IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

EMILY BENNETT, on behalf of herself and all others similarly situated, Plaintiff, v. **HOLISTIX TREATMENT CENTERS, LLC d/b/a LAKE WORTH HOLISTIX DETOX d/b/a LEVEL UP TREATMENT LAKE WORTH,** Defendant.	No. 502025CA005943XXXAMB **PLAINTIFF'S MEMORANDUM SUPPORTING UNOPPOSED MOTION TO PRELIMINARILY APPROVE CLASS ACTION SETTLEMENT**

INTRODUCTION

Plaintiff moves the Court to approve her settlement with Defendant because it accomplishes what she set out to achieve with this data breach class action. In July 2024, criminals breached Defendant's systems and accessed the data belonging to Defendant's patients, including their names, Social Security numbers, mailing addresses, and protected health information. That breach impacted around 6,567 individuals, with Plaintiff alleging it violated the class's privacy and exposed them all to a risk for identity theft and fraud. As a result, Plaintiff sued Defendant in a class action seeking compensation for their privacy injuries, protections for their identities, and to demand improvements to Defendant's security. And with this settlement, Plaintiff accomplishes just that.

The parties' settlement is "fair, adequate, and reasonable" because it provides: (a) ordinary losses up to $375, (b) lost time up to $30.00 per hour for up to 3 hours, and (c) extraordinary losses up to $5,000.00. As an alternative to ordinary losses, lost time, and extraordinary losses, Class

Members may elect to receive a cash payment of $40. The settlement also requires Defendant to provide credit monitoring at no cost with $1,000,000.00 in identity theft insurance. Last, the settlement requires Defendant to implement to improve its data security, ensuring their information will be protected in the future. In other words, Plaintiff secured a settlement that achieves the remedies she requested in her complaint.

As a result, the Court should grant Plaintiff's motion for three reasons. First, it satisfies the Florida standard for preliminary approval because the Court can anticipate it will be "finally" approved after Plaintiff notifies the class about settlement. Second, the Court should certify the class for settlement purposes, as the class meets all standards for certification under Florida's class action rules. And third, the Court should appoint Plaintiff as class representative and her attorneys as class counsel, as they have shown they will "adequately" protect the class's interests through the settlement process.

CASE SUMMARY

A. The data breach

Defendant is a healthcare provider that operates addiction treatment and recovery centers throughout Florida. *See* Filing # 225310755, Class Action Complaint ("Compl.") ¶¶ 2, 14. To run its business, Defendant collects, maintains, and stores Personal Information pertaining to thousands of current and former patients. *Id.* ¶ 3. And Plaintiff alleges collecting that information carries a duty to protect it, and that Defendant failed to fulfill its duty, leading to a data breach. *Id.* 16-17, 109.

As a result, Plaintiff alleges that in July 2024, an unauthorized actor accessed certain files and data stored within Defendant's network that contained the Personal Information, including names, Social Security numbers, mailing addresses, and protected health information belong to

around 6,567 individuals. *Id.* ¶ 4, 21. And later that month, the cybercriminal group, RansomHub, took credit for the attack and claimed to have stolen 100 Gigabytes of data from Holistix's system, which it then threatened to publicly publish. *Id.* ¶¶ 37-38.

B. Procedural Posture and History of Negotiations

After receiving a breach notice in September 2024, Plaintiff sued Defendant in the Southern District of Florida asserting negligence, breach of implied contract, invasion of privacy, unjust enrichment, breach of fiduciary duty, and declaratory judgment aiming to represent a nationwide class of impacted individuals. Declaration of Alex Phillips ¶ 7. In response, Defendant moved to dismiss Plaintiff's claims, attacking her standing to sue under Article III and whether she had stated claims under Rule 12(b)(6). *Id.* ¶ 8. The parties briefed the motion, and it remained pending until the parties agreed to stay the matter to allow for settlement discussions, a request the District Court granted. *Id.* ¶ 9.

But before agreeing to negotiate, Plaintiff requested discovery on the breach, its nature, what information it impacted, who it affected, and how many class members it affected—in other words, all the information needed to facilitate settlement. *Id*. ¶ 10. Defendant agreed to supply that discovery and the parties thus mediated in May 2025 with Christopher Griffin, Esq., a mediator experienced in resolving class actions. *Id.* ¶ 11. After arm's-length negotiations exchanging terms through Mr. Griffin, the Parties reached an agreement on the settlement's terms and executed a Term Sheet outlining them. *Id.*

During that process, the parties agreed the venue for this action was this Court rather than the District Court, as the Class Action Fairness Act's "home state" exception may have prevented the parties from maintain jurisdiction in federal court. *Id.* ¶ 12. For that reason, Plaintiff dismissed

her Southern District of Florida action and filed the present class action complaint in this Court in June 2025. *Id.*

Over the following months, the Parties continued negotiating, drafting, and finalizing the Settlement Agreement, Notice forms, and came to an agreement on a claims process and administrator. *Id.* ¶ 13. The Settlement Agreement and its exhibits were finalized and executed in September 2025. *Id.* And according to its terms, the Parties agreed to settle the Action without Defendant admitting liability or wrongdoing, resolving all Released Claims to avoid the costs, expenses, and burdens associated with litigation. *Id.* ¶ 14. As elaborated below, Plaintiff's counsel believes the Settlement Agreement secures relief that is "fair, adequate, and reasonable" under the circumstances, leading them to move the Court to approve it. *Id.* ¶ 15.

SUMMARY OF SETTLEMENT

A. Settlement Class

The Settlement Class is defined as: "all individuals residing in the United States whose Private Information was compromised in the Data Incident discovered by Level Up, in July 2024." Settlement Agreement ("Agr.") ¶ 34. The Settlement Class excludes: (i) Level Up, its officers and directors; (ii) all Settlement Class Members who opt out; (iii) any judges assigned to this case and their staff and family; and (iv) any other person found to be guilty for causing the data breach, or who pleads *nolo contendere* to charges arising from the breach. *Id.* ¶ 59.

B. Settlement benefits

The Settlement negotiated for the Settlement Class provides four benefits. *Id.* § II. First, Defendant cash reimbursement or payments, including: (a) ordinary losses up to $375, (b) lost time up to $30.00 per hour for up to 3 hours, and (c) extraordinary losses up to $5,000.00. *Id.* ¶ 42. Alternative to Claims for Out-of-Pocket Losses, Extraordinary Losses or Losses due to Lost Time,

Class Members may receive a $40.00 cash payment. *Id.* ¶ 43. Second, Defendant will provide all Settlement Class Members who qualify with a credit monitoring service for two years with $1,000,000.00 identity theft protection insurance. *Id.* ¶ 41. Last, Defendant has affirmed it has implemented information security enhancements designed to protect the class's data. *Id.* ¶ 44.

In addition, Defendant has agreed to pay Plaintiff's attorney fees and service awards without reducing the benefits to the class. That includes a $2,500 service award to the Plaintiff, which was negotiated only after the parties negotiated the benefits for the class, thus avoiding the possibility for any conflict with the class's interests. Phillips Decl. ¶ 29. The Service will compensate Plaintiff for her efforts on the class's behalf, including maintaining contact with counsel, assisting in the investigation of the case, reviewing the complaints, remaining available for consultation throughout settlement negotiations, reviewing the Settlement Agreement, and answering counsel's questions. *Id*.

The Settlement Agreement calls for attorneys' fees up to $160,000.00, to be paid by Defendant without reducing the benefits to the class. Agr. ¶ 71. And like Plaintiff's service award, the parties did not negotiate fees or costs until after agreeing on the class's benefits. Phillips Decl. ¶ 30. The requested fees and costs are "reasonable" for the work provided to the class, and are meant to compensate Counsel for the risk incurred and work expended in achieving the Settlement for the Settlement Class. *Id.* Class Counsel will submit an Application for Attorneys' Fees, Costs, and Service Awards together with their Motion for Final Approval, and before to Settlement Class Members' deadline to exclude themselves from or object to the Settlement Agreement. *Id*. ¶ 31.

C. The Notice and Claims Process

After reviewing bids from providers, the Parties agreed to use Angeion Group as the Settlement Administrator. *Id*. ¶ 21. Angeion Group is experienced in implementing notice

programs that satisfy the requirements of due process and claims administration plans that are user-friendly, streamlined, and provide Settlement Class members, Class Counsel, and the Court with the necessary support. *Id.*

The settlement's Notice Plan requires Angeion Group to notify the class by Postcard Notice through U.S. mail or, if available, email. Agr. ¶ 53. Direct Notice is to be implemented within 45 days following the entry of the Preliminary Approval Order. *Id.* If any Postcard Notices are returned by the Postal Service as undeliverable, the Settlement Administrator shall use reasonable efforts to identify an updated mailing address and resend the postcard notice if an updated mailing address is identified. *Id.*

In addition, the Settlement Administrator will establish a dedicated Settlement Website no later than the day before Notice is first initiated and will maintain and update the website until at least sixty (60) days after all Settlement Payments have been distributed. *Id.* ¶ 54. The Settlement Website will hold relevant documents, including the Long Form Notice, the Claim Form, this Agreement, Plaintiff's motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiff's motion for an award of attorneys' fees, costs and expenses, and/or service awards, and the operative complaint in the Action. *Id.* Settlement Class Members will be able to submit Claim Forms through the Settlement Website. *Id*. ¶ 45. The Settlement Administrator will also make a toll-free telephone line available to provide Settlement Class Members with additional information about the Settlement and an email address and mailing address through which Class Members may contact the Settlement Administrator directly. *Id.* ¶ 54.

The claims process is structured to ensure that all Class Members have time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide if they

would like to opt-out or object. *Id.* ¶¶ 45, 48. The Claim Form Period runs from the start of the Notice Program to 60 days after the Norice Deadline, allowing Class Members to submit their Claim Form to the Settlement Administrator by mail or online. *Id*. ¶¶ 5, 45. Ex. 3. Claims will be subject to review for completeness and plausibility by the Settlement Administrator. *Id.* ¶ 46. If the Settlement Administrator determines that a timely claim is lacking, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and provide the Settlement Class member twenty-one (21) days to cure deficiencies. If the Settlement Administrator then determines that the Settlement Class Member has not cured the deficiencies, the Settlement Administrator will notify the Settlement Class Member within ten (10) days of that determination. *Id.*

Any Settlement Class member who wishes to opt-out of the Settlement will have until 60 days after the Notice Deadline to opt-out of the Settlement Class. *Id.* ¶ 21. Opt-out requests must be a signed writing that includes the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement clearly manifesting the individual's intent to be excluded from the Settlement Class *Id*. ¶ 56.

Last, Class Members will have until 60 days after the Notice Deadline to object to the Settlement by filing written objections with the Court. *Id.* ¶ 19. Objections need only include: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final

Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. *Id.* ¶ 57.

LEGAL STANDARD

Approving a class action settlement is a two-step process. First, the court must determine whether the proposed settlement deserves approval under Florida Rule of Civil Procedure 1.220. Second, after notice has been provided and settlement class members have had the chance to object, the court must determine whether final approval is warranted. *See Manual for Complex Litigation* § 21.635 (4th ed. 2013). On preliminary approval, the Court's focus is on the first step. *Id.*

In 1980, Florida Rule of Civil Procedure was amended to bring it in line with the federal class action rule. *Cheatwood v. Barry Univ., Inc*., No. CIO 01-0003986, 2001 WL 1769914, n.14 (Fla. 17th Jud. Cir. Dec. 26, 2001) (citing *Lance v. Wade*, 457 So. 2d 1008, 1009 n.2 (Fla. 1984)). As such, "federal cases are persuasive authority for interpretation of [R]ule 1.220." *Toledo v. Hillsborough Cnty. Hosp. Auth.*, 747 So. 2d 958, 960 n.1 (Fla. 2d DCA 1997). In preliminarily approving a settlement, courts must preliminarily certify the settlement class and determine whether the proposed settlement is "within the range of possible approval." *Id*. (quoting *Manual for Complex Litigation* § 30.41 (3d ed. 1995)).

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) ("Public policy strongly favors the pretrial settlement of class action lawsuits"). This is because class action settlements ensure class members a benefit, as opposed to risk of litigation

with the "mere possibility of recovery at some indefinite time in the future." *In re Domestic Air Transp*., 148 F.R.D. 297, 306 (N.D. Ga. 1993).

ARGUMENT

A. Certification of the Settlement Class Is Appropriate

Before approving a class action settlement, the court should must determine whether to certify the class. *See Manual for Complex Litigation* § 21.632 (4th ed. 2013); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). And it may do so if the numerosity, commonality, typicality, and adequacy requirements of Rule 1.220 are satisfied. Fla. R. Civ. P. 1.220(a). Additionally, when (as in this case), certification is also sought under Rule 1.220(b)(3), the Plaintiff must show that common questions predominate and that the class device is "superior" to litigating the issues on a case-by-case basis. Fla. R. Civ. P. 1.220(b)(3); *Amchem*, 521 U.S. at 615–16.

"A class may be certified '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. 1314 (S.D. Fla. 2005)). Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court's evaluation is somewhat different than in a case that has not yet settled. *Amchem*, 521 U.S. at 620. In some ways, the court's review of certification of a settlement-only class is lessened, *i.e.*, as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id.* "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 . . . for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620.

Further, class actions are regularly certified for settlement. In fact, similar data breach cases have been certified—on a *national* basis—including the record-breaking settlement in *In re Equifax. See In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT (N.D. Ga. July 25, 2019); *see, e.g.*, *In re Target Corp. Customer Data Sec. Breach Litig.*, 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig*., 851 F. Supp. 2d 1040 (S.D. Tex. 2012); *see also Morales v. Cano Health LLC*, No. 2020-013998-CA-01 (Fla. 11th Cir. Ct. 2021) (granting final approval of settlement and certifying settlement class); *Martinez v. NCH Healthcare Sys., Inc.*, No. 2020-CA-000996 (Fla. 20th Jud. Cir. 2021) (same). This case should be similarly certified.

Numerosity. Numerosity requires "the members of the class [be] so numerous that separate joinder of all members is impracticable." Fla. R. Civ. P. 1.220(a)(1). "While 'mere allegations of numerosity are insufficient,' Fed. R. Civ. P. 23(a)(1) imposes a 'generally low hurdle,' and 'a plaintiff need not show the precise number of members in the class.'" *Manno v. Healthcare Rev. Recovery Grp., LLC*, 289 F.R.D. 674, 684 (S.D. Fla. 2013) (citation omitted). Courts require only that plaintiffs provide "some evidence of the number of members in the purported class, or at least a reasonable estimate of that number." *Leszczynski v. Allianz Ins.*, 176 F.R.D. 659, 669 (S.D. Fla. 1997).

Here, the Parties have identified 6,567 people in the Class. Thus, the numerosity requirement is satisfied.

Commonality. The second prerequisite to class certification is commonality, which requires that there be a determination as to "whether the representative members' claims arise from the same practice or course of conduct that gave rise to the other claims, and whether the claims are based on the same legal theory." *Sosa v. Safeway Premium Fin. Co*., 73 So. 3d 91, 106 (Fla.

2011). The court must determine the plaintiffs' common contention 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, 2545 (2011) (citation omitted). The commonality requirement presents a low hurdle, as commonality does not require that all questions of law and fact raised be common. *Muzuco v. Re$ubmitIt, LLC*, 297 F.R.D. 504, 514 (S.D. Fla. 2013). "Not all questions of law or fact raised in the litigation need be common because even a single common question will satisfy the commonality requirement." *Disc. Sleep of Ocala, LLC v. City of Ocala*, 245 So. 3d 842, 850 (Fla. 5th DCA 2018) (internal citations omitted).

Here, the commonality requirement of Rule 1.220(a) is readily satisfied. In this case, the Settlement Class Members and Plaintiff are joined by the common questions of law and fact that arise from the same event—the Data Incident on Defendant's network, and the potential compromise of Settlement Class Members' Personal Information. *See* Complaint ¶ 105. They all center on Defendant's conduct and claims arising from it, satisfying the commonality requirement. *See, e.g.*, *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) ("All class members had their private information stored in Countrywide's databases at the time of the data breach"); *In re Heartland Payment Sys., Inc.*, 851 F. Supp. 2d at 1059 ("Answering the factual and legal questions about Heartland's conduct will assist in reaching classwide resolution.").

Typicality. The next prerequisite to certification, typicality, measures whether "the claim or defense of the representative party is typical of the claim or defense of each member of the class." Fla. R. Civ. P. 1.220(a)(3). "In analyzing typicality, the key inquiry is 'whether the class representative possesses the same legal interest and has endured the same legal injury as the class

members." *Disc. Sleep*, 245 So.3d at 850 (internal citations omitted). "The test for typicality, like the test for commonality, is not demanding and focuses on the general similarity between the named plaintiff[s]' legal and remedial theories and the theories of those whom they purport to represent." *Id.* at 850. "Mere factual differences between the class representative's claims and the claims of the class members will not defeat typicality." *Sosa*, 73 So.3d at 114.

Here, the typicality requirement is satisfied for the same reasons that Plaintiff's claims meet the commonality requirement. Specifically, Plaintiff's claims are typical of those of the other Settlement Class Members because they arise from the same Data Incident. They are also based on the same legal theory, *i.e*., that Defendant had a legal duty to protect Plaintiff's and Settlement Class Members' Personal Information. Because there is a "strong similarity of legal theories" between Representative Plaintiff's claims and the claims of the Settlement Class Members, the typicality requirement is satisfied. *Sosa*, 73 So.3d at 114.

Adequacy. Rule 1.220(a)(4) requires that the "representative party can fairly and adequately protect and represent the interest of each member of the class." Additionally, the "trial court's inquiry concerning whether the adequacy requirement is satisfied contains two prongs." *Sosa*, 73 So. 3d at 114. The Court must determine "whether the class representative's interests are antagonistic to the interests of the class members." *Id.* There is nothing to suggest this requirement has not been satisfied in this case. Plaintiff is a Member of the Settlement Class and does not possess any interests antagonistic to the Settlement Class. She provided her Personal Information to Defendant and alleges that her Personal Information was compromised as a result of the Data Incident, as the Personal Information of the Settlement Class was also allegedly compromised. Indeed, Plaintiff's claims coincide identically with the claims of the Settlement Class, and Plaintiff and the Settlement Class desire the same outcome of this litigation. Plaintiff has vigorously

prosecuted this cases for the benefit of all Settlement Class Members. Plaintiff has participated in the litigation, including maintaining contact with counsel, assisting in the investigation of the case, reviewing pleadings, remaining available for consultation throughout settlement negotiations, reviewing the Settlement Agreement, and answering counsel's many questions. Phillips Decl. ¶ 29.

The second prong of the adequacy requirement is that the "class representative's counsel must be qualified, experienced and generally able to conduct the litigation." *Amchem*, 521 U.S. at 625–26; *See also Sosa*, 73 So. 3d at 115. "Class counsel's prior experience in a similar case is competent, substantial evidence of adequacy." *Disc*. *Sleep*, 245 So. 3d at 853 (citing *Litvak v. Scylla Props., LLC*, 946 So. 2d 1165, 1171 n.8 (Fla. 1st DCA 2006)). Here, Class Counsel are experienced in class action litigation and have submitted a declaration establishing their skills and experience in handling class litigation around the country. Phillips Decl. ¶¶ 3-5, 33. Because Plaintiff and her counsel possess substantial experience and track records in similar litigation and have vigorously prosecuted the case at hand to get the best result for Plaintiff and Class Members, the adequacy requirement is satisfied.

Predominance. In addition to meeting the prerequisites of Rule 1.220(a), the proposed Settlement Class must also meet one of the three requirements of Rule 1.220(b). Here, Plaintiff also seeks certification under Rule 1.220(b)(3), which requires that: "the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy." Fla. R. Civ. P. 1.220(b)(3). "Concerning predominance, the Florida Supreme Court explained in *Sosa* that 'a class representative establishes

predominance if he or she demonstrates a reasonable methodology for generalized proof of class-wide impact. A class representative accomplishes this if he or she, by proving his or her own individual case, *necessarily* proves the cases of the other class members." *Disc. Sleep*, 245 So. 3d at 854. The inquiry becomes whether a defendant's liability is common enough to be resolved on a class basis, *see Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. at 2551–57, and whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem,* 521 U.S. at 623. Predominance does not require that all questions of law or fact be common, but rather, that a significant aspect of the case "can be resolved for all Settlement Class Members of the class in a single adjudication." *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. 654, 660 (S.D. Fla. 2011).

Common issues predominate here because the central liability question in this case—whether Defendant failed to safeguard Plaintiff's Personal Information, like that of every other Class Member—can be established through generalized evidence. *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.") Several case-dispositive questions could be resolved identically for all Members of the Settlement Class, such as whether Defendant had a duty to exercise reasonable care in safeguarding, securing, and protecting the Personal Information of Plaintiff and Settlement Class Members and whether Defendant breached that duty. The many common questions of fact and law that arise from Defendant's conduct predominate over any individualized issues. Other courts have recognized that these types of common issues arising from a data breach predominate over individualized issues. *See, e.g.*, *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig*., No. 3:08-MD-01998, 2009 WL 5184352 (W.D. Ky. Dec. 22, 2009) (finding predominance where proof would focus on data

breach defendant's conduct both before and during the theft of class members' personal information); *In re Heartland Payment Sys., Inc.*, 851 F. Supp. 2d at 1059 (finding predominance where "several common questions of law and fact ar[ose] from a central issue: Heartland's conduct before, during, and following the data breach, and the resulting injury to each class member from that conduct").

Because the claims are being certified for the purposes of settlement, there are no issues with manageability. *Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.").

Superiority. Finally, a class action is superior to other methods available to fairly, adequately, and efficiently resolve the claims of the Settlement Class. As courts have historically noted, "[t]he class action fills an essential role when the plaintiffs would not have the incentive or resources to prosecute relatively small claims in individual suits, leaving the defendant free from legal accountability." *In re Checking Acct. Overdraft Litig.*, 286 F.R.D. at 659. "The purpose of the superiority requirement is to ensure the 'class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness." *Disc. Sleep*, 245 So. 3d at 856. Factors that the Court may consider include: "(1) whether a class action would provide the class members with the only economically viable remedy; (2) whether there is a likelihood that the individual claims are large enough to justify the expense of separate litigation; and (3) whether a class action cause of action is manageable." *Id*. A class action settlement is superior to other means of resolution because a settlement affording Settlement Class members an opportunity to receive compensation benefits *all* Parties.

Here, resolution of numerous claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See* Fla. R. Civ. P. 1.220(b)(3). Indeed, absent class treatment in the instant case, each Settlement Class member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. 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 In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 700 (S.D. Fla. 2004) (class actions are "particularly appropriate where . . . it is necessary to permit the plaintiffs to pool claims which would be uneconomical to litigate individually").

Additionally, the proposed Settlement will give the Parties the benefit of finality, and because this case has now been settled pending Court approval, the Court need not be concerned with 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 . . . would present intractable management problems . . . "). Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating tens of thousands of individual data breach cases arising out of the *same* Data Incident.

Respectfully, the Court should certify the Settlement Class, as the superiority requirement is satisfied, along with all other Rule 1.220 requirements.

B. Plaintiff's Counsel Should Be Appointed as Class Counsel

As discussed above, and as fully explained in their declaration, Class Counsel have extensive experience prosecuting similar class actions and other complex litigation. *See* Phillips Decl. ¶¶ 3-5, 33. Further, Class Counsel have diligently investigated and prosecuted the claims in this matter, dedicated substantial resources to the investigation and litigation of those claims, and successfully negotiated the Settlement of this matter for the benefit of Plaintiff and the Settlement Class. *See generally* Phillips Decl. Accordingly, the Court should appoint Alex Phillips of Strauss Borrelli PLLC and Joshua R. Jacobson of Jacobson Phillips PLLC as Class Counsel.

C. The Settlement Is Fair, Reasonable, and Adequate

After determining that a proposed settlement class can be certified, courts consider whether the proposed settlement warrants preliminary approval. Although under Rule 1.220 there are no specific standards for such approval, Federal Rule of Civil Procedure Rule 23(e) provides "the Court will approve a class action settlement if it is 'fair, reasonable, and adequate.'" *Burrows*, 2013 WL 10167232, at *5 (quoting Fed. R. Civ. P. 23(e)(2)). While at the second, or final approval stage a court should consider factors such as (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation, at the preliminary, pre-notice approval stage, a court determines only whether the proposed settlement is "within the range of possible approval." *Id*. (quoting *Manual for Complex Litigation* § 30.41 (3d ed. 1995)); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *Grosso*, 983 So. 2d at 1165.

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." *Smith v. Wm. Wrigley Jr. Co*., No. 09-cv-60646, 2010 WL 2401149, at *2 (S.D. Fla. June 15, 2010). Moreover, settlement negotiations that involve arm's-length, informed bargaining with the aid of experienced counsel, as occurred here, support a preliminary finding of fairness. *See Manual for Complex Litigation* § 21.61 (4th ed. 2013).

Here, the Settlement is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues in these cases. *See* Phillips Decl. ¶¶ 3-5, 10-13. Counsel for both sides vigorously advocated for their clients, and Settlement was only reached after the Parties engaged in months of protracted arm's-length negotiations and mediation. *Id*. ¶¶ 10-13.

What's more, the risks and expenses that come with litigation justify settlement here. Settlement Class Members who make a claim are eligible for reimbursements of up to $375.00 in ordinary losses, up to three hours of lost time at $30.00 per hour (for a total of $90.00), and $5,000.00 in extraordinary losses. Agr. *Id.* ¶ 42. In the alternative, Settlement Class Members may make a claim for a one-time payment of $40.00. *Id.* ¶ 43. Settlement Class members may also claim two years of Credit Monitoring service and identity theft protection insurance, valued at approximately $100 per year, per claimant. *Id.* ¶ 41. Settlement Class Members will also reap the benefits of increased data security safeguards implemented by Defendant. *Id.* ¶ 44. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain.

While Plaintiff believes in the merits of her case, she also understands that Defendant will assert a number of potentially case-dispositive defenses. In fact, if the case continues, Plaintiff

would need to re-argue Defendant's motion to dismiss. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. Bank of N.Y. Mellon Corp*., No. 08 Civ. 6060(RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage); *see also Hartigan v. Macy's, Inc*., No. 1:20-cv-10551-PBS (D. Mass. Nov. 5, 2020), ECF No. 35 (dismissing data breach case for lack of standing because the plaintiff could not allege a present misuse of information and had only alleged an increased future risk of injury). Class certification is another hurdle that would have to be met, and one that has been denied in other data breach cases. *See, e.g.*, *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig*., 293 F.R.D. 21 (D. Me. 2013).

While Plaintiff is confident in the strength of her claims, she are also pragmatic in her awareness of the various defenses available to Defendant, as well as the risks inherent to continued litigation. Defendant has consistently denied the allegations raised by Plaintiff and made clear at the outset that it would vigorously defend the case. Through the Settlement, Plaintiff and Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

D. The Notice Satisfies Rule 1.220

Rule 1.220(d)(2) requires that notice be given to "each member of the class who can be identified and located through reasonable effort and shall be given to the other members of the class in the manner determined by the court to be the most practicable under the circumstances." Fla. R. Civ. P. 1.220(d)(2). This Rule further requires that the notice: "[s]hall inform each member of the class that (A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class, (B) the judgment,

whether favorable or not, will include all members who do not request exclusion, and (C) any member who does not request exclusion may make a separate appearance within the time specified in the notice." *Id*.

The Notice Program here is the best practicable under any circumstances. The Notice Program calls for Settlement Class members to be provided direct and individual Notice to the postal address they used while doing business with Defendant and by email address to the email address provided to Defendant or otherwise reasonably ascertainable by the Settlement Administrator. The Postcard Notice that will be mailed provides a brief summary of the case and Settlement, and directs each Settlement Class Member to additional resources such as the Settlement Website. On the Settlement Website, Settlement Class Members can review the Long Form Notice, relevant filings, make a Claim, and get answers to frequently answered questions such as the process for opting out or objecting and assistance in signing up for the Credit Monitoring services offered under the Settlement. The Notices are clear and straightforward. *See* Agr. Exs. 1-3. They define the Settlement Class; clearly describe the options available to Class Members and the deadlines for taking action; describe the essential terms of the Settlement; disclose the requested Service Award for the Settlement Class Representative as well as the amount that Class Counsel intends to seek in attorneys' fees and costs; explain procedures for making claims, objections, or requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Approval Hearing; and prominently display the address and phone number of Class Counsel. *Id.* Thus, the proposed Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of all information required by Rule 1.220(d)(2) of the Florida Rules of Civil Procedure.

Therefore, the Notice and Notice Program satisfy all applicable requirements of the law, including, but not limited to, Rule 1.220 of the Florida Rules of Civil Procedure and due process. The Court should therefore approve the Notice Program and the form and content of the Notices.

E. The Court Should Schedule a Final Approval Hearing

The last step in the preliminary approval process is to schedule a Final Approval Hearing, at which the Court will hear evidence and argument necessary to make its final evaluation of the Settlement. The Court will determine at or after the Final Approval Hearing whether the Settlement should be approved; whether to enter the Final Approval Order; and whether to approve Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards. Plaintiff and Class Counsel request that the Court schedule the Final Approval Hearing at a date convenient for the Court, and in compliance with the provisions of the Agreement.

CONCLUSION

Based on the foregoing, Plaintiff respectfully request that the Court enter a Preliminary Approval Order:

(1) certifying, for settlement purposes, the proposed Settlement Class, pursuant to Rule 1.220 of the Florida Rules of Civil Procedure;

(2) granting Preliminary Approval of the Settlement;

(3) approving the Notice Program set forth in the Agreement and the form and content of the Claim Form and Notices attached as Exhibits 1-3 thereto;

(4) approving and ordering the opt-out and objection procedures set forth in the Settlement;

(5) appointing Plaintiff as Class Representative;

(6) appointing Alex Phillips of Strauss Borrelli PLLC and Joshua R. Jacobson of Jacobson Phillips PLLC as Class Counsel;

(7) staying all proceedings in this litigation unrelated to the Settlement, pending Final Approval; and

(8) scheduling a Final Approval Hearing at a date convenient for the Court but no earlier than 120 days from entry of an order approving this motion. A Proposed Preliminary Approval Order is attached hereto as ***Exhibit 4***.

Dated: March 10, 2026

Respectfully submitted,

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**Pro hac vice forthcoming*

Counsel for Plaintiff and the Proposed Class