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**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION**

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*In re Kannact, Inc. Data Security Incident*

Lead Case No. 6:23-cv-1132-AA

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

## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	iii
LR 7-1 CERTIFICATION .....	1
MOTION.....	1
I. INTRODUCTION .....	1
II. FACTS AND PROCEDURAL HISTORY .....	2
III. SUMMARY OF SETTLEMENT .....	3
IV. ADMINISTRATION OF THE SETTLEMENT .....	4
V. LEGAL STANDARD.....	6
VI. ARGUMENT.....	7
A. The Settlement Satisfies Rule 23(a).....	7
B. The Settlement Satisfies All the Rule 23(e)(2) Factors.....	8
1. The Class Was Adequately Represented .....	8
2. The Settlement was Negotiated at Arm’s Length.....	9
3. The Relief is Adequate under Rule 23(e)(2)(C) .....	9
i. The Costs, Risks, and Delay of Trial and Appeal.....	10
ii. The Method of Distributing Relief is Effective .....	10
iii. The Terms Relating to Attorneys’ Fees are Reasonable .....	11
iv. Any Agreement Required to be Identified Under Rule 23(e)(3).....	11
4. The Proposed Settlement Treats Class Members Equally .....	11
C. The Settlement Satisfies All of the <i>Bluetooth</i> Factors .....	12
1. The Strength of Plaintiffs’ Case .....	12
2. Risk, Expense, Complexity, and Duration of Further Litigation.....	12
3. The Risk of Maintaining Class Action Status Through Trial .....	14

4. The Amount Offered in Settlement .....	14
5. The Extent of Discovery Completed and the Stage of the Proceedings .....	15
6. The Experience and Views of Counsel.....	15
7. Governmental Participants.....	16
8. The Positive Reaction of the Class Favors Final Approval.....	16
9. Lack of Collusion Among the Parties.....	17
VII. NOTICE SATISFIED DUE PROCESS AND RULE 23.....	17
VIII. CONCLUSION.....	19
CERTIFICATE OF COMPLIANCE .....	20

**TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Page</u></b>
<i>Amchem Prod., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	7
<i>Barker v. CDR Maguire, Inc.</i> , No. 6:21-cv-01720-AA, 2022 WL 1799812 (D. Or. June 2, 2022).....	17
<i>Calderon v. Wolf Firm</i> , No. SACV 16-1622-JLS(KESx), 2018 WL 6843723 (C.D. Cal. Mar. 13, 2018).....	15
<i>Chester v. TJX Cos.</i> , No. 5:15-cv-01437-ODW(DTB), 2017 WL 6205788 (C.D. Cal. Dec. 5, 2017).....	12
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992) .....	7
<i>Dennis v. Kellogg Co.</i> , No. 09-cv-1786-L(WMc), 2013 WL 6055326 (S.D. Cal. Nov. 14, 2013).....	12
<i>Doe v. Mindgeek United States Inc.</i> , 702 F. Supp. 3d 937 (C.D. Cal. 2023) .....	8
<i>Espinosa v. United Student Aid Funds, Inc.</i> , 553 F.3d 1193 (9th Cir. 2008), <i>aff'd</i> , 559 U.S. 260 (2010).....	18
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i> , No. CV 08 1365 CW EMC, 2010 WL 1687832 (N.D. Cal. Apr. 22, 2010) .....	16
<i>Gordon v. Chipotle Mexican Grill, Inc.</i> , No. 17-cv-01415-CMA-SKC, 2019 WL 6972701 (D. Colo. Dec. 16, 2019).....	13
<i>Green-Cooper v. Brinker Int'l, Inc.</i> , 73 F.4th 883 (11th Cir. 2023) .....	14
<i>Hammond v. The Bank of N.Y. Mellon Corp.</i> , No. 08 Civ. 6060 (RMB) (RLE), 2010 WL 2643307 (S.D.N.Y. June 25, 2010).....	13
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998) .....	8
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011) .....	7, 8, 11, 12
<i>In re Toys R Us-Delaware, Inc.--Fair &amp; Accurate Credit Transactions Act (FACTA) Litig.</i> , 295 F.R.D. 438 (C.D. Cal. 2014).....	16

<i>In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.</i> , 266 F. Supp. 3d 1 (D.D.C. 2017), <i>rev'd in part</i> , 928 F.3d 42 (D.C. Cir. 2019).....	13
<i>Leonardo's Pizza by the Slice, Inc. v. Wal-Mart Stores, Inc.</i> , 544 U.S. 1044, (2005).....	9
<i>Linney v. Cellular Alaska P'ship</i> , 151 F. 3d 1234 (9th Cir 1998) .....	15
<i>Mullane v. Central Hanover Bank &amp; Trust Co.</i> , 339 U.S. 306 (1950).....	17
<i>Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	10, 16
<i>Norton v. Maximus, Inc.</i> , Case No. 1:14-0030 WBS, 2017 WL 1424636 (D. Idaho Apr. 17, 2017).....	16
<i>Paz v. AG Adriano Goldschmeid, Inc.</i> , No. 14CV1372DMS(DHB), 2016 WL 4427439 (S.D. Cal. Feb. 29, 2016).....	14
<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985).....	17
<i>Rausch v. Hartford Fin. Servs. Grp.</i> , No. 01-cv-1529-BR, 2007 WL 671334 (D. Or. Feb. 26, 2007) .....	18
<i>Smith v. Triad of Ala., LLC</i> , No. 1:14-CV-324-WKW, 2017 WL 1044692 (M.D. Ala. Mar. 17, 2017), <i>on reconsideration</i> <i>in part</i> , 2017 WL 3816722 (M.D. Ala. Aug. 31, 2017).....	14
<i>Solano v. Kroger Co.</i> , No. 3:18-cv-01488-AR, 2024 U.S. Dist. LEXIS 160116 (D. Or. July 16, 2024).....	9

### **Other Authorities**

Manual For Complex Litigation (Third) § 30.42 (1995) .....	9
Newberg on Class Actions § 11.41 (4th ed. 2002) .....	7

### **Rules**

Fed. R. Civ. P. 23 .....	8, 17
Fed. R. Civ. P. 23(a) .....	6, 7
Fed. R. Civ. P. 23(b) .....	6
Fed. R. Civ. P. 23(c) .....	4, 18

Fed. R. Civ. P. 23(c)(2)(B) .....	17
Fed. R. Civ. P. 23(e) .....	6, 9, 17
Fed. R. Civ. P. 23(e)(2).....	6, 7, 8
Fed. R. Civ. P. 23(e)(2)(C) .....	8, 9
Fed. R. Civ. P. 23(e)(2)(D) .....	11
Fed. R. Civ. P. 23(e)(3).....	6, 11

## **LR 7-1 CERTIFICATION**

Defendant, Kannact, Inc., does not oppose the relief sought in this motion.

### **MOTION**

Plaintiffs Terry Dukes, Ann Fongheiser, and Alan White, the Court-appointed Class Representatives, respectfully move the Court for an order:

1. Granting final approval of the Parties' Settlement Agreement;
2. Certifying the class for settlement purposes;
3. Granting Plaintiffs' request for an attorneys' fee award in the amount of \$233,333 and reimbursement of litigation costs and expenses totaling \$18,292.53, as well as Service Award Payments of \$1,500 to each of the Plaintiffs;
4. Directing EisnerAmper to distribute all funds or amounts pursuant to the Settlement Agreement or by Court order, including payments to Class Members, Class Representatives, and Class Counsel; and
5. Dismissing this case.

In support of this motion, Plaintiffs submit the following memorandum and the Declaration of Ryan Aldridge Regarding Notice and Administration.

### **I. INTRODUCTION**

On August 21, 2024, the Court granted preliminary approval of the Settlement between Plaintiffs and Defendant Kannact, Inc. ("Kannact" or "Defendant") and ordered that notice be given to the Class. Doc. 34. The Settlement provides a favorable result for the Settlement Class in the form of a \$700,000.00 non-reversionary Settlement Fund for the benefits of Plaintiffs and Settlement Class Members.

The Parties reached this Settlement—providing meaningful benefits for the Settlement Class—only after an extensive investigation and hard-fought, arm's-length negotiations, including

a full day mediation. Although Plaintiffs believe in the merits of their claims, Defendant denies all charges of wrongdoing or liability. Plaintiffs' claims involve the intricacies of data security litigation (a fast-developing area in the law), and Plaintiffs would face risks at each stage of litigation. Against these risks, Class Counsel and Plaintiffs believe that the Settlement reached by the parties is the best settlement that could be achieved.

After this Court granted preliminary approval, the Settlement Administrator—with the help of the Parties—disseminated Notice to the Settlement Class as set forth in the Settlement Agreement. Individual Notice was provided directly to Settlement Class Members via email or first-class mail. Direct Notice reached 86.59% of the Class, easily meeting the due process standard. *See* Declaration of Ryan Aldridge Regarding Notice and Administration (“Admin Dec.”), attached hereto as **Exhibit 1**, ¶ 15. The Notice was written in plain language, providing each Settlement Class Member with information on how to make a claim, how to opt-out, and how to object to the Settlement. *Id.* Exhibit B. The response by Class Members to the Settlement has been overwhelmingly positive, as no Class Member out of the 92,234 who have been notified has sought to be excluded from the Settlement, and no Class Member has filed any objection to the Settlement and roughly 4.9% of the Class have submitted a Claim (*Id.* ¶¶ 16, 17-18).

The Court previously granted preliminary approval in this matter. Doc. 34. Plaintiffs now respectfully request that the Court finally approval of the Settlement to fully effectuate the Parties' Settlement and permit the Settlement Administrator to distribute the Settlement benefits to the Settlement Class.

## II. FACTS AND PROCEDURAL HISTORY

In the interest of efficiency, for factual and procedural background on this case, Plaintiffs refer this Court to, and hereby incorporate, Plaintiffs' Unopposed Motion for Preliminary



Approval of Class Action Settlement and Memorandum in Support filed on May 16, 2024. Doc. 30.

### III. SUMMARY OF SETTLEMENT

The Settlement negotiated on behalf of the Class provides a \$700,000 non-reversionary Settlement Fund, from which class members may make a claim for the following benefits:

(a) Cash Award. Settlement Class Members who submit a valid and timely Claim Form may elect a claim to receive a payment (a “Cash Award”). The cash awards for all valid claimants shall be a *pro rata* share of the “Post Loss Payment Net Settlement Fund,” which is effectively the remainder of the Settlement Fund after payment of: the cost of notice and administration; any attorneys’ fees, expenses, and service awards approved by the Court; the cost of Credit Monitoring and Insurance claimed by Class Members, and; approved Documented Loss Payments. Settlement Agreement (“S.A.”) Doc. 30-2 Ex. 1. ¶¶ 2.2(a), 2.4. The estimated Cash Award as of the date of this filing is \$79.26. Admin Dec. ¶ 16.

(b) Documented Loss Payment. In the event a Settlement Class Member does not elect a Cash Award, the Settlement Class Member may submit a claim for a Settlement Payment of up to \$5,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Settlement Class Member must submit an attestation regarding any actual and unreimbursed Documented Loss, and reasonable documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement. S.A. ¶¶ 2.2(b).

(c) Credit Monitoring and Insurance Services. Each Settlement Class Member who submits a valid and timely Claim Form may elect to receive three (3) years of Credit Monitoring and Insurance Services (“CMIS”) regardless of whether they also make a claim for a Settlement Payment pursuant to Paragraph 2.2. The CMIS will have an enrollment period of twelve (12)

months after the enrollment codes are sent to Class Members claiming this benefit. The CMIS will include the following services to be provided to each Settlement Class Member who submits a valid and timely Claim Form and elects the CMIS: (i) up to \$1 million dollars of identity theft insurance coverage; (ii) three bureau credit monitoring providing notice of changes to the Settlement Class Members' credit profile; (iii) alerts for activity including new inquiries, new accounts created, change of address requests, changes to public records, postings of potentially negative information, and other leading indicators of identity theft; (iv) customer care and dedicated fraud resolution agent; (v) comprehensive educational resources; and (vi) extended fraud resolution.

#### IV. ADMINISTRATION OF THE SETTLEMENT

This Settlement was administered by EisnerAmper, a company which specializes in class action settlement administration *See* Admin Decl. ¶ 1. As outlined in detail in the Settlement Administrator's supporting declaration, the notice plan and its execution satisfied all the requirements of Rule 23 (c). On June 18, 2024, Counsel for Defendant provided EisnerAmper with the Class List containing 129,430 records of potential Settlement Class members. *Id.* ¶ 7. Upon receipt of the Class List, EisnerAmper determined the file contained 106,516 unique records, 94,401 records contained sufficient contact information to attempt mailing. *Id.* EisnerAmper executed skip tracing on the 12,115 records with incomplete address information where possible, and obtained contact information for an additional 772 Settlement Class Members. *Id.* Prior to the mailing, all mailing addresses were checked against the National Change of Address (NCOA) database maintained by the United States Postal Service ("USPS"). In addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. *Id.* ¶ 9.

On or before September 20, 2024, EisnerAmper mailed the Short Form Notice (“Short Notice”) to 95,173 Settlement Class Members with complete mailing information. EisnerAmper also executed supplemental mailings for 4,360 Settlement Class Members for which the initial Short Form Notice was not deliverable but for which EisnerAmper was able to obtain an alternative mailing address through (1) forwarding addresses provided by the USPS, (2) skip trace searches using the LexisNexis third-party vendor database, or (3) requests received directly from Settlement Class Members. *Id.* ¶ 10. Through the Notice procedures outlined above, EisnerAmper attempted to send direct notice to 95,173 (89.35%) Settlement Class Members. As of January 2, 2025, the Notice Program reached a total of 92,234 (86.59%) of Settlement Class Members. *Id.* ¶ 15.

On September 20, 2024, EisnerAmper published the Settlement Website, [www.KannactDataSettlement.com](http://www.KannactDataSettlement.com). Visitors to the Settlement Website can download the Long Form Notice (English & Spanish), the Claim Form, as well as Court Documents, such as the Class Action Complaint, the Settlement Agreement, the Unopposed Motion for Preliminary Approval, Orders of the Court, and other relevant documents. *Id.* ¶ 12. Visitors were also able to submit claims electronically, find answers to frequently asked questions (FAQs), important dates and deadlines, and contact information for the Settlement Administrator. As of January 2, 2025, the Settlement Website received 15,925 unique visits. *Id.* EisnerAmper also established a dedicated toll-free telephone number, 1-844-755-4754, which is available twenty-four hours per day. Settlement Class Members can call and interact with an interactive voice response system that provides important settlement information and offers the ability to leave a voicemail message to address specific requests or issues. *Id.* ¶ 13. Finally, EisnerAmper established an Email address, [info@KannactDataSettlement.com](mailto:info@KannactDataSettlement.com), to provide an additional option for Settlement Class Members to address specific questions and requests to the Settlement Administrator for support. *Id.* ¶ 14.

## V. LEGAL STANDARD

Plaintiffs bring this motion pursuant to Federal Rules of Civil Procedure Rule 23 (e), under which a class action may not be settled without final approval of the Court. In determining whether to finally approve a class action settlement, courts must first determine that the settlement class, as defined by the parties, is certifiable under the standards of Rule 23(a) and (b). This Court has considered and granted preliminary approval of class certification. Doc. 34. For the same reasons described in Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement (Doc. 30), this Court should certify the class for purposes of final approval of the settlement.

Next, for a settlement to be approved under Rule 23 (e)(2), the Court must determine that the settlement is fair, adequate, and reasonable. In making this determination, the Court must consider whether:

- (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. Rule 23(e)(2).

Fed. R. Civ. P. Rule 23(e)(2)

In addition to the Rule 23(e)(2) factors, when evaluating a class action settlement courts in the Ninth Circuit look to nine factors referred to as the “*Bluetooth* Factors”: (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; (8) the reaction of the class members to the proposed settlement; and (9) whether the settlement is a product of collusion among the parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

## **VI. ARGUMENT**

Federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”); 4 Newberg on Class Actions § 11.41 (4th ed. 2002) (citing cases). Here, with a strong settlement that enjoys robust support from the Settlement Class, and to which there is no opposition, the Court should grant final approval to this settlement.

### **A. The Settlement Satisfies Rule 23(a)**

When assessing the parties’ settlement, the Court should first confirm that the underlying settlement class meets the requirements of Rule 23(a). *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Those requirements are numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a).

As set forth in Plaintiffs’ Motion for Preliminary Approval, each of these requirements is easily met here. Doc. 30. In granting preliminary approval, the Court preliminarily certified the

Settlement Class, implicitly finding that the Class satisfies all Rule 23 requirements. Nothing has changed since then that undermines this preliminary class certification. Accordingly, Plaintiffs respectfully request that the Court finally certify the Settlement Class for Settlement purposes.

Specifically, Plaintiffs request this Court find that the Rule 23(e)(2) factors were satisfied including that the Class was adequately represented by Class Representatives and Class Counsel, that the Settlement was negotiated at arm's-length, that the relief is adequate under Rule 23(e)(2)(c), that the proposed Settlement treats class members equally, and the *Bluetooth* Factors are satisfied here. Further, Plaintiffs request this Court find the Notice program was adequate and complied with the requirements of Rule 23.

## **B. The Settlement Satisfies All the Rule 23(e)(2) Factors**

### **1. The Class Was Adequately Represented**

“To satisfy the adequacy requirement, Plaintiff must show that she and her counsel will fairly and adequately represent the class.” *Doe v. Mindgeek United States Inc.*, 702 F. Supp. 3d 937, 947 (C.D. Cal. 2023) (granting contested class certification motion). “Resolution of two questions determines legal adequacy: (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?” *Id.* (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Here, the Class Representatives have the same interests as all other Settlement Class Members because they are asserting the same claims and share the same injuries. *Mindgeek United States Inc.*, 702 F. Supp. 3d at 947 (“because Plaintiff’s claims are consistent with those of the class members, she has every reason to vigorously pursue those claims and fairly and adequately represent the class”). As detailed in Class Counsel’s resume, they have many years of experience

representing plaintiffs in class action litigation, and especially in the area of data breach litigation. Dkt. 30-1, Ex. 2 (Resumes of Class Counsel). The record shows Class Counsel worked diligently to bring this case to resolution, and no Settlement Class Member objected to Class Counsel's or Class Representatives' adequacy. *See Solano v. Kroger Co.*, No. 3:18-cv-01488-AR, 2024 U.S. Dist. LEXIS 160116, at \*28 (D. Or. July 16, 2024) (finding that the adequacy prong was satisfied where counsel worked diligently on behalf of the class and no party objected to their adequacy).

## **2. The Settlement was Negotiated at Arm's Length**

The negotiations in this matter were hard fought, involved experienced mediator, Hon. Wayne Andersen (Ret.) of JAMS, and occurred at arm's length. Settlements negotiated by experienced counsel that result from arm's-length negotiations are presumed to be fair, adequate and reasonable. *See Leonardo's Pizza by the Slice, Inc. v. Wal-Mart Stores, Inc.*, 544 U.S. 1044, (2005) (a "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." (quoting Manual For Complex Litigation (Third) § 30.42 (1995))). This deference reflects the knowledge that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness consideration of Rule 23(e).

## **3. The Relief is Adequate under Rule 23(e)(2)(C)**

The relief offered to Class Members in the proposed Settlement, *i.e.*, reimbursement for out of pocket losses, a *pro rata* cash distribution, and credit monitoring services, addresses the types of repercussions and injuries arising from the Data Security Incident and is more than adequate under the factors outlined in Rule 23(e)(2)(C).

Class Counsel, who have significant experience in leading major data breach class actions, strongly believe that the relief is fair, reasonable, and adequate. The Court may rely upon such

experienced counsel’s judgment. *See, e.g., Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.”).

***i. The Costs, Risks, and Delay of Trial and Appeal***

As outlined in the Preliminary Approval Motion and Motion for Attorneys’ Fees, Plaintiffs faced significant risks and additional litigation costs should they have continued to litigate the case. First, there was a risk that Plaintiffs’ claims would not have survived, or survived in full, on a class-wide basis after a motion to dismiss, motion for class certification, motions for summary judgment, and Daubert motions on damages methodologies, among other motions. Second, if Plaintiffs prevailed against a motion to dismiss, and/or on a motion for class certification, successfully defeated all the other objections and motions Defendant filed, and proceeded to trial, Plaintiffs still would have faced significant risk, cost, and delay including likely interlocutory and post-judgment appeals.

In contrast to the risk, cost, and delay posed by proceeding to trial, the proposed Settlement provides certain, substantial, and immediate relief to the proposed Settlement Class. It ensures that Settlement Class Members are eligible to receive compensation now. The substantial costs, risk, and delay of a trial and appeal support a finding that the proposed Settlement is adequate.

***ii. The Method of Distributing Relief is Effective***

The proposed distribution process will be efficient and effective. The available relief is detailed clearly in the Notice, which was provided to all Settlement Class Members laying out the benefits to which they are entitled, including benefits provided regardless of whether a Settlement Class Member files a claim. Admin Decl. ¶ 8 at Exs. B, C.



Noticing the Settlement Class of the available relief was efficient and effective. Notice included dissemination of individual notice by email and direct mail, in the form of the Short Form postcard notice. This direct mail notice reached approximately 86.59% of the Class. *Id.* ¶ 15. Therefore, Settlement Class Members received effective and efficient notice of the relief offered. Because Settlement Class Members were able to make claims through a simple online form or by mail, the method of distributing the relief is both efficient, effective and fair, and the proposed Settlement is adequate under this factor.

***iii. The Terms Relating to Attorneys' Fees are Reasonable***

On November 5, 2024, Class Counsel requested, attorneys' fees in the amount of \$233,333 (which represents 33.3% of the Settlement Fund) and expenses in the amount of \$18,292.53. For reasons discussed further therein, these requests are fair and reasonable and weigh in favor of final approval of the Settlement.

***iv. Any Agreement Required to be Identified Under Rule 23(e)(3)***

Apart from the Settlement Agreement, there are no additional agreements between the Parties or with others made in connection with the Settlement.

**4. The Proposed Settlement Treats Class Members Equally**

The Settlement Class Members are treated equitably because they all have similar claims arising from the same Data Security Incident, and they all are treated the same under the Settlement. Fed. R. Civ. P. 23(e)(2)(D). All Settlement Class Members are eligible to claim the various benefits provided by the Settlement, including compensation for Out-of-Pocket Losses or a *pro rata* cash payment. Accordingly, the factors under Rule 23(e) support final approval. As discussed below, the *Bluetooth* factors are similarly satisfied.

## **C. The Settlement Satisfies All of the *Bluetooth* Factors**

### **1. The Strength of Plaintiffs' Case**

Plaintiffs believe they have a strong case for liability. As described in Plaintiffs' Motion for Preliminary Approval, Plaintiffs believe their claims are viable and that they have a good chance of proving that Defendant's data security was inadequate, which could lend itself to a finding that Defendant was liable under at least some of the theories Plaintiffs pled in their complaint. Even so, Plaintiffs acknowledge their success is not guaranteed. 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). However, given the heavy obstacles and inherent risks Plaintiffs face with respect to the novel claims in data breach class actions, including class certification, summary judgment, and trial, the substantial benefits the Settlement provides favors final approval of the settlement. *Id.*

### **2. Risk, Expense, Complexity, and Duration of Further Litigation**

Although Plaintiffs believe their case has merit, they recognize that all cases are subject to substantial risk. This case involves: a proposed class of approximately 109,210 individuals (each of whom, Kannact has argued, would need to establish cognizable harm and causation); a complicated and technical factual background; and a motivated Defendant.

And, even though nearly all class actions involve a high level of risk, expense, and complexity, this is an especially complex class in an especially risky arena. As one federal district

court observed in finally approving a settlement with similar class relief: Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at \*1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and complex.”). Data breach cases face substantial hurdles in surviving even the pleading stage. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 WL 2643307, at \*1 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of similar notoriety and implicating data far more sensitive than at issue here have been found wanting at the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual allegations in the complaints are sufficient to establish . . . standing.”), *rev’d in part*, 928 F.3d 42 (D.C. Cir. 2019) (holding that plaintiff had standing to bring a data breach lawsuit).

To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide monetary judgment remains unforged, particularly in the area of damages. For now, data breach cases are among the riskiest and most uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. The damages methodologies, while theoretically sound in Plaintiffs’ view, remain untested in a trial setting and unproven in front of a jury. And as in any data breach case, establishing causation on a class-wide basis is rife with uncertainty.

Moving forward, Class Counsel would face numerous obstacles which could impede the successful prosecution of these claims at trial and in an eventual appeal—resulting in zero recovery to the class. “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). Thus, this factor favors final approval.

### **3. The Risk of Maintaining Class Action Status Through Trial**

While Plaintiffs' case is still in the pleadings stage, the Court has not certified any class treatment of this case. Absent settlement, class certification in consumer data breach cases has only occurred in a few cases. *See, e.g., Smith v. Triad of Ala., LLC*, No. 1:14-CV-324-WKW, 2017 WL 1044692, at \*15 (M.D. Ala. Mar. 17, 2017), *on reconsideration in part*, 2017 WL 3816722 (M.D. Ala. Aug. 31, 2017). Even when certification is granted, there are appeals. *See Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883, 890 (11th Cir. 2023) (vacating class certification in part and remanding for additional analysis on the predominance element). While certification of additional consumer data breach classes may follow, the dearth of precedent adds to the risks posed by continued litigation.

### **4. The Amount Offered in Settlement**

In light of the substantial risks and uncertainties presented by data security litigation generally and this litigation specifically, the value of the Settlement strongly favors approval. The Settlement makes significant relief available to Settlement Class Members in the form of out-of-pocket expense reimbursements, *pro rata* cash payments, credit monitoring and identity theft insurance services, and substantial improvements to the overall security of Defendant's systems and environments.

When viewed in relation to other data breach settlements from around the country, the instant Settlement represents a strong result for the Settlement Class because the benefits it offers to the Settlement Class Members are in line with, or exceed, other comparable data breach settlements. Indeed, this settlement is a strong result for the Class, and as discussed herein is in

line with other approved settlements in cases involving data incidents of similar scope. *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 pursuing individual claims, and the likelihood that they might be unaware of their claims, this factor favors final approval.

#### **5. The Extent of Discovery Completed and the Stage of the Proceedings**

Plaintiffs vigorously and aggressively gathered all of the information that was available regarding Kannact and the Data Security Incident—including publicly available documents concerning announcements of the Data Security Incident and notice of the Data Security Incident to its customers. The Parties also informally exchanged non-public information concerning the Data Security Incident and the size of the Class in order to have an understanding of the scope of this action in settlement discussions. Accordingly, the litigation has proceeded to the point where “the parties have sufficient information to make an informed decision about settlement,” including an informed and realistic assessment of the strengths and weakness of their respective cases. *See Linney*, 151 F.3d at 1239.

#### **6. The Experience and Views of Counsel**

Class Counsel have substantial experience litigating complex class cases of various types, including data-related cases such as this one. *See* Doc. 30-1 at Ex. 2 (resumes of Class Counsel). Having worked on behalf of the putative class since the Data Security Incident was first announced, evaluated the legal and factual disputes, and dedicated significant time and monetary resources to this litigation, proposed Class Counsel fully endorse the Settlement. 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 v. Maximus, Inc.*, Case No. 1:14-0030 WBS, 2017 WL

1424636, at \*6 (D. Idaho Apr. 17, 2017); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this factor supports approval.

### **7. Governmental Participants**

There is no governmental participant in this matter, making this factor neutral.

### **8. The Positive Reaction of the Class Favors Final Approval**

The reaction of the Settlement Class to this Settlement is largely positive. The deadline to object or opt out of the settlement was November 19, 2024. As of January 2, 2025, no Class Member sought to be excluded from, or object to, the Settlement. *See* Admin Decl. ¶¶ 17-18. In contrast, as of January 2, 2025, the Settlement Administrator received 4,559 Claims from Class Members seeking to receive Settlement benefits – a 4.9% Claims rate. *Id.* ¶ 16.

“It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.” *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004); 4 Newberg on Class Actions § 11:48 (“Courts have taken the position that one indication of the fairness of a settlement is the lack of or small number of objections.”). The fact that no Class Member even tried to submit an objection reflects a highly positive response by the Settlement Class. *See, e.g., Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 WL 1687832, at \*14 (N.D. Cal. Apr. 22, 2010) (finding that only one objector to settlement and fee request represented an “overwhelmingly positive” response from the class of 24,358 members); *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 456 (C.D. Cal. 2014) (“The negligible number of opt-outs and objections indicates that the class generally approves of the settlement.”). “[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents

at least some objective positive commentary as to its fairness.” *id.* at 1025–26 (noting favorably that less than 0.1% of class members opted out).

### **9. Lack of Collusion Among the Parties**

The Parties negotiated a substantial, multifaceted Settlement, as described above. Class Counsel and Kannact’s counsel are well-versed in handling data-related class actions such as this one and fully understand the values recovered in similar cases, and both parties were provided with ample amounts of informal discovery to better understand the posture and value of this instant action. Furthermore, the parties reached the settlement only after a full-day mediation, and months of negotiations. Therefore, the Court can be assured that the negotiations were not collusive.

## **VII. NOTICE SATISFIED DUE PROCESS AND RULE 23**

To satisfy due process, notice to class members must be the best practicable, and reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Fed. R. Civ. P. 23 (e); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Notice provided to the class must be sufficient to allow class members “a full and fair opportunity to consider the proposed decree and develop a response.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). While individual notice should be provided where class members can be located and identified through reasonable effort, notice may also be provided by U.S. Mail, electronic mail or other appropriate means. Fed. R. Civ. P. 23(c)(2)(B).

Here, the Parties utilized direct mail notice for those unreachable by electronic mail, which has been approved in other class actions in this District. *See Barker v. CDR Maguire, Inc.*, No. 6:21-cv-01720-AA, 2022 WL 1799812 at \*12 (D. Or. June 2, 2022) (“The Court authorizes Plaintiffs, or a third-party class administrator if one is engaged, to distribute by regular mail and/or electronic mail, notice of this action to prospective collective action members[.]”). The Notice

adequately informed Settlement Class Members of the nature of the action, the definition of the class, the claims at issue, the ability of a class members to object or exclude themselves and/or enter an appearance through an attorney, and the binding effect of final approval and class judgment. The Notice utilized clear and concise language that is easy to understand and organized the Notice in a way that allowed Class Members to easily find any section that they may be looking for. Thus, it was substantively adequate. *See Espinosa v. United Student Aid Funds, Inc.*, 553 F.3d 1193, 1202 (9th Cir. 2008), *aff'd*, 559 U.S. 260 (2010) (“The standard for what amounts to constitutionally adequate notice, however, is fairly low; it’s ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.’”).

As outlined in detail in the Settlement Administrator’s supporting declaration, the notice plan and its execution satisfied all the requirements of Rule 23(c). Robust efforts were made to determine forwarding addresses for returned mail, and to re-mail notices to good addresses via US mail. Admin. Decl. ¶ 8. After mailings, EisnerAmper reasonably believes that notice reached 92,234 Settlement Class Members which equates to a reach rate of the direct mail notice of approximately 86.59%. *Id.* ¶ 15. This reach exceeds other court-approved, best practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches over 70% of targeted class members is considered a high percentage and the “norm” of a notice campaign. *See Rausch v. Hartford Fin. Servs. Grp.*, No. 01-cv-1529-BR, 2007 WL 671334 (D. Or. Feb. 26, 2007) (Finally approving Class Action Settlement with notice reaching 92% of the Class.)

Thus, Notice here was robust, effective, and met all due process requirements, as well as the requirements of Rule 23(c). This weighs in favor of final approval as well.



### VIII. CONCLUSION

Plaintiffs negotiated a fair, adequate and reasonable Settlement that guarantees Settlement Class Members the opportunity to claim significant benefits. For the reasons discussed above, and for those described in Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 30) and Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards (Doc. 36), Plaintiffs respectfully request this Court enter the proposed Final Approval Order submitted herewith finally certifying the Settlement Class, appointing Settlement Class Counsel and Plaintiffs as representatives for the Class, and granting final approval of this Settlement.

DATE: January 8, 2024

Respectfully Submitted,

By: /s/ Gary M. Klinger  
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*Attorneys for Plaintiffs and the Class*

**CERTIFICATE OF COMPLIANCE**

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains 5,466 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

/s/ Gary M. Klinger  
Gary M. Klinger

**CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2025, I caused a true and correct copy of the foregoing document to be filed with the Clerk of the Court for the U.S. District Court of Oregon via the Court's CM/ECF system, which will send notification of such filing to the counsel of record in the above-captioned matter.

/s/ Gary M. Klinger  
Gary M. Klinger

# **EXHIBIT 1**

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

*In re: Kannact, Inc. Data Security Incident*

Lead Case No. 6:23-cv-1132-AA

**DECLARATION OF RYAN ALDRIDGE  
REGARDING NOTICE AND  
ADMINISTRATION**

I, Ryan Aldridge, hereby declare and verify as follows:

**I. INTRODUCTION**

1. ***Personal Information.*** I am a Partner at EisnerAmper (“EisnerAmper”). EisnerAmper was retained as the Settlement Administrator in this case, and, as the project manager over this Settlement, I am personally familiar with the facts set forth in this declaration.
2. ***The Capacity and Basis of this Declaration and Verification.*** I am over the age of 21. Except as otherwise noted, the matters set forth in this Declaration and Verification are based upon my personal knowledge, information received from the parties in this proceeding, and information provided by my colleagues at EisnerAmper and our Partners.
3. As the duly appointed Settlement Administrator, I verify compliance with the Notice requirements contained in the Settlement Agreement, and the Court’s Preliminary Approval Order.

**II. BACKGROUND**

4. ***Preliminary Approval.*** On August 21, 2024, the Court entered its order preliminarily approving the Settlement Agreement and the appointment of EisnerAmper as Settlement Administrator. After the Court’s preliminary approval of the Settlement, EisnerAmper began to implement and coordinate the Notice Program.

5. ***The Purpose of this Declaration and Verification.*** I submit this Declaration to evidence EisnerAmper's compliance with the terms of the Settlement Agreement, to detail EisnerAmper's execution of its role as the Settlement Administrator, and to verify compliance with the Notice requirements contained in the Settlement Agreement.

### **III. CLASS ACTION FAIRNESS ACT NOTICE ("CAFA")**

6. ***CAFA Notice.*** On June 13, 2024, pursuant to 28 U.S.C. §1715(b), EisnerAmper, on behalf of the Defendant, caused notice of this Settlement and related materials to be sent to the Attorneys General of all U.S. states, District of Columbia, Puerto Rico, as well as the Attorney General of the United States. As of January 02, 2024, EisnerAmper has not received any objection from any Attorney General. A copy of the CAFA Notice and service list are attached as **Exhibit A**.

### **IV. CLASS NOTICE PROGRAM EXECUTION**

7. ***Notice Database.*** EisnerAmper maintains a database of 106,516 Settlement Class Members which was used to effectuate the Notice Program as outlined within the Settlement Agreement. EisnerAmper received the class data on June 18, 2024, in eleven Excel files with a total of 129,430 records. After deduplicating the data based on the contact information available, EisnerAmper determined that Excels contained 106,516 unique records. Of the 106,516 unique records, 94,401 records contained sufficient contact information to attempt mailing. EisnerAmper executed skip tracing on the 12,115 records with incomplete address information where possible, and obtained contact information for an additional 772 Settlement Class Members.
8. ***Mail Notice.*** EisnerAmper coordinated and caused the Short Form Notice in the form of a postcard to be mailed via First-Class Mail to Settlement Class Members for which a mailing address was available from the class data. The Short Form Notice included (a) the web address to the case website for access to additional information, (b) rights and options as a Settlement Class Member and the dates by which to act on those options, and (c) the date of the Final Approval Hearing. The

Notice mailing commenced on or before September 20, 2024, in accordance with the Preliminary Approval Order. A true and correct copy of the Short Form Notice is attached hereto as **Exhibit B**.

9. ***Mailing Address Validation.*** Prior to the mailing, all mailing addresses were checked against the National Change of Address (NCOA) database maintained by the United States Postal Service (“USPS”). In addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses.
10. ***Mail Notice Delivery.*** In the initial mailing campaign, EisnerAmper executed mailings to 95,173 Settlement Class Members with complete mailing information. EisnerAmper also executed supplemental mailings for 4,360 Settlement Class Members for which the initial Short Form Notice was not deliverable but for which EisnerAmper was able to obtain an alternative mailing address through (1) forwarding addresses provided by the USPS, (2) skip trace searches using the LexisNexis third-party vendor database, or (3) requests received directly from Settlement Class Members. Mail notice delivery statistics are detailed in Section 16 below.
11. ***Settlement Post Office Box.*** EisnerAmper maintains the following Post Office Box for the Notice Program:

Kannact Settlement Administrator  
PO Box 3637  
Baton Rouge, LA 70821

This P.O. Box serves as a location for the USPS to return undeliverable program mail to EisnerAmper and for Settlement Class Members to submit exclusion requests, Claim Forms, and other settlement-related correspondence. The P.O. Box address appears prominently in all Notices, the Claim Form, and in multiple locations on the Settlement Website. EisnerAmper monitors the P.O. Box daily and uses a dedicated mail intake team to process each item received.

12. **Settlement Website.** On September 20, 2024, EisnerAmper published the Settlement Website, [www.KannactDataSettlement.com](http://www.KannactDataSettlement.com). Visitors to the Settlement Website can download the Long Form Notice (English & Spanish), the Claim Form, as well as Court Documents, such as the Class Action Complaint, the Settlement Agreement, the Unopposed Motion for Preliminary Approval, Orders of the Court, and other relevant documents. Visitors were also able to submit claims electronically, find answers to frequently asked questions (FAQs), important dates and deadlines, and contact information for the Settlement Administrator. As of January 2, 2025, the Settlement Website received 15,925 unique visits.
13. **Toll-Free Number.** On September 20, 2024, EisnerAmper established a dedicated toll-free telephone number, 1-844-755-4754, which is available twenty-four hours per day. Settlement Class Members can call and interact with an interactive voice response system that provides important settlement information and offers the ability to leave a voicemail message to address specific requests or issues. EisnerAmper also provided copies of the Long Form Notice, paper Claim Form, as well as the Settlement Agreement, upon request to Settlement Class Members, through the toll-free number. The toll-free number appeared in all Notices, as well as in multiple locations on the Settlement Website. The toll-free number will remain active through the close of this Notice Program.
14. **Email Support.** EisnerAmper established an Email address, [info@KannactDataSettlement.com](mailto:info@KannactDataSettlement.com), to provide an additional option for Settlement Class Members to address specific questions and requests to the Settlement Administrator for support.

## V. NOTICE PROGRAM REACH

15. **Notice Reach Results.** Through the Notice procedures outlined above, EisnerAmper attempted to send direct notice to 95,173 (89.35%) Settlement Class Members. As of January 2, 2025, the

Notice Program reached a total of 92,234 (86.59%) of Settlement Class Members.<sup>1</sup> Table 1 below provides an overview of dissemination results for the Notice Program and reach statistics for the Notice Program.

<b>Table 1: Direct Notice Program Dissemination &amp; Reach</b>		
<b>Description</b>	<b>Volume of Class Members</b>	<b>Percentage of Class Members</b>
Known Class Members	106,516	100.00%
<b>Initial Notice Mailing</b>		
(+) Total Notices Mailed	95,173	89.35%
(-) Total Notices Returned as Undeliverable	6,836	6.42%
<b>Supplemental Notice Mailing</b>		
(+) Total Unique Notices Re-Mailed	4,360	4.809%
(-) Total Undeliverable (Re-Mailed) Notices	463	0.43%
<b>Direct Notice Program Reach</b>		
<b>(=) Received Direct Notice</b>	<b>92,234</b>	<b>86.59%</b>

## **VI. CLAIM ACTIVITY**

16. ***Claim Intake and Processing.*** The online claim submission feature was available beginning September 20, 2024. As of January 2, 2025, EisnerAmper has received a total of 4,559 claims submissions, of which 4,185 claims have been determined to be non-duplicative and from Settlement Class Members. EisnerAmper will continue to intake and analyze claims postmarked by the claims filing deadline of December 19, 2024. Table 2 below provides summary statistics of claim submissions received as of January 2, 2025. EisnerAmper will continue to intake and analyze claims postmarked by the claims filing deadline of December 19, 2024.

<b>Table 2: Claim Statistics</b>	
<b>Description</b>	<b>Volume (#)</b>
<b>Total Claims Received</b>	<b>4,559</b>
(-) Duplicate Claims Identified	212
(-) Invalid Claims - Not a Class Member	57
(-) Invalid Claims - Late	105
<b>(=) Net Claims Received</b>	<b>4,185</b>

<sup>1</sup> A Settlement Class Member is considered “reached” by direct Notice if a Short Form mailed to the Settlement Class Member has not been returned by the USPS as undeliverable.



Estimated <i>Pro Rata</i> Cash Payment (as of January 2, 2025)	\$79.26
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## VII. EXCLUSIONS AND OBJECTIONS

17. ***Exclusions (Opt-Outs) Received.*** EisnerAmper has received zero (0) exclusion requests from Settlement Class Members as of January 2, 2025. The deadline to submit a request for exclusion was November 19, 2024.

18. ***Settlement Objections.*** EisnerAmper has not received any objections from Settlement Class Members. The deadline to object to the Settlement was November 19, 2024.

## VIII. COSTS OF NOTICE PROGRAM

19. ***Costs of Notice Program.*** EisnerAmper has incurred \$100,873.53 in Notice and Administrative Expenses to date. EisnerAmper estimates to incur an additional \$19,126.47 through completion of the case, for a total of \$120,000.00 in Notice and Administration Expenses.

## IX. CERTIFICATION

I, Ryan Aldridge, declare under the penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct. Executed on this 8<sup>th</sup> day of January, 2025 at Baton Rouge, Louisiana.



Ryan Aldridge

# **Exhibit A**



June 13, 2024

**By Certified Mail**

Federal and State Officials  
as listed in Attachment 1

**Re: NOTICE UNDER THE CLASS ACTION FAIRNESS ACT OF 2005, 28 U.S.C. § 1715(b),**  
*In re: Kannact, Inc. Data Security Incident*, Case No. 6:23-cv-1132-AA

Dear Sir or Madam:

I send this letter and the enclosed disc to you on behalf of the Parties to the action referenced above (the “Parties”) regarding the Motion for Preliminary Approval of Class Action Settlement filed on May 16, 2024. This communication constitutes the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b).

The proposed Settlement resolves the Class Action lawsuit brought by Plaintiffs Terry Dukes, Ann Fongheiser and Alan White (“Plaintiffs”) against Kannact, Inc. (“Kannact” or “Defendant”). The lawsuit involves allegations that Kannact failed to adequately protect sensitive personal information associated with current and former patients and employees of Kannact (and/or its affiliates) stemming from a data security incident in March of 2023 involving a cyber attack on Kannact’s computer systems and the data stored thereon. Plaintiffs, on behalf of themselves and all others similarly situated, allege negligence, negligence *per se*, breach of third-party beneficiary contract, bailment, unjust enrichment, violation of Oregon Unlawful Trade Practices Act, Or Rev. Stat § 646, violations of the Tennessee Consumer Protection Act, Tenn. Code § 47-18-104, et seq., violations of the Tennessee Data Breach Notification Act, Tenn. Code § 47-18-2107; violations of the North Carolina Identity Theft Protection Act, N.C. Gen. Stat § 75-61, et seq.; violations of the Missouri Merchandise Practices Act, Mo. Rev. Stat. § 407.010, et seq.; and declaratory judgment. Dkt. 18. Defendant denies all allegations of wrongdoing and any liability.

The Settlement Agreement, if approved, will establish a nationwide settlement class which includes all residents of the United States whose personal information may have been impacted in the Data Incident, including persons to whom Kannact mailed a notification. The Settlement Class specifically excludes: Kannact and its respective officers and directors.

In accordance with 28 U.S.C. § 1715(b), the enclosed disc includes:

- a. Exhibit 1: A copy of the Class Action Complaint filed on October 25, 2023;
- b. Exhibit 2: A copy of the Settlement Agreement filed on May 16, 2024, including the Class Notice Documents as Exhibits A-D;
- c. Exhibit 3: A copy of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement filed on May 16, 2024;
- d. Exhibit 4: Per 28 U.S.C. §§ 1715(b)(7)(A)-(B), a list of States with the estimated number of class members residing in each State.

Administrator once the information is available. To request a copy of the full list of class members by state, please email [adam.bell@eisneramper.com](mailto:adam.bell@eisneramper.com).

June 11, 2024

The proposed Settlement provides for a fund totaling \$700,000, which will be used to provide settlement awards to Settlement Class Members. All Settlement Class Members will be eligible for 36 months of Medical Shield Premium fraud monitoring services. Settlement Class Members may submit a claim for up to a total of \$5,000 for reimbursement of out-of-pocket losses and lost time, or an alternative pro-rata cash payment.

No hearing on Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement has been scheduled before the Honorable Ann L. Aiken of the United States District Court of Oregon, 405 East Eighth Avenue, Room 5500, Eugene, Oregon 97401. No other hearings have yet been scheduled.

There are no other agreements between Class Counsel and counsel for Defendant, there are no final judgments in this matter, and there are no written judicial opinions relating to the materials described under 28 U.S.C. §§ 1715(b)(3)-(6).

Thank you for your attention to this matter. If you have any question about this notice or the enclosed materials, please contact us.

Sincerely,

Adam Bell  
EisnerAmper, *Settlement Administrator*  
*In re: Kannact, Inc. Data Security Incident*

cc by email:

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June 11, 2024

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*Attorneys for the Representative Plaintiffs  
and the Plaintiff Class(es)*



CAFA Notice Service List							
Name1	Name2	Address1	Address2	Address3	City	State	Zip
Office of the Attorney General		1031 W. 4th Avenue, Suite 200			Anchorage	AK	99501-1994
Office of the Attorney General		501 Washington Avenue	PO Box 300152		Montgomery	AL	36104
Office of the Attorney General		323 Center Street, Suite 200			Little Rock	AR	72201-2610
Office of the Attorney General		2005 N Central Ave			Phoenix	AZ	85004-2926
Office of the Attorney General	CAFA Coordinator, Consumer Law Section	455 Golden Gate Avenue, Suite 11000			San Francisco	CA	94102
Office of the Attorney General		Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor		Denver	CO	80203
Office of the Attorney General		165 Capitol Avenue			Hartford	CT	06106
Office of the Attorney General		441 4th Street NW, Suite 1100S			Washington	DC	20001
United States Office of the Attorney General	US Department of Justice	950 Pennsylvania Ave, NW			Washington	DC	20530-0001
Office of the Attorney General		820 North French Street	6th Floor		Wilmington	DE	19801
Office of the Attorney General		The Capitol	PL-01		Tallahassee	FL	32399-1050
Office of the Attorney General		40 Capitol Square SW			Atlanta	GA	30334
Department of the Attorney General		425 Queen Street			Honolulu	HI	96813
Office of the Attorney General		Hoover State Office Building	1305 East Walnut Street		Des Moines	IA	50319
Office of the Attorney General		954 West Jefferson Street, 2nd floor	PO Box 83720		Boise	ID	83720-0010
Office of the Attorney General		100 West Randolph Street			Chicago	IL	60601
Office of the Attorney General		Indiana Government Center South	302 West Washington Street, 5th Floor		Indianapolis	IN	46204
Office of the Attorney General		120 SW 10th Ave, 2nd Floor			Topeka	KS	66612-1597
Office of the Attorney General		700 Capitol Avenue, Suite 118			Frankfort	KY	40601-3449
Office of the Attorney General		PO Box 94005			Baton Rouge	LA	70804
Office of the Attorney General	ATTN: CAFA Coordinator/General Counsel's Office	One Ashburton Place			Boston	MA	02108
Office of the Attorney General		200 St. Paul Place			Baltimore	MD	21202
Office of the Attorney General		6 State House Station			Augusta	ME	04333
Office of the Attorney General		G. Mennen Williams Building	525 West Ottawa Street	PO Box 30212	Lansing	MI	48909
Office of the Attorney General		445 Minnesota Street, Suite 1400			St Paul	MN	55101-2131
Office of the Attorney General		Supreme Court Building	207 West High Street		Jefferson City	MO	65102
Office of the Attorney General		Walter Sillers Building	550 High Street, Suite 11		Jackson	MS	39201
Office of the Attorney General		Justice Building Third Floor	215 North Sanders		Helena	MT	59601
Office of the Attorney General	ATTN: Consumer Protection	114 West Edenton Street			Raleigh	NC	27603
Office of the Attorney General		State Capitol	600 East Boulevard Avenue, Dept. 125		Bismarck	ND	58505
Office of the Attorney General		2115 State Capitol	PO Box 98920		Lincoln	NE	68509
Office of the Attorney General		33 Capitol Street			Concord	NH	03301
Office of the Attorney General		RJ Hughes Justice Complex	25 Market Street	PO BOX 080	Trenton	NJ	08625-0080
Office of the Attorney General	ATTN: Farrah Diaz, Paralegal	201 3rd St NW, Suite 300			Albuquerque	NM	87102
Office of the Attorney General		Old Supreme Court Building	100 North Carson Street		Carson City	NV	89701
Office of the Attorney General		The Capitol			Albany	NY	12224-0341
Office of the Attorney General		State Office Tower	30 East Broad Street, 14th Floor		Columbus	OH	43215
Office of the Attorney General		313 NE 21st Street			Oklahoma City	OK	73105
Office of the Attorney General	Oregon Department of Justice	1162 Court Street NE			Salem	OR	97301-4096
Office of the Attorney General		16th Floor, Strawberry Square			Harrisburg	PA	17120
Office of the Attorney General		PO Box 9020192			San Juan	PR	00902-0192
Office of the Attorney General	ATTN: Lisa Pinsonneault/CAFA Notice	150 South Main Street			Providence	RI	02903
Office of the Attorney General		PO Box 11549			Columbia	SC	29211-1549
Office of the Attorney General		1302 E. Highway 14, Suite 1			Pierre	SD	57501-8501
Office of the Attorney General and Reporter		PO Box 20207			Nashville	TN	37202
Office of the Attorney General		Capitol Station	PO Box 12548		Austin	TX	78711-2548
Office of the Attorney General		Utah State Capitol Complex	350 North State Street, Suite 230		Salt Lake City	UT	84114-2320
Office of the Attorney General		202 North Ninth Street			Richmond	VA	23219
Office of the Attorney General		109 State Street			Montpelier	VT	05609
Office of the Attorney General		1125 Washington Street SE	PO Box 40100		Olympia	WA	98504-0100
Office of the Attorney General	Wisconsin Department of Justice	PO Box 7857			Madison	WI	53707-7857
Office of the Attorney General		State Capitol	Building 1, Room E-26		Charleston	WV	25305
Office of the Attorney General		Kendrick Building	2320 Capital Avenue		Cheyenne	WY	82002

# Exhibit B

A proposed settlement has been reached in a class action lawsuit known as *In re: Kannact, Inc. Data Security Incident Litigation*, No. 6:23-cv-1132, which is currently pending in the United States District Court for the District of Oregon.

*This is not junk mail, an advertisement, or a solicitation from a lawyer*

**What is this case about?** A class action Settlement in the amount of \$700,000.00 has been reached in a case known as *In re: Kannact, Inc. Data Security Incident Litigation*, Case No. 6:23-cv-1132 (“Action”) filed in the United States District Court for the District of Oregon. The individuals who sued are called the “Plaintiffs” or “Class Representatives” and the company they sued, Kannact, Inc. (“Kannact”), is known as the “Defendant.” Plaintiffs filed a lawsuit against Defendant individually, and on behalf of anyone whose private information was potentially impacted as a result of a data security incident. The Action alleges that unauthorized access to the private information of the Plaintiffs and Settlement Class Members occurred as a result of unauthorized access to Defendant’s network and systems, which took place on or about March 13, 2023 (the “Data Incident”). Subsequently, this Action was filed asserting claims against Defendant relating to the Data Incident. Defendant denies any wrongdoing.

For more information, visit [www.KannactDataSettlement.com](http://www.KannactDataSettlement.com) or call toll-free 1-844-755-4754.

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**Kannact Settlement Administrator**

P.O. Box 3637

Baton Rouge, LA 70821

PREMIER  
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U.S. POSTAGE



**ELECTRONIC SERVICE REQUESTED**

SETTLEMENT CLAIM ID [ID]  
[FIRST NAME] [LAST NAME]  
[ADDRESS]  
[ADDRESS]  
[CITY] [STATE] [ZIP]



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FE40



**Who is a Settlement Class Member?** All persons in the United States whose information may have been impacted in the Data Incident, including persons to whom Kannact mailed a notification that their information may have been impacted in the Data Incident.

**What are the benefits?** The Settlement provides the following Settlement Class Member benefits: **Cash Award:** Settlement Class Members may elect to claim a Cash Award, which will be calculated by dividing (i) the amount of cash left in the Post Loss Payment Net Settlement Fund by (ii) the number of valid and timely Claim Forms submitted by Settlement Class Members electing to receive a Cash Award. **Documented Loss Payment:** In the alternative to a Cash Award, Settlement Class Members may make a Claim for a Settlement Payment of up to \$5,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, Settlement Class Members must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss; and (iii) reasonable documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement. **Credit Monitoring and Insurance Services:** In addition to a Cash Award or Document Loss Payment, all Settlement Class Members may also make a Claim for three years of Credit Monitoring and Insurance Services with three bureaus.

**How do I make a Claim?** You must file a Claim Form by mail postmarked by **December 19, 2024** and mailed to the Settlement Administrator's address below, or online at [www.KannactDataSettlement.com](http://www.KannactDataSettlement.com) by **December 19, 2024** to receive any benefit.

**What are my other rights? Do Nothing:** If you do nothing, you remain in the Settlement. You give up your rights to sue Kannact and all other Released Parties in the Settlement, and you will not get any money or other benefits as a Settlement Class Member. **Opt-Out:** You can exclude yourself from the Settlement and keep your right to sue for the claims being released in the Settlement, but you will not get any money from the Settlement. You must submit a request to opt-out to the Settlement Administrator by **November 19, 2024**. **Object:** You can stay in the Settlement but tell the Court why you think the Settlement should not be approved. Your objection must be submitted by **November 19, 2024**.

Detailed instructions on how to file a Claim Form, opt-out, or object, can be found on the Long Notice found on the Settlement Website, [www.KannactDataSettlement.com](http://www.KannactDataSettlement.com).

The Court will hold the Final Approval Hearing on January 22, 2025, at 10:00 a.m. Pacific Time to consider whether the proposed Settlement is fair, reasonable, and adequate, to consider an award of attorneys' fees of up to 33.33% of the Settlement Fund, reimbursement of the costs and expenses incurred in connection with the prosecution of the Action, and Service Awards of \$1,500 to the Class Representatives, and whether and if the Settlement should be approved. You may attend the hearing, but you don't have to. For additional information, including a copy of the Settlement Agreement, Long Notice, Claim Form, and other Court documents, visit the Documents section of the Settlement Website, [www.KannactDataSettlement.com](http://www.KannactDataSettlement.com), or call 1-844-755-4754. You may also contact the Settlement Administrator at *In re Kannact, Inc. Data Security Incident Litigation*, c/o Kannact Settlement Administrator, P.O. Box 3637, Baton Rouge, LA 70821.

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION**

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*In re Kannact, Inc. Data Security Incident*

Lead Case No. 6:23-cv-1132-AA

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' UNOPPOSED  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

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This matter comes before the Court on Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement (ECF 40) and Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Service Awards (ECF 36) (collectively, the "Motions"). The Court has reviewed the Motions, and the Settlement Agreement and Release (ECF 30-1 at Ex. 1) ("Settlement Agreement") entered into between Plaintiffs Terry Dukes, Ann Fongheiser, and Alan White ("Plaintiffs") and Defendant Kannact, Inc. ("Defendant"), and it finds that the Motions should be **GRANTED**. Therefore, it is **ORDERED**:

1. The Court, for the purpose of this Final Judgment, adopts the defined terms as set forth in the Settlement Agreement for any term not otherwise defined herein.
2. The Court finds that the Settlement Agreement is fair, reasonable, and adequate, as expressed further herein. The Court also finds the Settlement Agreement was entered into in good faith, at arm's length, and without collusion. The Court approves and directs consummation of the Settlement Agreement.
3. The Court approves the Releases provided in the Settlement Agreement and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties.

4. The Court has and reserves jurisdiction over the Settlement and this Settlement Agreement, the Parties thereto, including the Settlement Class and for purposes of the Settlement and Settlement Agreement, the Court has and reserves jurisdiction over the Parties to the Settlement.

5. The Court finds that there is no just reason for delay of entry of final judgment with respect to the foregoing.

6. The Court dismisses with prejudice the Action, without costs and fees except as explicitly provided for in the Settlement Agreement.

7. The Court grants final approval of the appointment of Milberg Coleman Bryson Phillips Grossman PLLC, Siri & Glimstead LLP, Cafferty Clobes Meriwether & Sprengel LLP, and Tousley Brain Stephens PLLC as Settlement Class Counsel.

8. The Court grants Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards (ECF 36). The Court awards Settlement Class Counsel \$233,333 in attorneys' fees and \$18,292.53 for the reimbursement of litigation expenses, to be paid according to the terms of the Settlement Agreement. This amount of fees and reimbursement of expenses is fair and reasonable.

9. The Court grants final approval of the appointment of Terry Dukes, Ann Fongheiser, and Alan White as Class Representatives.

10. The Court awards each Class Representative a service award of \$1,500 for their service to the Class.

11. On August 21, 2024, the Court granted Preliminary Approval of Class Action Settlement (ECF 34) that preliminarily approved the Settlement Agreement and the Notice Program and Claim Form as proposed met the requirements of Fed. R. Civ. P. 23 and due process,

and was the best notice practicable under the circumstances, constituting due and sufficient notice to all persons entitled to notice.

12. The Court finds that the distribution of the Notices has been achieved pursuant to the Preliminary Approval Order and the Settlement Agreement, and that the Notice to Class Members complied with Fed. R. Civ. P. 23 and due process. The fact that the Notices reached 86.59% of the Settlement Class indicates that the Notice program was successful and consistent with Fed. R. Civ. P. 23 and due process.

13. The Court finds Kannact, Inc. has complied with the requirements of 28 U.S.C. § 1715 regarding the CAFA Notice.

14. The Court certifies the following Class for settlement purposes only under Fed. R. Civ. P. 23(a) and 23(b)(3), subject to the Settlement Class exclusions set forth in the Settlement Agreement:

**The Settlement Class: “All persons in the United States whose information may have been impacted in the Data Incident, including persons to whom Kannact mailed a notification that their information may have been impacted in the Data Incident.**

The Settlement Class specifically excludes: 1) Kannact, Inc. and its officers and directors; (2) all members of the Settlement Class who submit a timely and valid request for exclusion from the Settlement Class; (3) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (4) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident, or who pleads nolo contendere to any such charge

15. The Court finds that the Settlement Class defined above satisfies the Requirements of Fed. R. Civ. P. 23(a) and (b)(3) for settlement purposes only in that (a) the Settlement Class of is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are

issues of law and fact that are common to the Settlement Class; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and Settlement Class Counsel have fairly and adequately protected the interests of the Settlement Class, as the Class Representatives have no interests antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement are superior to other methods available for a fair and effective resolution of this controversy.

16. This Court, having considered the negotiation of, the terms of, and all of the materials submitted concerning the Settlement Agreement; having considered Plaintiffs' and the Settlement Class's likelihood of success both of surviving dispositive motions practice, certifying this action as a class action, and of prevailing on the claims at trial, including considering Kannact, Inc.'s likelihood of success of prevailing on one or more of its defenses; having considered the range of Plaintiffs' possible recovery (and that of the Settlement Class) and the complexity, expense, and duration of the Action; and having considered the substance and amount of opposition to the proposed settlement, it is hereby determined that:

- a. The terms of the Settlement Agreement were fairly and honestly negotiated;
- b. The outcome of the Litigation was in doubt when the Settlement was reached making the compromise under this Settlement reasonable under the circumstances;
- c. The value of immediate recovery by way of a \$700,000 common fund outweighs the possibility of future relief that could occur, if at all, only after further protracted litigation and appeals;

- d. The Parties have in good faith determined the Settlement Agreement is in their respective best interests, including both Plaintiffs and Settlement Class Counsel determining that it is in the best interest of the Class Members;

17. Therefore, pursuant to Rule 23(e), the terms of the Settlement Agreement are finally approved as fair, reasonable, and adequate as to, and in the best interest of, the Settlement Class and each of the Settlement Class Members. Settlement Class Members who did not opt-out of the Settlement are bound by this Final Approval Order. The Settlement Agreement and its terms shall have *res judicata*, collateral estoppel, and all other preclusive effect in all pending and future lawsuits or other proceedings as to Released Claims and waivers applicable thereto.

18. The Court approves the distribution and allocation of the Settlement Fund under the Settlement Agreement pursuant to the terms of the Settlement Agreement.

19. This Final Approval Order, and all statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Kannact, Inc. of any claim, any fact alleged in Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Kannact, Inc. or of the validity or certifiability for this Litigation or other litigation of any claims or class that have been, or could have been, asserted in the Litigation.

20. This Final Approval Order, and all statements, documents, or proceedings relating to the Settlement Agreement shall not be offered or received or be admissible in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing by Kannact, Inc., or that Plaintiffs, any Settlement Class Member, or any other person has suffered any damage due to the Security Incident. Notwithstanding the above, the Settlement Agreement and this Final Approval Order may be filed in any action by Kannact, Inc.,

Settlement Class Counsel, or Settlement Class Members seeking to enforce the Settlement Agreement or the Final Approval Order.

21. The Settlement Agreement and Final Approval Order shall not be construed or admissible as an admission by Kannact, Inc. that Plaintiffs' claims or any similar claims are suitable for class treatment.

22. If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason this Final Approval Order and the Preliminary Approval Order shall be deemed vacated, and shall have no force and effect whatsoever; the Settlement Agreement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order and the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated *nunc pro tunc*, and the Parties shall be restored to their respective positions in the Action, as if the Parties never entered into the Settlement Agreement (without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue). In such event, the Parties will jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel.

**IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2025**

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Hon. Ann L. Aiken