UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO.: 25-CV-61610-MD

WILLIAM GILLIS, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PHIL SMITH MANAGEMENT, INC. d/b/a PHIL SMITH AUTOMOTIVE GROUP,

Defendant.
_____/

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, APPOINTMENT OF CLASS COUNSEL AND APPROVAL OF CLASS NOTICE

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Pursuant to Rule 23(e), and subject to Court approval, Plaintiff William Gillis (hereinafter "Settlement Class Representative"), on behalf of himself and all others similarly situated, respectfully moves the Court for preliminary approval of the proposed settlement of this class action under Rule 23 of the Federal Rules of Civil Procedure.

Plaintiff requests that the Court grant the Motion and enter a Preliminary Approval Order: (a) preliminarily certifying the Settlement Class,[1] appointing Plaintiff as Class Representative for the Settlement Class, and appointing Nicholas A. Colella and Gerald D. Wells, III of Lynch Carpenter, LLC as Settlement Class Counsel; (b) preliminarily approving the proposed Settlement as appearing sufficiently fair, adequate, and reasonable to warrant the issuance of the Class Notice; (c) approving the proposed notice plan as meeting the requirements of Rule 23 and due process; and (d) granting any related relief as described herein. Defendant has reviewed this filing and does not oppose this motion.[2] All definitions herein are the same as in the Settlement Agreement (hereinafter "S.A."), attached as "Exhibit A" to the Declaration of Gerald D. Wells, III ("Wells Decl.") which is being filed contemporaneously with this Motion.

[1] Capitalized terms not defined herein are as defined in the Settlement Agreement.

[2] Defendant does not oppose the relief sought by this Motion for Preliminary Approval (the "Motion") and agrees that the Court should grant the Motion. By not opposing this relief, Defendant does not concede the factual basis for any claim and denies liability. The language in this Motion, including the description of proceedings, as well as legal and factual arguments, is Plaintiff's, and Defendant may disagree with certain of those characterizations and descriptions.

I. PURPOSE

Rule 23(e) identifies the procedure courts must follow to consider and ultimately approve the settlement of an action that will bind class members. First, the parties must provide the court with information about the terms of the settlement sufficient to enable the court to determine whether to give notice of the proposed settlement to the class. Fed. R. Civ. P. 23(e)(1)(A). Notice should only be ordered if the parties provide information showing that the court will likely be able to approve the settlement proposal and certify the class for settlement purposes. *Id.* at 23(e)(1)(B)(i) and (B)(ii). Approval is likely if, after a final hearing, the court can conclude the settlement as proposed is fair, reasonable and adequate. *Id.* at 23(e)(2). Such final approval is dependent upon Plaintiff showing: A) he and class counsel have adequately represented the class; B) the proposal was negotiated at arm's length; C) the relief to the class is adequate; and D) the proposed settlement treats class members equitably relative to each other. *Id.* at 23(e)(2)(A-D). Thus, for preliminary approval purposes, the court conducts a preliminary evaluation of the fairness and adequacy of the settlement to determine whether there is good reason to schedule a full fairness hearing and order notice of the settlement to the class. *See* Manual for Complex Litigation (Fourth) (hereinafter "Manual") § 21.632, at 320-21. This examination is typically "made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties." *Id.*

II. BACKGROUND

A. History of Litigation

On or about February 8, 2025, an unauthorized party gained access to the information technology systems of Phil Smith Management, Inc. d/b/a Phil Smith Automative Group (the "Defendant") (the "Security Incident"). *See* S.A. at 2. In or around July 2025, Defendant provided notice of the Security Incident to approximately 13,145 Settlement Class Members informing them that their information may have been compromised in the Security Incident. *Id*. Plaintiff William Gillis filed a class action complaint against Defendant on August 8, 2025.

On September 12, 2025, Plaintiff's and Defendant's counsel began to engage in confidential settlement communications subject to F.R.E. 408. The Parties eventually reached a settlement in principle on October 9, 2025, about which they notified the Court on October 16, 2025. ECF No. 16. Since that notice, the Parties have worked diligently on drafting, negotiating, and finalizing the Settlement Agreement and its exhibits. Wells Decl. at ¶ 10.

B. Negotiations and Settlement

The Settlement is the result of on-going, arm's-length negotiations and hard bargaining. Wells Decl. ¶ 11. Plaintiff propounded written informal discovery including, but not limited to, information about the allegations in the Complaint, the class size, the types of data impacted in the Security Incident, and information supporting Plaintiff's damages allegations. *Id*. at ¶ 12. Through this Rule 408 discovery, the Parties were able to properly assess the strengths and weaknesses of the case and evaluate damages on a

class-wide basis. *Id*. at ¶ 13. The Parties engaged in extensive settlement discussions. *Id*. ¶ 11. After those negotiations, the Parties ultimately agreed to the terms of the settlement. This Settlement, if approved, would resolve all claims related to the Security Incident on behalf of the Settlement Class. S.A. p. 1. Plaintiff and Class Counsel strongly believe that this Settlement is fair, reasonable, and adequate, and represents an excellent result for the Settlement Class. *Id*. at ¶ 9. Plaintiff now moves this Court for entry of a Preliminary Approval Order, consistent with Exhibit A to this Motion, granting preliminary approval of the Settlement and providing for notice of the Settlement to be distributed to the Settlement Class.

C. Summary of Settlement Terms

The Settlement creates numerous benefits for the Settlement Class, which benefits are designed to compensate them for the harm suffered as a result of the type of data breach of the type that occurred here. The Settlement Class is defined as follows:

> All Persons residing within the United States who were notified by Defendant that their Personal Information was potentially compromised in the Security Incident. The Settlement Class shall not include the judge to whom the Litigation is assigned and any member of the judge's staffs or immediate family members, and any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge. The Settlement Class shall also not include any Released Person.

S.A. ¶ 1.39. The Settlement Class consists of 13,145 individuals nationwide. *Id*.

1. Settlement Benefits for Settlement Class Members

The Settlement provides for a non-reversionary Settlement Fund of Three Hundred Seventy-Four Thousand Six Hundred Thirty-Two Dollars and Fifty Cents

($374,632.50), which shall be used to pay for (i) Approved Claims to Settlement Class Members as provided in Section IV.2; (ii) Costs of Settlement Administration including CAFA notices; (iii) any Service Award approved by the Court; and (iv) any Attorneys' Fees and Expenses Award approved by the Court. S.A. ¶ 1.41.

The Settlement provides for Settlement Class Members to make a claim for monetary recovery for undocumented and documented harms suffered as a result of the Security Incident. As part of the Settlement, Settlement Class Members may also opt to receive credit monitoring for a period of three years. Finally, Defendant has also agreed to implement or maintain certain data security enhancements.

a. Undocumented Losses or Harm

Settlement Class Members may elect to receive a one-time pro rata cash payment without the need to document losses incurred as a result of the Security Incident. S.A. ¶ 2.3(b).

b. Documented Out-of-Pocket Losses

Alternatively, Settlement Class Members may submit claims for up to $5,000.00 (five thousand dollars) per Settlement Class Member for reimbursement of (i) proven monetary loss(es) that were more likely than not caused by the Security Incident; (ii) out-of-pocket expenses incurred as a result of the Security Incident; (iii) fees for credit reports, credit monitoring, or other identity theft insurance products; and (iv) any other actual, documented and un-reimbursed monetary loss that was more likely than not caused by the Security Incident. S.A. ¶ 2.3(a).

c. Credit Monitoring

In addition to electing to receive any monetary compensation, Settlement Class Members may also elect to receive three years of IDX credit monitoring. IDX credit monitoring has an estimated value of $900.00 per year per Settlement Class Member. *S.A.* ¶ 2.3(c).

d. Information Security Enhancements

In response to the Security Incident Defendant has further enhanced its data security infrastructure S.A. ¶ 2.3(d), including, but not limited to (1) enabling multi-factor authentication; (2) strengthened firewalls and network defenses; (3) centralized the management of service providers and security service providers across all affiliated dealerships; and (4) updated data security policies to enhance cybersecurity awareness and improve defenses against future threats. *Id.*

2. Scope of the Releases

In exchange for the consideration in Section 1 *supra*, 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 Security Incident at issue in this litigation. S.A. ¶¶ 2.32-2.34; 12.1. The scope of the release is defined as follows:

> Any and all past, present, and future claims (including Unknown Claims), administrative claims, actual and potential causes of action, demands, damages, debts, liabilities of any nature, remedies, proceedings, actions, suits, allegations, decrees, judgments, duties, obligations, losses, rights, matters, issues, assertions of wrongdoing, any demand for injunctive relief or any other type of equitable or legal relief, and controversies of any kind, whether class, individual, or otherwise in nature, including, but not limited

> to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, whether known or unknown, suspected or unsuspected, asserted or unasserted, discovered or undiscovered, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, concealed, or hidden, and any other form of legal or equitable relief that was asserted at any time before the Effective Date, could have been asserted at any point before the Effective Date, or could be asserted at any point on or after the Effective Date by any Releasing Person[3] with respect to any Released Person[4] arising out of or relating to the Security Incident, including without limitation all such claims that arise out of or relate to any of the facts, acts, omissions, transactions, and occurrences that have been alleged or could have been alleged in the Litigation in relation to any Released Person. Released Claims shall not include the right of any Releasing Person or any Released Person to enforce the terms of this Settlement Agreement, and shall not include the claims of individuals who have timely and validly opted out of the Settlement Class pursuant to Section IV.4.1 of the Settlement Agreement.

S.A. ¶ 1.31.

3. The Notice and Settlement Administration Plans

Under the Settlement Agreement, and subject to Court approval, RG2 Claims Administration LLC ("RG2") was selected and agreed upon by the Parties to be the Settlement Administrator. RG2 has experience in class action settlement notice and administration, including with data breach class actions, and has been retained by the Parties to carry out the Notice Program, claims administration, and all other tasks relating to settlement administration.

[3] As that term is defined in S.A. ¶ 1.33.
[4] As that term is defined in S.A. ¶ 1.32.

Within twenty (20) days after the Court's entry of a Preliminary Approval Order, Defendant shall provide to the Settlement Administrator a list of the Class Member Information for each Settlement Class Member. S.A. ¶¶ 3.3(a).

By the Notice Commencement Date, and prior to the dissemination of the Short Notice, the Settlement Administrator shall establish a Settlement Website that will inform members of the Settlement Class of the terms of the Settlement Agreement, their rights, dates and deadlines and related information. S.A. ¶ 3.3(c). The Settlement Website will contain relevant documents, including the Long Form Notice; Claim Form (which shall include, *inter alia*, the general terms of the Settlement, instructions for how to object or opt-out of the Settlement, the process and instructions for making Settlement Claims, and the date, time, and place of the Final Approval Hearing); the Complaint; the Settlement Agreement; Plaintiff's Motion for Preliminary Approval of the Settlement; the Preliminary Approval Order; and, once filed, Settlement Class Counsel's motion for attorneys' fees and expenses and Motion for Final Approval. S.A. ¶ 3.1

By the Notice Commencement Date, the Settlement Administrator will begin providing the Short Notice to the Settlement Class Members via email. S.A. ¶ 3.3(d)(i). For those Settlement Class Members for whom no email address is available, the Short Notice will be provided via mail to the postal address in the Defendant's possession, after the Claims Administrator has updated any change of address on file with United States Postal Service. S.A. ¶ 3.3(d)(ii). The Short Notice will inform the Settlement Class Members, inter alia, of the Opt-Out Date and Objection Date, and will direct the

Settlement Class Members to the Settlement Website, where they may view the Long Notice. S.A. ¶ 1.44.

4. Payments to Settlement Class Members

Once the Settlement Fund is funded by Defendant, the Claims Administrator will apply a portion of those funds for the payment of (i) the Costs of Settlement Administration and CAFA notices; (ii) Taxes and Tax-Related Expenses; (iii) any approved Service Award; and (iv) any approved Attorneys' Fees and Expenses Award. The remaining funds will constitute the "Net Settlement Fund."

For Settlement Class Members who submit a valid and timely claim for Settlement Benefits, the Settlement Administrator will first apply the Net Settlement Fund to pay for all documented, non-reimbursed out-of-pocket losses suffered by Settlement Class Members. It will then be used to pay for any credit monitoring elected to be received by Settlement Class Members. The amount remaining in the Net Settlement Fund after all such payments are made will constitute the "Post Loss Payment Net Settlement Fund."

The Claims Administrator will then utilize the Post Loss Payment Net Settlement Fund to make all timely claims to Settlement Class Members who opt to receive the one-time *pro rata* payment.

5. Attorneys' Fees and Expenses

Within seventy-five (75) days after the granting of Preliminary Approval, Settlement Class Counsel will move the Court for an award of their reasonable attorney's fees in an amount not to exceed one third (1/3) of the Settlement Fund, and reimbursement of documented costs and expenses.

III. 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." 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); *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). 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).

IV. 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, the class representative must have standing to sue and the proposed class must be adequately defined and clearly ascertainable. *Prado–Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000). 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 question of law or fact for plaintiffs' 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, all requirements are met here for settlement purposes.

1. Standing

A plaintiff must demonstrate Article III standing to pursue each of the claims asserted in the complaint. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiff must establish that he: "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Further, "[t]o have standing to represent a class, a party must not only satisfy the individual standing prerequisites, but must also 'be part of the class and possess the same interest and suffer the same injury as the class members.'" *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1307 (11th Cir. 2008) (*quoting Prado–Steiman*, 221 F.3d at 1279). Article III standing need not be proved with evidentiary support at the settlement approval stage. *In re Equifax*, 999 F.3d 1247, 1261 n.8.

"Standing exists when a plaintiff's sensitive personal information is allegedly accessed and exfiltrated in a data breach." *In re Fortra File Transfer Software Data Security Breach Litig.*, No. 24-MD-03090-RAR, 2025 WL 457896, at *6 (S.D. Fla. Feb. 11, 2025)("*Fortra III*") *citing Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 796367, at *4 (S.D. Fla. Mar. 15, 2022).

Like the plaintiffs in *Fortra* and *Desue*, the Class Representative's Private Information was allegedly accessed and acquired by cybercriminals. Because Plaintiff and Settlement Class Members here had their Private Information impacted in the Security Incident, they have all suffered an injury in fact, that is fairly traceable to the

Security Incident, and which could be redressed through an appropriate damages award if this case was litigated through trial. *Fortra III*, 2025 WL 457896, at *7.

The causal connection between the Security Incident and the Settlement Class Members' Injuries exists for Article III standing. While the Settlement Class Members' injuries must be "fairly traceable" to Defendant's actions, that does not require Plaintiff to show proximate cause since harm flowing indirectly from the Security Incident are sufficient for standing. *In re Fortra File Transfer Software Data Security Breach Litig.*, No. 24-MD-03090-RAR, 2024 WL 4547212 at *6-7 (S.D. Fla. Sep. 18, 2024)("*Fortra I*"). Defendant's alleged failure to protect the Settlement Class Members' Private Information, which allegedly allowed unauthorized actors to gain access to Plaintiff's and Settlement Class Members' Private Information, preceded economic losses, lost time, and emotional distress, and Settlement Classes are at substantial risk of future identity theft incidents. *See Fortra III*, 2025 WL 457896. For standing purposes, it is enough that the Security Incident could give identity thieves information to aid those harms. *Id*.

2. Ascertainability

Ascertainability is an implied prerequisite of Rule 23. *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1302 (11th Cir. 2021). Before a district court can consider whether a potential class satisfies Rule 23(a), it must find the proposed class is "adequately defined and clearly ascertainable." *Id*. Class definition and ascertainability typically involve one inquiry because, without an adequate definition for a proposed class, a district court cannot ascertain who belongs in the class. *Id*. For purposes of class certification, "a proposed class is ascertainable if it is adequately defined such that its membership is

capable of determination." *Id*. at 1304. An adequately defined class thus should be defined by objective criteria with its members identifiable. *Id*. Here, the Settlement Class is adequately defined and clearly ascertainable because the Settlement Class definition contains sufficient objective criteria to allow an individual to determine whether he or she is a Settlement Class Member—i.e., whether they were sent notification that their Private Information was potentially compromised as a result of the Data Incident. S.A. ¶ 1.39.

3. 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). "The numerosity requirement is a 'generally low hurdle' and, as a baseline, 'more than forty is adequate[.]'" *In re Fortra File Transfer Software Data Sec. Breach Litig*., No. 24-CV-20611-RAR, 2024 WL 5362098, at *4 (S.D. Fla. Sept. 24, 2024)("*Fortra II*"), *citing Vega v. T-Mobile USA, Inc*., 564 F.3d 1256, 1267 (11th Cir. 2009).

Here, the joinder of more than 13,000 Settlement Class Members would certainly be impracticable, and, thus, the numerosity element is satisfied. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986) (numerosity generally satisfied where there are more than 40 class members).

4. 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 plaintiffs assert 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*, 564 U.S. 338, 350 (2011).

The claims turn on whether Defendant's security environment was adequate to protect Settlement Class Members' Personal Information. 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 circuit have previously addressed this requirement in the context of cybersecurity incident class actions and found it satisfied. *Fortra II,* 2024 WL 5362098, at *4, *citing In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.,* No. 21-MD-02994-RAR, 2024 WL 1554329, at *4 (S.D. Fla. Apr. 10, 2024) (finding Plaintiffs' claims turn on the adequacy of Defendants' data security in protecting Plaintiffs' and the Class's information and that those issues are common to the Settlement Class).

5. Typicality

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. In *In re Fortra*, the Court found that the typicality requirement had been met since the plaintiff and class members were "all affected by the same purportedly inadequate security that allegedly harmed Settlement Class members" and thus "[t]heir claims are based on the same legal theories and underlying event." *Fortra II* 2024 WL 5362098, at *5 (S.D. Fla. Sept. 24, 2024).

Here, the claims all involve Defendant's conduct toward the Settlement Class Members, and the Class Representative's claims and the Class's claims are based on the same legal theories making the Class Representative's claims typical of those of the claims of the Settlement Class.

6. 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 proposed class representative has interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake this litigation." *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275-RAR, 2022 WL 17477004, at *5 (S.D. Fla. Dec. 5, 2022). 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.

The Class Representative here has no conflicts with the Settlement Class. Moreover, Settlement Class Counsel have significant experience in handling data privacy class actions like this one. Wells Decl. at ¶¶ 23-25.

7. 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 to ensure "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Fortra II*, WL 5362098, at *6. When assessing predominance and superiority, the court may consider that the class will be certified for

settlement purposes only, making a showing of manageability at trial 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.3d 1241, 1264 (11th Cir. 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 are the center of the controversy, and the answers will be the same for each Settlement Class Member – whether Defendant breached various duties owed to Settlement Class Members which resulted in the Security Incident. 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, 1184 (11th Cir. 2010) (internal quotation omitted). The Settlement 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. Wells Decl. ¶ 17. 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.

Thus, the Court should 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.

In re Mednax, 2024 WL 1554329, at *3, quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). In the instant matter, the Settlement warrants preliminary approval under each approach.

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

In this case, the Settlement was the result of arm's-length negotiations between attorneys with vast experience handling data breach class action cases. Wells Decl. ¶ 11. There is no evidence that any collusion or illegality existed during settlement negotiations. *Id*. Settlement Class Counsel supports the Settlement as fair and reasonable, and certify that it was reached at arm's length. *Id*. ¶¶ 11, 15.

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 recover up to $5000.00 (five thousand dollars) per Class Member of unreimbursed out of pocket losses by providing documentation of those losses. Wells Decl. ¶ 16. Alternatively, and with little effort, Settlement Class Members can choose to receive a one-time *pro rata* payment without the need document any losses incurred as a result of the Security Incident. *Id*. Further, Settlement Class Members may also elect to receive three years of IDX credit monitoring, which has an estimated value of $900,00

(nine hundred dollars) per year. *Id*. Finally, all Settlement Class Members further benefit by the data security enhancements committed to by Defendant as part of this Settlement. There are no grounds to doubt the fairness of the Settlement or any other obvious deficiencies.

3. The *Bennett* factors support preliminary approval

Although typically a consideration at the final approval stage, application of the *Bennett* factors at this stage point towards preliminary approval. *First*, the benefits of settlement outweigh the risk of trial. Here, Settlement Class Members have the option to either submit a claim for up to $5000.00 (five thousand dollars) for documented out-of-pocket losses, or claim a one-time *pro rata* payment without being required to provide any documentation. Moreover, Settlement Class Members may also elect to receive the additional benefit of three years of credit monitoring. The Settlement Class will also receive the benefit of information security enhancements implemented by Defendant, another important piece negotiated by Settlement Class Counsel to protect Settlement Class Members into the future. Wells Decl. ¶ 17. Here, Defendant would likely assert that it has no legal duty to safeguard personal information and would, invariably, hotly contest class certification. Although Plaintiff believes he has strong arguments to counter any such potential arguments, the Settlement's benefits outweigh the inherent risk and uncertainty of trial. *In re Mednax*, 2024 WL 1554329 (noting that data breach class actions are risky cases).

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. *Owings v. Medusind, Inc.*, 2025 WL 3101144 (S.D.Fla.). Here, Settlement Class Members have the ability to claim a pro-rata cash payment for any harm or losses related to the Security Incident without any required documentation or may submit a claim for up to $5000.00 (five thousand dollars) for documented monetary losses fairly traceable to the Security Incident. S.A. ¶ 2.3. Settlement Class Members are also eligible to receive the additional benefit of three years of credit monitoring.

Fourth, continued litigation would be lengthy and expensive. As alluded to in the first prong of the *Bennett* factors, data breach litigation is often difficult and complex. *See In re Mednax* 2024 WL 1554329, at *7 (noting that data breach litigation is "particularly risky, expensive, and complex"), *quoting Fox v. Iowa Health Sys.*, No. 3:18-cv-00327, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021). Thus, a settlement here is beneficial to all parties, including the Court. *Exum v. Nat'l Tire & Battery*, No. 9:19-CV-80121, 2020 WL 5217060, at *6 (S.D. Fla. Sept. 1, 2020)("complex class-action litigation . . . 'can occupy a court's dockets for years on end, depleting the resources of the parties . . . while rendering meaningful relief increasingly elusive.'"), *quoting In re U.S. Oil & Gas Litig.*, 967 F.2d at 493.

Fifth, while there has not been any 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. Thus, at this stage, this factor is neutral.

Sixth, despite resolving at an early stage, Plaintiff had 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 Settlement Class Counsel experienced in data breach litigation. Here, Plaintiff sought and received Rule 408 discovery and thus ensured their counsel had sufficient information to negotiate a fair, reasonable, and adequate settlement worthy of preliminary approval. Wells Decl. ¶ 12.

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 Representative, Settlement Class Counsel, and Settlement Administrator

Plaintiff seeks to be appointed to serve as Class Representative for the Settlement Class. As discussed above, the Plaintiff has cooperated with Settlement Class Counsel, assisted in the preparation of the Complaint, responded to inquiries from Settlement Class Counsel, and provided information and documents to Settlement Class Counsel.

Plaintiff was available for discussion regarding resolution of the case. Moreover, Plaintiff is committed to continuing to vigorously prosecute this case, including overseeing the Notice Program, and defending the Settlement Agreement against any objectors, all the way through the Court's final approval. Because he is an adequate representative, the Court should appoint the Plaintiff as Class Representative for the Settlement Class. Additionally, for the reasons previously discussed with respect to adequacy of representation, the Court should designate Gerald D. Wells, III and Nicholas A. Colella of Lynch Carpenter, LLP Settlement Class Counsel.

Finally, the Parties have agreed that RG2 shall serve as Settlement Administrator. RG2 and its principals have a long history of successful settlement administrations in class actions. Moreover, Settlement Class Counsel has worked with RG2 in numerous prior class settlements, necessarily ensuring that the Settlement Class will benefit from this working relationship. Wells Decl. ¶ 19.

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 Program set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Parties negotiated the form of the Short Notice and Long Notice with the aid of a professional notice provider. Wells Decl. ¶ 20. The Notice will be disseminated to all persons who fall within the definition of the Class. Defendant shall provide the Settlement Administrator with available contact information for Settlement Class Members, including email addresses where available. As set forth in and consistent with the Notice Program, the Short Notice will be provided by email or a single postcard via U.S. mail (where email is not available) and will direct Settlement Class Members to the Settlement Website where they may view the Long Notice and other relevant case documents. The Short Notice will inform Settlement Class Members of the Opt-Out Date and Objection Date. In addition, RG2 will administer the Settlement Website and toll-free number providing important and up-to-date information about the Settlement. Substantially similar notice programs have been utilized in directly analogous data breach settlements. Wells Decl. ¶ 21.

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 Program satisfies the requirements of Rule 23(h)(1), as it notifies Settlement Class Members that Settlement Class Counsel will apply to the Court for attorneys' fees incurred in the litigation of not more than one-third (1/3) of the Settlement Fund and reimbursement of documented

costs and expenses. Additionally, the fee motion will be posted on the Settlement Website upon filing. Finally, the proposed Notice Program also notifies the Settlement Class Members of Settlement Class Counsel's intent to move for a Service Award for the Class Representative of up to $2,500.00. S.A. ¶ 7.2.

The Notice Program 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 Settlement Class Counsel fees and expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Accordingly, the Notice Program 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 Program 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 which is attached hereto as Exhibit A. The Court will determine through the Final Approval Hearing whether the Settlement should be approved.

V. CONCLUSION

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

Respectfully submitted this 24th day of November 2025.

/s/ Nicholas Colella
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been electronically filed with the Clerk of Court using CM/ECF on November 24, 2025 which will send notification of such filing to all parties of record.

/s/ Nicholas Collela
Nicholas Collela

SERVICE LIST

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