IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GREGG NELSON and DANIEL COZZA, individually and on behalf of all others similarly situated, *Plaintiffs*, v. BANSLEY & KIENER, L.L.P., *Defendant*.	Case No.: 2021-CH-06274 Judge: Sophia H. Hall

PLAINTIFFS' AMENDED UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT[1]

[1]Plaintiffs submit this Amended Motion and Memorandum to correct certain nonmaterial factual statements in the prior version, which came to light since it was filed on June 24, 2022. The corrections herein, however, do not fundamentally alter the initial Motion and Memorandum nor change the relief sought. Nonetheless, Plaintiffs ask that this new version supersede and replace the earlier version as the operative motion for preliminary approval of the class action settlement of these consolidated actions.

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I. INTRODUCTION

Plaintiffs Gregg Nelson and Daniel Cozza ("Plaintiffs") respectfully seek preliminary approval of a proposed class action settlement with Defendant Bansley and Kiener, L.L.P. ("Bansley" or "Defendant"), the terms of which are set forth in the Settlement Agreement ("SA"), attached hereto as **Exhibit A**.[2]

Defendant is a full-service CPA firm based in Chicago. It provides accounting, tax, consulting, and assurance services, and conducts payroll compliance engagements. To provide these services, Defendant collects, maintains, analyzes, and uses personal identifying information, such as names, dates of birth, and Social Security numbers (collectively, "PII").

In December 2020, Bansley experienced a cyberattack in which criminals gained access to certain of Bansley's computer systems ("Data Incident"), resulting in the potential unauthorized access to PII. These two class action lawsuits were filed because of the Data Incident and resulting alleged injuries to Plaintiffs and putative Class. Defendant disputes Plaintiffs' allegations and denies that it has any liability for the Data Incident.

The proposed Settlement establishes a $900,000 common fund for Settlement Class Members so they may file claim forms to be reimbursed for out-of-pocket expenses and compensated for time spent responding to the Data Incident. The Settlement also provides security improvements for Plaintiffs' and Settlement Class Members' PII still in Defendant's custody and control, and eliminates the uncertainty and risk of continued litigation against Defendant.

This memorandum describes in detail the reasons why preliminary approval is in the best interests of the class members and is consistent with 735 ILCS 5/2-801. As discussed in more detail below, the most important consideration in evaluating the fairness of a proposed class action

[2] Capitalized terms in this Motion have the same definition as in the Settlement Agreement.

settlement is the strength of Plaintiffs' case on the merits balanced against the relief obtained in the settlement. *See, e.g.*, *Steinberg v. Software Assoc., Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *Am. Int'l Grp., Inc. v. ACE INA Holdings*, Nos. 07-cv-2898, 09-cv-2026, 2012 WL 651727 at *2 (N.D. Ill. Feb. 28, 2012).[3] While Plaintiffs reasonably believe they could secure class certification and prevail on the merits at trial, success is certainly not guaranteed, particularly given the uncertainties in the law surrounding data security, and Defendant is prepared to vigorously defend this case and to oppose certification of a litigated class. The terms of the Settlement, which entitle Settlement Class Members to meaningful cash compensation and significant financial and personal data protections, meet and exceed the applicable standards of fairness. Accordingly, this Court should preliminarily approve the Settlement so that Settlement Class Members can receive notice of their rights and the claims administration process may begin.

Further, the Settlement is within the range of Defendant's potential liability, as well as being fair, reasonable, and in the best interests of the Settlement Class. The Settlement is advantageous to Settlement Class Members because it provides them prompt compensation for losses, security improvements for their PII still in Defendant's custody and control and eliminates the uncertainty and risk of continued litigation against Defendant.

Plaintiffs, on behalf of themselves and putative Class, respectfully request the Court grant preliminary approval of the Settlement; issue the proposed Preliminary Approval Order; find the prerequisites for class certification under Section 2-801 of the Illinois Code of Civil Procedure are likely satisfied—solely for purposes of effectuating the proposed Settlement; appointing Plaintiffs

[3] Section 2-801 is modeled after Rule 23 of the Federal Rules of Civil Procedure and, therefore, "federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery v. State Farm Mut. Ins. Co.*, 216 Ill. 2d 100, 125 (2005).

Nelson and Cozza as the Class Representatives and Gary M. Klinger, David K. Lietz, Kate M. Baxter-Kauf, and Gayle M. Blatt as Class Counsel; appoint Postlethwaite & Netterville ("P&N") as the Claims Administrator; and direct notice of the Settlement to be sent to Settlement Class Members.

II. BACKGROUND

A. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

On December 10, 2020, Bansley identified an in-progress cyber security incident that resulted in the encryption of a portion of its systems (the "Data Incident"). Bansley immediately took steps to contain the Data Incident and prevent further encryption, including disconnecting from the internet and restoring the encrypted systems from recent backups. Because Bansley identified the attack in progress, and before a ransom demand note appeared, Bansley believed it had prevented a full ransomware attack and had taken the necessary mitigation steps. Bansley's IT specialist did not identify any evidence that Bansley data was exfiltrated prior to ransomware deployment.

On May 24, 2021, Bansley first learned the threat actor exfiltrated information from Bansley's environment. Bansley then conducted a forensic investigation with leading cybersecurity consultants to determine the full nature and scope of the Data Incident. In November 2021, Bansley began notifying individuals who may have been impacted by the Data Incident. In total, Bansley notified 274,115 individuals of the Data Incident.

As a result of the Data Incident, Plaintiffs contend that thieves accessed and stole Plaintiffs' and Settlement Class Members' PII for misuse, identity theft, and other fraudulent activities. Plaintiffs also contend that the exfiltrated PII is typically used by unauthorized part(ies) to commit identity theft, including applying for credit cards and unemployment benefits, taking out loans,

and leasing equipment. Bansley disputes Plaintiffs' contentions, including that Plaintiffs or any member of the putative class has been harmed as a result of the Data Incident.

These two class action lawsuits were filed as a result of Defendant's Data Incident. The *Nelson* action was filed on December 17, 2021, in the Circuit Court, First Judicial Circuit in Cook County, Illinois, Case No.: 2021-CH-06274. Plaintiff Nelson asserted claims for (i) negligence, (ii) unjust enrichment, (iii) breach of express contract, (iv) breach of implied contract, and (v) declaratory relief.

The *Cozza* action was filed on February 23, 2022, in the Circuit Court, First Judicial Circuit in Cook County, Illinois, Case No.: 2022-CH-01515. Plaintiff Cozza asserted claims for (i) negligence; (ii) negligence per se; (iii) breach of contracts to which plaintiff and class members are third–party beneficiaries; (iv) breach of implied contract; (v) unjust enrichment; (vi) common law unfair competition; (vii) declaratory and injunctive relief; (viii) violation of the Illinois Consumer Fraud Act; (ix) violation of the Illinois Uniform Deceptive Trade Practices Act; and (x) violation of the Missouri Merchandising Practices Act.

On June 21, 2022, Plaintiffs Gregg Nelson and Daniel Cozza filed a consolidated class action complaint (the "Consolidated Complaint") against Defendant. The Consolidated Complaint asserts five causes of action, all of which allegedly arise from the Data Incident: (1) negligence; (2) unjust enrichment; (3) breach of express contract; (4) breach of implied contract; and (5) declaratory judgment.

B. SETTLEMENT NEGOTIATIONS

The Parties began meeting and conferring regarding the circumstances surrounding and extent of the Data Incident. Eventually the Parties agreed to informal settlement discussions and mediation. Before and in preparation for mediation, the Parties engaged in informal discovery to ensure they had a thorough understanding of the facts and merits of this case.

On April 19, 2022, Plaintiffs' counsel, Defendant, and Defendant's counsel attended a mediation session with the Hon. Wayne Andersen (Ret.)—a well-respected and experienced mediator. (Exhibit B, Declaration of Gary M. Klinger filed concurrently herewith ("Klinger Decl.") ¶ 8.) At the conclusion of the mediation, the Parties reached a resolution of this matter. (*Id.*) The Parties then negotiated the terms of the Settlement Agreement, Class Notice, Claim Form, and Notice Plan, and the Parties agreed on P&N to serve as the Claims Administrator. (*Id.*)

III. SETTLEMENT TERMS

A. CLASS DEFINITION

Nationwide class, defined as follows:

> All persons who were identified by Bansley as having their data potentially accessed in the Data Incident, and who were sent a Notice of Data Breach letter by or on behalf of Bansley regarding the Data Incident. (the "Nationwide Class")

B. SETTLEMENT BENEFITS

1. Monetary Benefits to the Class

The proposed Settlement requires Defendant to pay $900,000 to create a non-reversionary common fund for: (a) reimbursement for the Settlement Class Members' ordinary and extraordinary expenses related to the Data Incident and providing identity theft protection; (b) reasonable notice and settlement administration costs, including the cost of providing notice to the Class; (c) attorney fees up to $300,000 and expenses up to $15,000, subject to Court approval; and (d) service awards of $5,000 to each of the Plaintiffs (for a total payment of $10,000), subject to Court approval. (SA, ¶¶ 2.1, 2.2, 2.3, 2.12, 7.2, 7.4.) The settlement administration expenses, including costs for mailing the Class Notice, any Court-approved Service Awards and attorneys' fees and expenses to Class Counsel will be deducted from the Settlement Fund. (*Id.* ¶ 2.12).

Settlement Class Members may submit claims for reimbursement of ordinary and extraordinary expenses with reasonable documentation that the out-of-pocket expenses and

charges claimed were both actually incurred and plausibly arose from the Data Incident. (SA, ¶¶ 2.1, 2.2, 2.2.1.) Settlement Class Members may also request reimbursement for up to five hours of time spent remediating the effects of the Data Incident, at a rate of $25 per hour upon attestation detailing the time spent. The maximum total reimbursement any class member can claim is $1,000 for time spent and ordinary losses. (*Id.* ¶ 2.1.) The maximum total reimbursement any class member can claim is $5,000 for extraordinary losses—proven losses not already covered by the ordinary loss categories. (*Id.* ¶ 2.2.) There will be a 90-day period to submit claims for out-of-pocket expenses and time spent. (*Id.* ¶ 2.1.)

Additionally, all Settlement Class Members are also eligible to claim Equifax identity theft protection services (provided by Aura Sub, LLC) for a period of 12 months from the Effective Date. (*Id.* ¶ 2.3.)

2. Prospective Relief

Additionally, the Settlement includes Defendant's agreement to improve its data security practices. (SA, ¶ 2.4.) This commitment to improve security helps protect Plaintiffs' and Settlement Class Member's PII still in Defendant's possession from future data breaches and/or ransomware events. (Klinger Decl. ¶ 9.) These security improvements are also important because Plaintiffs and Settlement Class Members have no other means of protecting the PII in Defendant's possession. (*Id.*)

The ongoing improvements include third party 24/7 security monitoring, third party logging, network monitoring, firewall enhancements, email enhancements, multifactor authentication for server and email access and VPN logins, enhanced employee training on data security and network security, ongoing engagement of information security consultants, upgraded anti-virus/malware software, and equipment upgrades. (Klinger Decl. ¶ 9; SA, ¶ 2.4.) Bansley

agrees to keep these enhancements in place for 36 months after execution of this agreement. (SA, ¶ 2.4.)

C. NOTICE AND RESPONSE TO NOTICE (OPT-OUT OR OBJECT AND/OR SUBMIT A CLAIM)

The proposed Notice Program is described in the Declaration of P&N (the proposed Settlement Administrator), attached hereto as Exhibit C. Notice of the Settlement will be given to Settlement Class Members by customary Short Notice by direct mail, and the Short Notice and Long Notice will be posted on the Settlement Website. (SA, ¶¶ 3.1-3.2.) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. (SA, ¶ 3.2.) Defendant shall provide the Claims Administrator the last known contact information for the Settlement Class Members and the Claims Administrator shall send each Settlement Class Member the Short Notice via U.S. Mail and establish the Settlement Website within 30 days of the Court's entry of the Preliminary Approval Order. (SA, ¶ 3.2.) Settlement Class Members will then have 90 days from the mailing date to submit their claim ("Claims Deadline"). (SA, ¶ 2.1) Settlement Class Members will have 60 days after the date on which the Court enters a Preliminary Approval Order to object to or opt-out of the Settlement. (SA, ¶¶ 4.1, 5.1.) If more than 250 opt-outs are received within 10 days after the opt-out period, Bansley has the option to void the Settlement Agreement. (SA, ¶ 4.3.)

The Class Notice will inform Settlement Class Members about nature of the case, claims at issue and to be released, general terms of the settlement, the claims process and instructions for making claims; the Settlement Website address; and the date, time, and location of the Final Approval Hearing. (SA, ¶ 3.1.) The Settlement Website will have the Short Notice, Long Notice, and Claim Form, and Settlement Agreement. (SA, ¶ 3.2.) This Notice Plan provides the best practicable notice under the circumstances and fulfills all due process requirements. (*See generally*, Klinger Decl. ¶¶ 11-13.)

D. CLASS REPRESENTATIVE SERVICE AWARDS, AND ATTORNEYS' FEES AND EXPENSES

The Parties addressed the issue of the proposed service awards, reasonable attorneys' fees, and litigation expenses only after the Parties reached an agreement on the material terms of the settlement on behalf of the Class. (SA, ¶ 7.1; Klinger Decl. ¶ 10.)

Subject to Court approval, Defendant agreed to pay service awards in the amount of $5,000 each to Plaintiffs Nelson and Cozza. (SA, ¶ 7.4.) The service awards are in recognition of Plaintiffs' service and commitment to litigate this matter on behalf of the Class, including their time and effort to responding to questions, being available during mediation, and the risks taken by Plaintiffs as the Class Representatives in commencing and prosecuting the Actions—because without their willingness to serve, there would be no case or Class benefits. (Klinger Decl. ¶ 10.) The service awards shall be in addition to the other benefits provided by the Settlement to Settlement Class Members. (*Id.*)

Class Counsel also intend to request, and Defendant agreed not to oppose, attorneys' fees not to exceed $300,000 and reasonable Litigation costs and expenses not to exceed $15,000, subject to Court approval. (SA, ¶ 7.2.)

E. NARROWLY TAILORED RELEASE

If the Settlement is approved, Settlement Class Members who do not exclude themselves (opt-out) of the Settlement will provide releases to Defendant and Released Parities. (SA, ¶ 1.22.) The Released Claims are defined as:

> any and all claims and causes of action including, without limitation, any causes of action under or relying negligence; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy/intrusion upon seclusion; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and

> expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Data Incident and alleged theft of personally identifiable information, protected health information, or other personal information or the allegations, facts, or circumstances described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

(*Id*.) Therefore, the release is limited and tailored to apply to allegations in these Actions.

IV. ARGUMENT

A. LEGAL STANDARD

Courts review proposed class action settlements using a well-established two-step process. *See* Conte & Newberg, *Newberg on Class Actions*, § 11.25, at 38-39 (4th ed. 2002); *see also Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009); *GMAC Mortgage Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992); S*hawn Fauley, Sabon, Inc. v. Metro Life Ins. Co.*, 2016 IL App (2d) 150236, ¶¶ 4, 7, 15. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38-39; *Armstrong v. Board of Sch. Dirs. Of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*; *Sabon*, 2016 IL App. (2d) 150236, ¶ 4. The preliminary approval hearing is not a fairness hearing, but rather a hearing to ascertain whether there is any reason to notify the class members of the proposed settlement based on the written submissions and informal presentation from the settling parties. *Manual for Complex Litigation*, § 21.632 (4th ed. 2002). If the Court finds the settlement proposal "within the range of possible approval," the case proceeds to the second step in the review process:

the final approval hearing. *Newberg,* § 11.25, at 38-39.

Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide complete victory, given that parties to a settlement "benefit by immediately resolving the litigation and receiving some measure of vindication for [their] position[s] while foregoing the opportunity to achieve an unmitigated victory." *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (internal quotations & citation omitted); *GMAC*, 236 Ill. App. 3d at 493 ("The court in approving [a class action settlement] should not judge the legal and factual questions by the same criteria applied in a trial on the merits"). There is a strong judicial and public policy favoring the settlement of class action litigation, and such a settlement should be approved by the Court after inquiry into whether the settlement is "fair, reasonable, and adequate." *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3d Dist. 2010); *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). "Although this standard and the factors used to measure it are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase." *Kessler v. Am. Resorts Int'l.*, No. 05-cv-5944, 2007 WL 4105204, at *5 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong*, 616 F.2d at 314).

B. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

For settlement purposes only, the Parties have agreed that the Court should make preliminary findings and enter an Order granting provisional certification of the Settlement Class and appointing Plaintiffs and their counsel to represent the Settlement Class. "The validity of use of a temporary settlement class is not usually questioned." *Newberg*, §11.22. The *Manual for Complex Litigation* explains the benefits of settlement classes:

> Settlement classes – cases certified as class actions solely for settlement – can provide significant benefits to class members and enable the defendants to achieve final resolution of multiple suits. Settlement classes also permit

> defendants to settle while preserving the right to contest the propriety and scope of the class allegations if the settlement is not approved[.]… An early settlement produces certainty for the plaintiffs and defendants and greatly reduces litigation expenses.

Manual for Complex Litigation (Fourth) § 21.612.

Before granting preliminary approval of a class action settlement, a court should determine that the proposed settlement class is a proper class for settlement purposes. *Id*. § 21.632; *see also Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In this case, the proposed Settlement Class meets all of the applicable certification requirements. Plaintiffs request the Court certify, for settlement purposes only, the previously defined Nationwide Class under Illinois Code of Civil Procedure Section 2-801. 735 ILCS 5/2-801; *see also CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶10. Under Section 2-801, a class may be certified if the following four requirements are met:

> (1) the class is so numerous that a joinder of all members is impracticable;
> (2) there are questions of fact or law common to the class that predominate over any questions affecting only individual members;
> (3) the representative parties will fairly and adequately protect the interest of the class; and
> (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

Smith v. Illinois Cent. R.R. Co., 223 Ill. 2d 441, 447 (2006) (citing 735 ILCS 5/2-801). "A trial court has broad discretion in determining whether a proposed class meets the requirements for class certification." *CE Design Ltd.*, 2015 IL App (1st) 131465, ¶ 9. Notably, Section 2-801 is modeled on Federal Rule of Civil Procedure 23, and federal cases interpreting that rule are persuasive authority in Illinois. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005) (citations omitted). As discussed below, the Settlement Class satisfies the four required elements of Section 2-801 and should be certified for settlement purposes.

1. The Class is Sufficiently Numerous, and Joinder is Impracticable

Numerosity is met where "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). "Although there is no bright-line test for numerosity, a class of forty is generally sufficient[.]" *Hinman v. M & M Rental Center, Inc.*, 545 F. Supp. 2d 802, 805-06 (N.D. Ill. 2008); *Kulins v. Malco, A Microdot Co., Inc.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (finding that 47 class members was sufficient to satisfy numerosity). Here, there are approximately 274,115 putative Settlement Class Members. (Klinger Decl. ¶ 9.) Joinder of 274,115 Settlement Class Members would be impractical. *Travel 100 Grp. v. Empire Cooler Serv., Inc.*, 2004 WL 3105679, at *2 (Ill. Cir. Ct. Oct. 19, 2004) ("The potential class exceeds 3,000 members. The numerosity requirement is met"). Accordingly, the Settlement Class satisfies the numerosity requirement.

2. Common Questions of Law and Fact Predominate

The commonality requirement is met when "[t]here are questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Common questions of fact or law exist when putative class members were aggrieved by the same or similar misconduct. *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673-74 (2d Dist. 2006); *Steinberg v. Chicago Med. Sch.*, 69 Ill. 2d 320, 340-42 (1977); *Ellerbrake v. Campbell-Hausfeld*, No. 01-L-540, 2003 WL 23409813, at *3 (Ill. Cir. Ct. July 2, 2003); *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). Also, where a "defendant allegedly acted wrongfully in the same basic manner as to an entire class . . . the common class questions predominate the case[.]" *Walczak*, *supra*, 365 Ill. App. 3d at 674 (citing *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 548 (2003)).

Here, putative Class Member share common claims for (1) negligence; (2) unjust enrichment; (3) breach of express contract; (4) breach of implied contract; and (5) declaratory judgment arising out of the same conduct and incident—the Data Incident.

Determination of the allegations set forth by Plaintiffs' Consolidated Complaint regarding the unauthorized access and exfiltration of Settlement Class Members' PII in Defendant's possession in violation of statutory and common law requires resolution of the same central factual and legal issues, including but limited to whether: (1) Defendant failed to implement and maintain reasonable security procedures and practices to preserve the confidentiality of Plaintiffs' and Settlement Class Members' PII; (2) Defendant breached express or implied contracts; (3) Defendant negligently maintained, preserved, or stored Plaintiffs' and Settlement Class Members' PII; (4) Defendant was unjustly enriched as a result of the acts and/or omissions alleged in the Consolidated Complaint; and (5) Plaintiffs and Settlement Class Members were injured by Defendant's act and/or omissions that failed to prepare for and prevent the Data Incident. Resolution of these claims involves an analysis of common legal issues and an examination of common facts regarding the Data Incident and Defendant's data privacy policies and practices.

The predominance "standard is met 'when there exists generalized evidence that proves or disproves an element on a simultaneous, class-wide basis . . . [since s]uch proof obviates the need to examine each class member's individual position.'" *Golon v. Ohio Savs. Bank*, No. 98-cv-7430, 1999 WL 965593, at *4 (N.D. Ill. Oct. 15, 1999) (quoting *In re Industrial Gas Antitrust Litig.*, 100 F.R.D. 280, 288 (N.D.Ill.1983); *see, e.g.*, *JT's Frames, Inc. v. Sunhill NIC Co., Inc.,* 2-11-0676, 2012 WL 6968914, at *6 (Ill. App. 2d Dist. Mar. 26, 2012).

In the case at bar, common questions resulting from Defendant's alleged conduct predominate over any individual issues that may exist and can be answered on a class-wide basis based on common evidence maintained by Defendant. Therefore, this factor is satisfied.

3. Class Representatives and Class Counsel Adequately Represent Settlement Class Members

This element of Section 2-801 is met where "[t]he representative parties will fairly and adequately protect the interest of the class." 735 ILCS 5/2-801(3). "The purpose of the adequate representation requirement is to ensure all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Walczak*, 365 Ill. App. 3d at 678 (citing *P.J.'s Concrete Pumping Service, Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 1004 (2nd Dist. 2004)); *Purcell & Wardrope Chartered v. Hertz Corp.*, 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988). The adequacy requirement is satisfied where "the interests of those who are parties are the same as those who are not joined" such that the "litigating parties fairly represent [them]" and where the "attorney for the representative party '[is] qualified, experienced and generally able to conduct the proposed litigation.'" *CE Design Ltd.*, *supra,* 2015 IL App (1st) 131465, ¶ 16 (citing *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). Thus, the class representative's and class members' interests must be generally aligned, and class counsel must be "qualified, experienced and generally able to conduct the proposed litigation." *Miner, supra,* 87 Ill. 2d at 14.

Plaintiffs and their counsel are adequate. First, the proposed Class Representatives do not have any conflicts of interest with the absent Settlement Class Members, as their claims are coextensive with those of the Settlement Class Members. (Klinger Decl. ¶ 5.) Plaintiffs have the same interests as the proposed Class because they allege the same injuries caused in the same manner, based on a common event—the Data Incident. Additionally, they reviewed the complaint before filing and understand the allegations it contains, and they are willing to prosecute this matter

on behalf of themselves and the putative Class. (*Id*.) The Class Representatives were also advised of and understand their obligations as Class Representatives. Plaintiffs regularly communicated with Class Counsel regarding various issues pertaining to this case and will continue to do so until the Settlement is approved, and its administration completed. (*Id*.) The proposed Class Representatives have been consistently involved in this litigation, providing valuable insight and useful facts allowing Class Counsel to effectively litigate this action, conduct informal discovery, research the claims and defenses, and negotiate this Settlement.

Second, proposed Class Counsel are well qualified and experienced in complex class action litigation and have an established track record in litigating cases involving consumer protection and consumer privacy—and data breaches in particular. (Klinger Decl. ¶¶ 16-19.) Proposed Class Counsel have been appointed as class counsel in numerous complex class actions in courts throughout the country, including data breach class action settlements, and each have over a decade of class action experience. (Klinger Decl. ¶¶ 18-19.)

Proposed Class Counsel vigorously prosecuted this action and will continue to do so through final approval. (Klinger Decl. ¶ 3.) They identified and investigated the claims in this lawsuit and the underlying facts, and successfully negotiated this Settlement on behalf of the Settlement Class. (Klinger Decl. ¶¶ 2, 4.)

4. Fair and Efficient Adjudication of the Controversy

The final class certification prerequisite is met where "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). To evaluate this prerequisite, "a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon v. Boden*, 224 Ill. App. 3d 195, 203 (1st Dist. 1991). As a practical matter, "holding that the first three prerequisites of section 2-801

are established makes it evident that the fourth requirement is fulfilled." *Id*. at 204; *Purcell & Wardrope Chartered*, *supra,* 175 Ill. App. 3d at 1079 ("the predominance of common issues [may] make a class action . . . a fair and efficient method to resolve the dispute.") Therefore, because the case at bar has demonstrated numerosity, commonality and predominance, and adequacy of representation, it is "evident" the appropriateness requirement is satisfied as well.

Additional considerations also support certifying this case as a class action. A class action is superior to multiple individual actions where the "litigation costs are high, the likely recovery is limited" and individuals are unlikely to prosecute individual claims absent the cost-sharing efficiencies of a class action. *Maxwell v. Arrow Fin. Servs., LLC*, 2004 WL 719278, at *6 (N.D. Ill. Mar. 31, 2004). In fact, a "controlling factor in many cases is that the class action is the only practical means for class members to receive redress— particularly where the claims are small." *Gordon*, 224 Ill. App. 3d at 203-04; *see also Eshaghi v. Hanley Dawson Cadillac Co.*, 214 Ill. App. 3d 995, 1004 (1st Dist.1991). The traditional means for handling claims like those at issue in the case at bar would tax the court system, require a massive expenditure of public and private resources, and given the relatively low value of Class Member's individual claims, would make individual resolution impracticable.

Because Plaintiffs' and Settlement Class Members' claims involve identical alleged violations of statutory and common law arising from identical conduct, this case is well-suited for class treatment. The costs of litigating Settlement Class Member's individual claims would likely exceed their potential recovery. Therefore, it is unlikely individuals would invest the resources and time need to bring an individual action—making litigation prohibitive absent class treatment.

Further, when evaluating "a request for settlement only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for

the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. Therefore, the Court need not be concerned with issues of manageability relating to trial because the action will now settle. Nor should the Court "judge the legal and factual questions" regarding certification of the proposed Settlement Class by the same criteria as a proposed class being adversely certified. *GMAC, supra*, 236 Ill. App. 3d at 493.

A class action is therefore the superior method of adjudicating this matter, and the Class should be certified for settlement purposes because it will "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615.

C. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR, REASONABLE, AND IN THE BEST INTEREST OF THE CLASS

Class claims may only be settled with court approval pursuant to Section 2-806 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-806. This is because the court ensures the proposed settlement agreement is "fair, reasonable, and in the best interest of the class." *Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 169 (1st Dist. 1999). Typically, the approval of a proposed class action settlement is exercised in a two-step process, consisting of "preliminary" and "final" approval. Manual For Complex Litigation § 30.41 (3d ed. 2000).

The Court's task at the preliminary approval stage is to "determine whether the proposed settlement is within the range of possible approval." *Armstrong v. Bd. of Sch. Dirs. of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) (internal citation and quotation marks omitted); *see also* 4 Alba Conte & Herbert B. Newberg, Newberg On Class Actions § 11.25 (4th ed. 2002) ("NEWBERG") (noting "[i]f the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness . . . and appears to fall within the range of possible approval," the court should

permit notice of the settlement to be sent to class members) (citations omitted). "A trial court should not disapprove a settlement . . . unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval." *Gowdey v. Commonwealth Edison Co.*, 37 Ill. App. 3d 140, 149-50 (1st Dist. 1976).

The purpose of the initial hearing is to ascertain whether there is any reason to notify the class members of the proposed settlement and proceed with a fairness hearing. *Shaun Fauley, Sabon, Inc. v. Metropolitan Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 35-37. Once the settlement is found to be "within the range of possible approval" at the preliminary approval hearing, the final approval hearing is scheduled, and notice is provided to the class.

The factors considered by a court are: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong, supra*, 616 F.2d at 314. Of these considerations, the first is most important. *Steinberg, supra*, 306 Ill. App. 3d at 170; *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). Here, each relevant factor supports approval of the Settlement.

1. The Strength of Plaintiffs' Case Compared with the Relief Afforded Under the Settlement Supports Preliminary Approval

The most important factor in determining whether a settlement should be approved is "the strength of the plaintiff's case on the merits balanced against the amount offered in the settlement." *Steinberg*, 306 Ill. App. 3d at 170; *Synfuel*, 463 F.3d at 653. Courts should not reject a settlement

because it does not provide a complete victory because a settlement is by definition a compromise, and because parties to a settlement "benefit by immediately resolving the litigation and receiving some measure of vindication for [their] position[s] while foregoing the opportunity to achieve an unmitigated victory." *In re AT&T Mobility Wireless Data Services Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (internal quotations and citations omitted); *GMAC, supra*, 236 Ill. App. 3d at 493 ("The court in approving [a class action settlement] should not judge the legal and factual questions by the same criteria applied in a trial on the merits.") There is a strong judicial and public policy favoring settlements in class action litigations, and such settlements should be approved by courts after inquiring whether the settlement is "fair, reasonable, and adequate." *Quick, supra,* 404 Ill. App. 3d at 282.

While Plaintiffs are confident in the strength of their claims, they also recognize there are significant risks and obstacles to overcome to succeed at trial—and Settlement eliminates the uncertainty and risk of continued litigation. (*See* SA, p. 3.) Given the comparative strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, as well as the inherent uncertainties of litigation, the substantial benefits the Settlement provides favors its approval. (*Id.*)

Here, the Settlement provides for a $900,000 common fund and there are approximately 274,115 Settlement Class Members. Settlement Class Members may submit claims for reimbursement of ordinary expenses up to $1,000, which includes compensation for up to five hours of documented time spent dealing with the data breach at a rate of $25 per hour; for extraordinary expenses up to $5,000; and 12 months of identity theft protection services. (SA, ¶¶ 2.1-2.3.) After careful consideration and arm's-length negotiations under the guidance of an experienced mediator, Class Counsel concluded the resulting Settlement consisting of improvements to Defendant's data security practices in addition to the $900,000 common fund

represents a fair and reasonable discount from the potential recovery. (Klinger Decl. ¶¶ 2, 16.) This Settlement provides Settlement Class Members benefits that would not otherwise be available unless a settlement was reached. (Klinger Decl. ¶9.) Class Counsel, who have significant experience litigating these types of claims, are of the opinion the Settlement is within the range of a fair, reasonable, and adequate settlement. (Klinger Decl. ¶¶ 2, 16.)

Defendant has denied Plaintiffs' claims. (SA, p. 3.) At trial, Defendant would likely argue it complied with all applicable laws and industry standards, and it neither negligently disclosed nor disseminated Plaintiffs' and Settlement Class Member's PII to unauthorized parties. Rather, Defendant is likely to argue—and potentially convince a jury—Defendant itself was the true victim of the Incident because the unknown actors bypassed its security systems and accessed and exfiltrated its data without authorization or approval—so Defendant did not condone the access and dissemination of the PII to the unauthorized party. Further, Defendant would likely argue individual issues predominate, and individual damages would make this case unmanageable.

Moreover, the unsettled nature of several potentially dispositive threshold issues in this case poses a significant risk to Plaintiffs' claims and will add to the length and costs of continued litigation. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp*., 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig*., 293 F.R.D. 21 (D. Me. 2013). Because the "legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as

other issues." *In re Target Corp. Customer Data Sec. Breach Litig*., 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015). As one federal district court recently observed:

> 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.").

Fox v. Iowa Health Sys., No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021).

In addition to Defendant's likely defenses, Plaintiffs would also need to prevail on class certification, which would be highly contested and the outcome not guaranteed. *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 582 (N.D. Ill. 2011). "Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Id*. at 586 (internal citations omitted); *see also Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, 2011 WL 10500933, ¶ 25 (settlement allows parties to "avoid[] a determination of sharply contested issues and dispens[es] with expensive and wasteful litigation."). "If the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Schulte, supra*, 805 F. Supp. 2d at 586. The proposed Settlement provides Settlement Class Members with the ability to file a claim for benefits provided from the proposed common fund and provides the meaningful prospective relief this litigation sought to obtain. Approval allows Plaintiffs and Settlement Class Members to receive meaningful and significant benefits now, instead of years from now—or perhaps never. *Id*. at 582.

In the judgment of Plaintiffs and Class Counsel after evaluation of the strengths and weaknesses of each Party's case and after weighing the substantial, certain, and immediate Settlement benefits against the uncertainty of class certification, summary judgment, trial and

appeal, the Settlement is fair, reasonable, and adequate, the proposed Settlement is a fair and reasonable compromise of the issues in dispute.

2. The Complexity, Length, Expense of Further Litigation Are Significant

The Settlement here appropriately balances the costs, risks, and likely delay of further litigation, on the one hand, against the benefits provided, on the other hand. NEWBERG § 11.50 at 155 ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

In the absence of settlement, or if the Settlement is not approved, Plaintiffs will continue forward with additional discovery, move for class certification, and prepare for trial. This case presents complexities not at issue in other cases. Defendant will likely oppose certification on the grounds that numerous individualized fact issues allegedly exist relating to such matters as whether each of Settlement Class Members' PII was accessed and viewed by an unauthorized third-party, and what information was accessed for each Settlement Class Member. It will also likely argue—and could succeed in claiming—individualized issues overwhelm common issues, on liability as well as on damages. It is also foreseeable Defendant will argue the action is not manageable on a class-wide basis. As a result, the case may not be certified.

Even if this matter was certified and went to trial, it would likely take several years to be resolved. Establishing liability and damages at trial would require multiple experts' extensive work and testimony. Defendant would attempt to interpose defenses that might either cause a jury to reject Plaintiffs' claims or award the Class a fraction of their losses—and potentially no requirement for Defendant to upgrade its security. Thus, continued litigating would incur additional expenses and considerable time to proceed through trial and post-trial motions.

Moreover, given the complexity of the issues and the amount in controversy due to the putative Class size, the defeated party would likely appeal any decision on the merits (at summary

judgment and/or trial), as well as any decision on class certification. As such, the immediate and considerable monetary and prospective relief provided to the Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appellate process.

3. The Amount of Opposition to the Settlement and Reaction of the Class

At preliminary approval, the Class has not yet received notice of the Settlement or been given an opportunity to opine on the Settlement. Although definitive Class Member reaction is not ascertainable before notice being disseminated, Plaintiffs approved of the Settlement and believe that it is a fair and reasonable settlement in light of the defenses raised by Defendant and the potential risks involved with continued litigation. At final approval, the Court will have additional information, including Settlement Class Members' reactions, including any objections, comments, or requests for exclusion received from Settlement Class Members.

4. No Collusion Because the Proposed Settlement Was Achieved Through Highly Contested, Arm's-Length Negotiations Between Experienced Counsel

When a proposed settlement was the result of arm's-length negotiations, there is an initial presumption it is fair and reasonable. NEWBERG § 11.42; *see also Shaun Fauley, supra*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"); *Coy, supra*, 2011 IL App (5th) 100068-U, 2011 WL 10500933, ¶ 31 (finding that there was no collusion where the settlement agreement was reached as a result of "an arm's-length negotiation . . . resulting in a settlement with the aid of an experienced mediator.").

Class Counsel's experience in similar data breach cases allowed them to efficiently seek essential information and documents through informal (for mediation purposes) discovery and evaluate the strengths and weaknesses of the claims. By engaging in informal discovery before

mediation, Parties had a thorough understanding of the facts and merits of this case. On April 19, 2022, Plaintiffs' counsel, Defendant, and Defendant's counsel attended a mediation session with well-respected and experienced mediator, Hon. Wayne Andersen (Ret.) With the assistance of the mediator, the Parties were able to fully resolve this matter at mediation. The Parties then continued negotiating the terms of the Settlement Agreement. (Klinger Decl. ¶ 8.) Such an extensive and formal process indicates the settlement was free of collusion. There is no indication of collusion or fraud in the settlement negotiations, and none exists.

5. The Experience and Views of Counsel Support Preliminary Approval

As stated, Class Counsel believe the proposed Settlement is in the best interest of the Class because the Settlement provides substantial benefits, especially in light of the significant risks of continued litigation. The availability of up to $1,000 per Settlement Class Member for reimbursement of out-of-pocket expenses and compensation for time spent responding to the Data Incident, up to $5000 per Settlement Class Member for reimbursement of extraordinary expenses, and 12 months of identity theft protection services, in addition improvements to Defendant's data security practices as part of the Settlement, is an excellent recovery for the Class—and is reasonable in light of the facts and circumstances in this case. Upon submission of a valid Claim Form and claim approval, Settlement Class Members will each receive meaningful relief—instead of waiting years for the litigation and any subsequent appeals to run their course and possibly getting nothing.

Additionally, due to Defendant's likely defenses if this matter proceeds through litigation—and Defendant's resources it committed to defend and litigate this matter—it is possible Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement.

Given Class Counsel's extensive experience prosecuting class action data breaches on cases with similar alleged facts and issues in state and federal courts, this factor also weighs in favor of granting preliminary approval. *GMAC*, 236 Ill. App. 3d at 497 (finding that the court should give weight to the fact that class counsel supports the class settlement in light of its experience prosecuting similar cases).

6. The Stage of the Proceedings and the Amount of Discovery Completed

As to the final factor, the Settlement was reached only after informal discovery efforts and substantial negotiations between the Parties. Plaintiffs and Class Counsel devoted substantial time, effort, and resources to this litigation, beginning with their initial investigation of Plaintiffs' allegations, continuing through informal discovery demands and ending with hard-fought settlement negotiations. Ultimately, Defendant disclosed evidence and information under mediation privilege, and the extent of information obtained is more extensive than the stage of proceedings alone might suggest. (Klinger Decl. ¶ 4.)

Had the Parties not reached this Settlement, this case would have proceeded to formal discovery and dispositive motions and/or class certification, with the Parties being required to expend substantial time and resources going forward with their respective claims and defenses while facing a significant risk regarding any decision on the merits of the case—including whether a class should be certified.

The Court need not rule on a completely blank slate as to the fairness, reasonableness, and adequacy because this Settlement falls within the same range of settlements involving privacy claims that are redressable by statutory damages.

Accordingly, the proposed Settlement here, and before any ruling on the merits, class certification or liability, creates a $900,000.00 Settlement Fund is fair, reasonable, adequate, and warrants Court approval.

D. THE PROPOSED CLASS NOTICE IS APPROPRIATE AND SHOULD BE APPROVED

Pursuant to 735 ILCS 5/2-803, the Court may provide class members notice of any proposed settlement to protect the interest of the class and parties. *Cavoto v. Chicago Nat'l League Ball Club, Inc.*, No. 1-03-3749, 2006 WL 2291181, at *15 (Ill. App. Ct. July 28, 2006) (collecting authorities and noting "[s]ection 2-803 makes it clear that the statutory requirement of notice is not mandatory; rather, whether notice is to be given at all, to whom and the kind of notice are separate determinations within the trial court's discretion."). The court's discretion, however, is limited by the dictates of due process. *Id.*; *see also Shaun Fauley, supra*, 2016 IL App (2d) 150236, ¶ 35; *Frank v. Teachers Insurance & Annuity Association of America*, 71 Ill. 2d 583, 593 (1978) (The issue here is the constitutional rather than the statutory requirements.) Therefore, even though it is within the court's discretion to provide notice to absent class members, due process may require individual notice.

Due process requires the notice be the "best practicable, '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'" as well as "'describe the action and the plaintiffs' rights in it.'" *Shaun Fauley, supra*, 2016 IL App (2d) 150236, ¶ 36 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)).

The requirements of 735 ILCS 5/2-803 and Due Process are satisfied by the Notice Program established in the Settlement Agreement and discussed in Section III.C, *supra.* Direct mailed notice will be sent to each member of the class. The Notice plan is designed to reach as many potential Settlement Class Members as possible and is the best notice practicable. (Klinger Decl. ¶¶ 11-13.) As such, the proposed methods of notice comport with 735 ILCS 5/2-803 and exceeds Due Process requirements. (*Id*.) The proposed Claim Form, Short-Form Notice, and Long-

Form Notice are attached as **Exhibits A, B, and C** to the Settlement Agreement, and should be approved by the Court.

V. PROPOSED SCHEDULE

The Parties propose the following schedule leading to the final approval hearing:

Event	Date
Notice Completion Deadline (Notice Deadline)	30 Days after Preliminary Approval
Motion for Service Awards, Attorneys' Fees & Costs	45 Days after Preliminary Approval
Opt-Out and Objection Deadlines	60 Days after Preliminary Approval
Motion for Final Approval	30 Days before Final Approval Hearing
Claim Deadline	90 Days after Notice Deadline
Replies in Support of Final Approval, Service Awards and Fee Requests	14 Days before Final Approval Hearing
Final Approval Hearing	No earlier than 90 Days after Preliminary Approval

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant this unopposed Motion and enter an order substantially in the form accompanying this Motion: (1) preliminarily approving the proposed class action Settlement; (2) approving the proposed class settlement administrative deadlines and procedures, including the proposed Final Approval Hearing date and procedures regarding objections, exclusions and submitting Claim Forms; (3) appointing Class Representatives and Class Counsel; (4) appointing the Claims Administrator; (5) approving the Claim Form, Short-Form Notice, and Long-Form Notice; and (6) providing notice of the proposed Settlement to Settlement Class Members.

Dated: July 11, 2022

Respectfully submitted,

/s/ Gary M. Klinger

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