

Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VERIDIAN CREDIT UNION, on behalf of
itself and a class of similarly situated financial
institutions,

Plaintiff,

v.

EDDIE BAUER LLC,

Defendant.

NO. 2:17-cv-00356-JLR

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



On June 12, 2019, this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) (ECF No. 165) of the Settlement between Plaintiff Veridian Credit Union (“Plaintiff” or “Veridian”), on its own behalf and on behalf of the Settlement Class, and Defendant Eddie Bauer LLC (“Eddie Bauer” or “Defendant”), as memorialized in Exhibit A (ECF No. 164-1) to Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement;¹

On July 12, 2019, pursuant to the notice requirements set forth in the Settlement and Preliminary Approval Order, the Settlement Class was apprised of the nature and pendency of the Litigation, the terms of the Settlement, and their rights to request exclusion, object, and/or appear at the Final Approval Hearing;

On September 20, 2019, Plaintiff filed its Motion for Final Approval of the Class Action Settlement (the “Final Approval Motion”) and accompanying Joint Declaration of Gary F. Lynch and Joseph P. Guglielmo, along with supporting exhibits; and Class Counsel filed their Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses and accompanying declarations from

¹ Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the Settlement Agreement and Release (“Agreement” or “SA”) (ECF No. 164-1).

1 counsel of record in the Litigation setting forth their time and expenses and related exhibits (the “Fee
2 Application”);

3 On October 25, 2019, the Court held a Final Approval Hearing to determine, *inter alia*:

4 (1) whether the Settlement is fair, reasonable, and adequate; and (2) whether judgment should be
5 entered dismissing all claims in the Complaint with prejudice. Prior to the Final Approval Hearing,
6 Class Counsel filed a declaration from the Settlement Administrator confirming that the Notice
7 Program was completed in accordance with the Parties’ instructions and Preliminary Approval Order.
8 Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right
9 to appear at the Final Approval Hearing in support of, or in opposition to, the proposed Settlement,
10 the award of attorneys’ fees, costs, and expenses, and the payment of a Service Award.

11 Having given an opportunity to be heard to all requesting persons in accordance with the
12 Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Eddie
13 Bauer, having reviewed all of the submissions presented with respect to the proposed Settlement,
14 having determined that the Settlement is fair, adequate, and reasonable, having considered the
15 application made by Class Counsel for attorneys’ fees, costs, and expenses and a Service Award, and
16 having reviewed the materials in support thereof, and good cause appearing in the record, Plaintiff’s
17 Final Approval Motion is **GRANTED** and Class Counsel’s Fee Application is **GRANTED**, and:

18 **IT IS HEREBY ORDERED THAT:**

19 1. The Court has jurisdiction over the subject matter of this Litigation and over all claims
20 raised therein and all Parties thereto, including the Settlement Class. The Court also has personal
21 jurisdiction over the Parties and Settlement Class Members.

22 2. The Settlement was entered into in good faith following arm’s-length negotiations
23 before an experienced mediator and is non-collusive.

24 3. The Settlement is, in all respects, fair, reasonable, and adequate, in the best interests
25 of the Settlement Class, satisfies Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”), and
26 therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and
27 uncertainties, including as to the outcome, of continued litigation of this complex matter, which
28 further supports the Court’s finding that the Settlement is fair, reasonable, adequate and in the best

1 interests of the Settlement Class Members. The Court finds that the uncertainties of continued
2 litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in
3 favor of approval of the Settlement.

4 4. This Court grants final approval of the Settlement, including, but not limited to, the
5 releases in the Settlement and the plans for distribution of the Settlement relief. The Court finds that
6 the Settlement is, in all respects, fair, reasonable, and in the best interest of the Settlement Class.
7 Therefore, all Settlement Class Members, who have not opted-out, are bound by the Settlement and
8 this Final Approval Order and Judgment.

9 5. The Settlement and every term and provision thereof shall be deemed incorporated
10 herein, as if explicitly set forth herein, and shall have the full force of an order of this Court.

11 6. The Parties shall effectuate the Settlement in accordance with its terms.

12 ^{for} **OBJECTIONS AND OPT-OUTS**

13 7. No objections were filed by Settlement Class Members. ~~The Court has considered~~
14 ~~all objections and finds the objections do not counsel against Settlement approval, and the objections~~
15 ~~are hereby overruled in all respects.~~

16 8. All persons and entities who have not objected to the Settlement in the manner
17 provided in the Settlement are deemed to have waived any objections to the Settlement, including,
18 but not limited to, by appeal, collateral attack, or otherwise.

19 9. A list of those putative Settlement Class Members who have timely and validly elected
20 to opt-out of the Settlement and Settlement Class, in accordance with the requirements in the
21 Settlement (the "Opt-Out Members"), has been submitted to the Court in the Declaration of
22 Christopher D. Amundson, filed in advance of the Final Approval Hearing. Such list is attached as
23 Exhibit A to this Order. The persons and/or entities listed in Exhibit A are not bound by the
24 Settlement, this Final Approval Order and Judgment, and are not entitled to any of the benefits under
25 the Settlement. Opt-Out Members listed in Exhibit A shall be deemed not to be Releasing Parties.

26 **CLASS CERTIFICATION**

27 10. For purposes of the Settlement and this Final Approval Order and Judgment, the Court
28 hereby finally certifies for settlement purposes only the following Settlement Class:

1 All banks, credit unions, financial institutions, and other entities in the United States
2 (including its Territories and the District of Columbia) that issued Alerted on
3 Payment Cards. Excluded from the Settlement Class is the judge presiding over
4 this matter and any members of his judicial staff, Eddie Bauer, and persons who
5 timely and validly request exclusion from the Settlement Class.

6 11. The Court determines that for settlement purposes, the Settlement Class meets all the
7 requirements of Rule 23(a) and (b)(3), namely that the Settlement Class is so numerous that joinder
8 of all members is impractical; there are common issues of law and fact; the claims of the Settlement
9 Class Representative are typical of absent Settlement Class Members; the Settlement Class
10 Representative will fairly and adequately protect the interests of the Settlement Class, as it has no
11 interests antagonistic to or in conflict with the Settlement Class, and has retained experienced and
12 competent counsel to prosecute this matter; common issues predominate over any individual issues;
13 and a class action is the superior means of adjudicating the controversy.

14 12. The Court grants Final Approval to the appointment of Plaintiff as the Settlement
15 Class Representative. The Court concludes that the Settlement Class Representative has fairly and
16 adequately represented the Settlement Class and will continue to do so.

17 13. The Court grants Final Approval to the appointment, pursuant to Rule 23(g), of Joseph
18 P. Guglielmo of Scott+Scott Attorneys at Law LLP and Gary F. Lynch of Carlson Lynch LLP as
19 Class Counsel. The Court concludes that Class Counsel have adequately represented the Settlement
20 Class and will continue to do so.

21 **NOTICE TO THE SETTLEMENT CLASS**

22 14. The Court finds that the Notice Program, as set forth in the Settlement and effectuated
23 pursuant to the Preliminary Approval Order, satisfied Rule 23(c)(2), was the best Notice practicable
24 under the circumstances, was reasonably calculated to provide, and did provide, due and sufficient
25 Notice to the Settlement Class of the pendency of the Litigation, certification of the Settlement Class
26 for settlement purposes only, the existence and terms of the Settlement, their right to exclude
27 themselves, their right to object to the Settlement and to appear at the Final Approval Hearing, and
28 satisfied the other requirements of the Federal Rules of Civil Procedure, the U.S. Constitution, and
all other applicable laws.

1 15. The Court finds that Eddie Bauer has fully complied with the Notice requirements of
2 the Class Action Fairness Act of 2005, 28 U.S.C. §1715.

3 16. The Settlement Administrator's fees, as well as all other costs and expenses associated
4 with Notice and Claims Administration, will continue to be paid by Eddie Bauer as provided in the
5 Settlement.

6 **AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD**

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

9 18. Pursuant to Rule 23(h), and relevant Ninth Circuit authority, the Court awards Class
10 Counsel \$2 million as an award of reasonable attorneys' fees, costs, and expenses to be paid in
11 accordance with the Settlement, and the Court finds this amount of fees, costs, and expenses to be
12 fair and reasonable. This amount will also cover the Costs of Settlement Administration, which was
13 previously approved by the Court (ECF No. 165), and the requested Service Award. This award of
14 attorneys' fees, costs, and expenses, and any interest earned thereon, shall be paid in accordance with
15 the Settlement. This award of attorneys' fees, costs, and expenses is independent of the Court's
16 consideration of the fairness, reasonableness, and adequacy of the Settlement.

17 19. The Court grants Class Counsel's request for a Service Award and awards \$10,000 to
18 Plaintiff. The Court finds that this payment is justified by Plaintiff's service to the Settlement Class.
19 This Service Award shall be paid by Eddie Bauer in accordance with the Settlement.

20 **OTHER PROVISIONS**

21 20. The Parties to the Settlement shall carry out their respective obligations thereunder.

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

25 22. As of the Effective Date, the Releasing Parties, each on behalf of themselves and any
26 predecessors, successors, or assigns, shall automatically be deemed to have fully, completely, finally,
27 irrevocably, and forever released and discharged Defendant's Released Persons of and from any and
28 all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys'

1 fees, losses, and remedies, whether known or unknown (including Unknown Claims (defined below)),
2 existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or
3 equitable that result from, arise out of, are based upon, or relate to the Cyber Attack, including,
4 without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or
5 remedies relating to, based upon, resulting from, or arising out of: (i) Eddie Bauer's information
6 security policies and practices; (ii) the allegations, facts, and/or circumstances described in the
7 Litigation and/or Complaint; (iii) Eddie Bauer's response to and notices about the Cyber Attack;
8 (iv) the fraudulent use of any Alerted on Payment Cards; (v) the cancellation and reissuance of any
9 Alerted on Payment Cards; and (vi) any expenses incurred investigating, responding to, or mitigating
10 potential damage from the theft or illegal use of Alerted on Payment Cards or information relating to
11 such cards (the "Released Claims").

12 23. For the avoidance of doubt, the Released Claims include, without limitation, any
13 claims, causes of actions, remedies, or damages that were or could have been asserted in the Litigation
14 and also include, without limitation, any claims that a Releasing Party may have under the law of any
15 jurisdiction, including, without limitation: those arising under state or federal laws of the United
16 States (including, without limitation, any causes of action under the California Business &
17 Professions Code §17200, *et seq.*, California Civil Code §1750, *et seq.*, Cal. Civ. Code §1798.80, *et*
18 *seq.*, Cal. Civ. Code §56.10, *et seq.*, and any similar statutes or data breach notification statutes in
19 effect in the United States or in any states in the United States); causes of action under the common
20 or civil laws of any state in the United States, including, but not limited to, unjust enrichment,
21 negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract,
22 breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation
23 (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of
24 privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes
25 of action based on privacy rights provided for under the constitutions of the United States or any
26 states in the United States; any statutory claims under state or federal law; and also including, but not
27 limited to, any and all claims in any state or federal courts of the United States for damages, injunctive
28 relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-

1 judgment interest, credit or financial account monitoring services, identity theft insurance, the
2 creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver,
3 and any other form of relief.

4 24. As of the Effective Date, Defendant's Released Persons will be deemed to have
5 completely released and forever discharged the Releasing Parties and Plaintiff's Released Persons
6 from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts,
7 liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or
8 demands of any kind whatsoever, whether known or unknown, existing or potential, or suspected or
9 unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or
10 unknown claims, which they have or may claim now or in the future to have, relating to the institution,
11 prosecution, or settlement of the Litigation. For the avoidance of doubt, Defendant's Released
12 Persons' release, as set forth in this ¶24, does not include entities that do not meet the definition of
13 either Releasing Parties or Plaintiff's Released Persons.

14 25. The Settlement Class Representative and Settlement Class Members are enjoined from
15 prosecuting any Released Claims in any proceeding against any of Defendant's Released Persons or
16 prosecuting any claim based on any actions taken by any of Defendant's Released Persons that are
17 authorized or required by this Settlement or the Final Approval Order and Judgment. It is further
18 agreed that the Settlement and/or this Final Approval Order and Judgment may be pleaded as a
19 complete defense to any proceeding subject to this section.

20 26. "Unknown Claims" means any of the Released Claims that any Settlement Class
21 Member, including the Settlement Class Representative, does not know or suspect to exist in its favor
22 at the time of the release of Defendant's Released Persons that, if known by it, might have affected
23 its settlement with, and release of, Defendant's Released Persons, or might have affected its decision
24 not to object to and/or to participate in this Settlement. With respect to any and all Released Claims,
25 the Parties stipulate and agree that upon the Effective Date, the Settlement Class Representative
26 expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and
27 by operation of the Final Approval Order and Judgment shall have, waived the provisions, rights, and
28 benefits conferred by Cal. Civ. Code §1542 to the extent applicable and also any and all provisions,

1 rights, and benefits conferred by any law of any state, province, or territory of the United States
2 (including, without limitation, Montana Code Ann. §28-1-1602; North Dakota Cent. Code §9-13-02;
3 and South Dakota Codified Laws §20-7-11), which is similar, comparable, or equivalent to Cal. Civ.
4 Code §1542, which provides:

5 *A general release does not extend to claims which the creditor or releasing party*
6 *does not know or suspect to exist in his or her favor at the time of executing the*
7 *release, and that, if known by him or her, would have materially affected his or*
8 *her settlement with the debtor or released party.*

9 [Emphasis added]. Settlement Class Members, including the Settlement Class Representative, and
10 any of them, may hereafter discover facts in addition to, or different from, those that they now know
11 or believe to be true, with respect to the subject matter of the Released Claims, but the Settlement
12 Class Representative expressly shall have, and each other Settlement Class Member shall be deemed
13 to have, and by operation of the Final Approval Order and Judgment shall have, upon the Effective
14 Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown
15 Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of
16 the Final Approval Order and Judgment to have acknowledged, that the foregoing waiver is a material
17 element of the Agreement of which this release is a part.

18 27. This Final Approval Order and Judgment and the Settlement, and all acts, statements,
19 documents, and proceedings relating to the Settlement, are not, and shall not be construed as, used
20 as, or deemed to be evidence of, an admission by or against Eddie Bauer of any claim, fact alleged in
21 the Litigation, fault, wrongdoing, violation of law, or liability of any kind on the part of Eddie Bauer
22 or of the validity or certifiability for litigation of any claims that have been, or could have been,
23 asserted in the Litigation.

24 28. This Final Approval Order and Judgment, the Settlement, and all acts, statements,
25 documents, and proceedings relating to the Settlement shall not be offered, received, or admissible in
26 evidence in any action or proceeding, or be used in any way as an admission, concession, or evidence
27 of any liability or wrongdoing of any nature, or that Plaintiff, any Settlement Class Member, or any
28 other person has suffered any damage; *provided, however*, that nothing in the foregoing, Settlement,
or this Final Approval Order and Judgment shall be interpreted to prohibit the use of the Settlement

1 or this Final Approval Order and Judgment in a proceeding to consummate or enforce the Settlement
2 or this Final Approval Order and Judgment (including all releases in the Settlement and Final
3 Approval Order and Judgment), or to defend against the assertion of any Released Claims in any
4 other proceeding, or as otherwise required by law.

5 29. The Settlement's terms shall be forever binding on, and shall have *res judicata* and
6 preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims (and
7 other prohibitions set forth in this Final Approval Order and Judgment) that are brought, initiated, or
8 maintained by, or on behalf of, any Settlement Class Member, who is not an Opt-Out Member, or
9 any other person subject to the provisions of this Final Approval Order and Judgment.

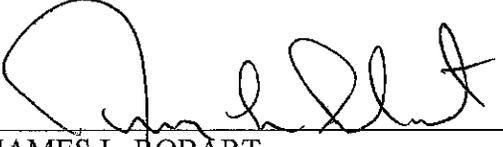
10 30. The Court hereby dismisses the Litigation and Complaint and all claims therein on the
11 merits and with prejudice, without fees or costs to any party, except as provided in this Final Approval
12 Order and Judgment.

13 31. Consistent with the Settlement, if the Effective Date, as defined in the Agreement,
14 does not occur for any reason, this Final Approval Order and Judgment and the Preliminary Approval
15 Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement shall be
16 considered null and void; all of the Parties' obligations under the Settlement, the Preliminary
17 Approval Order, and this Final Approval Order and Judgment shall cease to be of any force and effect;
18 and the Parties shall return to the *status quo ante* in the Litigation, as if the Parties had not entered
19 into the Settlement. In such an event, the Parties shall be restored to their respective positions in the
20 Litigation as if the Agreement had never been entered into (and without prejudice to any of the
21 Parties' respective positions on the issue of class certification or any other issue).

22 32. Pursuant to the All Writs Act, 28 U.S.C. §1651, this Court shall retain the authority to
23 issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

24 33. Without affecting the finality of this Final Approval Order and Judgment, the Court
25 will retain jurisdiction over the subject matter and the Parties, with respect to the interpretation and
26 implementation of the Settlement for all purposes, including enforcement of its terms at the request
27 of any party and resolution of any disputes that may arise, relating in any way to and arising from the
28 implementation of the Settlement or this Final Approval Order and Judgment.

1 IT IS SO ORDERED.

2 
3 _____
4 JAMES L. ROBART
5 UNITED STATES DISTRICT JUDGE

6 Dated this 25th day of October, 2019

7 Presented by:

8 TOUSLEY BRAIN STEPHENS PLLC

9 By: /s/ Kim D. Stephens

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18 *Attorneys for Plaintiff Veridian Credit Union*

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Exhibit D A



August 1, 2019.

Settlement Administrator
Eddie Bauer Data Breach Settlement
c/o Analytics Consulting LLC
Settlement Administrator
P.O. Box 2005
Chanhassen, MN 55317-2005

RE: Request for Exclusion

This letter is in regards to the settlement for Veridian Credit Union v. Eddie Bauer LLC, No. 2:17-cv-00356 (W.D. Wash). Metro Health Services Federal Credit Union located at 14517 F Street STE 211 Omaha, NE 68137 Phone number 402-551-3052. We request to be excluded from the Settlement Class.

VISA alerts US-2016-0665 listed a total of 68 payment cards issued by Metro Health Services that were identified as having been at risk as a result of the Data breach.

I, Nikki Delgado, am acting on behalf of Metro Health Services Federal Credit Union.

Nikki Delgado
nikkid@metrofcu.org
Manager of Cards and Phone Banking
402-552-7127
14517 F Street STE 211
Omaha NE 68137

Sincerely,

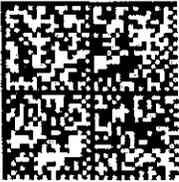
A handwritten signature in black ink that reads "Nikki Delgado". The signature is written in a cursive, flowing style.
Nikki Delgado



P.O. Box 390696 Omaha, NE 68139

ADDRESS SERVICE REQUESTED

Eddie Bauer Data Breach Settlement
c/o Analytics Consulting LLC
Settlement Administrator
P.O. Box 2005
Chanhassee, MN 55317-2005



FP US POSTAGE
\$ 00.50
First-Class
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