IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LAURA WILCOPOLSKI, individually and on behalf of all others similarly situated, Plaintiff, v. FIRST ADVANTAGE FORM I9 COMPLIANCE, LLC, Defendant.	Case No.: 1:24-cv-03235 Judge Leigh Martin May

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

OTHER AUTHORITIES

RULES

Pursuant to Federal Rule of Civil Procedure Rule 23(e), and subject to Court approval, Plaintiff Laura Wilcopolski ("Plaintiff"), on behalf of herself and all others similarly situated, respectfully submits this memorandum of law in support of her Unopposed Motion for Preliminary Approval of the proposed settlement of this class action under Rule 23 of the Federal Rules of Civil Procedure. All definitions herein are the same as in the Settlement Agreement, **Exhibit 1**.

I. BACKGROUND

A. History of Litigation

The case arises from a recent Cybersecurity Incident involving Defendant, a limited liability company that assists its clients in completing the government required Form I-9 documents in connection with its clients' employees' employment. On July 22, 2024, Plaintiff filed an action against Defendant, alleging that it failed to properly secure and safeguard the personally identifiable information that it collected and maintained as part of its regular business practices, including Plaintiff's and Class Members' names, dates of birth, addresses, hire dates, and Social Security numbers (collectively defined herein as "PII"). Plaintiff asserted claims for negligence, breach of third-party beneficiary contract, unjust enrichment, negligence per se, and statutory claims under Ga. Code Ann. § 13-6-11. [Doc. 1].

In response to Plaintiff's complaint, Defendant filed a Motion to Dismiss and Memorandum of Law in Support. [Doc. 8, 8.1.] The Court granted Plaintiff's request for extension to respond to Defendant's Motion to Dismiss. [Doc. 11.] During this time and thereafter, the Parties conferred regarding the Joint Preliminary Report and Scheduling Order and, subsequently, began engaging in settlement discussions. [Doc. 16.] The Parties jointly sought to stay the case for forty-five days to concentrate on resolving the matter. *Id.* On September 10, 2024, the Court stayed the case for forty-five days up through and including October 24, 2024. *Id.* On October 18, 2024, the Parties filed a Joint Notice of Settlement [Doc. 18], and on October 23, 2024, filed a Joint Report to the Court Regarding Settlement [Doc. 19]. On October 25, 2024, the Court stayed the case and ordered Plaintiff to file her Unopposed Motion for Preliminary Approval on or before November 22, 2024. [Doc. 20.]

B. Negotiations and Settlement

The Settlement is the result of months of on-going and arm's-length negotiations and hard bargaining. The Parties exchanged informal discovery, including, but not limited to, information about the allegations in the Complaint, the class size, the types of data impacted in the Cybersecurity Incident, and information supporting Plaintiff's damages allegations. *See* **Exhibit 2**, Joint Declaration of MaryBeth V. Gibson and Mariya Weekes ("Joint Decl.") ¶ 7. Through the informal discovery process, Plaintiff was able to properly evaluate damages on a class-wide basis. *Id*. The Parties engaged in multiple, extensive settlement discussions *Id*., ¶ 8.

After exchanging a series of offers and demands and information about the data breach and class size, the Parties agreed to a settlement in principle. *Id.* This Settlement, if approved, would resolve all claims related to the Cybersecurity Incident on behalf of the Settlement Class. *Id.*, ¶ 10. The settlement in principle was then negotiated in detail resulting in the thorough Settlement Agreement. *Id.*, ¶ 9. Plaintiff and Class Counsel strongly believe that this Settlement is fair, reasonable, and adequate, and represents an excellent result for the Settlement Class. Plaintiff now brings this unopposed Motion to request that the Court grant preliminary approval and order that notice of the Settlement be sent to the Settlement Class.

C. Summary of Settlement Terms

The Settlement creates numerous benefits for the Settlement Class, which benefits are designed to address the repercussions to consumers following a data breach of the type that occurred here. The Settlement defines the Settlement Class as follows:

> All persons residing in the United States whose PII may have been compromised in the Cybersecurity Incident. Excluded from the Settlement Class are (a) all persons who are employees, directors, officers, and agents of Form I-9; (b) governmental entities; (c) the Judge assigned to the Action, that Judge's immediate family, and Court staff; and (d) those persons who opt-out of the Settlement in accordance with the terms of this Agreement.

S.A. ¶ 54; Joint Decl., ¶ 12. The Settlement Class is comprised of approximately one hundred and eighty-three thousand (183,000) individuals nationwide. Joint

Decl., ¶11. Under the Proposed Settlement, Form I-9 and/or its insurers agree to pay a total of $650,000.00 into a non-reversionary common fund, the "Settlement Fund," which will be used to make payments to Settlement Class Members, Identity Monitoring, the Fee Award and Expenses and Settlement Administration Costs. S.A. ¶¶ 57, 60, 95; Joint Decl. ¶ 17.

1. Settlement Benefits

The Settlement Fund will be used to pay $50 to each Settlement Class Member submitting a valid claim under the Settlement Agreement. S.A. ¶¶ 63-65. This $50 cash payment will be increased pro rata or decreased pro rata after the payment of any documented Out-of-Pocket Losses, and for attorneys' fees, expenses, the Settlement Administration Costs, and the costs associated with Identity Monitoring. S.A. ¶ 97. For purposes of calculating the amount of the increase or decrease, the Settlement Administrator must first pay for Identity Monitoring before distributing the funds in the Net Settlement Fund for Cash Payments. S.A. ¶ 35; Joint Decl. ¶ 13. The Settlement Fund will be used to pay for Identity Monitoring for Settlement Class Members who elect it. S.A. ¶ 66; Joint Decl., ¶13. Additionally, the Settlement Fund will be used to pay for any attorneys' fees, expenses and the Settlement Administration Costs, as approved by the Court. S.A. ¶¶ 60, 71.n, 95; Joint Decl. ¶¶ 17, 23.

In addition to the foregoing, and as part of the settlement negotiations, Defendant agreed to provide information and evidence of security improvements implemented to secure its various servers and databases, including those that were used to store certain data and were compromised in this Data Breach. Joint Decl., ¶ 16.

Finally, if a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims against the Released Parties without receiving a Settlement Class Member Benefit. S.A. ¶ 63; Joint Decl., ¶ 13.

2. Scope of the Release

In exchange for consideration above, Settlement Class Members who do not timely and validly exclude themselves from the Settlement will be deemed to have released Defendant and certain related entities from claims arising from or related to the Cybersecurity Incident at issue in this litigation. S.A. ¶ 98. The scope of the release is defined as follows:

> Upon the Effective Date, and in consideration of the Settlement relief and other consideration described herein, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished, and completely discharged the Released Parties from any and all Released Claims, including but not limited to any state law, statutory, or common law claims arising out of or relating to the Cybersecurity Incident that the Releasing Parties had or may have had. The Releasing Parties agree that, once this Agreement is executed, they will not, directly or indirectly, individually or in concert with another, maintain, cause to be maintained, or voluntarily assist in maintaining any further demand, action, claim, lawsuit, arbitration, or similar proceeding, in any capacity

> whatsoever, against any of the Released Parties based on any of the Released Claims.

Id.

The Released Claims also include the release of Unknown Claims. S.A. ¶ 49.

3. The Notice and Settlement Administration Plans

Under the Settlement Agreement, Class Counsel, with Defendant's approval, has selected Angeion Group, LLC ("Angeion") to be the Settlement Administrator, who will provide the Settlement Class with notice and administer the claims. The Settlement Administrator shall create a "Class List" of all available names and email addresses of potential Settlement Class Members as set forth in the Settlement Agreement. S.A. ¶¶ 17, 72; *see also* Declaration of Michael Lynch of Angeion Group, LLC ("Angeion Decl."), ¶¶ 11-13, 17. (Exhibit B to the Joint Declaration). Class Counsel's decision to select Angeion was based on the scope of settlement administration services Angeion proposed balanced against the cost for such services. Joint Decl., ¶¶ 34-35. Class Counsel understands that any settlement administration costs and expenses will be paid from the Settlement Fund and endeavored to select the settlement administrator for this case offering the best service for the best price. S.A. ¶ 35; Joint Decl., ¶ 34.

Angeion will provide notice to the Settlement Class by Email Notice or Postcard Notice, sending out Long Form Notices and paper Claim Forms on request from Settlement Class Members, reviewing Claim Forms submitted online or by mail, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim. S.A. ¶ 71.b. The Postcard Notice will clearly and concisely inform Settlement Class Members of the amount of the Settlement Fund, that they may do nothing and be bound by the Settlement, object to the Settlement, exclude themselves and not be bound by the Settlement, or make a claim by completing and submitting a claim form and be bound by the Settlement. S.A. ¶¶ 74-76. Angeion will publish the Long Notice and Claim Form on the Settlement Website, which shall contain information about the Settlement, including copies of the Postcard Notice, Settlement Agreement, and all court documents related to the Settlement. S.A. ¶ 32, 58. Angeion will also be responsible for accounting for all the claims made and exclusions requested, determining eligibility, and disbursing funds from the Settlement Fund directly to Settlement Class Members. S.A. ¶ 71.

4. Attorneys' Fees and Expenses

The Attorneys' Fees and Expenses will be paid from the Settlement Fund. Class Counsel will separately seek an award of attorneys' fees, costs and expenses of up to one-third of the Settlement Fund. S.A. ¶ 95; Joint Decl. ¶ 51. The Application for Attorneys' Fees and Expenses will be filed no later than forty-five (45) days after the Notice Deadline (which is fourteen (14) days before Objection and Opt-Out Deadlines). S.A. ¶ 95.

II. LEGAL STANDARD

Under Fed. R. Civ. P. 23(e), a class action may be settled only with court approval, which requires the court to find the settlement "fair, reasonable, and adequate." *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021). Fed. R. Civ. P. 23(e) provides three steps for the approval of a proposed class action settlement: (1) the Court must preliminarily approve the proposed settlement; (2) members of the class must be given notice of the proposed settlement; and (3) a fairness hearing must be held, after which the court must determine whether the proposed settlement is fair, reasonable, and adequate. *See generally* Fed. R. Civ. P. 23(e). Courts in this Circuit have held that first the Court must conduct a preliminary review to determine whether the proposed class settlement "is within the range of possible approval." *Fresco v. Auto Data Direct, Inc.*, No. 03–61063–CIV, 2007 WL 2330895, at *4 (S.D. Fla. May 11, 2007) (internal citations omitted); *see also* MANUAL FOR COMPLEX LITIGATION (Third) § 30.41 (1995). This involves both preliminary certification of the class and an initial assessment of the proposed settlement. *Id.* Plaintiff requests that the Court preliminarily approve the proposed Settlement, the first step in approving a class action settlement in accordance with Fed. R. Civ. P. 23(e).

During the preliminary approval proceedings, "the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval." ANNOTATED MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.662 (2012). There is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). Generally, a large amount of discretion is afforded to courts in approving class action settlements, and the Eleventh Circuit has held the "degree of deference to a decision approving a class action settlement makes sense . . . [s]ettlements resolve differences and bring parties together for a common resolution." *In re Equifax*, 999 F.3d at 1273 (internal citations omitted).

III. ARGUMENT

A. Certification of the Settlement Class is Appropriate.

The Supreme Court has recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). For the Court to certify a class, Plaintiff must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). The four requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23(a). Here, Plaintiff seeks certification of the Settlement Class under Rule 23(b)(3), which provides that certification is appropriate when common questions of law or fact for Plaintiff's claims predominate over any individual issues and a showing that the class action mechanism is the superior method for efficiently handling the case. Fed. R. Civ. P. 23(b)(3). As discussed below, these requirements are met here for settlement purposes.

1. Numerosity

The numerosity requirement under Rule 23(a)(1) is satisfied where the class is so numerous that joinder of all class members is impracticable. Fed. R. Civ. P. 23(a)(1). There is no specific number below which class action relief is automatically precluded. "[T]o demonstrate numerosity, plaintiffs need not prove that joinder is impossible; rather, plaintiffs 'need only show that it would be extremely difficult or inconvenient to join all members of the class.'" *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 557 (N.D. Ga. July 20, 2007), quoting *Anderson v. Garner*, 22 F. Supp. 2d 1379, 1384 (N.D. Ga. 1997). Here, the joinder of one hundred and fifty-five thousand Settlement Class Members would certainly be impracticable, and thus, the numerosity element is satisfied.

2. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The Supreme Court has stated that Rule 23(a)(2)'s commonality requirement is satisfied where the plaintiff asserts claims that "depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution—which means 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." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

The claims turn on whether Form I-9's security environment was adequate to protect Settlement Class Members' PII. Resolution of that inquiry revolves around evidence that does not vary from Settlement Class Member to Settlement Class Member, and for purposes of settlement can be fairly resolved for all Settlement Class Members at once. Courts in this District have previously addressed this requirement in the context of cybersecurity incident class actions and found it satisfied. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *11 (N.D. Ga. Mar. 17, 2020), citing *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) (finding that multiple common issues center on the defendant's conduct, satisfying the commonality requirement).

3. Typicality

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative party must be typical of the claims or defenses of the class. In the *Equifax* MDL, Judge Thrash found that the typicality requirement had been met as "[t]he claims are also based on the same overarching legal theory that [Defendant] failed in its common-law duty to protect their personal information." *In re Equifax*, 2020 WL 256132, at *12.

Here, the claims all involve Form I-9's conduct toward the Settlement Class Members, and Plaintiff's and the Class's claims are based on the same legal theories. Thus, for purposes of settlement, Plaintiff's claims are typical of those of the claims of the Settlement Class, and for purposes of settlement she is an appropriate Settlement Class Representative.

4. Adequacy of Representation

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). For this analysis, courts consider: "(1) whether [the class representatives] have interests antagonistic to the interests of other class members; and (2) whether the proposed class counsel has the necessary qualifications and experience to lead the litigation." *Columbus Drywall*, 258 F.R.D. at 555. Rule 23(a)(4) "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem*, 521 U.S. at 594.

For purposes of settlement, Plaintiff has no conflict with the Settlement Class and has participated actively in the case. Joint Decl., ¶ 50. Moreover, Class Counsel have significant experience in handling data privacy class actions like this one. *Id.*, at ¶¶ 26-33.

5. Certification under Rule 23(b)(3) is appropriate.

Plaintiff seeks to certify a Class under Rule 23(b)(3), which has two components: predominance and superiority. Rule 23(b)(3) requires that "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." *In re Equifax*, 999 F.3d at 1275. When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Pro. 23(b)(3)(D), for the proposal is that there be no trial.").

a. Common Questions of Law and Fact Predominate.

For purpose of settlement, the common factual and legal questions all cut to the issues at the heart of this litigation. *See Klay v. Humana, Inc.*, 382 F.2d 1241, 1264 (2004) ("When there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position, the predominance test will be met."). Indeed, the answers to these questions are not tangential or theoretical such that the litigation will not be advanced by certification. Rather, they go right to the center of the controversy, and the answers will be the same for each Settlement Class Member. As such, because the class-wide determination of this issue will be the same for everyone and will determine whether any class member has a right of recovery, the predominance requirement is readily satisfied for purposes of this settlement.

b. A Class is the Superior Method of Adjudicating this Case.

The second prong of Rule 23(b)(3)—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy—is also readily satisfied for the purpose of this settlement. *See* Fed. R. Civ. P. 23(b)(3). A superiority analysis pursuant to rule 23(b)(3) involves an examination of "the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). The focus is on the efficiency of the class method. *In re Equifax*, 2020 WL 256132 at *14. The Agreement provides Settlement Class Members with certain relief and contains well-defined administrative procedures to ensure due process. This includes the right of any Settlement Class Member to object to it or to request exclusion. Moreover, there is no indication that Settlement Class Members have an interest in individual litigation or an incentive to pursue their claims individually, given the amount of damages likely to be recovered, relative to the resources required to prosecute such an action. *See Dickens v. GC Servs. Ltd. P'ship*, 706 F. App'x 529, 538 (11th Cir. 2017) (describing "the ways in which the high likelihood of a low per-class-member recovery militates in favor of class adjudication").

Adjudicating individual actions here is impracticable: the amount in dispute for individual class members is too small, the technical issues involved are too complex, and the required expert testimony and document review too costly. In no case are the individual amounts at issue sufficient to allow anyone to file and prosecute an individual lawsuit—at least not with the aid of competent counsel. Instead, the individual prosecution of Settlement Class Members' claims would be prohibitively expensive, and, if filed, would needlessly delay resolution and lead to inconsistent rulings. Because this Action is being settled on a class-wide basis, such theoretical inefficiencies are resolved, and the Court need not consider further issues of manageability relating to trial. *See Amchem*, 521 U.S. at 620 ("[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there will be no trial").

Thus, the Court may certify the Settlement Class for settlement under Rule 23(b)(3).

B. The Proposed Settlement Satisfies the Standard for Preliminary Approval.

After it has been determined that certification of the Settlement Class is appropriate, the Court must then determine whether the Settlement Agreement is worthy of preliminary approval of providing notice to the class. Courts in this Circuit have held that preliminary approval is appropriate "where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason." *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. 654, 661 (S.D. Fla. 2011) (internal quotations omitted). Other courts have looked to the *Bennett* factors to determine whether preliminary approval is appropriate. The *Bennett* factors include,

> (1) the likelihood of success at trial; (2) the range of possible recoveries; (3) the point on or below the range of possible recoveries at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and degree of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved.

Columbus Drywall, 258 F.R.D. at 557, quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The Settlement warrants preliminary approval under each approach.

1. The proposed Settlement was reached after serious, informed, and arm's-length negotiations.

First, arm's-length negotiations conducted by competent counsel based on confirmatory discovery support the finding that the settlement is fair. *See Cole v.*

Stateserv Med. of Fla., LLC, No. 8:17-cv-829, 2018 WL 3860263, at *2 (M.D. Fla. June 19, 2018). In this case, the Settlement was the result of intensive, arm's-length negotiations between attorneys with vast experience handling data breach class action cases that included numerous conferences. Joint Decl., ¶¶6-8. There is no evidence that any collusion or illegality existed during settlement negotiations. *Id*., ¶ 8. Class Counsel support the Settlement as fair and reasonable, and all certify that it was reached at arm's-length. *Id*., ¶ 56.

2. The proposed Settlement falls within the range of reasonableness and has no obvious deficiencies, and thus, warrants issuance of notice and a hearing on final approval of settlement.

Although Plaintiff believes that the claims asserted in the Class Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the Settlement Class uncertain. The Settlement's fairness is underscored by consideration of the obstacles that the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. Despite the risks involved with further litigation, the Settlement Agreement provides outstanding benefits as Settlement Class Members can claim a cash payment of $50 per Class Member. Moreover, there are no grounds to doubt the fairness of the Settlement or other obvious deficiencies, such as unduly preferred treatment of Plaintiff or excessive attorney compensation. Plaintiff, like all other Settlement Class Members, will receive their settlement benefits consistent with the Settlement Agreement.

3. The *Bennett* factors support preliminary approval.

Although typically a consideration at the final approval stage, here, the *Bennett* factors still point towards preliminary approval. *First*, the benefits of settlement outweigh the risk of trial. Here, Settlement Class Members can elect a cash payment of $50 per Class Member or alternatively seek compensation for ordinary losses up to $1,500 per person or compensation for extraordinary losses up to $5,000 per person. S.A. ¶¶ 64-65. In addition to cash payment, Settlement Class Members may also make a claim for Identity Monitoring, which includes (i) real time monitoring of the credit file at a single bureau; (ii) dark web scanning with notification if evidence of the individual's Personal Information is found; (iii) identity fraud loss insurance (no deductible) up to $1 million; (iv) access to fraud specialists to help investigate instances of identity theft; and (v) identity theft restoration services. S.A. ¶ 66. As Judge Thrash noted when approving the *Equifax* settlement, "[Defendant] would likely renew its arguments under Georgia law that it has no legal duty to safeguard personal information, arguments that were strengthened following the Supreme Court of Georgia's decisions in *Georgia Dep't of Labor v. McConnell*, 305 Ga. 812, 828 S.E.2d 352 (Ga. 2019)." *In re Equifax*, 2020 WL 256132, at *7. Here, Defendant would likely assert the same argument, and although Plaintiff believes she has strong arguments to counter this potential position, the Settlement's benefits outweigh the risk of trial.

Second and *third*, the Settlement is within the range of possible recoveries and is fair, adequate, and reasonable. The second and third *Bennett* factors are often considered together. *See Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013). In determining whether a settlement is fair and reasonable, the court must also examine the range of possible damages that Plaintiff could recover at trial and combine this with an analysis of Plaintiff's likely success at trial to determine if the settlement falls within the range of fair recoveries. *Columbus Drywall*, 258 F.R.D. at 559. Here, Settlement Class Members have the ability to claim a cash payment of up to $50 pro rata per Class Member, or, in the alternative, cash compensation for ordinary or extraordinary losses. And all Class Members may receive Identity Monitoring.

Fourth, continued litigation would be lengthy and expensive. As discussed in the first prong of the *Bennett* factors, data breach litigation is often difficult and complex, particularly in Georgia. A settlement here is beneficial to all parties, including the Court. *Woodward v. NOR–AM Chem. Co.*, No. Civ-94-0870, 1996 WL 1063670, at *21 (S.D. Ala. May 23, 1996) ("Complex litigation . . . 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'"), quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d at 493.

Fifth, there has not been an opposition to the Settlement. This factor is better considered after notice has been provided to Settlement Class Members and they are given the opportunity to object. *See Columbus Drywall*, 258 F.R.D. at 561. Thus, at this point, this factor should not weigh heavily in the analysis.

Sixth, despite resolving at an early stage, Plaintiff has sufficient information to evaluate the merits and negotiate a fair, adequate and reasonable settlement. Courts have approved settlements at early stages of the litigation. *See, e.g., Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977) (affirming approval of settlement with little discovery); *see also Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (holding that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery is required to determine the fairness of the settlement). The case has been thoroughly investigated by Counsel experienced in data breach litigation. Moreover, Counsel's exchange of informal discovery has ensured a fair, reasonable, and adequate settlement worthy of preliminary approval. Joint Decl., ¶¶ 6-9.

Accordingly, the Court should find that the proposed Settlement is fair, reasonable, and adequately protects the interests of the proposed Class.

C. The Court Should Appoint the Proposed Class Representatives, Class Counsel, and Settlement Administrator.

Plaintiff seeks to be appointed as Class Representative for the Class. As discussed above, Plaintiff has cooperated with Class Counsel, assisted in the preparation of the Complaint, provided discovery, and was available for discussion regarding resolution of the case. Moreover, Plaintiff is committed to continuing to vigorously prosecute this case, including overseeing the Notice Plan, and defending the Settlement Agreement against any objectors, all the way through the Court's final approval. Because she is an adequate representative, the Court should appoint her as Class Representative. Second, for the reasons previously discussed with respect to adequacy of representation, the Court should designate MaryBeth V. Gibson of Gibson Consumer Law Group, LLC and Mariya Weekes of Milberg, Coleman Bryson Phillips Grossman PLLC as Class Counsel.

Finally, the Parties have agreed that Angeion Group shall act as Settlement Administrator. Angeion and its principals have a long history of successful settlement administrations in class actions. Angeion Decl., ¶¶ 2-5.

D. The Proposed Form and Manner of Notice to the Class is Reasonable and Should be Approved.

Under Rule 23(e), the Court must "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the "best notice practicable." 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). The best practicable notice is that which "is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Notice Plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Parties negotiated the form of the Notice with the aid of a professional notice provider, Angeion. S.A. ¶¶ 69-71. The Notice will be disseminated to all persons who fall within the definition of the Class. Angeion Decl., ¶ 10. Form I-9 shall provide the Settlement Administrator with the names and reasonably accessible email and mailing addresses for the Settlement Members. *Id.* ¶ 11; S.A. ¶¶ 17, 72. The Settlement Administrator shall provide email notice and postcard notice, which will ensure a maximum reach to all Class Members. Angeion Decl., ¶¶ 11-17. In addition, Angeion will administer the Settlement Website and toll-free number providing important and up-to-date information about the Settlement. Angeion Decl., ¶¶ 19-23.

Moreover, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." The proposed Notice Plan satisfies the requirements of Rule 23(h)(1), as it notifies Settlement Class Members that Class Counsel will apply to the Court for an attorneys' fees, costs and expenses of up to one third of the Settlement Fund. The Notice Plan complies with Fed. R. Civ. P. 23 and due process because, among other things, it informs Settlement Class Members of: (1) the nature of the action; (2) the essential terms of the Settlement, including the definition of the Class, the claims asserted, and the benefits offered; (3) the binding effect of a judgment if the Settlement Class Member does not request exclusion; (4) the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that Settlement Class Members may make an appearance through counsel; (5) information regarding the payment of proposed Class Counsel fees and expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Accordingly, the Notice Plan and Notice are designed to be the best practicable under the circumstances, apprise Settlement Class Members of the pendency of the action, and give them an opportunity to object or exclude themselves from the Settlement. *See Agnone v. Camden Cnty.*, No. 2:14-cv-00024-LGW-BKE, 2019 WL 1368634, at *9 (S.D. Ga. Mar. 26, 2019) (finding class notice mailed directly to settlement class members was the best practicable and satisfied concerns of due process). Thus, the Notice Plan should be approved. Fed. R. Civ. P. 23(c)(2)(A).

E. The Court Should Approve a Settlement Schedule

Plaintiff requests that the Court set a settlement schedule that would include, *inter alia*, deadlines for notice to Settlement Class Members; for Settlement Class Members to object to the Settlement, to opt out of the Settlement, and to make claims under the Settlement; and for the filing of papers in support of final approval and in support of attorneys' fees and expenses. A proposed schedule is included in the proposed Preliminary Approval Order. The Court will determine through the Final Approval Hearing whether the Settlement should be approved.

CONCLUSION

For these reasons, Plaintiff and Class Counsel respectfully ask the Court to enter an Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.

Respectfully submitted this 19th day of December, 2024.

/s/ MaryBeth V. Gibson
MaryBeth V. Gibson
Georgia Bar No. 725843
Gibson Consumer Law Group, LLC
4279 Roswell Road
Suite 208-108
Atlanta, GA 30342
Telephone: (678) 642-2503
marybeth@gibsonconsumerlawgroup.com

Mariya Weekes (*pro hac vice*)
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
201 Sevilla Avenue, 2nd Floor
Coral Gables, FL 33134
Tel: (786) 879-8200
Fax: (786) 879-7520
mweekes@milberg.com

Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE AND LOCAL RULE 7.1(D) CERTIFICATION

I hereby certify that on December 19, 2024, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing and effectuate service to all counsel of record in this matter, pursuant to Local Rule 5.1.

I further certify that this Motion has been prepared with one of the fonts and point selections approved by the Court in Local Rule 5.1(C).

/s/ MaryBeth V. Gibson
MaryBeth V. Gibson

Co-Lead Class Counsel