

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

Christine Thomsen, Donna Miller,  
Shelbi Farrington, Dianna Kometh,  
Sally Labree, Harry Peterson, Patrick  
Burnham, David Teverbaugh,  
Richard Journagin, Gale Marie  
Jackson, Edward Cable, Carole  
Dangelo, Sophia Marks, Albert  
Shearer, and Rebecca Younk, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

Morley Companies, Inc.

Defendant.

Case No. 1:22-cv-10271-TLL-PTM  
Hon. Thomas L. Ludington  
Hon. Patricia T. Morris

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

Plaintiffs Christine Thomsen, Donna Miller, Shelbi Farrington, Dianna Kometh, Sally LaBree, Harry Peterson, Patrick Burnham, David Teverbaugh, Richard Journagin, Gale Marie Jackson, Edward Cable, Carole Dangelo, Sophia Marks, Albert Shearer, and Rebecca Younk (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, move this Court, pursuant to Federal Rule of Civil Procedure 23, for an Order granting preliminary approval of the proposed class action Settlement Agreement (“S.A.”) agreed to by the Parties. *See* Settlement Agreement attached as **Exhibit 1**. The Motion<sup>1</sup> seeks preliminary approval of the Plaintiffs’ agreement with Defendant to settle all individual and class claims that were made, or could have, been made, in Plaintiffs’ Second Amended Class Action Complaint (ECF No. 18).

In support of this motion, Plaintiffs rely upon the accompanying Memorandum of Law, the Declaration of Bryan L. Bleichner, and the Declaration of Epiq Class Action & Claims Solutions, Inc. and/or its affiliate Hilsoft Notifications in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval, which presents the Class Action Settlement with all supporting documentation.

Plaintiffs request that the Court enter an order<sup>2</sup>:

1. Provisionally certifying the Settlement Class under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3);

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<sup>1</sup> Filed with leave from the Court, *see* ECF No. 25, PageID.1658-1659.

<sup>2</sup> Plaintiffs have attached a Proposed Order to Plaintiffs’ papers, **Ex. 5**.

2. Provisionally appointing Plaintiffs as representatives of the Settlement Class;
3. Finding that the proposed Settlement is sufficiently fair, reasonable, and adequate to allow dissemination of notice of the settlement to the proposed Settlement Class;
4. Appointing Bryan L. Bleichner of Chestnut Cambronne PA as Settlement Class Counsel;
5. Establishing dates for a hearing on final approval of the proposed Settlement, Plaintiffs' service awards and Class Counsel's request for attorneys' fees and expenses;
6. Appointing Epiq Class Action & Claims Solutions, Inc. and/or its affiliate Hilsoft Notifications (together, "Epiq") as Claims Administrator;
7. Approving the form of class notice;
8. Approving the notice plan and directing that notice be given;
9. Establishing a deadline for filing papers in support of final approval of the proposed Settlement and a request for attorneys' fees, expenses, and service awards;
10. Establishing a deadline for the filing of objections by Settlement Class Members; and
11. Establishing a deadline for Settlement Class Members to exclude themselves from the proposed Settlement Class with respect to the settlement.

Respectfully Submitted:

September 5, 2022

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**



## STATEMENT OF ISSUES PRESENTED

1. Does the proposed Settlement Class meet Rule 23's requirements for class certification for settlement purposes under Fed. R. Civ. P 23(b)(2) and (b)(3)?

**Plaintiffs' Answer: Yes.**

2. Should Bryan L. Bleichner of Chestnut Cambronne PA be appointed as Settlement Class Counsel?

**Plaintiffs' Answer: Yes.**

3. Should Plaintiffs be appointed as Class Representatives for the Settlement Class?

**Plaintiffs' Answer: Yes.**

4. Based on an initial evaluation, is the proposed Settlement fair, adequate, and reasonable, sufficient to warrant notice to the proposed Settlement Class?

**Plaintiffs' Answer: Yes.**

5. Should Epiq Class Action & Claims Solutions, Inc. and/or its affiliate Hilsoft Notifications (together, "Epiq") be appointed as Claims Administrator? **Plaintiffs' Answer: Yes.**

6. Does the Notice Plan satisfy the requirements of Rule 23 and Due Process?

**Plaintiffs' Answer: Yes.**

## **CONTROLLING AND MOST APPROPRIATE AUTHORITIES**

- Fed. R. Civ. P. 23
- *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997)
- *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615 (6th Cir. 2007)
- *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)

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## I. INTRODUCTION

This case arises from a Data Incident<sup>1</sup> (the “Data Incident”) experienced by Defendant Morley Companies, Inc. (“Morley”) on or about August 1, 2021 involving the potential unauthorized access of Personally Identifiable Information (“PII”) of certain individuals. *See* Declaration of Bryan L. Bleichner in support of Plaintiffs’ Unopposed Motion for Preliminary Approval (“Bleichner Decl.”), ¶ 2 attached as **Ex. 2**. Counsel for all Plaintiffs have worked collaboratively, joining in this action via the filing of later complaints, including via the operative one, the Second Amended Class Action Complaint (“SAC”), filed on May 26, 2022. ECF No. 16. Defendant suffered a massive ransomware-type malware attack on or about August 1, 2021. SAC, ¶1. An unauthorized user targeted Defendant, launching a ransomware-type malware on Defendant’s network and computer systems that potentially resulted in unauthorized access to personal information—described in detail below in § II *infra*—of approximately 694,679 individuals, including current and former employees. Bleichner Decl., ¶ 11.

From the start, the Parties met and conferred and worked towards possible early resolution of this dispute. The Parties participated in a mediation on April 20, 2022 with a neutral, Bennett G. Picker, Esq. of Stradley Ronon. Bleichner Decl., ¶

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<sup>1</sup> Unless otherwise indicated, the defined terms herein shall have the same definition as set forth in the Settlement Agreement and Release dated August 24, 2022.

9. The Parties reached a resolution that – if accepted – will resolve the litigation and provide substantive relief to the Settlement Class Members (“SCMs”). Bleichner Decl., ¶ 13. The Parties have negotiated a settlement providing for a \$4,300,000 non-revisionary Settlement Fund to be used as the exclusive source of payment to SCMs, for costs of Claims Administration and Notice, and for any Attorneys’ Fees and Expenses Award and any Class Representative service awards (“Settlement Agreement” or “S.A.”). *See* S.A., § 1.29.

SCMs stand to benefit from the Settlement in many ways. SCMs who submit valid, timely claims may claim up to \$2,500 in out-of-pocket expenses, described in § IV *infra*. *See* S.A., § 2-2, 2.3(e).<sup>2</sup> Any residual funds after payment of all class benefits, settlement administration fees, attorneys’ fees and costs, and service awards shall be used to extend the credit monitoring terms for those who made claims. S.A., § 2.5. And, any additional remainder shall be used for a *pro rata* increase of the lost time claims, up to a maximum of \$160 per claimant. *Id.*

The results achieved by the Settlement—which compare favorably to settlements that have received final approval by courts in this and other districts—demonstrate the propriety of granting preliminary approval. As such, Plaintiffs respectfully move this Court for an Order: (1) granting preliminary approval to the

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<sup>2</sup> A subclass, California SCMs, may also claim a payment of \$75 per individual as compensation for their statutory claim(s) under California law. S.A., § 2.3(c).

Settlement Agreement; (2) certifying the Settlement Class; (3) appointing Plaintiffs as Settlement Class Representatives (the “Class Representatives”); (4) appointing Bryan L. Bleichner of Chestnut Cambronne PA as Settlement Counsel; (5) Appointing Epiq as Claims Administrator; and (6) ordering that Notice be disseminated to the Settlement Class in accordance with the Settlement Agreement.

## **II. STATEMENT OF FACTS**

Defendant Morley is a Michigan corporation that provides business services to clients, including the information processing for health plan clients. SAC, ¶ 32.

Plaintiffs allege that, starting in July 2021, and, first observed by Defendant on August 1, 2021, cybercriminals stole the sensitive personal information of Plaintiffs and Class Members from Defendant Morley’s computer servers. *Id.*, ¶1. On August 1, 2021, Defendant discovered that “a ransomware-type malware had prevented access to some data files on [Defendant’s] system beginning August 1, 2021, and there was unauthorized access to some files that contained personal information.” *Id.*, ¶ 1. This Data Incident involved approximately 694,679 individuals, including current and former employees of Defendant as well as various business clients. S.A. at p.3. The information allegedly stolen in the Data Incident included Class Members’ sensitive PII including, but not limited to: Social Security numbers (“SSNs”), names, addresses, dates of birth (“DOBs”), driver’s license numbers, client identification numbers, medical diagnostic and treatment

information, and health insurance information. *Id.* at 2-3.

Plaintiffs further allege that all of this PII and PHI was compromised due to Defendant's negligent and/or careless acts and omissions and its failures to protect its employees', former employees', and customers' data. SAC, ¶¶ 266-80.

Plaintiffs allege that they and similarly situated customers have suffered injury as a result of Defendant's conduct, including: (i) lost or diminished value of their PII; (ii) out-of-pocket expenses associated with the prevention, detection, and recovery from identity theft, tax fraud, and/or unauthorized use of their PII; (iii) lost opportunity costs associated with attempting to mitigate the actual consequences of the Data Incident, including but not limited to lost time; and (iv) the continued risk to their PII, which Plaintiffs allege (a) may remain available on the dark web for individuals to access and abuse, and (b) remains in Defendant's possession and is subject to further unauthorized disclosures so long as Defendant fails to undertake appropriate and adequate measures to protect the PII and PHI. *See, e.g., id.*, ¶ 279.

### **III. PROCEDURAL HISTORY**

Plaintiff Thomsen initiated this action against Morley by filing a class action complaint on February 10, 2022. *See* Compl., ECF No. 1. Subsequently, other similar suits were filed, and, after coordination, the plaintiffs there voluntarily dismissed their respective complaints without prejudice, and all are now added as

named Plaintiffs here.<sup>3</sup> *See* ECF No. 17, PageID.778-79; Bleichner Decl., ¶ 5; SAC. The Parties agreed to mediation and, prior to the mediation, exchanged discovery under F.R.E. 408, which included details of the Data Incident and the class allegations. Bleichner Decl., ¶¶ 10-12. The April 20, 2022 mediation with Mr. Picker led to a settlement in principle, and, shortly thereafter, the Parties reduced it to a Settlement Term Sheet. *See* **Ex. 1**; *Id.*, ¶ 13. Since then, the Parties have negotiated the details of the Settlement Agreement and its exhibits, and executed the Settlement Agreement on August 24, 2022. *Id.*

#### **IV. THE SETTLEMENT TERMS**

##### **A. Proposed Settlement Class**

The Settlement will provide substantial relief for the following Settlement Class: “[A]ll natural persons residing in the United States who were sent notice letters notifying them that their Private Information was compromised in the Data Incident announced by Defendant on or about August 1, 2021.” S.A., § 1.26. The Settlement Class contains approximately 694,679 individuals. *Id.* at 3.

##### **B. The Settlement Fund**

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<sup>3</sup> Counsel conferred with plaintiffs’ counsel in similar suits, and it was agreed that those cases would be voluntarily dismissed and then added to this case to work together towards settlement. Bleichner Decl., ¶ 15. *See Miller*, No. 1:22-cv-10284; *Kometh*, No. 1:22-cv-10311; *Teverbaugh*, No. 1:22-cv-10321; *Journagin*, No. 1:22-cv-10443; *Jackson*, No. 2:22-cv-10469. (notices of voluntary dismissal filed Mar. 16, 2022, Mar. 14, 2022, Mar. 17, 2022, Mar. 16, 2022, Mar. 23, 2022, respectively). In *Ratcliff v. Morley Companies, Inc.*, Case No. 1:22-cv-10360, counsel there chose not to coordinate with Plaintiffs, and it is stayed pending this case’s resolution.

Morley has agreed to create a non-reversionary Settlement Fund in the amount of \$4,300,000, which will be used to make payments to SCMs and to pay the costs of Claims Administration, any Attorneys' Fees and Expenses Award, and any Class Representative service awards. S.A., §§ 1.28, 2.1.

***Compensation for Unreimbursed Losses.*** SCMs may submit a claim for out-of-pocket losses, up to a total of \$2,500. Out-of-pocket claims include unreimbursed losses relating to fraud or identity theft; professional fees and fees for credit repair services; costs associated with freezing of credit with any credit reporting agency; credit monitoring costs that were incurred on or after August 1, 2021 through the date of claim submission that the claimant attests under penalty of perjury were caused or otherwise incurred as a result of the Data Incident; and miscellaneous expenses. S.A., § 2.3(a). SCMs with out-of-pocket expense claims must submit supporting documentation. This may include receipts or other documentation of costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation. *Id.*

SCMs can also submit a Claim Form for time spent remedying issues related to the Data Incident for up to four (4) total hours at a rate of \$20 per hour ("Lost-Time Claims"). S.A., § 2.3(b). No documentation is required but SCMs must (1) attest that the time claimed was actually spent as a result of the Data Incident and

(2) provide a brief description of the actions taken in response to the Data Incident.

*Id.* These Claims can be combined with claims for out-of-pocket expenses. *Id.*

***Credit Monitoring.*** All SCMs are entitled to receive 3 years of free 3-Bureau Credit Monitoring. The Parties will mutually agree on a Credit Monitoring vendor and coverage will include a minimum of the following: (1) financial fraud coverage; (2) identity freezing at the main credit bureaus; (3) home and property title monitoring; (4) income tax protection; (5) Early Warning Services to monitor financial accounts; and (6) identity theft insurance of up to \$1,000,000. S.A., § 2.2. The costs for such services will be paid out of the Settlement Fund. *Id.* SCMs who previously signed up for the Credit Monitoring offered by Defendant will have the terms of their service automatically extended by 3 years.

***Password Managing Service.*** SCMs who submit valid and timely claims for Password Managing Services shall also be provided the opportunity to enroll in one-year of Kroll's "Dashlane" password protections services. S.A., § 2.3(e). The costs for such services will be paid out of the Settlement Fund. *Id.*

***California Statutory Damages Payment.*** SCMs who attest, under penalty of perjury, that they were California residents at the time of the Data Incident (*i.e.*, on August 1, 2021) may submit a claim for cash payment of \$75 as compensation for their statutory claim(s) under California law. S.A., § 2.3(c). This claim for cash payment does not require any documentation. *Id.* This additional amount can be

combined with either or both Out-Of-Pocket Expense Claims or Lost-Time Claims.

***Residual Funds.*** Any residual funds after payment of all above-described class benefits, settlement administration fees, attorneys' fees and expenses of litigation, and any service awards to the Representative Plaintiffs shall be used to extend the credit monitoring terms for all those who make a valid claim for the service, up to the maximum term that the residual funds will allow on a class-wide basis. S.A., § 2.5. Any additional remainder shall be used for a *pro rata* increase of the Lost-Time Claims, up to a maximum of \$160 per claimant. *Id.*

#### **C. Remedial Measures and Security Enhancements**

Defendant has provided a confidential declaration identifying the remedial measures and data security enhancements it has implemented to date, attached hereto as **Ex. 3** and filed under seal (ECF No. 23, PageID.1231, granting order) to preserve the confidential nature of those remedial measures and enhancements. S.A., § 2.6. These changes will benefit those SCMs whose information remains in Morley's possession, and also other employees, former employees, future employees, and customers, by protecting their PII and PHI from unauthorized access.

#### **D. Class Notice and Settlement Administration**

The Parties have selected as Claims/Settlement Administrator Epiq, a company experienced in administering class action claims—and specifically those of the type provided for and made in data breach litigation. S.A., § 1.4; *see also*



Declaration of Cameron R. Azari on Notices and Notice Plan, attached as **Ex. 4**.

Notice will begin within 30 days after entry of a Preliminary Approval Order. S.A., §1.15. Within 14 days of Preliminary Approval, Epiq will be provided with the Class List, the names and last known address of each SCM. *Id.*, §3.2 (a). Using the list, Epiq will run the postal addresses of SCMs through the USPS Change of Address database to update any change of address on file. *Id.*, §3.2(d).

The “Short Notice” (*see Id.*, § 1.31) will then be mailed to SCMs. If returned to Epiq with a forwarding address, Epiq will re-send it to that address within 7 days. *Id.* If it is returned to Epiq at least 14 days prior to the Opt-Out Date and Objection Date, and there is no new forwarding address, Epiq will perform a standard skip trace in an effort to ascertain the current address of the SCM and, if an address is ascertained, Epiq will re-send the Short Notice within 7 days. *Id.*

Epiq also will establish and maintain a Settlement Website that will host a traditional “Long Form” notice. *Id.*, § 3.2(c), § 1.14. The Notices will refer SCMs to this Website at which SCMs will be able to learn about the Settlement Agreement, their rights in relation to it and procedures for exercising their rights to it. *Id.* SCMs will also be able to use the Website to download claim forms for mailing and for submitting electronically. *Id.* The Notices will be clear and concise and directly apprise SCMs of all the information they need to know to make a claim or to opt-out or object to the Settlement. Fed. R. Civ. P. 23(c)(2)(B). Epiq shall provide the

requested relief to all SCMs that made a valid claim, subject to the individual caps on settlement class payments, within sixty (60) days of the Effective Date or within thirty (30) days of the date the claim is approved, whichever is later. S.A., § 9.2.

**E. Attorneys' Fees and Expenses**

Plaintiffs will also separately seek an award of attorneys' fees not to exceed 33% of the Settlement Fund (*i.e.*, \$1,419,000), and reimbursement of reasonable costs and litigation expenses incurred, which shall be paid from the Settlement Fund. S.A., §7.2. Class Counsel's fee request is well within the range of reasonableness for Settlements of this nature and size. *See, e.g., Garner Properties & Mgmt. v. City of Inkster*, 2020 WL 4726938, at \*10 (E.D. Mich. Aug. 14, 2020) (holding an attorneys' fee request of 33% of settlement fund to be reasonable); *Hillson v. Kelly Servs.*, 2017 WL 279814, at \*9 (E.D. Mich. Jan. 23, 2017) (finding fee request of 33% of the fund "in the ballpark of a reasonable award").

**F. Service Awards to Named Plaintiffs**

Plaintiffs in this case have been vital in litigating this matter, and have been personally involved in the case and support the Settlement. Bleichner Decl., ¶ 26. Plaintiffs will separately petition for awards of \$1,500 each, recognizing their time, effort, and expense incurred pursuing claims that benefited all SCMs. S.A., § 7.3.

The amount requested here is reasonable and common in settled class actions. *See, e.g., Underwood v. Carpenters Pension Tr. Fund-Detroit & Vicinity*, 2017 WL

655622, at \*15 (E.D. Mich. Feb. 17, 2017) (approving \$5,000 service award); *Garner*, 2020 WL 4726938 at \*12 (approving \$1,000 service award).

### **G. Release**

Plaintiffs and the Settlement Class, upon entry of Final Approval Order, will be deemed to have “completely and unconditionally released, forever discharged and acquitted the Released Persons from any and all of the Released Claims, including Unknown Claims.” S.A. §6.2; *Id.* §1.22 Released Claims definition.

## **V. ARGUMENT**

A settlement agreement should be preliminarily approved if it (1) “does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys,” and (2) “appears to fall within the range of possible approval.” *Garner*, 333 F.R.D. 614, 621 (E.D. Mich. Jan. 17, 2020)<sup>4</sup>; *see also Berry v. Sch. Dist. of Benton Harbor*, 184 F.R.D. 93, 97 (W.D. Mich. 1998) (finding that a court must preliminarily approve a class settlement “[u]nless it appears that the compromise embodied in the agreement is illegal or tainted with collusion”). And “it is clear the bar is lower for preliminary approval than it is for final approval.” *Garner*, 333 F.R.D. 614, 621 (E.D. Mich. Jan. 17, 2020).

### **A. The Court Should Certify the Proposed Settlement Class**

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<sup>4</sup> Unless otherwise noted, all citations and internal quotations are omitted.

The first step for a court faced with a motion for preliminary approval is to certify the proposed settlement class for settlement purposes as meeting the requirements of rule 23 of the Federal Rules of Civil Procedure (“Rule 23”). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); MANUAL FOR COMPLEX LITIGATION, § 21.632 (4th ed. 2004). The plaintiff must demonstrate that the proposed class and proposed class representatives meet four requirements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Rule 23(a)(1)-(4). Each of these requirements is met here.

### **1. Rule 23(a) Requirements Are Met for Settlement Purposes**

***Numerosity and Ascertainability.*** The first prerequisite is that the “class is so numerous that joinder of all members is impracticable.” Rule 23(a)(1). As few as thirty-five class members is sufficient. *Afro Am. Patrolmen’s League v. Duck*, 503 F.2d 294, 298 (6th Cir. 1974); *Davidson v. Henkel*, 302 F.R.D. 427, 436 (E.D. Mich. 2014) (noting the modern trend requires a minimum of 21 to 40 class members); *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006). The Settlement Class includes approximately 694,679 individuals identified by Morley—satisfying the numerosity requirement for purposes of settlement. *See* Fed. R. Civ. P. 23(a)(1). The Class is ascertainable as well. *See Kinder v. Nw. Bank*, 278 F.R.D. 176, 182 (W.D. Mich. 2011) (“[T]he requirement that there be a class will not be deemed satisfied unless the class description is sufficiently definite so that it is administratively

feasible for the court to determine whether a particular individual is a member.”). Identifying SCMs is objective: Morley has a list of all individuals to whom it sent notice that their information may have been exposed in the Data Incident.

**Commonality.** Next, there must be “questions of law or fact common to the class.” Rule 23(a)(2). Commonality may be shown when the claims of all class members “depend upon a common contention,” with “even a single common question” sufficing. *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2545, 2557 (2011). The common contention must be capable of class-wide resolution and the “determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 2545. Here, Plaintiffs’ claims turn on the adequacy of Morley’s data security in protecting SCMs’ PII. Evidence to resolve that claim does not vary among class members, and so can be fairly resolved, at least for purposes of settlement, for all SCMs at once.

**Typicality.** Class Representatives’ claims must be typical of the putative class they seek to represent. Rule 23(a)(3). Plaintiffs satisfy the typicality requirement where their “claim arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.” *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007). Typicality is designed to assess “whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court