UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re Stanley Steemer International Data Breach Litigation	Case No. 2:23-cv-03932-SDM-EPD Judge Sarah D. Morrison Magistrate Judge Elizabeth Preston Deaver

MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiffs Marc Huber and Phillip Seabrook (collectively "Plaintiffs"), individually and on behalf of themselves and all others similarly situated, respectfully submit this memorandum of law in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION

Plaintiffs and the proposed Class have reached a nationwide class action settlement with Defendant, Stanley Steemer International, Inc. ("Defendant" or "Stanley Steemer") for a $700,000 nonreversionary common fund to resolve claims arising from the February 2023 Data Breach that impacted over 63,000 individuals (the "Data Breach"). See Consol. Am. Class Action Compl. ("CAC"), Doc. 27, ¶ 4. The Data Breach involved the potential access of names, Social Security numbers, and other personal data. *Id.* ¶¶ 24–28.

The Settlement provides significant relief and lies well within the range of reasonableness necessary for this Court to grant preliminary approval of the class action settlement under Rule 23(e). The Court should, therefore, preliminarily approve the settlement, direct that notice be sent to all Class Members in the reasonable manner outlined below, set deadlines for exclusions, objections, and briefing on Plaintiffs' Motion for Final Approval and Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representative Service Awards, and set a Final Approval Hearing date.

II. BACKGROUND

A. Procedural History

This is a nationwide class action brought by Plaintiffs on behalf of themselves and a nationwide class of individuals whose Personal Information was compromised in the Data Breach, including all those who received notice of the breach. CAC ¶ 233.

This case arises from the alleged compromise of personally identifiable information ("Personal Information") as a result of a February 2023 cyberattack experienced by Stanley Steemer.

CAC ¶¶ 4, 54. Plaintiffs and Class Members include Defendant's current and former employees and customers. *Id.* ¶¶ 8–10, 66. In response to the Data Breach, Defendant sent a Notice Letter ("Notice Letter") to each impacted individual providing a description of the type of Personal Information involved and explaining that the data was accessed from Stanely Steemer's systems. CAC, ¶¶ 8–12 & Exs. A, C thereto. Plaintiffs received a Notice Letter dated November 15, 2023, from Defendant informing them about the Data Breach and that their Personal Information may have been compromised. *Id.* ¶¶ 8–12.

In response, on November 21, 2023, prior plaintiff Julia Kaled and Plaintiff Phillip Seabrook filed *Kaled et al. v. Stanley Steemer International, Inc.*, Case No.: 2:23-cv-03932-SDM, Doc. No. 1. Related complaints were later filed by former plaintiff Joey Mejia and Plaintiff Marc Huber, and on February 5, 2024, the Court entered an order consolidating the related actions. Doc. No. 14. On March 18, the Court entered an order appointing Raina C. Borrelli of Strauss Borrelli PLLC,[1] and Andrew J. Shamis of Shamis & Gentile, P.A. Doc. No. 19, ¶ 1.

On May 15, 2024, Plaintiffs filed the CAC, asserting claims for Negligence (Count I), Breach of Implied Contract (Count II), Breach of Fiduciary Duty (Count III), Breach of Confidence (Count IV), Invasion of Privacy (Count V), Unjust Enrichment/Quasi Contract (Count VI), Violation of California's Unfair Competition Law (Count VII), Violation of the California Consumer Privacy Act (Count VIII), Violation of the California Consumer Records Act (Count IX), and Declaratory Judgment (Count X). Following the filing of the CAC, the parties agreed to attend private mediation with Hon. Morton Denow (Ret.) of JAMS on September 26, 2024. Borrelli Decl. ¶ 14. Before mediation, Defendant produced informal discovery, which allowed the parties to evaluate each side's respective position, including class size, number of impacted individuals with social security

[1] Formerly known as Turke & Strauss LLP. *See* Doc. No. 19; Doc. No. 36.

numbers, insurance coverage, and potential arbitration defenses. *Id.* ¶¶ 10–11. After a full-day mediation, the parties were ultimately able to resolve the case by agreeing to a common fund settlement of $700,000 on behalf of approximately 63,000 impacted individuals. *Id.* ¶ 17; Agreement, ¶ 42. The Settlement Agreement will resolve all claims related to the Data Breach for the Class.

Accordingly, Plaintiffs respectfully move this Court to preliminarily approve the Settlement Agreement and Notice Plan as detailed herein.

B. Summary of Settlement Terms

Under the proposed settlement, Defendant will pay $700,000 to establish the Settlement Fund to be distributed under the Settlement Agreement. The Settlement defines the Settlement Class as:

> **the persons who are identified on the Settlement Class List, including all individuals residing in the United States who were sent notification by Stanley Steemer that their Personal Information was potentially compromised in the Data Incident**.

Settlement Agreement, ¶ 39.[2] The Agreement likewise provides for subclasses defined as follows:

> **"Customer Subclass" means members of the Settlement Class who are/were customers of Stanley Steemer.**
>
> **"Employee Subclass" means members of the Settlement Class who are/were employees of Stanley Steemer.**

Id. ¶¶ 9, 13.

The Settlement Class specifically excludes: (1) the judges presiding over this Action, and their direct family members; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parent has a controlling interest, and

[2] In turn, the Agreement defines "Settlement Class List" as "the list generated by Stanley Steemer containing the full names and current or last known addresses for Settlement Class Members." *Id.* ¶ 40.

current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion before the Opt-Out Deadline.

The Class is comprised of approximately 63,000 individuals nationwide. Under the proposed Settlement, Defendant agrees to pay a total of $700,000 into the Settlement Fund, which will be used to make payments to Class Members and to pay the costs of Settlement Administration, attorneys' fees and expenses, and Service Awards to Plaintiffs. *See id.* ¶¶ 42, 47.

1. Settlement Benefits

The Settlement Fund will provide broad and significant relief to the Class and offer several categories of relief. First, the Settlement Fund will be used to reimburse Settlement Class Members who submit a valid claim for documented monetary losses and lost time that are fairly traceable to the Data Breach (Out-of-Pocket Losses). Settlement Agreement, ¶ 53.[3] This cash payment will be made available to each Settlement Class Member who sustained unreimbursed Out-of-Pocket Losses on a dollar-for-dollar basis up to a maximum of $10,000.00. *Id.*

Next, the Agreement provides for a Pro Rata Cash Payment to each Settlement Class Member who submits a valid claim for payment. *Id.* ¶¶ 56–57. The Agreement provides Employee Subclass Members will receive a $100.00 pro rata cash payment, while Customer Subclass Members will receive a $50.00 pro rata cash payment. *Id.* ¶¶ 29, 56–57, 65. The Agreement provides for a larger pro rata cash payment to the Employee Subclass because the Data Breach revealed more sensitive information as to the Employee Subclass (for example, social security numbers, health insurance information, medical information) than as to the Customer Subclass. Borrelli Decl., ¶¶ 20–21. The

[3] Such monetary losses may include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees for attorneys, accountants, and credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs incurred on or after the Data Breach, through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. *Id.*

pro rata amounts payable to each subclass member may be decreased or increased depending on the amount of the Net Settlement Fund after payment for approved Out-of-Pocket Losses claims are paid. *Id.* ¶ 65.

Any funds that remain after the distribution and reissuance of all payments from the Settlement Fund, including for settlement checks that are not cashed by the deadline to do so, distributed equally to Settlement Class Members who submitted Approved Claims for Pro Rata Cash Payments. *Id.* ¶ 66.

2. Scope of the Release

In exchange for consideration above, Class Members who do not timely and validly exclude themselves from the Settlement will be deemed to have released Defendant from claims arising from or related to the Data Breach at issue in this Litigation. *Id.* ¶¶ 87–88.

3. The Notice and Administration Plans

Under the Settlement Agreement, Class Counsel, with Defendant's approval, has selected Epiq Systems, Inc. ("Epiq") to be the Settlement Administrator, who will provide the Settlement Class with notice and administer the claims. Defendant, with the assistance of the Settlement Administrator, shall create a "Class List" of all names and mailing addresses of potential Class Members, to the extent such information was contained in the original list used to send to Class Members notice about the Data Breach. *See* Settlement Agreement, ¶ 40. Class Counsel contacted multiple respected settlement administrator before selecting Epiq as the appropriate settlement administrator for this case. Borrelli Decl. ¶ 22. Class Counsel's decision, with Defendant's consent, to select Epiq was based on the scope of settlement administration Epiq proposed balanced against the cost for such services. *Id.* Class Counsel understands that any settlement administration costs and expenses will be deducted from the Settlement Fund and endeavored to select a settlement administrator for this case offering the broad services for a price that is favorable to the Class. *See*

id. Notably, Epiq has agreed to cap its fees and expenses in this matter at $110,000.00 (so long as there is no unexpected change in the scope of work Epiq was hired to perform). *Id.*

The Settlement Administrator will first provide a written notice to each Class Member for whom valid mailing addresses are known. Settlement Agreement, ¶ 71. The Short Form Notice will be sent in a form substantially similar to that in Exhibit 1 to the Settlement Agreement, and will clearly and concisely inform Settlement Class Members the terms of the Settlement Agreement, including the amount of the Settlement Fund, that they may do nothing and be bound by the settlement, object, exclude themselves by completing the exclusion form and not be bound by the settlement, or make a claim by completing and returning a claim form and be bound by the settlement. *Id.* ¶¶ 73–75. The Short Form Notice will include a tear-off Claim Form that allows Settlement Class Members to simply and easily make a claim for a Pro Rata Cash Payment. *Id.* ¶ 73.

The Settlement Administrator will also publish a Long Form Notice and Claim Form on the Settlement Website established and administered by Epiq, which shall contain information about the settlement, including copies of the notice, the Settlement Agreement, and all court documents related to the settlement. *Id.* ¶¶ 44, 71. The Settlement Administrator will also be responsible for accounting for all of the claims made and exclusions requested, determining eligibility, and disbursing funds from the Settlement Escrow Account directly to Class Members. *Id.* ¶¶ 54, 55, 74, 77.

4. Attorneys' Fees, Costs, Expenses, and Service Award

Plaintiffs' counsel will also separately seek an award of attorneys' fees not to exceed 1/3 of the Settlement Fund (*i.e.*, $233,333.33), and for reimbursement of Class Counsel's reasonable costs and litigation expenses not to exceed $20,000, which shall be paid from the Settlement Fund. Settlement Agreement, ¶ 92. The motion for approval of these fees and costs will be filed at least thirty (30) days before Objection/Opt-Out Deadline. *Id.* The Settlement Agreement further provides for a payment of up to $4,000 each, subject to Court Approval, to Plaintiffs as Service Awards for

their services in representing the Class. *Id.* ¶ 90.

III. LEGAL STANDARD

Settlement of class actions is generally favored and encouraged. *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981). Fed. R. Civ. P. 23(e) provides three steps for approving 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. *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 372 (S.D. Ohio 2006); *see also Amos v. PPG Indus.*, No. 2:05-cv-70, 2015 WL 4881459, at *1 (S.D. Ohio Aug. 13, 2015). Plaintiffs request that the Court preliminarily approve the proposed Settlement.

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." David F. Herr, ANNOTATED MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.662 (2012). Instead, the Court should evaluate only whether the proposed settlement "appears to be the product of serious, informed, non-collusive negotiation, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Hyland v. Homeservs. of Am., Inc.*, No. 3:05-CV-612-R, 2009 WL 2525587, at *2 (W.D. Ky. Aug. 17, 2009) (citing *In re Nasdaq Market–Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y.1997)).[4] The Court should preliminarily determine that the settlement is sufficiently fair, reasonable, and adequate so that it can "direct the preparation of notice of

[4] *See also Bautista v. Twin Lakes Farms, Inc.*, No. 1:04-CV-483, 2007 WL 329162, at *4 (W.D. Mich. Jan. 31, 2007) ("The court's role in reviewing settlements must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and that the settlement taken as a whole is fair, reasonable, and adequate to all concerned.") (internal quotes omitted).

certification, proposed settlement, and date of the final fairness hearing" to all those affected by it. *In re Skechers Toning Shoe Prod. Liab. Litig.*, No. 3:11-MD-2308-TBR, 2012 WL 3312668, at *7 (W.D. Ky. Aug. 13, 2012).[5]

IV. ARGUMENT

A. The Proposed Settlement Satisfies the Standard for Preliminary Approval

1. The Proposed Settlement is the Product of Arm's-Length Negotiations Between Experienced Counsel

A showing of arm's-length negotiations conducted by competent counsel constitutes prima facie evidence of fair settlements. *See, e.g.*, *Roland v. Convergys Customer Mgmt. Grp. Inc.*, No. 1:15-CV-00325, 2017 WL 977589, at *1 (S.D. Ohio Mar. 10, 2017) (noting that settlement was "reached after good faith, arms' length negotiations, warranting a presumption in favor of approval"); *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001) (absence of any evidence suggesting collusion or illegality "lends toward a determination that the agreed proposed settlement was fair, adequate and reasonable").

In this case, the proposed Agreement was the result of intensive, arm's-length negotiations between attorneys who have extensive class action litigation experience and who have knowledge of the legal and factual issues of this case in particular. *See* Borrelli Decl. ¶¶ 14–17, 32–37. Settlement negotiations in this case took place over the course of several months and involved a mediation session with an experienced class action mediator. *Id.* ¶¶ 9–11, 14–23. No collusion or illegality existed during the settlement process. *See id.* ¶¶ 14–23. Interim Co-lead Counsel, without any opposition from Defendant, support the Settlement as fair and reasonable, and all certify that it was reached at arms' length. *See id.* ¶¶ 24–31.

[5] *See also In re Prandin Direct Purchaser Antitrust Litig.*, No. 2:10-CV-12141-AC-DAS, 2014 WL 8335997, at *3 (E.D. Mich. Oct. 2, 2014) ("The ultimate approval of a class action settlement requires a finding that the settlement is fair, adequate, and reasonable.").

2. The Proposed Settlement Falls within the Range of Reasonableness

Although Plaintiffs believe that the claims asserted in the Class Action are meritorious and the Class would ultimately prevail at trial, continued litigation poses significant risks that make any recovery for the Class uncertain. The fairness and adequacy of the Settlement is underscored by consideration of the obstacles that the Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. *See Amos*, 2015 WL 4881459, at *1 ("In general, most class actions are inherently complex, and settlement avoids the costs, delays, and multitude of other problems associated with them.") (internal citations and quotations omitted).[6] Furthermore, the Settlement is in line with other recent data breach settlements in terms of the amount recovered per Class Member. Borrelli Decl. ¶¶ 25, 29; *see also, e.g.*, *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG (RAOx), 2022 U.S. Dist. LEXIS 119454, at *7 (C.D. Cal. Feb. 22, 2022) (collecting cases with estimated settlement values of less than $1 per class member); *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 6902351, at *5 (N.D. Ga. Aug. 23, 2016) (finding an estimated settlement value of $0.52 per class member fair and reasonable given the substantial risks of data breach litigation); *In re Target Corp. Customer Data Sec. Breach Litig.*, No. MDL 14-2522 (PAM), 2017 WL 2178306, at *2 (D. Minn. May 17, 2017) (noting that an estimated settlement value of approximately $0.21 per class member was fair and reasonable); *In re Mednax Servs.*, No. 21-MD-02994-RAR, 2024 U.S. Dist. LEXIS 65379, at *14–*15, *24 (S.D. Fla. Apr. 10, 2024) (finding estimated settlement value of approximately $2.21

[6] Courts have experienced the protracted litigation often required to simply get past the pleading stage in similar actions. *See, e.g.*, *Savidge v. Pharm-Save, Inc.*, No. 3:17-CV-00186-TBR, 2017 WL 5986972, at *13 (W.D. Ky. Dec. 1, 2017) (granting in part and denying in part motion to dismiss complaint in data breach action involving employee personal information); *Savidge v. Pharm-Save, Inc.*, No. 3:17-CV-186-CHB, 2020 WL 265206, at *7 (W.D. Ky. Jan. 17, 2020) (dismissing all additional claims brought by the plaintiffs in amended complaint); *Savidge v. Pharm-Save, Inc.*, No. 3:17-CV-00186-CHB, 2021 WL 3076786, at *1 (W.D. Ky. July 1, 2021) (granting leave to file second amended complaint over defendant's objection).

per class member was fair and reasonable). Despite the risks involved with further litigation, the Settlement Agreement provides outstanding benefits. Class Members have the ability to claim documented losses up to $10,000 or alternatively make a claim for a *pro rata* cash payment to compensate them for the impacts of the Data Breach. Settlement Agreement ¶¶ 53, 56.

3. The Proposed Settlement Has No Obvious Deficiencies

There are no grounds to doubt the fairness of the proposed settlement or other obvious deficiencies, such as unduly preferred treatment of Plaintiffs or excessive attorney compensation. *Thacker v. Chesapeake Appalachia, LLC*, 259 F.R.D. 262, 271 (E.D. Ky. 2009). Plaintiffs, like all other Class Members, will receive their settlement benefit in accordance with a claims process that will be presented to the Court for approval.

The matter of attorneys' fees and payment of expenses, as well as any Service Awards for Plaintiffs, will be determined by the Court. Proposed Class Counsel has agreed to limit their attorneys' fee request to one-third of the Common Fund ($233,333.33), which is well within the range of fees awarded within the Sixth Circuit. *See In re Cincinnati Gas & Elec. Co. Sec. Litig.*, 643 F. Supp. 148, 150 (S.D. Ohio 1986) (in the Sixth Circuit, attorneys' fees "typically … range from 20% - 50%"); *In re Automotive Parts Antitrust Litig.*, No. 12-md-02311, 2022 WL 4385345, at *2 (E.D. Mich. Sept. 22, 2022) (a fee request of 1/3 of the class action settlement fund "is within the range of fee awards made by courts in this Circuit"); *Walker v. Nautilus, Inc.*, No. 2:20-cv-3414-EAS (S.D. Ohio June 27, 2022) (awarding attorneys' fees of 1/3 of the $4.25 million common fund); *Bechtel v. Fitness Equipment Servs., LLC*, No. 1:19-cv-726-KLL (S.D. Ohio Sept. 30, 2022) (Doc. No. 73, PageID 1579) (awarding attorneys' fees of 1/3 of the $3.65 million common fund).

Courts in this Circuit have recently granted attorneys' fees of one-third of the common fund in similar data breach class action cases. *Migliaccio v. Parker Hannifin, Corp.*, No. 1:22-cv-835-DAP (N.D. Ohio Aug. 2, 2023; Doc. 42, ¶ 7) ($583,333.33 fee award from a $1,750,000 common

fund in a data breach class action settlement); *Tucker v. Marietta Area Health Care Inc.*, No. 1:11-cv-184-SDM (S.D. Ohio Dec. 8, 2023; Doc. 13, ¶ 7) ($583,333.33 fee award from a $1,750,000 common fund in a data breach class action settlement); *Phelps v. Toyotetsu N. Am.*, No. 6:22-cv-106 (E.D. Ky. Oct. 25, 2023; Doc. 47, PageID # 542) (granting attorneys' fees of one-third of the common fund in a data breach class action settlement). Plaintiffs further seek modest Service Awards of up to $4,000.00 each for their active involvement in this litigation. Settlement Agreement ¶ 90. Because Plaintiffs and Class Counsel will move for an award of costs, fees, expenses, and the Plaintiffs' Service Awards at least 30 days before the objection and opt out deadlines, the Court will have the ability to consider these requests and the Class's response to them, if any, when evaluating whether to grant final approval of class action settlement.

For the foregoing reasons, the Court should find that the proposed settlement is fair, reasonable, and adequately protects the interests of the proposed Class.

B. The Settlement Class Should be Certified

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. v. Windsor*, 521 U.S 591, 620 (1997). For the Court to certify a class, Plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). *See Pelzer v. Vassalle*, 655 F. App'x 352, 363 (6th Cir. 2016). Rule 23(a)'s four requirements are numerosity, commonality, typicality, and adequacy. Plaintiffs seek certification of the Class under Rule 23(b)(3), which provides that certification is appropriate where "the questions of law or fact common to class members predominate over any questions affecting only individual members [predominance], and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy [superiority]." Fed. R. Civ. P. 23(b)(3).

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. Impracticability of joinder is not determined according to a strict numerical test but upon the circumstances surrounding the case." *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 523 n.24 (6th Cir.1976); *see also In re Am. Med. Sys. Inc.*, 75 F.3d 1069, 1076 (6th Cir. 1996) ("the Sixth Circuit has previously held that a class of 35 was sufficient to meet the numerosity requirement"); *Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 105 F.R.D. 506, 508 (S.D. Ohio 1985) (certifying a 23-person class). The approximately 63,000 Settlement Class Members in this case satisfy the numerosity element.

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 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*, 131 S. Ct. 2541, 2556 (2011). Both the majority and dissenting opinions in that case agreed that "for purposes of Rule 23(a)(2) even a single common question will do." *Id.* (Internal quotation marks and citation omitted).

Plaintiffs' claims turn on whether Defendant's security environment was adequate to protect Class Members' Personal Information. Resolution of that inquiry revolves around evidence that is common classwide, and so can be fairly resolved—at least for purposes of settlement—for all Class Members at once.

3. 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. "The typicality requirement ensures that the representative's interests will be aligned with those of the represented group and that the named plaintiff will also advance the interests of the class members." *Chesher v. Neyer*, 215 F.R.D. 544, 549 (S.D. Ohio 2003). "A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Id.*; *Am. Med. Sys.*, 75 F.3d at 1082. Typicality seeks to ensure that there are no conflicts between the class representatives' claims and the claims of the represented class. In this case, the claims all involve Defendant's conduct toward the Settlement Class Members, and Plaintiffs' and the Class's claims are based on the same legal theories. Thus, Plaintiffs' claims are typical of those of the claims of the Class, and they are appropriate Class Representatives.

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). There are two criteria: (1) the "representative must have common interests with unnamed members of the class," and (2) "it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Am. Med. Sys.*, 75 F.3d at 1083 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 525). 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. Class Counsel have significant experience in class and complex litigation in state and federal courts throughout the country. *See* Borrelli Decl., ¶¶ 32–38.

Moreover, Plaintiffs have no conflicts with the Class and have participated actively in the case (Borrelli Decl. ¶¶ 13, 16), and the Agreement treats Settlement Class Members equitably

relative to each other. The "Supreme Court has counseled that subclasses may be necessary when categories of claims have different settlement values." *Callendar v. Coastal Int'l Sec., Inc.*, No. 5:10-CV-220, 2012 U.S. Dist. LEXIS 32692, at *12 (W.D. Ky. Mar. 12, 2012). Accordingly, courts routinely grant certification of class settlement agreements that provide differing levels of compensation to different subclasses. *See, e.g.*, *Robles v. Comtrak Logistics, Inc.*, No. 15-cv-2228, 2022 U.S. Dist. LEXIS 225283, at *28 (W.D. Tenn. Dec. 14, 2022) (certifying class settlement where subclasses received differing levels of compensation and finding the "treatment of members across both Subclasses is [] equitable and provides adequate relief" because the lower compensation "paid to the Avalos/Marquez Subclass is aligned with, and reasonable in light of, the greater difficulty members of that Subclass would have in recovering further sums from Defendant through continued litigation"); *Chabak v. Somnia Inc.*, No. 7:22-cv-9341-PMH, 2024 U.S. Dist. LEXIS 160359, at *3 (S.D.N.Y. Sept. 3, 2024) (granting preliminary approval of settlement, in data breach case, that provided greater benefits to classmembers who sustained out-of-pocket losses than to those that did not). The substantive differences in the settlement values of Settlement Class Members' claims—*i.e.*, that some Settlement Class Members sustained out-of-pocket losses and some didn't, and that the Employee Subclass Members had more sensitive (and valuable) data revealed in the Data Breach as compared to the Customer Subclass—necessitated the payment structure contemplated by the Settlement Agreement and is equitable. *See Robles*, 2022 U.S. Dist. LEXIS 225283, at *28; *Chabak*, 2024 U.S. Dist. LEXIS 160359, at *3.

5. Certification Under Rule 23(b)(3) is Appropriate

Class certification under Rule 23(b)(3) has two additional predicate elements: predominance and superiority. "The Rule 23(b)(3) predominance requirement parallels the Rule 23(a)(2) commonality requirement in 'that both require that common questions exist, but subdivision (b)(3) contains the more stringent requirement that common issues 'predominate' over individual issues.'"

In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig., No. 3:08-MD-01998, 2009 WL 5184352, at *6 (W.D. Ky. Dec. 22, 2009) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1084). When assessing these components, 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 (on 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. Proc. 23(b)(3)(D), for the proposal is that there be no trial").

The Sixth Circuit has explained that "named plaintiffs must show, and district courts must find, that questions of law or fact common to members of the class predominate over any questions that affect only individual members." *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 860 (6th Cir. 2013). "To satisfy the predominance requirement in Rule 23(b)(3), a plaintiff must establish that the issues in the class action that are subject to generalized proof . . . predominate over those issues that are subject only to individualized proof." *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 564 (6th Cir. 2007). Put another way, the Court must determine whether the questions common to the Class are "at the heart of the litigation." *Powers v. Hamilton Cnty. Pub. Defender Com'n*, 501 F.3d 592, 619 (6th Cir. 2007)).

Also, the court considers whether a class action is "superior to other methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Rule 23(b)(3) provides a non-exhaustive list of factors to be considered when making this determination. These factors include: (i) the class members' interests in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (iv) the likely difficulties in managing a class action. *Willis v. Big*

Lots, Inc., No. 2:12-CV-604, 2017 WL 1063479, at *2 (S.D. Ohio Mar. 17, 2017) (citing Fed. R. Civ. P. 23(b)(3)).

i. Common Questions of Fact and Law Predominate for the Settlement Class

As other courts in this Circuit have held in similar data breach contexts, the common factual and legal questions lie at "the heart of the litigation." *See Powers*, 501 F.3d at 619; *In re CorrectCare Data Breach Litig.*, 2024 U.S. Dist. LEXIS 58922, *15–*16 (E.D. Ky. Apr. 1, 2024) (holding common questions predominated, including "whether the defendant owed a duty to the class members to safeguard their personal information; whether the defendant breached that duty; whether the defendant entered into implied contracts with the plaintiffs; and whether the defendant breached those contracts"). The U.S. District Court for the Southern District of Ohio recently held predominance satisfied in granting final approval of a data breach class action settlement, reasoning:

> Predominance is satisfied here. There is one set of operative facts which would render Defendant potentially liable to each potential class member, as evident in the definition of the class. Each class member alleges that their PII was compromised in the same data breach incident. Consequently, the alleged injuries to Class Members are of the same nature. The Court therefore finds common questions predominate over individual issues.

Jackson v. Nationwide Ret. Sols., Inc., No. 2:22-cv-3499, 2024 U.S. Dist. LEXIS 38282, at *8 (S.D. Ohio Mar. 5, 2024); *accord In re Wright & Filippis, LLC Data Sec. Breach Litig.*, No. 2:22-cv-12908-SFC, 2024 U.S. Dist. LEXIS 108682, at *7 (E.D. Mich. June 20, 2024). The same analysis applies here. The answers to the common questions in this litigation—including whether Defendant owed Plaintiff and the Class tort or contract duties, and breached those duties stemming from a single Data Breach—are not tangential or theoretical such that the litigation will not be advanced by certification. Rather, the common issues lie at the center of the controversy, and the answers will be the same for each Class Member. As such, because the class-wide determination of this issue will be the same for everyone, the predominance requirement is readily satisfied. *See Powers*, 501 F.3d at

619; *In re CorrectCare*, 2024 U.S. Dist. LEXIS 58922, *15–*16; *Jackson*, 2024 U.S. Dist. LEXIS 38282, at *8.

ii. A Settlement Class is the Superior Method of Adjudicating this Controversy

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. *See* Fed. R. Civ. P. 23(b)(3). The Settlement Agreement provides members of the Class with substantial, expedient, and certain relief, and contains well-defined administrative procedures to ensure due process. This includes the right of any Class Member who is dissatisfied with the settlement to object to it or to request exclusion. Moreover, the cost of litigating each Class Member's case on an individual basis would be substantial for each Class Member; the most reasonable and economically feasible method of litigating and resolving these hundreds of claims is through the class device. *See Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 545 (6th Cir. 2012) ("Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device." (internal quotations omitted)); *In re CorrectCare*, 2024 U.S. Dist. LEXIS 58922, *15–*16 (finding superiority met in data breach class action where class members were unlikely to pursue individual lawsuits against the defendant "[g]iven the relatively low value of the individual claims").

Adjudicating individual actions here is impracticable and uneconomical. The amount in dispute for individual class members is too small, the technical issues are too complex, and the required expert testimony and document review would be far too costly. In no case is the individual amount at issue sufficient to allow an individual class member to file and prosecute an individual lawsuit—at least not with the aid of competent counsel. The individual prosecution of 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").

A. The Court Should Appoint the Proposed Class Representatives, Class Counsel, and Class Action Administrator

The above-named Plaintiffs also seek to be appointed as Class Representatives for the Class. As discussed, Plaintiffs have cooperated with counsel, assisted in the preparation of the Complaints, reviewed, and approved of the settlement demand, and approved the terms of the Settlement on behalf of the Class. Borrelli Decl. ¶ 13. Moreover, Plaintiffs are 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 they are adequate representatives, the Court should appoint them as class representatives.

Also, for the reasons previously discussed in Plaintiffs' January 22, 2024, Motion to Appoint Interim Lead Counsel (Doc. No. 13), as well as Interim Co-Lead Counsel's efforts in this case following that order, the Court should designate Raina C. Borrelli of Strauss Borrelli PLLC, and Andrew J. Shamis of Shamis & Gentile, P.A. ("Counsel") as Settlement Class Counsel. Firm bios for each attorney and their respective firms are attached to the Borrelli Declaration.

Finally, the parties have agreed that Epiq shall act as Settlement Administrator. Epiq and its principals have a long history of successful settlement administrations in class actions. Epiq Decl. ¶¶ 4–7. The Court should appoint Epiq as Settlement Administrator here.

B. The Proposed Notice Program 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). To satisfy these standards and "comport with the requirements of due process, notice must be 'reasonably calculated to reach interested parties.'" *In re Countrywide*, 2009 WL 5184352, at *12 (quoting *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008)).

The Notice Plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Settlement Notice will be disseminated to all persons who fall within the definition of the Settlement Class and whose names and addresses can be identified with reasonable effort from Defendant's records, and through databases tracking nationwide addresses and address changes. In addition, Epiq will administer the Settlement Website containing important and up-to-date information about the Settlement. Settlement Agreement ¶¶ 44, 77; Epiq Decl. ¶¶ 18–29.

In addition, 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." Here, the proposed Notice Plan satisfies the requirements of Rule 23(h)(1), as it notifies Class Members that Class Counsel will apply to the Court for attorneys' fees of no more than 1/3 of the common fund, plus reimbursement of litigation costs and expenses up to $20,000. The proposed Notice Plan complies with Rule 23 and due process because it informs 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 a 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 one may make an appearance through counsel; (5) information regarding the Class Representatives' request for Service Awards; (6) information regarding the payment of proposed Class Counsel fees; and (7) how to make inquiries about the Settlement. Fed. R. Civ. P. 23(c)(2)(B).

Thus, the Notice Plan and Notice "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *See Wal-Mart Stores, Inc. v. Visa USA Inc.*, 396 F.3d 96, 114 (2d Cir. 2005). The manner of notice, which includes individual notice by mail or email to all those who can be reasonably identified, represents the best notice practicable under the circumstances and satisfies due process and Rule 23. *Frost v. Household Realty Corp.*, 61 F. Supp. 3d 740, 745 (S.D. Ohio 2004). Thus, the Notice Plan should be approved. Fed. R. Civ. P. 23(c)(2)(A).

C. The Court Should Confirm the Parties' Proposed Schedule for Settlement Administration and the Final Fairness Hearing

Plaintiffs request that the Court set a schedule, leading up to a Fairness Hearing, that would include, *inter alia*, deadlines for notice to Class Members for Class Members to object to the settlement, to opt out of the settlement, and to make claims under the settlement; and deadlines 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. At the Fairness Hearing, the Court may hear all evidence and oral argument necessary to make its final evaluation of the settlement. See Fed. R. Civ. P. 23(e)(2).

V. CONCLUSION

Plaintiffs respectfully request that the Court grant Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. A proposed Order Granting Preliminary Approval

of Class Action Settlement is attached as Exhibit 4 to the Unopposed Motion for Preliminary Approval of Class Action Settlement.

Dated: December 19, 2024

Respectfully submitted,

By: */s/ Raina C. Borrelli*

Raina C. Borrelli (*pro hac vice*)
Cassandra Miller (*pro hac vice*)
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N Michigan Avenue, Suite 1610
Chicago IL, 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109
raina@straussborrelli.com
cmiller@straussborrelli.com

Andrew J. Shamis, Esq.
Ohio Bar No. 100846
Leanna A. Loginov, Esq. (*pro hac vice*)
NY Bar No. 5894753
SHAMIS GENTILE
14 NE 1st Ave., Suite 705
Miami, Florida 33132
Telephone: (305) 479-2299
ashamis@shamisgentile.com
lloginov@shamisgentile.com

Kevin Laukaitis (*pro hac vice*)
LAUKAITIS LAW LLC
954 Avenida Ponce De Leon
Suite 205, #10518
San Juan, PR 00907
Telephone: (215) 789-4462
klaukaitis@laukaitislaw.com

Christopher Weist
Ohio Bar No. Ohio 0077931
25 Town Center Blvd., Suite 104
Crestview, KY 41017
Tel: (513) 257-1895
Fax: (859) 495-0803
chris@cwiestlaw.com

Mason A. Barney
Tyler J. Bean
SIRI & GLIMSTAD LLP
745 Fifth Avenue, Suite 500
New York, New York 10151
Tel: (212) 532-1091
E: mbarney@sirillp.com
E: tbean@sirillp.com

Attorneys for Plaintiffs and Proposed Classes

CERTIFICATE OF SERVICE

I, Raina C. Borrelli, hereby certify that on December 19, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, below, via the ECF system.

DATED this 19th day of December, 2024.

STRAUSS BORRELLI PLLC

By: */s/ Raina C. Borrelli*

Raina C. Borrelli (*pro hac vice*)
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N Michigan Avenue, Suite 1610
Chicago IL, 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109
raina@straussborrelli.com