

## COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT

DANIEL GUARINO, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

RADIUS FINANCIAL GROUP, INC.,

Defendant.

C.A. No. . 2283CV00196

**~~PROPOSED~~ ORDER GRANTING PRELIMINARILY APPROVAL OF CLASS  
ACTION SETTLEMENT, FORMS OF NOTICE AND NOTICE PROGRAM, AND  
IMPLEMENTATION OF THE NOTICE PROGRAM**

The Court, having considered Plaintiff's Unopposed Motion for Preliminary Approval of the Class Action Settlement (the "Motion for Preliminary Approval"), the supporting Memorandum, the Parties' Settlement Agreement,<sup>1</sup> dated May 19, 2023, the proposed Short Notice (also known as the "Summary Notice"), Long Notice, and Claim Form, and being otherwise fully advised in the premises, finds and orders as follows:

**PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

1. The Settlement Agreement, attached to the Memorandum in Support of Motion for Preliminary Approval as **Exhibit 1** is incorporated fully herein by reference. The definitions used

<sup>1</sup> The capitalized terms used in this [Proposed] Order Granting Preliminary Approval of Class Action Settlement, Forms of Notice and Notice Program, and Implementation of Notice Program shall have the same meaning as defined in the Settlement Agreement, except as may otherwise be indicated.

Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over the claims at issue in this Litigation, Plaintiff Daniel Guarino, (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated (the “Settlement Class”), and Defendant Radius Financial Group, Inc. (“Radius” or “Defendant”) (together with Plaintiff, the “Parties”).

3. This Order is based on Massachusetts Rule of Civil Procedure 23.

4. The Court finds that the Parties’ Settlement Agreement is fair, reasonable, and adequate and is within the range of possible approval, and was entered into after extensive, arm’s-length negotiations, such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members.

***Procedural Posture and History of Negotiations***

5. This is a putative class action brought by Plaintiff arising out of a cybersecurity incident where an unknown third-party gained access to Radius’s computer system and/or network, which potentially compromised the personally identifiable information (“PII”) of current and former customers of Radius on or about July 7, 2021 (the “Cybersecurity Incident”). Radius publicly announced the Cybersecurity Incident on or about February 3, 2022 and began notifying approximately 16,988 individuals that their information was potentially compromised.

6. On March 15, 2021, Plaintiff Daniel Guarino filed a putative class action in the Plymouth County Superior Court, Commonwealth of Massachusetts, captioned *Guarino v. Radius Financial Group, Inc.*, Civil Action No. 2283CV00196 (Plymouth Cty. Sup. Ct.) which Plaintiff Guarino later proposed to amend. Plaintiff Guarino alleges in his Amended Class Action

Complaint two causes of action: (1) Breach of Express Contract, and (2) violation of Massachusetts Consumer Protection Law, Mass. Gen. Laws, Ch. 93A

7. On June 24, 2022, Radius served its Motion to Dismiss the Class Action Complaint, pursuant to Massachusetts Rule of Civil Procedure 12(b)(6). The motion to dismiss led to the proposed amendment.

8. Thereafter, the Parties entered into settlement negotiations. The Parties negotiated in good faith and at arm's-length. After weeks of arms-length, good faith negotiations, the Parties eventually reached an agreement in principle on terms for a putative class action settlement. Thereafter, the Parties negotiated the drafted the finer details of the Settlement Agreement and its exhibits. The Settlement Agreement was finalized and executed on May 19, 2023.

### ***Settlement Benefits***

9. Plaintiff summarizes the relevant terms of the proposed Settlement as follows:

a. **Monetary Benefits**: Settlement Class Members may qualify and submit a Claim Form for the following monetary settlement benefits:

i. **Ordinary Losses**: Each Settlement Class Member is eligible to submit a claim for up to \$325 in Ordinary Losses. There are two forms of Ordinary Losses: (1) reimbursement for Out-of-Pocket Expenses; and (2) reimbursement for Lost Time:

1. ***Out-of-Pocket Expenses***: Settlement Class Members are eligible to submit claims for up to \$325 for Out-of-Pocket Expenses incurred as a result of the Data Breach. Examples of Out-of-Pocket Expenses include: (a) costs to obtain credit reports and remediate

fraudulent credit accounts; (b) telephone or cellphone fees or charges; (c) fees charges by credit cards, banks, or other financial institutions; (d) costs for postage or other forms of delivery of documents or other materials; (e) data fees or charges; (f) travel expenses; (g) costs and fees for filing or processing of documents or other materials; and (h) costs and fees for professional services, including forensic, technological, financial, accounting, and legal,

2. *Lost Time Payment:* Each Settlement Class Member is eligible to submit a claim for Lost Time that they spent responding to issues raised by the Data Breach. Settlement Class Members may claim up to four (4) hours of Lost Time at a rate of \$25 per hour, for a maximum of \$100. This \$100 is included in the \$325 Ordinary Loss cap. A Settlement Class Member who submits a Lost Time claim will be required to provide an attestation that he or he spent the claimed time responding to issues raised by the Data Breach.

ii. Stolen Funds:

Settlement Class Members who had Stolen Funds are eligible to receive compensation for up to \$2,500.00 (less reimbursement for Ordinary Losses). Stolen Funds means monetary funds that were stolen, or taken or debited without authorization, from a financial account owned by a Settlement Class Member between the Cybersecurity Incident Date and the Notice Date due to the compromise of that Settlement Class Member's

Protected Information in the Cybersecurity Incident, provided that the Settlement Class Member timely took all necessary and appropriate steps to attempt to recover or obtain a credit for such Stolen Funds, including, but not necessarily limited to, from any and all financial institutions and other Persons involved and all other sources, including potentially applicable insurance. As part of the claim, the Settlement Class Member must show that: 1) the loss is an actual, documented and unreimbursed monetary loss; (2) the loss was directly caused by the Cybersecurity Incident; (3) the loss occurred between July 7, 2021 and the Claims Deadline; (4) the loss is not already covered by one or more of the reimbursement categories for expenses; and (5) the member of the Settlement Class made reasonable efforts to avoid, or seek reimbursement for, the loss.

- b. To be eligible for these monetary settlement benefits, Settlement Class Members must submit reasonable documentation (except for claims for Lost Time) that: (i) with respect to claims for Ordinary Losses, the Out-of-Pocket Expenses claimed were incurred as a result of the Data Breach, and (ii) with respect to claims for Stolen Funds, that the loss was more likely than not caused by the Data Breach. Reasonable documentation supporting a claim for Out-of-Pocket Losses shall include, but not be limited to, credit card statements, bank statements, invoices, telephone records, and receipts. Failure to provide supporting documentation as requested on the Claim Form shall result in denial of a claim. If the Claims Administrator receives an incomplete or unsigned claim or a Claim Form that is not

accompanied by sufficient documentation to determine whether it is Facially Valid, the Settlement Class Member has an opportunity to cure the defect before it is rejected.

- c. **Credit Monitoring and Insurance Services**: In addition to monetary benefits, Settlement Class Members shall be entitled to receive two (2) years of 1B credit monitoring services. Settlement Class Members who claim this benefit will receive a code for the credit monitoring services within 30 days of the Effective Date of the Settlement..

#### **CLASS CERTIFICATION**

10. For the purposes of settlement only, and pursuant to Massachusetts Rule of Civil Procedure 23, the Court provisionally certifies the class, defined as follows: “the Radius customers, consumers, and other individuals whose Protected Information was compromised in the Cybersecurity Incident.”

11. The Settlement Class specifically excludes: (a) Defendant’s officers and directors; (b) any entity in which Defendant has a controlling interest; (c) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Defendant; and (d) attorneys and other legal representatives affiliated with or employed by Class Counsel. Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

12. The Settlement Class consists of approximately 16,988 individuals.

13. The Court provisionally finds, pursuant to the Massachusetts Rule of Civil Procedure 23, that, for purposes of this settlement only, the: (a) the Settlement Class is so numerous

that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representative's claims are typical of the Settlement Class's claims; (4) the Class Representative will fairly and adequately protect the Settlement Class's interests; and (5) questions of law or fact in this Litigation predominate over any questions affecting only individual members of the Settlement Class, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Because this certification of the Settlement Class is in connection with the Settlement Agreement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement Agreement.

#### **SETTLEMENT CLASS COUNSEL AND THE CLASS REPRESENTATIVE**

14. Plaintiff Daniel Guarino is hereby provisionally designated and appointed as the Class Representative. The Court provisionally finds that the Class Representative is similarly situated to absent Settlement Class Members, and are typical of the Settlement Class, and, therefore, he will be adequate Class Representative.

15. The Court finds that MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC are experienced and adequate counsel and are provisionally designated as Class Counsel.

#### **NOTICE TO SETTLEMENT CLASS**

16. The forms of the Claim Form, Summary Notice (also known as the "Short Notice"), and Long Notice, attached as **Exhibits A, B, and C**, respectively, to the Settlement Agreement, are constitutionally adequate, and are hereby approved. The Notice contains all essential elements required to satisfy state statutory requirements and Due Process. The Court further finds that the form, content, and method of providing notice to the Settlement Class, as described in the

Settlement Agreement, including the exhibits thereto: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the Settlement, their rights under the Settlement, including, but not limited to, their rights to object to Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members.

17. The Notice program set forth in the Settlement Agreement, and described below, satisfies the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure, provides the best notice practicable under the circumstances, and is hereby approved.

18. The Claims Administrator and Notice Specialist (the "Claims Administrator") is directed to carry out the Notice Program as set forth in the Settlement Agreement.

19. Within thirty (30) days of entry of the Preliminary Approval Order (the Notice Date) and to be substantially completed not later than forty-five (45) days after entry of the Preliminary Approval Order, subject to the requirements of Settlement Agreement and the Preliminary Approval Order, the Claims Administrator shall provide Notice to the Settlement Class Members in the manner set forth in the Settlement Agreement.

#### **CLAIMS AND OBJECTIONS**

20. The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to object.

21. Settlement Class Members will have ninety (90) days after the Notice Date to complete and submit a claim to the Claims Administrator.



22. Settlement Class Members who comply with the requirements of this paragraph may object to the Settlement. A Settlement Class Member who seeks to object to the Settlement must submit timely, written notice of his or her objection. This notice shall state: (a) the objecting Settlement Class Member's full name, address, and telephone number; (b) information, documents, data and other materials establishing that the objector is a Settlement Class Member; (c) a written statement of all grounds for the objection, accompanied by any legal support for the objection that the objector believes applicable; (d) the identity of all counsel representing the objector, if any; (e) the identity of all counsel representing the objector who will appear at the Final Fairness Hearing, if any; (f) a statement confirming whether the objector or the objector's counsel intends to personally appear at the Final Fairness Hearing, and; (g) the objector's signature and the signature of the objector's counsel or other duly authorized representative, if any the title of the case.

23. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Plymouth County Court, Commonwealth of Massachusetts no later than sixty (60) days after the Notice Date (the "Objection Deadline"), and served concurrently therewith upon Proposed Class Counsel, at David K. Lietz, Milberg Coleman Bryson Phillips Grossman, PLLC, 5335 Wisconsin Avenue NW, Suite 440, Washington, D.C. 20015, and counsel for Radius Cameron G. Shilling, McLane Middleton, P.A., 300 TradeCenter, Suite 700, Woburn, MA 01801.

24. Any Settlement Class Member who fails to comply with the requirements for objecting pursuant to the Settlement Agreement shall waive and forfeit any and all rights he or she may have to appear separately and/or object to the Settlement Agreement, and shall be bound by all of the terms of the Settlement Agreement and by all proceedings, orders and judgments in the

Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of the Settlement Agreement. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Massachusetts Rules of Appellate Procedure and not through a collateral attack.

#### **ADMINISTRATION OF THE SETTLEMENT**

25. The Class Representative, Settlement Class Counsel, and Radius have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement benefits to the Settlement Class, and the plan for distributing Settlement benefits as described in Section 4 of the Settlement Agreement.

26. The Court appoints Atticus Administration LLC as the Claims Administrator. Radius shall pay the Costs of Claims Administration and the costs of providing notice pursuant to the Notice Program to the Settlement Class, as set out in the Settlement Agreement and subject to the provisions contained therein.

27. The Court directs the Claims Administrator to effectuate the distribution of Settlement benefits according to the terms of the Settlement Agreement should the Settlement be finally approved.

28. Settlement Class Members who qualify for Settlement benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

29. If Final Judgment is entered, all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified in the Notice shall be forever barred from receiving any Settlement benefit, and will in all other respects be subject to and bound by the provisions of the Settlement Agreement, including the Releases contained therein, and the Final Approval Order and Judgment.

30. At least ten (10) days prior to the Final Fairness Hearing, Class Counsel and Radius shall cause to be filed with the Court an appropriate affidavit or declaration regarding compliance with the provisions of the Settlement Agreement relating to notice.

31. Radius shall provide notice of the Settlement to appropriate state and federal officials pursuant to 28 U.S.C. § 1715 (“CAFA Notice”), and no party shall request that an order giving final approval of the settlement be issued prior to the expiration of the time set forth in 28 U.S.C. § 1715(d)..

FINAL FAIRNESS HEARING

*See Clerk's Notice for Hearing information*

32. A Final Fairness Hearing shall be held on \_\_\_\_\_, 2022 at \_\_\_:\_\_\_0\_\_m. at Plymouth Superior Court, Courtroom \_\_\_\_\_, located at 52 Obery St., Plymouth, MA 02360, to be noticed on the Settlement Website.

33. The Court may require or allow the Parties and any objectors to appear at the Final Fairness Hearing by telephone or videoconference.

34. At the Final Fairness Hearing, the Court will determine whether: (1) this action should be finally certified as a class action for settlement purposes pursuant to the Massachusetts Rules of Civil Procedure; (2) the Settlement should be finally approved as fair, reasonable, and adequate; (3) Settlement Class Counsel’s application for attorneys’ fees, costs, and expenses

should be approved; (4) the Class Representative's request for a service award should be approved; (5) the Parties, their respective attorneys, and the Claims Administrator should consummate the Settlement in accordance with the terms of the Settlement Agreement; (6) Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; and (7) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement.

35. Plaintiff's Motion for attorneys' fees, costs, expenses, and service awards shall be filed with the Court no later than fourteen (14) days prior to the Objection Deadline.

36. Plaintiff's Motion for Final Approval of the Class Action Settlement shall be filed with the Court no later than fourteen (14) days before the Final Fairness Hearing.

#### **TERMINATION**

37. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions in the Litigation, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In the event that the Settlement is terminated pursuant to the Settlement Agreement, (i) the Parties shall 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.

38. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever, 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*.

39. This Order shall have no continuing force or effect if Final Judgment is not entered and shall not be construed or used as an admission, concession, or declaration by or against Radius of any fault, wrongdoing, breach, liability, or the certifiability of any class.

40. All proceedings and deadlines in this matter, except those necessary to implement this Order and Settlement, are hereby stayed and suspended until further order of the Court.

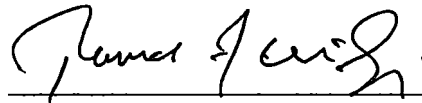
41. Plaintiff requests that the Court set the Final Fairness Hearing for a date approximately one hundred and fifty (150) days from the date of this Preliminary Approval Order.

**SUMMARY OF DEADLINES**

42. The preliminarily approved Settlement shall be administered according to its terms pending the Final Fairness Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to:

EVENT	DATE
Defendant to provide class list to Claims Administrator	7 days after entry of Preliminary Approval Order
Notice Date	30 days after the entry of the Preliminary Approval Order
Deadline for Plaintiff to File Motion for Attorneys' Fees, Costs, Expenses, and Service Award for Class Representative	14 days prior to Objection Deadline
Objection Deadline	60 days after Notice Date
Deadline for Class Members to Submit Claim Forms	90 days after Notice Date
Deadline for Plaintiff to File Motion for Final Approval of Class Action Settlement	14 days prior to Final Fairness Hearing
Final Fairness Hearing	<b>COURT TO FILL IN DATE NO EARLIER THAN 150 DAYS AFTER PRELIMINARY APPROVAL</b>

ORDERED this 11<sup>th</sup> day of August, 2023.



Justice of the Superior Court