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 OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

INTRODUCTION

Representative Plaintiffs Marc Huber and Phillip Seabrook moved previously for preliminary approval of a settlement with Defendant Stanley Steemer International, Inc. ("Stanley Steemer" or "Defendant"), the terms and conditions of which are set forth in the Class Action Settlement Agreement (the "Agreement"), attached to the Memorandum of Law in Support of their Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement filed December 19, 2024. ECF No. 49 The Court granted preliminary approval of the Class Action Settlement on January 27, 2025. ECF No. 51

The Class Notice plan has now been completed, with double postcard notice having been sent to Settlement Class Members as instructed by the Court's Preliminary Approval Order. *See* Declaration of Cameron Azari of Epiq Class Action & Claims Solutions, Inc. re: Settlement Administration ("Epiq Decl.") ¶ 11. The claims deadline has passed, and only four Settlement Class Members have opted-out and zero objection(s) have been filed. *Id.* at ¶ 21.

The preliminarily approved Settlement provides an outstanding recovery for Class Members. Accordingly, Plaintiffs respectfully request that this Court enter an order, *inter alia*, as follows: (1) granting Final Approval to the Settlement; (2) certifying the proposed Settlement Class for settlement purposes; (3) granting Plaintiffs' pending Motion for Attorneys' Fees and Class Representative Service Awards filed on March 28, 2025 (the "Fee Motion") [ECF No. 52]; and (4) entering Final Judgement. A proposed order is attached hereto.

FACTUAL BACKGROUND

I. THE LITIGATION

The history of this litigation is fully set forth in Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement and Certification of Settlement Class and Memorandum in Support filed on December 19, 2024. ECF No. 49. For purposes of efficiency, Plaintiffs incorporate the Factual Background section contained in that Brief. The Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement on January 27, 2025. *See* ECF No. 51, Order Granting Preliminary Approval of Settlement ("Prelim. Approval Order"). The Court, *inter alia*, (1) preliminarily approved the Settlement as fair, reasonable, and adequate, (2) conditionally certified the Settlement Class, (3) appointed Class Counsel, (4) approved the Settlement Class Notice, and scheduled a Final Approval Hearing for May 27, 2025. *Id*.

II. THE SETTLEMENT

A. Overview

The Settlement secures various forms of relief for the Class Members. The Settlement provides[1]: (1) up to a total of $10,000 per claimant for documented out-of-pocket losses; and (2)

[1] See Agreement §§ IV.4.1 and IV.4.2 respectively.

a *pro rata* cash payment of up to $100 for Employee Subclass Members and up to $50 for Customer Subclass Members. To date, the Class Action Settlement Administrator has received 2,677 claims. Epiq Decl., ¶ 23.

Furthermore, as set forth in Plaintiffs' Fee Motion, Defendant has agreed to pay, subject to Court approval, up to $233,333.33 in attorneys' fees and up to $20,000 in litigation costs and expenses, as well as service awards of up to $4,000 for each Class Representative to be paid from the Settlement Fund.

B. The Settlement Class

The proposed Settlement Class is defined as the following:

> 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.

Prelim. Approval Order ¶ 1. The Class also includes an Employee Subclass defined as members of the Settlement Class who are/were employees of Stanley Steemer, and a Customer Subclass defined as members of the Settlement Class who are/were customers of Stanley Steemer. *Id*. In exchange for the consideration described above, the Settlement Class shall release Defendant and other Released Parties from any claims that, inter alia, were or could have been alleged in this action. Agreement at ¶ 87.

C. Release

The Release is narrowly tailored. As of the Effective Date of the Settlement, Plaintiffs and each Settlement Class Member who does not opt out agrees to release any claims "whether known or unknown (including Unknown Claims), existing or potential, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that the Releasing Parties had or have that have been or could have been asserted in the Action or that otherwise relate to

or arise from the Data Incident, the operative facts alleged in the Action, including the complaint and any amendment thereto, the alleged access, disclosure and/or acquisition of Settlement Class Members' Personal Information in the Data Incident, Stanley Steemer's provision of notice to Settlement Class Members following the Data Incident, Stanley Steemer's information security policies and practices as they relate to or arise from the Data Incident, or Stanley Steemer's maintenance or storage of Personal Information as they relate to or arise from the Data Incident." Agr. at ¶ 30.

D. The Notice Program

Following the Court's preliminary approval of the Settlement and appointment of Epiq as the Settlement Administrator (see Prelim. Approval Order ¶ 6). Epiq mailed 63,146 double postcard notices (the "Notices"). Epiq Decl. ¶ 13. Epiq made reason efforts to ensure up-to-date Settlement Class Member address information, including checking against the National Change of Address Database and address certification via the Coding Accuracy Support System. *Id.* ¶ 14. Postcard Notices returned as undeliverable were re-mailed to any new address available through USPS and to addresses obtained through skip trace searches. *Id.* ¶ 15. Additionally, on April 14, 2025, Reminder Notices were sent to 61,052 identified Settlement Class Members who had not yet filed a claim form or requested exclusion from the Settlement. *Id.* ¶ 24. As of April 28, 2025, a Postcard Notice was delivered to 62,619 of the 63,155 unique Settlement Class Members. *Id.* ¶ 17.[2] The Notices included, among other information, a description of the material terms of the Settlement, a date by which Settlement Class Members may exclude themselves from, or "opt-out" of, the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date on which the Final

[2] Epiq's declaration reflects a reach rate for the notice program exceeding 99%, which is more than adequate to meet the requirements of due process.

Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class Members may access the Settlement Agreement and other related documents and information. *See* Exhibit A.

E. Opt-Outs and Objections

The Notices informed Settlement Class Members of their right to opt-out or object. *Id*. Settlement Class Members may opt out of the Settlement Class at any time during the Opt-Out Period. Agreement ¶ 74. The Opt-Out Period ended on April 27, 2025, 60 days after the Notice Date. Prelim. Approval Order ¶ 21. The deadline for the Opt-Out Period was specified in each of the Notices. *See Id*., Exhibit A. The Notices also informed Settlement Class Members of their right to object to the Settlement Class Members of their right to object to the Settlement and/or to aspects of Class Counsel's application for attorneys' fees, costs, and expenses, and/or Service Award. *Id*. The deadline for Objections was April 27, 2025, 60 days after the Notice Date. Prelim. Approval Order ¶ 21. Following Notice to the Class, the Settlement Administrator received only four (4) requests for exclusion and zero (0) objections. Epiq Decl. ¶ 21.

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

On March 28, 2025, Class Counsel filed a Motion requesting approval of attorneys' fees, costs, and Class Representative service awards. *See* ECF No. 52 ("Fee Motion"). Class Counsel have moved for an approval of attorneys' fees of $233,333.33 and costs, expenses of $13,646.78, and Class Representative service awards totaling $8,000 ($4,000 per representative). Defendant does not oppose this Motion in any respect, and no Settlement Class Member has filed an Objection to the Settlement. Epiq Decl. ¶ 21.

III. FINAL CLASS CERTIFICATION IS APPROPRIATE

Certifying the Class in this case is appropriate under Federal Rule of Civil Procedure 23. "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 Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Each of the Fed. R. Civ. P. 23(a) and (b)(3) requirements are satisfied here for the Settlement Class, defined as:

> 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.

The prerequisite of numerosity is satisfied if "the class is so numerous that joinder of all 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 Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 105 F.R.D. 506, 508 (S.D. Ohio 1985) (certifying 23-person class and stating "there is no reason to encumber the judicial system with 23 consolidated lawsuits when one will do.").

Defendant's forensic investigations identified a class of approximately 63,000 individual Class Members impacted by the Data Breach. The magnitude of this Data Breach makes clear that joinder of all Class Members is infeasible, and thus, numerosity is satisfied. *See Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006) (explaining that "while there is no strict numerical test, substantial numbers usually satisfy the numerosity requirement").

Rule 23(a)(2) requires a plaintiff to show that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The claims must depend on a common contention of which "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); *see also Sprague v. GMC*, 133 F.3d 388, 397 (6th Cir. 1998) (to satisfy commonality there "need only be one issue common to the class"). Here, because all Class Members were exposed in the same Data Breach, in the same time period, by the same cyber-attacker, and on Defendant's servers with the same protections in place, common questions of law and fact are common to the class.

Plaintiffs' legal claims of injury are typical of the proposed Class Members and are common across all Class Members as well. It is necessary that in proving these claims, the same questions and facts will be implicated, and so the commonality requirement is naturally satisfied. *See In re Brinker Data Incident Litig.*, M.D. Fla. No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508, *8 (Apr. 14, 2021) (commonality met where there were "several questions that are common to the class and capable of class wide resolution, including whether Brinker had a duty to protect customer data, whether Brinker knew or should have known its data systems were susceptible, and whether Brinker failed to implement adequate data security measures to protect customers' data.").

Rule 23(a)(3) requires that the class representative's claim(s) be typical of the claims of the Settlement Class. Fed. R. Civ. P. 23(a)(3). Typicality is established where the plaintiff's claim "arises from the same event or practice or course of conduct [as class members]" and are "based on the same legal theory." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996). In other words, "as goes the claim of the named plaintiff"—favorably or unfavorably—"so go the claims of the class." *Sprague*, 133 F.3d at 399. Plaintiffs' claims are typical of all proposed Class Members and are essentially identical to their fellow Class Members' claims. Defendant Stanley Steemer owed the same duty to safeguard consumers' Private Information to each Class Member, including the named Plaintiffs. Stanley Steemer breached its duty to Plaintiffs and each Class Member through the same

course of unlawful conduct, *i.e.*, failing to adequately safeguard Plaintiffs' and Class Members' Private Information.

Rule 23(a)(4) requires that "the representative parties ... fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This involves two criteria: "1) the representative must have common interests with unnamed [class] members...and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 543 (6th Cir. 2012). The court should "review[] the adequacy of class representation to determine whether class counsel are qualified, experienced and generally able to conduct the litigation." *Id*.

Plaintiffs were subject to the same unlawful conduct as the rest of the Class. Plaintiffs' and Class Members' claims flow from the same underlying conduct – all suffered the compromise and theft of their PII or PHI due to Defendant's wholly inadequate data security practices. Furthermore, Plaintiffs, at all times, represented the Class's best interests and stayed informed about this Action at each step of the way. The record reflects that both Plaintiffs have fully cooperated with Class Counsel, provided the necessary information and documentation for the filing of this case, and have regularly communicated with counsel. Because the Class Representatives have interests that are aligned with the Class and not antagonistic to the Class, they are adequate.

Class Counsel are seasoned attorneys experienced in complex class action litigation and adequately represented the interests of all Class Members. Class Counsel negotiated the terms of the Settlement Agreement and believe the Settlement to be fair, reasonable, adequate, and in Plaintiffs' and the Class's best interests. Class Counsel have previously served as class counsel in dozens of successful Data Breach class action cases. Borrelli Preliminary Approval Declaration, at ¶¶ 32-38; Joint Attorneys Fees Declaration, at ¶¶ 4-12. Class Counsel have diligently identified, researched, and

prosecuted all potential claims in an efficient and timely manner resulting in this Settlement Agreement.

Rule 23 requires a finding that "questions of law or fact common to class members predominate over any questions affecting only individual members" and that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Predominance is established where "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole...predominate over those issues that are subject only to individualized proof." *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 564 (6th Cir. 2007). An absence of individual issues is not necessary. *See Young*, 693 F.3d at 544.

Here, the predominance requirement is met because the overwhelming majority of issues of law and fact are common to all class members. *See, e.g., In re Target Corp. Customer Data Sec. Breach Litig.*, 309 F.R.D. 482, 486-489 (D. Minn. 2015). Though there may be a few individualized facts applying to various members of the Class, that should not and does not bar class certification. In fact, like here where the only real individual issue relates to damages, courts have routinely held that "individualized calculations of damages do not defeat the predominance requirement." *Enea v. Bloomberg, L.P.*, S.D.N.Y. No. 12 CIV. 4656 GBD FM, 2014 WL 1044027, *7 (Mar. 17, 2014); *see also Casey v. Coventry Healthcare of Kansas, Inc.*, W.D. Mo. No. 08-0201-CV-W-DGK, 2010 WL 3636140, *5 (Sept. 10, 2010) ("Numerous courts have recognized that damages are inherently individualized and do not present a major obstacle to certification."); *In re Workers' Comp.*, 130 F.R.D. 99, 110 (D.Minn.1990) (noting that individualized damages issues "are rarely a barrier to certification"); *Beattie*, 511 F.3d at 564 ("'[c]ommon issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues.'") (citation omitted) (alteration in original); *Klay v. Humana, Inc.*, 382 F.3d 1241 (11th Cir.2004) (in a fraud-

based RICO action against HMOs alleging a nationwide conspiracy to underpay doctors, the fact that individualized determinations were necessary to determine the extent of damages allegedly suffered by each plaintiff was not sufficient to defeat class certification because common questions of law and fact predominated over individual issues); *Owner-Operator Indep. Drivers Assn., Inc. v. Allied Van Lines*, *Inc*., 231 F.R.D. 280, 285 (N.D.Ill.2005) ("Common issues may predominate when liability can be determined on a class wide basis, even when there are some individualized damages issues."); Alba Conte and Herbert Newberg, Newberg on Class Actions § 4.25 (4th ed.2002)) (same). Thus, the predominance requirement of Rule 23(B)(3) is met.

As to the superiority factor, "cases alleging a single course of wrongful conduct are particularly well-suited to class certification." *Young*, 693 F.3d at 545. To determine if class-wide adjudication is proper, courts consider: (A) the interest in individually controlling prosecution; (B) whether other litigation has commenced; (C) the desirability of concentrating litigation; and (D) manageability. *Beattie*, 511 F.3d at 564. Here, there are approximately 63,000 class members. One single class action case is not only a fair and efficient method by which to adjudicate this large number of claims, it is by far the *most* fair and *most* efficient method by which to handle these claims. Thousands of individual lawsuits brought on these facts would immensely burden the judiciary and disadvantage all parties involved. Class members would be poorly served by trying to recover for their individual claims because the small amount of damages corresponding to each individual claim would make prosecution economically impractical. And once the possible costs of expert opinions is anticipated, the economic barrier to individual suits becomes only exponentially higher. *See generally Chapman v. Tristar Prods.*, No. 1:16-CV-1114, 2017 U.S. Dist. LEXIS 61767, at *16 (N.D. Oh. Apr. 24, 2017) ("The most compelling rationale for finding superiority in a class action is the existence of a negative value suit, which is where the costs of enforcement in an individual action would exceed

the expected individual recovery") (cleaned up); *see also Mullins v. Premier Nutrition Corp*., N.D. Cal. No. 13-CV-01271-RS, 2016 WL 1535057, *8 (Apr. 15, 2016) ("Cases, such as this, 'where litigation costs dwarf potential recovery' are paradigmatic examples of those well-suited for class wide prosecution.") (quoting *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1023 (9th Cir.1998)). A class action presents the best, and only, realistic means through which Class Members may obtain relief for their harm.

Furthermore, in cases such as this, where there is a single unifying question across all Class Members' claims – i.e., did Stanley Steemer fail to implement adequate security protocols that resulted in the Data Breach – there is no compelling reason to host numerous individual trials. There is considerable support for the certification of classes based on common liability issues linked to privacy in data breach cases. *See Smith v. Triad of Alabama, LLC*, M.D. Ala. No. 1:14-CV-324-WKW, 2017 WL 1044692, *12 (Mar. 17, 2017) (certifying adversarial class and finding "[t]he extent to which [hospital] was obliged to protect patient records, and whether it breached that obligation, are the predominant issues in this case— answering these questions one way or another will effectively decide the parties' dispute."); *In re Target*, 309 F.R.D. at 488 (certifying adversarial class and holding "[h]aving found such common liability issues, the question whether damages issues also predominate is thus less significant. Damages can and often are left to determination after liability issues are resolved."); *see also In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F.Supp.2d 1040, 1059 (S.D.Tex.2012) (finding predominance as "this case presents several common questions of law and fact arising 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" and certifying settlement class); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, W.D. Ky. No. 3:08-MD-01998, 2009 WL 5184352, *7 (Dec. 22, 2009) (finding "[a]lthough there are

variations in the damages claims of each class member and their appropriate amounts of recovery, these issues are predominated by the main issue of fault" and certifying settlement class).

The remaining prongs also favor class treatment: no action was "already commenced" by any member of the class as the cases have been consolidated before this Court, it is desirable and efficient to concentrate class members' identical claims in this forum, and Plaintiffs are unaware of any difficulties in the management of this action.

Because common issues of law and fact predominate over individual issues, and the class action is the superior method of resolving data breach class actions, Rule 23(B)(3) and all other requirements for class certification have been satisfied, this Court should grant final class certification for settlement purposes.

IV. THE NOTICE PLAN WAS THE BEST PRACTICABLE NOTICE AND COMPORTED WITH DUE PROCESS.

Epiq Group followed the Preliminary Approval Order by executing the Notice Plan, handling the Class's claims and inquiries about the Settlement, submitting weekly settlement claims update, and reporting the number of objections and requests to opt out of the settlement's benefits. Declaration of Raina Borrelli and Andrew Shamis in Support of Final Approval of Class Action Settlement, at ¶¶ 7-10; Epiq Decl., at ¶¶ 5-24. Notably, Epiq reported that there were no objections to the Settlement and only four requests to opt out. Borrelli & Shamis Declaration, at ¶ 9; Epiq Declaration, at ¶ 21. This indicates that Settlement was well received by the Class and the Settlement is fair, reasonable, and adequate. Thus, and for the same reasons as set forth in the Motion for Preliminary Approval and this Court's Preliminary Approval Order, the Notice provided to the Settlement Class members constitutes the best notice practicable and comports with due process requirements.

V. THE TERMS OF THE SETTLEMENT ARE FAIR, REASONABLE AND ADEQUATE

There is a strong federal policy "favoring settlement of class actions." *UAW v. General Motors Corp.*, 497 F.3d 615, 633 (6th Cir. 2007). The Fed. R. Civ. P. 23(e) factors—adequate representation, arms' length negotiations, and the relief provided to the Class—all favor approval. *See generally Cook v. Gov't Emples. Ins. Co.*, No. 6:17-cv-891-ORL-40KRS, 2020 U.S. Dist. LEXIS 111956, at *16-17 (M.D. Fla. Jun. 22, 2020) (explaining that Rule 23 was amended to add 11 textual factors relevant to approval of class action settlements, which was intended to focus litigants and courts on the "core concerns" of Rule 23, but not to displace the relevant factors prescribed by appellate courts). The factors outlined in *UAW*, 497 F.3d at 631 that do not overlap with the Rule 23 factors—the opinions of Class Counsel and the public interest—also favor approval.

1. The Rule 23 Threshold Factors Favor Approval

Fed. R. Civ. P. 23(e)(2) contains two threshold or procedural requirements: adequate representation and arms-length negotiations. Both favor final approval of the proposed Settlement.

The adequate representation analysis under Rule 23(e) "is distinct from Rule 23(a)(4) and is meant to address whether the class representatives possessed sufficient information and knowledge of the claims, issues, and defenses prior to negotiating and settling the claims." *Cook*, 2020 U.S. Dist. LEXIS 111956, at *18. This overlaps with one of the *UAW* factors, i.e., "the amount of discovery engaged in by the parties[.]" 497 F.3d at 631. Both are meant to ensure that the Class Representatives had sufficient information and knowledge such that they were able to make an informed decision concerning the pros and cons of settlement versus continuing litigation. *See Moore v. Medical Fin. Servs.*, 2021 U.S. Dist. LEXIS 249719, at *8 (W.D. Tenn. Nov. 30, 2021) ("Parties must have engaged in enough discovery to evaluate the merits of the case and determine the appropriate settlement value.").

As described in the Motion for Preliminary Approval and Supporting Declaration, Plaintiffs and experienced class counsel support this settlement. Despite the early stage of litigation, Plaintiffs here were able to complete an independent investigation of the facts to reach a full understanding of the value of the case, as well as the attendant risks of continued litigation. It remains the strong opinion of proposed Settlement Class Counsel that the Settlement presents a favorable result for the Class. The Rule 23 adequate representation factor and the UAW "amount of discovery" factor both clearly favor preliminary approval. See generally Satterly v. Airstream, Inc., 2020 U.S. Dist. LEXIS 210868, at *16-17 (S.D. Oh. Sep. 25, 2020) (that plaintiffs had "exchanged written discovery and relevant information, engaged in further independent investigation, confirmed damages calculations with a third-party expert, and conducted additional legal research regarding the claims and defenses in the lawsuits" militated in favor of approving a class settlement).

Additionally, the settlement was reached only with the assistance of the Hon. Morton Denlow, an experienced and well-respected mediator. The negotiations were unquestionably conducted at arms' length. Thus, the Rule 23 "arms' length" and the *UAW* "lack of fraud or collusion" factor both weigh in favor of final approval. *See generally Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) ("The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties").

2. The Rule 23 Substantive Factors Favor Approval

Fed. R. Civ. P. 23(e)(2)(C)-(D) prescribe the factors relevant to determining whether a proposed Settlement is substantively adequate: the costs and risk of trial and appeal, the method of claim distribution, the terms of attorneys' fees, and whether class members are treated equitably vis-à-vis each other.

Plaintiffs believe the Agreement is beneficial to the Class for several reasons, as can be seen between a comparison of the likelihood of ultimate success and the relief secured through the settlement. *See In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 2016 U.S. Dist. LEXIS 130467, at *47-50 (N.D. Oh. Sep. 23, 2016) (analyzing the fairness of a proposed settlement by comparing the benefits provided by the settlement to the damages potentially available at trial in light of the odds of success); *see generally In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984) ("The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured."); *Cook*, 2020 U.S. Dist. LEXIS 111956, at *19-20 (explaining that "courts should estimate the potential recovery if ultimately successful versus the risks of losing outright, and determine whether the relief provided comports therewith").

The complexity, expense and duration of the litigation all weigh heavily in favor of final approval. While Plaintiffs strongly believe in the merits of their case, they also understand that Stanley Steemer will assert a number of potentially case-dispositive defenses. 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. The Bank of N.Y. Mellon Corp*., S.D.N.Y. No. 08 Civ. 6060, 2010 WL 2643307, *1 (June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). As one federal district court recently observed in finally approving a settlement with similar class relief:

> Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc*., No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases ... are particularly risky, expensive, and complex.").

Fox v. Iowa Health Sys., W.D. Wis. No. 3:18-CV-00327-JDP, 2021 WL 826741, *5 (Mar. 4, 2021).

To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide monetary judgment remains unforged, particularly in the area of damages. For now, cybersecurity incident cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. The damages methodologies, while theoretically sound in Plaintiffs' view, remain untested in a disputed class certification setting and unproven in front of a jury. And as in any cybersecurity incident case, establishing causation on a class-wide basis is rife with uncertainty. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig*., 293 F.R.D. 21 (D.Me.2013).

Class certification is another hurdle that would have to be met—and one that been denied in other data breach cases. *See, e.g., In re Hannaford,* 293 F.R.D. 21. Further, if Plaintiffs are successful in obtaining certification of a litigation class, the certification would not be set in stone. *Long v. HSBC USA Inc*., S.D.N.Y. No. 14-cv-6233, 2015 WL 5444651, *11 (Sep. 11, 2015) ("A contested motion for certification would likely require extensive discovery and briefing, and, if granted, could potentially result in an interlocutory appeal pursuant to Fed. R. Civ. P. 23(f) or a motion to decertify by defendants, requiring additional briefing."). Plaintiffs would likely face several strong legal defenses and difficulties in demonstrating causation and injury. Such defenses, if successful, could drastically decrease or eliminate any recovery for Plaintiffs and putative class members. Given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on either certification or merits. Given the risks, costs, and potential delays inherent in litigating this class action to judgment, this factor weighs heavily in favor of final approval.

While Plaintiffs are confident in the strength of their claims, they are also pragmatic in their awareness of the various defenses available to Defendant, as well as the risks inherent to continued

litigation. Defendant consistently denied the allegations raised by Plaintiffs and made clear at the outset that it would vigorously defend the case. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to face further risk of not receiving any relief at all. This weighs in favor of final approval.

Further, the Notice to which the Parties agree is robust and comprehensive. Borrelli & Shamis Decl. at ¶ 10. Defendant agreed to send individual Notice by direct mail (including provisions to ensure any class member who changed addresses is located) on two separate occasions, thus providing significant assurance that Class Members will receive Notice. *See Braynen v. Nationstar Mortg., LLC*, 2015 U.S. Dist. LEXIS 151744, at *56 (S.D. Fla. Nov. 9, 2015) (robust notice plan is evidence terms of settlement are fair and reasonable).

The "method of processing class-member claims" is simplicity itself: Class members must simply fill the claim form, attest to the information and send the Claim form back. Agr. ¶¶ 53, 56, 63; *See In re Sonic Corp. Customer Data Sec. Breach Litig.*, 2019 U.S. Dist. LEXIS 135573, at *15 (N.D. Oh. Aug. 12, 2019) (approving claim form requiring class members to fill address and contact information, the location of the Sonic location where they made their purchase, and the last four digits of the payment card number they used to make the purchase and whether the fraud occurred before February 28, 2018). Moreover, Class members will have the ability to simply complete and submit the form through the Settlement Website. *Id*.

Further, the terms of the attorneys' fees award weighs in favor of approval of the proposed Settlement. See Fed. R. Civ. P. 23(e)(2)(C)(iii). The analysis here is "distinct from the Rule 23(h)" analysis, which addresses whether the attorneys' fees amount is reasonable on its own terms, and "instead addresses if and how the attorneys' fees impacted the terms of the Settlement." *Cook*, 2020 U.S. Dist. LEXIS 111956, at *24. Here, the attorneys' fees amount did not impact the substantive

Settlement terms at all—indeed, the parties did not even discuss attorneys' fees until after all other Settlement terms were finalized. Borrelli & Shamis Decl. at ¶ 12. As such, Rule 23(e)(2)(C)(iii) favors approval of the proposed Settlement.

Lastly, objections to the settlement and reaction of the Class are important factors to consider. Here, the reaction of the class has been overwhelmingly positive. There have been no objections and only two exclusions out of a Class of over 63,000. The Class has spoken and overwhelmingly approves the Settlement. This strongly weighs in favor of approving the Settlement. Indeed, a "certain number of objections" are expected and even a low number is evidence that a proposed settlement is fair and reasonable. *See In re Skechers Toning Shoe Prods. Liab. Litig.*, 2013 U.S. Dist. LEXIS 67441, at * 7 (W.D. Ken. May 13, 2013). All the more so here, where there were no objections at all. *See Amos v. PPG Indus.*, No. 2:05-cv-70, 2019 U.S. Dist. LEXIS 139021, at *30 (S.D. Oh. Aug. 16, 2019) ("[N]o objections were filed, which creates the inference that all or most of the class members had no concerns about the proposed settlement. This positive response weighs in favor of approving the settlement.").

As such, all the Rule 23(e)(2)(C)-(D) factors militate in favor of final approval.

3. The Remaining UAW Factors Favor Approval

The UAW factors that are independent of the Rule 23 factors—i.e., the opinions of class counsel and the public interest, *see* 497 F.3d at 631—also support approval of the proposed Agreement. Class Counsel possess extensive knowledge of data breach litigation, as well as the relative strengths and weaknesses of the underlying claims, and it is their reasoned judgment that the proposed Settlement is in the best interests of the Class. Borrelli & Shamis Decl. at ¶ 17; *see also Brent v. Midland Funding, LLC*, 2011 U.S. Dist. LEXIS 98763, at *49-50 (N.D. Oh. Sep. 1, 2011) ("The Court gives great weight to the recommendation of experienced counsel for the parties in

evaluating the adequacy of the settlement"); *see also See Greco v. Ginn Dev. Co., LLC*, 635 Fed. Appx. 628, 632 (11th Cir. 2015) (absent evidence of collusion or fraud, a court "should be hesitant to substitute its own judgment for that of counsel") (quotation omitted). Moreover, "settlement fosters the goals of certainty, finality and economy, which lie at the heart of our general preference for settlement of class actions." *Berry v. School Dist.*, 184 F.R.D. 93, 106 (W.D. Mich. 1998). And because of the valuable compensatory relief secured, the proposed Settlement "does its best to ensure that Defendants can continue to provide valuable service to Class Members in an atmosphere that will foster trust and confidence." *In re Dun & Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366, 372 (S.D. Oh. 1990).

This Court should grant final approval of this Settlement because it: (1) was the result of several months of settlement negotiations between the parties; (2) was after Class Counsel received information from Stanley Steemer regarding the data breach; (3) provides for class certification; (4) creates a substantial recovery for Plaintiffs and all the Class Members; (5) provides substantial additional recovery to compensate Class Members who incurred actual out of pocket losses.

Class Counsel has already submitted a motion for attorneys' fees in the amount of $233,333.33, inclusive of expenses, and a $4,000.00 Service Award for each of the Class Representatives, totaling $8,000.00 in Service Awards. Stanley Steemer generally agreed to these amounts within the Settlement Agreement. As of Plaintiffs' March 28, 2025, Motion for Attorneys' Fees and Class Representative Service Awards, Class Counsel had expended substantial time and efforts representing the Class in this matter. *See* ECF No. 52-2, Joint Attorney Fees Declaration, at ¶16. Since then, Class Counsel has expended many additional hours overseeing settlement administration and preparing this motion for final approval. *Id.* ¶ 17. Class Counsel will continue to

expend time working on behalf of the Class to answer Class Members' questions about the Settlement and in ensuring they receive their claimed Settlement benefits. *Id*.

CONCLUSION

Plaintiffs respectfully request the Court grant their motion for final approval of class action settlement, and enter an order that includes the content of proposed order attached as Exhibit 1 hereto.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Andrew Shamis, hereby certify that on May 13, 2025, 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.

By: */s/ Andrew Shamis*
Andrew J. Shamis, Esq.