UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE: 21ST CENTURY ONCOLOGY CUSTOMER DATA SECURITY BREACH LITIGATION	Case No. 8:16-md-2737-MSS-AEP MDL No. 2737
This Document Relates to All Cases	

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

The Court preliminarily approved the proposed Settlement of this action, and the Settlement Administrator has disseminated notice to Class Members in accordance with the Notice Plan.[1] Now, Plaintiffs respectfully request that the Court conduct a final review of the Settlement and approve it as fair, reasonable, and adequate.

After over four years of hard-fought litigation, including a decision on 21st Century's motion to dismiss, 21st Century's filing for voluntary bankruptcy relief,[2] a settlement in the Bankruptcy Action that enabled Plaintiffs to proceed with this litigation, a separate Declaratory Action concerning available insurance coverage, Court-ordered discovery, and more than two years of settlement efforts including three mediation sessions with two independent mediators, the Parties reached an exceptional Settlement that compensates Class Members for their losses and protects them against future risks caused by the Data Breach.

Based on current claims numbers, the Settlement is valued in excess of $10.9 million, and Plaintiffs expect this value to rise before the May 10, 2021 Claims Deadline. As explained in greater detail below, this value includes the $7.85 million non-reversionary Settlement Fund and the value of the Settlement's robust Credit Monitoring and Insurance Services, based on current claim figures.[3]

Each Settlement Class Member is eligible to submit a claim for the following

[1] Unless otherwise noted, capitalized terms have the meaning ascribed to them in the Settlement Agreement. (ECF No. 243-1).
[2] *See 21st Century Oncology Holdings, Inc., et al.*, No. 17-22770 (RDD) (Bankr. S.D.N.Y.).
[3] For a full explanation of the Settlement's value, see *infra*, Section III.B.4.

benefits: (i) a two-year subscription to comprehensive credit monitoring and identity theft protection through Identity Guard's Total Plan, which may be deferred by two years; (ii) a cash payment of up to $40 for two hours of time spent related to the Data Breach; (iii) an additional cash payment of up to $260 for up to thirteen additional hours of documented time fairly traceable to the Data Breach; and (iv) reimbursement of up to $10,000 for documented losses and/or expenditures fairly traceable to the Data Breach. 21st Century also acknowledges that it has undertaken significant steps to improve its data security practices and procedures. (Declaration of Daniel S. Robinson ("Robinson Decl.") ¶ 10.)

The Settlement provides for a robust Notice Plan and user-friendly Claims process, which have been and are being implemented by the Settlement Administrator. The Court-approved Notice Plan provided for notice by U.S. mail in addition to the creation of a Settlement Website. (Declaration of Steven J. Giannotti ("Giannotti Decl.") ¶¶ 5-12.) The Settlement Administrator mailed postcard notices to 2,157,016 Class Members' last known and updated addresses. (*Id.* ¶ 10.) The Settlement Administrator believes the notice reached approximately 83.01% of the Class.

Although the Claims Deadline is not until May 10, 2021, the reaction from Class Members has been overwhelmingly positive and strongly supports final approval. To date, only five Class Members have requested exclusion and one has provided a non-compliant objection. (Giannotti Decl. ¶ 17.) The exclusion and objection deadlines are March 9, 2021.

In light of the valuable benefits conveyed to members of the Settlement Class

and the significant risks faced through continued litigation, the terms of the Settlement are "fair, reasonable, and adequate" and merit final approval. Fed. R. Civ. P. 23(e)(2).

II. BACKGROUND

Following 21st Century's announcement of the Data Breach in March 2016, thirteen actions were filed in the Middle District of Florida, two in the Northern District of California, one in the Central District of California. On October 6, 2016, the Judicial Panel on Multidistrict Litigation entered a Transfer Order centralizing the federal actions in the Middle District of Florida before the Honorable Mary S. Scriven. (ECF No. 1.) On November 16, 2016, the Court appointed Cari Campen Laufenberg of Keller Rohrback, L.L.P. and Daniel S. Robinson of Robinson Calcagnie, Inc. as Interim Co-Lead Counsel; Robert C. Gilbert of Kopelowitz Ostrow Ferguson Weiselberg Gilbert and Jodi Westbrook Flowers of Motley Rice LLC as Co-Liaison Counsel; Kent G. Whittemore of The Whittemore Law Group, P.A., as Local Counsel; and a Steering Committee.[4] (ECF Nos. 79, 80.)

On January 17, 2017, Plaintiffs filed a Consolidated Class Action Complaint, alleging that 21st Century breached its duties to Plaintiffs by failing to maintain reasonable and adequate security measures to protect its patients' personal and health information from unauthorized access and disclosure, allowing their information to be compromised, obtained, and misused by unauthorized persons. (ECF No. 100.)

[4] The members of the Steering Committee are Matthew B. George of Kaplan Fox & Kilsheimer LLP, Kenneth G. Gilman of Gilman Law, LLP, Thomas V. Girardi of Girardi | Keese, Eric A. Grover of Keller Grover LLP, Julie Braman Kane of Colson Hicks Eidson, P.A., Steven S. Maher of The Maher Law Firm, PA, Charles PT Phoenix of Rhodes Tucker, and Daniel C. Girard of Girard Sharp LLP. *See* ECF Nos. 79, 80.

On February 21, 2017, 21st Century moved to dismiss the Complaint. (ECF No. 116.) At the motion to dismiss hearing on May 16, 2017, the Court ordered supplemental briefing on the issue of damages, ordered 21st Century to provide Plaintiffs with certain limited discovery, and permitted depositions to be taken of 21st Century's witnesses and FBI personnel with personal knowledge as to what patient information had been acquired.

On May 25, 2017, after the Parties argued 21st Century's motion to dismiss and submitted additional supplemental briefing, but before the Court had issued its order, the 21st Century Bankruptcy Entities initiated the Bankruptcy Action, thereby automatically staying the Data Breach Action and the Declaratory Action. Plaintiffs hired Lowenstein Sandler LLP as bankruptcy counsel to advocate for the Class in the Bankruptcy Action, filed proofs of claim on behalf of each of the Plaintiffs and other members of the Class, opposed the Debtor's motion to disallow these proofs of claim, and moved for class certification under Bankruptcy Rule 7023, or, in the alternative, relief from the automatic stay to proceed with the underlying litigation.

On November 20, 2017, following extensive multi-week negotiations, Plaintiffs reached an agreement with the 21st Century Bankruptcy Entities whereby, *inter alia*, the automatic stay would be lifted to allow the Actions to proceed, subject to (1) Plaintiffs' agreement to limit any monetary recovery to certain insurance policies; and (2) the 21st Century Bankruptcy Entities' agreement to assign the rights to seek and receive coverage under these policies to Plaintiffs, which the bankruptcy court approved on December 11, 2017. (*Bankruptcy Action*, ECF No. 825-1.)

On February 13, 2018, this Court held a Status Conference with parties from the Data Breach and Declaratory Actions. The Court ordered the parties to engage in mediation and to file a written notice advising of the outcome of the mediation within seven days of the mediation, providing that, in the event that the mediation failed to resolve matters, the Court would enter a schedule for the Data Breach and Declaratory Actions. (ECF No. 175.) The Parties attended mediation with mediator Rodney A. Max, Esq. on April 26, 2018, which was unsuccessful.

Plaintiffs took additional Court-ordered discovery, including a 30(b)(6) deposition, and filed their Amended Consolidated Class Action Complaint on July 30, 2018. (ECF No. 191.) Following supplemental briefing (ECF Nos. 195, 199), the Court denied 21st Century's motion to dismiss on March 3, 2019, holding that Plaintiffs sufficiently alleged an Article III injury in fact. (ECF No. 207.) On April 1, 2019, 21st Century answered the Complaint. (ECF No. 209.)

On April 3, 2019, Plaintiffs and 21st Century filed a joint motion to stay the Data Breach Action pending mediation and a determination on the duty to defend in the Declaratory Action. (ECF No. 210.) The Court stayed the Data Breach Action on May 3, 2019, but denied staying the proceedings pending a decision on the duty to defend in the Declaratory Action.[5] (ECF No. 214.) The Court also proposed Hon. Layn Phillips (Ret.) of Phillips ADR as mediator. *Id.* The Parties engaged in vigorous arm's-length settlement negotiations before Judge Phillips and Michelle Yoshida of

[5] Motions for Summary Judgment were filed and fully briefed by both parties in the Declaratory Action in June and July 2019. (ECF Nos. 137-145.)

Phillips ADR, including in-person private mediation sessions on August 9, 2019 and October 17, 2019. Through these mediation sessions, as well as subsequent discussions with the mediators, the Parties reached an agreement to resolve the Data Breach and Declaratory Actions. On April 14, 2020, following months of additional discussion on the terms of the agreement, the Parties memorialized their agreement in a Memorandum of Understanding and filed a Joint Status Report with the Court. (ECF No. 234.) In addition, on August 12, 2020, the parties in the Declaratory Action signed a Settlement and Release Agreement to resolve the claims in the Declaratory Action.

Class Counsel obtained bids from and negotiated with third-party administrators in order to secure the most economical and complete administration of the Settlement. (Robinson Decl. ¶ 28.) After soliciting competing bids, Class Counsel negotiated an agreement with Angeion Group ("Angeion")—an experienced and reputable national class action administrator—under which Angeion agreed to cap its fees and costs to no more than $1.148 million regardless of the claim filing rate. *Id.* These figures include all costs associated with class member data management, legal notification, telephone support, administering and making determinations regarding claim forms, processing settlement payments, making distributions, tax reporting, and providing other services necessary to implement the Settlement. (*See* Settlement Agreement ("SA"), ECF No. 243-1, ¶ IV.A.46, IV.F.2.)

Class Counsel solicited competing bids from providers of Credit Monitoring and Insurance Services in accordance with the Settlement's terms. Ultimately, Class Counsel negotiated for Identity Guard to provide the Settlement's Credit Monitoring

and Insurance Services at a cost of $517,000, along with additional months of Credit Monitoring and Insurance Services (if there are residual funds) at a rate of $24,000 per month for all Class Members electing to receive that benefit. (Robinson Decl. ¶ 28.)

Plaintiffs' Counsel prepared and filed the Settlement and Motion for Preliminary Approval (ECF Nos. 242-247), which the Court granted on November 2, 2020 (ECF No. 249, the "Preliminary Approval Order"). Since then, Class Counsel worked with Angeion to ensure the notice and claims process went smoothly for the Class Members. Class Counsel revised the website to make sure it was correct and user-friendly, reviewed weekly reports from and conferred with Angeion about the claims process, and responded to inquiries from Class Members. (Robinson Decl. ¶ 30.) Class Counsel will continue to expend significant efforts to communicate with Class Members, ensure that the offered benefits are received by Class Members, and respond to any objections that may be filed, including potential appeals. (*Id.* ¶ 31.)

III. TERMS OF THE SETTLEMENT

A. The Settlement Class

The Court certified, for settlement purposes only, the following Class:

> All persons to whom 21st Century sent notification that their personally identifiable information and/or protected health information may have been disclosed in the Data Breach (as defined in Plaintiffs' Amended Consolidated Class Action Complaint, ECF No. 191), excluding (1) any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff; (2) the Defendants, any entity in which the Defendants have a controlling interest, and the Defendants' officers, directors, legal representatives, successors, subsidiaries, and assigns; (3) any individual who timely and

> validly requests to be excluded from the Settlement Class; and (4) the successors or assigns of any such excluded Persons.

(ECF No. 249.)

B. Benefits of the Settlement

The $7.85 million non-reversionary Settlement Fund will be used to provide Participating Settlement Class Members with the following Settlement Benefits:

1. Credit Monitoring and Insurance Services

Each Participating Settlement Class Member who submits a valid claim may elect to receive two years of credit monitoring and identity theft protection through Identity Guard's Total Plan, powered by IBM Watson. (ECF No. 245, ¶ 7.) The Credit Monitoring and Insurance Services are fully described in the Settlement Agreement, the Declaration of Jerry Thompson in support of Plaintiffs' preliminary approval motion, and the Notices. (*Id.*; *see also* SA ¶ IV.E.1.a.) The Credit Monitoring and Insurance Services are demonstrably better than many competing products on the market. (ECF No. 245, ¶¶ 6-7.) If a claimant already has similar services, Participating Settlement Class Member can delay the start date of their Credit Monitoring and Insurance Services for up to two years. (*Id.* ¶ 8.)

The Credit Monitoring and Insurance Services are for sale to the public for $19.99 per month, or $16.67 per month if purchased annually. (ECF No. 247 ¶ 8.)

Accordingly, the value of this benefit[6] to the Settlement Class is at least $8,632,022.06 for every 1% of Class Members that elect to receive this benefit, before excluding the cost of the Credit Monitoring and Insurance Services.[7] (SA ¶ E.11.b.; *see also* ECF No. 247 ¶¶ 8-9.) After taking into account this cost, if one percent (1%) of Settlement Class Members elect to receive the Credit Monitoring and Insurance Services, the value to the Settlement Class would be $8,115,022.06,[8] and the total Settlement value would be $15,965,022.06.[9] (Robinson Decl. ¶¶ 13-14.) Given a Settlement Class of more than 2.1 million individuals, this is an enormous benefit in savings to Settlement Class Members obtaining similar, or even inferior, credit monitoring products on their own.

2. Fraud/Out-of-Pocket Costs Payments

In addition to the Credit Monitoring and Insurance Services, each Class Member who submits a valid Claim Form is entitled to receive up to $10,000 for reimbursement of Fraud/Out-of-Pocket Costs fairly traceable to the Data Breach. To

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[6] *See Total Plan*, Identity Guard, https://www.identityguard.com/plans/total (last visited February 10, 2021). The retail value of these services is the proper metric to apply, because this represents the value of the benefit Settlement Class Members will actually receive. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *38 (N.D. Ga. Mar. 17, 2020) ("[T]he record shows that the high-quality credit monitoring offered here is more valuable than the free or low-cost services typically available," and "courts have often recognized the benefit of credit monitoring, use its retail cost as evidence of value, and consider that value in awarding fees.") (collecting cases).

[7] 2,157,574 Settlement Class Members × 1% = 21,575.74. 21,575.74 × $16.67 (retail price per month) × 24 months = $8,632,022.06. The cost of the Credit Monitoring and Insurance Services will be paid out of the Settlement Fund, and under no circumstances will those costs exceed $517,000, unless Plaintiffs use any residual funds to purchase additional months of Credit Monitoring and Insurance Services at a rate of $24,000 per month for all Class Members electing to receive that benefit. (Robinson Decl. ¶¶ 13-14, 28.)

[8] The value of the Credit Monitoring and Insurance Services at a 1% claims rate ($8,632,022.06) minus the cost of the Credit Monitoring and Insurance Services ($517,000) equals $8,115,022.06.

[9] The value of the Credit Monitoring and Insurance Services at a 1% claims rate ($8,632,022.06) minus the cost of the Credit Monitoring and Insurance Services ($517,000) plus the Settlement Fund ($7,850,000) equals $15,965,022.06.

receive a payment for Fraud/Out-of-Pocket Costs, the Participating Settlement Class Member must provide Reasonable Documentation supporting the Fraud/Out-of-Pocket Costs claim, including, but not limited to, credit card statements, bank statements, invoices, telephone records, and receipts. (SA ¶ IV.E.1.b.) The Fraud/Out-of-Pocket Costs will be deemed fairly traceable to the Data Breach if the Fraud/Out-of-Pocket Costs occurred on or after October 3, 2015, and the Settlement Administrator determines the Fraud/Out-of-Pocket Costs incurred are related to the type of PII and/or PHI disclosed in the Data Breach. (*Id.* ¶ IV.E.4.)

3. Default Time and Documented Time Payments

In addition to the Credit Monitoring and Insurance Services and payment for Out-of-Pocket/Fraud Costs, each Class Member who submits a valid Claim Form to the Settlement Administrator is entitled to receive up to a $40 payment for two hours of time spent related to the Data Breach. (SA ¶ IV.E.1.c.) Class Members can submit a claim for Default Time by filling out the Claim Form on the postcard that was mailed to them, indicating that they would like to receive a Default Time payment, and then mailing it back to the Claims Administrator. Class Members can also submit a claim for a Default Time payment on the Settlement Website.

Class Members may also be entitled to receive an additional payment for up to thirteen hours of lost time fairly traceable to the Data Breach at $20 per hour. To receive a payment for Documented Time, the Participating Settlement Class Member must provide Reasonable Documentation supporting the Documented Time claim, including, but not limited to, credit card statements, bank statements, invoices,

telephone records, and receipts. (*Id.* ¶ IV.E.1.d.) The Documented Time will be deemed fairly traceable to the Data Breach by the Settlement Administrator if the Documented Time occurred on or after October 3, 2015 and the Settlement Administrator determines the Documented Time incurred is related to the type of PII and/or PHI disclosed in the Data Breach. (*Id.* ¶ IV.E.1.d.) In the event a Participating Settlement Class Member's claim for Documented Time is rejected, the Class Member will have 30 days to cure any deficiencies and resubmit the claim. If the Class Member fails to cure the deficiencies, the Class Member will still receive a Default Time Payment. (*Id.*) Payments may be reduced on a pro rata basis if the Settlement Fund would otherwise be depleted. (*Id.* ¶ IV.E.7.)

To the extent any monies remain in the Settlement Fund more than 150 days after the distribution of cash payments to the Participating Settlement Class Members, a subsequent Settlement Payment will be evenly distributed to all Participating Settlement Class Members with Approved Claims who cashed or deposited their initial payment, provided that the average check amount is equal to or greater than $7. In the unlikely event that a subsequent Settlement Payment made to Participating Members would exceed $250, the Parties will seek guidance from the Court on how to disburse the remaining Net Settlement Fund. If the average check amount in a distribution would be less than $7, the remaining Net Settlement Fund will be used to extend the Credit Monitoring and Insurance Services to Participating Settlement Class Members receiving that benefit for as long as possible. Any amount remaining in the Net Settlement Fund after this would be distributed to Privacy Rights Clearinghouse,

the Non-Profit Residual Recipient. (*Id.* ¶¶ IV.E.8, IV.A.29.)

4. Value to Settlement Class Members

The value of the Settlement, which consists of a $7.85 million non-reversionary Settlement Fund and the value of Credit Monitoring and Insurance Services, will likely exceed $12.5 million. The $7.85 million Settlement Fund will be used to provide the benefits set forth above, as well as a robust class notice, settlement administration, and any Service Awards and Fee Award and Costs approved by the Court.

The Settlement Fund alone comes to $3.64 for each of the 2,157,574 Class Members, which compares favorably to other data breach settlements (*e.g.*, *In re Anthem, Inc. Data Breach Litigation*, No. 5:15-md-02617-LHK (N.D. Cal. 2017) ($1.39), *In re The Home Depot, Inc. Customer Data Security Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga. 2016) ($.51 to $.68), *In re Target Corp. Customer Data Security Breach Litigation*, No. 0:14-md-02522-PAM (D. Minn. 2015) ($.15), and *In re Experian Data Breach Litigation*, No. 8:15-cv-01592-AG (C.D. Cal. 2015) ($1.47), but does not factor in the actual Settlement value here, which includes the value of the Credit Monitoring and Insurance Services.

The following table provides the expected value of the various components of the Settlement at different claims rates. It assumes the Court approves payments for up to $517,000 for Credit Monitoring and Insurance Services; $1.148 million for Settlement Administrator and Notice Expenses; $35,000 in Service Awards ($2,500 to each of the fourteen Class Representatives); and $3.75 million to Plaintiffs' Counsel for any Fee Award and Costs:

Credit Monitoring Claims Rate	Number of Credit Monitoring Claimants	Value of Credit Monitoring Services[10]	Total Value of Settlement[11]
0.5%	10,787.87	$3,799,011.03	$11,649,011.03
1%	21,575.74	$8,115,022.06	$15,965,022.06
1.5%	32,363.61	$12,431,033.09	$20,281,033.09
2%	43,151.48	$16,747,044.12	$24,597,044.12
2.5%	53,939.35	$21,063,055.15	$28,913,055.15
3%	64,727.22	$25,379,066.18	$33,229,066.18

As set forth below, Class Counsel estimates that over 1% of Settlement Class Members will make eligible claims for Credit Monitoring and Insurance Services. (Robinson Decl. ¶ 15.) After taking into account the cost of the Credit Monitoring and Insurance Services,[12] Class Counsel believes that the retail value of the Credit Monitoring and Insurance Services will significantly exceed $8,115,022.06, based on Class Counsel's conservative estimate that the claims for Credit Monitoring and

[10] The Value of Credit Monitoring Services is calculated by multiplying the Number of Credit Monitoring Claims by the retail price of the Credit Monitoring and Insurance Services ($16.67 per month) by the number of months available through the Settlement (24 months), and then subtracting the cost of the Credit Monitoring and Insurance Services ($517,000).

[11] The "Total Value" depicted here represents the value of Credit Monitoring and Insurance Services (minus the cost to pay for those services) based on the given claims rate, plus the $7.85 million Settlement Fund, which is used, as explained herein, to make the cash payments to Participating Settlement Class Members, and also to pay for the attorneys' fees and costs required to achieve the Settlement, Service Awards, notice and administration expenses, and to purchase the Credit Monitoring and Insurance Services.

[12] The cost of the Credit Monitoring and Insurance Services will be paid out of the Settlement Fund and, based on Plaintiffs' agreement with Identity Guard, under no circumstances will those costs exceed $517,000, unless Plaintiffs use any residual funds to purchase additional months of Credit Monitoring and Insurance Services at a rate of $24,000 per month for all Class Members electing to receive that benefit. Robinson Decl. ¶ 28.

Insurance Services is likely to exceed 1% of the Settlement Class. (Robinson Decl. ¶¶ 14-15.) Given a Settlement Class of approximately 2.1 million individuals, this is an enormous value to Settlement Class Members as compared to obtaining similar, or even inferior, credit monitoring products on their own. Taken together with the $7.85 million non-reversionary Settlement Fund, Class Counsel estimates the monetary value of the Settlement Benefits to significantly exceed $15,965,022.06, based on Class Counsel's estimate that the claims for Credit Monitoring and Insurance Services is likely to exceed 1% of the Settlement Class. (*Id.*)

5. Remedial Measures Acknowledged in the Settlement

As part of the Settlement Agreement, 21st Century acknowledges that, following the Data Breach, it undertook significant steps to improve its data security practices and procedures, including implementing a Corrective Action Plan and agreeing to pay $2,300,000 to the United States Department of Health and Human Services Office of Civil Rights. (SA ¶ IV.E.11.)

6. Attorneys' Fees, Costs, and Service Awards

Concurrent with the filing of this Motion, Plaintiffs will move the Court for an award of attorneys' fees in the amount of $3,443,535.54, expenses in the amount of $306,464.46, and Class Representative Service Awards in the amount of $2,500 each. The requested award is supported by the results achieved, the risk of continued litigation, the value of the Settlement, the quality of Plaintiffs' Counsel's representation, awards in comparable cases, the contingent nature of the representation, the response of the Class, and Plaintiffs' Counsel's time and expenses

incurred.

a. Attorneys' Fees and Expenses

Plaintiffs' Counsel expended a collective lodestar of $5,760,993.00 million to advance this litigation and achieve this exceptional result. The lodestar significantly exceeds the requested attorneys' fees of $3,443,535.54, which would result in a negative multiplier of 59.77%. *See, e.g.*, *In re NetBank, Inc. Sec. Litig.*, No. 1:07-CV-2298-TCB, 2011 WL 13353222, at *3 (N.D. Ga. Nov. 9, 2011) (where the requested fee is evaluated using the percentage method, and the lodestar "cross-check yields a negative multiplier," this "further confirms that the awarded fee is wholly proper").

The Parties did not negotiate attorneys' fees and costs or Service Awards until after they had agreed upon all substantive elements of the Settlement. (SA ¶ IV.L.1.) This is a practice routinely approved by courts. *See In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 445 (3d Cir. 2016), *as amended* (May 2, 2016). This request is within the Eleventh Circuit's 20% to 30% "benchmark" percentage for such awards. *See Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 767 (11th Cir. 2017).

In accordance with the Settlement, Plaintiffs also seek reimbursement of the $306,464.46 in unreimbursed litigation costs incurred by all Plaintiffs' Counsel litigating this action to date. The Class Notice informed Class Members that Class Counsel would seek such an award of attorneys' fees and expenses. (Giannotti Decl. Exhs. B, C.)

b. Class Representative Service Awards

In the Settlement Agreement, subject to Court approval, 21st Century agrees

not to oppose the payment of $2,500 service awards to each Class Representative for their service as Class Representatives. (SA ¶ IV.K.) Plaintiffs have moved for service awards in that amount and, as set forth in their declarations and in the declarations of Class Counsel, these Class Representatives have been enthusiastic and active class representatives. (ECF No. 244-1.)

IV. THE REACTION OF THE CLASS TO THE SETTLEMENT HAS BEEN OVERWHELMINGLY POSITIVE

The Claims Deadline is May 10, 2021. As of February 10, 2021—just over 30 days after the January 8, 2021 Notice Date—a total of 33,800 claims have been received. (Giannotti Decl. ¶ 15.) This amounts to a response rate of 1.6% of the over 2 million Class Members, to date. Of the 33,800 claims that have been submitted, 12,263 have been reviewed, of which 9,042 or 73.7% include a claim for Credit Monitoring and Insurance Services (approximately 0.4% of the Settlement Class). *Id.* Since not all of the submitted claims have yet been reviewed, based on the fact that 73.7% of claims that have been reviewed include a claim for Credit Monitoring and Insurance Services, Class Counsel estimates that the claims for Credit Monitoring and Insurance Services is likely to exceed 1% of the Settlement Class, because 73.7% of the 33,800 claims received to date is approximately 24,911 claims, which represents approximately 1.2% of the Settlement Class. (Robinson Decl. ¶ 15.) Moreover, this estimate is further supported by the fact that approximately three quarters (3/4) of the claims period remains for claims to be submitted by the May 10, 2021 Claims

Deadline. As such, the number of claims for Credit Monitoring and Insurance Services is likely to increase significantly beyond the number of claims received to date. (*Id.*)

These estimated claims rates are consistent with those in similar data breach settlements, including *In re Banner Health Data Breach Litigation,* No. 16-cv-02696-SRB, ECF No. 195 at 1 (D. Ariz. 2019), in which the claims rate was at least approximately 1.3%; *In re Anthem, Inc. Data Breach Litigation,* No. 5:15-md-02617-LHK, ECF No. 1007 at 4 (N.D. Cal. 2017), in which the claims rate was approximately 1.7%; and *In re Experian Data Breach Litigation,* No. 15-cv-01592AG, ECF No. 309 at 17 (C.D. Cal. 2018), in which the claims rate was approximately 2.91%.

A supplemental declaration detailing the final claims rate will be filed after the May 10, 2021 Claims Deadline and prior to the June 15, 2021 Final Fairness Hearing. The Settlement Administrator will continue to review Out-of-Pocket/Fraud Claims to determine which qualify for payment.

V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

"Public policy strongly favors the pretrial settlement of class action lawsuits." *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992); *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (a court's "judgment is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.").

Proceedings under Federal Rule of Civil Procedure 23 have led to a defined three-step procedure for approval of class action settlements:

(1) Certification of a settlement class and preliminary

> approval of the proposed settlement after submission to the Court of a written motion for preliminary approval.
> (2) Dissemination of notice of the proposed settlement to the affected class members.
> (3) A formal fairness hearing, or final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement are presented.

See Reyes v. A T & T Mobility Services, LLC, No. 10-20837-CIV, 2012 WL 13008164, at *1 (S.D. Fla. Dec. 20, 2012); Manual for Complex Litigation, Fourth §§ 21.63, *et seq*. (2004).

The Court completed the first step in the settlement approval process when it issued the Preliminary Approval Order. The second step—dissemination of notice to the Class Members—has been implemented by the Settlement Administrator. (Giannotti Decl. ¶¶ 5-10.) By this motion, Plaintiffs respectfully request that the Court take the third and final step and grant final approval of the Settlement.

Rule 23 provides that "the claims, issues, or defenses of a certified class—or class proposed to be certified for purposes of settlement—may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). To approve a class action settlement agreement, the Court is "required to determine that it was fair, adequate, reasonable, and not the product of collusion." *Leverso v. SouthTrust Bank of AL., Nat. Assoc.*, 18 F.3d 1527, 1530 (11th Cir. 1994). In this regard, the Supreme Court approved an amendment in 2018 to Rule 23 that enumerates the considerations to guide an evaluation of a class action settlement's fairness:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was

> negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account; (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including time of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Cty. of Monmouth, N.J. v. Fla. Cancer Specialists, P.L., No. 2:18-cv-00201, 2019 WL 1487340, at *2 (M.D. Fla. Apr. 4, 2019).

Relatedly, the Eleventh Circuit "has outlined several factors useful in making that determination," which courts review with an "adequate and careful analysis of the facts of the case in relation to the relevant principles of applicable law," *Leverso,* 18 F.3d at 1530 (quoting *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 212 (5th Cir. 1981)). These factors include the following:

i. The existence of fraud or collusion behind the settlement;

ii. The complexity, expense, and likely duration of the litigation;

iii. The stage of the proceedings and the amount of discovery completed;

iv. The probability of Plaintiffs' success on the merits;

v. The range of possible recovery; and

vi. The opinions of the class counsel, class representatives, and the substance and amount of opposition to the settlement.

Id. at 1530 n.6. The 2018 amendment to Rule 23 "does not displace considerations announced by the Eleventh Circuit." *Fla. Cancer Specialists*, 2019 WL 1487340, at *2 (citing Fed. R. Civ. P. 23(e)(2), advisory committee's note); *see also Grant v. Ocwen Loan*

Servicing, LLC, No. 3:15-cv-01376, 2019 WL 367648, at *4–5 (M.D. Fla. Jan. 30, 2019) (reviewing Rule 23(e)(2) and Eleventh Circuit factors). As set forth below, each relevant factor supports the conclusion that the Settlement is fundamentally fair, adequate, and reasonable.

A. The Rule 23(e)(2) Factors Are Satisfied

1. Plaintiffs and Class Counsel Provided More Than Adequate Representation

Plaintiffs and Class Counsel have vigorously and adequately represented the Settlement Class—prosecuting the claims against 21st Century, preserving Plaintiffs' claims in the Bankruptcy Action, defending claims brought in the Declaratory Action, and working tirelessly to gather the documents and information necessary to properly evaluate the case, prepare for trial, and negotiate a robust Settlement that provides Settlement Class Members with significant relief.

2. The Parties Negotiated the Settlement at Arm's-Length

"Settlement negotiations that involve arm's-length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness." *In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2012 WL 4174502, at *4 (S.D. Fla. Sept. 19, 2012); *see also Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding that class settlement was not collusive in part because it was overseen by "an experienced and well-respected mediator[.]"). Here, the Settlement was negotiated at arm's-length between Plaintiffs' counsel, 21st Century's counsel, and counsel for 21st Century's insurer in the Declaratory Action, both directly between the

Parties and in consultation with Judge Phillips and Michelle Yoshida, which took two in-person mediation sessions as well as additional negotiations facilitated by the mediators to reach an agreement. (*See* Robinson Decl. ¶¶ 26-27.) The time that it took to work out significant details and amid vigorous disagreements between the Parties demonstrates that this proposed resolution was the product of heavily-contested arm's-length negotiations. (*Id.*) Further, the Settlement was finalized after the Court denied 21st Century's motion to dismiss, after 21st Century filed for bankruptcy protection, after the Parties reached a settlement in the Bankruptcy Action, and after taking certain discovery. As a result, the Parties—and their counsel with extensive experience in data breach litigation—were able to properly assess the strengths and weaknesses of their positions and evaluate the fairness of the Settlement.

3. Adequacy of Relief

As set forth above, the relief provided by the Settlement is reasonable and adequate, particularly in light of the risks and resulting delay of further motion practice, trial, and associated appeals. The monetary value of the Settlement is likely to substantially exceed $12.5 million, consisting of a $7.85 million non-reversionary Settlement Fund, as well as at least $8,632,022.06 for every 1% of the Settlement Class who submit claims to receive the Credit Monitoring and Insurance Services (before excluding the cost for those services), as set forth above. The $7.85 million non-reversionary Settlement Fund will be used to provide the significant Settlement Benefits, including Credit Monitoring and Insurance Services and cash payments for Fraud/Out-of-Pocket Costs, Default Time, and/or Documented Time.

a. The Costs, Risks, and Delay of Trial and Appeal

Although all class actions involve a high level of risk, expense, and complexity, data breach litigation is especially risky and complex. *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 such as the instant case are particularly risky, expensive, and complex."); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky."). One of these risks is that 21st Century could successfully oppose class certification. Courts have reached different decisions as to whether to grant class certification in data breach cases. *Compare In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21, 35 (D. Me. 2013) (denying certification), and *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389, 401 (D. Mass. 2007) (same), *with Smith v. Triad of Alabama, LLC*, No. 1:14-CV-324-WKW, 2017 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017) (granting certification); *see also In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D. Cal. 2018) ("While there is no obvious reason to treat certification in a data-breach case differently than certification in other types of cases, the dearth of precedent makes continued litigation more risky.").

Further, case law specific to data breach litigation is currently evolving, with differing results, and there is no guarantee of the ultimate result. *See In re Anthem*, 327 F.R.D. at 318 ("Due to the unsettled nature of the legal questions, [p]laintiffs would likely have to contend with changing interpretations of procedural and substantive provisions throughout the course of the case."); *Gordon*, 2019 WL 6972701, at *1

("Serious questions of law and fact regarding the merits of [p]laintiffs' claims and [d]efendant's defenses place the ultimate outcome of the litigation in doubt."); *In re Sonic Corp.*, 2019 WL 3773737, at *7 ("This unsettled area of law often presents novel questions for courts.").

In addition to obtaining class certification, Plaintiffs would have to overcome 21st Century's motion for summary judgment, which would present issues of standing, causation, and damages. While Plaintiffs believe that they would prevail on these issues, continued litigation would bring with it the risk of Plaintiffs losing some or all of their remaining claims before trial. Moreover, Plaintiffs would have to prevail at trial and in any subsequent appeals. Also, the cost for 21st Century and Plaintiffs to maintain the lawsuit would be high, given the amount of documentary evidence as well as the substantial expert costs both Parties would incur in the context of class certification, summary judgment, and trial. Given these risks—and especially in light of 21st Century's bankruptcy filing and the uncertainty of insurance coverage in the pending Declaratory Action—the Settlement is eminently reasonable under the circumstances. *See Bennett v. Behring Corp.*, 96 F.R.D. 343, 349-50 (S.D. Fla. 1982), *aff'd*, 737 F.2d 982 (11th Cir. 1984) (plaintiffs faced a "myriad of factual and legal problems" that led to "great uncertainty as to the fact and amount of damage," which made it "unwise [for plaintiffs] to risk the substantial benefits which the settlement confers . . . to the vagaries of a trial"). As such, the current Settlement strikes an appropriate balance between Plaintiffs' "likelihood of success on the merits" and "the amount and form of the relief offered in the settlement." *See Carson v. Am. Brands, Inc.*,

450 U.S. 79, 88 n.14 (1981).

b. The Proposed Distribution of Settlement Benefits

The Settlement provides an effective method of distributing relief to the Settlement Class through a simplified Claims process. The claims protocol is straightforward and is designed to facilitate the filing of Claims with maximum clarity and ease. Claimants can complete and submit either a written or online Claim Form to the Claims Administrator, postmarked or electronically submitted on or before the Claims Deadline. (SA ¶¶ IV.G.3, IV.F.1.a.) The claims process allows Settlement Class Members to elect Credit Monitoring and Insurance Services and a Default Time Payment by simply tearing off and returning the pre-paid postage claim form attached to the Summary Notice. Class Members may also submit a Claim Form and any supporting documentation or information by mail or online. (*Id.*) The Settlement Administrator will review Claim Forms using reasonably exercised discretion. (*Id.* ¶ IV.E.4.) If the Settlement Administrator determines that a Claim is incomplete, the Claimant is given an opportunity to supplement the Claim. *Id.* The Settlement Administrator has created a Settlement Website, established and maintains a toll-free telephone number, and created a mailing address through which Class Members can obtain information and file Claims. (*Id.* ¶ IV.F.2.d.; Giannotti Decl. ¶¶ 11-12.)

c. Fees, Costs, and Service Awards

For the reasons discussed in Plaintiffs' motion for attorneys' fees and costs and for Service Awards to the Class Representatives, the Court should approve Service Awards of $2,500 to each named Plaintiff and an award of attorneys' fees and

reimbursement of litigation costs and expenses in an amount not to exceed $3,750,000, which 21st Century has agreed not to oppose. (*Id.* ¶¶ IV.K.1, IV.L.1.) The Parties did not negotiate attorneys' fees and costs or Service Awards until after they had agreed upon all substantive elements of the Settlement. (Robinson Decl. ¶ 27.)

Plaintiffs are aware of the recent Eleventh Circuit precedent that calls into question the availability of the requested service awards. *See Johnson v. NPAS Sol'ns., LLC*, 975 F.3d 1244, 1257-1259 (11th Cir. 2020) (petition for rehearing *en banc* pending). In the event that this issue remains unresolved when the Court decides Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, Plaintiffs request that the Court defer resolution of this issue pending a final decision in *Johnson*, as other courts in this district have done.[13]

d. Equitable Treatment of Settlement Class Members

The Settlement treats Settlement Class Members equitably relative to each other. All Class Members are eligible for two years of credit monitoring and up to $40

[13] *See Mosley v. Lozano Insurance Adjusters, Inc.*, No. 3:19-CV-379-J-32JRK, 2021 WL 293243, at *5 (M.D. Fla. Jan. 11, 2021), *report and recommendation adopted,* No. 3:19-CV-379-J-32JRK, 2021 WL 289031 (M.D. Fla. Jan. 28, 2021) (retaining jurisdiction to decide the question of service awards "pending a final decision in *Johnson*" and directing the parties "to deposit the $5,000 into the registry of the Court pending the Court's determination of the service award issue"); *Harvey v. Hammel & Kaplan Co., LLC*, No. 3:19-CV-640-J-32JRK, 2020 WL 7138568, at *3–4 (M.D. Fla. Dec. 7, 2020) ("[T]he Court will defer the issue of a service award due to a recent Eleventh Circuit case that bars such awards to plaintiffs in class action settlements," directing the defendant "to deposit $1,500 in the registry of the Court, to be held pending the Eleventh Circuit's issuance of a mandate in *Johnson*," and retaining jurisdiction to "determine whether and how the funds will be distributed once *Johnson* is final."); *Metzler v. Med. Mgmt. Int'l, Inc.*, No. 8:19-CV-2289-T-33CPT, 2020 WL 5994537, at *3 (M.D. Fla. Oct. 9, 2020) (retaining jurisdiction "for the limited purpose of revisiting the denial of service awards if the Eleventh Circuit holds a rehearing *en banc* in *Johnson v. NPAS Sols., LLC* and reverses its decision," in which case "[t]he parties may then move for reconsideration upon such a reversal").

for Default Time. Additional relief will be provided to Class Members who incurred additional damages resulting from the Data Breach, by allowing claims for Fraud/Out-of-Pocket Costs and Documented Time. To the extent Settlement Class Members receive different compensation under the Settlement, it reflects their different losses and is proportionate to their actual harms.

B. Additional Eleventh Circuit Factors Further Demonstrate the Settlement is Fair, Reasonable, and Adequate[14]

1. Stage of Proceedings and Amount of Discovery Completed

The Court should consider "the degree of case development that class counsel have accomplished prior to settlement" to ensure that counsel had an adequate appreciation of the merits of the case before negotiating. *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1348 (S.D. Fla. 2011). In addition, "[e]arly settlements are favored" such that "vast formal discovery need not be taken." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (S.D. Fla. 2014) (citations omitted). After four years of litigation in three separate actions, Plaintiffs more than adequately appreciate the merits of the case, along with the benefits and risks involved in continued litigation. *See, e.g.*, *Gonzalez v. TCR Sports Broad. Holding, LLP*, No. 18-cv-20048-DPG, 2019 WL 2249941, at *5 (S.D. Fla. May 24, 2019) (the "settlement reached between the parties

[14] As there is overlap between Rule 23(e)(2) factors and the Eleventh Circuit Factors, Plaintiffs address only those factors not analyzed above. These factors are not changed by the 2018 amendments to Rule 23(e)(2). The advisory committee's notes to Rule 23 indicate that "[t]he central concern in reviewing a proposed class-action settlement is that it be fair, reasonable, and adequate," and the goal of the amendments "is not to displace any factor" articulated by a given circuit, "but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23, advisory committee's note.

and the extent to which the parties were informed about the merits of their claims and defenses weighs in favor of approving the Settlement Agreement."). Importantly, despite 21st Century having declared bankruptcy as well the continued risks of further litigation, the Settlement is in line with other data breach settlements.

2. Likelihood of Success on the Merits and Range of Recovery

The Court should "judge the fairness of a proposed compromise by weighing the plaintiffs' likelihood of success on the merits against the amount and form of the relief achieved in the settlement." *Canupp v. Sheldon*, No. 2:04-CV-00260-FTM-99DNF, 2009 WL 4042928, at *10 (M.D. Fla. Nov. 23, 2009). In determining whether a settlement is fair, in light of the potential range of recovery, courts are guided by the important maxim that a proposed settlement may be only a fraction of the theoretical recovery, yet still be fair and adequate in light of the attendant risks of litigation. *Checking Account*, 830 F. Supp. 2d at 1350.

While Plaintiffs are confident they would succeed if this case proceeded to trial, Plaintiffs' ultimate recovery is limited to that of available insurance, as a result of the settlement agreement reached in 21st Century's bankruptcy proceedings. Moreover, the amount of available funds has been vigorously disputed by certain of 21st Century's insurance carriers, which is the subject of the related Declaratory Action, in which cross motions for summary judgment are pending. Notably, if the Court were to rule against Plaintiffs in that action, the amount Plaintiffs could ultimately recover from Defendants would be drastically less than the amount available to the Class through this Settlement. Moreover, even if Plaintiffs obtained a favorable decision in

the Declaratory Action, this would likely result in a lengthy appeal, which in turn would delay the Data Breach Action. Even if the Eleventh Circuit were to affirm such decision and the Supreme Court denied certiorari, Plaintiffs would nevertheless need to deal with the many risks of continued litigation in this case, as described above.

The amount Plaintiffs have recovered through this Settlement is an excellent result for the Class. The Settlement is in line with or superior to other recent data breach settlements, including *In Re: Banner Health Data Breach Litigation*, No. 2:16-cv-02696-PHX-SRB (D. Ariz. 2020) ($6 million settlement fund for a class of 2.9 million members, with an additional $2.9 million in attorney fees paid separately); *In re Anthem, Inc. Data Breach Litigation*, No. 5:15-md-02617-LHK (N.D. Cal. 2017) ($110 million settlement fund for a class of 78.8 million members); *In re The Home Depot, Inc. Customer Data Security Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga. 2016) ($13 million settlement fund, an additional $6.5 million for credit monitoring services, and $7.5 million in attorney fees for a class of over 40 million members); and *In re Target Corp. Customer Data Security Breach Litigation*, No. 0:14-md-02522-PAM (D. Minn. 2015) ($10 million settlement fund and $6.75 million in attorney fees for a class of up to 110 million members). These data breach settlements highlight the tremendous benefits Plaintiffs have achieved for the Settlement Class, particularly considering the obstacles presented by the Bankruptcy and Declaratory Actions. As such, this factor strongly supports preliminary approval of the Settlement.

3. The Opinions of Class Counsel and Class Representatives

The Class Representatives and Class Counsel strongly believe the Settlement is

fair, reasonable, adequate, and in the best interests of the Class. Class Counsel have substantial experience serving as counsel in numerous complex actions, including other data breach cases. (*See* Declarations of Daniel S. Robinson and Cari Campen Laufenberg In Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Service Awards; *see also Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012) ("Absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel."). Based on their experience, Class Counsel believe the Settlement provides exceptional results for the Settlement Class while sparing Class Members from the uncertainties of continued and protracted litigation. A strong initial presumption of fairness should attach to the proposed settlement as it was reached by well-qualified counsel engaged in arm's-length negotiations with experienced mediators. *See Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007).

C. The Reaction of Class Members Support the Settlement's Final Approval

Class Members' reaction to the Settlement has been overwhelmingly positive. Although Class Members have until May 10, 2021 to submit claims, the Settlement Administrator reports that 33,800 Class Members have already submitted a Claim. (Giannotti Decl. ¶ 15.) Further, as of today's date, only five Class Members have opted out (0.0002%) and just one non-compliant objection has been received (0.00005%). (*Id.* ¶ 17.) The Exclusion and Objection Deadline is March 9, 2021. The participation rate, miniscule number of opt-outs, and lack of compliant objections all demonstrate that the Settlement has been overwhelmingly well received by Class Members. *See*,

e.g., *Perez* , 501 F. Supp. 2d at 1381 ("A low percentage of objections demonstrates the reasonableness of a settlement."); *Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) ("The small number of optouts and objections, given the large number of claims filed, militates in favor of approval.").

VI. CLASS CERTIFICATION REMAINS APPROPRIATE

In its Order Granting Preliminary Approval, the Court certified the Class for settlement purposes. (ECF No. 249.) Nothing has changed since the Court's ruling at that time to call the Court's conclusions regarding class certification into question. Accordingly, Plaintiffs ask that the Court finally certify the Settlement Class for settlement purposes in its order granting final approval to the Settlement.

VII. CONCLUSION

For all the reasons explained above, the proposed Settlement is fair, reasonable, and adequate, and merits final approval. Accordingly, Plaintiffs request that the Court grant this motion, finally approve the Settlement, and enter a final judgment and order.

Dated: February 10, 2021

Respectfully submitted,

By: */s/ Daniel S. Robinson*

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Dated: February 10, 2021

By: *Daniel S. Robinson*
Daniel S. Robinson