**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

KIMBERLY FREIBURGER, individually and on behalf of all others similarly situated, Plaintiff, v. **MIZUNO USA INC.,** Defendant.	Case No. 25EV010647

PLATINFIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT

Plaintiff Kimberly Freiburger ("Plaintiff"), individually and on behalf of all others similarly situated, submits this Motion for Preliminary Approval of Class Action Settlement and Memorandum in support pursuant to O.C.G.A. § 9-11-23. Plaintiff requests this Court preliminarily approve the Settlement, certify the Settlement Class, approve the proposed plan of Notice, and schedule a Final Fairness Hearing. With the supporting Declaration of Counsel ("Counsel Decl.") filed herewith, Plaintiff submits the executed Settlement Agreement (Exhibit 1 to the Declaration) as well as proposed Preliminary Approval Order jointly agreed to and approved by the Parties (Exhibit 2 to the Declaration).

I. INTRODUCTION

Defendant Mizuno USA Inc. ("Mizuno") is a sporting goods company. On November 6, 2024, Defendant became aware of a security incident on its IT Network, took steps to secure its data network, and launched an investigation to determine what occurred. The investigation determined that certain systems and files within the network were accessed by an unknown individual periodically between August 21, 2024 and October 29, 2024. Mizuno then undertook a detailed review of the relevant files to determine what information was present and to whom it related. This review was completed on December 18, 2024, and Mizuno worked as quickly as possible thereafter to notify potentially impacted individuals. Defendant's investigation determined that the following types of private information were potentially accessed in the Data Breach: name, Social Security number, financial account number, driver's license information, and passport numbers. Approximately 1,200 individuals were potentially affected by the Data Breach.

On January 30, 2025, Mizuno started sending notice letters to the potentially impacted individuals. Plaintiff Freiburger received a notification from Defendant indicating that cybercriminals may have accessed and/or acquired her private information.

On or about February 24, 2025, Plaintiff filed a lawsuit in the United States District Court for the Northern District of Georgia alleging claims for damages arising from the Data Breach.[1] Defendant filed a motion to dismiss on the pleadings, challenging federal court jurisdiction and the sufficiency of the claims. Shortly after, the parties began exploring the possibility of early resolution. Over the next few months, the Parties engaged in arm's length negotiations, which ultimately resulted in a settlement in principle in late June 2025. As a material term of the Settlement, the Parties agreed Plaintiff would dismiss her federal court case and re-file before this Court, to resolve potential questions as to whether the court providing approval of this class action settlement has proper jurisdiction over the Action.

Over the next several months, the Parties negotiated the specific terms of the detailed Settlement Agreement, Plaintiff re-filed the case before this Court, and Plaintiff prepared this

[1] Case No. 1:25-cv-00950-MHC (N.D. Ga. 02/24/2025).

motion for preliminary approval. Plaintiff now brings this fair, reasonable and adequate settlement before this Honorable Court for Preliminary Approval. Mizuno does not oppose the motion.

III. SUMMARY OF SETTLEMENT

The "Settlement Class" is defined as:

> all individuals to whom Defendant mailed notices that their private information was potentially compromised in the Data Incident discovered in November 2024.

Settlement Agreement ("S.A.") ¶ 1.25. The Settlement Class specifically excludes: (i) Defendant and Defendant's parents, subsidiaries, affiliates, directors, and any entity in which Defendant has a controlling interest; (ii) all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; (iii) any and all federal, state, or local governments, including but not limited to their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; (iv) the attorneys representing the Parties in the Action; (v) all judges assigned to hear any aspect of the Action, as well as their immediate family members; and (vi) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the Data Breach, or who pleads *nolo contendere* to any such charge. *Id*. The Settlement Class may include 1,200 individuals (each, a "Settlement Class Member").

The Settlement negotiated on behalf of the class provides for four categories of relief for Settlement Class: (1) compensation for ordinary losses, including compensation for lost time spent dealing with the Data Breach; (2) compensation for extraordinary losses, or; (3) a $50 alternative cash payment in lieu of documented or extraordinary losses. *Id.* ¶¶ 2.1, 2.2., 2.4. All Settlement Class Members may also claim two years of single bureau credit monitoring, in addition to the monetary relief of their choice. *Id*. ¶ 2.8. Defendant also agreed to make changes to its systems or business practices to secure and keep confidential the Private Information of its current and former employees and job applicants still in its possession and agreed to pay for such remedial costs separate and apart from other settlement benefits. *Id*. ¶ 2.8.

The benefits are explained in more detail below:

A. Settlement Benefits

Subject to the terms of the Settlement Agreement, Mizuno or its insurer(s) shall make available the following compensation to Settlement Class Members:

(1) Monetary Compensation for Losses: Settlement Class Members who submit a valid and timely Claim Form may choose to receive either (1) compensation for documented ordinary and extraordinary losses, or (2) the Alternative Cash Payment.

(2) Compensation for Documented Losses: Settlement Class Members may claim compensation for documented losses, up to four hundred seventy five dollars ($475.00) for ordinary losses, and five thousand dollars ($5,000.00) for extraordinary losses.

(a) Compensation for Ordinary Losses. All Settlement Class Members who submit a Valid Claim using the Claim Form are eligible for reimbursement for the following documented out-of-pocket losses caused by the Data Breach ("Ordinary Losses") and attested to time spent responding to the Data Breach ("Lost Time") that Settlement Class Members incurred/spent between August 21, 2024 and seven days after the Court approved notice of settlement is sent to the Settlement Class, not to exceed an aggregate total of $475 per Settlement Class Member. S.A. ¶ 2.1. Ordinary Losses incurred as a result of the Data Breach, include, but are not limited to: (i) bank fees, (ii) long distance telephone charges; (iii) cell phone voice charges (if charged by the minute) or data charges (if charged by the amount of data used); (iv) postage; (v) gasoline for local travel; or (vi) fees for credit reports, credit monitoring, or other identity theft insurance product purchased as a result of the Data Breach. To receive reimbursement, Settlement Class Members must submit a Valid Claim, including necessary supporting documentation to the Claims Administrator. *Id.* ¶ 2.1(a).

(b) Lost Time. Settlement Class Members are eligible to receive reimbursement for up to four (4) hours of lost time spent dealing with the Data Breach (calculated at $15.00 per hour), with an attestation under penalty of perjury that any claimed lost time was spent responding to issues raised by the Data Breach. Claims made for Lost Time can be combined with reimbursement for the above referenced Ordinary Losses, and claims for both Lost Time and Ordinary Losses are subject to the single total aggregate cap of $475 per Settlement Class Member. *Id.* ¶ 2.1(b).

(c) Compensation for Extraordinary Losses. Settlement Class Members will be eligible for compensation for extraordinary losses, including proven actual monetary losses, provided that: (i) the loss is an actual, documented, and unreimbursed monetary loss arising from fraud or identity theft; (ii) the loss from fraud or misuse was more likely than not caused by the Data Breach; (iii) the actual misuse or fraud loss is not already covered by one or more of the ordinary loss compensation categories; (iv) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance; and (v) the actual misuse or fraud loss occurred between the date that the Data Breach began (August 21, 2024) and seven days after the Court approved notice of settlement is sent to the Settlement Class. S.A. ¶ 2.3. The maximum amount any one claimant may recover for extraordinary losses is five thousand dollars ($5,000.00).

(3) Alternative Cash Payment. In lieu of all the other monetary benefits, Settlement Class Members may elect to receive an Alternative Cash Payment of fifty dollars ($50.00). S.A. ¶ 2.4. No documentation is required to make a claim for the Alternative Cash Payment.

(4) Credit Monitoring Services. All Settlement Class Members are eligible to receive twenty-four (24) months of one-bureau credit monitoring services with at least $1 million in fraud protection upon submission of a timely, Valid Claim. S.A. ¶ 2.6. No documentation is required to request this Settlement benefit. This benefit may be claimed in addition to the monetary benefits set out above.

(5) Changes to Systems or Business Practices.

In connection with this Settlement, Mizuno has acknowledged (without any admission of liability), that Mizuno has made certain systems or business practice changes to mitigate the risk of similar data incidents in the future. S.A. ¶ 2.8. Mizuno agrees to disclose the details of the systems or business practice changes made to Class Counsel and estimate, to the extent reasonably calculable, the annual cost of those enhancements.

B. Release

The release in this case is tailored to the claims that have been plead or could have been plead in this case. Counsel Decl. ¶ 14. Settlement Class Members who do not exclude themselves from the Settlement Agreement will release claims related to the Data Breach. *Id*.

C. The Notice and Claims Process

1. Notice

Defendant has agreed to pay the entirety of the settlement administration fees, including the cost of notice, separate and apart from other benefits provided to the Settlement Class. S.A. ¶ 2.10. The Parties agreed to use Atticus Administration LLC ("Atticus") as the Claims Administrator. *Id.* ¶ 1.3.

Subject to approval of the Court, within 30 days of entry of the Preliminary Approval Order, Notice shall be provided to Settlement Class Members via U.S. mail. *Id.* ¶ 3.2. The Short

Form Postcard Notice is clear and concise and provides information about the Settlement as well as the sources Settlement Class Members can go to for additional information. S.A, Ex. B.

In addition to the individual direct notice the Claims Administrator will establish and maintain a dedicated settlement website that will be updated throughout the claims period with the Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement. *Id*. ¶¶ 3.1, 3.2. The Long Form Notice, available at the Settlement Website, explains the terms of the Settlement Agreement, provides contact information for Proposed Class Counsel, and explains the different options available. S.A. Ex. C. The Claims Administrator will also establish and maintain a toll-free help line to provide Settlement Class Members with additional information about the settlement, and will provide copies of the Short Notice, Long Notice, Claim Form, and Settlement Agreement on request.

2. Claims

The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, make a claim or decide whether they would like to opt-out or object. Counsel Decl. ¶ 17. Class Members will have ninety (90) days from the Notice Deadline to complete and submit a claim to the Claims Administrator. S.A. ¶ 1.4. The Claim Form, attached to the Settlement Agreement at Exhibit A, is written in plain language to facilitate Settlement Class Members' ease in completing it. Counsel Decl. ¶ 17; *S.A.* Ex. A.

3. Requests for Exclusion and Objections

Settlement Class Members will have up to and including sixty (60) days from the Notice Completion Deadline to object to or exclude themselves from the Settlement. S.A. ¶¶ 1.15, 1.16. Similar to the timing of the claims process, the timing with regard to objections and exclusions is structured to give Settlement Class Members sufficient time to review the Settlement documents—

including Plaintiff's Motion for Attorneys' Fees, Costs, and Service Awards, which will be filed prior to the deadline for Settlement Class Members to object to or exclude themselves from the Settlement. Counsel Decl. ¶ 24.

Any Settlement Class Member who wishes to be excluded from the Settlement must make the request in writing. To be considered valid, the request for exclusion must be timely mailed to the address designated by the Claims Administrator and must include the following: (a) full name, address, and telephone number; (b) the Settlement Class Member's personal and original signature; and (c) a clear manifestation of the Settlement Class Member's intent to be excluded from the Settlement Class. S.A. ¶ 4.1. Any Member of the Settlement Class who elects to be excluded shall not receive any benefits from and/or be bound by the terms of the Settlement Agreement. *Id.* ¶ 4.2.

Any Settlement Class Member who wishes to object shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall: (i) state the objecting Settlement Class Member's full name, current address, telephone number, and email address (if any); (ii) contain the objecting Settlement Class Member's original signature; (iii) set forth information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (*e.g.,* copy of the Notice or copy of original notice of the Data Breach); (iv) set forth a statement of all grounds for the objection, including any legal support for the objection that the objector believes applicable; (v) identify all counsel representing the objector; (vi) state whether the objector and/or his or her counsel will appear at the Final Fairness Hearing, and; (vii) contain the signature of the objector's duly authorized attorney or other duly authorized representative (if any), along with documentation setting forth such representation. *Id*. ¶ 5.1. To be timely, written notice of an objection in the appropriate form must be mailed to Class Counsel and Defendant's Counsel at the address provided in the Settlement Agreement. *Id*. ¶ 5.1.

4. Fees, Costs, and Service Awards

The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiff until after the substantive terms of the settlement had been agreed upon, other than that Defendant would pay reasonable attorneys' fees, costs, expenses, and a service award to Plaintiff as ordered by the Court, and that such fees shall be paid separately from any relief to the Class. S.A. ¶ 7.1. Settlement Class Counsel intends to apply to the Court for an award of combined attorney's fees and costs in an amount not to exceed one-hundred twenty-two thousand five hundred dollars ($122,500.00). *Id.* Attorneys' fees and expenses will be paid by Mizuno separately from all Settlement Class relief.

The Settlement Agreement calls for a reasonable service award to Plaintiff in the amount of $2,500, subject to approval of the Court. *Id*. ¶ 7.2. The Service Award is meant to recognize Plaintiff for her efforts on behalf of the Settlement Class, including assisting in the investigation of the case, reviewing the pleadings, remaining available for consultation throughout the settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement. Counsel Decl. ¶ 22. Any Court-approved service award will also be paid by Defendant separately from any Class relief.

IV. LEGAL AUTHORITY

O.C.G.A. § 9-11-23, which governs class action litigation in Georgia, provides "[a] class action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." O.C.G.A. § 9-11-23(e).

Since its enactment, Georgia courts have interpreted the statute as parallel to Fed. R. Civ. P. 23. In 2003, the state legislature shored up this interpretation, modifying O.C.G.A. § 9-11-23 to actually conform to the Federal Rule. Thus, and in acknowledgement of the few definitive holdings in Georgia on the subject, Georgia courts rely on federal cases interpreting Fed. R. Civ. P. 23(e) when interpreting O.C.G.A. § 9-11-23(e). *See Sta-Power Industries, Inc. v. Avant*, 134 Ga. App. 952, 953 (1975); *Brenntag Mid-South, Inc. v. Smart*, 308 Ga. App. 899, 903 (2011).

The approval of a class action settlement is a two-step process. 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.*, 2007 WL 2330895, at *4 (S.D. Fla. May 11, 2007) (internal citations omitted); *see also See Manual for Complex Litigation*, Sec. 30.41 (3rd ed. 1995). This first step involves both preliminary certification of the class and an initial assessment of the proposed settlement. *Id.* It is only after a court has preliminarily approved a settlement, and notice has been provided to the Class, that the Court makes a final determination of the fairness, adequacy and reasonableness of a Settlement.

There is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits"). This is because class action settlements ensure class members a benefit, as opposed to the "mere possibility of recovery at some indefinite time in the future." *In re Domestic Air Transp.*, 148 F.R.D. 297, 306 (N.D. Ga. 1993).

V. ARGUMENT

A. Certification of the Settlement Class is Warranted.

Prior to granting preliminary approval of a proposed settlement, the Court should first determine the proposed Settlement Class is appropriate for certification. *See Manual for Complex Litigation*, § 21.632 (4th ed. 2013); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Class certification is proper if the proposed class, proposed class representative, and proposed class counsel satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of O.C.G.A. § 9-11-23. Additionally, where (as in this case), certification is sought under O.C.G.A § 9-11-23(b)(3), Plaintiff must demonstrate that common questions of law or fact predominate over individual issues and that a class action is superior to other methods of adjudicating the claim. O.C.G.A § 9-11-23(b)(3); *Windsor*, 521 U.S. at 615-16.

"A class may be certified 'solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.'" *Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 WL 10167232, at *1 (S.D. Fla. Oct. 7, 2013) (quoting *Lipuma v. American Express Co*., 406 F. Supp. 2d 1298. 1314 (S.D. Fla. 2005)). Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court's evaluation is somewhat different than in a case that has not yet settled. *Windsor*, 521 U.S. at 620. In some ways, the court's review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id; see also Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 557 (N.D. Ga. July 20, 2007). Other certification issues however, such as "those designed to protect absentees by blocking unwarranted or overbroad class definitions," require heightened scrutiny and an active role as a guardian of the interests of the absent class members. *Windsor*, 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…for the proposal is that there be no trial." *Id*. Even under the heightened scrutiny required, this case meets all of the O.G.C.A. § 29-1-23 prerequisites, and for the reasons set forth below, certification is appropriate.

Class actions are regularly certified for settlement. In fact, similar data breach cases have been certified—on a *national* basis—including the record-breaking settlement in *In re Equifax. See In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT (N.D. Ga. July 25, 2019); *see also, e.g., In re Target*, 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig*., 851 F. Supp. 2d 1040 (S.D. Tex. 2012). Georgia state courts have also certified similar data breach class actions for settlement. *See Cece v. St, Mary's Health Care System, Inc. et al.,* No. SU20CV0500 (preliminary approval granted of class action settlement on December 15, 2021); *Jackson-Battle v. Navicent Health, Inc.*, No. 2020cv072287 (final approval granted August 4, 2021). This case should be similarly certified, and the settlement similarly approved.

1. The Proposed Settlement Class Meets the Requirements of O.G.C.A. § 9-11-23(a).

a. The class is so numerous that joinder of all members is impracticable.

Numerosity requires the members of the class be so numerous that separate joinder of all members is impracticable. O.C.G.A. § 9-11-23(a)(1). To demonstrate numerosity, "plaintiffs need not prove that joinder is impossible; rather, plaintiffs 'need only show that it would be extremely difficult or inconvenient to join all members of the class.'" *Columbus Drywall,* 258 F.R.D. at 557 (quoting *Anderson v. Garner*, 22 F. Supp. 2d 1379, 1384 (N.D.Ga.1997)).

Here, the Settlement Class includes approximately 1,200 people. Joinder of over a thousand claims would certainly be impracticable. Thus, the numerosity requirement is easily satisfied.

b. Questions of law and fact common to the class.

The second prerequisite to certification is that there exist questions of law or fact common to the class. O.C.G.A. § 9-11-23(a)(2). To demonstrate commonality, a plaintiff must demonstrate class members have suffered the same injury such that their claims can be productively litigated at once. *In re Equifax Inc. Customer Data Security Breach Litigation*, 220 WL 256132 *11 (Mar. 17, 2020) (citing *Sellers v. Rushmore Loan Mgmt. Servs., LLC,* 949 F.3d 1031, 1039 (11th Cir. 2019)). Courts have previously addressed this requirement in the context of data breach class actions and found it readily satisfied. *In re Equifax Inc. Customer Data Security Breach Litigation*, 220 WL 256132 *11 (citing *In re the Home Depot, Inc., Customer Data Security Breach Litigation*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding that multiple common issues center on the defendant's conduct, satisfying the commonality requirement)); *In re Anthem, Inc. Data Breach Litigation*, 327 F.R.D. 299, 308 (N.D. Cal. Aug. 15, 2018) (noting that the data breach complaint contains a common contention capable of class-wide resolution—one type of injury claimed to have been inflicted by one actor in violation of one legal norm).

Here also, the commonality requirement is readily satisfied for purposes of settlement, as Plaintiff and Settlement Class all have common questions of law and fact that arise out of the same event—the Data Breach that they were notified about in or about January 2025. Specifically, Plaintiff alleged that the following questions of law and fact are common to the class:

- whether Defendant failed to timely notify the public of the Data Breach;
- whether Defendant owed a legal duty to Plaintiff and the Class to exercise due care in collecting, storing, and safeguarding their PII;
- whether Defendant's security measures to protect their data systems were reasonable in light of best practices recommended by data security experts;
- whether Defendant's alleged failure to institute adequate protective security measures amounted to negligence.

Like in other data breach cases, these common issues all center on Defendant's conduct, or other facts and law applicable to all class members, thus satisfying the commonality requirement. *See, e.g., In re Countrywide Fin. Corp. Cust. Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009

WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) ("All class members had their private information stored in Countrywide's databases at the time of the data breach"); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig*., 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) ("Answering the factual and legal questions about Heartland's conduct will assist in reaching class wide resolution.").

c. The claims and defenses of Plaintiff are typical of the claims and defenses of the class.

The next prerequisite to certification, typicality, measures whether the claim or defense of the representative party is typical of the claim or defense of each member of the class. O.C.G.A. § 9-11-23(a)(3). "[T]ypicality measures whether a significant nexus exists between the claims of the named representative and those of the class at large. *Hines v. Widnall,* 334 F.3d 1253, 1256 (11th Cir. 2003) (internal quotation omitted). Like the commonality requirement, typicality does not require all putative class members to share identical claims; factual difference amongst the claims will not necessarily defeat certification. *Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004). The named representatives need only share the same "essential characteristics" of the larger class. *Id.* The typicality requirement is regularly met in data breach class actions. *In re Equifax Inc. Customer Data Security Breach Litigation*, 220 WL 256132 at *12.

Here, the typicality requirement for purposes of settlement is satisfied for the same reasons that Representative Plaintiff's claims meet the commonality requirement. Specifically, Plaintiff's claims are typical of those of the other members of the Settlement Class because they all arise from the Data Breach. They are also based on the same legal theory, i.e., that Defendant had a legal duty to protect Plaintiff's and Settlement Class Members' PII. Because there is a "strong similarity of legal theories" between Representative Plaintiff's claims and the claims of the Settlement Class Members, the typicality requirement is satisfied.

d. Plaintiff will fairly and adequately protect the interests of the class.

O.C.G.A. § 9-11-23(a)(4) requires that Plaintiff—the representative party—will fairly and adequately protect the interest of the class. This requirement involves a two-part test that asks: (1) whether plaintiffs have interests antagonistic to the interests of the other class members; and (2) whether the proposed class counsel has the necessary qualifications and experience to lead the litigation. *In re Tri-State Crematory Litigation*, 215 F.R.D. 660, 690-691 (N.D. Ga. Mar. 17, 2013).

As for the first prong, there is nothing to suggest that this requirement has not been satisfied in this case. The Representative Plaintiff is a member of the Settlement Class and does not possess any interests antagonistic to the Settlement Class. She provided her PII to Defendant and alleges that her PII was compromised as a result of the Data Breach, just as the PII of the Settlement Class was also allegedly compromised. Indeed, Plaintiff's claims coincide identically with the claims of the Settlement Class, and Plaintiff and the Settlement Class desire the same outcome of this litigation. Plaintiff has vigorously prosecuted this case for the benefit of all Settlement Class Members. Plaintiff participated in the litigation, reviewed pleadings, and participated in the factual investigation of the case.

The second prong is also satisfied. Proposed class counsel has extensive experience in class actions generally, and in data breach cases in particular. *See* Counsel Dec. ¶ 26. Because Plaintiff and her counsel possess substantial experience and track records in similar litigation and have vigorously prosecuted the case at hand to get the best result for Plaintiff and Class Members, the adequacy requirement is satisfied.

2. <u>The Proposed Settlement Class Meets the Requirements of O.C.G.A. § 9-11-23(b)(3)</u>.

In addition to the requirements discussed at length above, Plaintiff must demonstrate that one of the requirements of O.C.G.A. § 9-11-23(b) are met. Here, questions of law or fact common to class members predominate over any individual issues, making class treatment superior to other available methods of adjudication. *See* O.C.G.A. § 9-11-23(b)(3).

a. Common issues predominate over individualized ones in this matter.

The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Windsor*, 521 U.S. at 623. "Common issues of fact and law predominate if they have a direct impact on every class member's effort to establish liability and on every class member's entitlement to ... relief." *In re Equifax, Inc. Customer Data Security Breach Litigation*, 2020 WL 256132 at *13(quoting *Carriuolo v. Gen. Motors Co*., 823 F.3d 977, 985 (11th Cir. 2016)).

Common issues readily predominate here for purposes of settlement because the central liability question in this case—whether Defendant failed to safeguard Plaintiff's information, like that of every other Settlement Class Member—can be established through generalized evidence. *See Klay v. Humana, Inc*., 382 F.2d 1241, 1264 (2004) ("When there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position, the predominance test will be met"). Several case-dispositive questions could be resolved identically for all members of the Settlement Class, such as whether Defendant had a duty to exercise reasonable care in safeguarding, securing, and protecting the PII of Plaintiff and Settlement Class Members and whether Defendant breached that duty. The many common questions of fact and law that arise from Defendant's conduct predominate over any individualized issues.

Other courts have recognized that these types of common issues arising from a data breach predominate over individualized issues. *See, e.g., In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig*., 2009 U.S. Dist. LEXIS 119870 (W.D. Ky. 2009) (finding predominance where proof would focus on data breach defendant's conduct both before and during the theft of class members' personal information); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig.*, 851 F.Supp.2d 1040, 1059 (S.D. 2012) (finding predominance where "several common questions of law and fact ar[ose] from a central issue: Heartland's conduct before, during, and following the data breach, and the resulting injury to each class member from that conduct").

b. Class treatment is superior to individual litigation.

Finally, a class action is superior to other methods available to fairly, adequately, and efficiently resolve the claims of the Proposed Settlement Class. A superiority analysis involves an examination of "the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). The focus is efficiency. *In re Equifax, Inc. Customer Data Security Breach Litigation*, 2020 WL 256132 at *14.

Here, resolution of numerous claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. Indeed, absent class treatment in the instant case, each Settlement Class Member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. Moreover, there is no indication that Settlement Class Members have an interest in individual litigation or an incentive to pursue their claims individually, given the amount of damages likely to be recovered relative to the resources required to prosecute such an action. *See 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").

Additionally, the proposed Settlement will give the Parties the benefit of finality, and because this case has now been settled pending Court approval, the Court need not be concerned with issues of manageability relating to trial. *See Windsor*, 521 U.S. at 620 ("[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case…would present intractable management problems"). Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating tens of thousands of individual data breach cases arising out of the *same* Data Breach.

As the superiority requirement is satisfied for purposes of settlement, along with all other requirements of O.C.G.A. § 9-11-23, the Court should certify the Settlement Class.

B. Plaintiff's Counsel should be appointed Settlement Class Counsel.

As discussed above, and as fully explained in Counsel's declarations, proposed Settlement Class Counsel have extensive experience prosecuting similar class actions and other complex litigation. *See* Counsel Decl. ¶ 26 and Exhibit 3 thereto. Further, proposed Settlement Class Counsel have diligently investigated and prosecuted the claims in this matter, have dedicated substantial resources to the investigation and litigation of those claims, and have successfully negotiated the Settlement of this matter to the benefit of Plaintiff and the Settlement Class. *See generally* Counsel Decl. Accordingly, the Court should appoint Casondra R. Turner of Milberg Coleman Bryson Phillips Grossman, PLLC as Settlement Class Counsel.

C. The Proposed Settlement Should be Preliminarily Approved Because it is Fair, Reasonable, Adequate, and Free of Collusion.

After determining that certification of the Settlement Class is appropriate, the court must determine whether the Settlement Agreement itself is worthy of preliminary approval and of providing notice to the class. Some courts in the Eleventh Circuit find preliminary approval 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 Account Overdraft Litigation*, 275 F.R.D. 654, 661 (S.D. Fla. 2011) (internal quotations omitted). Other courts take a preliminary look at the factors considered fully at the second—or final approval—stage, known as the *Bennett* factors. The *Bennett* factors include:

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

Columbus Drywall, 258 F.R.D. at 557,(quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir 1984)). In either case, courts consider the relevant factors "informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Bennett.*, 737 F.2d at 986; *see also Meyer v. Citizens and Southern Bank*, 677 F. Supp. 1196, 1200 (M.D. Ga. 1988).

The proposed Settlement warrants preliminary approval under each approach.

1. The proposed Settlement is the result of good faith negotiations, is not obviously deficient, and falls within the range of reason.

Here, the Settlement is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues in these cases. Moreover, as discussed at greater length below, the Settlement provides real value to valid claimants—where continued litigation would provide significant risks.

2. The *Bennett* factors support preliminary approval.

Here, when preliminarily considering the *Bennett* factors examined in depth at final approval, there is no question that the proposed Settlement is well "within the range of possible approval," fair, reasonable, and adequate, and should be approved. While the Court cannot yet consider class approval before notice has been provided, an initial examination of the merits of the case, risks of litigation, and the benefits obtained by the Settlement Agreement wholly support preliminary approval.

a. The benefits of settlement outweigh the risks at trial.

Members of the Settlement Class who submit valid claims are eligible to receive up to $475 in ordinary expense reimbursements and payments for lost time, up to $5,000 in extraordinary expense reimbursements, or a $50 Alternative Cash Payment. In addition to the monetary benefits, Settlement Class Members may also claim two years of 1-bureau credit monitoring services and at least $1 million in fraud protection, Plaintiff and members of the Settlement Class will be the beneficiaries of business practice changes designed to enhance data security and implemented by Defendant. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain.

While Plaintiff strongly believes in the merits of her case, she also understands Defendant 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.*, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). To proceed with litigation, Plaintiff would have to immediately survive Defendant's motion to dismiss. Then, after significant discovery, class certification is another hurdle that would have to be met—and one that has been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013).

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

b. 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*, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013). In evaluating the range of possible recoveries and the fairness, reasonableness, and adequacy of the settlement, "[t]he Court's role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but to evaluate the proposed settlement in its totality." *Lipuma,* 406 F. Supp. at 1323. Here, Settlement Class Members can receive cash payments (including a $50 Alternative Cash Payment with no documentation or proof of loss) and credit monitoring protections, *and* will gain the benefit of data security enhancements. These payments, combined with credit monitoring services are of real value. *See Columbus Drywall*, 258 F.R.D. at 559 (court found settlement fair, reasonable, and adequate, and preliminary approval warranted where the there was an immediate and substantial benefit to the class). Accordingly, this settlement is eminently reasonable, especially considering that it avoids the potential contingencies of continued litigation.

c. Continued litigation would be lengthy and expensive.

As discussed above, data breach litigation is difficult, complex, and the rapid evolution of case law makes outcomes uncertain. While early settlement has allowed costs to stay modest, and the Settlement Agreement provides for such costs to be paid for separate and apart from the funds available to the Settlement Class—protracted litigation would only serve to increase costs and have a potentially negative affect on class recovery, which is itself far from certain. Continued litigation would also increase the burden on the Court, without any guaranteed benefit to Plaintiff or Settlement Class Members. "Complex litigation ... 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'" *Woodward v. NOR–AM Chem. Co.,* No. Civ-94-0870, 1996 WL 1063670 *21 (S.D. Ala. May 23, 1996) (quoting *In re U.S. Oil & Gas Litig.,* 967 F.2d 489, 493 (11th Cir. 1992)). Where a settlement, like here, "will alleviate the need for judicial exploration of . . . complex subjects [and] reduce litigation costs" this factor weighs in favor of approval. *See Lipuma,* 406 F. Supp. 2d at 1324.

d. There has not been any opposition to the Settlement.

Plaintiff has no reason to believe there will be opposition to the Settlement. This factor, however, is better considered after notice has been provided to the Settlement Class and they are given the opportunity to object. *See Columbus Drywall.*, 258 F.R.D. at 561. At this point, this factor is neutral in the analysis.

e. Plaintiff had sufficient information to evaluate the merits and negotiate a fair, adequate, and reasonable settlement.

The final *Bennett* factor allows a Court to consider whether "plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation." *Lipuma,* 406 F. Supp. 2d at 1324. Vast formal discovery is not a requirement. *Id.* (quoting *Cotton v. Hinton,* 559 F.2d 1326,1332 (5th Cir. 1977)).

This case, though at an early stage when settled, has been thoroughly investigated by counsel experienced in data breach litigation. Counsel Decl. ¶¶ 19-20. Counsel's experience and investigation, combined with the informal exchange of information put Plaintiff in a position to proficiently evaluate the case and negotiate a settlement she views as fair, reasonable, and adequate, and worthy of preliminary approval. *Id*. ¶ 20.

D. The Proposed Notice Plan Should be Approved.

O.C.G.A. § 9-11-23(e) provides "notice of the proposed . . . compromise shall be given to all members of the class in such a manner as the court directs." Due process requires provision of the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. *Cf.* Fed. R. Civ. P. 23(c)(2)(B). 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 & Trust Co.,* 339 U.S. 306, 314 (1950).

The Notice provided for by the Settlement Agreement is designed to be the best practicable and to meet all the criteria set forth by the Manual for Complex Litigation. Notice shall be provided to Settlement Class Members via first-class U.S. Mail. S.A. ¶ 3.2. In addition to the direct mail notice, the Claims Administrator will establish and maintain a settlement website and toll-free helpline through which the Settlement Class can receive additional information about the Settlement. *Id*.

The notices are clear and straightforward. They define the Class; clearly describe the options available to the Settlement Class and the deadlines for taking action; describe the essential terms of the settlement; disclose the requested service award for the class representative as well as the amount that proposed Settlement Class Counsel intends to seek in fees and costs; explain procedures for making claims, objections, or requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Fairness Hearing; and prominently display the address and phone number of class counsel. S.A. Exhibits B and C.

The Notice here is designed to be the best practicable under the circumstances, apprises the Settlement Class of the pendency of the action, and gives them an opportunity to object or exclude themselves from the settlement. *See Agnone v. Camden County,* Georgia, 2019 WL 1368634, *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); *Barkwell v. Sprint Communications Company L.P.*, 2014 WL 12704984, *6 (M.D. Ga. Apr. 18, 2014) (finding a notice program that involved direct mail notice to satisfy due process). Accordingly, the Notice process should be approved by this Court.

VI. CONCLUSION

Plaintiff has negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members significant relief in the form of direct reimbursements for expenses incurred and time spent relevant to the Data Breach and credit monitoring, as well as the benefit of data security enhancements that will further protect their sensitive information in the future. For these and the above reasons, Plaintiff respectfully requests this Court grant her Motion for Preliminary Approval of Class Action Settlement.

Dated: November 10, 2025 Respectfully submitted,

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