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' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

I. INTRODUCTION

Plaintiffs[1] seek preliminarily approval of a proposed class action settlement that would provide significant relief to approximately 2.2 million individuals whom 21st Century[2] notified on or about March 2016 that their personally identifiable information ("PII") and/or protected health information ("PHI"), including their names, Social Security numbers, physicians' names, diagnoses, treatment information, and insurance information, were potentially compromised in a data breach of 21st Century's systems on or about October 3, 2015.

The Settlement provides substantial relief to Settlement Class Members, including (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.

The Settlement was achieved after approximately four years of hard-fought litigation, including briefing, oral argument, and a decision on 21st Century's motion to dismiss; Defendant 21st Century Oncology Investments, LLC and several other 21st Century entities ("21st Century Bankruptcy Entities") filing for voluntary bankruptcy relief under Chapter 11

[1] "Plaintiffs" refers collectively to the Estate of Robert Russell, Valerie Corbel, Roxanne Haatvedt, Veneta Delucchi, Carl Schmitt, Matthew Benzion, Kathleen LaBarge, Stacey Schwartz, Timothy Meulenberg, Stephen Wilbur, Judy Cabrera, Jackie Griffith, Sharon MacDermid, and Steven Brehio.

[2] Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement ("SA"), attached as Exhibit 1 to the Declaration of Daniel S. Robinson ("Robinson Decl.") filed concurrently herewith.

of the United States Bankruptcy Code ("Bankruptcy Action")[3]; 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 a Rule 30(b)(6) deposition of 21st Century's corporate designee; and more than two years of settlement efforts including three mediation sessions with two independent mediators.

In light of the valuable and meaningful benefits conveyed to Settlement Class Members, and the significant risks faced through continued litigation, the terms of the Settlement are "fair, reasonable, and adequate" in accordance with Federal Rule of Civil Procedure 23(e)(2). Given the Settlement's meaningful benefits, and in light of the uncertainties associated with continued litigation, the Court should preliminarily approve the proposed Settlement, certify the proposed Settlement Class, appoint Class Counsel and Class Representatives as requested herein, authorize the provision of notice to the Settlement Class, and arrange proceedings for consideration of final approval of the Settlement.

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 actions in the Northern District of California, one action in the Central District of California, and other actions were filed in state courts.[4] 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.)

[3] *See 21st Century Oncology Holdings, Inc., et al.*, No. 17-22770 (RDD) (Bankr. S.D.N.Y.).

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. (ECF No. 79.)

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.)

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 bankruptcy counsel to advocate for the Class in the Bankruptcy Action, filing individual proofs of claim on behalf of each of the Plaintiffs and other members of the Class, opposing the Debtor's motion to disallow these proofs of claim, and moving for class

certification under Bankruptcy Rule 7023, or, in the alternative, seeking relief from the automatic stay to proceed with the underlying litigation to the extent of available insurance.

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.[5]

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 following the Status Conference 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 ultimately unsuccessful.

Plaintiffs took additional Court-ordered discovery, including a 30(b)(6) deposition of 21st Century's corporate designee, and filed their Amended Consolidated Class Action Complaint on July 30, 2018. (ECF No. 191.) Following additional 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.)

[5] *Bankruptcy Action*, ECF No. 825-1.

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 issued an order on May 3, 2019, staying the Data Breach Action for ninety days to allow for mediation, but denied staying the proceeding pending a decision on the duty to defend in the Declaratory Action.[6] (ECF No. 214.) The Court also proposed Hon. Layn Phillips (Ret.) of Phillips ADR as the mediator and ordered that a mediation report be filed within seven days of mediation. *Id.* The Parties engaged in vigorous arms' length settlement negotiations before Judge Phillips and Michelle Yoshida of 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 in principle to resolve the Data Breach Action and the Declaratory Action. 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 regarding the agreement. (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.

III. THE PROPOSED SETTLEMENT

A. The Settlement Class

Under the Settlement, the Parties agree to certify the following Settlement Class:

> The approximately 2,213,597 persons who are identified on the Settlement Class List, including Plaintiffs, who were notified that their personally identifiable information and/or protected health information may have been

[6] 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.)

> disclosed in the Data Breach (as defined in Plaintiffs' Amended Consolidated Class Action Complaint, ECF No. 191). Excluded from the Settlement Class are (1) the Judge(s) presiding over the Actions, and members of their families; (2) the Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former officers, directors, and employees; (3) Persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded Persons.

(SA ¶ IV.A.48.)

B. Benefits of the Settlement

In exchange for a release of their claims against 21st Century, Settlement Class Members may submit a claim for any one or more of 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. (Declaration of Jerry Thompson ("Thompson Decl.") ¶ 7.) The Credit Monitoring and Insurance Services are fully described in the Settlement Agreement and the Declaration of Jerry Thompson, as well as 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. (Thompson Decl. ¶¶ 6-7.) If a claimant already has similar services, the Settlement allows the term to be extended by up to two years. (*Id.* ¶ 8.)

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 may be entitled to receive up to $10,000 for reimbursement of Fraud/Out-of-Pocket Costs fairly traceable to the Data Breach. To 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 Settlement Benefits, each Class Member who submits a valid Claim Form to the Settlement Administrator may be entitled to receive up to a $40 payment for two hours of time spent related to the Data Breach at $20 per hour (SA ¶ IV.E.1.c.), which includes a representation that he or she expended time in addressing, attempting to remedy, or remedying issues fairly traceable to the Data Breach. (*Id.* ¶ IV.E.1.c.) 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 said extension is accomplished, would be distributed to Privacy Rights Clearinghouse, the Non-Profit Residual Recipient. (*Id.* ¶ IV.E.8; *Id.* ¶ IV.A.29.)

4. Value to Settlement Class Members

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 the significant monetary benefit each Class Member who submit a claim for Credit Monitoring and Insurance Services will receive, as detailed below. The $7,850,000.00 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 Credit Monitoring and Insurance Services are for sale to the general public for $19.99 per month, or $16.67 per month if purchased annually. (Declaration of Robert Siciliano ("Siciliano Decl.") ¶ 8.) Accordingly, the value of this benefit[7] to the Settlement Class is at least $8,856,158.88 for every 1% of Class Members that elect to receive this benefit, before excluding the cost of the Credit Monitoring and Insurance Services.[8] (SA ¶ E.11.b.; *see also* Siciliano Decl ¶¶ 8-9.) After taking into account these costs, 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 $8,339,158.88. (Robinson Decl. ¶ 32.) Given a Settlement Class of more than 2.2 million individuals, this is an enormous benefit in savings to Settlement Class Members obtaining similar, or even inferior, credit monitoring products on their own.

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 Class Counsel for any Fee Award and Costs:

---

[7] *See Total Plan*, Identity Guard, https://www.identityguard.com/plans/total (last visited August 8, 2020). 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).

[8] 2,213,587 Settlement Class Members × 1% = 22,135.97. 22,135.97 × 24 months × $16.67 = $8,856,158.88. 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. ¶ 19.)

Claims Rate	Number of Claimants[9]	Estimated Documented Claims[10]	Default Time Payment Amount	Value of Credit Monitoring Services	Total Value of Settlement[11]
1%	22,135.97	$64,760.35	$75.46	$8,339,158.88	$16,189,158.88
2%	44,271.94	$129,520.70	$37.13	$17,195,317.76	$25,045,317.76
3%	66,407.91	$194,281.05	$24.35	$26,051,476.63	$33,901,476.63
4%	88,543.88	$259,041.40	$17.91	$34,907,635.51	$42,757,635.51

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 to date is at least approximately 1.3%; *In re: Anthem, Inc. Data Breach Litigation*, No. 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%. However, these estimated claims rates are significantly lower than those rates in two recent data breach settlements, *In re: Premera Blue Cross Customer Data Security Breach Litigation*, No. 15-md-2633-SI, ECF No. 305 at 1 (D. Or. 2019), in which the claims rate was greater than 9.0%; and *In re: Equifax, Inc. Customer Data Security Breach Litigation*, No. 17-md-2800-TWT, ECF No. 903 at 1 (N.D. Ga. 2019), in which the claims rate was greater than 10.0%.

[9] The claims rate and number of claimants is based on the Credit Monitoring and Insurance Claims.

[10] The total amount of documented claims (Documented Time and/or Fraud/Out-of-Pocket Costs) is estimated based on publicly available information from similar data breach settlements, and actual results may vary.

[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.

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 the Corrective Action Plan set forth in the settlement agreement between 21st Century and the United States Department of Health and Human Services Office of Civil Rights, in which 21st Century also agreed to pay $2,300,000 as settlement. (SA ¶ IV.E.11.)

6. Settlement Administration

Class Counsel obtained bids from and negotiated with third-party administrators in order to secure the most economical and complete administration of the Settlement for Class Members. (Robinson Decl. ¶ 19.) After soliciting competing bids, Class Counsel negotiated an agreement with Angeion Group ("Angeion")—an experienced and reputable national class action administrator—under which Angeion agrees to cap its fees and costs to no more than $1.148 million, total, regardless of the claim filing rate. *Id.* These figures include all costs associated with class member data management, legal notification, telephone support, claims administration, disbursements, and tax reporting. (SA ¶ IV.A.46, IV.F.2; Declaration of Steven Weisbrot, Esq. ("Weisbrot Decl.") ¶¶ 13-21.) Plaintiffs propose that Angeion serve as Settlement Administrator to provide notice; administer and make determinations regarding claim forms; process settlement payments; make distributions; and provide other services necessary to implement the Settlement. (SA ¶ IV.A.46, IV.F.2; Laufenberg Decl. ¶ 5; Robinson Decl. ¶ 35.)

7. Provision of Notice to the Settlement Class

Subject to Court order, the Parties, with the approval of Angeion, propose that Notice

be provided by the Settlement Administrator as follows: Within seven days after entry of the Preliminary Approval Order, 21st Century shall provide the Settlement Administrator with the name and physical address of each Class Member. (SA ¶ IV.G.1.) Pursuant to Rule 23(e)(4), within sixty days of receiving the Settlement Class List, the Settlement Administrator will disseminate the Summary Notice to Class Members. *Id.* at ¶ IV.G.3. Notice will be in the form of a double-sided postcard sent via U.S. mail to each Settlement Class Member's last known mailing address (1) notifying Class Members of the Settlement and relevant terms, (2) providing Class Members the URL to the Settlement Website and a telephone number they can call to obtain additional information about the Settlement, and (3) instructing Class Members on how to make a Claim. (Weisbrot Decl. ¶¶ 14-21.) The Summary Notice will also contain a detachable pre-paid postage Claim Form allowing Participating Settlement Class Members to submit a claim for Credit Monitoring and Insurance Services and a Default Time Payment. (SA ¶¶ IV.G.3-4; Weisbrot Decl. ¶ 15.) Class Members have 120 days after the Notice Date to submit a Claim Form. (SA ¶ IV.E.3.)

Prior to the dissemination of the Notice, the Settlement Administrator will create a Settlement Website dedicated to providing information related to the Action and this Settlement. (*Id.* ¶ IV.F.2.d.; Weisbrot Decl. ¶ 20.) The Settlement Website will include the Settlement Agreement, Claim Form, and the Long Form Notice as well as relevant Court documents relating to the Data Breach Action. *Id.* It will also enable Settlement Class Members to make Claims for Settlement Benefits and to submit documents to supplement or cure deficient Claims. *Id*. The Settlement Administrator will also establish and maintain a toll-free telephone number with information relevant to this Settlement. (*Id.*)

8. Plan of Distribution

The Net Settlement Fund will be used to make cash payments to Participating Settlement Class Members for Fraud/Out-of-Pocket Costs, Default Time, and Documented Time. Claims for reimbursement of Fraud/Out-of-Pocket Costs will be paid first from the Net Settlement Fund. The amount remaining in the Net Settlement Fund will then be used to make payments for Default Time and Documented Time, which will be prorated as needed based on the claims rate. If Fraud/Out-of-Pocket Costs Payments deplete the Net Settlement Fund, such payments will be reduced pro rata and no payments for Default Time or Documented Time will be made; however, based on Class Counsel's experience and the claims rates in similar data breach settlements, such a scenario is extremely unlikely. (Robinson Decl. ¶ 30.)

9. Proposed Class Representative Service Awards

Plaintiffs will seek and 21st Century agrees not to oppose a $2,500 service award payment to each Plaintiff for their service as a Class Representative, subject to Court approval. (SA ¶ IV.K.1-3.) As set forth in their declarations, attached as Exhibit 1 to the Declaration of Cari C. Laufenberg ("Laufenberg Decl."), these Plaintiffs have been dedicated and active Class Representatives. (Laufenberg Decl. ¶ 8.) The proposed $2,500 service awards are consistent with those approved in other data breach class action settlements. *Id.*

10. Attorneys' Fees and Costs

Subject to Court approval, Plaintiffs will seek and 21st Century agrees not to oppose an award of attorney's fees and costs in an amount not to exceed $3,750,000. (SA ¶ 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. (SA ¶ IV.L.1; Robinson Decl. ¶ 23.)

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.), *as amended* (May 2, 2016). This amount represents 30% of Class Counsel's $12.5 million minimum estimated value of the Settlement Benefits, which is not opposed by 21st Century (SA ¶ IV.E.12.), or just 23% of the $16,189,158.88 settlement valuation using a conservative projection of a one percent participation rate. 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) ("[I]n this circuit we have identified twenty to thirty percent of the common fund as a 'benchmark' for an attorney's fee award."). If the Court grants Plaintiffs' Motion for Preliminary Approval, Plaintiffs will address the reasonableness of the requested award of fees and costs and service awards in their Motion for Attorneys' Fees, Costs, and Service Awards.

11. Opt-Out and Objection Procedures

Settlement Class Members who do not wish to participate in the Settlement may opt-out of the Settlement by sending a letter no later than sixty (60) days after the Notice Date, stating they want to be excluded from the Settlement in *In Re: 21st Century Oncology Customer Data Security Breach Litigation*, Case No. 8:16-md-2737-MSS-AEP, in the United States District Court for the Middle District of Florida, to the Settlement Administrator and include their name, address, and signature, (SA ¶ IV.H.1.) Class Members who timely opt-out of the Settlement will preserve their rights to individually pursue any claims they may have against 21st Century, subject to any defenses that 21st Century may have against those claims.

In the event that within ten days after the Opt-Out Period, there have been more than seven hundred and fifty (750) individuals who have opted-out of the Settlement, 21st Century

may void the Settlement by notifying Class Counsel in writing, which will (a) restore the Parties to their respective positions in the Action. In such an event, the Parties will jointly request that all scheduled litigation deadlines be reasonably extended by the Court, and Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any of the Administrative Expenses, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs. *Id.*

A Settlement Class Member who wishes to file an objection to the Settlement likewise must do so no later than sixty (60) days after the Notice Date. (*Id.* ¶ IV.I.1.) To be valid, an objection must also be mailed to the Court, Class Counsel, and 21st Century' Counsel, and state: (a) the objector's full name, address, telephone number, and e-mail address (if any); (b) information identifying the objector as a Settlement Class Member; (c) a written statement of all grounds for the objection, accompanied by any legal support the objector cares to submit; (d) the identity of all lawyers (if any) representing the objector; (e) the identity of all of the objector's lawyers (if any) who will appear at the Final Fairness Hearing; (f) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (g) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector's signature or the signature of the objector's duly authorized lawyer or other duly authorized representative. (*Id.*)

12. Release of Claims

Upon the Effective Date, Settlement Class Members will release and discharge Released Parties from all claims and causes of action (including Unknown Claims), whether

arising under federal, state, statutory, regulatory, common, foreign, or other law, that arise in any way from or relate to the facts alleged in the Complaint. (SA ¶ IV.C.)

IV. ARGUMENT

"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) (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."). The "approval in class action settlements include[s] three distinct steps: first, preliminary approval of the proposed settlement after submission to the court of a written motion for preliminary approval; second, dissemination of mailed and/or published notice of settlement to all affected class members; and third, a final settlement approval hearing at which class members may be heard regarding the settlement, and at which argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented." *Reyes v. A T & T Mobility Services, LLC*, No. 10-20837-CIV, 2012 WL 13008164, at *1 (S.D. Fla., Dec. 20, 2012).

A. The Court Should Certify the Settlement Class

The Court may certify a class "solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue." *Burrows v. Purchasing Power*, LLC, No. 1: 12-CV-22800, 2013 WL 10167232, at *1 (S.D. Fla. Oct. 7, 2013) (quoting *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1313 (S.D. Fla. 2005). Rule 23 "establishes the legal roadmap courts must follow when determining whether class certification is appropriate." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1187 (11th Cir. 2003). To certify a class for settlement, "the Court must find that the prerequisites for class

certification under Rule 23(a) and (b) of the Federal Rules of Civil Procedure are met." *Burrows*, 2013 WL 10167232, at *1. Courts are given discretion to certify a class under Rule 23 and, "in exercising this discretion, courts should give weight to the parties' consensual decision to settle class action cases, because they and their counsel are in unique positions to assess the potential risks." *Pierre-Val v. Buccaneers Ltd. P'ship*, 2015 WL 3776918, at *1 (M.D. Fla. June 17, 2015) (quoting *Clark v. Ecolab, Inc.*, 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009)). "In determining the propriety of a class action, the question is whether the moving party meets the requirements of Rule 23, not whether the moving party states a cause of action or will prevail on the merits." *Belcher v. Ocwen Loan Servicing, LLC*, No. 8:16-CV-690-T-23AEP, 2018 WL 1701963, at *4 (M.D. Fla. Mar. 9, 2018) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178, 94 S. Ct. 2140, 2152, 40 L. Ed. 2d 732 (1974).

As a threshold matter to the issue of certification, courts consider whether "the proposed class is adequately defined and clearly ascertainable." *Palm Beach Golf Center–Boca, Inc. v. Sarris*, 311 F.R.D. 688, 693 (S.D. Fla. 2015). Additionally, "the named plaintiffs must have standing, and the putative class must meet each of the requirements specified in Federal Rule of Civil Procedure 23(a), as well as at least one of the requirements set forth in Rule 23(b)." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250 (11th Cir. 2004). The party seeking to maintain the class action must affirmatively demonstrate compliance with Rule 23. *Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011).

1. Rule 23(a) Is Satisfied

Federal Rule of Civil Procedure 23(a) requires that "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the

class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

a. The Class Is Sufficiently Numerous

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a). Joinder is usually impracticable if a class is "large in numbers." The "[p]racticability of joinder depends on many factors, including, for example, the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion." *Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (finding thirty-one individual class members as sufficient for the numerosity requirement). Numerosity is readily satisfied here, as joinder of approximately 2.2 million individuals affected by the Data Breach would be highly impractical. *See In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 659 (S.D. Fla. 2011) ("well over one million individuals, spread out across the country, are members of the proposed Settlement Class. Their joinder is impracticable.").

b. There Are Common Questions of Law and Fact

To satisfy Rule 23(a)(2), a plaintiff must show that "there are questions of law or fact common to the class," Fed. R. Civ. P. 23(a)(2), and "[c]ommonality is established if plaintiffs and class members' claims "depend upon a common contention," that is "capable of class-wide resolution," meaning that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350. "The threshold for commonality under Rule 23(a)(2) is not high. '[C]ommonality requires that there

be at least one issue whose resolution will affect all or a significant number of the putative class members.'" *Checking Account*, 275 F.R.D. at 659 (quoting *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir.2009) (internal quotation marks omitted).

The Settlement Class Members' claims all involve common questions of law and fact regarding 21st Century's data security. Plaintiffs allege that 21st Century's actions and/or omissions with respect to the Data Breach harmed all Class Members. In this regard, the claims of the Class Members all rise or fall based on 21st Century's actions and/or omissions, which were made in a uniform manner to each of the Settlement Class Members. Plaintiffs' claims raise numerous common issues with common answers, including but not limited to:

- Whether 21st Century had a duty and/or contractual obligations to safeguard Plaintiffs' and Settlement Class Members' PII and PHI;
- Whether 21st Century breached its duty and/or contractual obligations to safeguard Plaintiffs' and Settlement Class Members' PII and PHI;
- Whether 21st Century's alleged failures to safeguard Plaintiffs' and Settlement Class Members' PII and PHI resulted in the Data Breach;
- Whether Plaintiffs and Settlement Class Members were injured and suffered damages as a result of the Data Breach;
- Whether 21st Century has been unjustly enriched as a result of its alleged failures to safeguard Plaintiffs' and Settlement Class Members' PII and PHI; and
- Whether Plaintiffs and Settlement Class Members are entitled to monetary damages or other relief.

Accordingly, these common issues satisfy the commonality requirement of Rule 23.

c. Class Representatives' Claims Are Typical of the Class

Rule 23(a)(3) requires that the claims of the representative plaintiffs be "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). In short, to meet the typicality requirement,

the representative plaintiffs simply must demonstrate that the members of the class have the same or similar grievances. *See Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982). "In many ways, the commonality and typicality requirements of Rule 23(a) overlap," in that "[b]oth requirements focus on whether a sufficient nexus exists between the legal claims of the named class representatives and those of individual class members to warrant class certification." *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1278 (11th Cir. 2000). The typicality requirement of Rule 23 is satisfied where claims "arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir.1984); *see also Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they "possess the same interest and suffer the same injury as the class members").

Plaintiffs' claims and those of the Settlement Class Members arise from the same course of conduct by 21st Century. Plaintiffs' claims are typical because they, like all members of the proposed Settlement Class, provided their PII and/or PHI to 21st Century in exchange for services. 21st Century owed a duty and was contractually obligated to protect and keep that information secure. Plaintiffs, like all other members of the proposed Settlement Class, have sustained injury and damages as a result of 21st Century's uniform breach of its duty and contractual obligations to adequately safeguard that information. Therefore, the typicality requirement of Rule 23(a)(3) is satisfied because Plaintiffs' claims arise out of the same course of conduct, are based on the same legal theories, and seek the same types of damages as the

Settlement Class, and meet all necessary standing requirements.[12]

d. Class Representatives and Class Counsel Adequately Represent the Settlement Class

The adequacy requirement of Rule 23(a)(4) concerns whether (1) class representatives have any interests antagonistic to the class and (2) class counsel possesses the competence to undertake the litigation. *Checking Account*, 275 F.R.D at 659 (citing *Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 314 (S.D. Fla. 2001)). Class representatives are adequate if they have no substantial conflicts with the class. *Valley Drug*, 350 F.3d at 1189 ("Significantly, the existence of minor conflicts alone will not defeat a party's claim to class certification: the conflict must be a 'fundamental' one going to the specific issues in controversy.")

Class Counsel are adequate if they will adequately prosecute the case. *Parker v. Universal Pictures*, No. 6:16-cv-01193, 2019 WL 1521708, at *6 (M.D. Fla. Feb. 28, 2019), *report and recommendation adopted*, No. 6:16-cv-01193, 2019 WL 1518958 (M.D. Fla. Apr. 8, 2019). To determine "whether counsel will adequately prosecute the case, the court must consider the following factors: 1) the work counsel has done in identifying or investigating potential claims in the action; 2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; 3) counsel's knowledge of the applicable law; and 4) the resources that counsel will commit to representing the class. *Parker*, 2019 WL 1521708, at *6 (citing Fed. R. Civ. P. 23(g)(1)(A)). The Court may consider any "matter pertinent to counsel's ability to fairly and adequately represent the interests of the

[12] In the Court's March 11, 2019 Order on Defendants' Motion to Dismiss, the Court held Plaintiffs had Article III standing because "they have pleaded an injury in fact due to an increased risk of identity theft and the cost of mitigation efforts undertaken to minimize that risk." *In Re: 21st Century Oncology Customer Data Sec. Breach Litig.*, 380 F. Supp. 3d 1243, 1258 (M.D. Fla. 2019).

class." Fed. R. Civ. P. 23(g)(1)(B).

Proposed Class Representatives and Class Counsel are adequate. First, the proposed Class Representatives do not have any conflicts with the absent Class Members, as they are seeking redress from what is essentially the same alleged injury, and as such their claims are coextensive with those of the Class Members. *Falcon*, 457 U.S. at 157-58, fn. 13. They have read and understood the allegations of the Complaint and are dedicated to prosecuting this matter on behalf of the Class. (Laufenberg Decl. Ex. 1, Class Representative Declarations.) As detailed in their declarations, the proposed Class Representatives have diligently pursued this case since its inception in order to obtain relief for absent class members, providing valuable insights and useful facts to permit Class Counsel to effectively litigate this action and negotiate this Settlement. Proposed Class Representatives were clearly advised of and understand their obligations as Class Representatives. Plaintiffs communicated with Class Counsel regarding various issues pertaining to this case and will continue to do so until the Settlement is approved and administration is completed. *Id.*

Second, proposed Class Counsel are qualified and experienced in conducting class action litigation, especially those cases involving data privacy. (Robinson Decl. ¶¶ 38-40, Ex. 2; Laufenberg Decl. ¶¶ 9-13, Ex. 2.) Proposed Class Counsel diligently, vigorously, and skillfully prosecuted this action, as well as the related Bankruptcy Action and Declaratory Action, thoroughly and efficiently pursued Plaintiffs' claims and successfully negotiated this Settlement. (Robinson Decl. ¶ 7-20.) Thus, proposed Class Counsel will adequately represent the Settlement Class. *See Anderson v. Bank of the S., N.A.*, 118 F.R.D. 136, 149 (M.D. Fla. 1987) ("The court is convinced that these attorneys possess the requisite skill, ability and

experience to represent a plaintiff class in this action.")

For these reasons, the Court should appoint Cari Campen Laufenberg of Keller Rohrback L.L.P. and Daniel S. Robinson of Robinson Calcagnie, Inc., as Class Counsel, and appoint Plaintiffs as Class Representatives.

2. Rule 23(b)(3) Is Satisfied

In addition to meeting the four requirements of Rule 23(a), parties seeking class certification must demonstrate that the action is maintainable under one of the three subsections of Rule 23(b). Under Rule 23(b)(3), a class action may be maintained if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In this regard, "the issues in the class action that are subject to generalized proof and thus applicable to the class as a whole, must predominate over those issues that are subject only to individualized proof." *Kerr v. City of West Palm Beach*, 875 F.2d 1546, 1558 (11th Cir. 1989) (quoting *Nichols v. Mobile Bd. of Realtors, Inc.*, 675 F.2d 671, 676 (5th Cir. 1982)). Predominance does not require "that all questions of fact or law be common, but only that some questions are common and that they predominate over individual questions." *Klay*, 382 F.3d at 1254. However, "common issues will not predominate over individual questions if, 'as a practical matter, the resolution of [an] overarching common issue breaks down into an unmanageable variety of individual legal and factual issues.'" *Babineau v. Fed. Exp. Corp.*, 576 F.3d 1183, 1191 (11th Cir. 2009). Predominance is satisfied when plaintiffs and class members share a common claim that is "capable of classwide resolution," meaning that determination of the

claims' "truth or falsity will resolve an issue that is central to [the claims'] validity . . . in one stroke." *Dukes*, 564 U.S. at 350.

The proposed Settlement Class is well-suited for certification under Rule 23(b)(3) because questions common to Class Members predominate over questions affecting only individual Class Members. Each of Plaintiffs' claims raise common issues capable of classwide resolution, and these issues predominate over any questions that would affect individual Class Members. Each of these causes of action concerns the same fundamental questions of fact and law regarding 21st Century's conduct, the Data Breach, and the harm to Class Members, including: whether 21st Century owed a duty and had contractual obligations to safeguard Class Members' PII and PHI; whether 21st Century breached its duty and contractual obligations, resulting in the Data Breach; whether Class Members were harmed and incurred damages as a result of the Data Breach; and whether 21st Century was unjustly enriched. The resolution of these common issues revolves around common evidence that does not vary from Class Member to Class Member, and so can be fairly resolved for all Class Members at once. Similarly, resolving these questions as to one claim would resolve the other claims as well. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 314 (N.D. Cal. 2018) (the "main issue" of the plaintiffs' contract and negligence claims "boils down to the common factual contention of whether [the defendant's] data security levels were reasonable"). These common questions are "central to the validity of each one of the claims" and may be resolved "in one stroke." *See Dukes*, 564 U.S. at 350.

The issues of duty and breach are common to all Class Members because they focus on 21st Century's data security practices, and would be proven with common evidence, including

21st Century's documents, employee testimony, and expert analysis. *See In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016). The Data Breach affected all Class Members in a uniform fashion, compromising the same types of PII and/or PHI for each Class Member. *See Herman v. Seaworld Parks & Entm't, Inc.*, 320 F.R.D. 271, 295–96 (M.D. Fla. 2017) ("Where corporate policies 'constitute the very heart of the plaintiffs' . . . claims,' as they do here, common issues will predominate because those policies "would necessarily have to be re-proven by every plaintiff."). Although the extent of each Class Member's damages may vary, variations in damages do not preclude certification. *Id.* at 296 ("The fact that individualized damages issues will need to be resolved is not disqualifying of class certification."); *see also Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003).

Nor do choice of law considerations preclude certification of a nationwide class. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 822, 105 S. Ct. 2965, 2980, 86 L. Ed. 2d 628 (1985); *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 561 (9th Cir. 2019) ("Subject to constitutional limitations and the forum state's choice-of-law rules, a court adjudicating a multistate class action is free to apply the substantive law of a single state to the entire class."). It is also "well-established that consideration of choice of law issues at the class certification stage is generally premature." *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 309 (3d Cir. 2011) (quoting *Singer v. AT & T Corp.*, 185 F.R.D. 681 (S.D. Fla. 1998) ("Many courts find that it is inappropriate to decide choice of law issues incident to a motion for class certification."); *see also Berman v. Gen. Motors LLC*, No. 2:18-CV-14371, 2019 WL 6163798, at *10 (S.D. Fla. Nov. 18, 2019) ("that this matter involves state laws from multiple

jurisdictions does not undermine certification of the Settlement Class."); *Elkins v. Equitable Life Ins. of Iowa*, No. CIVA96-296-CIV-T-17B, 1998 WL 133741, at *17 (M.D. Fla. Jan. 27, 1998) ("Predominance is not undermined by any theoretical choice of law issues that might also arise if this case were to be litigated. At the certification stage, the Court need only determine which state law is 'likely' to apply.").

Finally, if the proposed Settlement is approved, there will be no need for a trial, and thus manageability for trial need not be considered. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). A class settlement is superior to other methods of litigation where, as here, class treatment will promote greater efficiency and no realistic alternative exists. *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 676-77 (S.D. Fla. 2006) (finding "class action is superior to thousands of individual actions" and listing non-exhaustive factors in support thereof).

B. The Court Should Preliminarily Approve 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). The Eleventh Circuit "has outlined several factors useful in making that determination." *Id.* (citing *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1147–49 (11th Cir. 1983)). These factors, which courts review with an "adequate and careful analysis of the 'facts of the case in relation to the relevant principles of applicable law" 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 fn. 6; *Borcea*, 238 F.R.D. at 672-73 (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir.1977) (the trial court is 'entitled to rely on the judgment of experienced counsel for the parties' in evaluating a settlement)). 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). "[T]he amendment does not displace considerations announced by the Eleventh Circuit." *Id.* (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).

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

a. Adequate Representation

Plaintiffs and proposed 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.

b. Arm's-Length Negotiations

"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 and 21st Century's counsel both directly between the Parties and in consultation with the Judge Phillips and Michelle Yoshida, which took three in-person mediation sessions as well as additional negotiations facilitated by the mediators to reach an agreement. (*See* Robinson Decl. ¶¶ 5, 17-19, 41.) The time that it took to work out significant details and vigorous disagreements between the Parties demonstrates that this proposed resolution was the product of heavily-contested arm's-length negotiations. *Id.*

c. 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 $8,856,158.88 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 $7,850,000.00 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, as set forth above.

(i) 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*, 327 F.R.D. at 318 ("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, and Plaintiffs would face the risk of 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—preliminary approval of the settlement is appropriate. *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).

(ii) The Proposed Distribution of Settlement Benefits

The Settlement provides an effective method of distributing relief to the Settlement Class through a simplified processing 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 will allow 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 will create a Settlement Website, establish and maintain a toll-free telephone number, and create a mailing address through which Class Members can obtain information and file Claims. (*Id.* ¶ IV.F.2.d.)

(iii) Fees, Costs, and Service Awards

As discussed above, Plaintiffs will seek and 21st Century has agreed not to oppose 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, subject to Court approval. (*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. ¶ 23.) If the Court grants Plaintiffs' Motion for Preliminary Approval, then Plaintiffs will fully address the reasonableness of the requested award of fees, costs, and incentive awards in their motion for Fee Award and Costs and Service Awards.

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 for Default Time. Additional relief will be provided to Class Members who incurred additional damages resulting from the Data Breach, by allowing for 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.

2. Additional Eleventh Circuit Factors Further Demonstrate the Settlement is Fair, Reasonable, and Adequate[13]

a. Stage of Proceedings and Amount of Discovery Completed

The Court should consider "the degree of case development that class counsel have

[13] 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

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 of 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 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, and as set forth below, the Settlement is in line with other data breach settlements.

b. 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

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.

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.

In any event, 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 highlights the tremendous benefits Plaintiffs have achieved for the Settlement Class, particularly in light of the obstacles presented by the Bankruptcy and Declaratory Actions. As such, this factor strongly supports preliminary approval of the Settlement.

c. The Opinions of Class Counsel and Class Representatives

Plaintiffs and proposed Class Counsel strongly believe the Settlement is fair, reasonable, adequate, and in the best interests of the Class. Proposed Class Counsel have substantial experience serving as counsel in numerous complex actions, including other data breach cases. (Robinson Decl. ¶¶ 38-39; Laufenberg Decl. ¶¶ 10-11.); *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*, 501 F. Supp. 2d at 1384.

C. Appointment of Class Counsel and Class Representatives

Under Rule 23(g), "a court that certifies a class must appoint class counsel . . . [who must] fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). Here, Class Counsel have spent a significant amount of time identifying the potential claims

in this action and pursuing the relevant discovery. They are recognized as experts in consumer law and class-action litigation and have been appointed class counsel in major consumer class action cases. (*See* Laufenberg Decl. ¶¶ 9-13; Robinson Decl. ¶¶ 38-40.) Further, they have committed their full resources to representing the Settlement Class and will continue that commitment in resolving this case and administering the Settlement. (*See* Laufenberg Decl. ¶ 4; Robinson Decl. ¶ 20.) Accordingly, the Court should appoint Cari Campen Laufenberg, of Keller Rohrback L.L.P.; and Daniel S. Robinson, of Robinson Calcagnie, Inc., as Class Counsel.

The Court should also appoint Plaintiffs as Class Representatives. Plaintiffs have fulfilled their duties in pursuing their claims and those of Settlement Class members in this matter, and they have vigorously represented the interests of the Settlement Class. (*See* Laufenberg Decl. ¶ 8.) Plaintiffs understand that they are pursuing this case on behalf of all Settlement Class members and have a duty to protect the interests of all Settlement Class members, and they do not have any conflicts of interest with any other members of the Settlement Class. (Laufenberg Decl. Ex. 1.) Plaintiffs will fairly and adequately represent and protect the interests of the Settlement Class as Class Representatives.

D. The Proposed Notice Plan Should Be Approved

"The court must direct notice in a reasonable manner to all Class Members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). Notice of a proposed settlement to class members must be the "best notice that is practicable." *See* Fed. R. Civ. P. 23(c)(2)(B). "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). A notice

of settlement should include "'information reasonably necessary to make a decision [whether] to remain a class member and be bound by the final judgment or opt out of the action.'" *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1239 (11th Cir. 2011) (quoting *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104–05 (5th Cir. 1977)). Such reasonable information includes the terms of the settlement, the allocation of attorneys' fees, and the date, time, and place of the final approval hearing. *Pierre-Val*, 2015 WL 3776918, at *4.

The parties' proposed Notice complies with all of the requirements of Rules 23(c)(2)(B) and 23(e). The parties have selected, subject to Court approval, Angeion as the Settlement Administrator. The notice program agreed to by the parties and approved by Angeion includes direct mailing of the Summary Notice via U.S. mail to all Class Members. Substantially similar notices have been approved by courts in this district. *See, e.g.*, *Hanley v. Tampa Bay Sports & Entm't LLC*, No. 8:19-cv-00550-CEH-CPT, 2020 WL 357002, at *4 (M.D. Fla. Jan. 7, 2020). The Long Form Notice is clear, precise, informative, and meets all of the necessary standards. It also includes information such as the case caption; a description of the Settlement Class; the claims and the history of the litigation; the Settlement and the claims being released; the names of Class Counsel; the maximum amount of attorneys' fees that will be sought by Class Counsel; the amount Class Representatives will seek for Service Awards; the Fairness Hearing date; a statement of the procedures and deadlines for requesting exclusion or filing objections to the Settlement; and the manner in which to obtain further information. *See* MANUAL FOR COMPLEX LITIGATION § 30.212 (4th ed. 2004) (Rule 23(e) notice designed to be only a summary of the litigation and settlement to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings).

The Claim process is also designed to be as straight forward as possible, including a pre-paid postage tear-off postcard that Class Members can return without filling in any additional information in order to receive Credit Monitoring and Insurance Services as well as a Default Time Payment. The same postcard notice will also inform Class Members how they can submit a claim for a Documented Time Payment and/or Fraud/Out-of-Pocket Costs, and will direct recipients to the Settlement Website, where they can submit claims, view the Long Form Notice, and review the Settlement Agreement and other filings.

The Notice Program was reviewed to ensure it meets due process requirements. (Weisbrot Decl. ¶ 13.) It is also consistent with, and exceeds, Fed. Civ. P. 23(c)(2)(B) requirements, Federal Judicial Center guidelines for notice, and other similar court-approved notice plans. *See Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 479 (D. Md. 2014).

E. Proposed Schedule for Intermediate Deadlines and Final Approval Hearing

Consistent with the Settlement Agreement, the parties request that the Court set a Final Approval Hearing at least one hundred and eighty (180) days after the date a preliminary approval order is entered. (SA ¶ IV.B.4.) This will allow sufficient time for the Settlement Administrator to provide Notice to the Class, for Defendants to notify appropriate government officials of the Settlement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and for Class Members who wish to opt out or object to do so, but will not delay relief to the Class any more than necessary. Plaintiffs respectfully propose the following schedule:

EVENT	DATE
Notice Date	67 days after entry of the Preliminary Approval Order
Plaintiffs to File Motion for Final Approval	100 days after entry of the Preliminary Approval Order
Plaintiffs to File Motion for Attorneys' Fees, Costs, and Incentive Awards	100 days after entry of the Preliminary Approval Order
Opt-Out Deadline	60 days after Notice Date
Objection Deadline	60 days after Notice Date
Claim Submission Deadline	120 days after Notice Date
Plaintiffs to File Reply in Support of Motion for Final Approval	14 days prior to the Final Approval Hearing
Plaintiffs to File Reply in Support of Attorneys' Fees, Costs, Incentive Awards	14 days prior to the Final Approval Hearing
Final Approval Hearing	To be set by Court, approximately 180 days after entry of the Preliminary Approval Order

V. CONCLUSION

Plaintiffs respectfully request the Motion be granted and the Court enter an order: (1) certifying the proposed class; (2) preliminarily approving the proposed settlement; (3) appointing class representatives and class counsel; (4) appointing the notice and settlement administrator; (5) approving the class notice and administration documents; and (6) approving the proposed class settlement administrative deadlines and procedures.

Dated: August 12, 2020

Respectfully submitted,

By: */s/ Daniel S. Robinson*

Daniel S. Robinson
ROBINSON CALCAGNIE, INC.
19 Corporate Plaza Drive
Newport Beach, California 92660
Telephone: (949) 720-1288
Facsimile: (949) 720-1292
drobinson@robinsonfirm.com

By: */s/ Cari Campen Laufenberg*

Cari Campen Laufenberg
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384
claufenberg@kellerrohrback.com

Interim Co-Lead Counsel for Plaintiffs

Jodi Westbrook Flowers
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Telephone: (843) 216-9000
Facsimile: (843) 216-9450
jflowers@motleyrice.com

Robert C. Gilbert
Florida Bar No. 561861
KOPELOWITZ OSTROW FERGUSON WEISELBERG GILBERT
2800 Ponce de Leon Blvd., Suite 1100
Coral Gables, FL 33134
Telephone: (305) 529-8858
Facsimile: (954) 525-4300
gilbert@kolawyers.com

Interim Co-Liaison Counsel for Plaintiffs

Kent G. Whittemore
Florida Bar No. 166049
THE WHITTEMORE LAW GROUP, P.A.
100 Second Avenue South, Ste. 304-S
St. Petersburg, FL 33701
Telephone: (727) 821-8752
kwhittemore@wherejusticematters.com

Interim Local Counsel for Plaintiffs

Matthew B. George
KAPLAN FOX & KILSHEIMER LLP
350 Sansome Street, Suite 400
San Francisco, CA 94104
Telephone: (415) 772-4700
Facsimile: (415) 772-4707
mgeorge@kaplanfox.com

Kenneth G. Gilman
Florida Bar No. 340758
GILMAN LAW, LLP
Beachway Professional Center Tower
8951 Bonita Beach Road, S.E. Ste. #525
Bonita Springs, FL 34135
Telephone: (239) 494-6128
kgilman@gilmanlawllp.com

Thomas V. Girardi
GIRARDI | KEESE
1126 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: (213) 977-0211
Facsimile: (213) 481-1554
tgirardi@girardikeese.com

Eric A. Grover
KELLER GROVER LLP
1965 Market Street
San Francisco, CA 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861
eagrover@kellergrover.com

Julie Braman Kane
Florida Bar No. 980277
COLSON HICKS EIDSON, P.A.
255 Alhambra Circle, Penthouse
Coral Gables, Florida 33134
Telephone: (305) 476-7400
Facsimile: (305) 476-7444
julie@colson.com

Steven S. Maher
Florida Bar No. 887846
THE MAHER LAW FIRM, PA
631 W Morse Blvd., Suite 200
Winter Park, FL 32789
Telephone: (407) 839-0866
Facsimile: (407) 425-7958
smaher@maherlawfirm.com

Charles PT Phoenix
Florida Bar No. 0535591
RHODES TUCKER
2407 Periwinkle Way, Suite 6
Sanibel, FL 33957
Telephone: (239) 472-1144
Facsimile: (239) 461-0083
cptp@RhodesTucker.com

Daniel Girard
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
dgirard@girardsharp.com

Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Dated: August 12, 2020

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

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	

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the Parties to the above-described class action ("Action") have applied for an order, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, regarding certain matters in connection with a proposed settlement of the Action, in accordance with a Class Action Settlement Agreement and Release (the "Settlement" or Settlement Agreement") entered into by the Parties as of August 12, 2020 (which, together with its exhibits, is incorporated herein by reference) and dismissing the Action upon the terms and conditions set forth in the Settlement Agreement;

WHEREAS, the Court has jurisdiction over this litigation, Plaintiffs, 21st Century, and Settlement Class Members, and any party to any agreement that is part of or related to the Settlement.

WHEREAS, all defined terms used in this Order have the same meanings as set forth in the Settlement;

WHEREAS, Class Counsel have conducted an extensive investigation into the facts and law relating to the matters alleged in the Action;

WHEREAS, the Parties reached a settlement as a result of extensive arms' length negotiations between the Parties and their counsel, occurring over the course of more than two years and three separate, in-person mediation sessions with respected mediators; and

WHEREAS, the Court has carefully reviewed the Settlement Agreement, including the exhibits attached thereto and all files, records, and prior proceedings to date in this matter, and good cause appearing based on the record;

IT IS HEREBY ORDERED that:

The Settlement, including the exhibits attached thereto, are preliminarily approved as fair, reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, pending a final hearing on the Settlement as provided herein.

1. Stay of the Action. Pending the Fairness Hearing, all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby stayed.

2. Provisional Class Certification for Settlement Purposes Only. For purposes of the Settlement only, the Court finds and determines that the Action may proceed as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and that: (a) the Settlement Class certified herein is sufficiently numerous, as it include approximately 2.2 million people, and joinder of all such persons would be impracticable, (b) there are questions of law and fact that are common to the Settlement Class, and those questions of law and fact common to the Settlement Class predominate over any questions affecting any individual Settlement Class Member; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent for purposes of settlement; (d) a class action on behalf of the Settlement Class is superior to other available means of adjudicating this dispute; and (e) as set forth below, Plaintiffs and Class Counsel are

adequate representatives of the Settlement Class. Defendants retain all rights to assert that this action may not be certified as a class action, other than for settlement purposes.

3. Class Definition. The Court hereby certifies, for settlement purposes only, a Class defined as "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."

4. Class Representatives. For purposes of the Settlement only, the Court finds and determines, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, that Plaintiffs[1] ("Class Representatives") will fairly and adequately represent the interests of the Class in enforcing their rights in the Action and appoints them as Class Representatives. The Court preliminarily finds that they are similarly situated to absent Class Members and therefore typical of the Class, and that they will be adequate class representatives.

5. Class Counsel. For purposes of the Settlement, the Court appoints Cari Campen Laufenberg of Keller Rohrback L.L.P. and Daniel S. Robinson of Robinson Calcagnie, Inc. as Class Counsel to act on behalf of the Class and the Class Representatives with respect to the

[1] Plaintiffs include the Estate of Robert Russell, Valerie Corbel, Roxanne Haatvedt, Veneta Delucchi, Carl Schmitt, Matthew Benzion, Kathleen LaBarge, Stacey Schwartz, Timothy Meulenberg, Stephen Wilbur, Judy Cabrera, Jackie Griffith, Sharon MacDermid, and Steven Brehio.

Settlement. The Court authorizes Class Counsel to enter into the Settlement on behalf of the Class Representatives and the Class, and to bind them all to the duties and obligations contained therein, subject to final approval by the Court of the Settlement.

6. Administration. The firm of Angeion Group is appointed as Settlement Administrator to administer the notice procedure and the processing of claims, under the supervision of Class Counsel.

7. Class Notice. The form and content of the proposed Notice of 21st Century Data Breach Class Action Settlement ("Long Form Notice"), Summary Notice ("Summary Notice"), and Claim Form for 21st Century Data Breach Benefits ("Claim Form") submitted by the Parties as Exhibits A, C, and E, respectively, to the Settlement Agreement, are hereby approved.

8. Notice Date. The Court directs that the Settlement Administrator cause a copy of the Summary Notice be mailed to all members of the Class who have been identified by Defendants through their records. The mailing is to be made by United States mail, postage prepaid, within sixty (60) calendar days of receiving the Settlement Class List, which Defendants are to provide to the Settlement Administrator within seven (7) calendar days of entry of this Order. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement ("Settlement Website").

9. Findings Concerning Notice. The Court finds and determines that mailing the Summary Notice and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the

requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members.

10. Deadline to Submit Claim Forms. Class Members will have until one hundred and twenty (120) calendar days from the Notice Date to submit their Claim Forms ("Claims Deadline"), which is due, adequate, and sufficient time.

11. Exclusion from Class. Any person falling within the definition of the Class may, upon request, be excluded or "opt out" from the Class. Any such person who desires to request exclusion from the Class must submit a fully completed Request for Exclusion. To be valid, the Request for Exclusion must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period, which shall expire sixty (60) days following the Notice Date. Any Request for Exclusion must be in writing and must identify the case name *In Re: 21st Century Oncology Customer Data Security Breach Litigation*, Case No. 8:16-md-2737-MSS-AEP; state the name, address, and telephone number of the Settlement Class Members seeking exclusion; be physically signed by the Person(s) seeking exclusion; and must also contain a statement to the effect that "I/We hereby request to be excluded from the proposed Settlement Class in *In Re: 21st Century Oncology Customer Data Security Breach Litigation*, Case No. 8:16-md-2737-MSS-AEP." All persons and entities who submit valid and timely Requests For Exclusion as set forth in this Order and the Notice shall have no rights under the Settlement, shall not share in the distribution of the Settlement Fund, and shall not be bound by the Settlement or any final judgment entered in this Action.

12. Final Fairness Hearing. A hearing will be held by this Court in the Courtroom of The Honorable Mary S. Scriven, United States District Court for the Middle District of Florida,

United States Courthouse, 801 North Florida Avenue, Courtroom 7A, Tampa, Florida 33602 at _____ __.m. on _____, 2021 ("Fairness Hearing"), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Class; (b) whether the Final Approval Order should be entered in substance materially the same as Exhibit B to the Settlement Agreement; (c) whether the Class Representative's proposed Settlement Benefits as described IV.E. of the Settlement Agreement should be approved as fair, reasonable, and adequate to the Class; (d) whether to approve the application for service awards for the Class Representatives ("Service Awards") or an award of attorneys' fees and litigation expenses ("Fee Award and Costs"); and (e) any other matters that may properly be brought before the Court in connection with the Settlement. The Fairness Hearing is subject to continuation or adjournment by the Court without further notice to the Class. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Class.

13. At least seven (7) calendar days prior to the Fairness Hearing, Class Counsel shall cause an affidavit or declaration to be filed with the Court certifying that the Summary Notice has been provided and the Settlement Agreement, Long Form Notice, and Claim Form have been published on the Settlement Website.

14. Objections and Appearances. Any Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Class Member does not enter an appearance, they will be represented by Class Counsel. Any Class Member who wishes to object to the Settlement, the Settlement Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Fairness Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement Benefits should not be approved, or

why the Service Awards and/or the Fee Award and Costs should not be granted, may do so, but must proceed as set forth in this paragraph. No Class Member or other person will be heard on such matters unless they have filed in this Action the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider, within sixty (60) calendar days following the Notice Date. Any objection must include: (i) the Settlement Class Member's full name, current mailing address, and telephone number; (ii) a signed statement that he or she believes himself or herself to be a member of the Settlement Class; (iii) the specific grounds for the objection; (iv) all documents or writings that the Settlement Class Member desires the Court to consider; and (v) a statement regarding whether they (or counsel of their choosing) intend to appear at the Fairness Hearing. A copy of the objection must also be mailed to the following four addresses, postmarked within sixty (60) days of the Notice Date.

Court	Class Counsel	Defendants' Counsel
Clerk of the Court United States District Court Middle District of Florida 801 North Florida Avenue Tampa, Florida 33602	Cari C. Laufenberg c/o 21st Century Data Breach Settlement KELLER ROHRBACK L.L.P. 1201 Third Avenue Suite 3200 Seattle, Washington 98101 Daniel S. Robinson c/o 21st Century Data Breach Settlement ROBINSON CALCAGNIE, INC. P.O. Box 2350 Newport Beach, CA 92658-8962	Casie D. Collignon BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, Colorado 80202

Any Class Member who does not make their objections in the manner and by the date set forth in ¶ 12 of this Order shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

15. Claimants. Class Members who have been identified from Defendants' records and who submit within one hundred and twenty (120) days of the Notice Date a valid Claim Form approved by the Settlement Administrator may qualify to receive Credit Monitoring and Insurance Services, a Default Time Payment, a Documented Time Payment, and/or a payment for Fraud/Out-of-Pocket Costs. Any such Class Member who does not submit a timely Claim Form in accordance with this Order shall not be entitled to receive Credit Monitoring and Insurance Services, a Default Time Payment, a Documented Time Payment, or a payment for Fraud/Out-of-Pocket Costs, but shall nevertheless be bound by any final judgment entered by the Court. Class Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Settlement Administrator, so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby. No person shall have any claim against Class Counsel or the Settlement Administrator by reason of the decision to exercise discretion whether to accept late-submitted claims.

16. Release. Upon the entry of the Court's order for final judgment after the Fairness Hearing, the Class Representative and all Class Members, whether or not they have filed a Claim Form within the time provided, shall be permanently enjoined and barred from asserting any claims (except through the Claim Form procedures) against Defendants and the Released Parties arising from the Released Claims, and the Class Representative and all Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

17. Funds Held by Settlement Administrator. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Settlement or further order of the Court.

18. Final Approval Briefing. All opening briefs and documents in support of a request for final approval of the Settlement, the Settlement Benefits, the Service Award, and the Fee Award and Cost must be filed and served at least 21 days before the Objection Deadline. Any reply papers must be filed and served no later than seven calendar days prior to the Fairness Hearing.

19. Reasonable Procedures. Class Counsel and Defense Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement, including making, without further approval of the Court, minor changes to the form or content of the Long Form Notice, Summary Notice, and other exhibits that they jointly agree are reasonable or necessary.

20. Extension of Deadlines. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Class. Class Members must check the Settlement Website (www.21COSettlement.com) regularly for updates and further details regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Fairness Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Class.

21. If Effective Date Does Not Occur. In the event that the Effective Date does not occur, certification shall be automatically vacated and this Preliminary Approval, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

IT IS SO ORDERED.

Entered this _____ day of _____, 2020.

MARY S. SCRIVEN
United States District Judge