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17 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

18 **IN AND FOR THE COUNTY OF MARICOPA**

19 Carol Dearing, On Behalf of Herself and	)	Case No.: CV2020-013648
20 All Others Similarly Situated,	)	
21	)	PLAINTIFF’S MOTION FOR AND
22 Plaintiff,	)	MEMORANDUM IN SUPPORT OF
23	)	FINAL APPROVAL OF CLASS
24 v.	)	ACTION SETTLEMENT,
25	)	CERTIFICATION OF SETTLEMENT
26 Magellan Health, Inc. and Magellan RX	)	CLASS AND ENTRY OF
27 Management, LLC,	)	JUDGMENT
28	)	
29 Defendants.	)	(Assigned to the Hon. Danielle Viola)
	)	

30 Plaintiff Carol Dearing, on behalf of herself and all others similarly situated, hereby  
31 submits her Motion for Final Approval of Class Action Settlement, Class Certification of  
32 Settlement Class and Entry of Judgment (“Motion for Final Approval”). This Motion is  
33 based upon this Notice of Motion; the related Memorandum in Support of the Motion for  
34 Final Approval; the evidentiary submissions, including the Declaration of Cameron R.

1 Azari, Esq. on Implementation and Adequacy of Notice Plan, the Supplemental Declaration  
2 of Cameron R. Azari, Esq. to be filed under separate cover, the materials submitted in  
3 support of Plaintiff’s Motion for and Memorandum in Support of Attorneys’ Fees and Costs  
4 and Plaintiff’s Incentive Award and its accompanying Declarations of Elaine A. Ryan and  
5 Class Counsel, and such other evidence as may be received at the hearing of this matter on  
6 December 2, 2022.  
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8 Because the Settlement Agreement in this action provides a fair, reasonable, and  
9 adequate resolution of the claims asserted on behalf of the proposed Class, Plaintiff requests  
10 that the Court enter a judgment finalizing the preliminary approval granted on August 1,  
11 2022 and certifying the class.  
12

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 On August 2, 2022, this Court granted preliminary approval of the proposed class  
16 action settlement between Plaintiff Carol Dearing (“Plaintiff”) and Defendants Magellan  
17 Health, Inc., and Magellan RX Management, LLC (“Defendants” or “Magellan”). In the  
18 interest of efficiency, Plaintiff refers this Court to, and incorporates by reference, Plaintiff’s  
19 Motions and Memoranda for Preliminary Approval and for Award of Attorney’s Fees and  
20 Incentive Award, each with their accompanying Exhibits, including the proposed settlement  
21 agreement, for the factual and procedural background on this Action.  
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1 **II. OVERVIEW OF THE SETTLEMENT TERMS AND BENEFITS**

2 **A. Compensation for Class Members**

3  
4 The Settlement Agreement provides for two types of compensation for the Class  
5 members: (1) a Reimbursement for *Ordinary* Out-of-Pocket Expenses and Lost Time; and  
6 (2) a Reimbursement for *Extraordinary* Out-of-Pocket Expenses and Lost Time. (See  
7 Settlement Agreement (hereinafter “Agr.”)). The Settlement provides for relief for a  
8 Settlement Class defined as:

9  
10 The approximately 273,000 individuals who were mailed a  
11 notification that their personally identifiable information  
12 and/or personal health information may have been exposed to  
13 unauthorized third parties as a result of the Data Incident  
14 experienced by Magellan on or around May 2019.

15 (Ryan Decl., at ¶29).

16 Under the terms of the Settlement Agreement, any Class member who incurred both  
17 ordinary and extraordinary expenses as a result of the Data Incident between November  
18 2019 and the Claims Deadline may be reimbursed for those expenses. In order to receive a  
19 reimbursement, Settlement Class Members must submit a valid Claim Form, that may be  
20 completed in writing or online, prior to the Claims Deadline, or 90 days from the Notice.

21 (*Id.*, at ¶32).

22 **1. Ordinary Out-of-Pocket Expenses**

23 Reimbursements covered by the Settlement as Ordinary Out-of-Pocket Expenses  
24 include: (i) long distance telephone charges; (ii) cell phone minutes (if charged by the  
25 minute); (iii) internet usage charges (if either charged by the minute or incurred solely as a  
26 result of the Data Incident); (iv) costs of credit monitoring services and/or fraud resolution  
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1 services purchased between November 2019 and the Claims Deadline; (v) other losses  
2 incurred by Settlement Class Members determined to be fairly traceable to the Data  
3 Incident; and (vi) compensation for attested-to lost time spent dealing with the Data  
4 Incident, at the rate of \$15 per hour for up to two (2) hours of lost time (attestation requires  
5 at least a narrative description of the activities performed during the time claimed and their  
6 connection to the Data Incident). No attestation or verification requires notarization. (*Id.*,  
7 at ¶32).

8  
9  
10 To be reimbursed for costs associated with the purchase of credit monitoring and/or  
11 fraud resolution services, Claimants must submit: (1) a statement that the monitoring or  
12 service was purchased primarily because of the Data Incident and not for other purposes;  
13 and (2) documentation supporting the cost of the service purchased. Instructions for how  
14 to submit a proper Claim Form were provided in the Long Form Notice that has been posted  
15 to the Settlement Website ([www.MHDataSettlement.com](http://www.MHDataSettlement.com)) and also described in the  
16 Frequently Asked Questions (“FAQS”) available there. (*Id.*, at ¶33).

17  
18 In no event shall the aggregate amount for Ordinary Out-of-Pocket Expenses exceed  
19 \$430,000. (*Id.*, at ¶34).<sup>1</sup>

## 20 21 **2. Extraordinary Out-of-Pocket Expenses**

22 Settlement Class Members also may be eligible to be reimbursed for additional  
23 expenses up to \$2,500 including: (1) documented expenses directly associated with dealing  
24 with identity theft or identity fraud related to the Data Incident; and (ii) attested-to lost time  
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27 <sup>1</sup> In the event that the actual amount exceeds this amount, Settlement Class Members’  
28 Settlement benefits will be reduced by a pro-rata share. (*Ryan Decl.*, at ¶34).

1 dealing with documented identity theft and/or fraud from the Data Incident, at the rate of  
2 \$15 per hour, up to an additional three (3) hours of lost time (attestation requires at least a  
3 narrative description of the activities performed during the time claimed and their  
4 connection to the Data Incident). (*Id.*, at ¶35).

5  
6 In no event shall the aggregate Extraordinary Out-of-Pocket Expenses exceed  
7 \$1,000,000.<sup>2</sup>

### 8 **3. Mutual Release.**

9  
10 The Settlement includes a mutual release of claims that have been submitted or could  
11 have been submitted in this case. Settlement Class Members who did not submit a valid  
12 request to exclude themselves from the Settlement Agreement release all claims against  
13 Defendants and their Release Parties, as detailed in the Settlement Agreement. (*Id.*, at ¶37).

#### 14 **B. The Notice and Claim Process**

##### 15 **1. Notice**

16  
17 The Parties agreed to use Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the  
18 notice specialist and Claims Administrator in this case. (*Id.*, at ¶38; Agr. at ¶19-f). Epiq is  
19 experienced for the tasks assigned. Defendants have agreed to pay the costs associated with  
20 the Notice and Claims Administration separately from the Settlement benefits available to  
21 Settlement Class Members. (Agr., at ¶51). A description of the Notice Plan is set forth in  
22 the Supplemental Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy  
23 of Notice Plan filed under separate cover. In addition to a plan that required mail notice,  
24 Epiq also established a Settlement Website (available at [www.MHDataSettlement.com](http://www.MHDataSettlement.com)) and  
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28 <sup>2</sup> In the event that the actual amount exceeds this amount, Settlement Class Members’ Settlement benefits will be reduced by a pro-rata share. (*Id.*, at ¶36).

1 a toll-free telephone number (1-800-320-5709), with both continuing in service to allow for  
2 Claims to be submitted prior to the Claim Deadline. (Azari Decl., at ¶¶11-13).

## 3 **2. Claims**

4  
5 The timing of the claims process was structured to ensure that all Class Members  
6 had sufficient time to review the terms of the Settlement Agreement, to collect documents  
7 supporting their claim, and to decide whether they would like to opt-out or object. Class  
8 Members have until December 15, 2022 to submit valid claims, as described in the Long  
9 Form Notice, the Claim Form and other related documents on the website. (Agr., Definition  
10 of “Claims Deadline” at ¶19-g). The Claims Administrator will review the Claim Forms  
11 and determine if they are complete and valid and will communicate to Class Counsel and  
12 Defendants’ Counsel regarding the number of Claims since the prior reporting period, the  
13 total number of Claims received to date, the number of any Claims approved and denied,  
14 the total number of Claims approved and denied to date, and other pertinent information as  
15 requested by Class Counsel or Defendants’ Counsel. (Agr., at ¶31).

## 16 **3. Requests for Exclusion and Objections**

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19 The Opt-Out and Objection Deadline provided individuals a deadline of 60 days  
20 from the Notice Date, or to November 15, 2022, to also opt out and be excluded from the  
21 Settlement or to file objections to the Class Settlement. As of the date of filing this Motion,  
22 only five such requests to opt-out of the Settlement have been received, and none have been  
23 received objecting to the Settlement. (Azari Decl. at ¶14). The requirements for making  
24 these requests were provided to Class Members via the Settlement Website and the Long  
25 Form Notice.  
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2 The requirements to make these requests were described fully in the Affidavit of  
3 Elaine A. Ryan in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of  
4 Class Action Settlement and Certification of Class, attached to the Plaintiff’s Motion for  
5 Preliminary Approval.  
6

7 **4. Fees, Costs, and Service Award**

8 Plaintiff previously moved for, and Defendants do not oppose, an attorneys’ fees and  
9 expense award of \$280,000. Plaintiff also moved for an incentive award in the amount of  
10 \$2,500. These payments are separate from the reimbursements to be paid to Class Members  
11 described above.  
12

13 **III. LEGAL AUTHORITY**

14 Class actions are governed by Rule 23 of the Arizona Rules of Civil Procedure,  
15 which is similar to Rule 23 of the Federal Rules of Civil Procedure. *ESI Ergonomic*  
16 *Solutions, LLC v. UA Theatre Circuit, Inc.*, 203 Ariz. 94, 98, n.2 (Ct. App. 2002); *Ferrara*  
17 *v. 21st Century N. Am. Ins. Co.*, 245 Ariz. 377, 380, ¶ 6, n.2, (Ct. App. 2018).  
18

19 As a matter of policy, courts strongly encourage and favor settlements, particularly  
20 where complex class action litigation is involved. *Class Plaintiffs v. City of Seattle*, 955  
21 F.2d 1268, 1276 (9th Cir. 1992). When deciding to preliminarily approve a class settlement,  
22 a court must conclude the proposed settlement “taken as a whole, is fair, reasonable and  
23 adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San*  
24 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). For the same reasons discussed in Judge  
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1 Contes’ Court’s Preliminary Approval Order of August 2, 2022, the Court should approve  
2 this Motion and certify the class for purposes of final approval of the class action settlement.

3  
4 The process involved in certifying a class and to issue a court’s final approval  
5 involves two steps: (1) preliminary approval of the settlement terms, certification of the  
6 settlement class, and approval of the notice plan, followed by (2) a final hearing on the  
7 fairness, reasonableness, and adequacy of the settlement. *Rodriguez v. QS Next Chapter*  
8 *LLC*, 2020 U.S. Dist. LEXIS 222050, at \*2 (D. Ariz. Nov. 18, 2020).

#### 10 **IV. LEGAL DISCUSSION**

##### 11 **A. The Settlement Class.**

12 Plaintiff seeks final approval of the Class definition as set forth on page 3 of this  
13 Memorandum. Here, the class includes some 273,000 individuals whose data was impacted  
14 by the Data Incident.

##### 16 **B. The Settlement Class, As Defined, and the Class Settlement Should Be 17 Approved.**

18 In making decisions for final approval, a settlement agreement will be considered  
19 “presumptively valid” with a court not needing to make a detailed investigation consonant  
20 with trying the case. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d at 932  
21 (citing *Van Horn v. Trickey*, 840 F.2d at 607 (citations omitted)). A court must, however,  
22 provide a basis for determining that its decision rests on “well-reasoned conclusions” and  
23 is not “mere boilerplate.” *Id.* “The most important consideration in deciding whether a  
24 settlement is fair, reasonable, and adequate is the strength of the case for plaintiffs on the  
25 merits, balanced against the amount offered in settlement.” *Id.*, at 932. (quoting *Petrovic v.*  
26 *Amoco Oil Co.*, 200 F.3d 1140, 1150 (8<sup>th</sup> Cir. 1999) (internal citations omitted)).  
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1 Courts have recognized that a class action settlement is a private contract negotiated  
2 between the parties. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d at 932  
3 (citing *Christina A. ex rel. Jennifer A. v. Bloomberg*, 315 F.3d 990, 992 (8<sup>th</sup> Cir. 2003)).  
4 “Rule 23(e) requires the court to intrude on that private consensual agreement merely to  
5 ensure that the agreement is not the product of fraud or collusion and that, taken as a whole,  
6 it is fair, adequate, and reasonable to all concerned.” *Id.* Because the Settlement Agreement  
7 is the product of mediation with a neutral mediator and not of fraud or collusion, presents a  
8 resolution well within the range of acceptable outcomes, and is in fact a good result for  
9 Settlement Class Members, final approval should be granted. *See Schoenbaum v. E.I.*  
10 *Dupont De Nemours Co.*, 2009 U.S. Dist. LEXIS 114080, at \*2.

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14 **1. The Settlement Agreement and the Litigation Preceding It**  
15 **Required More Than Two Years of Litigation and an Arm’s**  
16 **Length Series of Negotiations to Reach.**

17 “A settlement reached after a supervised mediation receives a presumption of  
18 reasonableness and the absence of collusion.” 2 McLaughlin on Class Actions Section 6:7  
19 (8<sup>th</sup> ed. 2011); *see also Lee v. Anthem Inc. Cos.*, 2015 WL 3645208 at \*1 (quoting *Grove v.*  
20 *Principal Mut. Life Ins. Co.*, 200 F.R.D. 434, 445 (S.D. Iowa 2001)). Here, the litigation in  
21 the case required more than 2.5 years to reach the point that the case is ready for Final  
22 Approval. Numerous law and motion battles had to be resolved by both federal and state  
23 courts, including the Arizona Court of Appeals. Additionally, two mediation sessions were  
24 required, one in 2020 and the other this year, to finally resolve the case with the benefits  
25 described above. Class counsel were both diligent and vigorous in their representation of  
26 the Plaintiff and the putative class.  
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**2. The Settlement Agreement Provides Substantial Relief to the Settlement Class.**

The Settlement guarantees Class Members compensation for the ordinary and extraordinary expenses that they incurred as a result of the Data Incident and provides for payment of the Attorney’s Fees and Expenses, as well as a Plaintiff’s Award and costs of administration and notice above the reimbursements provided to the class. As of November 17, 2022, Epiq has received 940 Claim Forms. (Azari Decl., at ¶16).

These terms which are contained in the Settlement Agreement are available to any Settlement Class Member who files a valid and timely Claim Form. On the other hand, the chances of prevailing on the same claims in individual lawsuits on the merits would be costly and very uncertain. While Plaintiff believes in the merits of her case, she also understands that the Defendants will assert a number of defenses that could result in an end to the litigation. Through the Settlement, Plaintiff and Class Members will gain significant benefits without having to face further risk of not receiving any relief at all.

**3. The Proposed Claims Administrator Has Provided Adequate Notice.**

Rule 23(c)(2)(B) of the Rules of Civil Procedure require the Court to ensure direct notice of the proposed dismissal or compromise to all members of the class. Parties must provide “the best notice . . . practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Ariz. R. Civ. P. 23(c)(2)(B). As described in the Supplemental Declaration of Cameron, the notice provided reached some 93.6% of the Settlement Class. (Azari Decl., at ¶17.) In addition, notice was supported by both a Settlement Website as well as a toll-free number. (*Id.*, at ¶¶11-13).

1 The notices were previously approved by the Court and are clear and straightforward.  
2 They defined the Settlement Class; clearly described the options available to Settlement  
3 Class Members and the deadlines for taking action; described the essential terms of the  
4 Settlement; disclosed the requested service/incentive Award for the Class Representative as  
5 well as the amount that proposed Settlement Class Counsel intends to seek in fees and costs;  
6 explained procedures for making claims, objections, or requesting exclusion; provided  
7 information that will enable Settlement Class Members to calculate their individual  
8 recovery; described the date, time, and place of the Final Fairness Hearing; and prominently  
9 displayed the address and phone number of Class Counsel.

12 **V. CONCLUSION**

13 Plaintiff has negotiated a fair, adequate, and reasonable settlement that guarantees  
14 Settlement Class Members who submit a valid and timely Claim Form significant relief in  
15 the form of reimbursements for credit monitoring and/or fraud resolution services purchased  
16 as a result of the Data Incident. This includes reimbursement for time lost and damages  
17 actually suffered as a result of identity theft flowing from the Data Incident. For the  
18 foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion.  
19  
20

21 Dated: November 18, 2022

Respectfully submitted,

23 /s/Elaine A. Ryan

24 Elaine A. Ryan (State Bar No. 012870)

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