

1 THE HONORABLE BRIAN McDONALD

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

8 SARAH ARMON, ABHI SHETH, LONDON
9 THURMAN, and DALE DEAN, individually
and on behalf of all others similarly situated,
10 JANE AND JOHN DOES 1-10, individually and
on behalf of all others similarly situated,

11 Plaintiffs,

12 v.

13 WASHINGTON STATE UNIVERSITY,

14 Defendant.

No. 17-2-23244-1 SEA (consolidated
with Case No. 17-2-25052-0 SEA)


**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

15 This Court entered an order granting preliminary approval of the Settlement between
16 Plaintiffs Armon, Sheth, Thurman, and Dean (“Plaintiffs”), on their own behalf and on behalf
17 of the Settlement Class, and Defendant Washington State University (“Defendant” or “WSU”)
18 on April 18, 2019 (the “Preliminary Approval Order”). Plaintiffs submitted the Settlement
19 Agreement to the Court with their “Unopposed Motion for Preliminary Approval of Class
20 Action Settlement” (as Exhibit 1 to the “Declaration of Kim D. Stephens in Support of Motion
21 for Preliminary Approval”).

22 On May 20, 2019, under the terms of the notice requirements set forth in the Settlement
23 and the Preliminary Approval Order, the Settlement Class was apprised of the nature and


**[PROPOSED] FINAL APPROVAL ORDER AND
JUDGMENT - 1**

ORIGINAL

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1 pendency of the Litigation, the terms of the Settlement, and their rights to request exclusion,
2 object, and/or appear and the Final Approval Hearing.

3 On September 25, 2019, Plaintiffs filed their Motion for Final Approval of Class Action
4 Settlement ("Final Approval Motion") and accompanying Declarations from Cameron R.
5 Azari, Esq., Sasi Pillay; and Class Counsel filed their Motion for an Award of Attorneys' Fees
6 and Reimbursement of Expenses, with accompanying declarations from Kim Stephens, Tina
7 Wolfson, Michael Rhodes, Rachel Bender and John Bender setting forth their time and
8 expenses, along with related exhibits (the "Fee Application").

9 On ~~October 25~~ ^{November 8, 2019}, 2019, the Court held a Final Approval Hearing to determine, among
10 other things, (1) whether the Settlement is fair, reasonable, and adequate, and (2) whether the
11 Court should enter judgment dismissing all claims in the Complaint with prejudice. Prior to the
12 Final Approval Hearing, and as noted above, Class Counsel filed the Declaration of Cameron
13 R. Azari, Esq. on Implementation of Settlement Notice Program, confirming that the Notice
14 Program was completed in accordance with the Parties' instructions and the Preliminary
15 Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly
16 notified of their right to appear at the Final Approval Hearing in support of, or in opposition to,
17 the proposed Settlement, the award of attorneys' fees, costs, and expenses, and the payment of
18 Service Awards to the Class Representatives.

19 Having given an opportunity to be heard to all requesting persons in accordance with
20 the Preliminary Approval Order; having heard the presentation of Class Counsel and counsel
21 for WSU; having reviewed all of the submissions presented with respect to the proposed
22 Settlement; having determined that the Settlement is fair, reasonable, and adequate; having
23 considered the application made by Class Counsel for attorneys' fees, costs, and expenses, and

1 Service Awards to the Class Representatives, and having reviewed the materials in support of
2 that application; and good cause appearing in the record, Plaintiffs' Final Approval Motion is
3 **GRANTED**, Class Counsel's Fee Application is **GRANTED**, and:

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

5 1. The Court has jurisdiction over the subject matter of this Litigation and over all
6 claims raised therein. The Court also has personal jurisdiction over the Parties and the
7 Settlement Class Members.

8 2. Unless otherwise defined herein, capitalized terms appearing in this Final
9 Approval Order and Judgment shall have the same meaning as used in the Settlement
10 Agreement.

11 3. The Parties entered into the Settlement in good faith following arm's-length
12 negotiations before an experienced mediator, and the Settlement is non-collusive.

13 4. The Settlement is, in all respects, fair, reasonable, and adequate; in the best
14 interests of the Settlement Class; satisfies Civil Rule 23; and therefore approved. The Court
15 finds that the Parties faced significant risks, expenses, delays, and uncertainties, including as to
16 the outcome, of continued litigation in this matter, which further supports the Court's finding
17 that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement
18 Class.

19 5. The Court grants final approval of the Settlement, including, but not limited to,
20 the releases in the Settlement and the plans for distribution of the Settlement relief. Therefore,
21 all Settlement Class Members (defined as "Person(s) who falls within the definition of the
22 Settlement Class and is/are not a Successful Opt-Out") are bound by the Settlement and this
23 Final Approval Order and Judgment.

1 6. The Settlement and every term and provision thereof shall be deemed
2 incorporated herein and shall have the full force of an order of this Court.

3 7. The Parties shall effectuate the Settlement in accordance with its terms.

4 **CLASS CERTIFICATION**

5 8. For the purposes of the Settlement and this Final Approval Order and Judgment,
6 the Court hereby finally certifies for settlement purposes only the following Settlement Class:

7 All individuals whose personal information (including but not limited to social
8 security numbers), financial information, and/or educational records were on the
9 WSU Social & Economic Sciences Research Center's hard drive stolen in April
2017 from Quality Self Storage in Olympia, Washington.

10 The Settlement Class is limited to those individuals who were included on the original list for
11 mailing the written Summary Notice in accordance with ¶ 3.2(d) of the Settlement Agreement.

12 9. The Court finds that for settlement purposes, the Settlement Class meets all the
13 requirements of CR 23(a) and (b)(3), namely that the Settlement Class is so numerous that
14 joinder of all members is impractical; there are common issues of law and fact; the claims of
15 the Settlement Class Representatives are typical of absent Settlement Class Members; the
16 Settlement Class Representatives have and will fairly and adequately protect the interests of the
17 Settlement Class, as they have no interests antagonistic to or in conflict with the Settlement
18 Class and have retained experienced and competent counsel to prosecute this matter; common
19 issues predominate over any individual issues; and a class action is superior to any alternative
20 means of adjudicating the controversy.

21 10. The Court grants Final Approval to the appointment of Plaintiffs as Settlement
22 Class Representatives. The Court concludes that the Settlement Class Representatives have
23 fairly and adequately represented the Settlement Class and will continue to do so.

1 11. The Court grants Final Approval to the appointment of Kim D. Stephens and
2 James Bulthuis of Tousley Brain Stephens PLLC; Rachel R. Bender of Bender Law, PLLC;
3 Michael K. Rhodes of Mix Sanders Thompson PLLC; and Tina Wolfson of Ahdoot Wolfson,
4 PC, as Class Counsel. The Court concludes that Class Counsel have adequately represented the
5 Settlement Class and will continue to do so.

6 **NOTICE TO THE SETTLEMENT CLASS**

7 12. The Court finds that the Notice Program, as set forth in the Settlement and
8 effectuated pursuant to the Preliminary Approval Order, satisfied CR 23(c)(2), was the best
9 Notice practicable under the circumstances, was reasonably calculated to provide—and did
10 provide—due and sufficient Notice to the Settlement Class of the pendency of the Litigation;
11 certification of the Settlement Class for settlement purposes only; the existence and terms of the
12 Settlement; the identity of Class Counsel and appropriate information about Class Counsel’s
13 then-forthcoming application for attorneys’ fees and incentive awards to the Class
14 Representatives; appropriate information about how to participate in the Settlement; Settlement
15 Class Members’ right to exclude themselves; their right to object to the Settlement and to
16 appear at the Final Approval Hearing, through counsel if they desired; and appropriate
17 instructions as to how to obtain additional information regarding this Litigation and the
18 Settlement. In addition, pursuant to CR 23(c)(2)(B), the Notice properly informed Settlement
19 Class Members that any Settlement Class Member who failed to opt-out would be prohibited
20 from bringing a lawsuit against Defendant based on or related to any of the claims asserted by
21 Plaintiffs, and it satisfied the other requirements of the Civil Rules.

22 13. The Claims Administrator’s fees, as well as all other costs and expenses
23 associated with Notice and Claims Administration, will continue to be paid by WSU as

1 provided in the Settlement.

2 **OBJECTIONS AND OPT-OUTS**

3 14. One objection was filed by a Settlement Class Member and served on the parties
4 The Court has considered this objection—which contains several purported concerns about the
5 Settlement—and finds that it does not counsel against Settlement approval. The objection, filed
6 by Settlement Class Member John E. Shepard, is hereby overruled in all respects. More
7 specifically:

- 8 a. The Court overrules the objection to the extent that it contends that WSU
9 cannot comply with the Settlement Agreement’s proposed injunctive relief
10 in Section 2.10a. The Court finds that it is not necessary for WSU to match
11 the Settlement Class Members’ Personal Information to the source of that
12 Personal Information to destroy the data as contemplated by Section 2.10a;
- 13 b. The Court overrules the objection to Section 2.10b of the Settlement
14 Agreement, as it rests on the mistaken assumption that SESRC continues to
15 store unencrypted data offsite for a purpose other than the litigation hold in
16 this matter, which the Court finds is unfounded;
- 17 c. The Court overrules the objection to the extent it claims that Section 2.10c
18 does not provide for adequate investment in cyber-security and changes to
19 WSU’s information security policies. The Court finds that the Settlement,
20 including Section 2.10c, is fair, reasonable, and adequate, and that WSU has
21 agreed to significant investments in cyber-security and positive changes to
22 WSU’s information security policies;
- 23 d. The Court overrules the objection to the extent that it claims that the

1 Plaintiffs conducted inadequate discovery. The Court, having overseen this
2 Litigation, the Parties, and their counsel, finds that the Parties' discovery
3 gave them a sufficient basis on which to evaluate the strengths and
4 weaknesses of this case in negotiations;

5 e. The Court overrules the objection to the extent that it claims that Settlement
6 Class Members are unable to opt out of future risks associated with WSU
7 operations. The Settlement provides for the destruction of the Personal
8 Information on the two remaining hard drives at the conclusion of this
9 Litigation, and it further provides that WSU and its research departments
10 shall conduct a review to ensure Settlement Class Members' SESRC
11 research data containing Personal Information have been destroyed in
12 accordance with the Washington Release of Records for Research Act,
13 Chapter 42.48 RCW, and/or the contracts through which WSU obtained the
14 Personal Information. WSU will provide proof reasonably satisfactory to
15 Plaintiffs' counsel that such review has been conducted. The Settlement was
16 not aimed at ensuring that other state agencies could not share Settlement
17 Class Members' Personal Information with WSU in the future, nor could it
18 reasonably have been so aimed;

19 f. The Court overrules the objection to the extent that it argues that WSU's
20 denial of wrongdoing undermines the proposed injunctive relief. The Court
21 finds that WSU's denial of wrongdoing in no way impacts its independent
22 obligation to abide by the terms of the agreed-on injunctive relief as set forth
23 in the Settlement Agreement;

- 1 g. The Court overrules the objection that, given WSU's denial of liability, the
2 Settlement Agreement violates the Washington State Constitution, as no
3 credit is loaned from WSU or any other State entity as a result of the
4 Settlement, and the Court finds no other basis on which the Settlement could
5 even arguably violate the Washington State Constitution;
- 6 h. The Court overrules the objection to the extent that it claims that the
7 Settlement fails to further a public purpose. The Court finds that the
8 Settlement Agreement, as a compromise between the Parties, puts a stop to
9 litigation costs, mitigates litigation risks, and provides relief to those in the
10 Settlement Class; and
- 11 i. The Court overrules the objection to the extent that it claims that the
12 monetary relief is inadequate. The Settlement, as with all settlements, is a
13 compromise—the fact that it may have been greater is not in itself sufficient
14 to undermine the Court's conclusion that the Settlement is fair, reasonable,
15 and adequate.
- 16 j. To the extent that the objection raises any other grounds for disapproval not
17 specifically addressed, the Court finds that they are not well taken and need
18 not be further considered.

19 15. The Court also received correspondence from Dennis Kelly and Jeromy Roach,
20 which the parties represent was not served on them. To the extent this correspondence raises
21 objections, the objections are overruled. Their correspondence addresses the potential for
22 future harm, but the Court finds that the Settlement's provision of credit monitoring and
23 insurance reasonably addresses those fears. Further, the Settlement provides for the destruction

1 of the hard drive upon final approval of the Settlement. The Court further finds that the
2 consideration provided under the Settlement is reasonable and adequate. To the extent that the
3 correspondence raises any other grounds for disapproval not specifically addressed, the Court
4 finds that they are not well taken and need not be further considered

5 16. All Settlement Class Members who have not objected to the Settlement in the
6 manner provided in the Settlement are deemed to have waived any objections to the Settlement,
7 including, but not limited to, by appeal, collateral attack, or otherwise.

8 17. A list of putative members of the Settlement Class who have timely and validly
9 elected to opt-out of the Settlement and the Settlement Class, in accordance with the
10 requirements in the Settlement (the "Successful Opt-Outs"), has been submitted to the Court as
11 an attachment to the Declaration of Cameron Azari, filed in advance of the Final Approval
12 Hearing. That list is attached as Exhibit A to this Order. The persons listed in Exhibit A are not
13 bound by the Settlement or this Final Approval Order and Judgment, and they are not entitled
14 to any of the benefits under the Settlement.

15 **AWARD OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS**

16 18. The Court has considered Class Counsel's Fee Application along with the
17 declarations submitted by Counsel setting forth their time and expenses incurred in connection
18 with this Litigation.

19 19. The Court finds that the attorneys' fees requested by Class Counsel are fair and
20 reasonable, given Class Counsel's lodestar of over \$960,000, the results achieved through this
21 Litigation, and the contingent nature of the fee. The Court has reviewed the records submitted
22 by Class Counsel and finds Class Counsel reasonably spent 1,917.88 hours representing the
23 Settlement Class's interests through this Litigation, that Class Counsel's hourly rates are

1 reasonable and in line with the prevailing rates in the community for complex class action
2 litigation, and that the \$26,655.97 in costs incurred to prosecute this Litigation were reasonable.
3 Similarly, the requested fee award of \$806,194 is reasonable when considering it in proportion
4 to the benefits made available to, and claimed by, the Settlement Class. The aggregate value of
5 the benefits claimed by the Settlement Class were approximately \$17.5 million when
6 considering the retail value of the credit monitoring and insurance benefits. This means the fee
7 request is well below the benchmark of 25%, and is therefore reasonable. Accordingly, Class
8 Counsel are hereby awarded \$806,194 in attorneys' fees (inclusive of reimbursement of Class
9 Counsel's litigation costs). This award of attorneys' fees and costs is independent of the
10 Court's consideration of the fairness, reasonableness, and adequacy of the Settlement.

11 20. The Court further finds that the requested incentive awards of \$2,500 to each
12 individual Settlement Class Representative, as provided in the Settlement Agreement, are fair
13 and reasonable given the time and effort expended by the Settlement Class Representatives on
14 behalf of the Settlement Class. Pursuant to the Settlement Agreement, the incentive awards are
15 to be paid by WSU.

16 **OTHER PROVISIONS**

17 21. The Parties to the Settlement shall carry out their respective obligations as set
18 forth in the Settlement Agreement.

19 22. Within the time period set forth in the Settlement, the relief provided for in the
20 Settlement shall be made available to the Settlement Class Members submitting valid Claim
21 Forms under the terms and conditions of the Settlement.

22 23. The Releases set forth in the Settlement Agreement, including those described in
23 ¶ 1.33 and Section 6 thereto, are incorporated herein, and—as of the Effective Date and by

1 operation of this Final Approval Order and Judgment—are binding and effective on all
2 Settlement Class Members who have not properly excluded themselves from the Settlement
3 Class.

4 24. The Court hereby dismisses the Litigation and Complaint and all claims therein
5 on the merits and with prejudice, without fees or costs to any party, except as provided in this
6 Final Approval Order and Judgment.

7 25. There being no just reason for delay, the Court, in the interests of justice, enters
8 this Final Approval Order and Judgment, and hereby decrees that, upon entry, it be deemed a
9 final judgment. Without affecting the finality of this Judgment in any way, the Court hereby
10 retains continuing jurisdiction over: (1) implementation of the Settlement; (2) further
11 proceedings, if necessary, on applications for attorneys' fees, expenses, and costs in connection
12 with the Litigation and the Settlement; and (3) the Parties and the Settlement Class Members
13 for the purpose of construing, enforcing, and administering the Settlement Agreement and all
14 orders and judgments entered in connection therewith.

15 IT IS SO ORDERED.

16 DATED this 8th day of November, 2019.

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18 
19 The Hon. Brian McDonald

1 Presented By:

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[PROPOSED] FINAL APPROVAL ORDER AND
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[PROPOSED] FINAL APPROVAL ORDER AND
JUDGMENT - 13

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Exhibit A

WSU Data Breach Settlement

Requests for Exclusion

Opt-Out ID	Claimant Name
1	Cynthia F Yap
2	Nini Le
3	Brenda Colleen Clifton
4	Daniel Ryan Murtagh
5	Connor Ferbrache
6	Jason Brandon Hawley
7	Sue Mi Kim
8	Thach Prachs Chackreys
9	Jordan Walker
10	Brian Geyer
11	Andrew P Keleher
12	Katherine D LaShier
13	Deborah Lynn Hanuscin
14	Matthew David Mower
15	Kevin James Davis
16	Ashleigh Brock
17	Nicholas Mitchell
18	Samuel Windom
19	Destin-James Kamara
20	Travis Little
21	Mabinty T Kamara
22	Ana Velloso
23	Vera Borshch