

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT

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

C.A. No. . 2283CV00196

Plaintiff,

v.

RADIUS FINANCIAL GROUP, INC.,

Defendant.

**FINAL APPROVAL ORDER AND JUDGMENT**

On August 11, 2023, this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) of the settlement (the “Settlement”) between 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,” and together with Plaintiff, the “Parties”), as memorialized in the Settlement Agreement, dated May 19, 2023, which is **Exhibit 1** to Plaintiff’s Assented to Motion for Preliminary Approval of Class Action Settlement;<sup>1</sup>

On September 8, 2023, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Class was notified of the terms of the proposed Settlement Agreement and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a final approval hearing;

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<sup>1</sup>The capitalized terms used in this [Proposed] Final Approval Order and Judgment shall have the same meaning as defined in the Settlement Agreement, except as may otherwise be indicated.

On February 28, 2024, the Court held a final approval hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. Prior to the final approving hearing, an affidavit or declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as required by the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the final approval hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees and expenses to Settlement Class Counsel, and the payment of a service award to the Class Representative.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Settlement Class Counsel and counsel for Radius, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees and expenses, and the application for a service award to the Class Representative, and having reviewed the materials in support thereof, and good cause appearing:

**IT IS HEREBY ORDERED THAT:**

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class.
2. The Settlement Agreement was entered into in good faith following arm's length negotiations and is non-collusive.

3. The Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and uncertainties, including as to the outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

4. This Court grants final approval of the Settlement Agreement, including, but not limited to, the releases in the Settlement Agreement, including all Released Claims, and the plans for implementation and distribution of the settlement benefits. The Court finds that the Settlement Agreement is in all respects fair, reasonable, and in the best interest of the Settlement Class. Therefore, all Class Members are bound by this Final Approval Order and Judgment, approving the Settlement Agreement.

5. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

### **OBJECTIONS**

6. No objections were filed to this Settlement.

7. All Settlement Class Members who have not objected to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

## CLASS CERTIFICATION

8. For purposes of the Settlement Agreement and this Final Approval Order and Judgment only, the Court hereby finally certifies the following class (the "Settlement Class"):

The Radius customers, consumers, and other individuals whose Protected Information was compromised in the Cybersecurity Incident.

9. 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.

10. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Massachusetts Rule of Civil Procedure 23 set forth in the Preliminary Approval Order and notes again that 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.

11. The Court grants final approval to the appointment of Plaintiff Daniel Guarino as Class Representative. The Court concludes the Class Representative has fairly and adequately represented the Settlement Class and will continue to do so.

12. The Court grants final approval to the appointment of MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC as Class Counsel. The Court concludes that Class Counsel has adequately represented the Settlement Class and will continue to do so.

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

13. The Court finds that the Notice Program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their right to object and to appear at the final approval hearing, and satisfied the requirements of Massachusetts Rule of Civil Procedure 23, the United States Constitution, and other applicable law.

### **AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

14. The Court has considered Class Counsel's Motion for attorneys, fees, costs, expense, and service awards. The Court awards Class Counsel the sum of \$123,500 as an award of combined attorneys' fees and expenses to be paid in accordance with the Settlement Agreement, and the Court finds this amount of fees and costs to be fair and reasonable. This payment shall be paid in accordance with the Settlement Agreement.

15. The Court grants Class Counsel's request for a service award to the Class Representatives and awards \$3500 to Plaintiff Daniel Guarino. The Court finds that this payment is justified by Class Representative's service to the Settlement Class. This payment shall be paid in accordance with the Settlement Agreement.

### **OTHER PROVISIONS**

16. The Parties to the Settlement Agreement shall carry out their respective obligations thereunder.

17. Within the time period set forth in the Settlement Agreement, the benefits provided for in the Settlement Agreement shall be made available to the various Settlement Class Members

submitting Valid Claim Forms, on approved Claims, pursuant to the terms and conditions of the Settlement Agreement.

18. As of the Effective Date, as defined in the attached Settlement Agreement, and in consideration of the promises and covenants set forth in the Settlement Agreement, each Settlement Class Member, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims and Unknown Claims against Radius and the Releasees. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including the Class Representatives, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the Settlement Agreement as provided therein) in which any Released Claim(s) is/are asserted.

19. As set forth in the Settlement Agreement, Radius and the Releasees are not releasing, relinquishing, or discharging any allegation, assertion, action, cause of action, count, suit, lawsuit, claim, counterclaim, third-party claim, defense, liability, responsibility, agreement, contract, promise, tort, debt, statutory violation, damage, controversy, judgment, right or demand, whether existing or contingent, known or unknown, that Radius or the Releasees had, have or may have against the Plaintiff or any Settlement Class Member, arising out of the Cybersecurity Incident.

20. "Released Claims" means all allegations, actions, cause of actions, counts, suits, lawsuits, claims, counterclaims, third-party claims, defenses, liabilities, responsibilities, agreements, contracts, promises, torts, debts, statutory violations, damages, controversies,

judgments, rights, and demands, whether existing or contingent, known or unknown. This term includes, but is not limited to, the following: (a) all claims, allegations, and assertions that were or could have been made in the Complaint or Proposed Amended Complaint; (b) all claims, allegations, and assertions that were or could have been made by Plaintiff and on behalf of the Settlement Class Members arising out of or related to the Cybersecurity Incident or Cybersecurity Incident Notice (as those terms are defined in the Settlement Agreement); (c) all claims, allegations, and assertions arising out of or related to the Massachusetts CPA, Massachusetts Privacy Act, M.G.L. chapter 214, section 1B, Massachusetts State Constitution, GLBA, Federal Trade Commission Act (as well as any and all regulations promulgated under or pursuant to it), and any other local, state, or federal statute or constitution; (d) all claims, allegations, and assertions concerning negligence, negligence per se, breach of contract, breach of implied contract, breach of fiduciary duty, breach of confidence, invasion of privacy, misrepresentation, fraud, unjust enrichment, bailment, wantonness, failure to provide timely or sufficient notice pursuant to any state or federal breach notification law or duty; and (e) all claims, allegations, and assertions for damages, losses, injunctive relief, equitable relief, disgorgement, declaratory relief, attorney's fee, costs, expenses, pre and post judgment interest, identity and credit monitoring and restoration services and protection, the creation of a fund for future damages or losses, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief. This term does not include a Claim by a Settlement Class Member under this Agreement, or any right of Plaintiff or a Settlement Class Member to this Agreement.

21. "Releasees" means all of the following: (a) Radius; (b) all of Radius' past and present, direct and indirect subsidiaries, parents, affiliates, predecessors, successors, and assigns; (c) all employees, officers, directors, owners, attorneys, insurers, re-insurers, and other agents and

representatives of Radius and any and all of its past and present, direct and indirect subsidiaries, parents, affiliates, predecessors, successors, and assigns; (c) Radius Counsel; and (d) the Claim Administrator and all employees, officers, directors, owners, attorneys, insurers, re-insurers, and other agents and representatives of the Claim Administrator.

22. “Unknown Claims” means any and all of the Released Claims that Plaintiff or any Settlement Class Member does not know or suspect exist in that Person’s favor at the time of the release of the Releasees that, if known by that Person, might have affected that Person’s settlement with and release of the Releasees, or might have affected that Person’s decision not to object to and/or to participate in this Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiff expressly will have, and each of the other Settlement Class Members will be deemed to have, and by operation of the Final Approval Order and Judgment will have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 et seq., Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff and all Settlement Class Members may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiff expressly will have, and all of the other Settlement Class Members



will be deemed to have, and by operation of the Final Approval Order and Judgment will have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members will be deemed by operation of the Final Approval Order and Judgment to have acknowledged, that the foregoing waiver is a material element of this Agreement of which this release is a part.

23. The terms of the Settlement Agreement and this Final Approval Order and Judgment shall have maximum *res judicata*, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest, or expenses that arise out of or relate to the allegations or subject matter of the Litigation.

24. This Final Approval Order and Judgment and the Settlement Agreement, and all acts, 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 Radius of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Radius or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the action. This Final Approval Order and Judgment, the Settlement Agreement, and all acts, 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 of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; *provided, however*, that the Settlement Agreement and this Final Approval Order and Judgment may be filed in any action by Radius, Class Counsel, or Settlement

Class Members seeking to enforce the Settlement Agreement or the Final Approval Order and Judgment (including, but not limited to, enforcing the releases contained herein).

25. Any of the Releasees may file the Settlement Agreement and/or this Final Approval Order and Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

26. The Settlement Agreement and Final Approval Order and Judgment shall not be construed or admissible as an admission by Radius that Plaintiff's claims or any similar claims are suitable for class treatment. The Settlement Agreement's terms shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions set forth in this Final Approval Order and Judgment that are maintained by, or on behalf of, any Settlement Class Member or any other person subject to the provisions of this Final Approval Order and Judgment.

27. The Court hereby dismisses this Litigation and all claims therein on the merits and with prejudice, without fees or costs to any Party, except as provided in this Final Approval Order and Judgment.


28. Consistent with Paragraphs 9.1 and 9.2 of the Settlement Agreement, if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Approval Order and Judgment 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 Judgment 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 Litigation 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 Litigation, 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). Further, 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.

29. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes.

**ENTERED:**

DATED: February 29, 2024

By:   
Michael A. Cahillane  
Justice of the Superior Court

A TRUE COPY ATTEST  
  
Clerk of Courts