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Attorneys for Plaintiffs and the Proposed Class

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS FEHLEN, TONY BLAKE, DAVID ARTUSO, TERESA BAZAN, LORRIEL CHHAY, SAMANTHA GRIFFITH, ALLEN CHAO, and AUGUSTA MCCAIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ACCELLION, INC.,

Defendant.

Case No. 5:21-cv-01353-EJD

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

DATE: June 9, 2022
TIME: 9:00 a.m.
JUDGE: Hon. Edward J. Davila
CTRM: 4, 5th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 9, 2022 at 9:00 a.m. in Courtroom 4 of the United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, CA 95113, the Honorable Edward J. Davila presiding, Plaintiffs will and hereby do move for an Order granting Preliminary Approval of the Class Action Settlement in this matter.

This motion is based upon this Notice of Motion and Motion, the supporting Memorandum set forth below, the attached exhibits and declarations, the pleadings and records on file in this Action, and other such matters and argument as the Court may consider at the hearing of this motion.

Respectfully submitted,

DATED: January 12, 2022

/s/ Tina Wolfson
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE ISSUES TO BE DECIDED

Whether the proposed Settlement warrants: (a) preliminary approval; (b) certification of a Settlement Class; (c) dissemination of Notice to the Settlement Class Members ("Class Members") of the Settlement's terms in the proposed method using the proposed forms; (d) appointment of Tina Wolfson, Robert Ahdoot, and Andrew W. Ferich of Ahdoot & Wolfson, PC; and Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C. as Class Counsel, and appointment of Plaintiffs Douglas Fehlen, Tony Blake, David Artuso, Teresa Bazan, Lorriel Chhay, Samantha Griffith, Allen Chao, and Augusta McCain ("Plaintiffs") as Class Representatives; and (e) setting a Final Approval Hearing for final approval of the Settlement and a hearing to consider any application for Service Awards and a Fee Award and Costs.

II. INTRODUCTION

Plaintiffs request that the Court preliminarily approve a nationwide class action Settlement that would resolve all of the class's claims against Accellion only, on behalf of all natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of Accellion's FTA Customers and was compromised in the Attacks. The exact class size is unknown, but includes approximately 9,200,000 Class Members to whom direct notice is being sent. Under the terms of the Settlement, Accellion will use best efforts to ascertain the number of and contact information for any additional Class Members to whom direct notice may be sent under the Settlement to achieve the best notice practicable, but the Parties do not anticipate this number to increase substantially.

The Settlement establishes a non-reversionary cash fund of $8.1 million to pay for valid claims, notice and administration costs, any Service Awards to the named Plaintiffs, and any Fee Award and Costs awarded by the Court. It requires Accellion to pay $4,600,000 of the Settlement Fund into escrow within ten (10) Business Days of the execution of the Settlement Agreement, with the remaining $3,500,000 to be placed into escrow ten (10) Business Days after the Settlement is preliminarily approved. These escrow payments will secure the Settlement Fund now, eliminating

the risk of nonpayment from Accellion, a small, privately held company without the resources of a large, publicly traded corporation to withstand a larger judgment.

Under the terms of the Settlement, Claimants may elect to receive one of the following: (1) two years of three-bureau Credit Monitoring and Insurance Services ("CMIS"); (2) a payment for reimbursement of Documented Losses of up to $10,000; or (3) a Cash Fund Payment, calculated in accordance with the terms of the Settlement Agreement, estimated at $15 to $50 (at 1% and 3% claims rates respectively). The Settlement also provides robust injunctive relief to be implemented for four years from the Effective Date of the Settlement, including requiring Accellion to fully retire its FTA offering, maintain FedRAMP certification for its newer Kiteworks offering, expand its bug bounty program, provide annual cybersecurity training to all employees, employ personnel with formal responsibilities for cybersecurity, and to periodically confirm compliance with the foregoing measures publicly on Accellion's website.

The Settlement compares favorably with other data breach settlements on a per capita basis, even outside of the unique circumstances surrounding this case. The fact that Class Members can seek additional recovery against the FTA Customers (and in the case of Kroger, Flagstar, and HealthNet, have already secured such potential recovery through pending settlements) further supports approval. There are unique litigation risks that arise from the case against Accellion. Approval is further warranted by the fact that the Settlement secures significant funds from a company that is unlikely to withstand a higher judgment.

The Settlement is the product of arduous, arm's-length negotiations between highly experienced counsel after comprehensive investigation, informal exchange of information, confirmatory discovery, two mediation sessions with the Honorable Judge Jay C. Gandhi (Ret.) of JAMS, and months of additional zealous negotiations between the parties. It delivers tangible and immediate benefits to the Settlement Class that address all the potential harms of the FTA Data Breach suffered by Class Members without protracted class action litigation and the attendant serious inherent risks of such litigation. The Court should preliminarily approve the Settlement.

III. BACKGROUND

A. The FTA Data Breach and Subsequent Litigation

In late 2020 and early 2021, Accellion disclosed to its FTA Customers[1] that threat actors had breached Accellion client data via certain vulnerabilities in the FTA software. Second Amended Class Action Complaint ("SAC"), ECF No. 43, ¶ 2. These threat actors were then able to steal sensitive data from many Accellion clients, including corporations, law firms, banks, universities, and other entities. *Id.* ¶¶ 5-11, 40, 44.

On February 24, 2021, this action was commenced with the filing of a class action complaint against Accellion. ECF No. 1. Plaintiffs alleged, among other things, that Accellion: (a) failed to implement and maintain adequate data security practices to safeguard Plaintiffs' and Class Members' Personal Information; (b) failed to prevent the Attacks and the FTA Data Breach; (c) failed to detect security vulnerabilities leading to the Attacks and the FTA Data Breach; and (d) failed to disclose that their data security practices were inadequate to safeguard Class Members' Personal Information. *E.g., id.* ¶¶ 64, 113. Accellion has denied all of the allegations and any liability and maintains that it did not owe a legal duty of care to Plaintiffs and acted reasonably.

Following commencement of this action, counsel for the Parties began a dialogue about case management issues and engaged in multiple meet-and-confer discussions. Declaration of Tina Wolfson ("Wolfson Decl."), ¶ 14; Declaration of Ben Barnow ("Barnow Decl."), ¶ 6. Plaintiffs' counsel already had been engaging in efforts to coordinate all of the class action cases filed in this District relating to the Attacks and the FTA Data Breach, including drafting a stipulation to consolidate those cases and set deadlines for submitting leadership applications. *Id*. When efforts to secure such a stipulation failed, Ahdoot Wolfson filed a motion to consolidate the numerous FTA Data Breach-related class actions pending before this Court, and to set deadlines for filing a Consolidated Complaint and leadership applications. *See Brown, et al. v. Accellion, Inc.*, No. 5:21-cv-01155-EJD, ECF No. 37 (filed April 7, 2021). The motion to consolidate is pending before the Court.

[1] Unless otherwise noted, all capitalized terms not separately defined here have the meaning ascribed to them in the Settlement Agreement. The Settlement Agreement ("SA") is submitted as an Exhibit.

In view of the fact that many cases relating to the FTA Data Breach continued to be filed in multiple courts in the weeks after this action was commenced, Ahdoot Wolfson filed a motion on March 31, 2021 (brought on behalf of another client) for transfer and centralization pursuant to 28 U.S.C. § 1407 with the United States Judicial Panel on Multidistrict Litigation, seeking to transfer numerous FTA Data Breach-related actions in four district courts to this Court for centralized proceedings. *In re Accellion, Inc., Data Breach Litigation*, MDL No. 3002 (J.P.M.L. 2021), at ECF No. 1. While the JPML Motion was pending, the dialogue between counsel for Plaintiffs and counsel for Accellion continued. Wolfson Decl. ¶ 16. On June 7, 2021, the Panel issued an order denying transfer. MDL No. 3002, ECF No. 88. Counsel for Plaintiffs and counsel for Accellion had previously agreed to participate in mediation (further discussed below).

On July 23, 2021, Plaintiffs filed the First Amended Class Action Complaint. ECF No. 35. On January 6, 2022, Plaintiffs filed the operative SAC asserting claims for negligence, negligence per se, invasion of privacy (intrusion upon seclusion), violations of various consumer protection statutes (including the North Carolina Unfair Deceptive Trade Practices Act, the Washington Consumer Protection Act, the California Consumer Privacy Act ("CCPA"), the California Confidentiality of Medical Information Action ("CMIA"), the California Customer Records Act ("CCRA"), and the California Unfair Competition Law ("UCL")), and for declaratory relief, and seeking remedies (including damages and injunctive relief) for the impact and harm they allege were caused by the Attacks. SAC ¶¶ 80-172 . Plaintiffs seek certification of a nationwide class. *Id*. ¶ 72.

Plaintiffs now file this motion seeking preliminary approval of the Settlement, which would resolve all claims alleged against Accellion and not any FTA Customers.

B. Mediation and Settlement Negotiations

As stated above, the Parties reached an early agreement to participate in mediation to attempt to resolve this matter. Barnow Decl. ¶ 7; Wolfson Decl. ¶ 17. Prior to mediation, the Parties exchanged information to prepare for and facilitate a productive mediation. Barnow Decl. ¶ 8; Wolfson Decl. ¶ 18. The Parties also exchanged and submitted to the mediator detailed confidential mediation briefs laying out their respective positions on the merits of the case and settlement.

Barnow Decl. ¶ 8; Wolfson Decl. ¶ 18. Throughout the negotiations, Plaintiffs received and analyzed pre-mediation discovery provided on a voluntary basis by Accellion, including specific information concerning the scope of the FTA Data Breach, Accellion's financial condition, and the steps Accellion took in response to the FTA Data Breach. Barnow Decl. ¶ 8; Wolfson Decl. ¶ 20.

On July 19, 2021, the Parties participated in mediation before Judge Gandhi but were not able to reach resolution. Barnow Decl. ¶ 9; Wolfson Decl. ¶ 21. The Parties continued their dialogue regarding settlement in the following weeks and agreed to go back to mediation. Barnow Decl. ¶ 10; Wolfson Decl. ¶ 21. A second mediation took place on September 7, 2021 but did not result in a settlement. *Id*. Following the second mediation, the Parties continued to work tirelessly over several months to reach a Settlement. Barnow Decl. ¶¶ 10-11; Wolfson Decl. ¶ 21.

Plaintiffs' counsel negotiated an agreement with Epiq Class Action and Claims Solutions, Inc. ("Epiq") to serve as Settlement Administrator, and Epiq estimates that the total administration and notice charges in this matter will be approximately $1,834,421. Wolfson Decl. ¶ 23. This estimate is reasonable in the context of this proposed Settlement and the size of the Settlement Class, and includes all costs associated with providing direct notice, publication notice, class member data management, CAFA notification, telephone support, claims administration, creation and management of the Settlement Website, disbursements and tax reporting, and postage costs. *Id*.

During the settlement negotiation process, the Parties deferred any discussion concerning the maximum Service Awards to be sought by the proposed Class Representatives until after reaching an agreement on all material terms of the Settlement. Barnow Decl. ¶ 15; Wolfson Decl. ¶ 24. There has been no negotiation or agreement regarding the amount of attorneys' fees, costs, and expenses that may be sought by proposed Class Counsel. Barnow Decl. ¶ 15; Wolfson Decl. ¶ 24. The Settlement negotiations were conducted at arm's length, in good faith, and free of any collusion, and the Parties' negotiations and efforts to resolve this litigation were hard fought. Barnow Decl. ¶ 18; Wolfson Decl. ¶ 24.

After protracted comprehensive negotiations and diligent efforts, including two mediation sessions and months of continued negotiations thereafter, the Parties finalized the terms of the Settlement and now seek preliminary approval of the Settlement from the Court.

C. Information Learned Prior to the Mediation and Through Confirmatory Discovery

Plaintiffs conducted a thorough investigation and engaged in detailed confirmatory discovery. As a result of these efforts, Plaintiffs were able to obtain the details surrounding the breach, which confirm the fairness, reasonableness, and adequacy of the proposed Settlement.

The FTA is a software product that Accellion licensed to customers on a subscription basis for their use in file transfers. Wolfson Decl. ¶ 33. Historically, FTA has been adopted by customers in a broad range of industries, including federal and state government agencies, and companies and institutions in the financial services, legal, manufacturing and engineering, healthcare, and higher education fields. *Id.*

FTA Customers are responsible for managing, maintaining, and updating their "instances" of the FTA software. *Id.* ¶ 34. Accellion does not manage its customers' FTA systems, and Accellion does not collect any data on behalf of its FTA Customers. *Id.* Customers' use of FTA does not involve any data flowing through Accellion systems. *Id.* Accellion also does not access the content of information its customers choose to store or transfer with FTA. *Id.*

Accellion did not guarantee the security of the FTA software to customers. *Id.* ¶ 35. Its standard license agreement disclaimed such guarantees and included a broad limitation of liability for any damages resulting from a data breach. *Id.* The license agreement explicitly states that each FTA Customer is "solely responsible and liable for the use of and access to" the FTA software "and for all files and data transmitted, shared, or stored using" FTA. *Id.* With the FTA, customers have exclusive control over the data they are storing or transferring via FTA. *Id.* Accellion provided multiple hosting options for the software that data customers could use for transfer using the FTA, including 1) on customers' own systems ("on-premises"), 2) cloud-based storage arranged by the customer, or 3) cloud storage space within Amazon Web Services. *Id.* Under any of these hosting arrangements, Accellion never had access to the contents of the customers' files. *Id.*

Kiteworks was launched in 2014 as a successor to the FTA. *Id.* ¶ 36. Kiteworks purports to offer enhanced security, functionality, and integration into customers' software and security infrastructures. *Id.* Most of Accellion's legacy FTA Customers had migrated from FTA to Kiteworks by early 2020. *Id.* Prior to the FTA Data Breach Attacks, Accellion encouraged FTA Customers to switch to its newer Kiteworks platform by making it cheaper for FTA Customers to switch to Kiteworks than to stay on FTA and by offering technical support for the transition. *Id.*

Accellion stopped licensing FTA to new customers in 2016, but permitted existing FTA Customers to renew FTA licenses. *Id.* ¶ 37. Prior to the Attacks and the FTA Data Breach, the last security update for FTA was released in February 2019. *Id.* Since that time, five separate security scans and penetration tests (including two in 2020, in April and June) were conducted on the FTA software. *Id.*

In December 2020 and then again in January 2021, cyber-criminals exploited multiple "zero-day" vulnerabilities—vulnerabilities that had never been discovered in FTA's decades of service, despite penetration testing and other monitoring by both Accellion and its customers, as well as scrutiny by external security researchers through Accellion's bug bounty program—in the FTA, allowing the criminals to illegally access information stored on FTA Customers' systems. *Id.* ¶ 38. Not all customers using the FTA were affected by the attacks. *Id.* Accellion employed an "anomaly detector," designed to detect potentially suspicious activity in a customer's FTA system and bring them to the customer's attention, which is how the FTA Data Breach was discovered. *Id.* When Accellion learned of the the December 2020 attack, it patched the vulnerabilities and supported its customers in investigating whether and to what extent they were affected. *Id.* After the second attack in January 2021, Accellion promptly released another patch, and issued a critical security alert advising customers to apply the patch as soon as possible. *Id.*

In addition to issuing patches and a critical safety alert concerning the breach, Accellion took other responsive actions. *Id.* ¶ 39. It engaged Mandiant to investigate and issue a report of its findings. *Id.* Accellion also offered assistance to customers in identifying whether they were impacted by the breach if impacted customers agreed to share system logs and other information

with Accellion. *Id.* Even if customers agreed to do so, Accellion was never able to obtain access to or download the underlying customer files, and Accellion never had any ability to identify what specific data was contained on any customer's compromised files. *Id.* Accellion has limited information as to which of its customers were impacted by the Attacks. For some of these customers, it has limited information concerning the number of files the attackers accessed. *Id.* Accellion never had access to the underlying data that its FTA Customers were transferring and has no knowledge of or reasonable way of knowing whether or which FTA Customers were transferring individuals' Personal Information or whose Personal Information may have been transferred. *Id.*

Accellion maintained records of those customers who provided information to Accellion confirming that they were targeted by the Attacks. *Id.* ¶ 40. Accellion has provided Class Counsel with the list of the impacted FTA Customers. *Id.* Accellion also has identified certain FTA Customers impacted by the Attacks based upon publicly available information. *Id.* ¶ 41.

On February 25, 2021, Accellion announced immediate end of life for FTA, meaning that Accellion will not renew any licenses for existing FTA Customers effective April 30, 2021. *Id.* ¶ 42. The final FTA license for any Accellion customer based in the United States is set to expire on January 31, 2022. *Id.* There is one Accellion customer outside of the United States whose FTA license is set to expire on March 31, 2022. *Id.* No new FTA licenses extend beyond that date. *Id.*

In connection with the Settlement, Accellion will migrate any remaining FTA Customers to Kiteworks or an alternative file transfer solution, which process is to be completed for all U.S.-based customers by January 31, 2022. *Id.* ¶ 43. Accellion has also agreed to maintain Kiteworks' FedRAMP certification (a certification that requires a rigorous annual security audit of the software and company as a whole). *Id.* Accellion intends to continue to comply with FedRAMP's Continuous Monitoring program, which requires (among other things) that Accellion complete an Annual Security Assessment performed by an independent third party to test and evaluate the security of Kiteworks as well as Accellion's security practices and procedures. *Id.* As part of the Settlement, Accellion also has agreed to (i) expand its bug bounty program by increasing the reward offerings for eligible vulnerabilities from $250-$25,000 per eligible vulnerability to $500-$35,000; (ii) provide

annual cybersecurity training to all employees, and (iii) continue to employ personnel with formal responsibilities for cybersecurity. *Id.* Accellion will employ these measures for a period of four years following the Effective Date of the Settlement, and will certify compliance once annually for a period of three years. *Id.*; *see also* SA § 2.1.

IV. TERMS OF THE SETTLEMENT

A. The Class Definition

The proposed Settlement Class is defined as follows:

> "Settlement Class" and "Class" mean all natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their Personal Information may have been compromised in the Attacks. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Accellion, its subsidiaries, parent companies, successors, predecessors, and any entity in which Accellion or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

SA § 1.46. The proposed Settlement Class is coextensive with the Class defined in the SAC. SAC ¶¶ 72-73.

B. The Release

In exchange for the benefits provided under the Settlement Agreement, Class Members will release any claims against Accellion and the Released Parties related to or arising from the FTA Data Breach. SA §§ 1.39, 4.1. Class Members are not releasing any claims they may have against Accellion FTA Customers, or any other non-released parties related to the FTA Data Breach. *Id*. The claims sought to be released by the Settlement are coextensive with the claims in the operative SAC.

C. The Settlement Benefits

The Settlement provides for an $8.1 million pre-funded, non-reversionary Settlement Fund (*id.* §§ 1.47, 3.1) that will be used to provide Participating Class Members, at their choice, with one of the following Settlement Benefits:

1. Credit Monitoring and Insurance Services

Each Participating Class Member who submits a valid claim may elect to receive two years of CMIS. SA § 3.2(a). If a Participating Class Member chooses CMIS as their respective Settlement

Benefit and already maintains a subscription for a similar product, they will have the option to postpone the commencement of the CMIS by 12 months for no additional charge. SA § 3.2(a).

The CMIS includes up to $1 million of identity theft insurance coverage and three-bureau credit monitoring that provides notice of changes to the Participating Class Member's credit profile. The retail value of this CMIS is $15.00 per month (a total of $360.00 for the entire two-year term) for each subscriber. *See* Declaration of Robert Siciliano ¶¶ 5-6.

2. Documented Loss Payment

In the alternative to the CMIS, Class Members may seek reimbursement of up to $10,000 of Documented Losses ("Documented Loss Payment"). Reimbursable Documented Losses include, *inter alia*, unreimbursed fraud losses or charges, charges or losses related to credit freezes, and credit monitoring services purchased prior to the Settlement. SA, Ex. A. To receive a Documented Loss Payment, a Class Member must submit a valid Claim Form with attestation regarding the amount of the loss supported by reasonable documentary proof. SA § 3.2(b).

3. Cash Fund Payments

In the alternative to CMIS or a Documented Loss Payment, Participating Class Members may submit a claim to receive a cash Settlement Payment ("Cash Fund Payment"). The amount of the Cash Fund Payment will be calculated per the terms of the Settlement. *Id.* §§ 3.2(c), 3.7.

It is difficult to estimate the amount of Cash Fund Payments, as it will depend on a number of factors. Assuming, however, that the claims rate is between 1% and 3% of the Class Members who will be sent direct notice (concurrently filed Declaration of Cameron R. Azari of Epiq ("Azari Decl.") ¶ 43; *see also infra*, Section V.B.5, previous Data Breach Settlement claims rate chart), Class Counsel's best estimate is that Class Members will receive approximately $50 at 1%, $24 at 2%, and $15 at 3%. Wolfson Decl. ¶ 28. As noted above, this estimate may change as the Parties endeavor to supplement the Class Member list with outreach to FTA Customers, but the Parties do not anticipate any change to be significant.

4. Prospective Relief Attributable to the Settlement

The Settlement also provides significant remedial measures that Accellion will implement for four years as a result of this litigation, which will benefit the Class Members whether or not they submit a claim. Accellion will fully retire its FTA offering, maintain FedRAMP certification for its newer Kiteworks offering, expand its bug bounty program, provide annual cybersecurity training to all employees, employ personnel with formal responsibilities for cybersecurity, and periodically confirm compliance with the foregoing measures publicly on Accellion's website. SA § 2.1. Accellion will annually certify compliance with the security commitments provided for under the Settlement for a period of three years. *Id*. § 2.1(f).

5. The Settlement's Value to Settlement Class Members

The value of the Settlement is significant. The cash fund value of the Settlement is $8,100,000. *Id.* §§ 1.47, 3.1. This does not include the value of the Settlement's prospective relief or the retail value of the CMIS claimed by Participating Class Members.

Accellion will deposit $4,600,000 of the Settlement Fund into escrow within ten Business Days of the execution of the Settlement Agreement. SA § 3.1. The remaining $3,500,000 will be placed into escrow ten Business Days after the Settlement is preliminarily approved. *Id*. These early escrow payments are themselves a substantial additional benefit to the Class. By securing the Settlement Fund now, the Settlement Class will not bear the risk of nonpayment by a privately held Defendant that has no ability to pay a higher judgment based on its current financial situation. The Settlement brings significant additional value by ensuring that all available funds go toward compensating the Class Members, as opposed to litigation that, even if successful for Plaintiffs, is likely to result in non-payment. In addition, the interest that accrues upon the deposited amount will also become part of the Settlement Fund and will benefit the Class. *Id*.

D. Plan of Distribution

Subject to the Court's approval, the Settlement Administrator will apply the Net Settlement Fund to make all distributions necessary for the CMIS claimed, Documented Loss Payments, and Cash Fund Payments. The Administrator will first apply the Net Settlement Fund to pay for claimed CMIS and then to pay for any valid claims for Documented Loss. SA § 3.7.

The amount of the Settlement Fund remaining after all payments for CMIS and Documented Loss Payments are applied (the "Post DC Net Settlement Fund") will be used to pay valid claims for Cash Fund Payments. *Id*. § 3.7. The amount of each Cash Fund Payment will be calculated by dividing the Post DC Net Settlement Fund by the number of valid claims submitted. *Id*.

Class Members will have the option to receive any Settlement Payment available to them pursuant to the terms of the Settlement Agreement via a digital payment. *Id.* § 3.3; Azari Decl. ¶ 39. In the event Class Members do not exercise an electronic payment option, they will receive their Settlement Payment via a physical check, which they will have 60 days to deposit or cash following distribution. SA § 3.8.

E. Residual

The Settlement Fund is non-reversionary. To the extent any monies remain in the Net Settlement Fund more than 150 days after the distribution of Settlement Payments, a subsequent Settlement Payment will be evenly made to all Claimants with Approved Claims who cashed or deposited the initial payment they received, assuming such payment is over $3.00. *Id.* § 3.9. In the event such payment is less than $3.00, the remaining funds will be used to extend the term of the CMIS for as long as possible for all Claimants who selected CMIS. *Id.* Any amount remaining thereafter will be paid to the proposed Non-Profit Residual Recipient: the Electronic Frontier Foundation, a 26 U.S.C. 501(c)(3) non-profit organization. *Id.* §§ 1.29, 3.9. The Electronic Frontier Foundation's efforts are directly related to the subject matter of this action. Wolfson Decl. ¶ 29. Proposed Class Counsel have no relationship with the Electronic Frontier Foundation. *Id.*; Barnow Decl. ¶ 23.

F. Notice to the Class

Pursuant to Rule 23(e), the Administrator will provide Class Members with the Summary Notice via email for any Class Member for whom an email address is available, or by postcard through the U.S. mail to those Class Members for whom a physical mailing address but no email address is available. SA § 6.7; Azari Decl. ¶¶ 20-22. If an email notice is returned undeliverable, the Administrator will attempt two other email executions; if unsuccessful, the Administrator will send

a post card Summary Notice via U.S. mail if a current mailing address is available. SA § 6.7(c); Azari Decl. ¶ 22. For Summary Notices returned as undeliverable via U.S. mail, the Administrator will re-mail the notice to any forwarding address identified on the return mail. SA § 6.7.(d); Azari Decl. ¶ 22. To those notified by email who do not submit a Claim Form, the Administrator will periodically transmit reminder emails of the opportunity to submit a Claim Form prior to the Claims Deadline. SA § 6.9; Azari Decl. ¶ 23.

The Administrator will also (i) design and conduct an online digital advertising publication notice program, which will continue through the Claims Deadline (SA § 6.4; Azari Decl. ¶ 25); and (ii) create and maintain a Settlement Website that contains all relevant information and documents regarding the Settlement (including the Long Form Notice, the Claim Form, the Settlement Agreement, Preliminary Approval documents, and the operative Complaint), through which Class Members can submit electronic Claims Forms and Requests for Exclusion (SA § 6.10; Azari Decl. ¶ 35). The Settlement Website will contain a toll-free telephone number and mailing address through which Class Members can contact the Administrator. SA § 6.10; Azari Decl. ¶ 35. The language of all Notice Forms (Summary Notices, Long Form Notice, Claim Form, etc.) is easily understandable and takes into account the education level and language needs of the proposed Class Members. Azari Decl. ¶ 37.

G. Proposed Class Representative Service Awards

Plaintiffs have been dedicated and active participants on behalf of the class they seek to represent. They assisted in the investigation of the matter prior to and after retaining counsel, provided relevant information to their counsel, reviewed and approved complaints, kept in close contact with counsel to monitor the progress of the litigation, and reviewed and communicated with their counsel regarding the Settlement. Barnow Decl. ¶ 21; Wolfson Decl. ¶ 49. Their efforts made the recovery possible. Barnow Decl. ¶ 21; Wolfson Decl. ¶ 49. In view of these efforts, on behalf of Plaintiffs, counsel will separately petition the Court for approval of Service Awards for each of the eight Plaintiffs in the amount of up to $1,500 each. SA § 8.1. This amount is consistent with those

approved in other data breach class action settlements. The Settlement is not conditioned upon the Court's award of any Service Awards. *Id.* § 8.3.

H. Attorneys' Fees, Costs, and Expenses

As part of the Settlement, Plaintiffs' counsel will separately file a motion for an award of reasonable attorneys' fees and reimbursement of litigation costs and expenses. *Id.* § 9.1. There is no "clear sailing" clause in the Settlement (*id.* §§ 9.1-9.3) and any amount sought for payment of attorneys' fees will be reasonable and consistent with the Ninth Circuit's 25% "benchmark" percentage for such awards. *See, e.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). Proposed Class Counsel have in total expended approximately $649,292.00 in lodestar and incurred $36,196.98 in expenses as of January 12, 2022. Barnow Decl. ¶ 36; Wolfson Decl. ¶ 51. Proposed Class Counsel are not yet certain whether, or in what amount, they will seek a multiplier as they expect a number of additional hours to be expended in this matter prior to the filing of a motion for fees, costs, and expenses. In no event will proposed Class Counsel seek more than 25% of the Settlement Fund in attorneys' fees. Proposed Class Counsel also intend to seek reimbursement of all costs and expenses incurred to date. Any approved Fee Award and Costs will be paid out of the Settlement Fund. SA § 9.1. The Settlement is not conditioned upon the Court's award of any attorneys' fees, costs, or expenses. *Id.* § 9.3.

I. The Settlement Administrator

The Parties propose that Epiq—a highly experienced and reputable national class action administrator—serve as Administrator to provide notice, administer and make determinations regarding claims, process settlement payments, make distributions and provide other services necessary to implement the Settlement. *See generally* Azari Decl. The costs of the Administrator will be paid out of the Settlement Fund. SA § 3.1.

Epiq was selected because they will provide the most efficient administration option. Wolfson Decl. ¶ 23. Proposed Class Counsel—who have litigated many class actions to settlement—has previously worked with Epiq on different matters, including pending settlements involving three FTA Customers (Kroger, Flagstar, and HealthNet). Wolfson Decl. ¶ 23. Proposed Class Counsel

scrupulously negotiated the cost for notice and settlement administration and believe that estimated $1,834,421 amount is reasonable. Barnow Decl. ¶ 13; Wolfson Decl. ¶ 23.

The selection of Epiq provides additional benefits to the Class because Epiq will have and use, for the purposes of this Settlement, the class contact lists that had been optimized in the Kroger, Flagstar, and HealthNet settlements (whether by agreement from those Defendants or court order), assuming Flagstar and HealthNet receive preliminary approval. It is anticipated that the Settlement Class could save approximately $276,000 in costs associated with such optimization. Azari Decl. ¶ 19.

V. PRELIMINARY APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED

A. The Rule 23 Requirements for Class Certification Are Met

Parties seeking class certification for settlement purposes must satisfy the requirements of Fed. R. Civ. P. 23. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). "A court considering such a request should give the Rule 23 certification factors 'undiluted, even heightened, attention in the settlement context.'" *Sandoval v. Roadlink USA Pac., Inc*., No. EDCV 10-00973, 2011 WL 5443777, at *2 (C.D. Cal. Oct. 9, 2011) (quoting *Amchem*, 521 U.S. at 620). At the preliminary approval stage, "if a class has not [yet] been certified, the parties must ensure that the court has a basis for concluding that it likely will be able, after the final hearing, to certify the class." Fed. R. Civ. P. 23, Adv. Comm. Notes to 2018 Amendment. All the requirements of Rule 23(a) must be met, and "at least one of the three requirements listed in Rule 23(b)." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011).

1. Rule 23(a) Is Satisfied

i. The Class Is Sufficiently Numerous

The Settlement Class is comprised of, at a minimum, 9.2 million Settlement Class Members. The Rule 23(a)(1) numerosity requirement is readily satisfied.

ii. There Are Common Questions of Law and Fact

The commonality requirement is satisfied if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2); *see also Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012) (characterizing commonality as a "limited burden," which "only requires a single significant question of law or fact").

Here, numerous common issues of law and fact affect the Class uniformly, including: the nature of Accellion's data security practices, whether Accellion knew or should have known that FTA was unsecure, whether Accellion owed duties of care to Class Members to safeguard their Personal Information, and whether Accellion breached those duties. Resolution of these and other common inquiries can be achieved through common evidence that does not vary from Class Member to Class Member. Commonality is satisfied.

iii. The Class Representatives' Claims Are Typical

Rule 23(a)(3) requires that the Class Representatives' claims be typical of those of the Class. "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other Class Members have been injured by the same course of conduct." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (internal quotation marks and citation omitted).

Here, the claims of the Plaintiffs are typical of the claims of the Settlement Class. Plaintiffs are all individuals whose Personal Information was impacted as a result of the FTA Data Breach, as each Plaintiff received notice from an FTA Customer that their Personal Information may have been compromised; the Class Members are also individuals whose Personal Information was impacted by the Attacks and FTA Data Breach. Plaintiffs' and Class Members' claims arise from the same nucleus of facts relating to the FTA Data Breach and Attacks, pertain to common defendant Accellion, and are based on the same legal theories. Plaintiffs thus satisfy the Rule 23(a)(3) typicality requirement.

iv. Proposed Class Representatives and Class Counsel Adequately Represent Class Members

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interests of the class," which requires that the named plaintiffs (1) not have conflicts of interest with the proposed Class; and (2) be represented by qualified and competent counsel. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 895 F.3d 597, 607 (9th Cir. 2018).

Plaintiffs and proposed Class Counsel are adequate. First, the Plaintiffs have demonstrated that they are well-suited to represent the Settlement Class, have actively participated in the litigation, and will continue to do so. Barnow Decl. ¶ 20; Wolfson Decl. ¶ 49. They do not have any conflicts of interest with the absent Class Members, as their claims are coextensive with those of the Class Members. *Id.*; *Kent v. Hewlett-Packard Co.*, No. 5:09-CV-05341, 2011 WL 4403717, at *1 (N.D. Cal. Sept. 20, 2011) (finding class representatives adequate where their claims coextensive were with those of absent class members, and they had no conflicts). Further, the named Plaintiffs represent victims of the FTA Customer-specific data breaches for nearly every FTA Customer that has been sued relating to the FTA Data Breach.

Second, proposed Class Counsel are highly qualified and experienced in class action and complex litigation, with expertise and extensive experience in data breach and data privacy class actions. Barnow Decl. ¶¶ 24-34; Wolfson Decl. ¶¶ 54-69. Proposed Class Counsel have been dedicated to the prosecution of this action and will remain so through final approval. Should appeals be necessary, they are experienced and highly competent in that regard. Among other actions, counsel identified and investigated the claims in this lawsuit and the underlying facts, spoke with numerous Class Members, engaged in multiple mediation sessions and extensive negotiations with Accellion, and successfully negotiated this Settlement. Barnow Decl. ¶ 22; Wolfson Decl. ¶ 13; *see also In re Emulex Corp. Sec. Litig.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) (a court evaluating adequacy of representation may examine "the attorneys' professional qualifications, skill, experience, and resources . . . [and] the attorneys' demonstrated performance in the suit itself"); *Alvarez v. Sirius XM Radio Inc.*, No. CV 18-8605, 2020 WL 7314793, at *8 (C.D. Cal. July 15, 2020) (adequacy of counsel satisfied where class was "represented by Class Counsel who are experienced in class action litigation"). The adequacy requirement is satisfied.

2. Rule 23(b)(3) Is Satisfied

Rule 23(b)(3) requires that (1) "questions of law or fact common to the members of the class predominate over any questions affecting only individual members of the class," and (2) "that a class

action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). Both of these requirements are satisfied.

i. Common Issues of Law and Fact Predominate Over Any Potential Individual Questions

The Rule 23(b)(3) predominance element requires that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Here, Plaintiffs' claims depend on whether Accellion had reasonable data security measures in place to protect Plaintiffs' and Class Members' Personal Information, and whether Accellion could have prevented unauthorized exposure or compromise of Plaintiffs' Personal Information, or mitigated its effects with more adequate security practices. These questions can be resolved using the same evidence for all Class Members, including Accellion's internal documents, testimony of its employees, and expert analysis. *Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc.*, No. 3:16-CV-05486, 2018 WL 8949777, at *5 (N.D. Cal. Oct. 15, 2018) ("Predominance is satisfied because the overarching common question . . . can be resolved using the same evidence for all class members and is exactly the kind of predominant common issue that makes certification appropriate.").

Plaintiffs allege that the FTA Data Breach and Attacks stemmed from the same FTA vulnerabilities and compromised similar types of Personal Information for Plaintiffs and Class Members. The issues presented are susceptible to common proof because they focus on Accellion's class-wide data security policies and practices, and thus are the type of predominant questions that make a class-wide adjudication worthwhile. *Id.*; *see also Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) ("When 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) . . . .'" (citation omitted)). Predominance is satisfied.

ii. A Class Action Is the Superior Method to Fairly and Efficiently Adjudicate the Matter

Rule 23(b)(3) requires a class action to be "superior to other available methods for the fair and efficient adjudication of the controversy" under following factors:

> (A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

Where, as here, a court is deciding the certification question in the proposed class action settlement context, it need not consider manageability issues because "the proposal is that there be no trial," and hence manageability considerations are no hurdle to certification for purposes of settlement. *Amchem*, 521 U.S. at 620.

A class action is the only reasonable method to fairly and efficiently adjudicate Class Members' claims against Accellion. *See, e.g.*, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) ("Class actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [In such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available."). Resolution of the predominant issues of fact and law through individual actions is impracticable: the amount in dispute for individual class members is too small, the technical issues involved are too complex, and the required expert testimony and document review too costly. *Just Film, Inc. v. Buono,* 847 F.3d 1108, 1123 (9th Cir. 2017).

The class device is the superior method of adjudicating claims against Accellion that arise from the FTA Data Breach because it promotes greater efficiency, and no realistic alternative exists. Courts routinely recognize this in other data breach cases where class-wide settlements have been approved. *See, e.g.*, *In re Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal. May 10, 2019); *In re Yahoo! Inc. Cust. Data Sec. Breach Litig.*, No. 5:16-md-02752-LHK (N.D. Cal. July 20, 2019).

B. The Proposed Settlement Is Eminently Fair, an Excellent Result for the Class Members, and Should Be Preliminarily Approved

The 2018 revisions to Rule 23 confirm the need for a detailed analysis regarding the fairness of a proposed class settlement. "The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). Accordingly, a district court may approve a settlement agreement "after a hearing and only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

In making this decision, Rule 23(e)(2) clarifies that district courts must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Thus, Rule 23(e) now reflects the factors that courts in this Circuit already considered for settlement approval: "(1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement." *In re Anthem, Inc. Data Breach Litigation,* 327 F.R.D. 299, 317 (N.D. Cal. 2018) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)); *see also* United States District Court for the Northern District of California, Procedural Guidance for Class Action Settlements.

Prior to class certification, there is an even greater potential for a breach of fiduciary duty owed the class during settlement. Accordingly, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair. *In re Bluetooth Headset*, 654 F.3d at 946.

At the preliminary approval stage, the court "evaluate[s] the terms of the settlement to determine whether they are within a range of possible judicial approval." *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009). Ultimately, "[s]trong judicial policy favors settlements." *Churchill Village, L.L.C. v. Gen. Elec.,* 361 F.3d 566, 576 (9th Cir. 2004) (ellipses and quotation marks omitted) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)).

1. The Strength of Plaintiffs' Case and Possible Monetary Remedies

Plaintiffs believe they have a strong case for liability based on the alleged shortcomings in Accellion's data security measures. Plaintiffs also believe that they would be able to recover damages on behalf of the Class.

The range of potential outcomes, however, is wide. The damages available will depend on the scope of class certification, whether various theories of damages would be accepted by the Court (e.g., benefit of the bargain and loss of value of Personal Information), and which causes of action survive. Plaintiffs' best measure of damages (based on black-market rates of at least $5 per individual for Social Security numbers[2]) is $46,000,000 for the approximately 9.2 million Class Members who will be sent direct notice. These amounts are not certain and the claims are subject to numerous risks (*see infra*, Section V.B.2.). Plaintiffs believe that the legal theories behind such damages have merit, but also recognize that there is serious risk.

2. The Risk, Expense, Complexity, and Potential Class Recovery

The risk, expense, and complexity of this litigation, and the likelihood that, even if successful on the merits, the Class may not see any recovery in light of Accellion's likely inability to pay a larger judgment, weigh heavily in favor of preliminary approval.

Data breach cases are, by nature, especially risky, expensive, and innately complex. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800, 2020 WL 256132, at *32-33 (N.D. Ga. Mar. 17, 2020) *aff'd in part, rev'd in part and remanded,* 999 F.3d 1247 (11th Cir. 2021), *cert. denied sub nom. Huang v. Spector*, No. 21-336, 2021 WL 5043620 (U.S. Nov. 1, 2021) (recognizing the complexity and novelty of issues in data breach class actions). This case is no exception and presents unique risks because of the unique circumstances of the Data Breach.

There are many substantial hurdles that Plaintiffs would have to overcome before the Court might find a trial appropriate. Given the early stage of the litigation, the legal sufficiency of Plaintiffs' claims has not been tested by a motion to dismiss.

[2] *See Premera, supra,* ECF No. 156, p. 20 of 24, Motion for Class Certification.

Data breach cases, particularly, face substantial hurdles in surviving past the pleading stage and are among the most risky and uncertain of all class action litigation. *See, e.g.*, *Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting cases). Here, the different factual scenarios pertaining to each FTA Customer, such as the types of Personal Information compromised, whether hackers demanded a ransom, and whether the Personal Information appeared on the dark web, further complicates the matter. While Plaintiffs are confident that they would prevail on sustaining Article III standing across the board over an anticipated challenge from Accellion, they recognize the additional delay this inquiry could create in the advancement of this litigation.

To the extent the case did survive dismissal, Accellion would oppose certification arguing that too many individual inquiries defeat commonality because the compromised Personal Information is not uniform among Class Members, the proposed class includes too many uninjured class members, and other facts unique to particular FTA Customers. While Plaintiffs are confident that such issues would be fully addressed, they recognize that the manageability inquiry of class certification could be more complicated by the unique circumstances of this case.

Accellion would also challenge liability for negligence on several grounds, including that it owed no legal duty of care to Class Members because it was FTA Customers—not Accellion—who stored and transferred Class Members' data, and chose to do so on FTA. Accellion would further argue that Plaintiffs cannot establish causation, establish any breach of duty on Accellion's part, or recover any tort damages due to the economic loss rule. Any claims based on untimely or defective notice of the FTA Data Breach will also presents risk because Accellion alleges that it promptly notified its FTA Customers of the FTA vulnerabilities and issued patches and will argue that it had no ability or duty to notify Class Members directly.

The California statutory claims as to Accellion also face the risk of dismissal on the pleadings or an unfavorable disposition at summary judgment. The CCPA provides a private right of action to consumers whose personal information "is subject to unauthorized access and exfiltration, theft, or disclosure as a result of [a] business's violation of the duty to implement and maintain reasonable

security procedure and practices[.]" Cal. Civ. Code § 1798.150(a)(1) (emphasis added). Section 1798.150(a)(1) applies exclusively to a "business" regulated by the CCPA, a term that is defined as an entity "that collects consumers' personal information or on the behalf of which that information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information." *Id.* § 1798.140(c)(1) (emphasis added).

Accellion might argue that it is not a "business" under the CCPA with respect to Plaintiffs. Accellion might also argue that it was the FTA Customers who collected data from Plaintiffs in a wide variety of circumstances, and those customers exclusively controlled which of that data was stored or transferred over the Customer's FTA platforms.

Accellion will make similar arguments under the CMIA, which provides that "[a] provider of health care, health care service plan, or contractor shall not disclose medical information" except in certain enumerated circumstances. Cal. Civ. Code § 56.10; see also *id.* § 56.101 (imposing liability on "[a]ny provider of health care, health care service plan, . . . or contractor who negligently creates, maintains, pre- serves, stores, abandons, destroys, or disposes of medical information . . . ."). Accellion will argue that it is neither a "health care provider" nor a "contractor" covered by the statute. The term "provider of healchare" is defined as (a) "any clinic, health dispensary, or health facility" licensed under the California Health and Safety Code; (b) any business "organized for the purpose of maintaining medical information" for purposes of diagnosis, treatment, or management; and (c) any business that "offers software or hardware to consumers . . . that is designed to maintain medical information" for purposes of diagnosis, treatment, or management. and a contractor is a "medical group, independent practice association, pharmaceutical benefits manager, or . . . medical service organization." *Id.* §§ 56.05, 56.06. Accellion will argue that it is not a "clinic, health dispensary, or health facility," is not organized solely "for the purpose of maintaining medical information," and its software is not offered "to consumers" or "designed to maintain medical information" for diagnosis, treatment, or patient management purposes. *Id.*

Were the litigation to proceed, there would be numerous expert reports and costly depositions, which would present significant expenses. It is also not certain that the Court would

approve Plaintiffs' damages theories. As in any data breach class action, establishing causation and damages on a class-wide basis is largely unchartered territory and full of uncertainty. Here, the unique circumstances pertaining to each FTA Customer further could be argued as complicating the causation and class-wide damage inquiries.

Even if Plaintiffs prevail at every turn during the litigation and obtain a judgment in their favor, the likelihood that Accellion would not be able to pay the judgment is high, based on Accellion's financial documents and Plaintiffs' counsels' consultation with an expert. The Settlement, including the early escrow payments, ensures that every available dollar is promptly secured toward relief to the Class Members, and supports preliminary approval. *See City of Seattle,* 955 F.2d 1268 at 1295 ("a settling defendant's ability to pay may be a proper factor to be considered in evaluating a proposed class action settlement"); *Alabsi v. Savoya, LLC*, No. 18-CV-06510, 2020 WL 587429, at *6–7 (N.D. Cal. Feb. 6, 2020) (risk of non-payment, if Plaintiffs prevails on the merits, supports preliminary approval); *Johnson v. Serenity Transportation, Inc.*, No. 15-CV-02004, 2021 WL 3081091, at *4 (N.D. Cal. July 21, 2021) (settlement fair and reasonable because Defendants would be unable to provide a higher settlement due to their financial insolvency); *Yamagata v. Reckitt Benckiser LLC*, No. 3:17-CV-03529, 2021 WL 5909206, at *3 (N.D. Cal. Oct. 28, 2021) (granting final approval of class action settlement, the Court having "considered a number of factors, including . . . the ability of Defendant to withstand a greater judgment . . . ."); *Perks v. Activehours, Inc.*, No. 5:19-CV-05543, 2021 WL 1146038, at *5 (N.D. Cal. Mar. 25, 2021) (defendant's inability to pay a larger settlement weighs in favor of finding the relief to be adequate).

The Settlement avoids the risk of non-recovery from Acccellion both based on the risks of litigation as well as the risk of non-payment even if litigation is successful, and directs all available moneys to bring benefits that address all potential harms of the FTA Data Breach and Attacks to the Class. The Court should grant preliminary approval.

3. The Risk of Maintaining Class Status Through Trial

Plaintiffs' case is still in the pleadings stage, and the Parties have not briefed class certification. Class certification proceedings are far off in the distance in this litigation, and prior to

those proceedings, there is risk of dismissal. Class certification, if and when continued litigation reaches that point, will present substantial risk, particularly given that different types of information were affected for different Class Members, that different FTA Customers were attacked at different times and reacted in different ways, that some FTA Customers were subjected to ransom demands while others were not, that some Class Members' Personal Information was found on the dark web while others' was not, and in light of the fact that class-wide data breach damage models remain largely untested, with little precedent pertaining to class certification in the data breach context. Data breach law is developing, so even if Plaintiffs obtained class certification, there is no guarantee that the class action status would be maintained. Accellion would likely seek a Rule 23(f) appeal of any decision by the Court granting class certification, resulting in additional delay to Class Members. The significant risk of obtaining and maintaining class certification in this case supports preliminary approval.

4. The Amount Offered in Settlement Is Fair, Reasonable, and Adequate

The $8.1 million non-reversionary Settlement Fund is an excellent result for the Class. With this fund, all Class Members will be eligible for a Settlement Payment in the form of distribution for the CMIS, a Documented Loss Payment, or a Cash Fund Payment. SA §§ 3.2(a)-(c). The Settlement Fund will be applied to pay all Administrative Expenses, Notice Expenses, the taxes to the Settlement Fund, any Service Awards, and any payment of a Fee Award and Costs. *Id*. §§ 1.28, 3.1. Any funds remaining in the Net Settlement Fund after distribution(s) to Class Members will be distributed in large part, by way of a subsequent Settlement Payment to Class Members. *Id*. § 3.9.

The Settlement presents a robust relief package and valuable outcome for the Class, particularly in light of the FTA Customer settlements, Accellion's comparative size and financial resources, and the total compensation Class Members may be eligible for as a result of the Attacks. When combined with the three FTA Customer settlements that are currently pending (Kroger, HealthNet, and Flagstar), a total of $29,000,000 will be made available to the approximately 9.2 million Class Members known to be impacted by the FTA Data Breach and related Attacks when these settlements are approved. The average recovery on a per class member basis is $3.15 on the

basis of these four settlements—placing the per Class Member recovery obtained to date on behalf of persons impacted by the FTA Data Breach in the upper range of per capita recovery for similar breaches—and this amount will only increase as future FTA Customer settlements are reached and approved.

Even ignoring the other FTA Customer settlements (Kroger, Flagstar, HealthNet), the Settlement represents an excellent outcome for the Class and compares favorably to other data breach settlements:

Case Title	No. of Class Members	Settlement Fund	Amount Per Class Member	Credit Monitoring
Target Data Breach Security Litig.	97.5M	$10M	$0.10	Documented Cost Reimbursement
LinkedIn User Privacy Litig.	6.4M	$1.25M	$0.20	N/A
Home Depot Customer Data Breach Litig.	40M	$13M	$0.33	18 Months
Yahoo! Inc. Customer Data Breach Litig.	194M	$117.5M	$0.61	2 years
Adlouni v. UCLA Health Systems Auxiliary, et al.	4.5M	$2M	$0.44	2 years
Proposed Settlement	**9.2M**	**$8.1M**	**$0.88**	**2 years**
Atkinson v. Minted	4.1M	$5M	$1.22	2 years
Experian Data Breach Litig.	16M	$22M	$1.37	2 years
Anthem Data Breach Litig.	79.2M	$115M	$1.45	2 years
Equifax Data Security Breach Litig.	> 147M	$380.5M	$2.59	4 years
21st Century Oncology Customer Data Security Breach Litig.	2.2M	7.85M	3.57	2 years
Premera Blue Cross Data Breach Litig.	8.86M	$32M	$3.61	2 years

Wolfson Decl. ¶ 45. In isolation, the Settlement is in the middle range of settlements on a per-capita basis, and the amount supports preliminary approval. The Settlement amount is even stronger in light of the additional risks of litigation based on the unique circumstances of this Data Breach, discussed in Section V.B.2, *supra*.

Furthermore, the substantive and meaningful injunctive relief obtained as part of this Settlement further supports approval. *See e.g., Campbell v. Facebook*, *Inc*., 951 F.3d 1106, 1114 (9th Cir. 2020) (inclusion of "enhanced disclosures and practice changes" in settlement agreement supports approval). Notably, many of the same FTA Customers who were affected by the FTA Data Breach have migrated to Accellion's newer Kiteworks product, and the injunctive benefits—which include a requirement that Accellion maintain Kiteworks' FedRAMP certification and implement cybersecurity training and personnel requirements—provide a direct benefit to Class Members whose data is still held by those customers.

5. The Proposed Method of Distribution Is Effective

Rule 23(e)(2)(C)(ii) requires consideration of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e). "Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." *Id.*, Advisory Comm. Note to 2018 amendment.

To file a claim, Class Members need only complete a straightforward Claim Form and, if necessary, submit it along with any documents supporting claimed losses, either through the Settlement Website or by mail. SA §§ 1.10, 3.2, and Ex. A (claim form); Azari Decl. ¶¶ 35. Individuals who did not receive direct Notice of the Settlement, and thus no unique Class Member identifier, but believe themselves to be a Settlement Class Member, may submit a Claim if they can provide Reasonable Documentation evidencing their relationship to one of the affected FTA Customers. SA § 6.8; SA, Ex. A. Epiq will process all Claims. SA §§ 1.44, 3.5. The methods of distributing relief to Class Members include both digital and physical check avenues. *Id.* § 3.3; Azari Decl. ¶ 39.

Based upon Class Counsel's previous experience, Class Counsel expect the claims rate in this Settlement to be between 1-3%. Wolfson Decl. ¶ 27; Azari Decl. ¶ 43. Previous data breach settlements' claims rates support this conclusion:

Case Title	Class Size (Approx.)	No. of Claims	Claims Rate
Gordon v. Chipotle Mexican Grill, No. 1:17-cv-01415 (D. Colo.), ECF 103 at 1 & ECF 124 at ¶ 13	10,000,000	6,354	< 0.1%
Target Corp. Customer Data Security Breach Litigation, MDL No. 14-2522 (D. Minn.), ECF 615 at ¶¶ 4, 14	97,447,983	225,856	~0.2%
The Home Depot Inc. Customer Data Security Breach Litigation, No. 1:14-md-02583 (N.D. Ga.), ECF 181-1 at 25 & ECF 245-1 at ¶ 3	40,000,000	127,527	~0.3%
Corona v. Sony Pictures Entertainment, No. 2:14-cv-9600 (C.D. Cal.), ECF 145-1 at 11 n.8 & ECF 164 at 2	435,000	3,127	~0.7%
LinkedIn User Privacy Litig., No. 12-cv-03088-EJD (N.D. Cal.), ECF 122 at 2 & ECF 145-2 at ¶ 12	6,400,000	47,336	~0.7%
Banner Health Data Breach Litigation, No. 2:16-cv-2696 (D. Ariz.), ECF 170 at 1, and ECF 195-3 at ¶ 12	2,900,000	39,091	~1.3%
Anthem, Inc. Data Breach Litig., No. 5:15-md-02617-LHK (N.D. Cal.), ECF 1007 at 4 & ECF 1007-6 at ¶ 2	79,200,000	1,380,000	~1.7%
Adlouni v. UCLA Health Systems Auxiliary, BC589243 (Cal. Sup. Ct.)	4,500,000	108,736	~2.4%
Experian Data Breach Litigation, No. 8:15-cv-01592-JLS-DFM (C.D. Cal.), ECF 286-1 at 20 & ECF 309-3 at ¶ 8	14,931,074	436,006	~2.9%
Sheth v. Washington State University, No. 3:17-cv-05511 (W.D. Wash.)	992,327	37,712	~3.8%
Winstead v. ComplyRight, No. 1:18-cv-4990 (N.D. Ill.)	665,680	28,073	~4.2%
Premera Blue Cross Customer Data Security Breach Litigation, No. 3:15-md-2633 (D. Or.), ECF 273 at 12-13 & ECF 301 at ¶ 13	8,855,764	803,710	~9.1%
Equifax Inc. Data Security Breach Litigation, No. 1:17-md-2800 (N.D. Ga.), ECF 739-1 at 20 & ECF 900-4 at ¶ 5	147,000,000	15,000,000	~10.2%

6. The Extent of Discovery Completed and the Stage of the Proceedings

While this matter is still in its early stages, Plaintiffs have thoroughly investigated and diligently developed the facts and legal claims in this case. Counsel reviewed all publicly available

sources concerning the FTA Data Breach and Attacks, the information Accellion has provided about the breach, and the FTA Customers' data breach notification letters. Barnow Decl. ¶ 22; Wolfson Decl. ¶ 13.

Plaintiffs conducted confirmatory discovery to establish the core facts of the breach and Accellion's liability, Accellion's reaction to the breach, class size, and Accellion's financial ability. Barnow Decl. ¶¶ 2, 12; Wolfson Decl. ¶ 31; *see supra*, Section III.C. Plaintiffs and their counsel have stayed abreast of all developments involving the FTA Data Breach. Barnow Decl. ¶ 22; Wolfson Decl. ¶ 13. Confirmatory discovery further confirms the Settlement as fair, reasonable, and adequate. Barnow Decl. ¶ 12; Wolfson Decl. ¶¶ 30-43. Proposed Class Counsel's knowledge of facts of this case and of the practice area more broadly informed Plaintiffs' clear view of the strengths and weaknesses of the case, the extensive settlement negotiations, and the decision to recommend that the Court grant preliminary approval to the Settlement. Barnow Decl. ¶¶ 19, 35; Wolfson Decl. ¶ 48.

7. The Experience and Views of Counsel

Proposed Class Counsel include attorneys who have substantial experience in complex class action litigation, including in data breach and data privacy cases. Barnow Decl. ¶¶ 24-34, & Ex. 1; Wolfson Decl. ¶¶ 46, 53-69, & Ex. 2. Proposed Class Counsel fully endorse the Settlement as fair, reasonable, and adequate to the Class, and do so without reservation. Barnow Decl. ¶ 35; Wolfson Decl. ¶ 70.

8. The Presence of a Governmental Participant

No governmental agency is involved in this litigation. The Attorney General of the United States and Attorneys General of each State will be notified of the proposed Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, and will have an opportunity to raise any concerns or objections. SA § 6.13.

9. The Reaction of Class Members to the Proposed Settlement

The Class has yet to be notified of the Settlement and given an opportunity to object, so it is premature to assess this factor. Before the final approval hearing, the Court will receive and be able to review all objections or other comments received from Class Members, along with a full accounting of all opt-out requests.

10. The Settlement Is the Product of Arm's-Length Negotiations That Were Free of Collusion

The Court must be satisfied that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset*, 654 F.3d at 946-47 (internal quotation marks, ellipses and citation omitted).

Plaintiffs achieved the Settlement in contested litigation and through arm's-length negotiations that involved two intensive mediation sessions before a highly respected mediator. Plaintiffs undertook substantial investigation of the underlying facts, causes of action, and potential defenses to those claims. Barnow Decl. ¶ 21; Wolfson Decl. ¶¶ 7, 13. When settlement negotiations began, Plaintiffs and their counsel had a clear view of the strengths and weaknesses of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. The Parties engaged in extensive arm's length negotiations, including two mediation sessions before a mutually agreed upon mediator, the Hon. Jay C. Gandhi (Ret.) on July 19, 2021 and September 7, 2021, as well as months of negotiations between the parties subsequently. Barnow Decl. ¶¶ 8-11, 18; Wolfson Decl. ¶¶ 24, 47, 52.

Judge Gandhi, a highly respected mediator, has extensive experience in class action litigation, both from his time as a magistrate judge in the Central District of California and as a result of mediating many class actions, including multiple data breach cases where a settlement was reached and subsequently approved.[3] His involvement here further confirms the absence of collusion. *G. F. v. Contra Costa Cnty.*, No. 13-cv-03667, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) ("[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.") (internal quotation marks and citation omitted).

In re Bluetooth identified three "signs" of possible collusion: (1) "'when counsel receive[s] a disproportionate distribution of the settlement'"; (2) "when the parties negotiate a 'clear sailing' arrangement," under which the defendant agrees not to challenge a request for an agreed-upon

[3] *See, e.g., In re Premera Blue Cross Customer Data Sec. Breach Litig.*, No. 3:15-MD-2633, 2019 WL 3410382, at *1 (D. Or. July 29, 2019); *In re Banner Health Data Breach Litig.*, No. 2:16-cv-02696-PHX-SRB (D. Ariz. Dec. 5, 2019), ECF No. 170, at 6 (parties engaged in private mediation with Judge Gandhi).

attorney's fee; and (3) when the agreement contains a "kicker" or "reverter" clause that returns unawarded fees to the defendant, rather than the class. *In re Bluetooth, supra,* 654 F.3d at 947 (internal citations omitted).

None of the *In re Bluetooth* signs are present here. There is no "clear sailing provision" and Class Counsel will not seek fees and expenses that exceed the 25% of the Fund benchmark set by *In re Bluetooth*. *Id.* at 942; SA § 11.3; *see supra,* Section IV.H. There is no reversion of the Settlement Fund (SA § 3.13), but rather the Settlement makes every effort to distribute any Residual to the Class (*see id*. § 3.9). Proposed Class Counsel will apply for fees from this non-reversionary Settlement Fund, so that there was every incentive to secure the largest fund possible.

There is no indication or existence of collusion or fraud in the settlement negotiations and the Settlement that is being presented to the Court.

11. The Proposed Notice Plan Is Appropriate

Rule 23 requires that prior to final approval, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). For classes certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The Rule provides, "notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." *Id*.

"The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir. 2005). The best practicable notice is that which is "reasonably calculated, under all 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); *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 252 (2001) ("As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members.").

The notice should provide sufficient information to allow Class Members to decide whether they should accept the benefits of the settlement, opt out and pursue their own remedies, or object to its terms. *Id.* at 251-52. "[N]otice is adequate if it may be understood by the average class member." *Warner v. Toyota Motor Sales, U.S.A., Inc.*, No. CV 15-2171, 2016 WL 8578913, at *14 (C.D. Cal. Dec. 2, 2016) (quoting 4 NEWBERG ON CLASS ACTIONS § 11:53, at p. 167 (4th ed. 2013)). The Long Form Notice (SA, Ex. D) here is clear, precise, informative, and meets all the necessary standards, allowing Class Members to make informed decisions with respect to whether they remain in or opt out of the Settlement Class, or object to the Settlement.

The Long Form Notice describes the claims, a history of the litigation, the Class itself, the Settlement terms, the released claims, identity of Class Counsel, the maximum amount of attorneys' fees and Service Awards that will be applied for, the Fairness Hearing date, a description of Class Members' opportunity to appear at the hearing, a statement of the procedures and deadlines for requesting exclusion and filing objections, and how to obtain further information. SA, Ex. D; MANUAL FOR COMPLEX LITIGATION § 30.212 (4th ed. 2004) (Rule 23(e) notice should provide a summary of the litigation and the settlement to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings). Further, the Notice describes the plan and priority of distribution and provides for recovery estimates to best inform class members.

The Notice Plan was carefully negotiated and structured. Accellion is required to promptly request contact information for prospective Class Members directly from FTA Customers that Accellion reasonably believes were affected by the FTA Data Breach to facilitate direct notice to those individuals. SA § 6.5. The Notice Plan includes direct notice by emailing or mailing the Summary Notice (SA, Ex. D) to all Class Members who can reasonably be identified in the records of FTA Customers, and reminder emails to those for whom email addresses are available. SA § 6.9; Azari Decl. ¶¶ 21-23. The Administrator will also conduct a comprehensive online digital advertising publication notice program and establish a Settlement Website. SA §§ 6.4, 6.10; Azari Decl. ¶¶ 25-35. The proposed Notice Plan represents the best notice practicable. Azari Decl. ¶ 42. Copies of all

the notice documents are attached as exhibits to the Settlement Agreement; they are clear and concise, and directly apprise Class Members of all the information they need to know to make a claim, opt out, or object. Fed. R. Civ. P. 23(c)(2)(B); *see also* Azari Decl. ¶ 38. The Notice Plan is consistent with, and exceeds, other similar court-approved notice plans (Azari Decl. ¶ 42), the requirements of Fed. Civ. P. 23(c)(2)(B), the Northern District of California Procedural Guidance for Class Action Settlements (Guidance # 3), and the Federal Judicial Center guidelines for adequate notice.

As there is no alternative method of notice that would be practicable here or more likely to notify Class Members, the proposed Notice plan constitutes the best practicable notice to Class Members and complies with the requirements of Due Process.

12. Appointment of Settlement Class Counsel

Under Rule 23, "a court that certifies a class must appoint class counsel [who must] fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). In making this determination, courts consider the following attributes: the proposed class counsel's (1) work in identifying or investigating potential claims, (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case, (3) knowledge of the applicable law, and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i-iv).

Here, proposed Class Counsel have extensive experience prosecuting complex consumer class action cases, including data breach and data privacy cases. Barnow Decl. ¶¶ 24-34, & Ex. 1; Wolfson Decl. ¶¶ 53-69, & Ex. 2. As described above and in Class Counsel's supporting declarations and firm resumes, Proposed Class Counsel meet all Rule 23(g)(1)(A) factors. Accordingly, the Court should appoint Tina Wolfson, Robert Ahdoot, and Andrew W. Ferich of Ahdoot & Wolfson, PC, and Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C. as Class Counsel.

C. Settlement Deadlines and Schedule for Final Approval

In connection with preliminary approval, the Court must set a final approval hearing date, dates for mailing the Notices, and deadlines for objecting to the Settlement and filing papers in

support of the Settlement. Plaintiffs propose the following schedule, which the parties believe will provide ample opportunity for Class Members to decide whether to request exclusion or object:

EVENT	DATE
Notice Date (U.S. mail and email)	Within **30 Days** from Preliminary Approval Order
Deadline to Submit Claim Forms	**90 Days** from Notice Date
Deadline to Submit Motion for Fee Award and Costs, and Service Awards	No later than **35 Days** Before Objection Deadline
Deadline to Object and/or Comment on Settlement	**75 Days** from Notice Date
Deadline to Submit Request for Exclusion	**75 Days** from Notice Date
Final Approval Hearing	To be Determined

VI. CONCLUSION

Plaintiffs Douglas Fehlen, Tony Blake, David Artuso, Teresa Bazan, Lorriel Chhay, Samantha Griffith, Allen Chao, and Augusta McCain respectfully request that the Court grant this motion and enter an order: (1) certifying the proposed class for settlement; (2) preliminarily approving the proposed class action Settlement; (3) appointing Plaintiffs as Class Representatives and Tina Wolfson, Robert Ahdoot, and Andrew W. Ferich of Ahdoot & Wolfson, PC, and Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C. as Class Counsel; (4) appointing Epiq as the Settlement Administrator; (5) approving the proposed Class Notice Plan and related Settlement administration documents; and (6) approving the proposed class settlement administrative deadlines and procedures, including setting a Final Approval Hearing date, and approving the proposed procedures regarding objections, exclusions and submitting Claim Forms.

Dated: January 12, 2022

Respectfully submitted,

/s/ Tina Wolfson

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS FEHLEN, TONY BLAKE, DAVID ARTUSO, TERESA BAZAN, LORRIEL CHHAY, SAMANTHA GRIFFITH, ALLEN CHAO, and AUGUSTA MCCAIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ACCELLION, INC.,

Defendant.

Case No. 5:21-cv-01353-EJD

DECLARATION OF TINA WOLFSON IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

DATE: **June 9, 2022**
TIME: **9:00 a.m.**
JUDGE: **Hon. Edward J. Davila**
CTRM: **4, 5th Floor**

DECLARATION OF TINA WOLFSON

I, Tina Wolfson, declare as follows:

1. I am a partner and founding member of Ahdoot & Wolfson, PC ("AW"), and a member in good standing of the bars of the State of California, the State of New York, and the District of Columbia. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement in this action, as memorialized in the Class Action Settlement Agreement and Release ("Settlement Agreement") filed concurrently herewith.[1] I make the following declaration based on my own personal knowledge and, where indicated as based on information and belief, that the following statements are true. If called upon as a witness, I could and would competently testify as follows.

INTRODUCTION

2. The proposed Settlement is the product of arduous, arms-length negotiations between experienced counsel after comprehensive investigation and informal exchange of information, two mediation sessions with the Honorable Judge Jay C. Gandhi (Ret.) of JAMS, substantial confirmatory discovery, and extensive negotiation efforts between counsel for Plaintiffs and Defendant Accellion, Inc. ("Accellion"). The Settlement secures a significant recovery for the putative Class Members, eliminates the risks of continued litigation, and is an excellent data breach class action settlement result.

3. The Settlement, if approved, would resolve all class claims against only Accellion, on behalf of an estimated 9,200,000 Class Members relating to Accellion's File Transfer Appliance ("FTA") Data Breach (the "FTA Data Breach").

4. The Settlement would establish a non-reversionary cash fund of $8.1 million to pay for valid claims, notice and administration costs, and any Service Awards to the named Plaintiffs and attorneys' fees, expenses, and costs awarded by the Court. Claimants may elect to receive: (1) two years of three-bureau Credit Monitoring and Insurance Services ("CMIS"); (2) a payment for

[1] Unless otherwise noted, all capitalized terms not separately defined herein have the meaning ascribed to them in the Settlement Agreement.

reimbursement of Documented Losses of up to $10,000; or (3) a cash payment, calculated in accordance with the terms of the Settlement Agreement, estimated at $50 to $15 (at 1% to 3% claims rates respectively). The Settlement also provides robust injunctive relief to be implemented for four years from the Effective Date of the Settlement, including requiring Accellion to fully retire its FTA offering, maintain FedRAMP certification for its newer Kiteworks offering, expand its bug bounty program, provide annual cybersecurity training to all employees, employ personnel with formal responsibilities for cybersecurity, and periodically confirm compliance with the foregoing measures publicly on Accellion's website.

5. I am informed and believe that if approved, the Settlement would resolve all claims against Accellion and the Released Parties in the following pending class actions: *Brown v. Accellion, Inc.*, No. 5:21-cv-01155 (N.D. Cal.); *Zebelman v. Accellion*, No. 21-cv-01203-EJD (N.D. Cal.); *Rodriguez v. Accellion*, No. 21-cv-01272-EJD (N.D. Cal.); *Price v. Accellion, Inc.*, No. 21-cv-01430-EJD (N.D. Cal.); *Bolton v. Accellion, Inc.*, No. 21-cv-01645-EJD (N.D. Cal.); *Whittaker v. Accellion*, *Inc.*, No. 21-cv-01708-EJD (N.D. Cal.); *Cochran v. The Kroger Co. and Accellion, Inc.*, No. 21-cv-01887-EJD (N.D. Cal.); *Beyer v. Flagstar Bancorp., Inc. and Accellion, Inc.*, No. 21-cv-02239-EJD (N.D. Cal.); *Sharp v. Accellion, Inc.*, No. 21-cv-02525-EJD (N.D. Cal.); *Pollard v. Accellion, Inc. and Flagstar Bancorp, Inc.*, No. 21-cv-02572-EJD (N.D. Cal.); *Doe v. HealthNet of California, Inc., HealthNet, LLC, Accellion, Inc.*, No. 21-cv-02975-EJD (N.D. Cal.); *Harbour v. California Health & Wellness Plan, et. al.*, No. 21-cv-03322-EJD (N.D. Cal.); *Vunisa v. HealthNet LLC, et. al.*, No. 5:21-cv-03425-EJD (N.D. Cal.); *Desjardins v. Accellion, Inc.*, 5:21-cv-04743-EJD (N.D. Cal.); *Stone v. Accellion, Inc., et. Al.*, 21-209143905 (Wash. Sup. Ct.); *Erazo v. The Regents of the University of California and Accellion, Inc.*, RG21097796 (Cal. Super., Alameda County); *Cunanan v. Accellion, Inc. et al.,* 21-cv-381776 (Cal. Super., Santa Clara County); *Olson v. Accellion, Inc., et al.*, 21-cv-386581 (Cal. Super., Santa Clara County); *Peña v. Centene Corporation, California Health & Wellness, and Accellion, Inc.*, ECL005536 (Cal. Super., Imperial County).

6. For all the reasons explained herein, I believe the proposed Settlement to be fair, reasonable, and adequate, and in the best interests of the proposed Settlement Class. A true and

correct copy of the Settlement Agreement and its Exhibits (A-E) are submitted as an exhibit to the Motion for Preliminary Approval.

THE COMMENCEMENT OF THE LITIGATION

7. On February 24, 2021, this action was commenced with the filing of a class action complaint against Accellion. ECF No. 1. Prior to commencing this action, my firm, on behalf of Plaintiffs, undertook substantial investigation of the underlying facts, causes of action, and potential defenses to those claims.

8. On July 23, 2021, Plaintiffs filed the First Amended Class Action Complaint. ECF No. 35.

9. On January 6, 2022, Plaintiffs filed the operative Second Amended Complaint ("SAC") asserting claims for negligence, negligence per se, invasion of privacy (intrusion upon seclusion), violations of various consumer protection statutes (including the North Carolina Unfair Deceptive Trade Practices Act, the Washington Consumer Protection Act, the California Consumer Privacy Act ("CCPA"), the California Confidentiality of Medical Information Action ("CMIA"), the California Customer Records Act ("CCRA"), and the California Unfair Competition Law ("UCL"), and for declaratory relief, and seeking remedies (including damages and injunctive relief) for the impact and harm they allege was caused by the Attacks. SAC ¶¶ 80-172. Plaintiffs seek certification of a nationwide class. *Id.* ¶ 72.

10. I am informed and believe that each of the Plaintiffs received notification from an FTA Customer indicating that their Personal Information may have been compromised during the FTA Data Breach and the Attacks.

11. The SAC alleges that, *inter alia*, Accellion: (a) failed to implement and maintain adequate data security practices to safeguard Plaintiffs' and Class Members' Personal Information; (b) failed to prevent the Attacks and the FTA Data Breach; (c) failed to detect security vulnerabilities leading to the Attacks and the FTA Data Breach; and (d) failed to disclose that their data security practices were inadequate to safeguard Class Members' Personal Information. *E.g., id.* ¶¶ 64, 113.

12. Prior to filing the instant action, my firm drafted and served Accellion with a detailed notice letter pursuant to the California Consumer Privacy Act ("CCPA"), Cal. Civ. Code § 1798.150(b). Accellion has steadfastly denied all such allegations and responded to Plaintiffs' CCPA demand letter that the CCPA does not apply to Accellion, and that Accellion has not violated the CCPA.

PLAINTIFFS' LITIGATION EFFORTS AND WORK ON BEHALF OF THE CLASS

13. The attorneys at AW who worked on this matter have stayed abreast of all material developments involving the FTA Data Breach. We have gathered the press releases and statements concerning the FTA Data Breach, reviewed the information Accellion has provided on its website about the breach, reviewed impacted FTA Customer data breach notification letters, and reviewed numerous news stories and other publicly available sources of information relating to the FTA Data Breach, including its impact on FTA Customers. My firm identified and investigated the claims in this lawsuit and the underlying facts, spoke with numerous Class Members, engaged in multiple mediation sessions and extensive negotiations with Accellion, and successfully negotiated this Settlement.

14. Following commencement of this action, counsel for the Parties began a dialogue about case management issues and engaged in multiple meet-and-confer discussions. Plaintiffs' counsel already had been engaging in efforts to coordinate all of the class action cases filed in this District relating to the Attacks and the FTA Data Breach, including drafting a stipulation to consolidate those cases and set deadlines for submitting leadership applications. When efforts to consolidate failed, in an effort to coordinate and organize the FTA Data Breach litigation, AW filed a motion to consolidate the numerous FTA Data Breach-related class actions pending before this Court, and to set deadlines for filing a Consolidated Complaint and leadership applications. *See Brown, et al. v. Accellion, Inc.*, No. 5:21-cv-01155-EJD, ECF No. 37 (filed April 7, 2021). The motion to consolidate is still pending before the Court.

15. In view of the fact that many cases relating to the FTA Data Breach continued to be filed in multiple courts in the weeks after this action was commenced, my firm filed a motion on March 31, 2021 (brought on behalf of another client) for transfer and centralization pursuant to

28 U.S.C. § 1407 with the United States Judicial Panel on Multidistrict Litigation, seeking to transfer numerous FTA Data Breach-related actions in four district courts to this Court for centralized proceedings. *In re Accellion, Inc., Data Breach Litigation*, MDL No. 3002 (J.P.M.L. 2021), at ECF No. 1.

16. During the pendency of the Motion to Consolidate and the JPML Motion, dialogue between counsel for Plaintiffs and counsel for Accellion continued.

MEDIATION AND SETTLEMENT NEGOTIATIONS

17. The Parties reached an early agreement to participate in mediation to attempt to resolve this matter.

18. Prior to mediation, the Parties exchanged information to prepare for and facilitate a productive mediation. The Parties also exchanged and submitted to the mediator detailed confidential mediation briefs laying out their respective positions on the merits of the case and settlement.

19. When settlement negotiations began, Plaintiffs and their counsel had a clear view of the strengths and weaknesses of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement.

20. Throughout the negotiations, Plaintiffs received and analyzed pre-mediation discovery provided on a voluntary basis by Accellion, including specific information concerning the scope of the FTA Data Breach, Accellion's financial condition, and the steps Accellion took in response to the FTA Data Breach.

21. On July 19, 2021, the Parties participated in mediation before the mutually agreed upon mediator Judge Gandhi. The Parties, however, were not able to reach an agreement to settle this matter at this mediation. In the weeks following the July 19, 2021 mediation, counsel for the Parties continued their dialogue regarding settlement. A second mediation took place on September 7, 2021. The second mediation session also did not result in a settlement. Following the second mediation, the Parties continued to work tirelessly over several months to reach a Settlement.

22. The Parties expended significant efforts in negotiating and ironing out the numerous details of the Settlement in addition to formal mediation. Following the mediations, the Parties continued to work together to finalize the Settlement's terms. During this time, the Parties exchanged drafts of the Settlement Agreement and its exhibits as they negotiated numerous details, with Plaintiffs' counsel seeking to maximize the benefits to the Class.

23. Plaintiffs' counsel ultimately negotiated an agreement with Epiq Class Action and Claims Solutions, Inc. ("Epiq"), which estimates that the total administration and notice charges in this matter will be approximately $1,834,421. Epiq was selected because they will provide the most efficient administration option. My firm has previously worked with Epiq on different matters, including pending settlements involving three FTA Customers (Kroger, Flagstar, and HealthNet). In my experience, Epiq's estimate is reasonable in the context of this proposed Settlement and the large size of the Settlement Class, and includes all costs associated with providing direct notice, publication notice, class member data management, CAFA notification, telephone support, claims administration, creation and management of the Settlement Website, disbursements and tax reporting, and postage costs.

24. During the settlement negotiation process, the Parties deferred any discussion concerning the maximum Service Awards to be sought by the proposed Class Representatives until after reaching an agreement on all material terms of the Settlement. There has been no negotiation or agreement regarding the amount of attorneys' fees, costs, and expenses that may be sought by proposed Class Counsel. The Settlement negotiations were conducted at arm's length, in good faith, and free of any collusion. The Parties' negotiations and efforts to resolve this litigation were hard fought.

25. Plaintiffs' counsel reviewed competing bids from alternative providers of CMIS. Ultimately, the CMIS protection plan negotiated by Class Counsel includes up to $1 million of identity theft insurance coverage and provides three-bureau credit monitoring. The primary features of the CMIS are set forth in the chart attached hereto as **Exhibit 1**.

26. The Notice Plan and each document comprising the Class Notice were negotiated and exhaustively refined, with input from Cameron Azari, the expert at Epiq, to ensure that these

materials will be clear, straightforward, and understandable by Class Members, and that they fully comply with due process, CAFA, and all requirements of Fed. R. Civ. P. 23.

27. Following consultation with Epiq and based upon Class Counsel's previous experience in and knowledge of similar cases, Class Counsel expect the claims rate in this Settlement to be between 1-3%. In my opinion, the claims rates in previous data breach settlements (detailed in the concurrently filed Motion for Preliminary Approval of Class Action Settlement) support this conclusion. The Settlement's proposed distribution plan is similar to past distributions of settlements negotiated and recommended by proposed Class Counsel.

28. Based on my experience, I estimate that Claimants will receive approximately $50 at 1%, $24 at 2%, and $15 at 3%. This estimate is based on a number of assumptions regarding the number of claims for CMIS and Cash Fund Payments, the amount of Documented Loss claims, the amount awarded by the Court for Service Awards and attorneys' fees, costs, and expenses, and anticipated administration and notice fees at different claims rates.

29. Any amount remaining in the Net Settlement Fund, after all payments and distributions are made pursuant to the terms and conditions of the Settlement, will be paid to the proposed Non-Profit Residual Recipient: the Electronic Frontier Foundation, a 26 U.S.C. 501(c)(3) non-profit organization. The Electronic Frontier Foundation's efforts are directly related to the subject matter of this action and the organization has been approved as the recipient of residual settlement funds in other data breach class action settlements. My firm has no relationship with the Electronic Frontier Foundation.

SUMMARY OF INFORMATION LEARNED PRIOR TO MEDIATION AND THROUGH CONFIRMATORY DISCOVERY

30. The Parties engaged in informal discovery to verify the relevant facts and confirm the Settlement as fair, reasonable, and adequate.

31. Plaintiffs conducted significant confirmatory discovery to establish, *inter alia*, facts relevant to the breach and Accellion's liability, Accellion's reaction to and actions after the breach, class size, and Accellion's financial condition.

32. Through the confirmatory discovery process, Plaintiffs have confirmed the following information, of which I am informed and thus believe:

33. The FTA is a software product that Accellion licensed to customers on a subscription basis for their use in file transfers. Historically, FTA has been adopted by customers in a broad range of industries, including federal and state government agencies, and companies and institutions in the financial services, legal, manufacturing and engineering, healthcare, and higher education fields.

34. FTA customers are responsible for managing, maintaining, and updating their "instances" of the FTA software. Accellion does not manage customers' FTA systems, and Accellion does not collect any data on behalf of its FTA customers. Customers' use of FTA does not involve any data flowing through Accellion systems. Accellion also does not access the content of information its customers choose to store or transfer with FTA.

35. Accellion did not guarantee the security of the FTA software to customers. Its standard license agreement disclaimed such guarantees and included a broad limitation of liability for any damages resulting from a data breach. The license agreement explicitly states that each FTA customer is "solely responsible and liable for the use of and access to" the FTA software "and for all files and data transmitted, shared, or stored using" FTA. With the FTA, customers have exclusive control over the data they are storing or transferring via FTA. Accellion provided multiple hosting options for the software and which data customers can transfer using the FTA, including 1) on customers' own systems ("on-premises"), 2) cloud-based storage arranged by the customer, or 3) cloud storage space within Amazon Web Services. Under any of these hosting arrangements, Accellion never had access to the contents of the customers' files.

36. Kiteworks was launched in 2014 as a successor to the FTA. Kiteworks purports to offer enhanced security, functionality, and integration into customers' software and security infrastructures. Most of Accellion's legacy FTA Customers had migrated from FTA to Kiteworks by early 2020. Prior to the FTA Data Breach Attacks, Accellion encouraged FTA Customers to switch to its newer Kiteworks platform by making it cheaper for FTA Customers to switch to Kiteworks than to stay on FTA and offering technical support for the transition.

37. Accellion stopped licensing FTA to new customers in 2016 but permitted existing FTA customers to renew FTA licenses. Prior to the Attacks and the FTA Data Breach, the last security update for FTA was released in February 2019. Since that time, five separate security scans and penetration tests (including two in 2020, in April and June) were conducted on the FTA software.

38. In December 2020 and then again in January 2021, cyber-criminals exploited multiple "zero-day" vulnerabilities—vulnerabilities that had never been discovered in FTA's decades of service, despite penetration testing and other monitoring by both Accellion and its customers, as well as scrutiny by external security researchers through Accellion's bug bounty program—in the FTA, allowing the criminals to illegally access information stored on FTA customers' systems. Not all customers using the FTA were affected by the attacks. Accellion employed an "anomaly detector," designed to detect potentially suspicious activity in a customer's FTA system and bring them directly to the customer's attention, which is what first led to the discovery of the FTA Data Breach. When Accellion learned of the FTA Data Breach during the first attack in December 2020, it acted promptly to patch the vulnerabilities and support its customers in investigating whether and to what extent they were affected. After the second attack in January 2021, promptly released another patch, and issued a critical security alert advising customers to apply the patch as soon as possible.

39. In addition to issuing patches and a critical safety alert concerning the breach, Accellion took other responsive actions following the Attacks. It engaged Mandiant to investigate the FTA Data Breach and issue a report of its findings. Accellion also offered assistance to customers in identifying whether they were impacted by the breach, only insofar as impacted customers agreed to share system logs and other information with Accellion. Even if customers agreed to do so, Accellion was never able to obtain access to or download the underlying customer files, and Accellion never had any ability to identify what specific data was contained on any customer's compromised files. Accellion only has certain limited information as to which of its customers were impacted by the Attacks, and for some customers, Accellion has certain limited information concerning the number of files attackers accessed. Accellion never had access to the

underlying data that its FTA customers were transferring and has no knowledge of or reasonable way of knowing whether or which FTA customers were transferring individuals' Personal Information or whose Personal Information may have been transferred.

40. Accellion maintained records of those customers who provided information to Accellion confirming that they were targeted by the Attacks. Accellion has provided Class Counsel with a list of those impacted FTA Customers.

41. Accellion also has identified certain FTA Customers impacted by the Attacks based upon those Attacks being reported in public reports. Those impacted FTA Customers include, without limitation: Flagstar; Kroger; HealthNet; The Regents of the University of California; The Office of the Washington State Auditor; the University of Colorado; American Bureau of Shipping; Congressional Federal Credit Union; CSX Corporation; Danaher Corporation; El Paso Electric Company; Finnegan, Henderson, Farablow, & Garret; Foley & Lardner, LLP; Fortior Solutions, LLC; Goodwin Procter LLP; Guidehouse (FKA Navigant, Inc.); Harvard Business School; Jones Day; Memorial Sloan Kettering Cancer Center; Postlehwaite & Netterville; Qualys, Inc.; Racetrac Corporation; SIU School of Medicine; Stanford School of Medicine; STERIS Corporation; Trinity Health; the University of Maryland, Baltimore; the University of Miami; Wright Medical Technology; and Yeshiva University.

42. On February 25, 2021, Accellion announced immediate end of life for FTA, meaning that Accellion will not renew any licenses for existing FTA customers effective April 30, 2021. The final FTA license for any Accellion customer based in the United States is set to expire on January 31, 2022. There is one Accellion customer outside of the United States whose FTA license is set to expire on March 31, 2022. No new FTA licenses have been granted that extend beyond that date.

43. In connection with the Settlement, Accellion will migrate any remaining FTA customers to Kiteworks or an alternative file transfer solution, which process is to be completed for all U.S.-based customers by January 31, 2022. Accellion has also agreed to maintain Kiteworks' FedRAMP certification (a certification that requires a rigorous annual security audit of the software and company as a whole). Accellion intends to continue to comply with

FedRAMP's Continuous Monitoring program, which requires (among other things) that Accellion complete an Annual Security Assessment performed by an independent third party to test and evaluate the security of Kiteworks as well as Accellion's security practices and procedures. As part of the Settlement, Accellion also has agreed to (i) expand its bug bounty program by increasing the reward offerings for eligible vulnerabilities; (ii) provide annual cybersecurity training to all employees, and (iii) continue to employ personnel with formal responsibilities for cybersecurity. Accellion will employ these measures for a period of four years following the Effective Date of the Settlement and will certify compliance once annually with these measures for a period of three years.

THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

44. I believe the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of Plaintiffs and putative Class Members. Despite my strong belief in the merits of this litigation and likelihood of success at trial, I nonetheless believe that the benefits to Plaintiffs and the putative Class pursuant to the agreed upon terms substantially outweigh the risks of continuing to litigate the claims—namely, the delay that would result before Plaintiffs and putative Class Members receive any benefits should the action proceed to trial; the possibility of a negative outcome at trial; the possibility of a negative outcome post-trial should Accellion appeal a judgment in favor of the putative Class; and Accellion's financial inability to withstand a larger judgment. This Settlement provides significant benefits now, avoids the risk of non-payment, and is in the best interests of all putative Class Members.

45. In my opinion, the Settlement presents a robust relief package and valuable outcome for the Settlement Class compared to other recent data breach class action settlements. The chart below demonstrates the quality of this Settlement as compared to other data breach settlements (on a per capita basis per class member). Based on review of the record at the cases cited below by AW attorneys, as well as AW's participation in some of these cases, I believe the information in chart below is true and accurate.

Case Title	No. of Class Members	Settlement Fund	Amount Per Class Member	Credit Monitoring
Target Data Breach Security Litig.	97.5M	$10M	$0.10	Documented Cost Reimbursement
LinkedIn User Privacy Litig.	6.4M	$1.25M	$0.20	N/A
Home Depot Customer Data Breach Litig.	40M	$13M	$0.33	18 Months
Yahoo! Inc. Customer Data Breach Litig.	194M	$117.5M	$0.61	2 years
Adlouni v. UCLA Health Systems Auxiliary, et al.	4.5M	$2M	$0.44	2 years
Proposed Settlement	**9.2M**	**$8.1M**	**$0.88**	**2 years**
Atkinson v. Minted	4.1M	$5M	$1.22	2 years
Experian Data Breach Litig.	16M	$22M	$1.37	2 years
Anthem Data Breach Litig.	79.2M	$115M	$1.45	2 years
Equifax Data Security Breach Litig.	> 147M	$380.5M	$2.59	4 years
21st Century Oncology Customer Data Security Breach Litig.	2.2M	7.85M	3.57	2 years
Premera Blue Cross Data Breach Litig.	8.86M	$32M	$3.61	2 years

46. The proposed Settlement was entered into by Plaintiffs with the benefit of the substantial experience of Plaintiffs' Counsel. In my opinion and based on my decades of experience in privacy litigation, Plaintiffs' Counsel had all of the information necessary to properly evaluate the case and determine the terms and conditions of the proposed Settlement.

47. Negotiations regarding the Settlement were conducted at arm's length, in good faith, free of any collusion, and under the supervision of Judge Gandhi, a highly respected mediator.

48. My knowledge of facts of this case and of the practice area more broadly informed my clear view of the strengths and weaknesses of the case, the decision to twice go to mediation with Accellion, and the decision to recommend that the Court grant preliminary approval to the Settlement.

49. The proposed Class Representatives have shown that they are well-suited to represent the Settlement Class, have actively participated in the litigation, and will continue to do so. Since the litigation was commenced, the Plaintiffs have been dedicated and active participants. They investigated the matter prior to and after retaining counsel, provided relevant information to their counsel, reviewed and approved complaints, kept in close contact with counsel to monitor the progress of the litigation, and reviewed and communicated with their counsel regarding the Settlement. In my opinion, each Plaintiff put their name and reputation on the line for the sake of the Class, and the recovery would not have been possible without their efforts. The proposed Class Representatives do not have any conflicts of interest with the absent Class Members, as their claims are coextensive with those of the Class Members.

50. During the Settlement negotiations process, the Parties deferred any discussion concerning the maximum Service Awards to be sought by the proposed Class Representatives until after reaching an agreement on all material terms of the Settlement.

51. As of January 12, 2022, my firm has expended approximately $371,600 in lodestar and incurred $28,500 in current expenses, which it will detail in a motion for an award of reasonable attorneys' fees and reimbursement of litigation costs and expenses to be filed prior to the Objection Deadline, provided that the Court preliminarily approves the proposed Settlement. Expenses may increase as Plaintiffs are invoiced for additional litigation costs.

52. There has been no negotiation or agreement regarding the amount of attorneys' fees, costs, and expenses that may be sought by proposed Class Counsel, and the Settlement is not conditioned upon payment of attorneys' fees, costs, and expenses. All negotiations were conducted at arm's length, in good faith, free of any collusion, and under the supervision of Judge Gandhi.

AHDOOT & WOLFSON, PC FIRM EXPERIENCE

53. At all times, AW had the experience, expertise, and resources to effectively litigate any all issues related to this litigation.

54. In March 1998, Robert Ahdoot and I founded Ahdoot & Wolfson, PC, now a nationally recognized law firm that specializes in complex and class action litigation, with a focus on privacy rights, consumer fraud, anti-competitive business practices, employee rights, defective

products, civil rights, and taxpayer rights. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its existence, AW has successfully vindicated the rights of millions of class members in protracted, complex litigation, conferring hundreds of millions of dollars to the victims, and affecting real change in corporate behavior. A copy of the firm's resume is attached hereto as **Exhibit 2.**

55. AW has been on the cutting-edge of privacy litigation since the late 1990s, when its attorneys successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, they were novel and hidden from public scrutiny at the time AW was prosecuting them. Our work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of privacy-related litigation since then.

56. AW has been appointed lead counsel in numerous complex consumer class actions. The following are some examples of recent class actions that AW has litigated to conclusion or are currently litigating on behalf of clients - either as Class Counsel, proposed Class Counsel or members of a Court appointed Plaintiff Steering Committee. *See* Ex. 2.

57. As co-lead counsel in *In Re Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155-LHK (N.D. Cal.) (Hon. Lucy H. Koh), AW achieved an $85 million settlement, that was preliminarily approved by Judge Koh on October 21, 2021. The Settlement provides monetary relief to Zoom users who submit a claim for payment and comprehensive injunctive relief which addresses the privacy issues on which Plaintiffs' claims were based.

58. As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over $150 million. Under that settlement, each class member was entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus

monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian also provided robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

59. As a member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-cv-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at $74 million.

60. In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a $29 million settlement fund and robust injunctive relief for the consumer class.

61. As co-lead counsel in *Gordon v. Chipotle Mexican Grill, Inc*., No. 1:17-cv-01415-CMA-MLC (D. Colo.) (Hon. Christine M. Arguello), AW secured a settlement for the nationwide class that provided for up to $250 in claimed damages or $10,000 in extraordinary damages.

62. In *Adlouni v. UCLA Health Sys. Auxiliary*, No. BC589243 (Cal. Super. Ct. Los Angeles Cnty.) (Hon. Daniel J. Buckley), AW, as a member of the PSC for patients impacted by a university medical data breach, achieved a settlement providing two years of credit monitoring, a $5,275,000 fund, and robust injunctive relief.

63. AW's efforts have also shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited routinely in briefing on Article III and data breach standing, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). The Seventh Circuit concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before

that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

64. Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), I was chosen by Judge Jackson to serve as a member of the Plaintiffs' Steering Committee. AW briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful appeal to the D.C. Circuit.

65. AW's other ongoing privacy class actions include *In re Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald) (serving as co-lead counsel), *In re Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila) (same), and *In re Ambry Genetics Data Breach Litigation*, No. 8:20-cv-791-CJC-KES (C.D. Cal.) (Hon. Cormac J. Carney) (same).

66. AW attorneys also have served or are serving as plaintiffs' counsel in consumer privacy rights cases involving the right to control the collection and use of biometric information. *See, e.g., Rivera v. Google LLC*, No. 2019-CH-00990 (Ill Cir. Ct.) (Hon. Anna M. Loftus); *Azzano v. Google LLC*, No. 2019-CH-11153 (Ill. Cir. Ct.) (Hon. Anna M. Loftus); *Molander v. Google LLC*, No. 5:20-cv-00918-SVK (N.D. Cal.) (Hon. Susan van Keulen); and *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

67. In addition, AW has served or is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co*., No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in $10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) ($14.5 million nationwide settlement).

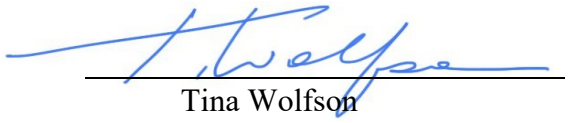
68. In sum, I and my firm have led and continue to lead many high-profile privacy cases, including those involving data privacy (e.g., *Zoom*, *Ring*), data breaches (e.g., *Experian, Premera, Home Depot, OPM, Chipotle, The Kroger Co.*), geo-location tracking (e.g., *Google Location History Litigation*), collection and storing of biometric information (e.g., *Google*,

Shutterfly, *Vimeo*), and TCPA violations (e.g., *Hollister*, *American Eagle*), as well as many other types of consumer class actions (e.g., *Eck* - $295 million class settlement against City of Los Angeles for unlawful utility taxes).

69. AW has decades of experience in the prosecution of class actions, including data breach and privacy lawsuits such as this action. AW can more than adequately represent the Settlement Class.

70. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of January 2022, at Sherman Oaks, California.



Tina Wolfson

EXHIBIT 1

*my*TrueIdentity by TransUnion 3-Bureau Credit Monitoring – 3BCM

www.mytrueidentity.com

The 3-Bureau Credit Monitoring and Identity Restoration Services includes the following:

- Unlimited access to your TransUnion credit report that can be updated daily, every 24-hours
- Unlimited access to your *VantageScore*® credit score from TransUnion, with analysis, that can be updated daily, every 24-hours
- Credit score trending (available online only)
- Daily comprehensive 3-bureau credit monitoring and email alerts when key changes occur to your credit files at TransUnion®, Experian® and Equifax®
- Access to TransUnion credit lock (available online only)
- Online credit dispute access (available online only)
- Toll-free access to credit specialists
- Up to $1,000,000 identity theft insurance with no deductible (Policy limitations and exclusions may apply)
- Unlimited toll-free 24/7 access to identity theft insurance specialists
- Unlimited online access to credit management and identity theft prevention resources located in the online education center (available online only)
- Access to an Identity Restoration Program that provides assistance in the event your identity is compromised to help you restore your identity

EXHIBIT 2

Ahdoot & Wolfson, PC ("AW") is a nationally recognized law firm founded in 1998 that specializes in complex and class action litigation, with a focus on privacy rights, unfair and anti-competitive business practices, consumer fraud, employee rights, defective products, civil rights, and taxpayer rights and unfair practices by municipalities. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has successfully vindicated the rights of millions of class members in protracted, complex litigation, conferring billions of dollars to the victims, and affecting real change in corporate behavior.

Results

AW has achieved excellent results as lead counsel in numerous complex class actions.

In *Alvarez v. Sirius XM Radio Inc.*, No. 2:18-cv-08605-JVS-SS (C.D. Cal.) (Hon. James V. Selna), a breach of contract class action alleging that defendant did not honor its lifetime subscriptions, AW reached a nationwide class action settlement conservatively valued at approximately $420 million. The settlement extends the promised lifetime subscription for the lifetime of class members who have active accounts, and provides the opportunity for class members with closed accounts to reactivate their accounts and enjoy a true lifetime subscription or recover $100. The district court had granted the motion to compel arbitration on an individual basis, and AW appealed. AW reached the final deal points of the nationwide class action settlement literally minutes prior to oral argument in the Ninth Circuit.

The Honorable Lucy H. Judge Koh selected Ms. Wolfson and AW to serve as interim co-lead class counsel in the *ZOOM Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155-LHK (N.D. Cal.), a class action alleging Zoom's failure to implement adequate security protocols for its video-conferencing platform that breached millions of consumers' privacy, fell well short of its promises, and diminished the value of the products and services it provided. AW and co-counsel reached a nationwide settlement (preliminary approval granted) with Zoom providing for, among other things, an $85 million settlement fund to resolve data privacy and other claims.

As a member of the Plaintiffs' Executive Committee in the *Apple Inc. Device Performance Litigation*, No. 5:18-md-2827-EJD (N.D. Cal.) (Hon. Edward J. Davila), AW helped achieve a nationwide

settlement of $310 million minimum and $500 million maximum. The case arose from Apple's alleged practice of deploying software updates to iPhones that deliberately degraded the devices' performance and battery life.

In *Eck v. City of Los Angeles*, No. BC577028 (LASC) (Hon. Ann I. Jones), AW achieved a $295 million class settlement in a case alleging that an 8% surcharge on Los Angeles electricity rates was an illegal tax. Final settlement approval was affirmed on appeal in October 2019.

As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over $150 million. Each class member is entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian is also providing robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

In *Kirby v. McAfee, Inc.*, No. 5:14-cv-02475-EJD (N.D. Cal.) (Hon. Edward J. Davila), a case arising from McAfee's auto renewal and discount practices, AW and co-counsel achieved a settlement that made $80 million available to the class and required McAfee to notify customers regarding auto-renewals at an undiscounted subscription price and change its policy regarding the past pricing it lists as a reference to any current discount.

In *Lavinsky v. City of Los Angeles*, No. BC542245 (LASC) (Hon. Ann I. Jones), a class action alleging the city unlawfully overcharged residents for utility taxes, AW certified the plaintiff class in litigation and then achieved a $51 million class settlement.

As co-lead counsel in *Berman v. Gen. Motors, LLC*, No. 2:18-cv-14371-RLR (S.D. Fla.) (Hon. Robin L. Rosenberg) (vehicle oil consumption defect class action), AW achieved a $40 million settlement.

Lumber Liquidators Chinese-Manufactured Flooring Durability Marketing & Sales Practices Litigation, No. 1:16-md-02743-AJT-TRJ (E.D. Va.) (Hon. Anthony J. Trenga) arose from alleged misrepresentations of laminate flooring durability, which was coordinated with MDL proceedings regarding formaldehyde emissions. As co-lead class counsel for the durability class, AW was instrumental in achieving a $36 million settlement.

In *McKnight v. Uber Technologies, Inc.*, No. 4:14-cv-05615-JST (N.D. Cal.) (Hon. Jon S. Tigar), AW achieved a $32.5 million settlement for the passenger plaintiff class alleging that Uber falsely advertised and illegally charged a "safe rides fee."

In *Pantelyat v. Bank of America, N A.*, No. 1:16-cv-08964-AJN (S D.N.Y.) (Hon. Alison J. Nathan), a class action arising from allegedly improper overdraft fees, AW, serving as sole class counsel for plaintiffs, achieved a $22 million class settlement, representing approximately 80% of total revenues

gleaned by the bank's alleged conduct.

Current Noteworthy Leadership Roles

Most recently, AW was selected to serve as interim co-lead class counsel in the *StubHub Refund Litigation*, No. 4:20-md-02951-HSG (N.D. Cal.) (Hon. Haywood S. Gilliam, Jr.). This consolidated multidistrict litigation alleges that StubHub retroactively changed its policies for refunds for cancelled or rescheduled events as a result of the Covid-19 pandemic and refused to offer refunds despite promising consumers 100% of their money back if events are cancelled. In appointing Ms. Wolfson as Interim Co-Lead Counsel, Judge Gilliam noted that while competing counsel were qualified, her team "proposed a cogent legal strategy," "a process for ensuring that counsel work and bill efficiently" and "demonstrated careful attention to creating a diverse team."

Ms. Wolfson was appointed, after competing applications, to serve as interim co-lead class counsel in the *Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald), a consolidated class action arising from Ring's failure to implement necessary measures to secure the privacy of Ring user accounts and home-security devices, and failure to protect its customers from hackers despite being on notice of the inadequacies of its cybersecurity.

In *Clark v. American Honda Motor Co., Inc.*, No. 2:20-cv-03147-AB-MRW (C.D. Cal.) (Hon. André Birotte Jr.), Ms. Wolfson was appointed co-lead counsel in a class action arising from unintended and uncontrolled deceleration in certain Acura vehicles. In selecting Ms. Wolfson from competing applications, Judge Birotte noted: "The Court believes that Ms. Wolfson brings particular attention to the virtues of collaboration, efficiency, and cost-containment which strike the Court as especially necessary in a case such as this. Ms. Wolfson's appointment as Co-Lead also brings diversity to the ranks of attorneys appointed to such positions: such diversity is not simply a "plus factor" but the Court firmly believes that diverse perspectives improve decision-making and leadership."

AW was appointed to serve as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila), a consumer class action arising out of Google's allegedly unlawful collection and use of mobile device location information on all Android and iPhone devices.

AW also serves on the Plaintiffs' Executive Committees in *Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 2:19-md-2921-BRM-JAD (D.N.J.) (Hon. Brian R. Martinotti), a class action alleging textured breast implants caused a rare type of lymphoma and in *ZF-TRW Airbag Control Units Products Liability Litigation*, No. 2:19-ml-2905-JAK-FFM (C.D. Cal.) (Hon. John A. Kronstadt), a class action alleging a dangerous defect in car airbag component units.

AW also was recently selected to serve on the PEC in the *Robinhood Outage Litigation*, No. 3:20-cv-1626-JD (N.D. Cal.) (Hon. James Donato), a consolidated case arising from a March 2020 outage of the online stock trading platform.

In the *Kind LLC "All Natural" Litigation*, No. 1:15-md-02645-WHP (S.D N.Y.) (Hon. William H. Pauley III), AW was selected as interim co-lead class counsel after competing applications. AW certified three separate classes of New York, California, and Florida consumers who purchased Kind LLC's products in a false labeling food MDL.

As part of the leadership team in *Novoa v. The Geo Group, Inc.*, No. 5:17-cv-2514-JGB-SHK (C.D. Cal.) (Hon. Jesus G. Bernal), AW certified a class of immigration detainees challenging private prison's alleged forced labor practices.

In the *Dental Supplies Antitrust Litigation*, No. 1:16-cv-00696-BMC-GRB (E D.N.Y.) (Hon. Brian M. Cogan), a class action alleging an anticompetitive conspiracy among three dominant dental supply companies in the United States, AW served on the plaintiffs' counsel team that brought in an $80 million cash settlement for the benefit of a class of approximately 200,000 dental practitioners, clinics, and laboratories.

In *Robinson v. Jackson Hewitt, Inc.*, No. 2:19-cv-09066-SDW-ESK (D.N.J.) (Hon. Susan D. Wigenton), a class action alleging that a standardized "no-poach" agreement among Jackson Hewitt and its franchisees limited mobility and compensation prospects for the tax preparer employees, AW is asserting claims on behalf of consumers under both federal antitrust and California employment laws.

In *Powell Prescription Center v. Surescripts, LLC*, No. 1:19-cv-00627 (N.D. Ill.) (Hon. John J. Tharp. Jr.), AW represents pharmacies in a class action arising from Surescripts' alleged monopolies in both the routing and eligibility markets of the e-prescription industry.

Privacy Class Actions

AW has been prosecuting cutting edge privacy cases on behalf of consumers since the late 1990s. AW was among the first group of attorneys who successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without the consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, at the time AW was prosecuting these cases before the Hon. Richard R. Kramer, (Ret.) in the complex department of San Francisco Superior Court, such practices were novel and hidden from public scrutiny. AW's work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of privacy-related litigation since then.

As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over $150 million. Each class member is entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian is also providing robust injunctive relief. Judge

Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

As an invaluable member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-cv-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at $74 million.

In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a $29 million settlement fund and robust injunctive relief for the consumer class. As co-lead counsel in *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA-MLC (D. Colo.) (Hon. Christine M. Arguello), AW secured a settlement for the nationwide class that provides for up to $250 in claimed damages or $10,000 in extraordinary damages.

AW was appointed to serve as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila), a consumer class action arising out of Google's allegedly unlawful collection and use of mobile device location information on all Android and iPhone devices.

AW also currently serves on the PSC in *Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litigation*, No. 2:19-md-2904-MCA-MAH (D.N.J.) (Hon. Madeline Cox Arleo), a class action arising out of a medical data breach that disclosed the personal and financial information of over 20 million patients, as well as many other data breach class actions.

AW's efforts have shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW's attorneys successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited in every standing brief, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013) and concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), AW, as a member of the PSC, briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful appeal to the D.C. Circuit.

AW is also serving as plaintiffs' counsel in consumer privacy rights cases involving the right to control the collection and use of biometric information, successfully opposing motions to dismiss

based on lack of standing. *See, e g.*, *Rivera v. Google LLC*, No. 19-1182 (7th Cir.) (order granting summary judgment currently on appeal to the Seventh Circuit); *Azzano v. Google LLC*, No. 2019-CH-11153 (Ill. Cir. Ct.) (Hon. Anna M. Loftus); *Molander v. Google LLC*, No. 5:20-cv-00918-EJD (N.D. Cal.) (Hon. Edward J. Davila); *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

In *Miracle-Pond v. Shutterfly, Inc.*, No. 2019CH07050 (Cir. Ct. Cook County) (Hon. Raymond W. Mitchell), a class action arising from Shutterfly's alleged illegal collection, storage, and use of the biometrics of individuals (including those without Shutterfly accounts) who appear in photographs uploaded to Shuttefly in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* AW achieved preliminary approval of a settlement that establishes a $6.75 million non-reversionary cash Settlement Fund and provides meaningful prospective relief for the benefit of class members.

In addition, AW has served and is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in $10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) ($14.5 million nationwide settlement).

Attorney Profiles

Tina Wolfson graduated Harvard Law School *cum laude* in 1994. Ms. Wolfson began her civil litigation career at the Los Angeles office of Morrison & Foerster, LLP, where she defended major corporations in complex actions and represented indigent individuals in immigration and deportation trials as part of the firm's *pro bono* practice. She then gained further invaluable litigation and trial experience at a boutique firm, focusing on representing plaintiffs on a contingency basis in civil rights and employee rights cases. Since co-founding AW in 1998, Ms. Wolfson had lead numerous class actions to successful results. Ms. Wolfson is a member of the California, New York and District of Columbia Bars.

Recognized for her deep class action experience, Ms. Wolfson frequently lectures on numerous class action topics across the country. She is a guest lecturer on class actions at the University of California at Irvine Law School. Her notable speaking engagements include:

- Class Action Mastery Forum at the University Of San Diego School of Law (Consumer Class Actions Roundtable) March 2020, featuring Hon. Lucy H. Koh, Hon. Edward M. Chen, and Hon. Fernando M. Olguin.
- Class Action Mastery Forum at the University Of San Diego School of Law (Data Breach/Privacy Class Action Panel) January 16, 2019.
- Association of Business Trial Lawyers: "Navigating Class Action Settlement Negotiations and Court Approval: A Discussion with the Experts," Los Angeles May 2017, featuring Hon. Philip S. Gutierrez and Hon. Jay C. Gandhi.

- CalBar Privacy Panel: "Privacy Law Symposium: Insider Views on Emerging Trends in Privacy Law Litigation and Enforcement Actions in California," Los Angeles Mar. 2017 (Moderator), featuring Hon. Kim Dunning.
- American Conference Institute: "2nd Cross-Industry and Interdisciplinary Summit on Defending and Managing Complex Class Actions," April 2016, New York: Class Action Mock Settlement Exercise featuring the Hon. Anthony J. Mohr.
- Federal Bar Association: N.D. Cal. Chapter "2016 Class Action Symposium," San Francisco Dec. 2016 (Co-Chair), featuring Hon. Joseph F. Anderson, Jr. and Hon. Susan Y. Illston.
- Federal Bar Association: "The Future of Class Actions: Cutting Edge Topics in Class Action Litigation," San Francisco Nov. 2015 (Co-Chair &Faculty), featuring Hon. Jon S. Tigar and Hon. Laurel Beeler.
- American Association for Justice: AAJ 2015 Annual Convention – "The Mechanics of Class Action Certification," July 2015, Montreal, Canada.
- HarrisMartin: Data Breach Litigation Conference: The Coming of Age – "The First Hurdles: Standing and Other Motion to Dismiss Arguments," March 2015, San Diego.
- Bridgeport: 2015 Annual Consumer Class Action Conference, February 2015, Miami (Co-Chair).
- Venable, LLP: Invited by former opposing counsel to present mock oral argument on a motion to certify the class in a food labeling case, Hon. Marilyn Hall Patel (Ret.) presiding, October 2014, San Francisco.
- Bridgeport: 15th Annual Class Action Litigation Conference – "Food Labeling and Nutritional Claim Specific Class Actions," September 2014, San Francisco (Co-Chair and Panelist).
- Bridgeport: 2014 Consumer Class Action Conference – "Hot Topics in Food Class Action Litigation," June 2014, Chicago.
- Perrin Conferences: Challenges Facing the Food and Beverage Industries in Complex Consumer Litigations, invited to discuss cutting edge developments in settlement negotiations, notice, and other topics, April 2014, Chicago.
- Bridgeport: Class Action Litigation & Management Conference – "Getting Your Settlement Approved," April 2014, Los Angeles.
- HarrisMartin: Target Data Security Breach Litigation Conference – "Neiman Marcus and Michael's Data Breach Cases and the Future of Data Breach Cases," March 2014, San Diego.
- Bridgeport: Advertising, Marketing & Media Law: Litigation and Best Management Practices – "Class Waivers and Arbitration Provisions Post-*Concepcion / Oxford Health Care*," March 2014, Los Angeles.

Ms. Wolfson currently serves as a Ninth Circuit Lawyer Representative for the Central District of California, as Vice President of the Federal Litigation Section of the Federal Bar Association, as a member of the American Business Trial Lawyer Association, as a participant at the Duke Law School Conferences and the Institute for the Advancement of the American Legal System, and on the Board of Public Justice.

Robert Ahdoot graduated from Pepperdine Law School *cum laude* in 1994, where he served as Literary Editor of the Pepperdine Law Review. Mr. Ahdoot clerked for the Honorable Paul Flynn at the California Court of Appeals, and then began his career as a civil litigator at the Los Angeles office of Mendes & Mount, LLP, where he defended large corporations and syndicates such as Lloyds of London in complex environmental and construction-related litigation as well as a variety of other matters. Since co-founding AW in 1998, Mr. Ahdoot had led numerous class actions to successful results. Recognized for his deep class action experience, Mr. Ahdoot frequently lectures on numerous class action topics across the country. His notable speaking engagements include:

- MassTorts Made Perfect: Speaker Conference, April 2019, Las Vegas: "Llegal Fees: How Companies and Governments Charge The Public, and How You Can Fight Back."
- HarrisMartin: Lumber Liquidators Flooring Litigation Conference, May 2015, Minneapolis: "Best Legal Claims and Defenses."
- Bridgeport: 15th Annual Class Action Litigation Conference, September 2014, San Francisco: "The Scourge of the System: Serial Objectors."
- Strafford Webinars: Crafting Class Settlement Notice Programs: Due Process, Reach, Claims Rates and More, February 2014: "Minimizing Court Scrutiny and Overcoming Objector Challenges."
- Pincus: Wage & Hour and Consumer Class Actions for Newer Attorneys: The Do's and Don'ts, January 2014, Los Angeles: "Current Uses for the 17200, the CLRA an PAGA."
- Bridgeport: 2013 Class Action Litigation & Management Conference, August 2013, San Francisco: "Settlement Mechanics and Strategy."

Theodore W. Maya graduated from UCLA Law School in 2002 after serving as Editor-in-Chief of the UCLA Law Review. From July 2003 to August 2004, Mr. Maya served as Law Clerk to the Honorable Gary Allen Feess in the United States District Court for the Central District of California. Mr. Maya was also a litigation associate in the Los Angeles offices of Kaye Scholer LLP for approximately eight years where he worked on a large variety of complex commercial litigation from inception through trial. Mr. Maya was named "Advocate of the Year" for 2007 by the Consumer Law Project of Public Counsel for successful pro bono representation of a victim of a large-scale equity fraud ring.

Bradley K. King is a member of the State Bars of California, New Jersey, New York, and the District of Columbia. He graduated from Pepperdine University School of Law in 2010, where he served as Associate Editor of the Pepperdine Law Review. He worked as a law clerk for the California Office of the Attorney General, Correctional Law Section in Los Angeles and was a certified law clerk for the Ventura County District Attorney's Office. Mr. King began his legal career at a boutique civil rights law firm, gaining litigation experience in a wide variety of practice areas, including employment law, police misconduct, municipal contracts, criminal defense, and premises liability cases. During his nine-year career at AW, Mr. King has focused on consumer class actions, and data breach class actions in particular. He has extensive experience litigating consolidated and MDL class actions with AW serving in leadership roles, including numerous large data breach cases that have resulted in nationwide class settlements.

Henry Kelston graduated from New York University School of Law in 1978 and is a member of the New York and Connecticut Bars. Mr. Kelston has litigated a broad array of class actions for more than two decades, including actions challenging improperly charged bank fees, unauthorized collection of biometric data, and unlawful no-poach agreements among employers. He has been on the front lines in major data breach cases against companies such as Yahoo! and Facebook, and has represented consumers in class actions challenging food labeling practices, including the use of "natural" claims on products containing GMOs. His work in *In re Conagra Foods, Inc.*, contributed to a groundbreaking decision by the Ninth Circuit Court of Appeals, significantly strengthening the rights of consumers to bring class actions. Mr. Kelston is also a frequent speaker and CLE presenter on electronic discovery, and a member of The Sedona Conference® Working Group 1 on Electronic Document Retention and Production.

Christopher E. Stiner graduated from Duke University School of Law *cum laude* in 2007 and is a member of the California and New York Bars. Mr. Stiner began his legal career at the New York office of Milbank Tweed working on finance matters for some of the world's largest financial institutions. Several years later Mr. Stiner transitioned to a litigation practice at the Los Angeles office of Katten Muchin, again representing large financial institutions and other corporate clients. Chris also worked as a clerk for the Honorable Thomas B. Donavan in the Central District of California Bankruptcy Court. In 2020 Mr. Stiner joined AW to pursue his desired focus on consumer class actions with a particular interest in consumer finance and banking matters.

Andrew W. Ferich is admitted to the bars of Pennsylvania, New Jersey, and the District of Columbia. Mr. Ferich received his law degree from Villanova University's Charles Widger School of Law in 2012, where he served as Executive Editor of the *Journal of Catholic Social Thought*. Mr. Ferich has significant experience in consumer protection, data privacy, ERISA/retirement plan, and whistleblower/*qui tam* litigation. Prior to joining the firm, Mr. Ferich was a senior associate at a well-known Philadelphia-area class action law firm. Before joining the plaintiffs' bar, Mr. Ferich was an associate at an AmLaw 200 national litigation firm in Philadelphia where he focused his practice on

commercial litigation and financial services litigation. Mr. Ferich has represented a wide array of clients and has received numerous court-appointed leadership positions in large class actions. Mr. Ferich possesses major jury trial experience and has assisted in litigating cases that have collectively resulted in over $100 million in settlement value in damages and injunctive relief for various classes and groups of people.

Deborah De Villa is an associate attorney at Ahdoot Wolfson and a member of the State Bars of New York and California. Ms. De Villa focuses on consumer protection and class actions. She graduated from Pepperdine University School of Law in 2016, where she earned the CALI Excellence for the Future Award in immigration law, business planning and commercial law. During law school, Ms. De Villa completed internships at the Los Angeles District Attorney's Office, Hardcore Gangs Unit, and at the Supreme Court of the Philippines, Office of the Court Administrator. Born in the Philippines, Ms. De Villa moved to Florida at the age of sixteen to attend IMG Golf Academy as a full-time student-athlete. Ms. De Villa earned a scholarship to play NCAA Division 1 college golf at Texas Tech University, where she graduated *magna cum laude* with a Bachelor of Arts in Psychology and a minor in Legal Studies. Ms. De Villa has gained substantial experience litigating class actions with Ahdoot Wolfson serving in leadership roles, including numerous large data breach and data privacy cases that have resulted in nationwide class settlements.

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Attorneys for Plaintiffs and the Proposed Class

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS FEHLEN, TONY BLAKE, DAVID ARTUSO, TERESA BAZAN, LORRIEL CHHAY, SAMANTHA GRIFFITH, ALLEN CHAO, and AUGUSTA MCCAIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ACCELLION, INC.,

Defendant.

Case No. 5:21-cv-01353-EJD

DECLARATION OF BEN BARNOW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

DATE: June 9, 2022
TIME: 9:00 a.m.
JUDGE: Hon. Edward J. Davila
CTRM: 4, 5th Floor

I, Ben Barnow, declare as follows:

1. I am President and sole shareholder of Barnow and Associates, P.C. ("B&A"), and a member in good standing of the bar of the State of Illinois and State of New York. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement in this action, as memorialized in the Class Action Settlement Agreement and Release ("Settlement Agreement") filed concurrently herewith.[1] I make the following declaration based on my own personal knowledge and, where indicated as based on information and belief, that the following statements are true. If called upon as a witness, I could and would competently testify as follows.

INTRODUCTION

2. The proposed Settlement is the product of hard-fought, arms-length negotiations between experienced counsel after necessary confirmatory discovery by Plaintiffs' counsel, settlement negotiations that included mediation before the Honorable Judge Jay C. Gandhi (Ret.) of JAMS, and extensive ongoing negotiation efforts between counsel for Plaintiffs and Defendant Accellion, Inc. ("Accellion"). The Settlement secures a significant recovery for the putative Class Members, eliminates the risks of continued litigation, and is an excellent data breach class action settlement result.

3. The Settlement, if approved, would resolve all claims against only Accellion and the Released Parties relating to the breach of the FTA systems in December 2020 and January 2021 (the "FTA Data Breach") on behalf of all members of the Settlement Class.

4. The Settlement provides a choice of one of the following benefits to the Class: (1) two years of three-bureau Credit Monitoring and Insurance Services ("CMIS"); (2) a payment for reimbursement of Documented Losses up to $10,000; or (3) a Cash Fund Payment. In addition, Accellion will be required to make significant improvements to its data protection practices through injunctive relief.

[1] The definitions in the Settlement are incorporated herein by reference.

5. For all the reasons explained herein, I believe the proposed Settlement to be fair, reasonable, and adequate, and in the best interests of the proposed Settlement Class.

COMMENCEMENT OF THE ACTION AND CONSOLIDATION EFFORTS

6. This action began on February 24, 2021, with the filing of the class action complaint against Accellion. Following commencement of the action, Plaintiffs and Accellion opened a dialogue about case management issues and engaged in meet-and-confer discussions. Proposed Class Counsel led efforts to coordinate the related cases filed in this Court relating to the FTA Data Breach. Proposed Class Counsel drafted a stipulation to consolidate the cases and set deadlines for submitting leadership applications. The stipulation was not agreed upon.

MEDIATION AND SETTLEMENT NEGOTIATIONS

7. As a result of the Parties' continued efforts at achieving a fair and speedy resolution of this action, they were able to reach an agreement to participate in mediation to attempt to resolve this matter. The first mediation took place on July 19, 2021, before Judge Gandhi. Judge Gandhi is a highly respected and experienced class action mediator who previously served as a magistrate judge in the Central District of California. A second mediation occurred on September 7, 2021, before Judge Gandhi.

8. Prior to the mediation sessions, the Parties exchanged information to prepare for and facilitate a productive mediation session. The Parties communicated their respective positions on the litigation and the Parties' claims and defenses with each other and Judge Gandhi and submitted confidential mediation briefs conveying their positions. Plaintiffs received and analyzed data and documents from Accellion relating to the impact of the FTA Data Breach on Accellion and its customers, Accellion's response to the FTA Data Breach, Accellion's security practices, and the company's financial position.

9. On July 19, 2021, the Parties participated in a full-day mediation session with Judge Gandhi. With Judge Gandhi's guidance, the Parties had a productive mediation session, but were unable to reach a settlement at that time.

10. The Parties continued their hard-fought, arms-length negotiations after the mediation session. A second mediation session was held on September 7, 2021 before Judge Gandhi, but the Parties were still unable to come to an agreement at that time. The Parties continued to negotiate regarding the possibility of settlement after the second mediation session.

11. An agreement was eventually reached after many more hours of negotiations. The Parties expended significant efforts in negotiating and finalizing the numerous details of the Settlement. After an initial agreement was met, drafts of the Settlement Agreement and its exhibits were exchanged, and Class Counsel negotiated numerous details to maximize the benefits to the Class Members.

12. Additionally, the Parties engaged in informal confirmatory discovery to ensure that the Settlement is fair, reasonable and adequate.

13. Plaintiffs' Counsel negotiated an agreement with Epiq Class Action and Claims Solutions, LLC ("Epiq"). Proposed Class Counsel has worked with Epiq on different matters, including the pending settlement with Kroger regarding the FTA Data Breach. Epiq estimates that the total administration and notice charges in this matter will be approximately $1,834,421. In my experience, this estimate is reasonable in the context of this proposed Settlement and includes costs associated with providing direct notice, publication notice, class member data management, CAFA notification, telephone support, claims administration, creation and management of the Settlement Website, disbursements and tax reporting, and includes postage.

14. The Notice Plan and each document comprising the Class Notice were negotiated and exhaustively refined with input from Cameron Azari, an expert at Epiq, to ensure that these materials will be clear, straightforward, and understandable by Class Members.

15. The Parties did not discuss the possibility of Class Representative Service Awards until all material terms of the Settlement were agreed upon. The Parties have not discussed the amount of attorneys' fees, costs, and expenses that may be sought by proposed Class Counsel.

THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

16. I believe the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of Plaintiffs and putative Class Members. Despite my strong belief in the merits of

this litigation and likelihood of success as trial, I nonetheless believe that the benefits to Plaintiffs and the putative Class pursuant to the agreed upon terms substantially outweigh the risks of continuing to litigate the claims—namely, the delay that would result before Plaintiffs and putative Class Members receive any benefits should the action proceed to trial; the possibility of a negative outcome at trial; and the possibility of a negative outcome post-trial should Accellion appeal a judgment in favor of the putative Class. This Settlement provides significant benefits now and is in the best interests of all putative Class Members.

17. The proposed Settlement was entered into by Plaintiffs with the benefit of the substantial experience of Plaintiffs' Counsel. In my opinion and based on my many years of experience in privacy litigations, Plaintiffs' Counsel had all of the information necessary to properly evaluate the case and determine the terms and conditions of the proposed Settlement.

18. Negotiations regarding the Settlement were conducted at arm's length, in good faith, free of any collusion, and, in large part, under the supervision of Judge Gandhi.

19. Plaintiffs' Counsels' knowledge of the facts of this case and of the practice area more broadly informed Plaintiffs' clear view of the strengths and weaknesses of the case, the decision to go to mediation with Accellion, and the decision to recommend that the Court grant preliminary approval to the Settlement.

20. The proposed Class Representatives have shown that they are well-suited to represent the Settlement Class, have actively participated in the litigation, and will continue to do so. They do not have any conflicts of interest with the absent Class Members, as their claims are coextensive with those of the Class Members.

21. The Plaintiffs have been dedicated and active participants. They investigated the matter prior to and after retaining counsel, participated in the client and case vetting process, reviewed and approved the complaints, kept in close contact with counsel to monitor the progress of the litigation, and reviewed and communicated with their counsel regarding the Settlement. In my opinion, each Plaintiff put their name and reputation on the line for the sake of the Class, and the recovery has been made possible by their efforts.

22. The attorneys at B&A who worked on this matter have stayed abreast of all material developments involving the FTA Data Breach. We have gathered the press releases and statements concerning the FTA Data Breach, reviewed information online relating to the FTA Data Breach, reviewed information Accellion has provided regarding the FTA Data Breach, spoke with Class Members regarding the FTA Data Breach, reviewed FTA Customers' data breach notification letters, and kept informed of updates and new information relating to the FTA Data Breach.

23. I have no relationship with the proposed Non-Profit Residual Recipient, the Electronic Frontier Foundation.

BARNOW AND ASSOCIATES, P.C. FIRM EXPERIENCE

24. At all times, B&A had the experience, expertise, and resources to effectively litigate any and all issues related to this litigation.

25. I am nationally recognized for my experience in leading some of the nation's largest consumer class actions and have been recognized as a Titan of the Plaintiffs Bar.[2] As a court-appointed lead counsel or equivalent designation, I have successfully led over forty major class actions (including MDLs) where class-wide recoveries were achieved, resulting in benefits valued in excess of five billion dollars being made available to class members. This includes leading eight noteworthy privacy class actions where class settlements were achieved. Below is a brief description of some of the cases in which I served as a lead, co-lead counsel, or equivlent.

26. *In Re: Sony Gaming Networks and Customer Data Security Breach Litigation*, No. 11-md-2258 (N.D. Cal.). I was appointed to the Plaintiffs' Steering Committee—a committee of seven firms established to lead the litigation—in this MDL proceeding involving over 60 cases relating to a data security breach that affected approximately 50 million consumers. A settlement agreement was entered into and was granted final approval. At the final fairness hearing, the Honorable Judge Anthony J. Battaglia remarked: "Just in the final analysis, the

[2] *See* Sindhu Sundar, *Titan of the Plaintiffs Bar: Ben Barnow,* LAW360 (Oct. 8, 2014, 7:40 P.M.), https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow.

order, much like all the work by both sides throughout the case, has been impeccable, highly professional, and skilled. It's been a real pleasure dealing with you."

27. *In Re: TJX Retail Security Breach Litigation,* No. 1:07-cv-10162 (D. Mass). I served as one of Co-Lead Settlement Class Counsel for the Consumer Track in this MDL proceeding relating to the theft of approximately 45 million credit and debit card numbers used at TJX stores and the personal information of over 454,000 TJX customers. I took the lead in negotiating a settlement with TJX's attorneys that made available benefits valued at over $200 million to the Class. The Honorable Judge Young granted final approval to the settlement, which he referred to as "excellent," and as containing "innovative" and "groundbreaking" elements.

28. *In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation,* No. 08-md-01998 (W.D. Ky.). I served as one of Co-Lead Settlement Class Counsel in this forty-case MDL proceeding relating to a former Countrywide employee's theft and sale of millions of Countrywide customers' private and confidential information. I negotiated a settlement that was granted final approval, making benefits valued at over $650 million available to approximately 17 million Settlement Class Members. In the opinion granting final approval to the settlement, the Honorable Chief Judge Russell noted that "Co-Lead Settlement Counsel are nationally recognized in the field of class actions, particularly those involving security breaches," and stated that "the Court was impressed with Co-Lead Counsel and Countrywide counsels' knowledge and skill, as represented in the various motions and hearings that took place throughout this settlement process."

29. *Lockwood v. Certegy Check Services, Inc.*, No. 8:07-cv-01434 (M.D. Fla.). I served as one of Co-Lead Settlement Class Counsel in this consolidated proceeding relating to the theft of approximately 37 million individuals' private and confidential information from Certegy Check Services, Inc.'s computer databases. I negotiated a settlement that was granted final approval, making benefits valued at over $500 million available to Settlement Class Members. At the final fairness hearing, the Honorable Judge Merryday described the settlement as a "good deal," providing "a real benefit to a large class of persons" as "the result of the focused attention of skilled counsel for a protracted time."

30. *Rowe v. Unicare Life and Health Insurance Co.*, No. 1:09-cv-02286 (N.D. Ill.). I was Lead Counsel in this proceeding relating to the defendants' alleged failure to secure the private health information of approximately 220,000 individuals enrolled in the defendants' health insurance plans, resulting in such information being accessible to the public via the Internet. I negotiated a settlement that was granted final approval, making benefits valued at over $20 million available to Settlement Class Members. At the preliminary approval hearing, the Honorable Judge Hibbler described the efforts of the parties as "exemplary."

31. *Orr v. InterContinental Hotels Group, PLC*., No. 1:17-cv-01622 (N.D. Ga.). I was appointed as one of Lead Class Counsel in this payment card data breach litigation. I successfully negotiated a class settlement providing a claim process for Class Members to seek reimbursement for certain expenses or fraudulent and unauthorized charges resulting from the data breach, subject to an aggregate cap of $1.55 million. The settlement was granted final approval.

32. *In re: Zappos.com Inc. Customer Data Security Breach Litigation*, No. 12-cv-00325 (D. Nev.). I was one of Co-Lead Class Counsel and settlement class counsel in this litigation, which resulted in a landmark Ninth Circuit ruling recognizing the Article III standing of consumers harmed by data breaches. I also successfully opposed Zappos' petition for writ of certiorari to the Supreme Court of the United States, where I served as counsel of record for plaintiffs. After many years of litigation, I negotiated a settlement that was granted final approval. The Settlement provided Class Members with CAFA-compliant coupons that were redeemed for over $7 million.

33. A copy of my firm's resume is submitted herewith, Exhibit 1.

34. B&A has decades of experience in the prosecution of class actions, including data breach and privacy lawsuits such as this action. B&A can more than adequately represent the Settlement Class.

35. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that

the proposed Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

36. As of January 11, 2022, my firm's lodestar in this matter is approximately $277,692, and expenses are $7,696.98.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of January, 2022, at Chicago, Illinois.

Ben Barnow

EXHIBIT 1

BEN BARNOW

BARNOW AND ASSOCIATES

a professional corporation

ATTORNEYS AT LAW

Ben Barnow is nationally recognized for his experience in leading some of the nation's largest class actions. In that capacity, he has successfully led the prosecution of a number of large-scale class actions relating to consumer data security breaches, consumer protection issues, and antitrust violations. He has been appointed to and served in leadership positions in cases throughout the nation, in both state and federal courts, including MDL proceedings. His efforts have delivered resolutions in numerous significant cases, including cases against America Online, DaimlerChrysler, McDonald's, Microsoft, Nissan, Shell Oil, Sony, TJX, and Toyota.

Ben Barnow graduated from the University of Wisconsin in 1966 with a Bachelor's degree in Business Administration. He received his Juris Doctor from the University of Michigan Law School in 1969. He is licensed to practice in the State of Illinois and the State of New York. Mr. Barnow is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the First, Third, Sixth, Seventh, Eighth, and Ninth Circuits, the United States District Court for the Northern District of Illinois, the Central District of Illinois, the District of Colorado, the Eastern District of Wisconsin, and the Western District of Wisconsin. He is a member of the American Bar Association, the American Association for Justice, the Illinois State Bar Association, and the Chicago Bar Association. He has also served as a member of the Panel of Arbitrators of the American Arbitration Association. He is listed in Martindale-Hubbell with an AV rating.

During his over forty-year legal career, Ben Barnow has represented both plaintiffs and defendants in many types of litigation and has engaged in significant transactional work. He was General Counsel to one of the world's largest public relations agencies and presided as chairman of certain of its retirement trusts. Ben Barnow was an Associate Professor at Northern Michigan University from 1969-1971, where he taught business law and unfair competition. Mr. Barnow joined the law firm of Herrick, McNeill, McElroy & Peregrine in July 1971, where he became a partner in 1977.

As part of a series of articles by Law360 featuring notable plaintiff attorneys, Ben Barnow was recognized as a Titan of the Plaintiffs Bar, and Barnow and Associates, P.C. "a plaintiffs' class action outfit known for winning big-time antitrust and data breach settlements." Sindhu Sundar, Titan of the Plaintiffs Bar:

Ben Barnow, Law360 (Oct. 8, 2014), https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow (last visited June 3, 2019).

Selected Cases

Data Security Breach Cases

Orr v. InterContinental Hotels Group, PLC. Ben Barnow was appointed as one of Lead Class Counsel in this payment card data breach litigation. He successfully negotiated a class settlement providing a claim process for Class Members to seek reimbursement for certain expenses or fraudulent and unauthorized charges resulting from the data breach, subject to an aggregate cap of $1.55 million. The settlement was granted final approval.

In re: Zappos.com Inc. Customer Data Security Breach Litigation. Ben Barnow was one of Co-Lead Class Counsel and settlement class counsel in this litigation, which resulted in a landmark Ninth Circuit ruling recognizing the Article III standing of consumers harmed by data breaches. He also successfully opposed Zappos' petition for writ of certiorari to the Supreme Court of the United States, where he served as counsel of record for plaintiffs. After many years of litigation, he negotiated a settlement that was granted final approval. The Settlement provided Class Members with CAFA-compliant coupons that were redeemed for over $7 million.

In Re: Sony Gaming Networks and Customer Data Security Breach Litigation, **MDL 2258.** The Honorable Anthony J. Battaglia appointed Ben Barnow to the Plaintiffs' Steering Committee—a committee of seven firms established to lead the litigation—in this MDL proceeding involving over 60 cases relating to a data security breach that affected approximately 50 million consumers in the United States and Canada. A settlement agreement was entered into and was granted final approval. At the final fairness hearing, Judge Battaglia remarked: "Just in the final analysis, the order, much like all the work by both sides throughout the case, has been impeccable, highly professional, and skilled. It's been a real pleasure dealing with you."

In Re: TJX Retail Security Breach Litigation, **MDL No. 1838.** Ben Barnow served as one of Co-Lead Settlement Class Counsel for the Consumer Track in this MDL proceeding relating to the theft of approximately 45 million credit and debit card numbers used at TJX stores and the personal information of over 454,000 TJX customers. Mr. Barnow took the lead in negotiating a settlement with TJX's attorneys that made available benefits valued at over $200 million to the Class. The Honorable Judge Young granted final approval to the settlement, which he referred to as "excellent," and as containing "innovative" and "groundbreaking" elements.

In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation, **MDL No. 1998.** Ben Barnow served as one of Co-Lead Settlement Class Counsel in this forty-case MDL proceeding relating to a former Countrywide employee's theft and sale of millions of Countrywide customers' private and confidential information. Mr. Barnow negotiated a settlement that was granted final approval, making benefits valued at over $650 million available to approximately 17 million Settlement Class Members. In the opinion granting final approval to the settlement, the Honorable Chief Judge Russell noted that "Co-Lead Settlement Counsel are nationally recognized in the field of class actions, particularly those involving security breaches," and stated that "the Court was impressed with Co-Lead Counsel and Countrywide counsels' knowledge and skill, as represented in the various motions and hearings that took place throughout this settlement process."

In Re: Heartland Payment Systems Inc., Data Security Breach Litigation**, MDL No. 2046.** Ben Barnow served as one of Co-Lead Counsel for the Consumer Track in this MDL proceeding relating to what, at the time, was reported as one of the largest data security breaches in history. Mr. Barnow negotiated a settlement on behalf of a Settlement Class that is estimated to include more than 120 million members. Notice of the settlement was completed and only one objection was received. Final approval of the settlement was granted.

Winstead v. ComplyRight, Inc.**,** Ben Barnow served as one of Co-Lead Settlement Class Counsel in this proceeding relating to the theft of approximately 665,000 individuals' private and confidential information (including Social Security numbers) from ComplyRight, Inc.'s web portal. Mr. Barnow and his Co-Lead Settlement Class Counsel negotiated a settlement that included the creation of a $3,025,000 settlement fund and which allowed Settlement Class members to claim, at their selection, a cash payment, a protection plan option, or reimbursement of up $200 in documented and unreimbursed out-of-pocket expenses incurred as a result of the Data Breach. Final approval of the settlement was granted.

Lockwood v. Certegy Check Services, Inc. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this consolidated proceeding relating to the theft of approximately 37 million individuals' private and confidential information from Certegy Check Services, Inc.'s computer databases. Mr. Barnow organized all plaintiffs' counsel and pending cases without the benefit of an MDL and negotiated a settlement that was granted final approval, making benefits valued at over $500 million available to Settlement Class Members. At the final fairness hearing, the Honorable Judge Merryday described the settlement as a "good deal," providing "a real benefit to a large class of persons" as "the result of the focused attention of skilled counsel for a protracted time."

McGann v. Schnuck Markets, Inc.**,** Ben Barnow served as one of Co-Lead Settlement Class Counsel in this proceeding relating to the theft of the credit and

debit card information of an estimated 777,000 individuals from point-of-sale terminals at affected Schnucks stores. Mr. Barnow negotiated a settlement that has been granted final approval, making significant benefits available to the Settlement Class.

Rowe v. Unicare Life and Health Insurance Co. Ben Barnow was Lead Counsel in this proceeding relating to the defendants' alleged failure to secure the private health information of approximately 220,000 individuals enrolled in the defendants' health insurance plans, resulting in such information being accessible to the public via the Internet. Mr. Barnow negotiated a settlement that was granted final approval, making benefits valued at over $20 million available to Settlement Class Members. At the preliminary approval hearing, the Honorable Judge Hibbler described the efforts of the parties as "exemplary."

Deceptive Trade Practices and Other Consumer Protection Cases

Gann v. Nissan North America, Inc. Ben Barnow served as one of Class Counsel in this case regarding defective continuously variable transmissions on 1.4 million 2013–2016 Nissan Altima vehicles. After successfully defeating Nissan's motions to dismiss the litigation in two separate courts, he negotiated a settlement providing reimbursement for out-of-pocket costs for prior transmission replacements and a warranty extension, collectively valued at over $444 million.

Warner v. Toyota Motor Sales, U.S.A., Inc. Ben Barnow served as one of Co-Lead Counsel in this litigation regarding claims of excessive frame rust to certain Toyota vehicles, yielding a recent landmark settlement estimated at $3.4 billion. Under the settlement, owners of 2005–2010 Toyota Tacoma, 2007–2008 Toyota Tundra, and 2005–2008 Toyota Sequoia vehicles are eligible for free frame inspections for a period of twelve years from the date the vehicle was originally sold or leased, or one year from the date of the Final Order and Judgment, whichever is longer. Vehicles that exhibit excessive frame rust are eligible for a free frame replacement.

Rafofsky v. Nissan North America, Inc. Ben Barnow served as Class Counsel in this litigation regarding the failure to timely deliver certain advertised infotainment apps on 2014 Infiniti Q50s. Class Counsel achieved a settlement in which class members could file claims for cash worth up to $85 or for vouchers to purchase of a new Infiniti vehicle worth up to $1,250.

Palace v. DaimlerChrysler Corp. Ben Barnow was one of Co-Lead Class Counsel in this litigation relating to the defendant's sale of Neons containing allegedly defective head gaskets. After several years of litigation, a settlement was granted final approval, making up to $8.25 million available to Class members for reimbursement of repair costs and other expenses.

Schulte v. Fifth Third Bank. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this action relating to allegations that the defendant unlawfully re-sequenced debit card transactions in order to maximize overdraft fees. In this capacity, he negotiated a settlement with Defendant's counsel providing for the establishment of a $9.5 million settlement fund and including substantial injunctive relief, the present value of which Plaintiffs' expert estimated to be approximately $58.8 million over five years and $108.3 million over ten years. The settlement has been granted final approval.

Schwab v. America Online, Inc. **(America Online Access Litigation).** Ben Barnow served as Class Counsel and Co-Chair in this highly publicized litigation relating to AOL's representation that users would have unlimited access to AOL for $19.95/month and the connectivity problems that ensued in conjunction therewith. In the face of what was ultimately over one hundred class actions filed nationwide, Mr. Barnow organized over 50 law firms and set up the co-chairmanship and the Executive Committee, which brought order and resolution to this litigation. A settlement was reached and was granted final approval, resulting in a multi-million-dollar benefit to a Class estimated to include over 8 million people.

Miner v. Philip Morris USA, Inc., Ben Barnow served as one of Class Counsel in this litigation concerning Philip Morris USA, Inc.'s practice of marketing and selling its Marlboro Lights and Marlboro Ultra-Lights cigarettes as less harmful to smoke than regular cigarettes when, in fact, they were not. A settlement was reached and granted final approval, providing for Philip Morris's payment of $45 million into an escrow account for the benefit of Class members.

Boland v. McDonald's Corp. **(McDonald's Sweepstakes Litigation).** As Co-Lead Class Counsel in this litigation, Ben Barnow coordinated the efforts of approximately 25 plaintiffs' firms. The litigation concerned certain McDonald's promotional games and arose from the fraudulent removal of winning game pieces from random public distribution. Mr. Barnow developed and accomplished the settlement concept; to wit, for a chance lost, a chance would be given. The settlement, valued at approximately $20 million, included fifteen $1 million prizes given away by random selection. The settlement included the United States and nine other countries.

Campos v. Calumet Transload R.R., LLC, Ben Barnow served as one of Co-Lead Settlement Class Counsel in this litigation relating to the defendants' alleged negligent storage and handling of petroleum coke and coal at certain industrial storage facilities in Chicago, Illinois. Two settlements were reached which collectively provided for the payment of $1,455,000 for the benefit of Settlement Class members. The settlements were granted final approval.

Fernandez v. Vitamin Shoppe Industries, Inc. Ben Barnow served as Co-Lead Counsel in this national class action that settled, resulting in injunctive relief

regarding labeling practices, and additional relief by way of discount coupons and *cy pres* relief to appropriate charities.

Gianopolous v. Interstate Brand Corp. and Interstate Bakeries Corp. Ben Barnow was appointed one of Class Counsel in this litigation concerning allegedly adulterated bakery goods. A settlement was reached and granted final approval, making valuable relief available to consumers.

Glenz v. RCI, LLC. Ben Barnow served as one of three Class Counsel in this litigation involving the RCI Points program and allegations of improper use of points by RCI. The settlement made available cash benefits of approximately $19 million to members of the Settlement Class and included substantial injunctive relief. Final approval of the settlement has been granted.

Heilman v. Perfection Corp. Ben Barnow served as Co-Lead Class Counsel in this national class action concerning allegedly defective dip tubes in over 14.2 million hot water tanks sold throughout the United States. In this capacity, Mr. Barnow organized twenty-three law firms and oversaw numerous filings in bringing about a national unified settlement that provided for a 100% recovery of out-of-pocket expenses and requisite repairs, including preventive replacement of all concerned dip tubes, whether or not the dip tubes had actually failed.

In Re: Chicago Flood Litigation. As Co-Lead Class Counsel and a member of the Executive Committee, Ben Barnow was responsible for several major aspects of this class action, which included years of litigation, appellate practice, trial, and a multi-million-dollar settlement. Mr. Barnow argued a related portion of the matter before the Supreme Court of the United States, *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995), and was responsible for preparing the petition for a writ of certiorari and all related filings. At the Supreme Court level, opposing counsel was John Roberts, who now sits as Chief Justice of the Supreme Court of the United States.

***In Re: High Sulfur Content Gasoline Products Liability Litigation*, MDL No. 1632 ("Shell Oil").** Ben Barnow served as Co-Lead Settlement Class Counsel in this 26-case MDL proceeding relating to the defendant's alleged sale of defective gasoline. A settlement was reached and was granted final approval, resulting in approximately $100 million being made available towards the satisfaction of consumers' claims.

In Re: Mercury Class Action Litigation. Ben Barnow served as Co-Lead Class Counsel in this case relating to the location of mercury-containing gas regulators in and on real estate. A settlement was reached and granted final approval that provided for medical monitoring, removal of the regulators, and cash compensation to certain class members.

***In Re: M3Power Marketing Practices Litigation*, MDL No. 1704.** Ben Barnow was appointed Co-Lead Class Counsel in this MDL proceeding relating to the defendant's allegedly deceptive marketing and sale of M3Power shaving razors. A settlement was reached and granted final approval, making available benefits of more than $7 million to Class members.

***In Re: Pilot Flying J Fuel Rebate Contract Litigation*.** Ben Barnow served as one of Settlement Class Counsel in this litigation involving allegations that the defendants withheld portions of fuel discounts and rebates that Class members were contractually entitled to receive in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO"), and various state laws. The $84.9 million settlement was granted final approval.

***In Re: Starlink Corn Products Liability Litigation*, MDL No. 1403.** Ben Barnow served as Co-Lead Class Counsel in this MDL proceeding relating to the alleged inclusion of genetically engineered corn in the defendants' food products. A settlement was reached, valued at $9 million, including the return of up to $6 million to consumers on a fluid recovery/*cy pres* basis through price reduction on future purchases coupled with a cash payment to approved charities based on shortfall in the redemption.

***In Re: United Parcel Service, Inc., Shipper Excess Value Insurance Coverage Litigation*.** Ben Barnow was one of Settlement Class Counsel in this litigation. A settlement was reached and granted final approval, providing relief to UPS shippers who had paid premiums for excess value insurance coverage.

Ori v. Fifth Third Bank. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this action relating to inactive mortgage loans that were erroneously reported as active to Consumer Credit Reporting Agencies. The Settlement Class included approximately 55,000 individuals, and the settlement made available cash benefits of approximately $3,000,000 to members of the Settlement Class. Final approval of the settlement has been granted.

***Orrick v. Sonic Communications*.** Ben Barnow was one of Lead Class Counsel in this matter relating to the practice known as "slamming." The private actions and actions filed on behalf of various Attorneys General were consolidated. A settlement covering all of the pending cases and providing benefits of approximately $8.3 million was achieved and granted final approval. This litigation is believed to be the first class certification and settlement relating to the practice known as "slamming."

Rosen v. Ingersoll-Rand Co., Kryptonite Corp. Ben Barnow was Co-Lead Class Counsel in this matter relating to allegedly defective bicycle locks. Mr. Barnow organized 18 U.S. and Canadian law firms and negotiated a settlement on behalf of Class members in the U.S. and Canada. The settlement was granted final approval,

providing valuable relief to purchasers of the allegedly defective U-shaped tubular cylinder bicycle locks in the U. S. and Canada.

Schneider v. Dominick's Finer Foods, Inc. Ben Barnow was Co-Class Counsel in this matter relating to the defendant's alleged failure to deliver on representations of 100% ground beef. A settlement was reached and granted final approval, which included significant remedial relief in the form of shop signage regarding cleanliness and meat grinding practices, and fluid recovery mechanisms to compensate the class members by way of in-store sales and published coupons.

Schwab v. Binney & Smith. Ben Barnow served as Co-Lead Class Counsel in this case relating to crayons that were produced for decades with talc, which allegedly contained, or was subject to containing, asbestos. Mr. Barnow negotiated a national class settlement that contributed to the reformulation of most crayons produced in this country, so as to eliminate the inclusion of talc and, thus, the alleged asbestos inclusion, and the settlement was granted final approval. This represented one of the largest classes ever certified, if not the largest.

Siegel v. Syncronys. Ben Barnow was Co-Class Counsel in this nationwide class action concerning an allegedly defective computer product. The matter was settled, resulting in a remedy for the Class that provided for a 100% reimbursement on moneys spent for the product; the value of the settlement was estimated at $22 million.

Smith v. J.M. Smucker Co. Ben Barnow was Class Counsel in this litigation relating to allegedly deceptive advertising practices. Mr. Barnow negotiated a national settlement and organized a group of plaintiffs' counsel from over 25 firms throughout the country who supported the settlement. The settlement was granted final approval, making available valuable relief to consumers of spreadable fruit products labeled "Simply 100% Fruit," including a change of labeling practices by the defendant, which added and maintained the following language, in prominent fashion, on the front label of its Simply 100% Fruit products: "Sweetened with fruit syrup from apple, pineapple or pear juice concentrate," thus fairly and fully advising consumers of the product they were purchasing.

Stelk v. BeMusic, Inc. Ben Barnow served as Co-Lead Class Counsel in this litigation relating to charges for shipping and handling in the context of a "free" offer. The Class included an estimated 16 million members. A settlement was reached and granted final approval providing substantial relief to Class members, including a guaranteed minimum of $8 million.

Antitrust Cases

Wisconsin Civil Microsoft Antitrust Litigation. Ben Barnow served as one of Co-Lead Class Counsel in this indirect purchaser antitrust lawsuit. Mr. Barnow and his co-counsel successfully petitioned the Wisconsin Supreme Court to recognize the rights of indirect purchasers to recover under Wisconsin's antitrust laws. *Olstad v. Microsoft Corp.*, 700 N.W.2d 139 (Wis. 2005). Subsequently thereto, Mr. Barnow negotiated a settlement valued at approximately $224 million that was granted final approval.

Arkansas, Kansas, South Dakota Civil Microsoft Antitrust Litigations. Ben Barnow served as a Co-Lead Class Counsel in the Arkansas, Kansas, and South Dakota Microsoft civil antitrust cases. Each of these cases settled, and the settlements were granted final approval.

***Microsoft Civil Antitrust Litigation*, MDL No. 1332.** Ben Barnow served as a member of the nine-member Plaintiffs' Lead Counsel Committee in this MDL antitrust proceeding before Judge Motz in the United States District Court for the District of Maryland.

***Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.*,** Ben Barnow served as a Co-Lead Counsel for third-party payor plaintiffs in this antitrust action where settlements were reached and finally approved collectively providing for the payment of $9,850,000 for the benefit of the Settlement Class.

Loeb Industries, Inc. v. Sumitomo Corp. Ben Barnow served as Co-Lead Counsel in this nationwide antitrust class action, which sought recovery on behalf of scrap copper purchasers who were allegedly harmed by activities designed to manipulate the copper market. A $20 million cash settlement with one of the defendants (Merrill Lynch) was reached.

Vichreva v. Cabot Corp. Ben Barnow served as Co-Lead Counsel in this Florida antitrust litigation. An $825,500 common fund, which is believed to be the largest per-consumer Carbon Black state court antitrust class action settlement in the country at that time, was obtained.

Public Speaking Engagements

1. HarrisMartin's Equifax Data Breach Litigation Conference (Atlanta, GA, Nov. 10, 2017), topic: "Settlements" (Program Co-Chair)

2. Bridgeport Continuing Education's 2016 Class Action Litigation & Management Conference (Los Angeles, CA, Apr. 15, 2016) (Program Co-Chair)

3. HarrisMartin's Data Breach Litigation Conference: The Coming of Age (San Diego, CA, Mar. 25, 2015), topic: "Creative Approaches to Settling Data Breach Cases."

4. Bridgeport Continuing Education's 2014 National Consumer Class Action Conference (Chicago, IL, Jun. 12-13, 2014); topic: "Privacy/TCPA Class Actions: State of the Law, Claims and Defenses, What Does the Future Hold?"

5. HarrisMartin's MDL Conference: Target Data Security Breach Litigation (San Diego, CA, Mar. 26, 2014); topic: "Settlement of a Data Breach Case."

6. NetDiligence Cyber Risk & Privacy Liability Forum (Marina del Rey, CA, Oct. 11–12, 2012).

7. 25th Annual Producer Conference (Stowe, VT, Sept. 10–12, 2012); topic: "Cyber 2.0—The Evolution of Cyber in the Boardroom."

8. NetDiligence 2012 Cyber Risk & Privacy Liability Forum (Philadelphia, PA, June 4–5, 2012); topic: "State of the Cyber Nation—Cases, Theories, and Damages."

9. Tulane University Law School's symposium on *The Problem of Multidistrict Litigation* (February 15–16, 2008); topic: "The Practicalities of Multidistrict Litigation."

ANTHONY L. PARKHILL

BARNOW AND ASSOCIATES

a professional corporation

ATTORNEYS AT LAW

Anthony L. Parkhill has more than five years of litigation experience and has spent the last four years prosecuting some of the nation's largest complex consumer fraud, automotive defect, and privacy class action matters.

Mr. Parkhill graduated from DePaul University with a Bachelor's degree in Political Science in 2010. He received his Juris Doctor from the University of Chicago Law School in 2014. He is licensed to practice in the State of Illinois. He is also admitted to practice before the United States Courts of Appeals for the Seventh Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Central District of Illinois, and the United States District Court for the District of Colorado. He is a member of the American Bar Association, the Illinois State Bar Association, and the Chicago Bar Association.

Mr. Parkhill has played an active role in litigating the following class action matters that successfully settled: *Gann v. Nissan North America, Inc.* (M.D. Tenn.) (settlement reached in case regarding defective transmissions providing reimbursement for out-of-pocket costs for prior transmission replacements and a warranty extension, collectively valued at over $444 million); *Warner v. Toyota Motor Sales, U.S.A., Inc.* (C.D. Cal.) (settlement reached regarding allegations of excessive frame rust to certain vehicles providing benefits valued at in excess of $3.4 billion to Settlement Class members); *Orr v. InterContinental Hotels Group, PLC* (N.D. Ga.) (settlement reached in payment card breach case providing reimbursement for certain expenses subject to an aggregate cap of $1.55 million); *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.*, (E.D. Wis.) (settlements reached with four of six defendants in this ongoing international antitrust action providing for the payment of $9,850,000); *Campos v. Calumet Transload R.R., LLC* (N.D. Ill.) (settlements reached providing for payment of $1,455,000 for the benefit of the Settlement Class in action relating to the alleged negligent storage and handling of petroleum coke and coal at certain industrial storage facilities); *Rafofsky v. Nissan North America, Inc.*, (settlement providing class members with up to $85 cash or vouchers worth up to $1,250); and *In re Zappos Security Breach Litigation*, (D. Nev.) (settlement providing class with benefits in excess of $7 million); and *Cullan and Cullan LLC v. m-Qube, Inc.*, (D. Neb.), (making over $1 million available to victims of cell phone cramming).

Mr. Parkhill was appointed as one of Class Counsel in *Rafofsky v. Nissan North America, Inc.*, where a class settlement was granted final approval.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS FEHLEN, TONY BLAKE, DAVID ARTUSO, TERESA BAZAN, LORRIEL CHHAY, SAMANTHA GRIFFITH, ALLEN CHAO, and AUGUSTA MCCAIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ACCELLION, INC.,

Defendant.

Case No. 5:21-cv-01353-EJD

Hon. Edward J. Davila

DECLARATION OF CAMERON R. AZARI ON NOTICE PLAN AND NOTICES

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. I am the Director of Legal Notice for Hilsoft Notifications ("Hilsoft"), a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq Class Action and Claims Solutions, Inc. ("Epiq").

2. I am a nationally recognized expert in the field of legal notice and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

4. Hilsoft was retained to provide notice and administration services in this matter. This declaration will describe the Notice Plan developed for the proposed Settlement in the class action *Fehlen, et al. v. Accellion, Inc., et al.*, Case No. 5:21-cv-01353-EJD (N.D. Cal.).

5. Individual notice will be emailed or mailed to a substantial number of Class Members and an extensive, nationwide media plan will be implemented, thereby effectively reaching the vast majority of the Settlement Class with notice.

6. The Federal Judicial Center's ("FJC") *Judges' Class Action Notice and Claims*

Process Checklist and Plaint Language Guide (the "FJC Checklist") considers 70-95% reach among class members to be a "high percentage" and reasonable. The efforts proposed here are designed to reach a high percentage of the Settlement Class with notice multiple times, thereby fulfilling the FJC guidelines as well as due process requirements.

7. I have reviewed the Settlement Agreement, Long Form Notice, Summary Notices, and Claim Form to ensure, and I can confirm, that all required information is plainly available to Class Members. Draft forms of the Notices and Claim Form are attached as Exhibits A, C, and E to the Class Action Settlement Agreement and Release.

RELEVANT EXPERIENCE

8. Hilsoft and Epiq are industry leaders in class action settlement administration, having implemented more than a thousand successful class action notice and settlement administration matters, and handled thousands of distributions in other contexts.

9. I have served as a notice expert and have been recognized and appointed by courts to design and provide notice in several, large data breach settlements, including:

- *Cochran et al. v. Accellion, Inc., et al.*, ("Kroger"), Case No. 5:21-cv-01887-EJD (N.D. Cal.) (preliminary approval granted November 5, 2021);
- *Beyer, et al. v. Flagstar Bancorp Inc., et al.*, Case No. 5:21-cv-02239-EJD (N.D. Cal.) (preliminary approval pending);
- *Harbour, et al. v. California Health & Wellness, et al.*, Case No. 5:21-cv-03322-EJD (N.D. Cal.) (preliminary approval pending);
- *In re: Zoom Video Communications, Inc. Privacy Litigation*, Master Case No. 5:20-cv-02155-LHK (N.D. Cal.) (preliminary approval granted October 21, 2021);
- *Lozano v. CodeMetro, Inc. et al.*, Case No. 37-2020-00022701-CU-MC-CTL (Sup. Ct. of Cal. Cnty. of San Diego);
- *Nelson v. Roadrunner Transportation Systems, Inc.*, Case No. 1:18-cv-07400, (N.D. Ill.);
- *In re: Premera Blue Cross Customer Data Security Breach Litigation*, Case No. 3:15-md-02633-SI (D. Ore.);
- *In re Community Health Systems, Inc. Customer Data Security Breach Litigation*, MDL No. 2595 (N.D. Ala.);
- *Adlouni v. UCLA Health System Auxiliary, et al*, Case No. BC589243 (Sup. Ct. Cal.);

- *Parsons v. Kimpton Hotel & Restaurant Group, LLC*, Case No. 3:16-cv-05387-VC (N.D. Cal);
- *In re: Valley Anesthesiology Consultants, Inc. Data Breach Litigation*, Case No. CV2016-013446 (Sup. Ct. Cal);
- *McGann, et al., v. Schnuck Markets, Inc.*, Case No. 1322-CC00800 (Mo. Cir. Ct.);
- *Greater Chautauqua Federal Credit Union v. Kmart Corp., et al.*, Case No. 1:15-cv- 02228 (N.D. Ill.);
- *In re Heartland Data Security Breach Litigation*, MDL No. 2046 (S.D. Tex.);
- *In re Trans Union Corp. Privacy Litigation*, MDL No. 1350 (N.D. Ill.);
- *In re: Countrywide Financial Corp. Customer Data Security Breach Litigation*, MDL No.1998, (W.D. Ky.);
- *In re TJX Companies, Inc., Customer Data Security Breach Litigation*, MDL No. 1838 (D. Mass.);
- *Lockwood v. Certegy Check Services, Inc.*, 8:07-cv-1434-T-23TGW (M.D. Fla.); and
- *In re: Department of Veteran Affairs (VA) Data Theft Litigation*, MDL No. 1796 (D.D.C.).

10. Numerous court opinions and comments regarding my testimony and the adequacy of our notice efforts are included in Hilsoft's *curriculum vitae*, which is included as **Exhibit A**.

11. In forming expert opinions, my staff and I draw from our in-depth class action case experience, as well as our educational and related work experiences. I am an active member of the Oregon State Bar, having received my Bachelor of Science from Willamette University and my Juris Doctor from Northwestern School of Law at Lewis and Clark College. I have served as the Director of Legal Notice for Hilsoft since 2008 and have overseen the detailed planning of virtually all of our court-approved notice programs during that time. Before assuming my current role with Hilsoft, I served in a similar role as Director of Epiq Legal Noticing (previously called Huntington Legal Advertising). Overall, I have over 21 years of experience in the design and implementation of legal notification and claims administration programs, having been personally involved in well over one hundred successful notice programs.

12. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Hilsoft and Epiq.

NOTICE PROGRAM METHODOLOGY

13. Federal Rule of Civil Procedure, Rule 23 directs that notice must be the best notice practicable under the circumstances.[1] The proposed Notice Program will satisfy this requirement.

14. Data sources and tools that are commonly employed by experts in this field were used to analyze and develop the media portion of this Notice Program. These include MRI-Simmons ("MRI-Simmons") data,[2] which provides statistically significant readership and product usage data, Comscore,[3] and Alliance for Audited Media ("AAM")[4] statements, which certify how many readers buy or obtain copies of publications. These tools, along with demographic breakdowns indicating how many people use each media vehicle, as well as computer software that take the underlying data and factor out the duplication among audiences of various media vehicles, allow us to determine the net (unduplicated) reach of a particular mailing and media schedule. We combine the results of this analysis to help determine notice plan sufficiency and effectiveness.

15. ***Tools and data trusted by the communications industry and courts.*** Virtually all of the nation's largest advertising agency media departments utilize, scrutinize, and rely upon such independent, time-tested data and tools, including net reach and de-duplication analysis

[1] Fed. R. Civ. P. 23(c)(2)(B).

[2] MRI-Simmons is a leading source of publication readership and product usage data for the communications industry. MRI-Simmons is the new name for the joint venture of GfK Mediamark Research & Intelligence, LLC ("MRI") and Simmons Market Research. MRI-Simmons offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, the company provides information to magazines, televisions, radio, Internet, and other media, leading national advertisers, and over 450 advertising agencies—including 90 of the top 100 in the United States. MRI-Simmons's national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the U.S.

[3] Comscore is a global Internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and Internet usage data. Comscore maintains a proprietary database of more than two million consumers who have given comScore permission to monitor their browsing and transaction behavior, including online and offline purchasing. Comscore panelists also participate in survey research that captures and integrates their attitudes and intentions.

[4] Established in 1914 as the Audit Bureau of Circulations ("ABC"), and rebranded as Alliance for Audited Media ("AAM") in 2012, AAM is a non-profit cooperative formed by media, advertisers, and advertising agencies to audit the paid circulation statements of magazines and newspapers. AAM is the leading third party auditing organization in the U.S. It is the industry's leading, neutral source for documentation on the actual distribution of newspapers, magazines, and other publications. Widely accepted throughout the industry, it certifies thousands of printed publications as well as emerging digital editions read via tablet subscriptions. Its publication audits are conducted in accordance with rules established by its Board of Directors. These rules govern not only how audits are conducted, but also how publishers report their circulation figures. AAM's Board of Directors is comprised of representatives from the publishing and advertising communities.

methodologies, to guide the billions of dollars of advertising placements that we see today, providing assurance that these figures are not overstated. These analyses and similar planning tools have become standard analytical tools for evaluations of notice programs and have been regularly accepted by courts.

16. In fact, advertising and media planning firms around the world have long relied on audience data and techniques: AAM data has been relied on since 1914; 90 to 100% of media directors use reach and frequency planning;[5] all of the leading advertising and communications textbooks cite the need to use reach and frequency planning.[6] Ninety of the top one hundred media firms use MRI data, Comscore is used by the major holding company agencies worldwide which includes Dentsu Aegis Networking, GroupM, IPG and Publicis, in addition to independent agencies for TV and digital media buying and planning, and at least 25,000 media professionals in 100 different countries use media planning software.

NOTICE PLAN SUMMARY

17. I have reviewed the Class Action Settlement Agreement and Release and understand that "Settlement Class" and "Class" means:

> [A]ll natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their personal information may have been compromised in the Attacks.
>
> Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Accellion, its subsidiaries, parent companies, successors, predecessors, and any entity in which Accellion or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute

[5] See generally Peter B. Turk, Effective Frequency Report: Its Use And Evaluation By Major Agency Media Department Executives, 28 J. ADVERTISING RES. 56 (1988); Peggy J. Kreshel et al., How Leading Advertising Agencies Perceive Effective Reach and Frequency, 14 J.ADVERTISING 32 (1985).

[6] Textbook sources that have identified the need for reach and frequency for years include: JACK S. SISSORS & JIM SURMANEK, ADVERTISING MEDIA PLANNING, 57-72 (2d ed. 1982); KENT M. LANCASTER & HELEN E. KATZ, STRATEGIC MEDIA PLANNING 120-156 (1989); DONALD W. JUGENHEIMER & PETER B. TURK, ADVERTISING MEDIA 123-126 (1980); JACK Z. SISSORS & LINCOLN BUMBA, ADVERTISING MEDIA PLANNING 93 122 (4th ed. 1993); JIM SURMANEK, INTRODUCTION TO ADVERTISING MEDIA: RESEARCH, PLANNING, AND BUYING 106-187 (1993).

and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

18. Given our experience with similar notice efforts, we expect that the proposed Notice Program (direct notice, national consumer publication, and national digital and social media) will reach a significant percentage of the Settlement Class. The media plan alone will reach over 70% of all adults nationwide. In my experience, the projected reach of the Notice Program is consistent with other court-approved notice programs, is the best notice practicable under the circumstances of this case, and has been designed to satisfy the requirements of due process, including its "desire to actually inform" requirement.[7]

Individual Notice – Mail and Email

19. The Settlement Class in this matter includes a substantial number of Class Members from three other settlements related to an incident involving Accellion's File Transfer Appliance, which was the file transfer software vendor of the Defendants in those settlements. For each of these three matters (listed below) Epiq has been retained to administer the settlements and has already done extensive work to develop Class Member data for the purpose of providing individual notice. This data will be used to also provide a significant number (approximately 6.77 million) of the Accellion Settlement Class individual notice of this proposed Settlement. If the prior reverse look-ups, related data acquisition, and data standardization work from the other settlements are leveraged, it could result in a significant cost savings to the Accellion Settlement. Based on current volumes and the data work done to-date on the other settlements, we estimate this savings could be approximately $276,000.

- *Beyer, et al. v. Flagstar Bancorp Inc., et al.*, Case No. 5:21-cv-02239-EJD (N.D. Cal.);

[7] *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950) ("But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . ."); *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019) ("To satisfy Rule 23(e)(1), settlement notices must 'present information about a proposed settlement neutrally, simply, and understandably.' 'Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'") (citations omitted); N.D. Cal. Procedural Guidance for Class Action Settlements, Preliminary Approval (3) (articulating best practices and procedures for class notice).

- *Cochran et al. v. Accellion, Inc., et al.*, ("Kroger"), Case No. 5:21-cv-01887-EJD (N.D. Cal.); and
- *Harbour, et al. v. California Health & Wellness, et al.*, Case No. 5:21-cv-03322-EJD

20. The proposed Notice Plan provides that individual notice in the form of a Summary Notice will be sent via email (Email Notice) and mailed via United States Postal Service ("USPS") first class mail (Postcard Notice) to all undeliverable email addresses or to whom an email address has not been provided or cannot be determined. All Email and Postcard Notices will also include a unique identifying number for each identified member of the Settlement Class to allow for more secure online claims processing and the efficient processing of returned paper Claim Forms.

21. The Summary Notice will be sent via email to all potential Class Members for whom a facially valid email address is available. The Email Notice will use an embedded html text format. This format will provide easy to read text without graphics, tables, images and other elements that would increase the likelihood that the message could be blocked by Internet Service Providers (ISPs) and/or SPAM filters. Each Email Notice will be transmitted with a unique message identifier. If an item is returned as undeliverable, commonly referred to as a "bounce," the reason is noted. For any Email Notice for which a bounce code is received indicating that the message was undeliverable, at least two additional attempts will be made to deliver the Notice by email. The Email Notice will include an embedded link to the Settlement Website. By clicking the link, recipients will be able to easily access information about the case.

22. The Summary Notice will also be sent as a Postcard Notice to all potential Class Members with an associated physical address for whom a facially valid email address could not be located and for those with an undeliverable email after several attempts. The Postcard Notice will be sent via USPS first class mail. The proposed Postcard Notice clearly and concisely summarizes the case and the legal rights of the Class Members. The proposed Postcard Notice also directs the recipients to the Settlement Website where Class Members can access additional information. Prior to initiating the Postcard Notice, Epiq will run the Class List through the National Change of Address ("NCOA") database maintained by the USPS to ensure Class Member address information

is up-to-date and accurately formatted for mailing.[8] In addition, the addresses will be certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code, and will be verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. Should NCOA provide a more current mailing address for a class member, Epiq will update the address accordingly. Postcard Notices returned as undeliverable will be re-mailed to any new address available through USPS information, for example, to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the USPS returns the piece with the address indicated, or to better addresses that may be found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices will be promptly remailed.

Email Reminder Notice

23. For any Settlement Class Member for whom Hilsoft has an email address, and who has not submitted a valid claim form, Hilsoft will send periodic email reminders of the opportunity to file a Claim Form prior to the Claim Deadline. The Reminder Notice will contain a summary of the Settlement and a link to the Settlement Website.

Media Plan

National Consumer Publication

24. The Publication Notice will appear once in the national edition of the weekly magazine *People,* as a 1/3 page ad unit. *People*'s circulation is approximately 3.4 million and its readership is approximately 31.8 million readers per week, with an average of 9.35 readers-per-copy nationwide.

Internet Notice Campaign

25. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target class members as part of

[8] The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service™. The address information is maintained on the database for 48 months and reduces undeliverable mail by providing the most current address information, including standardized and delivery point coded addresses, for matches made to the NCOA file for individual, family, and business moves.

providing notice of a settlement for a class action case. According to MRI-Simmons syndicated research, over 94% of adults, aged 18+ are online.[9]

26. The Notice Program includes targeted banner advertising on a selected advertising network and social media sites. The Banner Notices will link directly to the Settlement Website, thereby allowing visitors easy access to relevant information and documents. The Banner Notices will use language from the Notices, which will allow users to identify themselves as potential members of the Settlement Class.

27. The Notice Program includes Banner Notices in various sizes, which will be placed on the *Google Display Network*. All Banner Notices will run on desktop, mobile and tablet devices. Banner Notices will also be targeted (remarketed) to people who visit the Settlement Website.

28. The Notice Program also includes advertising on social media, which will consist of Banner Notices on Facebook, Twitter, and Instagram in various sizes. Facebook is the leading social networking site in the United States and combined with Instagram covers over 300 million users in the United States.

29. More details regarding the target audiences, distribution, and specific ad sizes of the Banner Notices, are included in the following table.

Network/Property	***Target***	***Distribution***	***Ad Sizes***	***Planned Impressions***
Google Display Network	Adults 18+	National	728x90, 300x250, 300x600, 970x250	175,000,000
Facebook	Adults 18+	National	Newsfeed & Right Hand Column	115,000,000
Instagram	Adults 18+	National	Newsfeed	45,000,000
Twitter	Adults 18+	National	Twitter Feed	45,000,000
TOTAL				**380,000,000**

30. Combined, approximately 380 million impressions will be generated by the Banner

[9] MRI-Simmons 2021 Survey of the American Consumer®.

Notices, which will run for approximately 45 days nationwide.[10] Clicking on the Banner Notices will link the readers to the Settlement Website, where they can easily obtain detailed information about the case.

31. Throughout the implementation of the Notice Program, Hilsoft will continuously monitor the effectiveness of the Notice Program to ensure impression goals are met.

Sponsored Search Listings

32. The Notice Program includes purchasing sponsored search listings to facilitate locating the Settlement Website. Sponsored search listings will be acquired on the three most highly-visited internet search engines: *Google*, *Yahoo!* and *Bing*. When search engine visitors search on selected common keyword combinations related to the case, the sponsored search listing will be generally displayed at the top of the page prior to the search results or in the upper right-hand column. Representative search terms will include word and phrase variations related to the Settlement. The sponsored search listings will be displayed nationwide.

Informational Release

33. To build additional reach and extend exposures, a party-neutral Informational Release will be issued broadly over PR Newswire to approximately 5,000 general media (print and broadcast) outlets, including local and national newspapers, magazines, national wire services, television and radio broadcast media across the United States as well as approximately 4,500 websites, online databases, internet networks and social networking media.

34. The Informational Release will include the address of the Settlement Website and the toll-free telephone number. Although there is no guarantee that any news stories will result, the Informational Release will serve a valuable role by providing additional notice exposures beyond that which was provided by the paid media.

[10] The third-party ad management platform, ClickCease will be used to audit the digital Banner Notice ad placements. This type of platform tracks all Banner Notice ad clicks to provide real-time ad monitoring, fraud traffic analysis, blocks clicks from fraudulent sources, and quarantines dangerous IP addresses. This helps reduce wasted, fraudulent or otherwise invalid traffic (*e.g.*, ads being seen by 'bots' or non-humans, ads not being viewable, etc.).

Settlement Website

35. Hilsoft will create and maintain a dedicated Settlement Website with an easy to remember domain name: www.FTADataBreach.com. The website address will be included in the Notices and all Banner Notices will link directly to the Settlement Website. Relevant documents, including the Long Form Notice, the Claim Form, the Settlement Agreement, the Preliminary Approval Order entered by the Court, and the operative complaint will be posted on the Settlement Website for Class Members to review and download the documents. The Settlement Website will also provide the ability to file an online Claim Form and a Request of Exclusion, and will include relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Class Members may opt-out (request exclusion) from or object to the Settlement Agreement, contact information for the Settlement Administrator, and other case-related information.

Toll-Free Telephone Number

36. A toll-free telephone number will be established for the Settlement. Callers will be able to hear an introductory message. Callers will also have the option to learn more about the settlement in the form of recorded answers to FAQs.

Notice Content

37. The Notices (including the Claim Form) are designed to be "noticed," reviewed, and—by presenting the information in plain language—understood by Class Members. The design of the Notices follows the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov. Many courts, and the FJC itself, have approved notices that we have written and designed in a similar fashion. The Notices contain substantial, albeit easy-to-read, summaries of all of the key information about Class Members' rights and options. Consistent with our normal practice, all notice documents will undergo a final edit prior to actual mailing and publication for grammatical errors and accuracy.

38. The Long Form Notice will provide substantial information to Class Members. The Long Form Notice will include (i) details regarding Class Members' ability to request exclusion from, opt-out, object to, or otherwise comment on the Settlement Agreement, (ii) instructions on

how to submit a Claim Form, (iii) the deadline to submit a Claim Form, request exclusion or objection, and (iv) the date, time, and location of the Fairness Hearing, among other information. A draft of the Long Form Notice is attached to the Settlement Agreement as Exhibit C.

Distribution Options

39. The Settlement provides Class Members the option of filing a Claim for Cash Fund Payments, or Credit Monitoring and Insurance Services, or Documented Loss Payments for reimbursement of Documented Losses. The proposed Postcard Notice contains a detailed summary of the relevant information about the Settlement, including the Settlement Website address where Class Members can file a Claim for a Cash Fund Payment, or Credit Monitoring and Insurance Services, or a Documented Loss Payment for reimbursement of Documented Losses. The proposed Email Notice includes a link directly to the claim filing portal on the Settlement Website, where Class Members can file an online claim for any one of the three benefits offered under the Settlement. Under any method of filing a Claim, Class Members will be given the option of receiving a digital payment (such as Venmo, Paypal, Digital Mastercard or other options). Class Members can also elect to receive a traditional paper check.

CONCLUSION

40. The above-described Notice Program is designed to reach a significant percentage of the entire Settlement Class and provide the Class with information necessary to understand their rights and options. Individual notice will be provided to millions of Class Members. The media plan on its own will reach at least 70% of all adults, aged 18+ in the United States. Combined, the individual notice and media notice efforts will likely reach a significant percentage of all potential Class Members.

41. In my opinion, the above-described Notice Program is consistent with other effective class action notice programs.

42. It is my opinion, based on my expertise and experience and that of my team, that this method of focused notice dissemination provides effective notice in this Action, will provide the best notice that is practicable, adheres to Fed. R. Civ. P. 23, follows the guidance set forth in the

Manual for Complex Litigation 4th Ed., and the FJC guidance, and exceeds the requirements of due process, including its "desire to actually inform" requirement.

43. In my opinion, and in light of my experience in similar class action settlements, while the claims rate may always vary depending on various factors, all things being equal and in view of the administration outcomes in other recent similar data breach class action settlements, I anticipate that the claims rate in this case — for all settlement benefits available (either credit monitoring, or cash) — will be between 1% and 3%.

44. Epiq has also been retained to provide the requisite notice to governmental agencies required pursuant to the Class Action Fairness Act, and will provide a declaration attesting to the completion of such notice.

45. At the conclusion of the Notice Plan, I will provide a final report to the Court verifying its implementation.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of January, 2022.

Cameron R. Azari, Esq.

Exhibit A

HILSOFT NOTIFICATIONS

Hilsoft Notifications ("Hilsoft") is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert, and notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. ("Epiq"). Hilsoft has been retained by defendants or plaintiffs for more than 500 cases, including more than 40 MDL cases, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. For more than 25 years, Hilsoft's notice plans have been approved and upheld by courts. Case examples include:

- Hilsoft designed and implemented monumental notice campaigns to notify current or former owners or lessees of certain BMW, Mazda, Subaru, Toyota, Honda, Nissan, and Ford vehicles as part of $1.49 billion in settlements regarding Takata airbags. The Notice Plans included individual mailed notice to more than 59.6 million potential class members and notice via consumer publications, U.S. Territory newspapers, radio, internet banners, mobile banners, and other behaviorally targeted digital media. Combined, the Notice Plans reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle with a frequency of 4.0 times each. ***In re: Takata Airbag Products Liability Litigation*** **(OEMS – BMW, Mazda, Subaru, Toyota, Honda, Nissan and Ford)**, MDL No. 2599 (S.D. Fla.).

- For a landmark $6.05 billion settlement reached by Visa and MasterCard in 2012, Hilsoft implemented an intensive notice program, which included over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade and specialty publications, and language & ethnic targeted publications. Hilsoft also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a settlement website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. For the subsequent, superseding $5.54 billion settlement reached by Visa and MasterCard in 2019, Hilsoft implemented an extensive notice program, which included over 16.3 million direct mail notices to class members together with over 354 print publication insertions and banner notices, which generated more than 689 million adult impressions. ***In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,*** 05-MD-1720, MDL No. 1720 (E.D.N.Y.).

- For a $250 million settlement with approximately 4.7 million class members, Hilsoft designed and implemented a notice program with individual notice via postcard or email to approximately 1.43 million class members and a robust publication program, which combined, reached approximately 78.8% of all U.S. adults aged 35+ approximately 2.4 times each. ***Hale v. State Farm Mutual Automobile Insurance Company, et al.,*** 12-cv-00660 (S.D. Ill.).

- Hilsoft designed and implemented an extensive individual notice program, which included 8.6 million double-postcard notices and 1.4 million email notices. The notices informed class members of a $32 million settlement for a "security incident" regarding class members' personal information stored in Premera's computer network, which was compromised. The individual notice efforts reached 93.3% of the settlement class. A settlement website, an informational release, and a geo-targeted publication notice further enhanced the notice efforts. ***In re: Premera Blue Cross Customer Data Security Breach Litigation***, 3:15-md-2633 (D. Ore.).

- Hilsoft provided notice for the $113 million lithium-ion batteries antitrust litigation settlements, which included individual notice via email to millions of class members, banner and social media ads, an informational release, and a settlement website. ***In re: Lithium Ion Batteries Antitrust Litigation***, 4:13-md-02420, MDL No. 2420 (N.D. Cal.).

- Hilsoft designed a notice program that included extensive data acquisition and mailed notice to inform owners and lessees of specific models of Mercedes-Benz vehicles. The notice program reached approximately 96.5% of all class members. ***Callaway v. Mercedes-Benz USA, LLC***, 8:14-cv-02011 (C.D. Cal.).

- Hilsoft provided notice for a $520 million settlement, which involved utility customers (residential, commercial, industrial, etc.) who paid utility bills. The notice program included individual notice to more than 1.6 million known class members via postal mail or email and a supplemental publication notice in local newspapers, banner notices, and a settlement website. The individual notice efforts alone reached more than 98.6% of the class. ***Cook, et al. v. South Carolina Public Service Authority, et al.***, 2019-CP-23-6675 (Ct. of Com. Pleas. 13th Jud. Cir. S.C.).

- For a $20 million TCPA settlement that involved Uber, Hilsoft created a notice program, which resulted in notice via mail or email to more than 6.9 million identifiable class members. The combined measurable notice effort reached approximately 90.6% of the settlement class with direct mail and email, newspaper and internet banner ads. ***Vergara, et al., v. Uber Technologies, Inc.***, 1:15-CV-06972 (N.D. Ill.).

- A comprehensive notice program within the *Volkswagen Emissions Litigation* that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 vehicle owners via email. A targeted internet campaign further enhanced the notice effort. ***In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)***, MDL No. 2672 (N.D. Cal.).

- Hilsoft designed and implemented a comprehensive notice plan, which included individual notice via an oversized postcard notice to more than 740,000 class members as well as email notice to class members. Combined the individual notice efforts delivered notice to approximately 98% of the class. Supplemental newspaper notice in four large-circulation newspapers and a settlement website further expanded the notice efforts. ***Lusnak v. Bank of America, N.A.***, CV 14-1855 (C.D. Cal.).

- Hilsoft provided notice for both the class certification and the settlement phases of the case. The individual notice efforts included sending postcard notices to more than 2.3 million class members, which reached 96% of the class. Publication notice in a national newspaper, targeted internet banner notices and a settlement website further extended the reach of the notice plan. ***Waldrup v. Countrywide Financial Corporation, et al.***, 2:13-cv-08833 (C.D. Cal.).

- An extensive notice effort regarding asbestos personal injury claims and rights as to Debtors' Joint Plan of Reorganization and Disclosure Statement that was designed and implemented by Hilsoft. The notice program included nationwide consumer print publications, trade and union labor publications, internet banner advertising, an informational release, and a website. ***In re: Kaiser Gypsum Company, Inc., el al.***, 16-31602 (Bankr. W.D. N.C.).

- Hilsoft designed and implemented an extensive settlement notice plan for a class period spanning more than 40 years for smokers of light cigarettes. The notice plan delivered a measured reach of approximately 87.8% of Arkansas adults 25+ with a frequency of 8.9 times and approximately 91.1% of Arkansas adults 55+ with a frequency of 10.8 times. Hispanic newspaper notice, an informational release, radio public service announcements ("PSAs"), sponsored search listings and a case website further enhanced reach. ***Miner v. Philip Morris USA, Inc.***, 60CV03-4661 (Ark. Cir. Ct.).

- A large asbestos bar date notice effort, which included individual notice, national consumer publications, hundreds of local and national newspapers, Spanish newspapers, union labor publications, and digital media to reach the target audience. ***In re: Energy Future Holdings Corp., et al.***, 14-10979 (Bankr. D. Del.).

- Overdraft fee class actions have been brought against nearly every major U.S. commercial bank. For related settlements from 2010-2020, Hilsoft has developed programs that integrate individual notice, and in some cases paid media efforts. Fifth Third Bank, National City Bank, Bank of Oklahoma, Webster Bank, Harris Bank, M& I Bank, PNC Bank, Compass Bank, Commerce Bank, Citizens Bank, Great Western Bank, TD Bank, BancorpSouth, Comerica Bank, Susquehanna Bank, Associated Bank, Capital One, M&T Bank, Iberiabank and Synovus are among the more than 20 banks that have retained Epiq (Hilsoft). ***In re: Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.).

- For one of the largest and most complex class action case in Canadian history, Hilsoft designed and implemented groundbreaking notice to disparate, remote indigenous people in the multi-billion-dollar settlement. ***In re: Residential Schools Class Action Litigation***, 00-CV-192059 CPA (Ont. Super. Ct.).

- BP's $7.8 billion settlement related to the Deepwater Horizon oil spill emerged from possibly the most complex class action case in U.S. history. Hilsoft drafted and opined on all forms of notice. The 2012 dual notice program to "Economic and Property Damages" and "Medical Benefits" settlement classes designed by Hilsoft reached at least 95% Gulf Coast region adults via more than 7,900 television spots, 5,200 radio spots, 5,400 print insertions in newspapers, consumer publications, and trade journals, digital media, and individual notice. Subsequently, Hilsoft designed and implemented one of the largest claim deadline notice campaigns ever implemented, which resulted in a combined measurable paid print, television, radio and internet effort, which reached in excess of 90% of adults aged 18+ in the 26 identified DMAs covering the Gulf Coast Areas an average of 5.5 times each. ***In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- Extensive point of sale notice program of a settlement, which provided payments of up to $100,000 related to Chinese drywall – 100 million notices distributed to Lowe's purchasers during a six-week period. ***Vereen v. Lowe's Home Centers***, SU10-CV-2267B (Ga. Super. Ct.).

LEGAL NOTICING EXPERTS

Cameron Azari, Esq., Epiq Senior Vice President, Hilsoft Director of Legal Notice

Cameron Azari, Esq. has more than 21 years of experience in the design and implementation of legal notice and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In re: Takata Airbag Products Liability Litigation, In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement), In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010, In re: Checking Account Overdraft Litigation,* and *In re: Residential Schools Class Action Litigation*. He is an active author and speaker on a broad range of legal notice and class action topics ranging from FRCP Rule 23 to email noticing, response rates, and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at caza@legalnotice.com.

Lauran Schultz, Epiq Managing Director

Lauran Schultz consults with Hilsoft clients on complex noticing issues. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration since 2005. High profile actions he has been involved in include companies such as BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at lschultz@hilsoft.com.

Kyle Bingham, Manager of Strategic Communications

Kyle Bingham has 15 years of experience in the advertising industry. At Hilsoft and Epiq, Kyle is responsible for overseeing the research, planning, and execution of advertising campaigns for legal notice programs including class action, bankruptcy and other legal cases. Kyle has been involved in the design and implementation of numerous legal notice campaigns, including *In re: Takata Airbag Products Liability Litigation, In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch), In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Energy Future Holdings Corp., et al. (Asbestos Claims Bar Notice), In re: Residential Schools Class Action Litigation, Hale v. State Farm Mutual Automobile Insurance Company,* and *In re: Checking Account Overdraft Litigation*. Prior to joining Epiq and Hilsoft, Kyle worked at Wieden+Kennedy for seven years, an industry-leading advertising agency where he planned and purchased print, digital and broadcast media, and presented strategy and media campaigns to clients for multi-million dollar branding campaigns and regional direct response initiatives. He received his B.A. from Willamette University. Kyle can be reached at kbingham@epiqglobal.com.

ARTICLES AND PRESENTATIONS

- **Cameron Azari** Speaker, "Virtual Global Class Actions Symposium 2020, Class Actions Case Management Panel." November 18, 2020.
- **Cameron Azari** Speaker, "Consumers and Class Action Notices: An FTC Workshop." Federal Trade Commission, Washington, DC, October 29, 2019.
- **Cameron Azari** Speaker, "The New Outlook for Automotive Class Action Litigation: Coattails, Recalls, and Loss of Value/Diminution Cases." ACI's Automotive Product Liability Litigation Conference." American Conference Institute, Chicago, IL, July 18, 2019.
- **Cameron Azari** Moderator, "Prepare for the Future of Automotive Class Actions." Bloomberg Next, Webinar-CLE, November 6, 2018.
- **Cameron Azari** Speaker, "The Battleground for Class Certification: Plaintiff and Defense Burdens, Commonality Requirements and Ascertainability." 30th National Forum on Consumer Finance Class Actions and Government Enforcement, Chicago, IL, July 17, 2018.
- **Cameron Azari** Speaker, "Recent Developments in Class Action Notice and Claims Administration." PLI's Class Action Litigation 2018 Conference, New York, NY, June 21, 2018.
- **Cameron Azari** Speaker, "One Class Action or 50? Choice of Law Considerations as Potential Impediment to Nationwide Class Action Settlements." 5th Annual Western Regional CLE Program on Class Actions and Mass Torts. Clyde & Co LLP, San Francisco, CA, June 22, 2018.
- **Cameron Azari** Co-Author, *A Practical Guide to Chapter 11 Bankruptcy Publication Notice*. E-book, published, May 2017.
- **Cameron Azari** Featured Speaker, "Proposed Changes to Rule 23 Notice and Scrutiny of Claim Filing Rates," DC Consumer Class Action Lawyers Luncheon, December 6, 2016.
- **Cameron Azari** Speaker, "Recent Developments in Consumer Class Action Notice and Claims Administration." Berman DeValerio Litigation Group, San Francisco, CA, June 8, 2016.
- **Cameron Azari** Speaker, "2016 Cybersecurity & Privacy Summit. Moving From 'Issue Spotting' To Implementing a Mature Risk Management Model." King & Spalding, Atlanta, GA, April 25, 2016.
- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, February 10, 2015.
- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.
- **Cameron Azari** Co-Author, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.
- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, April 7-8, 2014 and Chicago, IL, April 28-29, 2014.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 29-30, 2014.
- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, October 25, 2013.

- **Cameron Azari** Co-Author, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, April 2013.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 31-February 1, 2013.
- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.
- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 26-27, 2012.
- **Lauran Schultz** Speaker, "Legal Notice Best Practices: Building a Workable Settlement Structure." CLE International's 7th Annual Class Action Conference, San Francisco, CA, May 2011.
- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 2011.
- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.
- **Lauran Schultz** Speaker, "Efficiency and Adequacy Considerations in Class Action Media Notice Programs." Chicago Bar Association, Chicago, IL, 2009.
- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.
- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.
- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.
- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements" – Class Action Bar Gathering, Vancouver, British Columbia, 2007.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stoel Rives litigation group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stroock & Stroock & Lavan Litigation Group, Los Angeles, CA, 2005.
- **Cameron Azari** Author, "Twice the Notice or No Settlement." Current Developments – Issue II, August 2003.
- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication" – Weil Gotshal litigation group, New York, NY, 2003.

JUDICIAL COMMENTS

Judge Anne-Christine Massullo, *Morris v. Provident Credit Union* (June 23, 2021) CGC-19-581616, Sup. Ct. Cal. Cty. of San Fran.:

> *The Notice approved by this Court was distributed to the Classes in substantial compliance with this Court's Order Certifying Classes for Settlement Purposes and Granting Preliminary Approval of Class Settlement ("Preliminary Approval Order") and the Agreement. The Notice met the requirements of due process and California Rules of Court, rules 3.766 and 3.769(f). The notice to the Classes was adequate.*

Judge Esther Salas, *Sager, et al. v. Volkswagen Group of America, Inc., et al.* (June 22, 2021) 18-cv-13556 (D.N.J.):

> *The Court further finds and concludes that Class Notice was properly and timely disseminated to the Settlement Class in accordance with the Class Notice Plan set forth in the Settlement Agreement and the Preliminary Approval Order (Dkt. No. 69). The Class Notice Plan and its implementation in this case fully satisfy Rule 23, the requirements of due process and constitute the best notice practicable under the circumstances.*

Judge Josephine L. Staton, *In re: Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc., et al.* (June 10, 2021) 8:17-CV-00838 & 18-cv-02223 (C.D. Cal.):

> *The Class Notice was disseminated in accordance with the procedures required by the Court's Orders … in accordance with applicable law, and satisfied the requirements of Rule 23(e) and due process and constituted the best notice practicable for the reasons discussed in the Preliminary Approval Order and Final Approval Order.*

Judge Harvey Schlesinger, *In re: Disposable Contact Lens Antitrust Litigation* (ABB Concise Optical Group, LLC) (May 31, 2021) 3:15-md-02626 (M.D. Fla.):

> *The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of (i) the pendency of the Action; (ii) the effect of the Settlement Agreement (including the Releases to be provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreement, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Class; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement; and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).*

Judge Haywood S. Gilliam, Jr. *Richards, et al. v. Chime Financial, Inc.* (May 24, 2021) 4:19-cv-06864 (N.D. Cal.):

> *The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Rule 23(c)(2)(B)… The Court ordered that the third-party settlement administrator send class notice via email based on a class list Defendant provided… Epiq Class Action & Claims Solutions, Inc., the third-party settlement administrator, represents that class notice was provided as directed… Epiq received a total of 527,505 records for potential Class Members, including their email addresses…. If the receiving email server could not deliver the message, a "bounce code" was returned to Epiq indicating that the message was undeliverable…. Epiq made two additional attempts to deliver the email notice… As of Mach 1, 2021, a total of 495,006 email notices were delivered, and 32,499 remained undeliverable… In light of these facts, the Court finds that the parties have sufficiently provided the best practicable notice to the Class Members.*

Judge Henry Edward Autrey, *Pearlstone v. Wal-Mart Stores, Inc.* (Apr. 22, 2021) 4:17-cv-02856 (C.D. Cal.):

> *The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Parties' Settlement Agreement and the Preliminary Approval Order. The Court has further determined that the Notice Plan fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule 23(c)(2) and 23(e)(1), applicable law, and the Due Process Clause of the United States Constitution.*

Judge Lucy H. Koh, *Grace v. Apple, Inc.* (Mar. 31, 2021) 17-CV-00551 (N.D. Cal.):

> *Federal Rule of Civil Procedure 23(c)(2)(B) requires that the settling parties provide class members with "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." The Court finds that the Notice Plan, which was direct notice sent to 99.8% of the Settlement Class via email and U.S. Mail, has been implemented in compliance with this Court's Order (ECF No. 426) and complies with Rule 23(c)(2)(B).*

Judge Gary A. Fenner, *In re: Pre-Filled Propane Tank Antitrust Litigation* (Mar. 30, 2021) MDL No. 2567, 14-2567 (W.D. Mo.):

> *Based upon the Declaration of Cameron Azari, on behalf of Epiq, the Administrator appointed by the Court, the Court finds that the Notice Program has been properly implemented. That Declaration shows that there have been no requests for exclusion from the Settlement, and no objections to the Settlement. Finally, the Declaration reflects that AmeriGas has given appropriate notice of this settlement to the Attorney General of the United States and the appropriate State officials under the Class Action Fairness Act, 28 U.S.C. § 1715, and no objections have been received from any of them.*

Judge Richard Seeborg, *Bautista v. Valero Marketing and Supply Company* (Mar. 17, 2021) 3:15-cv-05557 (N.D. Cal.):

> *The Notice given to the Settlement Class in accordance with the Notice Order was the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Settlement Agreement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.*

Judge James D. Peterson, *Fox, et al. v. Iowa Health System d.b.a. UnityPoint Health* (Mar. 4, 2021) 18-cv-327 (W.D. Wis.):

> *The approved Notice plan provided for direct mail notice to all class members at their last known address according to UnityPoint's records, as updated by the administrator through the U.S. Postal Service. For postcards returned undeliverable, the administrator tried to find updated addresses for those class members. The administrator maintained the Settlement website and made Spanish versions of the Long Form Notice and Claim Form available upon request. The administrator also maintained a toll-free telephone line which provides class members detailed information about the settlement and allows individuals to request a claim form be mailed to them.*
>
> *The Court finds that this Notice (i) constituted the best notice practicable under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class members of the Settlement, the effect of the Settlement (including the release therein), and their right to object to the terms of the settlement and appear at the Final Approval Hearing; (iii) constituted due and sufficient notice of the Settlement to all reasonably identifiable persons entitled to receive such notice; (iv) satisfied the requirements of due process, Federal Rule of Civil Procedure 23(e)(1) and the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all applicable laws and rules.*

Judge Larry A. Burns, *Trujillo, et al. v. Ametek, Inc., et al.* (Mar. 3, 2021) 3:15-cv-01394 (S.D. Cal.):

> *The Class has received the best practicable notice under the circumstances of this case. The Parties' selection and retention of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 181-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement's terms. The Settlement Notices informed the Class of Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members' rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing… The Settlement Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.*

Judge Sherri A. Lydon, *Fitzhenry v. Independent Home Products, LLC* (Mar. 2, 2021) 2:19-cv-02993 (D.S.C.):

> *Notice was provided to Class Members in compliance with Section VI of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed Settlement Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final fairness hearing.*

Judge James V. Selna, *Alvarez v. Sirius XM Radio Inc.* (Feb. 9, 2021) 2:18-cv-8605 (C.D. Cal.):

> *The Court finds that the dissemination of the Notices attached as Exhibits to the Settlement Agreement: (a) was implemented in accordance with the Notice Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the Releases to be provided thereunder); (v) Named Plaintiffs' application for the payment of Service Awards; (vi) Class Counsel's motion for an award an attorneys' fees and expenses; (vii) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for attorneys' fees and expenses (including a Service Award to the Named Plaintiffs and Mr. Wright); and (viii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.*

Judge Jon S .Tigar, *Elder v. Hilton Worldwide Holdings, Inc.* (Feb. 4, 2021) 16-cv-00278 (N.D. Cal.):

> *"Epiq implemented the notice plan precisely as set out in the Settlement Agreement and as ordered by the Court." ECF No. 162 at 9-10. Epiq sent initial notice by email to 8,777 Class Members and by U.S. Mail to the remaining 1,244 Class members. Id. at 10. The Notice informed Class Members about all aspects of the Settlement, the date and time of the fairness hearing, and the process for objections. ECF No. 155 at 28-37. Epiq then mailed notice to the 2,696 Class Members whose emails were returned as undeliverable. Id. "Of the 10,021 Class Members identified from Defendants' records, Epiq was unable to deliver the notice to only 35 Class Members. Accordingly, the reach of the notice is 99.65%." Id. (citation omitted). Epiq also created and maintained a settlement website and a toll-free hotline that Class Members could call if they had questions about the settlement. Id.*
>
> *The Court finds that the parties have complied with the Court's preliminary approval order and, because the notice plan complied with Rule 23, have provided adequate notice to class members.*

Judge Michael W. Jones, *Wallace, et al, v. Monier Lifetile LLC, et al.* (Jan. 15, 2021) SCV-16410 (Sup. Ct. Cal.):

> *The Court also finds that the Class Notice and notice process were implemented in accordance with the Preliminary Approval Order, providing the best practicable notice under the circumstances.*

Judge Kristi K. DuBose, *Drazen v. GoDaddy.com, LLC* and *Bennett v. GoDaddy.com, LLC* (Dec. 23, 2020) 1:19-cv-00563 (S.D. Ala.):

> *The Court finds that the Notice and the claims procedures actually implemented satisfy due process, meet the requirements of Rule 23(e)(1), and the Notice constitutes the best notice practicable under the circumstances.*

Judge Haywood S. Gilliam, Jr.*, Izor v. Abacus Data Systems, Inc.* (Dec. 21, 2020) 19-cv-01057 (N.D. Cal.):

> *The Court finds that the notice plan previously approved by the Court was implemented and that the notice thus satisfied Rule 23(c)(2)(B). [T]he Court finds that the parties have sufficiently provided the best practicable notice to the class members.*

Judge Christopher C. Conner, *Al's Discount Plumbing, et al. v. Viega, LLC* (Dec. 18, 2020) 19-cv-00159 (M.D. Pa.):

> *The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Fed. R. Civ. P. 23(c)(2)(B) and due process. Specifically, the Court ordered that the third-party Settlement Administrator, Epiq, send class notice via email, U.S. mail, by publication in two recognized industry magazines, Plumber and PHC News, in both their print and online digital forms, and to implement a digital media campaign. (ECF 99). Epiq represents that class notice was provided as directed. See Declaration of Cameron R. Azari, ¶¶ 12-15 (ECF 104-13).*

Judge Naomi Reice Buchwald, *In re: Libor-Based Financial Instruments Antitrust Litigation* (Dec. 16, 2020) MDL No. 2262 1:11-md-2262 (S.D.N.Y.):

> *Upon review of the record, the Court hereby finds that the forms and methods of notifying the members of the Settlement Classes and their terms and conditions have met the requirements of the United States Constitution (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all members of the Settlement Classes of these proceedings and the matters set forth herein, including the Settlements, the Plan of Allocation and the Fairness Hearing. Therefore, the Class Notice is finally approved.*

Judge Larry A. Burns, *Cox, et al. Ametek, Inc., et al.* (Dec 15, 2020) 3:17-cv-00597 (S.D. Cal.):

> *The Class has received the best practicable notice under the circumstances of this case. The Parties' selection and retention of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 129-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement's terms. The Settlement Notices informed the Class of Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members' rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing… The Settlement Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.*

Judge Timothy J. Sullivan*, Robinson v. Nationstar Mortgage LLC* (Dec. 11, 2020) 8:14-cv-03667 (D. Md.):

> *The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the United States Constitution, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The Class Notice fully satisfied the requirements of Due Process.*

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Dec. 10, 2020) 4:13-md-02420, MDL No. 2420 (N.D. Cal.):

> *The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order prior to remand, and a second notice campaign thereafter. (See Dkt. No. 2571.) The class received direct and indirect notice through several methods – email notice, mailed notice upon request, an informative settlement website, a telephone support line, and a vigorous online campaign. Digital banner advertisements were targeted specifically to settlement class members, including on Google and Yahoo's ad networks, as well as Facebook and Instagram, with over 396 million impressions delivered. Sponsored search listings were employed on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks through to the settlement website. An informational released was distributed to 495 media contacts in the consumer electronics industry. The case website has continued to be maintained as a channel for communications with class members. Between February 11, 2020 and April 23, 2020, there were 207,205 unique visitors to the website. In the same period, the toll-free telephone number available to class members received 515 calls.*

Judge Katherine A. Bacal, *Garvin v. San Diego Unified Port District* (Nov. 20, 2020) 37-2020-00015064 (Sup. Ct. Cal.):

> *Notice was provided to Class Members in compliance with the Settlement Agreement, California Code of Civil Procedure §382 and California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing notice to all individual Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Class Members. The Notice fully satisfied the requirements of due process.*

Judge Catherine D. Perry*, Pirozzi, et al. v. Massage Envy Franchising, LLC* (Nov. 13, 2020) 4:19-cv-807 (E.D. Mo.):

> *The COURT hereby finds that the CLASS NOTICE given to the CLASS: (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the time and manner by which CLASS MEMBERS could submit a CLAIM under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances, constituted a reasonable manner of notice to all class members who would be bound by the SETTLEMENT, and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.*

Judge Robert E. Payne, *Skochin, et al. v. Genworth Life Insurance Company, et al.* (Nov. 12, 2020) 3:19-cv-00049 (E.D. Vir.):

> *For the reasons set forth in the Court's Memorandum Opinion addressing objections to the Settlement Agreement, . . . the plan to disseminate the Class Notice and Publication Notice, which the Court previously approved, has been implemented and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process.*

Judge Jeff Carpenter*, Eastwood Construction LLC, et al. v. City of Monroe* (Oct. 27, 2020) 18-cvs-2692 and ***The Estate of Donald Alan Plyler Sr., et al. v. City of Monroe*** (Oct. 27, 2020) 19-cvs-1825 (Sup. Ct. N.C.):

> *Therefore, the Court GRANTS the Final Approval Motion, CERTIFIES the class as defined below for settlement purposes only, APPROVES the Settlement, and GRANTS the Fee Motion…*
> *The Settlement Agreement and the Settlement Notice are found to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and are hereby approved pursuant to North Carolina Rule of Civil Procedure 23. The Parties are hereby authorized and directed to comply with and to consummate the Settlement Agreement in accordance with the terms and provisions set forth in the Settlement Agreement, and the Clerk of the Court is directed to enter and docket this Order and Final Judgement in the Actions.*

Judge M. James Lorenz, *Walters, et al. v. Target Corp.* (Oct. 26, 2020) 3:16-cv-1678 (S.D. Cal.):

> *The Court has determined that the Class Notices given to Settlement Class members fully and accurately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process and has been fully implemented.*

Judge Maren E. Nelson, *Harris, et al. v. Farmers Insurance Exchange and Mid Century Insurance Company* (Oct. 26, 2020) BC 579498 (Sup. Ct Cal.):

> *Distribution of Notice directed to the Settlement Class Members as set forth in the Settlement has been completed in conformity with the Preliminary Approval Order, including individual notice to all Settlement Class members who could be identified through reasonable effort, and the best notice practicable under the circumstances. The Notice, which reached 99.9% of all Settlement Class Members, provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement, to all persons entitled to Notice, and the Notice and its distribution fully satisfied the requirements of due process.*

Judge Vera M. Scanlon, *Lashambae v. Capital One Bank, N.A.* (Oct. 21, 2020) 1:17-cv-06406 (E.D.N.Y.):

> *The Class Notice, as amended, contained all of the necessary elements, including the class definition, the identifies of the named Parties and their counsel, a summary of the terms of the proposed Settlement, information regarding the manner in which objections may be submitted, information regarding the opt-out procedures and deadlines, and the date and location of the Final Approval Hearing. Notice was successfully delivered to approximately 98.7% of the Settlement Class and only 78 individual Settlement Class Members did not receive notice by email or first class mail.*
>
> *Having reviewed the content of the Class Notice, as amended, and the manner in which the Class Notice was disseminated, this Court finds that the Class Notice, as amended, satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules. The Class Notice, as amended, provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and provided this Court with jurisdiction over the absent Settlement Class Members. See Fed. R. Civ. P. 23(c)(2)(B).*

Chancellor Walter L. Evans, *K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knox-Bender v. Methodist Healthcare - Memphis Hospitals* (Oct. 14, 2020) CH-13-04871-1 (30th Jud. Dist. Tenn.):

> *Based upon the filings and the record as a whole, the Court finds and determines that dissemination of the Class Notice as set forth herein complies with Tenn. R. Civ. P. 23.03(3) and 23.05 and (i) constitutes the best practicable notice under the circumstances, (ii) was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of Class Settlement, their rights to object to the proposed Settlement, (iii) was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, (iv) meets all applicable requirements of Due Process; (v) and properly provides notice of the attorney's fees that Class Counsel shall seek in this action. As a result, the Court finds that Class Members were properly notified of their rights, received full Due Process . . . .*

Judge Sara L. Ellis, *Nelson v. Roadrunner Transportation Systems, Inc.* (Sept. 15, 2020) 1:18-cv-07400 (N.D. Ill.):

> *Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and expenses, and the proposed Service Award payment to Plaintiff have been provided to Settlement Class Members as directed by this Court's Orders,*
>
> *The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).*

Judge George H. Wu, *Lusnak v. Bank of America, N.A.* (Aug. 10, 2020) CV 14-1855 (C.D. Cal.):

> *The Court finds that the Notice program for disseminating notice to the Settlement Class, provided for in the Settlement Agreement and previously approved and directed by the Court, has been implemented by the Settlement Administrator and the Parties. The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of the Lawsuit, the definition of the Settlement Class certified, the class claims and issues, the opportunity to enter an appearance through an attorney if the member so desires; the opportunity, the time, and manner for requesting exclusion from the Settlement Class, and the binding effect of a class judgment; (d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, due process under the U.S. Constitution, and any other applicable law.*

Judge James Lawrence King, *Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A.* (Aug. 10, 2020) 1:10-cv-22190 (S.D. Fla.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

> *The Court finds that the members of the Settlement Class were provided with the best practicable notice; the notice was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement was widely publicized, and any member of the Settlement Class who wished to express comments or objections had ample opportunity and means to do so.*

Judge Jeffrey S. Ross, *Lehman v. Transbay Joint Powers Authority, et al.* (Aug. 7, 2020) CGC-16-553758 (Sup. Ct. Cal.):

> *The Notice approved by this Court was distributed to the Settlement Class Members in compliance with this Court's Order Granting Preliminary Approval of Class Action Settlement, dated May 8, 2020. The Notice provided to the Settlement Class Members met the requirements of due process and constituted the best notice practicable in the circumstances. Based on evidence and other material submitted in conjunction with the final approval hearing, notice to the class was adequate.*

Judge Jean Hoefer Toal, *Cook, et al. v. South Carolina Public Service Authority, et al.* (July 31, 2020) 2019-CP-23-6675 (Ct. of Com. Pleas. 13th Jud. Cir. S.C.):

> *Notice was sent to more than 1.65 million Class members, published in newspapers whose collective circulation covers the entirety of the State, and supplemented with internet banner ads totaling approximately 12.3 million impressions. The notices directed Class members to the settlement website and toll-free line for additional inquiries and further information. After this extensive notice campaign, only 78 individuals (0.0047%) have opted-out, and only nine (0.00054%) have objected. The Court finds this response to be overwhelmingly favorable.*

Judge Peter J. Messitte, *Jackson, et al. v. Viking Group, Inc., et al.* (July 28, 2020) 8:18-cv-02356 (D. Md.):

> *[T]he Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order as amended. The Court finds that the Notice Plan: (i) constitutes the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Lawsuit and the terms of the Settlement, their right to exclude themselves from the Settlement, or to object to any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Final Approval Order and the Final Judgment, whether favorable or unfavorable, on all Persons who do not exclude themselves from the Settlement Class, (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.*

Judge Michael P. Shea, *Grayson, et al. v. General Electric Company* (July 27, 2020) 3:13-cv-01799 (D. Conn.):

> *Pursuant to the Preliminary Approval Order, the Settlement Notice was mailed, emailed and disseminated by the other means described in the Settlement Agreement to the Class Members. This Court finds that this notice procedure was (i) the best practicable notice; (ii) reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Civil Action and of their right to object to or exclude themselves from the proposed Settlement; and (iii) reasonable and constitutes due, adequate, and sufficient notice to all entities and persons entitled to receive notice.*

Judge Gerald J. Pappert, *Rose v. The Travelers Home and Marine Insurance Company, et al.* (July 20, 2020) 19-cv-00977 (E.D. Pa.):

> *The Class Notice . . . has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. Such Class Notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency and nature of this Action, the definition of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class to exclude themselves from the settlement or to object to any part of the settlement, the rights of the Settlement Class to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement Agreement on all persons who do not exclude themselves from the Settlement Class, (iii) provided due, adequate, and sufficient notice to the Settlement Class; and (iv) fully satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.*

Judge Christina A. Snyder, *Waldrup v. Countrywide Financial Corporation, et al.* (July 16, 2020) 2:13-cv-08833 (C.D. Cal.):

> *The Court finds that mailed and publication notice previously given to Class Members in the Action was the best notice practicable under the circumstances, and satisfies the requirements of due process and FED. R. CIV. P. 23. The Court further finds that, because (a) adequate notice has been provided to all Class Members*

and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, it has jurisdiction over all Class Members. The Court further finds that all requirements of statute (including but not limited to 28 U.S.C. § 1715), rule, and state and federal constitutions necessary to effectuate this Settlement have been met and satisfied.

Judge James Donato, *Coffeng, et al. v. Volkswagen Group of America, Inc.* (June 10, 2020) 17-cv-01825 (N.D. Cal.):

The Court finds that, as demonstrated by the Declaration and Supplemental Declaration of Cameron Azari, and counsel's submissions, Notice to the Settlement Class was timely and properly effectuated in accordance with FED. R. CIV. P. 23(e) and the approved Notice Plan set forth in the Court's Preliminary Approval Order. The Court finds that said Notice constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Michael W. Fitzgerald*, Behfarin v. Pruco Life Insurance Company, et al.* (June 3, 2020) 17-cv-05290 (C.D. Cal.):

The Court finds that the requirements of Rule 23 of the Federal Rule of Civil Procedure and other laws and rules applicable to final settlement approval of class actions have been satisfied . . . .

This Court finds that the Claims Administrator caused notice to be disseminated to the Class in accordance with the plan to disseminate Notice outlined in the Settlement Agreement and the Preliminary Approval Order, and that Notice was given in an adequate and sufficient manner and complies with Due Process and Fed. R. Civ. P. 23.

Judge Nancy J. Rosenstengel, *First Impressions Salon, Inc., et al. v. National Milk Producers Federation, et al.* (Apr. 27, 2020) 3:13-cv-00454 (S.D. Ill.):

The Court finds that the Notice given to the Class Members was completed as approved by this Court and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The settlement Notice Plan was modeled on and supplements the previous court-approved plan and, having been completed, constitutes the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, the Plan of Distribution, these proceedings, and the rights of Class members to opt-out of the Class and/or object to Final Approval of the Settlement, as well as Plaintiffs' Motion requesting attorney fees, costs, and Class Representative service awards.

Judge Harvey Schlesinger, *In re: Disposable Contact Lens Antitrust Litigation* (CooperVision, Inc.) (Mar. 4, 2020) 3:15-md-02626 (M.D. Fla.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Orders; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of (i) the pendency of the Action; (ii) the effect of the Settlement Agreements (including the Releases to the provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreements, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Classes; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

Judge Amos L. Mazzant, *Stone, et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens* (Mar. 3, 2020) 4:17-cv-00001 (E.D. Tex.):

The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Equitable Relief Settlement Class; (iii) the claims and issues of the

Equitable Relief Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

Judge Michael H. Simon, ***In re: Premera Blue Cross Customer Data Security Breach Litigation*** (Mar. 2, 2020) 3:15-md-2633 (D. Ore.):

The Court confirms that the form and content of the Summary Notice, Long Form Notice, Publication Notice, and Claim Form, and the procedure set forth in the Settlement for providing notice of the Settlement to the Class, were in full compliance with the notice requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e), fully, fairly, accurately, and adequately advised members of the Class of their rights under the Settlement, provided the best notice practicable under the circumstances, fully satisfied the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, and afforded Class Members with adequate time and opportunity to file objections to the Settlement and attorney's fee motion, submit Requests for Exclusion, and submit Claim Forms to the Settlement Administrator.

Judge Maxine M. Chesney, ***McKinney-Drobnis, et al. v. Massage Envy Franchising*** (Mar. 2, 2020) 3:16-cv-6450 (N.D. Cal.):

The COURT hereby finds that the individual direct CLASS NOTICE given to the CLASS via email or First Class U.S. Mail (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the manner in which CLASS MEMBERS could submit a VOUCHER REQUEST under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.

Judge Harry D. Leinenweber, ***Albrecht v. Oasis Power, LLC d/b/a Oasis Energy*** (Feb. 6, 2020) 1:18-cv-1061 (N.D. Ill.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable laws.

Judge Robert Scola, Jr., ***Wilson, et al. v. Volkswagen Group of America, Inc., et al.*** (Jan. 28, 2020) 17-cv-23033 (S.D. Fla.):

The Court finds that the Class Notice, in the form approved by the Court, was properly disseminated to the Settlement Class pursuant to the Notice Plan and constituted the best practicable notice under the circumstances. The forms and methods of the Notice Plan approved by the Court met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution (including the Due Process Clause), and any other applicable law.

Judge Michael Davis, ***Garcia v. Target Corporation*** (Jan. 27, 2020) 16-cv-02574 (D. Minn.):

The Court finds that the Notice Plan set forth in Section 4 of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final

Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

Judge Bruce Howe Hendricks, *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (Jan. 9, 2020) MDL No. 2613, 6:15-MN-02613 (D.S.C.):

The Classes have been notified of the settlement pursuant to the plan approved by the Court. After having reviewed the Declaration of Cameron R. Azari (ECF No. 220-1) and the Supplemental Declaration of Cameron R. Azari (ECF No. 225-1), the Court hereby finds that notice was accomplished in accordance with the Court's directives. The Court further finds that the notice program constituted the best practicable notice to the Settlement Classes under the circumstances and fully satisfies the requirements of due process and Federal Rule 23.

Judge Margo K. Brodie, *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (Dec. 13, 2019) MDL No. 1720, 05-md-1720 (E.D.N.Y.):

The notice and exclusion procedures provided to the Rule 23(b)(3) Settlement Class, including but not limited to the methods of identifying and notifying members of the Rule 23(b)(3) Settlement Class, were fair, adequate, and sufficient, constituted the best practicable notice under the circumstances, and were reasonably calculated to apprise members of the Rule 23(b)(3) Settlement Class of the Action, the terms of the Superseding Settlement Agreement, and their objection rights, and to apprise members of the Rule 23(b)(3) Settlement Class of their exclusion rights, and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, any other applicable laws or rules of the Court, and due process.

Judge Steven Logan, *Knapper v. Cox Communications, Inc.* (Dec. 13, 2019) 2:17-cv-00913 (D. Ariz.):

The Court finds that the form and method for notifying the class members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order (Doc. 120). The Court further finds that the notice satisfied due process principles and the requirements of Federal Rule of Civil Procedure 23(c), and the Plaintiff chose the best practicable notice under the circumstances. The Court further finds that the notice was clearly designed to advise the class members of their rights.

Judge Manish Shah, *Prather v. Wells Fargo Bank, N.A.* (Dec. 10, 2019) 1:17-cv-00481 (N.D. Ill.):

The Court finds that the Notice Plan set forth in Section VIII of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

Judge Liam O'Grady, *Liggio v. Apple Federal Credit Union* (Dec. 6, 2019) 1:18-cv-01059 (E.D. Vir.):

The Court finds that the manner and form of notice (the "Notice Plan") as provided for in the this Court's July 2, 2019 Order granting preliminary approval of class settlement, and as set forth in the Parties' Settlement Agreement was provided to Settlement Class Members by the Settlement Administrator. . . The Notice Plan was reasonably calculated to give actual notice to Settlement Class Members of the right to receive benefits from the Settlement, and to be excluded from or object to the Settlement. The Notice Plan met the requirements of Rule 23(c)(2)(B) and due process and constituted the best notice practicable under the circumstances.

Judge Brian McDonald, *Armon, et al. v. Washington State University* (Nov. 8, 2019) 17-2-23244-1 (consolidated with 17-2-25052-0) (Sup. Ct. Wash.):

The Court finds that the Notice Program, as set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied CR 23(c)(2), was the best Notice practicable under the circumstances, was reasonably calculated to provide-and did provide-due and sufficient Notice to the Settlement Class of the pendency of the Litigation; certification of the Settlement Class for settlement purposes only; the existence and terms of the Settlement; the identity of Class Counsel and appropriate information about Class Counsel's then-forthcoming application for attorneys' fees and incentive awards to the Class Representatives; appropriate information about how to participate in the Settlement; Settlement Class Members' right to exclude themselves; their right to object to the Settlement and to appear at the Final Approval Hearing, through counsel if they desired; and appropriate

instructions as to how to obtain additional information regarding this Litigation and the Settlement. In addition, pursuant to CR 23(c)(2)(B), the Notice properly informed Settlement Class Members that any Settlement Class Member who failed to opt-out would be prohibited from bringing a lawsuit against Defendant based on or related to any of the claims asserted by Plaintiffs, and it satisfied the other requirements of the Civil Rules.

Judge Andrew J. Guilford, *In re: Wells Fargo Collateral Protection Insurance Litigation* (Nov. 4, 2019) 8:17-ml-02797 (C.D. Cal.):

Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the parties' settlement administrator, was able to deliver the court-approved notice materials to all class members, including 2,254,411 notice packets and 1,019,408 summary notices.

Judge Paul L. Maloney, *Burch v. Whirlpool Corporation* (Oct. 16, 2019) 1:17-cv-00018 (W.D. Mich.):

[T]he Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and applicable state laws and due process.

Judge Gene E.K. Pratter, *Tashica Fulton-Green, et al. v. Accolade, Inc.* (Sept. 24, 2019) 2:18-cv-00274 (E.D. Pa.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

Judge Edwin Torres, *Burrow, et al. v. Forjas Taurus S.A., et al.* (Sept. 6, 2019) 1:16-cv-21606 (S.D. Fla.):

Because the Parties complied with the agreed-to notice provisions as preliminarily approved by this Court, and given that there are no developments or changes in the facts to alter the Court's previous conclusion, the Court finds that the notice provided in this case satisfied the requirements of due process and of Rule 23(c)(2)(B).

Judge Amos L. Mazzant, *Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens* (Aug. 30, 2019) 4:19-cv-00248 (E.D. Tex.):

The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified 2011 Settlement Class; (iii) the claims and issues of the 2011 Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

Judge Karon Owen Bowdre, *In re: Community Health Systems, Inc. Customer Data Security Breach Litigation* (Aug. 22, 2019) MDL No. 2595, 2:15-cv-222 (N.D. Ala.):

The court finds that the Notice Program: (1) satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process; (2) was the best practicable notice under the circumstances; (3) reasonably apprised Settlement Class members of the pendency of the Action and their right to object to the settlement or opt-out of the Settlement Class; and (4) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice. Approximately 90% of the 6,081,189 individuals identified as Settlement Class members received the Initial Postcard Notice of this Settlement Action.

The court further finds, pursuant to Fed. R. Civ. P. 23(c)(2)(B), that the Class Notice adequately informed Settlement Class members of their rights with respect to this action.

Judge Christina A. Snyder, *Zaklit, et al. v. Nationstar Mortgage LLC, et al.* (Aug. 21, 2019) 5:15-cv-02190 (C.D. Cal.):

> *The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The notice fully satisfied the requirements of Due Process. No Settlement Class Members have objected to the terms of the Settlement.*

Judge Brian M. Cogan, *Luib v. Henkel Consumer Goods Inc.* (Aug. 19, 2019) 1:17-cv-03021 (E.D.N.Y.):

> *The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.*

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Aug. 16, 2019) 4:13-md-02420 MDL No. 2420 (N.D. Cal.):

> *The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order. [T]he notice program reached approximately 87 percent of adults who purchased portable computers, power tools, camcorders, or replacement batteries, and these class members were notified an average of 3.5 times each. As a result of Plaintiffs' notice efforts, in total, 1,025,449 class members have submitted claims. That includes 51,961 new claims, and 973,488 claims filed under the prior settlements.*

Judge Jon Tigar, *McKnight, et al. v. Uber Technologies, Inc., et al.* (Aug. 13, 2019) 3:14-cv-05615 (N.D. Cal.):

> *The settlement administrator, Epiq Systems, Inc., carried out the notice procedures as outlined in the preliminary approval. ECF No. 162 at 17-18. Notices were mailed to over 22 million class members with a success rate of over 90%. Id. at 17. Epiq also created a website, banner ads, and a toll free number. Id. at 17-18. Epiq estimates that it reached through mail and other formats 94.3% of class members. ECF No. 164 ¶ 28. In light of these actions, and the Court's prior order granting preliminary approval, the Court finds that the parties have provided adequate notice to class members.*

Judge Gary W.B. Chang, *Robinson v. First Hawaiian Bank* (Aug. 8, 2019) 17-1-0167-01 (Cir. Ct. of First Cir. Haw.):

> *This Court determines that the Notice Program satisfies all of the due process requirements for a class action settlement.*

Judge Karin Crump, *Hyder, et al. v. Consumers County Mutual Insurance Company* (July 30, 2019) D-1-GN-16-000596 (D. Ct. of Travis County Tex.):

> *Due and adequate Notice of the pendency of this Action and of this Settlement has been provided to members of the Settlement Class, and this Court hereby finds that the Notice Plan described in the Preliminary Approval Order and completed by Defendant complied fully with the requirements of due process, the Texas Rules of Civil Procedure, and the requirements of due process under the Texas and United States Constitutions, and any other applicable laws.*

Judge Wendy Bettlestone, *Underwood v. Kohl's Department Stores, Inc., et al.* (July 24, 2019) 2:15-cv-00730 (E.D. Pa.):

> *The Notice, the contents of which were previously approved by the Court, was disseminated in accordance with the procedures required by the Court's Preliminary Approval Order in accordance with applicable law.*

Judge Andrew G. Ceresia, J.S.C., *Denier, et al. v. Taconic Biosciences, Inc.* (July 15, 2019) 00255851 (Sup Ct. N.Y.):

> *The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of the CPLR.*

Judge Vince G. Chhabria, *Parsons v. Kimpton Hotel & Restaurant Group, LLC* (July 11, 2019) 3:16-cv-05387 (N.D. Cal.):

> *Pursuant to the Preliminary Approval Order, the notice documents were sent to Settlement Class Members by email or by first-class mail, and further notice was achieved via publication in People magazine, internet banner notices, and internet sponsored search listings. The Court finds that the manner and form of notice (the "Notice Program") set forth in the Settlement Agreement was provided to Settlement Class Members. The Court finds that the Notice Program, as implemented, was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and the request for Service Award for Plaintiff. The Notice and Notice Program constituted sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.*

Judge Daniel J. Buckley, *Adlouni v. UCLA Health Systems Auxiliary, et al.* (June 28, 2019) BC589243 (Sup. Ct. Cal.):

> *The Court finds that the notice to the Settlement Class pursuant to the Preliminary Approval Order was appropriate, adequate, and sufficient, and constituted the best notice practicable under the circumstances to all Persons within the definition of the Settlement Class to apprise interested parties of the pendency of the Action, the nature of the claims, the definition of the Settlement Class, and the opportunity to exclude themselves from the Settlement Class or present objections to the settlement. The notice fully complied with the requirements of due process and all applicable statutes and laws and with the California Rules of Court.*

Judge John C. Hayes III, *Lightsey, et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, et al.* (June 11, 2019) 2017-CP-25-335 (Ct. of Com. Pleas., S.C.):

> *These multiple efforts at notification far exceed the due process requirement that the class representative provide the best practical notice. See Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 94 S.Ct. 2140 (1974); Hospitality Mgmt. Assoc., Inc. v. Shell Oil, Inc., 356 S.C. 644, 591 S.E.2d 611 (2004). Following this extensive notice campaign reaching over 1.6 million potential class member accounts, Class counsel have received just two objections to the settlement and only 24 opt outs.*

Judge Stephen K. Bushong, *Scharfstein v. BP West Coast Products, LLC* (June 4, 2019) 1112-17046 (Ore. Cir., County of Multnomah):

> *The Court finds that the Notice Plan was effected in accordance with the Preliminary Approval and Notice Order, dated March 26, 2019, was made pursuant to ORCP 32 D, and fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.*

Judge Cynthia Bashant, *Lloyd, et al. v. Navy Federal Credit Union* (May 28, 2019) 17-cv-1280 (S.D. Cal.):

> *This Court previously reviewed, and conditionally approved Plaintiffs' class notices subject to certain amendments. The Court affirms once more that notice was adequate.*

Judge Robert W. Gettleman, *Cowen v. Lenny & Larry's Inc.* (May 2, 2019) 1:17-cv-01530 (N.D. Ill.):

> *Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the elements specified by the Court in the preliminary approval order. Adequate notice of the amended settlement and the final approval hearing has also been given. Such notice informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a means to obtain additional information; was adequate notice under the circumstances; was valid, due, and sufficient notice to all Settlement Class [M]embers; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.*

Judge Edward J. Davila, *In re: HP Printer Firmware Update Litigation* (Apr. 25, 2019) 5:16-cv-05820 (N.D. Cal.):

> *Due and adequate notice has been given of the Settlement as required by the Preliminary Approval Order. The Court finds that notice of this Settlement was given to Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.*

Judge Claudia Wilken, *Naiman v. Total Merchant Services, Inc., et al.* (Apr. 16, 2019) 4:17-cv-03806 (N.D. Cal.):

> *The Court also finds that the notice program satisfied the requirements of Federal Rule of Civil Procedure 23 and due process. The notice approved by the Court and disseminated by Epiq constituted the best practicable method for informing the class about the Final Settlement Agreement and relevant aspects of the litigation.*

Judge Paul Gardephe, *37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)* (Mar. 31, 2019) 15-cv-9924 (S.D.N.Y.):

> *The Notice given to Class Members complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and provided due and adequate notice to the Class.*

Judge Alison J. Nathan, *Pantelyat, et al. v. Bank of America, N.A., et al.* (Jan. 31, 2019) 16-cv-08964 (S.D.N.Y.):

> *The Class Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The notice fully satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules.*

Judge Kenneth M. Hoyt, *Al's Pals Pet Card, LLC, et al. v. Woodforest National Bank, N.A., et al.* (Jan. 30, 2019) 4:17-cv-3852 (S.D. Tex.):

> *[T]he Court finds that the class has been notified of the Settlement pursuant to the plan approved by the Court. The Court further finds that the notice program constituted the best practicable notice to the class under the circumstances and fully satisfies the requirements of due process, including Fed. R. Civ. P. 23(e)(1) and 28 U.S.C. § 1715.*

Judge Robert M. Dow, Jr., *In re: Dealer Management Systems Antitrust Litigation* (Jan. 23, 2019) MDL No. 2817, 18-cv-00864 (N.D. Ill.):

> *The Court finds that the Settlement Administrator fully complied with the Preliminary Approval Order and that the form and manner of providing notice to the Dealership Class of the proposed Settlement with Reynolds was the best notice practicable under the circumstances, including individual notice to all members of the Dealership Class who could be identified through the exercise of reasonable effort. The Court further finds that the notice program provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715(b), and constitutional due process.*

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (Ford) (Dec. 20, 2018) MDL No. 2599 (S.D. Fla.):

> *The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: .(i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States*

Constitution (including the Due Process Clause), FED. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge Herndon, *Hale v. State Farm Mutual Automobile Insurance Company, et al.* (Dec. 16, 2018) 3:12-cv-00660 (S.D. Ill.):

The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program "estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times." Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." See Fed. R. Civ. P. 23(c)(2)(B). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.

Judge Jesse M. Furman, *Alaska Electrical Pension Fund, et al. v. Bank of America, N.A., et al.* (Nov. 13, 2018) 14-cv-7126 (S.D.N.Y.):

The mailing and distribution of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice efforts described in the Motion for Final Approval, as provided for in the Court's June 26, 2018 Preliminary Approval Order, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

Judge William L. Campbell, Jr., *Ajose, et al. v. Interline Brands, Inc.* (Oct. 23, 2018) 3:14-cv-01707 (M.D. Tenn.):

The Court finds that the Notice Plan, as approved by the Preliminary Approval Order: (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was reasonable and the best practicable notice under the circumstances; (iii) reasonably apprised the Settlement Class of the pendency of the action, the terms of the Agreement, their right to object to the proposed settlement or opt out of the Settlement Class, the right to appear at the Final Fairness Hearing, and the Claims Process; and (iv) was reasonable and constituted due, adequate, and sufficient notice to all those entitled to receive notice.

Judge Joseph C. Spero, *Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN* (Oct. 15, 2018) 3:16-cv-05486 (N.D. Cal.):

[T]the Court finds that notice to the class of the settlement complied with Rule 23(c)(3) and (e) and due process. Rule 23(e)(1) states that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement, voluntary dismissal, or compromise. Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. Fed. R. Civ. P. 23(c)(2)(B)…The notice program included notice sent by first class mail to 1,750,564 class members and reached approximately 95.2% of the class.

Judge Marcia G. Cooke, *Dipuglia v. US Coachways, Inc.* (*Sept. 28, 2018)* 1:17-cv-23006 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the Case 1:17-cv-23006-MGC Document 66 Entered on FLSD Docket 09/28/2018 Page 3 of 7 4 proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Beth Labson Freeman, *Gergetz v. Telenav, Inc.* (Sept. 27, 2018) 5:16-cv-04261 (N.D. Cal.):

The Court finds that the Notice and Notice Plan implemented pursuant to the Settlement Agreement, which consists of individual notice sent via first-class U.S. Mail postcard, notice provided via email, and the posting of relevant Settlement documents on the Settlement Website, has been successfully implemented and was the best notice practicable under the circumstances and: (1) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons

entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Rules of this Court.

Judge M. James Lorenz, *Farrell v. Bank of America, N.A.* (Aug. 31, 2018) 3:16-cv-00492 (S.D. Cal.):

The Court therefore finds that the Class Notices given to Settlement Class members adequately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

Judge Dean D. Pregerson, *Falco, et al. v. Nissan North America, Inc., et al.* (July 16, 2018) 2:13-cv-00686 (C.D. Cal.):

Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and such Notice by first-class mail was given in an adequate and sufficient manner, and constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Lynn Adelman, *In re: Windsor Wood Clad Window Product Liability Litigation* (July 16, 2018) MDL No. 2688, 16-md-02688 (E.D. Wis.):

The Court finds that the Notice Program was appropriately administered, and was the best practicable notice to the Class under the circumstances, satisfying the requirements of Rule 23 and due process. The Notice Program, constitutes due, adequate, and sufficient notice to all persons, entities, and/or organizations entitled to receive notice; fully satisfied the requirements of the Constitution of the United States (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law; and is based on the Federal Judicial Center's illustrative class action notices.

Judge Stephen K. Bushong, *Surrett, et al. v. Western Culinary Institute, et al.* (June 18, 2018) 0803-03530 (Ore. Cir. County of Multnomah):

This Court finds that the distribution of the Notice of Settlement was effected in accordance with the Preliminary Approval/Notice Order, dated February 9, 2018, was made pursuant to ORCP 32 D, and fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

Judge Jesse M. Furman, *Alaska Electrical Pension Fund, et al. v. Bank of America, N.A., et al.* (June 1, 2018) 14-cv-7126 (S.D.N.Y.):

The mailing of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice distribution efforts described in the Motion for Final Approval, as provided for in the Court's October 24, 2017 Order Providing for Notice to the Settlement Class and Preliminarily Approving the Plan of Distribution, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

Judge Brad Seligman, *Larson v. John Hancock Life Insurance Company (U.S.A.)* (May 8, 2018) RG16813803 (Sup. Ct. Cal.):

The Court finds that the Class Notice and dissemination of the Class Notice as carried out by the Settlement Administrator complied with the Court's order granting preliminary approval and all applicable requirements of law, including, but not limited to California Rules of Court, rule 3.769(f) and the Constitutional requirements of due process, and constituted the best notice practicable under the circumstances and sufficient notice to all persons entitled to notice of the Settlement.

[T]he dissemination of the Class Notice constituted the best notice practicable because it included mailing individual notice to all Settlement Class Members who are reasonably identifiable using the same method used to inform class members of certification of the class, following a National Change of Address search and run through the LexisNexis Deceased Database.

Judge Federico A. Moreno, *Masson v. Tallahassee Dodge Chrysler Jeep, LLC* (May 8, 2018) 17-cv-22967 (S.D. Fla.):

> *The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.*

Chancellor Russell T. Perkins, *Morton v. GreenBank* (Apr. 18, 2018) 11-135-IV (20th Jud. Dist. Tenn.):

> *The Notice Program as provided or in the Agreement and the Preliminary Amended Approval Order constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class members who could be identified through reasonable effort. The Notice Plan fully satisfied the requirements of Tennessee Rule of Civil Procedure 23.03, due process and any other applicable law.*

Judge James V. Selna, *Callaway v. Mercedes-Benz USA, LLC* (Mar. 8, 2018) 8:14-cv-02011 (C.D. Cal.):

> *The Court finds that the notice given to the Class was the best notice practicable under the circumstances of this case, and that the notice complied with the requirements of Federal Rule of Civil Procedure 23 and due process.*
>
> *The notice given by the Class Administrator constituted due and sufficient notice to the Settlement Class, and adequately informed members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement and how to object to the Settlement.*
>
> *The Court has considered and rejected the objection . . . [regarding] the adequacy of the notice plan. The notice given provided ample information regarding the case. Class members also had the ability to seek additional information from the settlement website, from Class Counsel or from the Class Administrator*

Judge Thomas M. Durkin, *Vergara, et al., v. Uber Technologies, Inc.* (Mar. 1, 2018) 1:15-cv-06972 (N.D. Ill.):

> *The Court finds that the Notice Plan set forth in Section IX of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Classes of the pendency of this case, certification of the Settlement Classes for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. Further, the Court finds that Defendant has timely satisfied the notice requirements of 28 U.S.C. Section 1715.*

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (Honda & Nissan) (Feb. 28, 2018) MDL No. 2599 (S.D. Fla.):

> *The Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED R. CIV. R. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.*

Judge Susan O. Hickey, *Larey v. Allstate Property and Casualty Insurance Company* (Feb. 9, 2018) 4:14-cv-04008 (W.D. Kan.):

> *Based on the Court's review of the evidence submitted and argument of counsel, the Court finds and concludes that the Class Notice and Claim Form was mailed to potential Class Members in accordance with the provisions of the Preliminary Approval Order, and together with the Publication Notice, the automated toll-free telephone number, and the settlement website: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Lawsuit, this Stipulation, and the Final Approval*

Hearing to all Class Members who could be identified through reasonable effort; and (ii) met all requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

Judge Muriel D. Hughes, *Glaske v. Independent Bank Corporation* (Jan. 11, 2018) 13-009983 (Cir. Ct. Mich.):

The Court-approved Notice Plan satisfied due process requirements . . . The notice, among other things, was calculated to reach Settlement Class Members because it was sent to their last known email or mail address in the Bank's files.

Judge Naomi Reice Buchwald, *Orlander v. Staples, Inc.* (Dec. 13, 2017) 13-CV-0703 (S.D.N.Y.):

The Notice of Class Action Settlement ("Notice") was given to all Class Members who could be identified with reasonable effort in accordance with the terms of the Settlement Agreement and Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and the terms and conditions of the proposed Settlement met the requirements of Federal Rule of Civil Procedure 23 and the Constitution of the United States (including the Due Process Clause); and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Judge Lisa Godbey Wood, *T.A.N. v. PNI Digital Media, Inc.* (Dec. 1, 2017) 2:16-cv-132 (S.D. Ga.):

Notice to the Settlement Class Members required by Rule 23 has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of Rule 23 and due process, and all other applicable laws.

Judge Robin L. Rosenberg, *Gottlieb v. Citgo Petroleum Corporation* (Nov. 29, 2017) 9:16-cv-81911 (S.D. Fla):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Donald M. Middlebrooks, *Mahoney v. TT of Pine Ridge, Inc.* (Nov. 20, 2017) 9:17-cv-80029 (S.D. Fla.):

Based on the Settlement Agreement, Order Granting Preliminary Approval of Class Action Settlement Agreement, and upon the Declaration of Cameron Azari, Esq. (DE 61-1), the Court finds that Class Notice provided to the Settlement Class was the best notice practicable under the circumstances, and that it satisfied the requirements of due process and Federal Rule of Civil Procedure 23(e)(1).

Judge Gerald Austin McHugh, *Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric, et al.* (Nov. 8, 2017) 2:14-cv-04464 (E.D. Pa.):

Notice has been provided to the Settlement Class of the pendency of this Action, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that the notice provided was the best notice practicable under the circumstances to all persons entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (BMW, Mazda, Toyota, & Subaru) (Nov. 1, 2017) MDL No. 2599 (S.D. Fla.):

[T]he Court finds that the Class Notice has been given to the Class in the manner approved in the Preliminary Approval Order. The Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the orders and Final Order and Final Judgment in the Action, whether

favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge Charles R. Breyer, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (May 17, 2017) MDL No. 2672 (N.D. Cal.):

The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)

Judge Rebecca Brett Nightingale, *Ratzlaff, et al. v. BOKF, NA d/b/a Bank of Oklahoma, et al.* (May 15, 2017) CJ-2015-00859 (Dist. Ct. Okla.):

The Court-approved Notice Plan satisfies Oklahoma law because it is "reasonable" (12 O.S. § 2023(E)(I)) and it satisfies due process requirements because it was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15).

Judge Joseph F. Bataillon, *Klug v. Watts Regulator Company* (Apr. 13, 2017) No. 8:15-cv-00061 (D. Neb.):

The court finds that the notice to the Settlement Class of the pendency of the Class Action and of this settlement, as provided by the Settlement Agreement and by the Preliminary Approval Order dated December 7, 2017, constituted the best notice practicable under the circumstances to all persons and entities within the definition of the Settlement Class, and fully complied with the requirements of Federal Rules of Civil Procedure Rule 23 and due process. Due and sufficient proof of the execution of the Notice Plan as outlined in the Preliminary Approval Order has been filed.

Judge Yvonne Gonzalez Rogers, *Bias v. Wells Fargo & Company, et al.* (Apr. 13, 2017) 4:12-cv-00664 (N.D. Cal.):

The form, content, and method of dissemination of Notice of Settlement given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including both individual notice to all Settlement Class Members who could be identified through reasonable effort and publication notice.

Notice of Settlement, as given, complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.

Notice of the Settlement was provided to the appropriate regulators pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(c)(1).

Judge Carlos Murguia, *Whitton v. Deffenbaugh Industries, Inc., et al.* (Dec. 14, 2016) 2:12-cv-02247 and ***Gary, LLC v. Deffenbaugh Industries, Inc., et al.*** 2:13-cv-02634 (D. Kan.):

The Court determines that the Notice Plan as implemented was reasonably calculated to provide the best notice practicable under the circumstances and contained all required information for members of the proposed Settlement Class to act to protect their interests. The Court also finds that Class Members were provided an adequate period of time to receive Notice and respond accordingly.

Judge Yvette Kane, *In re: Shop-Vac Marketing and Sales Practices Litigation* (Dec. 9, 2016) MDL No. 2380 (M.D. Pa.):

The Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws.

Judge Timothy D. Fox, *Miner v. Philip Morris USA, Inc.* (Nov. 21, 2016) 60CV03-4661 (Ark. Cir. Ct.):

> *The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.*

Judge Eileen Bransten, *In re: HSBC Bank USA, N.A.,* as part of *In re: Checking Account Overdraft Litigation* (Oct. 13, 2016) 650562/2011 (Sup. Ct. N.Y.):

> *This Court finds that the Notice Program and the Notice provided to Settlement Class members fully satisfied the requirements of constitutional due process, the N.Y. C.P.L.R., and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto.*

Judge Jerome B. Simandle, *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* (Sept. 20, 2016) MDL No. 2540 (D.N.J.):

> *The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.*

Judge Marcia G. Cooke, *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.* (Apr. 11, 2016) 14-23120 (S.D. Fla.):

> *Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.*

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Mar. 22, 2016) 4:13-md-02420 MDL No. 2420 (N.D. Cal.):

> *From what I could tell, I liked your approach and the way you did it. I get a lot of these notices that I think are all legalese and no one can really understand them. Yours was not that way.*

Judge Christopher S. Sontchi, *In re: Energy Future Holdings Corp, et al.* (July 30, 2015) 14-10979 (Bankr. D. Del.):

> *Notice of the Asbestos Bar Date as set forth in this Asbestos Bar Date Order and in the manner set forth herein constitutes adequate and sufficient notice of the Asbestos Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.*

Judge David C. Norton, *In re: MI Windows and Doors Inc. Products Liability Litigation* (July 22, 2015) MDL No. 2333, 2:12-mn-00001 (D.S.C.):

> *The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.*
>
> *The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and*

preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.

Judge Robert W. Gettleman, *Adkins, et al. v. Nestlé Purina PetCare Company, et al.* (June 23, 2015) 1:12-cv-02871 (N.D. Ill.):

Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.

Judge James Lawrence King, *Steen v. Capital One, N.A.* (May 22, 2015) 2:10-cv-01505 (E.D. La.) and 1:10-cv-22058 (S.D. Fla.) as part of ***In re: Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.):

The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so. Azari Decl. ¶¶ 30-39.

Judge Rya W. Zobel, *Gulbankian et al. v. MW Manufacturers, Inc.* (Dec. 29, 2014) 1:10-cv-10392 (D. Mass.):

This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.

Judge Edward J. Davila, *Rose v. Bank of America Corporation, et al.* (Aug. 29, 2014) 5:11-cv-02390 and 5:12-cv-0400 (N.D. Cal.):

The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.

Judge James A. Robertson, II, *Wong, et al. v. Alacer Corp.* (June 27, 2014) CGC-12-519221 (Sup. Ct. Cal.):

Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.

Judge John Gleeson, ***In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*** (Dec. 13, 2013) MDL No. 1720, 05-md-01720 (E.D.N.Y.):

> *The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards… The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.*

Judge Lance M. Africk, ***Evans, et al. v. TIN, Inc., et al.*** (July 7, 2013) 2:11-cv-02067 (E.D. La.):

> *The Court finds that the dissemination of the Class Notice… as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances…; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Judge Edward M. Chen, ***Marolda v. Symantec Corporation*** (Apr. 5, 2013) 3:08-cv-05701 (N.D. Cal.):

> *Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.*

Judge Ann D. Montgomery, ***In re: Zurn Pex Plumbing Products Liability Litigation*** (Feb. 27, 2013) MDL No. 1958, 08-md-1958 (D. Minn.):

> *The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.*
>
> *The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

Magistrate Judge Stewart, ***Gessele, et al. v. Jack in the Box, Inc.*** (Jan. 28, 2013) 3:10-cv-960 (D. Ore.):

> *Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.*

Judge Carl J. Barbier, ***In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*** *(Medical Benefits Settlement)* (Jan. 11, 2013) MDL No. 2179 (E.D. La.):

> *Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)*

The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.

Judge Carl J. Barbier, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Economic and Property Damages Settlement)* (Dec. 21, 2012) MDL No. 2179 (E.D. La.):

The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation. The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.

The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.

The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.

Judge Alonzo Harris, *Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.* (Aug. 17, 2012) 12-C-1599 (27th Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.

Judge James Lawrence King, *Sachar v. Iberiabank Corporation* (Apr. 26, 2012) as part of ***In re: Checking Account Overdraft*** MDL No. 2036 (S.D. Fla):

The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims . . . [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment." In re: Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class

Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.

Judge Bobby Peters, *Vereen v. Lowe's Home Centers* (Apr. 13, 2012) SU10-cv-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.

Judge Lee Rosenthal, *In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation* (Mar. 2, 2012) MDL No. 2046 (S.D. Tex.):

*The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement… Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re: Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197.*

Judge John D. Bates, *Trombley v. National City Bank* (Dec. 1, 2011) 1:10-cv-00232 (D.D.C.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.

Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank* (July 29, 2011) 1:09-cv-06655 (N.D. Ill.):

The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.

Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc.* (June 30, 2011) 11-C-3187-B (27th Jud. D. Ct. La.):

Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30th day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court

to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.* (Mar. 24, 2011) 3:10-cv-01448 (D. Conn.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

Judge Ted Stewart, *Miller v. Basic Research, LLC* (Sept. 2, 2010) 2:07-cv-00871 (D. Utah):

Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.

Judge Sara Loi, *Pavlov v. Continental Casualty Co.* (Oct. 7, 2009) 5:07-cv-2580 (N.D. Ohio):

As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).

Judge James Robertson, *In re: Department of Veterans Affairs (VA) Data Theft Litigation* (Sept. 23, 2009) MDL No. 1796 (D.D.C.):

The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

LEGAL NOTICE CASES

Hilsoft has served as a notice expert for planning, implementation and/or analysis in the following partial list of cases:

Yamagata et al. v. Reckitt Benckiser LLC	N.D. Cal., No. 3:17-cv-03529
Thompson et al. v. Community Bank, N.A. **(Overdraft)**	N.D.N.Y., No. 8:19-cv-0919
Silveira v. M&T Bank	C.D. Cal., No. 2:19-cv-06958
In re Toll Roads Litigation; Borsuk et al. v. Foothill/Eastern Transportation Corridor Agency, et al. **(OCTA Settlement)**	C.D. Cal., No. 8:16-cv-00262
In Re: Toll Roads Litigation **(3M/TCA Settlement)**	C.D. Cal., No. 8:16-cv-00262

Pearlstone v. Wal-Mart Stores, Inc. **(Sales Tax)**	C.D. Cal., No. 4:17-cv-02856
Zanca, et al. v. Epic Games, Inc. **(Fortnite or Rocket League Video Games)**	Sup Ct. Wake Cnty., N.C., No. 21-CVS-534
In re: Flint Water Cases	E.D. Mich., No. 5:16-cv-10444
Kukorinis, et al. v. Walmart, Inc.	S.D. Fla., No. 1:19-cv-20592
Grace v. Apple, Inc.	N.D. Cal., No. 17-CV-00551
Alvarez v. Sirius XM Radio Inc.	C.D. Cal., No. 2:18-cv-8605
In re: Pre-Filled Propane Tank Antitrust Litigation	W.D. Mo., No. MDL No. 2567, No. 14-2567
In re: Disposable Contact Lens Antitrust Litigation **(ABB Concise Optical Group, LLC)**	M.D. Fla., No. 3:15-md-02626
Bally v. State Farm Insurance Company	N.D. Cal., No. 3:18-cv-04954
Morris v. Provident Credit Union **(Overdraft)**	Sup. Ct. Cal. Cty. of San Fran., No. CGC-19-581616
Pennington v. Tetra Tech, Inc. et al.	N.D. Cal., No. 3:18-cv-05330
Maldonado et al. v. Apple Inc, et al.	N.D. Cal., No. 3:16-cv-04067
UFCW & Employers Benefit Trust v. Sutter Health, et al.	Sup. Ct. of Cal., Cnty of San Fran., No. CGC 14-538451 Consolidated with CGC-18-565398
Fitzhenry v. Independent Home Products, LLC **(TCPA)**	D.S.C., No. 2:19-cv-02993
In re: Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc., et al.	C.D. Cal., Nos. 8:17-CV-00838 & 18-cv-02223
Sager, et al. v. Volkswagen Group of America, Inc., et al.	D.N.J., No. 18-cv-13556
Bautista v. Valero Marketing and Supply Company	N.D. Cal., No. 3:15-cv-05557
Snee Farm Lakes Homeowner's Association Inc. v. The Commissioners of Public Works for the Town of Mount Pleasant d/b/a Mount Pleasant Waterworks	Ct. of Com. Pleas., S.C., No. 2018-CP-10-2764
Richards, et al. v. Chime Financial, Inc.	N.D. Cal., No. 4:19-cv-06864
In re: Health Insurance Innovations Securities Litigation	M.D. Fla., No. 8:17-cv-02186
Fox, et al. v. Iowa Health System d.b.a. UnityPoint Health **(Data Breach)**	W.D. Wis., No. 18-cv-327
Smith v. Costa Del Mar, Inc.	M.D. Fla., No. 3:18-cv-1011
Al's Discount Plumbing, et al. v. Viega, LLC **(Building Products)**	M.D. Pa., No. 19-cv-00159
The Weinstein Company Holdings, LLC	Bankr. D. Del., No. 18-10601
Rose v. The Travelers Home and Marine Insurance Company, et al.	E.D. Pa., No. 19-cv-00977
Paris et al. v. Progressive American Insurance Company, et al.	S.D. Fla., No. 19-cv-21761
Chinitz v. Intero Real Estate Services	N.D. Cal., No. 5:18-cv-05623
Eastwood Construction LLC, et al. v. City of Monroe ***The Estate of Donald Alan Plyler Sr., et al. v. City of Monroe***	Sup. Ct. N.C., Nos. 18-CVS-2692 & 19-CVS-1825

Garvin v. San Diego Unified Port District	Sup. Ct. Cal., No. 37-2020-00015064
Consumer Financial Protection Bureau v. Siringoringo Law Firm	C.D. Cal., No. 8:14-cv-01155
Robinson v. Nationstar Mortgage LLC	D. Md., No. 8:14-cv-03667
Drazen v. GoDaddy.com, LLC* and *Bennett v. GoDaddy.com, LLC (TCPA)	S.D. Ala., No. 1:19-cv-00563
In re: Libor-Based Financial Instruments Antitrust Litigation	S.D.N.Y., MDL No. 2262, No. 1:11-md-2262
***Izor v. Abacus Data Systems, Inc.* (TCPA)**	N.D. Cal., No. 19-cv-01057
Cook, et al. v. South Carolina Public Service Authority, et al.	Ct. of Com. Pleas. 13th Jud. Cir. S.C., No. 2019-CP-23-6675
K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knox-Bender v. Methodist Healthcare - Memphis Hospitals	30th Jud. Dist. Tenn., No. CH-13-04871-1
In re: Roman Catholic Diocese of Harrisburg	Bank. Ct. M.D. Pa., No. 1:20-bk-00599
Denier, et al. v. Taconic Biosciences, Inc.	Sup Ct. N.Y., No. 00255851
***Robinson v. First Hawaiian Bank* (Overdraft)**	Cir. Ct. of First Cir. Haw., No. 17-1-0167-01
Burch v. Whirlpool Corporation	W.D. Mich., No. 1:17-cv-00018
***Armon, et al. v. Washington State University* (Data Breach)**	Sup. Ct. Wash., No. 17-2-23244-1 consolidated with No. 17-2-25052-0
Wilson, et al. v. Volkswagen Group of America, Inc., et al.	S.D. Fla., No. 17-cv-23033
***Prather v. Wells Fargo Bank, N.A.* (TCPA)**	N.D. Ill., No. 1:17-cv-00481
In re: Wells Fargo Collateral Protection Insurance Litigation	C.D. Cal., No. 8:17-ml-02797
Ciuffitelli, et al. v. Deloitte & Touche LLP, et al.	D. Ore., No. 3:16-cv-00580
Coffeng, et al. v. Volkswagen Group of America, Inc.	N.D. Cal., No. 17-cv-01825
***In re: Disposable Contact Lens Antitrust Litigation* (CooperVision, Inc.)**	M.D. Fla., No. 3:15-md-02626
Audet, et al. v. Garza, et al.	D. Conn., No. 3:16-cv-00940
Hyder, et al. v. Consumers County Mutual Insurance Company	D. Ct. of Travis County Tex., No. D-1-GN-16-000596
Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens	E.D. Tex., No. 4:19-cv-00248
In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation	D.S.C., MDL No. 2613, No. 6:15-MN-02613
Liggio v. Apple Federal Credit Union	E.D. Vir., No. 1:18-cv-01059
***Garcia v. Target Corporation* (TCPA)**	D. Minn., No. 16-cv-02574
Albrecht v. Oasis Power, LLC d/b/a Oasis Energy	N.D. Ill., No. 1:18-cv-1061
McKinney-Drobnis, et al. v. Massage Envy Franchising	N.D. Cal., No. 3:16-cv-6450

In re: Optical Disk Drive Products Antitrust Litigation	N.D. Cal., MDL No. 2143, No. 3:10-md-2143
Stone, et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens	E.D. Tex., No. 4:17-cv-00001
***In re: Kaiser Gypsum Company, Inc., el al.* (Asbestos)**	Bankr. W.D. N.C., No. 16-31602
***Kuss v. American HomePatient, Inc., et al.* (Data Breach)**	M.D. Fla., No. 8:18-cv-2348
Lusnak v. Bank of America, N.A.	C.D. Cal., No. 14-cv-1855
In re: Premera Blue Cross Customer Data Security Breach Litigation	D. Ore., No. 3:15-md-2633
***Elder v. Hilton Worldwide Holdings, Inc.* (Hotel Stay Promotion)**	N.D. Cal., No. 16-cv-00278
***Grayson, et al. v. General Electric Company* (Microwaves)**	D. Conn., No. 3:13-cv-01799
Harris, et al. v. Farmers Insurance Exchange and Mid Century Insurance Company	Sup. Ct Cal., No. BC 579498
***Lashambae v. Capital One Bank, N.A.* (Overdraft)**	E.D.N.Y., No. 1:17-cv-06406
***Trujillo, et al. v. Ametek, Inc., et al.* (Toxic Leak)**	S.D. Cal., No.3:15-cv-01394
***Cox, et al. v. Ametek, Inc., et al.* (Toxic Leak)**	S.D. Cal., No. 3:17-cv-00597
Pirozzi, et al. v. Massage Envy Franchising, LLC	E.D. Mo., No. 4:19-CV-807
***Lehman v. Transbay Joint Powers Authority, et al.* (Millennium Tower)**	Sup. Ct. Cal., No. GCG-16-553758
In re: FCA US LLC Monostable Electronic Gearshift Litigation	E.D. Mich., MDL No. 2744 & No. 16-md-02744
Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A.*, as part of *In re: Checking Account Overdraft	S.D. Fla., No. 1:10-CV-22190, as part of MDL No. 2036
Behfarin v. Pruco Life Insurance Company, et al.	C.D. Cal., No. 17-cv-05290
In re: Renovate America Finance Cases	Sup. Ct, Cal., County of Riverside, No. RICJCCP4940
***Nelson v. Roadrunner Transportation Systems, Inc.* (Data Breach)**	N.D. Ill., No. 1:18-cv-07400
Skochin, et al. v. Genworth Life Insurance Company, et al.	E.D. Vir., No. 3:19-cv-00049
***Walters, et al. v. Target Corp.* (Overdraft)**	S.D. Cal., No. 3:16-cv-1678
Jackson, et al. v. Viking Group, Inc., et al.	D. Md., No. 8:18-cv-02356
Waldrup v. Countrywide Financial Corporation, et al.	C.D. Cal., No. 2:13-cv-08833
Burrow, et al. v. Forjas Taurus S.A., et al.	S.D. Fla., No. 1:16-cv-21606
Henrikson v. Samsung Electronics Canada Inc.	Ontario Sup. Ct., No. 2762-16cp
In re: Comcast Corp. Set-Top Cable Television Box Antitrust Litigation	E.D. Pa., No. 2:09-md-02034
Lightsey, et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, et al.	Ct. of Com. Pleas., S.C., No. 2017-CP-25-335

Rabin v. HP Canada Co., et al.	Quebec Ct., Dist. of Montreal, No. 500-06-000813-168
McIntosh v. Takata Corporation, et al.; Vitoratos, et al. v. Takata Corporation, et al.; and Hall v. Takata Corporation, et al.	Ontario Sup Ct., No. CV-16-543833-00CP; Quebec Sup. Ct of Justice, No. 500-06-000723-144; & Court of Queen's Bench for Saskatchewan, No. QBG. 1284 or 2015
Di Filippo v. The Bank of Nova Scotia, et al. **(Gold Market Instrument)**	Ontario Sup. Ct., No. CV-15-543005-00CP & No. CV-16-551067-00CP
Adlouni v. UCLA Health Systems Auxiliary, et al.	Sup. Ct. Cal., No. BC589243
Lloyd, et al. v. Navy Federal Credit Union	S.D. Cal., No. 17-cv-1280
Luib v. Henkel Consumer Goods Inc.	E.D.N.Y., No. 1:17-cv-03021
Zaklit, et al. v. Nationstar Mortgage LLC, et al. **(TCPA)**	C.D. Cal., No. 5:15-cv-02190
In re: HP Printer Firmware Update Litigation	N.D. Cal., No. 5:16-cv-05820
In re: Dealer Management Systems Antitrust Litigation	N.D. Ill., MDL No. 2817, No. 18-cv-00864
Mosser v. TD Bank, N.A. and Mazzadra, et al. v. TD Bank, N.A.**, as part of *In re: Checking Account Overdraft***	E.D. Pa., No. 2:10-cv-00731, S.D. Fla., No. 10-cv-21386 and S.D. Fla., No. 1:10-cv-21870, as part of S.D. Fla., MDL No. 2036
Naiman v. Total Merchant Services, Inc., et al. **(TCPA)**	N.D. Cal., No. 4:17-cv-03806
In re: Valley Anesthesiology Consultants, Inc. Data Breach Litigation	Sup. Ct. Cal., No. CV2016-013446
Parsons v. Kimpton Hotel & Restaurant Group, LLC **(Data Breach)**	N.D. Cal., No. 3:16-cv-05387
Stahl v. Bank of the West	Sup. Ct. Cal., No. BC673397
37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)	S.D.N.Y., No. 15-cv-9924
Tashica Fulton-Green, et al. v. Accolade, Inc.	E.D. Pa., No. 2:18-cv-00274
In re: Community Health Systems, Inc. Customer Data Security Breach Litigation	N.D. Ala., MDL No. 2595, No. 2:15-CV-222
Al's Pals Pet Card, LLC, et al. v. Woodforest National Bank, N.A., et al.	S.D. Tex., No. 4:17-cv-3852
Cowen v. Lenny & Larry's Inc.	N.D. Ill., No. 1:17-cv-01530
Martin v. Trott **(MI - Foreclosure)**	E.D. Mich., No. 2:15-cv-12838
Knapper v. Cox Communications, Inc. **(TCPA)**	D. Ariz., No. 2:17-cv-00913
Dipuglia v. US Coachways, Inc. **(TCPA)**	S.D. Fla., No. 1:17-cv-23006
Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN **(TCPA)**	N.D. Cal., No. 3:16-cv-05486
First Impressions Salon, Inc., et al. v. National Milk Producers Federation, et al.	S.D. Ill., No. 3:13-cv-00454
Raffin v. Medicredit, Inc., et al.	C.D. Cal., No. 15-cv-4912

Gergetz v. Telenav, Inc. **(TCPA)**	N.D. Cal., No. 5:16-cv-04261
Ajose, et al. v. Interline Brands Inc. **(Plumbing Fixtures)**	M.D. Tenn., No. 3:14-cv-01707
Underwood v. Kohl's Department Stores, Inc., et al.	E.D. Pa., No. 2:15-cv-00730
Surrett, et al. v. Western Culinary Institute, et al.	Ore. Cir., County of Multnomah, No. 0803-03530
Vergara, et al., v. Uber Technologies, Inc. **(TCPA)**	N.D. Ill., No. 1:15-CV-06972
Watson v. Bank of America Corporation, et al.; ***Bancroft-Snell et al. v. Visa Canada Corporation, et al.;*** ***Bakopanos v. Visa Canada Corporation, et al.;*** ***Macaronies Hair Club and Laser Center Inc. operating as Fuze Salon v. BofA Canada Bank, et al.;*** ***Hello Baby Equipment Inc. v. BofA Canada Bank and others (Visa and Mastercard Canadian Interchange Fees)***	Sup. Ct. of B.C., No. VLC-S-S-112003; Ontario Sup. Ct., No. CV-11-426591; Sup. Ct. of Quebec, No. 500-06-00549-101; Ct. of QB of Alberta, No. 1203-18531; Ct. of QB of Saskatchewan, No. 133 of 2013
In re: Takata Airbag Products Liability Litigation **(OEMs – BMW, Mazda, Subaru, and Toyota)**	S.D. Fla., MDL No. 2599
In re: Takata Airbag Products Liability Litigation **(OEMs – Honda and Nissan)**	S.D. Fla., MDL No. 2599
In re: Takata Airbag Products Liability Litigation **(OEM – Ford)**	S.D. Fla., MDL No. 2599
Poseidon Concepts Corp., et al. **(Canadian Securities Litigation)**	Ct. of QB of Alberta, No. 1301-04364
Callaway v. Mercedes-Benz USA, LLC **(Seat Heaters)**	C.D. Cal., No. 8:14-cv-02011
Hale v. State Farm Mutual Automobile Insurance Company, et al.	S.D. Ill., No. 3:12-cv-0660
Farrell v. Bank of America, N.A. **(Overdraft)**	S.D. Cal., No. 3:16-cv-00492
In re: Windsor Wood Clad Window Products Liability Litigation	E.D. Wis., MDL No. 2688, No. 16-MD-02688
Wallace, et al, v. Monier Lifetile LLC, et al.	Sup. Ct. Cal., No. SCV-16410
In re: Parking Heaters Antitrust Litigation	E.D.N.Y., No. 15-MC-0940
Pantelyat, et al. v. Bank of America, N.A., et al. **(Overdraft / Uber)**	S.D.N.Y., No. 16-cv-08964
Falco et al. v. Nissan North America, Inc., et al. **(Engine – CA & WA)**	C.D. Cal., No. 2:13-cv-00686
Alaska Electrical Pension Fund, et al. v. Bank of America N.A., et al. **(ISDAfix Instruments)**	S.D.N.Y., No. 14-cv-7126
Larson v. John Hancock Life Insurance Company (U.S.A.)	Sup. Ct. Cal., No. RG16813803
Larey v. Allstate Property and Casualty Insurance Company	W.D. Kan., No. 4:14-cv-04008
Orlander v. Staples, Inc.	S.D.N.Y., No. 13-cv-0703
Masson v. Tallahassee Dodge Chrysler Jeep, LLC (TCPA)	S.D. Fla., No. 1:17-cv-22967
Gordon, et al. v. Amadeus IT Group, S.A., et al.	S.D.N.Y., No. 1:15-cv-05457
Alexander M. Rattner v. Tribe App., Inc., and ***Kenneth Horsley v. Tribe App., Inc.***	S.D. Fla., Nos. 1:17-cv-21344 & 1:14-cv-2311

Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric, et al.	E.D. Pa., No. 2:14-cv-04464
Mahoney v. TT of Pine Ridge, Inc.	S.D. Fla., No. 9:17-cv-80029
Ma, et al. v. Harmless Harvest Inc. **(Coconut Water)**	E.D.N.Y., No. 2:16-cv-07102
Reilly v. Chipotle Mexican Grill, Inc.	S.D. Fla., No. 1:15-cv-23425
The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy)	D. Puerto Rico, No. 17-04780
In re: Syngenta Litigation	4th Jud. Dist. Minn., No. 27-CV-15-3785
T.A.N. v. PNI Digital Media, Inc.	S.D. Ga., No. 2:16-cv-132
Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.)	N.C. Gen. Ct of Justice, Sup. Ct. Div., No. 05 CVS 188, No. 05 CVS 1938
McKnight, et al. v. Uber Technologies, Inc., et al.	N.D. Cal., No. 14-cv-05615
Gottlieb v. Citgo Petroleum Corporation **(TCPA)**	S.D. Fla., No. 9:16-cv-81911
Farnham v. Caribou Coffee Company, Inc. **(TCPA)**	W.D. Wis., No. 16-cv-00295
Jacobs, et al. v. Huntington Bancshares Inc., et al. **(FirstMerit Overdraft Fees)**	Ohio C.P., No. 11CV000090
Morton v. Greenbank **(Overdraft Fees)**	20th Jud. Dist. Tenn., No. 11-135-IV
Ratzlaff, et al. v. BOKF, NA d/b/a Bank of Oklahoma, et al. **(Overdraft Fees)**	Dist. Ct. Okla., No. CJ-2015-00859
Klug v. Watts Regulator Company **(Product Liability)**	D. Neb., No. 8:15-cv-00061
Bias v. Wells Fargo & Company, et al. **(Broker's Price Opinions)**	N.D. Cal., No. 4:12-cv-00664
Greater Chautauqua Federal Credit Union v. Kmart Corp., et al. **(Data Breach)**	N.D. Ill., No. 1:15-cv-02228
Hawkins v. First Tennessee Bank, N.A., et al. **(Overdraft Fees)**	13th Jud. Cir. Tenn., No. CT-004085-11
In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation **(Bosch Settlement)**	N.D. Cal., MDL No. 2672
In re: HSBC Bank USA, N.A.	Sup. Ct. N.Y., No. 650562/11
Glaske v. Independent Bank Corporation **(Overdraft Fees)**	Cir. Ct. Mich., No. 13-009983
MSPA Claims 1, LLC v. IDS Property Casualty Insurance Company	11th Jud. Cir. Fla, No. 15-27940-CA-21
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Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.	S.D. Fla., No. 14-cv-23120
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In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation	D.N.J., MDL No. 2540
In re: Shop-Vac Marketing and Sales Practices Litigation	M.D. Pa., MDL No. 2380
Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.	27th Jud. D. Ct. La., No. 12-C-1599
Opelousas General Hospital Authority v. PPO Plus, L.L.C., et al.	27th Jud. D. Ct. La., No. 13-C-5380
Russell Minoru Ono v. Head Racquet Sports USA	C.D. Cal., No. 2:13-cv-04222
Kerry T. Thibodeaux, M.D. (A Professional Medical Corporation) v. American Lifecare, Inc.	27th Jud. D. Ct. La., No. 13-C-3212
Gattinella v. Michael Kors (USA), Inc., et al.	S.D.N.Y., No. 14-civ-5731
***In re: Energy Future Holdings Corp., et al.* (Asbestos Claims Bar Notice)**	Bankr. D. Del., No. 14-10979
Dorothy Williams d/b/a Dot's Restaurant v. Waste Away Group, Inc.	Cir. Ct., Lawrence Cnty, Ala., No. 42-cv-2012- 900001.00
Kota of Sarasota, Inc. v. Waste Management Inc. of Florida	12th Jud. Cir. Ct., Sarasota Cnty, Fla., No. 2011-CA-008020NC
Steen v. Capital One, N.A.*, as part of *In re: Checking Account Overdraft	E.D. La., No. 2:10-cv-01505 and 1:10-cv-22058, as part of S.D. Fla., MDL No. 2036
Childs, et al. v. Synovus Bank, et al.*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
***In re: MI Windows and Doors Inc. Products Liability Litigation* (Building Products)**	D.S.C., MDL No. 2333
Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
Scharfstein v. BP West Coast Products, LLC	Ore. Cir., County of Multnomah, No. 1112-17046
Adkins, et al. v. Nestlé Purina PetCare Company, et al.	N.D. Ill., No. 1:12-cv-02871
Smith v. City of New Orleans	Civil D. Ct., Parish of Orleans, La., No. 2005-05453
***Hawthorne v. Umpqua Bank* (Overdraft Fees)**	N.D. Cal., No. 11-cv-06700
Gulbankian, et al. v. MW Manufacturers, Inc.	D. Mass., No. 1:10-cv-10392
***Costello v. NBT Bank* (Overdraft Fees)**	Sup. Ct. Del Cnty., N.Y., No. 2011-1037
In re American Express Anti-Steering Rules Antitrust Litigation (II) (Italian Colors Restaurant)	E.D.N.Y., MDL No. 2221, No. 11-MD-2221

Wong, et al. v. Alacer Corp. **(Emergen-C)**	Sup. Ct. Cal., No. CGC-12-519221
Mello et al. v. Susquehanna Bank**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
In re: Plasma-Derivative Protein Therapies Antitrust Litigation	N.D. Ill., No. 09-CV-7666
Simpson v. Citizens Bank **(Overdraft Fees)**	E.D. Mich., No. 2:12-cv-10267
George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC, et al. v. Bestcomp, Inc., et al.	27th Jud. D. Ct. La., No. 09-C-5242-B
Simmons v. Comerica Bank, N.A.**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
McGann, et al., v. Schnuck Markets, Inc. **(Data Breach)**	Mo. Cir. Ct., No. 1322-CC00800
Rose v. Bank of America Corporation, et al. **(TCPA)**	N.D. Cal., Nos. 5:11-cv-02390 & 5:12-cv-0400
Johnson v. Community Bank, N.A., et al. **(Overdraft Fees)**	M.D. Pa., No. 3:12-cv-01405
National Trucking Financial Reclamation Services, LLC, et al. v. Pilot Corporation, et al.	E.D. Ark., No. 4:13-cv-00250
Price v. BP Products North America	N.D. Ill., No. 12-cv-06799
Yarger v. ING Bank	D. Del., No. 11-154-LPS
Glube, et al. v. Pella Corporation, et al. **(Building Products)**	Ont. Super. Ct., No. CV-11-4322294-00CP
Fontaine v. Attorney General of Canada **(Mistassini Hostels Residential Schools)**	Qué. Super. Ct., No. 500-06-000293-056 & No. 550-06-000021-056
Miner v. Philip Morris Companies, Inc., et al. **(Light Cigarettes)**	Ark. Cir. Ct., No. 60CV03-4661
Williams v. SIF Consultants of Louisiana, Inc., et al.	27th Jud. D. Ct. La., No. 09-C-5244-C
Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.	27th Jud. D. Ct. La., No. 12-C-1599-C
Evans, et al. v. TIN, Inc., et al. **(Environmental)**	E.D. La., No. 2:11-cv-02067
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Eno v. M & I Marshall & Ilsley Bank **as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Blahut v. Harris, N.A.**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
In re: Zurn Pex Plumbing Products Liability Litigation	D. Minn., MDL No. 1958, No. 08-md-1958
Saltzman v. Pella Corporation **(Building Products)**	N.D. Ill., No. 06-cv-4481
In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation **(Mastercard & Visa)**	E.D.N.Y., MDL No. 1720, No. 05-MD-1720
RBS v. Citizens Financial Group, Inc.**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036

Gessele, et al. v. Jack in the Box, Inc.	D. Ore., No. 3:10-cv-960
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In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 **(Medical Benefits Settlement)**	E.D. La., MDL No. 2179
In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 **(Economic & Property Damages Settlement)**	E.D. La., MDL No. 2179
Marolda v. Symantec Corporation **(Software Upgrades)**	N.D. Cal., No. 3:08-cv-05701
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Fontaine v. Attorney General of Canada **(Stirland Lake and Cristal Lake Residential Schools)**	Ont. Super. Ct., No. 00-CV-192059 CP
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Case v. Bank of Oklahoma**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Harris v. Associated Bank**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Wolfgeher v. Commerce Bank**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
McKinley v. Great Western Bank**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Lawson v. BancorpSouth **(Overdraft Fees)**	W.D. Ark., No. 1:12cv1016
LaCour v. Whitney Bank **(Overdraft Fees)**	M.D. Fla., No. 8:11cv1896
Sachar v. Iberiabank Corporation**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
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Gwiazdowski v. County of Chester **(Prisoner Strip Search)**	E.D. Pa., No. 2:08cv4463
Williams v. Hammerman & Gainer, Inc. **(SIF Consultants)**	27th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. **(Risk Management)**	27th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. **(Hammerman)**	27th Jud. D. Ct. La., No. 11-C-3187-B
Gunderson v. F.A. Richard & Assocs., Inc. **(First Health)**	14th Jud. D. Ct. La., No. 2004-002417
Delandro v. County of Allegheny **(Prisoner Strip Search)**	W.D. Pa., No. 2:06-cv-00927
Mathena v. Webster Bank, N.A.**, as part of** ***In re: Checking Account Overdraft***	D. Conn, No. 3:10-cv-01448, as part of S.D. Fla., MDL No. 2036
Vereen v. Lowe's Home Centers **(Defective Drywall)**	Ga. Super. Ct., No. SU10-CV-2267B
Trombley v. National City Bank**, as part of** ***In re: Checking Account Overdraft***	D.D.C., No. 1:10-CV-00232, as part of S.D. Fla., MDL No. 2036

***Schulte v. Fifth Third Bank* (Overdraft Fees)**	N.D. Ill., No. 1:09-cv-06655
***Satterfield v. Simon & Schuster, Inc.* (Text Messaging)**	N.D. Cal., No. 06-CV-2893
In re: Heartland Data Payment System Inc. Customer Data Security Breach Litigation	S.D. Tex., MDL No. 2046
***Coyle v. Hornell Brewing Co.* (Arizona Iced Tea)**	D.N.J., No. 08-CV-2797
Holk v. Snapple Beverage Corporation	D.N.J., No. 3:07-CV-03018
Weiner v. Snapple Beverage Corporation	S.D.N.Y., No. 07-CV-08742
***Gunderson v. F.A. Richard & Assocs., Inc.* (Cambridge)**	14th Jud. D. Ct. La., No. 2004-002417
***Miller v. Basic Research, LLC* (Weight-loss Supplement)**	D. Utah, No. 2:07-cv-00871
In re: Countrywide Customer Data Breach Litigation	W.D. Ky., MDL No. 1998
***Boone v. City of Philadelphia* (Prisoner Strip Search)**	E.D. Pa., No. 05-CV-1851
***Little v. Kia Motors America, Inc.* (Braking Systems)**	N.J. Super. Ct., No. UNN-L-0800-01
Opelousas Trust Authority v. Summit Consulting	27th Jud. D. Ct. La., No. 07-C-3737-B
***Steele v. Pergo* (Flooring Products)**	D. Ore., No. 07-CV-01493
***Pavlov v. Continental Casualty Co.* (Long Term Care Insurance)**	N.D. Ohio, No. 5:07-cv-2580
***Dolen v. ABN AMRO Bank N.V.* (Callable CD's)**	Ill. Cir. Ct., Nos. 01-L-454 & 01-L-493
In re: Department of Veterans Affairs (VA) Data Theft Litigation	D.D.C., MDL No. 1796
In re: Katrina Canal Breaches Consolidated Litigation	E.D. La., No. 05-4182

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS FEHLEN, TONY BLAKE, DAVID ARTUSO, TERESA BAZAN, LORRIEL CHHAY, SAMANTHA GRIFFITH, ALLEN CHAO, and AUGUSTA MCCAIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ACCELLION, INC.,

Defendant.

Case No.: 5:21-cv-01353-EJD

DECLARATION OF ROBERT SICILIANO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

JUDGE: Hon. Edward J. Davila
CTRM: 4, 5th Floor

I, Robert Siciliano, pursuant to 28 U.S.C. § 1746, declare the following:

1. I have been retained by Plaintiffs' counsel as an expert witness to provide a reasonable estimated retail market value for the Credit Monitoring and Insurance Services provided to Settlement Class Members under the proposed Settlement of the above-captioned Action. I respectfully submit this declaration in support of Plaintiffs' unopposed Motion for Preliminary Approval of Class Action Settlement. The facts herein stated are true of my own personal knowledge and/or upon information and belief and, if called to testify to such facts, I could and would do so competently.

2. I am the principal of IDTheftSecurity.com Inc. My firm is in the business of consulting on matters of fraud prevention and personal security. I am a Certified Identity Theft Risk Management Specialist (CITRMS), certified by the Institute of Consumer Finance Education (ICFE) in San Diego, California. I have over thirty years of experience in consulting on matters of cybercrime and identity theft, and I am one of the nation's most well-respected and trusted experts on the subject as a consultant, speaker, media pundit, and expert.

3. I have worked with such companies as ExxonMobil, Intel, McAfee, MasterCard, Morgan Stanley, Merrill Lynch, KPMG, MIT, Transamerica and UPS, and almost every major media outlet has turned to me for information on identity theft, internet safety, crime prevention and security, including respected media such as The New York Times, The Wall Street Journal, TIME, USA Today, Anderson Cooper 360, Nightline and ABC World News Tonight. I have written four books on the subjects of security and cybercrime, including the bestselling book *99 Things You Wish You Knew Before…Your Identity Was Stolen* (Updated Ed., 2014).

4. I am informed that under the instant Settlement, for Settlement Class Members who have filed a valid Claim Form electing the Credit Monitoring and Insurance Services benefit, Defendant will distribute Settlement payments to pay for two years of TransUnion's *my*TrueIdentity 3-bureau credit monitoring plan (the "*my*TrueIdentity Plan"), which includes the following benefits:

a. Unlimited access to TransUnion credit reports;

b. Unlimited access to *VantageScore* credit scores from TransUnion;

c. Credit score trend information;

d. Daily comprehensive 3-bureau credit monitoring and email alerts when key changes occur to credit files at TransUnion, Experian, and Equifax;

e. Access to TransUnion credit lock;

f. Online credit dispute access;

g. Toll-free access to credit and identity theft insurance specialists;

h. Up to $1,000,000 of identity theft insurance with no deductible (subject to policy limitations and exclusions);

i. Unlimited online access to credit management and identity theft prevention resources; and

j. Access to an Identity Restoration Program that assists you when your identity is compromised to help you restore your identity.

5. Based upon publicly available information about the *my*TrueIdentity Plan, the retail value of the plan is fifteen dollars ($15.00) per month for each Settlement Class Member for the two years offered, and arguably more.

6. Thus, based upon the two years of Credit Monitoring and Insurance Services being offered as part of the Settlement, the minimum total retail value of the *my*TrueIdentity Plan for each Settlement Class Member who elects Credit Monitoring and Insurance Services is three hundred sixty dollars ($360).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of January 2022.

ROBERT SICILIANO

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release, dated January 3, 2022, is made and entered into by and among the Class Representatives, for themselves individually and on behalf of the Settlement Class, and Defendant, Accellion, Inc. (collectively, the "Parties"). This Agreement fully and finally resolves and settles all of Plaintiffs' Released Claims, upon and subject to the terms and conditions hereof, and subject to the Court's approval.

RECITALS

WHEREAS, in December 2020 and January 2021, threat actors hacked file transfer software developed by Accellion and licensed to customers, called File Transfer Appliance ("FTA"), in a sophisticated criminal cyberattack, which permitted criminals to illegally access information stored on certain customers' FTA systems (defined below as the "Attacks").

WHEREAS, as a result of the Attacks, Personal Information of millions of individuals who are customers, employees, or otherwise affiliated with or conducted business with Accellion's FTA Customers was exfiltrated by the criminal hackers.

WHEREAS, on February 24, 2021, this Action (defined below) was commenced with the filing of a class action complaint against Accellion. Plaintiffs' Second Amended Class Action Complaint asserts claims for negligence, negligence per se, invasion of privacy (intrusion upon seclusion), violations of the North Carolina Unfair and Deceptive Trade Practices Act, violations of the Washington Consumer Protection Act, violations of the California Consumer Privacy Act, violations of the California Confidentiality of Medical Information Act, violations of the California Customer Records Act, violations of the California Unfair Competition Law, and for declaratory relief, and seeking remedies (including damages and injunctive relief) for the impact and harm they allege was caused by the Attacks.

WHEREAS, after considerable meet and confer efforts, the Parties agreed to attempt to resolve their dispute through mediation.

WHEREAS, in connection with the scheduled mediation, the Parties exchanged certain documents and information pertinent to assessing the claims and defenses in this matter.

WHEREAS, on July 19, 2021, the Parties engaged in an all-day, arm's-length mediation session before the Honorable Jay C. Gandhi (Ret.) of JAMS. The mediation did not result in an agreement, and the Parties continued to attempt to resolve their disputes through continued negotiations.

WHEREAS, on September 7, 2021, the Parties engaged in a second mediation session before Judge Gandhi. The mediation did not result in an agreement, and the Parties continued to attempt to resolve their dispute.

WHEREAS, following numerous hours of additional arm's length negotiations in the months after the second mediation session, the Parties were able to finalize all of the terms of this Settlement.

WHEREAS, pursuant to the terms set forth below, this Agreement resolves all actual and potential claims, actions, and proceedings as set forth in the release contained herein, by and on behalf of members of the Settlement Class defined herein, but excludes the claims of all Class Members who opt out from the Settlement Class pursuant to the terms and conditions herein.

WHEREAS, Class Counsel, on behalf of Plaintiffs and the Settlement Class, have thoroughly examined the law and facts relating to the matters at issue in the Action, Plaintiffs' claims, and Accellion's potential defenses, including conducting independent investigation and confirmatory discovery, conferring with defense counsel through the settlement negotiation process, as well as conducting an assessment of the merits of expected arguments and defenses throughout the litigation, including on a motion for class certification. Based on a thorough analysis of the facts and the law applicable to Plaintiffs' claims in the Action, and taking into account the burden, expense, and delay of continued litigation, including the risks and uncertainties associated with litigating class certification and other defenses Accellion may assert, a protracted trial and appeal(s), and Accellion's ability to withstand a large verdict, as well as the opportunity for a fair, cost-effective, and assured method of resolving the claims of the Settlement Class, Plaintiffs and Class Counsel believe that resolution is an appropriate and reasonable means of ensuring that the Class is afforded important benefits as expediently as possible. Plaintiffs and Class Counsel have also taken into account the uncertain outcome and the risk of continued litigation, as well as the difficulties and delays inherent in such litigation.

WHEREAS, Plaintiffs and Class Counsel believe that the terms set forth in this Settlement Agreement confer substantial benefits upon the Settlement Class and have determined that they are fair, reasonable, adequate, and in the best interests of the Settlement Class.

WHEREAS, Accellion has similarly concluded that this Agreement is desirable in order to avoid the time, risk, and expense of defending protracted litigation, and to resolve finally and completely the claims as stated herein of Plaintiffs and the Settlement Class.

WHEREAS, this Agreement, whether or not consummated, and any actions or proceedings taken pursuant to this Agreement, are for settlement purposes only, and Accellion specifically denies any and all wrongdoing. The existence of, terms in, and any action taken under or in connection with this Agreement shall not constitute, be construed as, or be admissible in evidence as, any admission by Accellion of (i) the validity of any claim, defense, or fact asserted in the Action or any other pending or future action, or (ii) any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree, as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall be defined as follows:

1.1 "Accellion" or "Accellion, Inc." or "Defendant" or "Defendant Accellion" means Defendant Accellion, Inc., a company incorporated in Delaware, with its principal

place of business in Palo Alto, California, and its current and former Affiliates, Parents, Subsidiaries, and Successors, including but not limited to Accellion USA, LLC.

1.2 "Accellion's Counsel" or references to counsel for Accellion means attorneys, Melanie Blunschi, Michael Rubin and other attorneys at the law firm Latham & Watkins LLP, on behalf of Accellion, Inc.

1.3 "Action" means the class action captioned as *Fehlen, et al. v. Accellion, Inc.*, Case No. 5:21-cv-01353-EJD, now pending before the Honorable Edward J. Davila in the United States District Court for the Northern District of California.

1.4 "Administrative Expenses" means all expenses incurred by the Settlement Administrator in the administration of this Settlement, including, without limitation, all expenses and costs associated with the Notice Plan and providing Notice to the Settlement Class. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

1.5 "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release. The terms of the Settlement Agreement are set forth herein including the exhibits hereto.

1.6 "Approved Claim(s)" means a claim as evidenced by a Claim Form submitted by a Settlement Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is physically signed or electronically verified by the Settlement Class Member; (c) satisfies the conditions of eligibility for a Settlement Benefit as set forth herein; and (d) has been approved by the Settlement Administrator.

1.7 "Attacks" refers to the cybersecurity attacks on customers who used FTA that occurred in December 2020 and January 2021, that are the subject of the above-captioned lawsuit.

1.8 "Business Days" means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the federal government.

1.9 "Claimant" means a Settlement Class Member who submits a Claim Form for a Settlement Payment.

1.10 "Claim Form" means the form attached hereto as **Exhibit A**, as approved by the Court. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the Settlement Website) by Settlement Class Members who wish to file a claim for their given share of the Settlement Benefits pursuant to the terms and conditions of this Agreement. The Claim Form shall be available for download from the Settlement Website. The Settlement Administrator shall mail a Claim Form, in hardcopy form, to any Settlement Class Member who so requests.

1.11 "Claims Deadline" means the date by which all Claim Forms must be received to be considered timely and shall be set as the date 90 days after the Notice Date. The Claims Deadline shall be clearly set forth in the Long Form Notice, the Summary Notice, the Claim Form, and the Court's order granting Preliminary Approval.

1.12 "Claims Period" means the period of time during which Settlement Class Members may submit Claim Forms to receive their given share of the Settlement Benefits and shall commence on the Notice Date and shall end on the date 90 days thereafter.

1.13 "Class Counsel" means attorneys Tina Wolfson, Robert Ahdoot, and Andrew W. Ferich of Ahdoot & Wolfson, PC, and Ben Barnow and Anthony Parkhill of Barnow and Associates, P.C.

1.14 "Class Member" means a member of the Settlement Class.

1.15 "Class Representatives" and "Plaintiffs" mean Douglas Fehlen, Tony Blake, David Artuso, Teresa Bazan, Lorriel Chhay, Samantha Griffith, Allen Chao, and Augusta McCain.

1.16 "Court" means the United States District Court for the Northern District of California, the Honorable Edward J. Davila (or any judge sitting in his stead or to whom the Action may be transferred) presiding.

1.17 "Credit Monitoring and Insurance Services" and "CMIS" mean the services to be provided to Class Members who are entitled to and so select such services on their Claim Form, and as further described in Section 3.2(a), below.

1.18 "Documented Loss" refers to monetary losses incurred by a Settlement Class Member and supported by Reasonable Documentation for attempting to remedy or remedying issues that are more likely than not traceable to the FTA Data Breach, and that are not otherwise recoverable through insurance or any other FTA Data Breach settlement. Documented Loss must be supported by Reasonable Documentation that a Settlement Class Member actually incurred unreimbursed losses and consequential expenses that are more likely than not traceable to the FTA Data Breach and incurred on or after December 16, 2020.

1.19 "Effective Date" means the date upon which the Settlement contemplated by this Agreement shall become effective as set forth in Section 9.1 below.

1.20 "Entity" means any person, corporation, partnership, limited liability company, association, trust, agency, or other organization of any type.

1.21 "Fee Award and Costs" means the amount of attorneys' fees and reimbursement of Litigation Costs awarded by the Court to Class Counsel.

1.22 "Final Approval Order and Judgment" means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement and dismisses the claims against Accellion with prejudice and without material change

to the Parties' agreed-upon proposed Final Approval Order and Judgment attached hereto as **Exhibit B** (Final Approval Order and Judgment).

1.23 "Final Approval Hearing" means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

1.24 "FTA" means Accellion's File Transfer Appliance software.

1.25 "FTA Customer" means a customer of Accellion who held a license to use FTA.

1.26 "Litigation Costs" means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, settling the Action, and obtaining an order of final judgment.

1.27 "Long Form Notice" means the long form notice of settlement, substantially in the form attached hereto as **Exhibit C**.

1.28 "Net Settlement Fund" means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Administrative Expenses incurred pursuant to this Settlement Agreement, (ii) Service Awards approved by the Court, (iii) any amounts approved by the Court for attorneys' fees, costs, and reimbursement of expenses, and (iv) taxes, if any.

1.29 "Non-Profit Residual Recipient" means the Electronic Frontier Foundation, a 26 U.S.C. § 501(c)(3) nonprofit organization.

1.30 "Notice" means notice of the proposed class action settlement to be provided to Settlement Class Members pursuant to the Notice Plan approved by the Court in connection with preliminary approval of the Settlement. The Notice shall consist of the Summary Notice, the Long Form Notice, and the Settlement Website.

1.31 "Notice Date" means the date upon which Settlement Class Notice is first disseminated to the Settlement Class as set forth in Section 6 herein.

1.32 "Notice Plan" means the settlement notice program, as approved by the Court, developed by the Settlement Administrator and described in this Agreement for disseminating Notice to the Settlement Class members of the terms of this Agreement and the Final Approval Hearing.

1.33 "Objection Deadline" means the date by which Settlement Class Members must file and postmark required copies of any written objections, pursuant to the terms and conditions herein, to this Settlement Agreement and to any application and motion for (i) the Fee Award and Costs, and (ii) the Service Awards, which shall be 75 days following the Notice Date.

1.34 "Opt-Out Period" means the period in which a Settlement Class Member may submit a Request for Exclusion, pursuant to the terms and conditions herein, which shall expire 75 days following the Notice Date. The deadline for filing a Request for Exclusion will be clearly set forth in the Settlement Class Notice.

1.35 "Parties" means the Plaintiffs and Defendant Accellion.

1.36 "Personal Information" means information that is or could be used, whether on its own or in combination with other information, to identify, locate, or contact a person, including, without limitation, names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers (SSN), drivers' license information, tax records, bank account and routing information, and other personally identifying information, as well as information used to process health insurance claims, prescription information, medical records and data, and other personal health information.

1.37 "Preliminary Approval Order" means an order by the Court that preliminarily approves the Settlement (including, but not limited to, the forms and procedure for providing Notice to the Settlement Class), permits Notice to the proposed Settlement Class, establishes a procedure for Settlement Class Members to object to or opt out of the Settlement, and sets a date for the Final Approval Hearing, without material change to the Parties' agreed-upon proposed preliminary approval order attached hereto as **Exhibit D**.

1.38 "Reasonable Documentation" means documentation supporting a claim for Documented Loss including, but not limited to, credit card statements, bank statements, invoices, telephone records, and receipts. Documented Loss costs cannot be documented solely by a personal certification, declaration, or affidavit from the Claimant; a Settlement Class Member must provide supporting documentation.

1.39 "Released Claims" means any claim, liability, right, demand, suit, obligation, damage, including consequential damage, loss or cost, punitive damage, attorneys' fees, costs, and expenses, action or cause of action, of every kind or description—whether known or Unknown (as the term "Unknown Claims" is defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that was or could have been asserted on behalf of the Settlement Class in the Action related to or arising from the compromise of any Class member's Personal Information arising out of the Attacks. "Released Claims" do not include any claims against any entity other than Released Parties and are subject to Section 4.1 below.

1.40 "Released Parties" means Defendant Accellion and its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing and specifically excludes

all FTA Customers. Each of the Released Parties may be referred to individually as a "Released Party."

1.41 "Request for Exclusion" is the written communication by a Settlement Class Member in which he or she requests to be excluded from the Settlement Class pursuant to the terms of the Agreement.

1.42 "Service Awards" means the amount awarded by the Court and paid to the Class Representatives in recognition of their role in this litigation, as set forth in Sections 8.1-8.3 below.

1.43 "Settlement" means this settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

1.44 "Settlement Administrator" means the third-party class action settlement administrator to be selected by the Parties with the approval of the Court. Under the supervision of Class Counsel, the Settlement Administrator shall oversee and implement the Notice Plan and receive any requests for exclusion from the Class. Class Counsel and Accellion may, by agreement, substitute a different Settlement Administrator, subject to Court approval.

1.45 "Settlement Benefit(s)" means any Settlement Payment, the Credit Monitoring and Insurance Services, the Documented Loss Payments, the Prospective Relief set forth in Sections 2 and 3 herein, and any other benefits Settlement Class Members receive pursuant to this Agreement, including non-monetary benefits and relief, the Fee Award and Costs, and Administrative Expenses.

1.46 "Settlement Class" and "Class" means all natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their personal information may have been compromised in the Attacks. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Accellion, its subsidiaries, parent companies, successors, predecessors, and any entity in which Accellion or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

1.47 "Settlement Fund" means the sum of Eight Million One Hundred Thousand Dollars and No Cents ($8,100,000), to be paid by Accellion and its insurers, as specified in Section 3.1 of this Agreement.

1.48 "Settlement Payment" means any payment to be made to any Class Member on Approved Claims pursuant to Section 3.2 herein.

1.49 "Settlement Website" means the Internet website, at URL address www.FTADataBreach.com, to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of Claim Forms and Requests for Exclusion, and provides access to relevant case documents including the Settlement Class Notice, information about the submission of Claim Forms, and other relevant documents, including downloadable Claim Forms.

1.50 "Summary Notice" means the summary notices of the proposed Settlement herein, substantially in the form attached hereto as **Exhibit E**.

1.51 "Taxes" means (i) any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendant Accellion or its counsel with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund; (ii) any other taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) relating to the Settlement Fund that the Settlement Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities and costs incurred in connection with the taxation of the Settlement Fund (including without limitation, expenses of tax attorneys and accountants).

1.52 "Unknown Claims" means any and all Released Claims that Accellion or any Class Representative or Settlement Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date and which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Accellion, Class Representatives and Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Class Representatives and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

2. SECURITY COMMITMENTS

2.1 Accellion agrees to adopt, continue, and/or implement the following data security measures for a period of no less than 4 years from the Effective Date of this Agreement:

(a) Complete Retirement of FTA. Accellion implemented end-of-life of FTA effective April 30, 2021, and represents and warrants that it has not extended any existing FTA licenses since that date except as necessary for a temporary period to ensure transition to Kiteworks. No such FTA license extension shall extend beyond January 31, 2022 for Accellion's United States customers. Accellion will use its best efforts to migrate any remaining FTA Customers to Kiteworks, or to an alternative file transfer solution, before the expiration of those customers' existing FTA license terms.

(b) Maintain Kiteworks FedRAMP Certification. Accellion is committed to maintaining Kiteworks' FedRAMP certification, which it has held since 2017. Accellion will continue to comply with FedRAMP's Continuous Monitoring program, including the requirement of an Annual Security Assessment performed by a third-party assessment organization ("3PAO"). That program and assessment requires Accellion to, among other things: (a) Submit to an annual comprehensive security test and evaluation of the Kiteworks software conducted by a 3PAO, which includes penetration testing and potentially other specialized assessments, including vulnerability scanning of all operating systems, infrastructure, web applications, and databases; malicious user testing; insider threat assessment; and performance/load testing; (b) Cooperate with the 3PAO on the preparation of an annual Security Assessment Report that is submitted to participating federal Agency Authorizing Officials; (c) Complete an annual Plan of Action and Milestones report, which documents all residual risks identified in the annual security assessment and defines a plan for remediation of those risks; (d) Review, update, and submit on an annual basis a System Security Plan describing relevant security controls; (e) Conduct an annual Incident Response Plan Test and submit a test report summarizing the results; (f) Conduct an annual Contingency Plan Functional Test and submit a test report summarizing the results; and (g) Provide documented role-based security training annually and additionally as needed. Nothing in this paragraph shall be interpreted to affect or limit the confidentiality of any documents, reports, or other materials prepared or maintained by Accellion in connection with Kiteworks' FedRAMP certification, or to require Accellion to produce or otherwise make any documents, reports, or other materials available as part of this Settlement.

(c) Bug Bounty Program. Accellion will continue to support a Bug Bounty program. Accellion will increase its reward offerings for this program from

$250-$25,000 per eligible vulnerability to $500-$35,000 per eligible vulnerability.

(d) Employee Training. Accellion will continue to provide all employees with annual security training, under the guidance and with the oversight of Accellion's Chief Information Security Officer or similar senior security officer.

(e) Personnel Responsibilities. Accellion will continue to have at least one employee within Accellion who is specifically responsible for overseeing Kiteworks product security, including oversight of internal and external security audits, penetration testing, and maintenance of Accellion's bug bounty program. This individual shall provide periodic reporting concerning this oversight to Accellion's Chief Information Security Officer or similar security executive. In the event that the senior security executive is responsible for overseeing the security and other matters provided for in this section, periodic reporting shall be made to Accellion's Chief Executive Officer. Accellion will also continue to employ at least one senior security executive (e.g., Chief Information Security Officer).

(f) Confirmation of Compliance. Once annually for a period of 3 years from the Settlement Effective Date, Accellion will post a publicly available confirmation on its website, available at https://www.accellion.com/trust-center/, or a similarly publicly accessible location on Accellion's website confirming Accellion's compliance with the foregoing security commitments required as part of this Settlement under this Section.

3. SETTLEMENT FUND / MONETARY PAYMENT / BENEFITS DETAILS

3.1 Defendant Accellion agrees to make or cause to be made a payment of Eight Million One Hundred Thousand Dollars and No Cents ($8,100,000) and deposit that payment into the Settlement Fund as follows: Defendant Accellion shall pay or cause to be paid Four Million Six Hundred Thousand Dollars and No Cents ($4,600,000) into an escrow account no later than ten (10) Business Days after the Parties execute this Settlement Agreement. Defendant Accellion shall pay or cause to be paid Three Million, Five Hundred Thousand Dollars and No Cents ($3,500,000) into an escrow account no later than ten (10) Business Days after the Court preliminarily approves this Settlement Agreement. The total amount in escrow, including any earned interest, will be transferred to the Settlement Fund no later than ten (10) Business Days after the Court enters the Preliminary Approval Order, which shall be available to cover reasonable costs associated with the Notice Plan and any other Administrative Expenses incurred prior to entry of the Final Approval Order and Judgment. In no circumstances shall this payment be considered a fine or penalty. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant Accellion's liability shall not exceed Eight Million One Hundred Thousand Dollars and No Cents ($8,100,000) absent an express written agreement between the Parties to the contrary.

3.2 Settlement Payments: Each Class Member may qualify and submit a claim for one of the following:

(a) Credit Monitoring and Insurance Services. Two years of the Credit Monitoring and Insurance Services ("CMIS"). CMIS will include credit monitoring, fraud consultation, and identity theft restoration services. A Class Member who chooses CMIS as their respective Settlement Benefit and already maintains a credit monitoring service may elect to defer their enrollment in the CMIS for a period of 12 months for no additional charge. The CMIS will include the following services, among other features, to be provided to each Class Member who submits a valid claim for CMIS: (i) up to $1 million dollars of identity theft insurance coverage; and (ii) three-bureau credit monitoring providing notice of changes to the Class Member's credit profile.

(b) Documented Loss Payment. Class Members may submit a claim for a Settlement Payment of up to $10,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Class Member must choose to do so on their given Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss; and (iii) Reasonable Documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement. If a Class Member does not submit Reasonable Documentation supporting a Documented Loss Payment claim, or if a Class Member's claim for a Documented Loss Payment is rejected by the Settlement Administrator for any reason, and the Class Member fails to cure their claim, the claim will be considered for a Cash Fund Payment.

(c) Cash Fund Payment. Class Members may submit a claim to receive a Settlement Payment in cash ("Cash Fund Payment"). The amount of the Cash Fund Payment will be calculated in accordance with Section 3.7 below.

3.3 Settlement Payment Methods. Class Members will be provided the option to receive any Settlement Payment due to them pursuant to the terms of this Agreement via various digital methods. In the event Class Members do not exercise this option, they will receive their Settlement Payment via a physical check sent by U.S. Mail.

3.4 Deadline to File Claims. Claim Forms must be received postmarked or electronically within 90 days after the Notice Date.

3.5 The Settlement Administrator. The Settlement Administrator shall have the authority to determine whether a Claim Form is valid, timely, and complete, and to what extent a Claim Form is electing to receive a Documented Loss Payment. To

the extent the Settlement Administrator determines a claim is deficient for a reason other than late posting, within 10 days of making such a determination, the Settlement Administrator shall notify the Claimant of the deficiencies and that Claimant shall have 30 days to cure the deficiencies and re-submit the claim. No notification is required for late-posted claims. The Settlement Administrator shall exercise reasonable discretion to determine whether the Claimant has cured the deficient claim. If the Claimant fails to cure the deficiency, the claim shall stand as denied and the Class Member shall be so notified.

3.6 Timing of Settlement Benefits. Within 90 days after: (i) the Effective Date; or (ii) all Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever date is later, the Settlement Administrator shall cause funds to be distributed to each Class Member who is entitled to funds based on the selection made on their given Claim Form. Within 30 days of the Effective Date, the Settlement Administrator shall make best efforts to provide Class Members who selected CMIS with enrollment instructions for the CMIS.

3.7 Distribution of Settlement Payments: The Settlement Administrator will first apply the Net Settlement Fund to pay for CMIS claimed by Class Members. If Net Settlement Funds remain after paying for the CMIS, the Settlement Administrator will next use it to pay all Documented Loss Payments. The amount of the Net Settlement Fund remaining after all Documented Loss Payments are applied and the payments for the Credit Monitoring and Insurance Services are made shall be referred to as the "Post DC Net Settlement Fund." The Settlement Administrator shall then utilize the Post DC Net Settlement Fund to make all Cash Fund Payments pursuant to Section 3.2(c) herein. The amount of each Cash Fund Payment shall be calculated by dividing the Post DC Net Settlement Fund by the number of valid claims submitted. In the event the Net Settlement Fund is insufficient to cover the payment for the CMIS claimed by Class Members, the duration of the CMIS coverage will be reduced to exhaust the fund. In such an event, no Net Settlement Funds will be distributed to Claimants for Approved Claims for Documented Loss Payments or for Cash Fund Payments. In the event that the aggregate amount of all Documented Loss Payments and payments for the CMIS exceeds the total amount of the Net Settlement Fund, then the value of the Documented Loss Payment to be paid to each Class Member shall be reduced, on a pro rata basis, such that the aggregate value of all Documented Loss Payments and payments due for CMIS does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed to Claimants with Approved Claims for Cash Fund Payments. All such determinations shall be performed by the Settlement Administrator.

3.8 Deadline to Deposit or Cash Physical Checks. Settlement Class Members with Approved Claims who receive a Documented Loss Payment or a Cash Fund Payment, by physical check, shall have 60 days following distribution to deposit or cash their benefit check.

3.9 Residual Funds. To the extent any monies remain in the Net Settlement Fund more than 150 days after the distribution of Settlement Payments to the Class Members,

a subsequent Settlement Payment will be evenly made to all Class Members with Approved Claims who cashed or deposited the initial payment they received, provided that the average check amount is equal to or greater than Three Dollars and No Cents ($3.00). The distribution of this remaining Net Settlement Fund shall continue until the average check amount in a distribution is less than Three Dollars and No Cents ($3.00). If the average check amount in a distribution would be less than Three Dollars and No Cents ($3.00), and if possible, the remaining Net Settlement Fund will be used to extend the Credit Monitoring and Insurance Services to Class Members receiving that benefit for as long as possible. Any amount remaining in the Net Settlement Fund after said extension is accomplished shall be distributed to a Non-Profit Residual Recipient.

3.10 Returned Checks. For any Settlement Payment returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Settlement Payment within 30 days after the check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Settlement Payment.

3.11 Residue of Settlement Fund. No portion of the Settlement Fund shall revert or be repaid to Accellion after the Effective Date. Any residual funds remaining in the Net Settlement Fund, after all payments and distributions are made pursuant to the terms and conditions of this Agreement, shall be distributed to the Non-Profit Residual Recipient, as approved by the Court.

3.12 Custody of Settlement Fund. The Settlement Fund shall be deposited in an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.

(a) In the event this Settlement Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason, any amounts remaining in the Settlement Fund after payment of Administrative Expenses paid or incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any Taxes, shall be returned to Defendant Accellion and/or its insurer, and no other person or entity shall have any further claim whatsoever to such amounts.

3.13 Non-Reversionary. This Settlement is not a reversionary settlement. As of the Effective Date, all rights of Defendant Accellion and/or its insurer in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as described in Section 10 of this

Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to Accellion and/or its insurers.

3.14 Use of the Settlement Fund. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) all Administrative Expenses; (ii) any Service Awards; (iii) any Fee Award and Costs; (iv) any Settlement Payments and/or Settlement Benefits, pursuant to the terms and conditions of this Agreement; and (v) any Taxes.

3.15 Financial Account. The Settlement Fund shall be an account established and administered by the Settlement Administrator, at a financial institution recommended by the Settlement Administrator and approved by Class Counsel and Defendant Accellion, and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, et seq.

3.16 Payment / Withdrawal Authorization. No amounts from the Settlement Fund may be withdrawn unless (i) expressly authorized by the Settlement Agreement or (ii) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable Administrative Expenses from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and Defendant Accellion with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) Business Days prior to making such withdrawal or payment.

3.17 Payments to Class Members. The Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund to Class Members pursuant to this Agreement.

3.18 Treasury Regulations & Fund Investment. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation ("FDIC") at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

3.19 Taxes. All Taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

3.20 Limitation of Liability.

(a) Released Parties shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

(b) Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

(c) The Settlement Administrator shall indemnify and hold Class Counsel, the Settlement Class, Class Representatives, and Released Parties harmless for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims

asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

4. RELEASE

4.1 Upon the Effective Date, and in consideration of the Settlement Benefits described herein, the Class Representatives and all Settlement Class Members, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, release and discharge all Released Claims, including Unknown Claims, against each of the Released Parties and agree to refrain from instituting, directing or maintaining any lawsuit, contested matter, adversary proceeding, or miscellaneous proceeding against each of the Released Parties that relates to the Attacks or otherwise arises out of the same facts and circumstances set forth in the Second Amended Class Action Complaint in this Action. This Settlement releases claims against only the Released Parties. This Settlement does not release, and it is not the intention of the Parties to this Settlement to release, any claims against any third party, including, without limitation, any of Accellion's FTA customers who are not parties to this Action (including, for example, but not limited to, The Kroger Co., Flagstar Bank, Health Net/California Health and Wellness, the University of California, the Office of the Washington State Auditor, and the University of Colorado).

4.2 The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes that risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

5. REQUIRED EVENTS AND COOPERATION BY PARTIES

5.1 Preliminary Approval. Class Counsel shall submit this Agreement to the Court and shall move the Court to enter the Preliminary Approval Order, in the form attached as **Exhibit D**.

5.2 Cooperation. The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish all requirements of this Agreement on the schedule set by the Court, subject to the terms of this Agreement.

5.3 Certification of the Settlement Class. For purposes of this Settlement only, Plaintiffs and Defendant Accellion stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Should: (1)

the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Accellion reserves the right to contest class certification for all other purposes. Plaintiffs and Accellion further stipulate to designate the Class Representatives as the representatives for the Settlement Class.

5.4 Final Approval. Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing, within a reasonable time after the Objection Deadline and Opt-Out Period; and at least 90 days after Accellion notifies the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

6. CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

6.1 Notice shall be disseminated pursuant to the Court's Preliminary Approval Order.

6.2 The Settlement Administrator shall oversee and implement the Notice Plan approved by the Court. All costs associated with the Notice Plan shall be paid from the Settlement Fund.

6.3 Accellion represents that it does not have the ability to identify the persons that fall under the definition of the Settlement Class from Accellion's own records because it cannot access the data that FTA Customers transfer(red) and/or store(d) with FTA, including any data that may have been compromised. Accellion represents that it therefore does not have access to data to identify what (if any) Personal Information was compromised or to whom it relates. Records identifying individuals in the Settlement Class, to the extent they exist, are expected to be in the sole possession of FTA Customers.

6.4 Notice via Internet Campaign. The Settlement Administrator shall design and conduct an Internet advertisement publication notice program targeted to Class Members, which must be approved by the Parties and the Court. This internet advertisement publication notice shall commence no later than the Notice Date and shall continue through the Claims Deadline.

6.5 Class List. Within three (3) days after the issuance of the Preliminary Approval Order, Accellion will provide to the Settlement Administrator a list of any and all names, addresses, telephone numbers and email addresses of any Class Member that it has in its possession, custody or control, if any. Promptly following the filing of the Preliminary Approval Motion described in Section 5.1, Accellion will request from each and every FTA Customer that has (i) provided information to Accellion indicating that it had files downloaded in the Attacks or (ii) publicly announced that it was affected by the Attacks, all available contact information for any and all Class Members, to be provided directly to the Settlement Administrator (the "Request"). The Parties will take all reasonable steps necessary to ascertain the information subject to the Request in order to achieve the best notice practicable.

6.6 Confidentiality. Any information relating to Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to the Class Members (as set forth herein) and allowing them to recover under this Agreement; shall be kept in strict confidence by the Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall be destroyed after all distributions to Settlement Class Members have been made; and shall not be used for any other purpose. Moreover, because the lists will be provided to the Settlement Administrator solely for purposes of providing the Class Notice and Settlement Benefits and processing opt-out requests, the Settlement Administrator will execute a confidentiality and non-disclosure agreement with Class Counsel, Accellion's Counsel, and counsel for the applicable FTA Customer and will ensure that any information provided to it by Settlement Class Members, Class Counsel, Accellion's Counsel, or an FTA Customer will be secure and used solely for the purpose of effecting this Settlement.

6.7 Direct Notice. No later than the Notice Date, and to be substantially completed within 21 days thereafter, or such other time as may be ordered by the Court, the Settlement Administrator shall disseminate the Summary Notice to every Class Member who reasonably can be identified in the records of FTA Customers pursuant to the procedures set forth in Section 6.5 as follows:

(a) For any Settlement Class Member for whom an email address is available, the Settlement Administrator shall email the Summary Notice to such person;

(b) For any Settlement Class member for whom an email is not available, and to the extent a physical address is reasonably available, the Settlement Administrator will send the Summary Notice (in Post Card form) by U.S. mail, postage prepaid;

(c) If any notice that has been emailed is returned as undeliverable, the Settlement Administrator shall attempt two other email executions and if not successful, the Settlement Administrator will send the Summary Notice (in Post Card form) by U.S. mail, postage prepaid, to the extent a current mailing address is available;

(d) For any Summary Notice that has been mailed via U.S. mail and returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail; and

(e) Neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been mailed as provided in this Paragraph.

6.8 Fraud Prevention. The Settlement Administrator shall use reasonable and customary fraud-prevention mechanisms to prevent (i) submission of Claim Forms

by persons other than potential Settlement Class Members, (ii) submission of more than one Claim Form per person, and (iii) submission of Claim Forms seeking amounts to which the claimant is not entitled. In the event a Claim Form is submitted without a unique Class Member identifier, the Settlement Administrator shall employ reasonable efforts to ensure that the Claim is valid.

6.9 Email Reminder. For any Settlement Class Member for whom the Settlement Administrator has an email address, and who has not submitted a valid Claim Form, the Settlement Administrator shall transmit periodic email reminders of the opportunity to file a Claim Form prior to the Claims Deadline.

6.10 Settlement Website. Prior to any dissemination of the Summary Notice and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the Internet in accordance with this Agreement. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall also allow for submission of Requests of Exclusion electronically through the Settlement Website.

6.11 Opt-Out/Request for Exclusion. The Notice shall explain the procedure for Class Members to opt out and exclude themselves from the Settlement Class by notifying the Settlement Administrator in writing, postmarked no later than 75 calendar days after the Notice Date. Each written request for exclusion must set forth the name of the individual seeking exclusion and can only request exclusion for that one individual. The Notice shall contain instructions and a deadline for persons within the Settlement Class to request exclusion from the Settlement Class or object to the Settlement.

6.12 Objections. The Notice shall explain the procedure for Class Members to object to the Settlement by submitting written objections to the Court no later than seventy-five (75) calendar days after the Notice Date (the "Objection Deadline"). Any Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Class Member does not enter an appearance, they will be represented by Class Counsel. Any Class Member who wishes to object to the Settlement, the Settlement Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Fairness Hearing and show cause, if any, for why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement Benefits should not be approved, or why the Service Awards and/or the Fee Award and Costs should not be granted, may do so, but must proceed as set forth in this paragraph. No Class Member or other person will be heard on such

matters unless they have filed in this Action the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider, within seventy-five (75) calendar days following the Notice Date. All written objections and supporting papers must (a) clearly identify the case name and number; (b) state the Class Member's full name, current mailing address, and telephone number; (c) contain a signed statement by the Class Member that he or she believes he or she is a member of the Settlement Class; (d) identify the specific grounds for the objection; (e) include all documents or writings that the Class Member desires the Court to consider; (f) contain a statement regarding whether the Class Member (or counsel of his or her choosing) intends to appear at the Fairness Hearing; (g) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, San Jose, California 95113, or by filing them in person at any location of the United States District Court for the Northern District of California; and (h) be filed or postmarked on or before the Objection Deadline, as set forth above. Any Class Member who does not make their objections in the manner and by the date set forth in this paragraph shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court

6.13 Accellion will serve the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, no later than 10 days after this Agreement is filed with the Court.

7. SETTLEMENT ADMINISTRATION

7.1 Submission of Claims.

(a) Submission of Electronic and Hard Copy Claims. Settlement Class Members may submit electronically verified Claim Forms to the Settlement Administrator through the Settlement Website or may download Claim Forms to be filled out, signed, and submitted physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement Administrator shall reject any Claim Forms that are incomplete, inaccurate, or not timely received and will provide Claimants notice and the ability to cure defective claims, unless otherwise noted in this Agreement.

(b) Review of Claim Forms. The Settlement Administrator will review Claim Forms submitted by Settlement Class members to determine whether they are eligible for a Settlement Payment.

7.2 Settlement Administrator's Duties.

(a) Cost Effective Claims Processing. The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this

Agreement by processing Claim Forms in a rational, responsive, cost effective and timely manner, and calculate Settlement Payments in accordance with this Agreement.

(b) Dissemination of Notices. The Settlement Administrator shall disseminate the Notice as provided for in this Agreement.

(c) Maintenance of Records. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Accellion's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Accellion's Counsel with information concerning Notice, administration, and implementation of the Settlement. Without limiting the foregoing, the Settlement Administrator also shall:

(i) Receive Requests for Exclusion from Settlement Class Members and provide Class Counsel and Accellion's Counsel a copy thereof no later than five (5) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion or other requests from Class Members after expiration of the Opt-Out Period, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Accellion's Counsel;

(ii) Provide weekly reports to Class Counsel and Accelion's Counsel that include, without limitation, reports regarding the number of Claim Forms received, the number of Claim Forms approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected by the Settlement Administrator. The Settlement Administrator shall also, as requested by Class Counsel or Accellion's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;

(iii) Make available for inspection by Class Counsel and Accellion's Counsel the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice;

(iv) Cooperate with any audit by Class Counsel or Accellion's Counsel, who shall have the right but not the obligation to review, audit, and evaluate all Claim Forms for accuracy, veracity, completeness, and compliance with the terms and conditions of this Agreement.

7.3 Requests For Additional Information: In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class member who submits a Claim Form.

8. SERVICE AWARDS

8.1 Class Representatives and Class Counsel may seek Service Awards to the Class Representative. Any requests for such an award must be filed at least 35 days before the deadline for filing objections to the Settlement.

8.2 The Settlement Administrator shall pay the Service Awards approved by the Court to the Class Representatives. Such Service Awards shall be paid by the Settlement Administrator, in the amount approved by the Court, five (5) Business Days after the Effective Date.

8.3 In the event the Court declines to approve, in whole or in part, the payment of the Service Award in the amounts requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Service Award shall constitute grounds for cancellation or termination of this Agreement.

9. ATTORNEYS' FEES, COSTS, AND EXPENSES

9.1 Class Counsel may file a motion for an award of reasonable attorneys' fees, costs, and expenses to be paid from the Settlement Fund. The motion must be filed at least 35 days before the deadline for filing objections to the Settlement. Any attorneys' fees, costs, and expenses awarded by the Court to Class Counsel shall be paid in the amount approved by the Court within, five (5) Business Days after the Effective Date.

9.2 Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst themselves.

9.3 The Settlement is not conditioned upon the Court's approval of an award of Class Counsel's attorneys' fees, costs, or expenses.

10. EFFECTIVE DATE, MODIFICATION, AND TERMINATION

10.1 The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:

(a) Accellion and Class Counsel execute this Agreement;

(b) The Court enters the Preliminary Approval Order, without material change to the Parties' agreed-upon proposed preliminary approval order attached hereto as **Exhibit D**;

(c) Notice is provided to the Settlement Class consistent with the Preliminary Approval Order;

(d) The Court enters the Final Approval Order and Judgment, without material change to the Parties' agreed-upon proposed Final Approval Order and Judgment attached hereto as **Exhibit B**; and

(e) The Final Approval Order and Judgment has become final because: (i) the time for appeal, petition, rehearing or other review has expired; or (ii) if any appeal, petition, request for rehearing or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, requests for rehearing or other review has expired.

10.2 In the event that the Court declines to enter the Preliminary Approval Order, declines to enter the Final Approval Order and Judgment, or the Final Approval Order and Judgment does not become final, Accellion may at its sole discretion terminate this Agreement on five (5) Business Days written notice from counsel for Accellion to Class Counsel. For avoidance of doubt, Accellion may not terminate this Agreement while an appeal from an order granting final approval is pending.

10.3 In the event the terms or conditions of this Settlement Agreement are materially modified by any court, any Party in its sole discretion to be exercised within 14 days after such modification may declare this Settlement Agreement null and void. In the event of a material modification by any court, and in the event the Parties do not exercise their unilateral options to withdraw from this Settlement Agreement pursuant to this Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt to reach an agreement as to how best to effectuate the court-ordered modification.

10.4 Except as otherwise provided herein, in the event the Settlement is terminated, the Parties to this Agreement, including Settlement Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. In addition, the Parties agree that in the event the Settlement is terminated, any orders entered pursuant to the Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses.

10.5 In the event this Agreement is terminated pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of

Sections 3.12, 3.13, 10.5, and 10.6 herein) and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers (except as necessary to explain the timing of the procedural history of the Action), and the Parties will return to their respective positions existing immediately before the execution of this Agreement.

10.6 Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any of the Administrative Expenses, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs.

11. NO ADMISSION OF WRONGDOING OR LIABILITY

11.1 This Agreement, whether or not consummated, any communications and negotiations relating to this Agreement or the Settlement, and any proceedings taken pursuant to the Agreement:

(a) shall not be offered or received against Accellion as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Accellion with respect to the truth of any fact alleged by any Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of Accellion;

(b) shall not be offered or received against Accellion as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Accellion;

(c) shall not be offered or received against Accellion as evidence of a presumption, concession or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against Accellion, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Parties may refer to it to effectuate the liability protection granted them hereunder;

(d) shall not be construed against Accellion as an admission or concession that the consideration to be given hereunder represents the relief that could be or would have been awarded after trial; and

(e) shall not be construed as or received in evidence as an admission, concession or presumption against the Class Representatives or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by Accellion have any merit.

12. REPRESENTATIONS

12.1 Each Party represents that: (i) such Party has full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval; (ii) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party; (iii) this Agreement constitutes a valid, binding, and enforceable agreement; and (iv) no consent or approval of any person or entity is necessary for such Party to enter into this Agreement.

13. NOTICE

13.1 All notices to Class Counsel provided for in this Agreement shall be sent by email and First Class mail to the following:

Tina Wolfson
twolfson@ahdootwolfson.com
Robert Ahdoot
rahdoot@ahdootwolfson.com
Andrew Ferich
aferich@ahdootwolfson.com
AHDOOT & WOLFSON, PC
2600 West Olive Avenue, Suite 500
Burbank, California 91505

Ben Barnow
b.barnow@barnowlaw.com
Anthony Parkhill
aparkhill@barnowlaw.com
BARNOW AND ASSOCIATES, P.C.
205 West Randolph Street, Suite 1630
Chicago, IL 60606

13.2 All notices to Accellion or counsel to Accellion provided for in this Agreement shall be sent by email and First Class mail to the following:

Michael H. Rubin
Michael.rubin@lw.com
Melanie M. Blunschi
Melanie.blunschi@lw.com
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000

San Francisco, CA 94111

Serrin Turner
Serrin.turner@lw.com
LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022

13.3 All notices to the Settlement Administrator provided for in this Agreement shall be sent by email and First Class mail to the following address:

FTA Data Breach Settlement
PO Box 5956
Beaverton, OR 97228-5956

13.4 The notice recipients and addresses designated in this Section may be changed by written notice.

14. MISCELLANEOUS PROVISIONS

14.1 Representation by Counsel. The Class Representatives and Accellion represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.

14.2 Best Efforts. The Parties agree that they will make all reasonable efforts needed to reach the Effective Date and fulfill their obligations under this Agreement.

14.3 Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the Exhibits thereto, are contractual and are not a mere recital, and each signatory warrants that he, she, or it is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that they or it represents.

14.4 Integration. This Agreement constitutes the entire agreement among the Parties and no representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

14.5 No Additional Persons with Financial Interest. Accellion shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member, other than what is expressly provided for in this Agreement.

14.6 Drafting. The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of

contra proferentum. This Settlement Agreement is a collaborative effort of the Parties and their attorneys that was negotiated on an arm's-length basis between parties of equal bargaining power. Accordingly, this Agreement shall be neutral, and no ambiguity shall be construed in favor of or against any of the Parties. The Parties expressly waive the presumption of California Civil Code section 1654 that uncertainties in a contract are interpreted against the party who caused the uncertainty to exist.

14.7 Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the persons who executed this Agreement or their successors-in-interest.

14.8 Waiver. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

14.9 Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.

14.10 Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties thereto.

14.11 Survival. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.

14.12 Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of California, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.

14.13 Interpretation.

(a) Definitions apply to the singular and plural forms of each term defined.

(b) Definitions apply to the masculine, feminine, and neuter genders of each term defined.

(c) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

14.14 No Precedential Value. The Parties agree and acknowledge that this Agreement carries no precedential value.

14.15 Fair and Reasonable. The Parties and their counsel believe this Agreement is a fair and reasonable compromise of the disputed claims, in the best interest of the Parties, and have arrived at this Agreement as a result of arm's-length negotiations.

14.16 Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement.

14.17 Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

14.18 Exhibits. The exhibits to this Agreement and any exhibits thereto are an integral and material part of the Settlement. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

14.19 Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

14.20 Facsimile and Electronic Mail. Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.

14.21 No Assignment. Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.

14.22 Deadlines. If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next Business Day. All reference to "days" in this Agreement shall refer to calendar days, unless otherwise specified. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

14.23 Dollar Amounts. All dollar amounts are in United States dollars, unless otherwise expressly stated.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized counsel:

AHDOOT & WOLFSON, PC

Dated: January 3, 2022

Tina Wolfson
Robert Ahdoot
Andrew W. Ferich

BARNOW AND ASSOCIATES, P.C.

Dated: January 3, 2022

Ben Barnow
Anthony Parkhill

LATHAM & WATKINS LLP

Dated: January 3, 2022

Michael H. Rubin
Melanie M. Blunschi
Serrin Turner

EXHIBIT A

CLAIM FORM FOR FTA DATA BREACH BENEFITS

USE THIS FORM TO MAKE A CLAIM FOR CREDIT MONITORING AND INSURANCE SERVICES, A CASH FUND PAYMENT, OR A DOCUMENTED LOSS PAYMENT

Para una notificación en Español, llamar 1-888-888-8888 o visitar nuestro sitio web www.FTADataBreach.com.

The DEADLINE to submit this Claim Form is postmarked: [XXXX XX, 2022]

I. GENERAL INSTRUCTIONS

If you are an individual whose Personal Information was compromised as a result of a data breach that occurred when file transfer software developed by Accellion, Inc., called File Transfer Appliance ("FTA") was hacked in a sophisticated criminal cyberattack on certain Accellion FTA Customers' FTA systems (the "FTA Data Breach"), you are a Class Member.

Affected FTA Customers include, without limitation: Flagstar; Kroger; HealthNet; The Regents of the University of California; The Office of the Washington State Auditor; the University of Colorado; American Bureau of Shipping; Congressional Federal Credit Union; CSX Corporation; Danaher Corporation; El Paso Electric Company; Finnegan, Henderson, Farablow, & Garret; Foley & Lardner, LLP; Fortior Solutions, LLC; Goodwin Procter LLP; Guidehouse (FKA Navigant, Inc.); Harvard Business School; Jones Day; Memorial Sloan Kettering Cancer Center; Postlehwaite & Netterville; Qualys, Inc.; Racetrac Corporation; SIU School of Medicine; Stanford School of Medicine; STERIS Corporation; Trinity Health; the University of Maryland, Baltimore; the University of Miami; Wright Medical Technology; and Yeshiva University.

As a Class Member, you are eligible to make a claim for **one of the following options**: (1) two years of Credit Monitoring and Identity Theft Insurance Services; or (2) up to a $10,000 cash payment for reimbursement of Documented Losses that are more likely than not a result of the FTA Data Breach ("Documented Loss Payment") and not otherwise recoverable through insurance or another FTA Data Breach settlement; or (3) a Cash Fund Payment, the amount of which will depend on the number of Class Members who participate in the Settlement and who utilized Credit Monitoring or Documented Losses.

The Credit Monitoring and Insurance Services will include, among other things: (i) up to $1,000,000 of identity theft insurance coverage; and (ii) two years of three-bureau credit monitoring providing, among other things, notice of changes to the Class Member's credit profile. If you already subscribed to credit monitoring services through another provider, you will have the option to postpone the commencement of the Credit Monitoring and Insurance Services by up to 12 months. The Credit Monitoring and Insurance Services available under this Settlement are similar to the credit monitoring and insurance services available under the other FTA Data Breach settlements.

Cash payments amounts may be reduced pro rata (equal share) or increased pro rata depending on how many Class Members submit claims. Complete information about the Settlement and its benefits are available at www.FTADataBreach.com.

This Claim Form may be submitted online at www.FTADataBreach.com or completed and mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, including any supporting documentation, by U.S. mail to:

FTA Data Breach Settlement Administrator

PO Box 5956
Beaverton, OR 97228-5956

II. CLAIMANT INFORMATION

The Settlement Administrator will use this information for all communications regarding this Claim Form and the Settlement. If this information changes prior to distribution of cash payments and Credit Monitoring and Insurance Services, you must notify the Settlement Administrator in writing at the address above.

First Name M.I. Last Name

Alternative Name(s)

Mailing Address, Line 1: Street Address/P.O. Box

Mailing Address, Line 2:

City: State: Zip Code:

Telephone Numbers (Cell) Telephone Numbers (Home)

Email Address

Date of Birth (mm/dd/yyyy) Unique ID Number Provided on mailed Notice (if known)

You may only select one of the following options:

III. CLASS MEMBERSHIP

☐ Please check this box if you received a notice related to this Class Action and provide your Unique ID Number in Section II above.

☐ Please check this box if you have not received a letter notice but believe that you should be included in the Class. You must provide Reasonable Documentation evidencing your relationship to one of the affected FTA Customers. Acceptable forms of documentation include, but are not limited to: statements, receipts, invoices, or other documents showing your relationship to one of the affected FTA Customers, or demonstrating that you were otherwise impacted by the FTA Data Breach.

Please provide the name of the affected company that you interacted with below:

You may only select one of the following options:

IV. CREDIT MONITORING AND INSURANCE SERVICES

☐ If you wish to receive Credit Monitoring and Insurance Services, you must check off the box for this section, provide your email address in the space provided in Section II, above, and return this Claim Form. Submitting this Claim Form will not automatically enroll you into Credit Monitoring and Insurance Services. To enroll, you must follow the instructions sent to your email address after the Settlement is approved and becomes final (the "Effective Date").

V. REIMBURSEMENT FOR DOCUMENTED LOSSES

☐ Please check off this box for this section if you are electing to seek reimbursement for up to $10,000 of Documented Losses you incurred that are more likely than not traceable to the FTA Data Breach and are not otherwise reimbursable from insurance on another FTA Data Breach settlement. Documented Losses include unreimbursed losses and consequential expenses that are more likely than not related to the FTA Data Breach and incurred on or after December 16, 2020.

In order to make a claim for a Documented Loss Payment, **you must** (i) fill out the information below and/or on a separate sheet submitted with this Claim Form; (ii) sign the attestation at the end of this Claim Form (section VIII); and (iii) include Reasonable Documentation supporting each claimed cost along with this Claim Form. Documented Losses need to be deemed more likely than not due to the FTA Data Breach by the Settlement Administrator based on the documentation you provide and the facts of the FTA Data Breach. **Failure to meet the requirements of this section may result in your claim being rejected by the Settlement Administrator.**

Cost Type (Fill all that apply)	**Approximate Date of Loss**	**Amount of Loss**	**Description of Supporting Reasonable Documentation** (Identify what you are attaching and why)
○ Unreimbursed fraud losses or charges	/ / (mm/dd/yy)	$.	*Examples: Account statement with unauthorized charges highlighted; Correspondence from financial institution declining to reimburse you for fraudulent charges*
○ Professional fees incurred in connection with identity theft or falsified tax returns	/ / (mm/dd/yy)	$.	*Examples: Receipt for hiring service to assist you in addressing identity theft; Accountant bill for re-filing tax return*
○ Lost interest or other damages resulting from a delayed state and/or federal tax refund in connection with fraudulent tax return filing	/ / (mm/dd/yy)	$.	*Examples: Letter from IRS or state about tax fraud in your name; Documents reflecting length of time you waited to receive your tax refund and the amount*

Cost Type (Fill all that apply)	**Approximate Date of Loss**	**Amount of Loss**	**Description of Supporting Reasonable Documentation** (Identify what you are attaching and why)
○ Credit freeze	/ / (mm/dd/yy)	$.	*Examples: Notices or account statements reflecting payment for a credit freeze:*
○ Credit monitoring that was ordered after December 16, 2020 through the date on which the Credit Monitoring and Insurance Services become available through this Settlement	/ / (mm/dd/yy)	$.	*Example: Receipts or account statements reflecting purchases made for credit monitoring and insurance services*
○ Miscellaneous expenses such as notary, fax, postage, copying, mileage, and long- distance telephone charges	/ / (mm/dd/yy)	$.	*Example: Phone bills, gas receipts, postage receipts; detailed list of locations to which you traveled (i.e. police station, IRS office), indication of why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled to remediate or address issues related to the FTA Data Breach*
○ Other (provide detailed description)	/ / (mm/dd/yy)	$.	*Please provide detailed description below or in a separate document submitted with this Claim Form:*

If you do not submit Reasonable Documentation supporting a Documented Loss Payment claim, or your claim for a Documented Loss Payment is rejected by the Settlement Administrator for any reason and you do not cure the defect, your claim will be considered for a Cash Fund Payment.

VI. CASH FUND PAYMENT

☐ If you wish to receive a Cash Fund Payment, you must check off the box for this section, and then simply return this Claim Form. A check will be mailed to the address you provided in Section II, above, as long as the Net Settlement Fund is not depleted by the claims for Credit Monitoring and Insurance Services and Documented Loss Payments.

You will receive an email at the email address provided below after Final Approval prompting you to select how you'd like to be paid. You can receive your payment via a variety of digital options such as digital debit card or PayPal, or you can elect to receive a check.

Email Address [Mandatory]:

VII. CERTIFICATION

By submitting this Claim Form, I certify that I am eligible to make a claim in this settlement and that the information provided in this Claim Form and any attachments are true and correct. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I understand that this claim may be subject to audit, verification, and Court review and that the Settlement Administrator may require supplementation of this Claim or additional information from me. I also understand that all claim payments are subject to the availability of settlement funds and may be reduced in part or in whole, depending on the type of claim and the determinations of the Settlement Administrator.

_____ Date:_____

Signature

_____

Print Name

VIII. ATTESTATION
(REQUIRED FOR DOCUMENTED LOSS PAYMENT CLAIMS)

I, _____, declare that I suffered the Documented Losses claimed above.
[Name]

I also attest that the Documented Losses claimed above are accurate and were not otherwise reimbursable by insurance or another FTA Data Breach settlement.

I declare under penalty of perjury under the laws of California and of the United States of America that the foregoing is true and correct. Executed on _____, in _____, _____.
[Date] [City] [State]

_____
[Signature]

EXHIBIT B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS FEHLEN, TONY BLAKE, DAVID ARTUSO, TERESA BAZAN, LORRIEL CHHAY, SAMANTHA GRIFFITH, ALLEN CHAO, and AUGUSTA MCCAIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ACCELLION, INC.,

Defendant.

Case No. 5:21-cv-01353-EJD

Hon. Edward J. Davila

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND ENTERING JUDGMENT

The Court having held a Final Approval Hearing on _____ __, 20___, at _____ _.m., in the Courtroom of The Honorable Edward J. Davila, United States District Court for the District of the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, Courtroom 4 – 5th Floor, San Jose, California 95113, and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order (this "Order") and good cause appearing therefore, and having considered the papers filed and proceedings held in connection with the Settlement, having considered all of the other files, records, and proceedings in the Action, and being otherwise fully advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Class Members. Venue is proper in this Court.

2. This Order incorporates and makes a part hereof: (a) the Class Action Settlement Agreement dated January 3, 2022 including the definitions in the Settlement Agreement and (b) the Notices attached as Exhibits thereto, respectively, all of which were filed with the Court on _____ __, 2022. All terms used in this Order have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

3. Certification of the Settlement Class for Purposes of Settlement. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court certifies, solely for purposes of effectuating the Settlement, this Action as a class action on behalf of a Settlement Class defined as: all natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their Personal Information may have been compromised in the Attacks. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Accellion, its subsidiaries, parent companies, successors, predecessors, and any

entity in which Accellion or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person (the "Settlement Class").

4. Class Representatives. Plaintiffs Douglas Fehlen, Tony Blake, David Artuso, Teresa Bazan, Lorriel Chhay, Samantha Griffith, Allen Chao, and Augusta McCain ("Class Representatives") are hereby appointed, for settlement purposes only, as representatives for the Settlement Class for purposes of Rule 23 of the Federal Rules of Civil Procedure.

5. Class Counsel. Tina Wolfson, Robert Ahdoot, and Andrew W. Ferich of Ahdoot & Wolfson, PC, and Ben Barnow and Anthony Parkhill of Barnow and Associates, P.C. are hereby appointed, for settlement purposes only, as counsel for the Settlement Class pursuant to Rules 23(c)(1)(B) and (g) of the Federal Rules of Civil Procedure.

6. Class Notice. The Court finds that the dissemination of Notice to Settlement Class Members: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the releases to be provided thereunder); (v) Class Counsel's motion for a Fee Award and Costs and for Service Awards to the Class Representatives; (vi) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for Service Awards to the Class Representatives and for a Fee Award and Costs; and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

7. Class Action Fairness Act Notice. The notice to government officials, as given,

complied with 28 U.S.C. § 1715.

8. Objections. [If Necessary] The Court has considered each of the objections to the Settlement submitted pursuant to Rule 23(e)(5) of the Federal Rules of Civil Procedure. The Court finds and concludes that each of the objections is without merit, and they are hereby overruled.

9. Final Settlement Approval and Dismissal of Claims. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects (including, without limitation: the consideration provided for in the Settlement; the releases provided for therein; and the dismissal with prejudice of the claims asserted against Accellion in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Court finds that, pursuant to Rule 23(e)(2), (A) the Class Representatives and Class Counsel have adequately represented the Settlement Class; (B) the Settlement was negotiated at arm's length; (C) the relief provided for the Settlement Class is fair, reasonable, and adequate taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the Settlement Class, including the method of processing Class Member claims; (iii) the terms of the proposed award of attorneys' fees and reimbursement of costs and other expenses, as well as the Service Awards to the Class Representatives; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the Settlement treats Class Members equitably relative to each other. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

10. Dismissal with Prejudice. The Action is hereby dismissed with prejudice as to Accellion. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Settlement Agreement.

11. Binding Effect. The terms of the Settlement Agreement and of this Order shall be forever binding on Accellion, Plaintiffs, and all Class Members (regardless of whether or not

any individual Class Member submits a Claim Form, seeks or obtains a Settlement benefit, or objected to the Settlement), as well as their respective successors and assigns.

12. Opt Outs. The persons listed on Exhibit 1, attached hereto and incorporated by this reference, submitted timely and proper Requests for Exclusion, are excluded from the Settlement Class, and are not bound by the terms of the Settlement Agreement or this Order.

13. Releases. The releases set forth in Paragraph 4.1 of the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders pursuant to this Order, without further action by anyone, upon the Effective Date of the Settlement, and as provided in the Settlement Agreement, that Plaintiffs and each and every member of the Settlement Class shall have released the Released Claims against the Released Parties. Notwithstanding the foregoing, nothing in this Order shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Order.

14. Future Prosecutions Barred. Plaintiffs and all Class Members are hereby barred and permanently enjoined from instituting, asserting, or prosecuting any or all of the Released Claims against any of the Released Parties.

15. No Admission of Liability. The Court hereby decrees that the Settlement, this Order, and the fact of the Settlement do not constitute admissions or concessions by Accellion of any fault, wrongdoing, or liability whatsoever, or an admission of the appropriateness of class certification for trial or dispositive motion practice. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Nothing relating to the Settlement shall be offered or received in evidence as an admission, concession, presumption or inference against Accellion or any of the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Settlement Agreement or to support a defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense.

16. Attorneys' Fees and Expenses. Class Counsel are awarded attorneys' fees in the amount of $_____, and reimbursement of costs and expenses in the amount of $ _____, and such amounts shall be paid by the Settlement Administrator pursuant to and consistent with the terms of the Settlement.

17. Service Awards. The Class Representatives are each awarded a Service Award in the amount of $_____, and such amounts shall be paid by the Settlement Administrator pursuant to and consistent with the terms of the Settlement Agreement.

18. Modification of the Agreement of Settlement. Without further approval from the Court, Plaintiffs, by and through Class Counsel, and Accellion are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Order; and (b) do not materially limit the rights of members of the Settlement Class in connection with the Settlement. Without further order of the Court, Plaintiffs, by and through Class Counsel, and Accellion may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

19. Retention of Jurisdiction. Without affecting the finality of this Order in any way, the Court hereby retains and reserves jurisdiction over: (a) implementation of this Settlement and any distributions pursuant to the Settlement; (b) the Action, until the Effective Date and until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms and conditions of the Settlement Agreement, including the exhibits appended thereto; and (c) all Parties, for the purpose of enforcing and administering the Settlement Agreement and the Settlement.

20. Termination of Settlement. If the Settlement is terminated as provided in the Settlement Agreement or the Effective Date of the Settlement otherwise fails to occur, this Order shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Settlement Agreement, and this Order shall be without prejudice to the rights of Plaintiffs, Settlement Class members, and Accellion, and the Parties shall be deemed to have

reverted *nunc pro tunc* to their respective litigation positions in the Action immediately prior to the execution of the Settlement Agreement.

21. Judgment. **JUDGMENT IS HEREBY ENTERED**, pursuant to Federal Rule of Civil Procedure 58, as to the Settlement Class (excluding the individuals who validly and timely requested exclusion from the Settlement Class, as identified in Exhibit 1 hereto), the Class Representatives, and Defendant Accellion, Inc. on the terms and conditions of the Settlement Agreement approved by this Final Approval Order.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Date: _____, 2022

_____
HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

EXHIBIT C

Fehlen, et al. v. Accellion, Inc.,
Case No. 5:21-cv-01353 (U.S. District Court for the Northern District of California)

Notice of Accellion FTA Data Breach Class Action Settlement

A federal court has authorized this Notice. This is not a solicitation from a lawyer.
Please read this Notice carefully and completely.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

Para una notificación en Español, llamar 1-888-888-8888 o visitar nuestro sitio web www.FTADataBreach.com.

- A Settlement has been proposed in a class action lawsuit against Accellion, Inc. ("Defendant" or "Accellion"), relating to a data breach that occurred in December 2020 and January 2021, when threat actors hacked file transfer software developed by Accellion and licensed to its customers ("FTA Customers"), called File Transfer Appliance ("FTA"), in a sophisticated criminal cyberattack that permitted criminals to illegally access information stored on certain customers' FTA systems (the "FTA Data Breach"). As a result, Personal Information of millions of individuals who are customers, employees, or otherwise affiliated with or conducted business with Accellion's FTA Customers may have been accessed by unauthorized persons. The Personal Information obtained may have included, without limitation, names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers (SSNs), drivers' license information, tax records, bank account and routing information, and other personally identifying information, as well as information used to process health insurance claims, prescription information, medical records and data, and other personal health information. If your Personal Information was compromised as a result of the FTA Data Breach, you are included in this Settlement as a member of the Settlement Class.
- In addition to the Accellion Settlement, several of Accellion's FTA Customers – including Flagstar Bank ("Flagstar"), The Kroger Co. ("Kroger"), and Health Net/California Health and Wellness ("HealthNet"), reached separate settlements relating to this data breach. Additional, similar settlements involving the FTA Data Breach may occur. You may have received a notice regarding one or more of these other settlements. You may be a Class Member in more than one of these settlements, in addition to this Accellion Settlement, and be entitled to benefits in more than one settlement.
- Affected FTA Customers include, without limitation: Flagstar; Kroger; HealthNet; The Regents of the University of California; The Office of the Washington State Auditor; the University of Colorado; American Bureau of Shipping; Congressional Federal Credit Union; CSX Corporation; Danaher Corporation; El Paso Electric Company; Finnegan, Henderson, Farablow, & Garret; Foley & Lardner, LLP; Fortior Solutions, LLC; Goodwin Procter LLP; Guidehouse (FKA Navigant, Inc.); Harvard Business School; Jones Day; Memorial Sloan Kettering Cancer Center; Postlehwaite & Netterville; Qualys, Inc.; Racetrac Corporation; SIU School of Medicine; Stanford School of Medicine; STERIS Corporation; Trinity Health; the University of Maryland, Baltimore; the University of Miami; Wright Medical Technology; and Yeshiva University.
- Under the Settlement, Accellion has agreed to establish an $8.1 million Settlement Fund to: (1) pay for two years of credit monitoring and insurance services ("Credit Monitoring and Insurance Services" or "CMIS"); or (2) provide cash payments of up to $10,000 per Class Member for reimbursement of certain Documented Losses ("Documented Loss Payment"); or (3) provide cash payments to Class Members ("Cash Fund Payment"). The Settlement Fund will also be used to pay for the costs of the settlement administration, court-approved Service Awards for named Plaintiffs and Attorneys' Fees and Costs. In addition, Accellion has agreed to undertake certain remedial measures and enhanced security measures that they will continue to implement.
- Your legal rights will be affected whether you act or do not act. You should read this entire Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
FILE A CLAIM FORM **EARLIEST DEADLINE: [XXXX XX, 2022]**	Submitting a Claim Form is the only way that you can receive any of the Settlement Benefits provided by this Settlement, including Credit Monitoring and Insurance Services, a Documented Loss Payment, or a Cash Fund Payment. If you submit a Claim Form, you will give up the right to sue Accellion and certain related parties in a separate lawsuit about the legal claims this Settlement resolves.
EXCLUDE YOURSELF FROM THIS SETTLEMENT **DEADLINE: [XXXX XX, 2022]**	This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against Accellion, or certain related parties, for the claims this Settlement resolves. If you exclude yourself, you will give up the right to receive any Settlement Benefits from this Settlement.

OBJECT TO OR COMMENT ON THE SETTLEMENT **DEADLINE: [XXXX XX, 2022]**	You may object to the Settlement by writing to the Court and informing it why you do not think the Settlement should be approved. You can also write the Court to provide comments or reasons why you support the Settlement. If you object, you may also file a Claim Form to receive Settlement Benefits, but you will give up the right to sue Accellion in a separate lawsuit about the legal claims this Settlement resolves.
GO TO THE "FINAL APPROVAL" HEARING **DATE: XXXX XX, 2022**	You may attend the Final Approval Hearing where the Court may hear arguments concerning approval of the Settlement. If you wish to speak at the Final Approval Hearing, you must make a request to do so in your written objection or comment. You are not required to attend the Final Approval Hearing.
DO NOTHING	If you do nothing, you will not receive any of the monetary Settlement Benefits and you will give up your rights to sue Accellion and certain related parties for the claims this Settlement resolves.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement Benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

BASIC INFORMATION

1. Why did I get this Notice?

A federal court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Honorable Edward J. Davila of the United States District Court for the Northern District of California is overseeing this class action. The case is known as *Fehlen, et al. v. Accellion, Inc.*, Case No. 5:21-cv-01353 (N.D. Cal.) (the "Action"). The people who filed this lawsuit are called the "Plaintiffs" and the company they sued, Accellion, Inc. is called the "Defendant." The Plaintiffs and the Defendant agreed to this Settlement.

2. What is this lawsuit about?

On January 12 and February 1, 2021, Accellion announced that in December 2020 and January 2021, threat actors hacked file transfer software developed by Accellion and licensed to FTA Customers, called File Transfer Appliance ("FTA"), in a sophisticated criminal cyberattack that permitted criminals to illegally access information stored on certain of Accellion FTA Customers' FTA systems. As a result, Personal Information of millions of individuals who are customers, employees, or otherwise affiliated with or conducted business with Accellion's FTA Customers may have been obtained by the criminals. The Personal Information obtained may have included, without limitation, names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers (SSNs), drivers' license information, tax records, bank account and routing information, and other personally identifying information, as well as information used to process health insurance claims, prescription information, medical records and data, and other personal health information.

The Plaintiffs claim that Accellion failed to adequately protect their Personal Information and that they were injured as a result. Accellion denies any wrongdoing, and no court or other entity has made any judgment or other determination of any wrongdoing or that the law has been violated. Accellion denies these and all other claims made in the Action. By entering into the Settlement, Accellion is not admitting that it did anything wrong.

3. Why is this a class action?

In a class action, one or more people called the Class Representatives sue on behalf of all people who have similar claims. Together all of these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

The Class Representatives in this case are Douglas Fehlen, Tony Blake, David Artuso, Teresa Bazan, Lorriel Chhay, Samantha Griffith, Allen Chao, and Augusta McCain.

4. Why is there a Settlement?

The Class Representatives and Accellion do not agree about the claims made in this Action. The Action has not gone to trial and the Court has not decided in favor of the Class Representatives or Accellion. Instead, the Class Representatives and Accellion have agreed to settle the Action. The Class Representatives and the attorneys for the Class ("Class Counsel") believe the Settlement is best for all Class Members because of the risks and uncertainty associated with continued litigation and the nature of the defenses raised by Accellion.

WHO IS INCLUDED IN THE SETTLEMENT

5. How do I know if I am part of the Settlement?

The Court has decided that everyone who fits the following description is a Class Member.

> All natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their Personal Information may have been compromised in the Attacks.

Affected FTA Customers include, without limitation: Flagstar; Kroger; HealthNet; The Regents of the University of California; The Office of the Washington State Auditor; the University of Colorado; American Bureau of Shipping; Congressional Federal Credit Union; CSX Corporation; Danaher Corporation; El Paso Electric Company; Finnegan, Henderson, Farablow, & Garret; Foley & Lardner, LLP; Fortior Solutions, LLC; Goodwin Procter LLP; Guidehouse (FKA Navigant, Inc.); Harvard Business School; Jones Day; Memorial Sloan Kettering Cancer Center; Postlehwaite & Netterville; Qualys, Inc.; Racetrac Corporation; SIU School of Medicine; Stanford School of Medicine; STERIS Corporation; Trinity Health; the University of Maryland, Baltimore; the University of Miami; Wright Medical Technology; and Yeshiva University.

If you received Notice of this Settlement, you have been identified by the Settlement Administrator as a Class Member. More specifically, you are a Class Member, and you are affected by this Settlement.

You may contact the Settlement Administrator if you have any questions as to whether you are a Class Member.

6. Are there exceptions to individuals who are included as Class Members in the Settlement?

Yes, the Settlement does not include: (1) the Judges presiding over the Action and members of their families; (2) Accellion, its subsidiaries, parent companies, successors, predecessors, and any entity in which Accellion or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Class Member, you may go to the Settlement Website at www.FTADataBreach.com, or call the Settlement Administrator's toll-free number at 1-888-888-8888.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

8. What does the Settlement provide?

The Settlement will provide Class Members with the opportunity to select and make a claim for one of following Settlement Benefits:

- Two years of Credit Monitoring and Insurance Services; or
- Cash Payments of up to $10,000 per Class Member for reimbursement of certain Documented Losses ("Documented Loss Payment"); or
- Cash Fund Payments in amounts to be determined in accordance with the terms of the Settlement.

In addition, Accellion has agreed to take certain remedial measures and enhanced security measures as a result of this Action.

Please review Number 12 carefully for additional information regarding the order in which Settlement Benefits are paid from the Settlement Fund. This additional information may impact your decision as to which of the three Settlement Benefit options is the best option for you.

9. Credit Monitoring and Insurance Services.

You may file a Claim Form to receive Credit Monitoring and Insurance Services. Credit Monitoring and Insurance Services provide a way to protect yourself from unauthorized use of your personal information. If you already have credit monitoring services, you may still sign up for this additional protection. The Credit Monitoring and Insurance Services provided by this Settlement are separate from, and in addition to, the credit monitoring and identity resolution services that may have been offered to you by FTA Customers in response to the FTA Data Breach. You are eligible to make a claim for the Credit Monitoring and Insurance Services being offered through this Settlement even if you did not sign up for the previous services. If you file a claim for Credit Monitoring and Insurance Services and you already have credit monitoring services, you can choose to postpone the Credit Monitoring and Insurance Services from this Settlement for a period of 12 months.

Credit Monitoring and Insurance Services include: (i) up to $1 million dollars of identity theft insurance coverage; and (ii) three bureau credit monitoring providing notice of changes to the Class Member's credit profile. The estimated retail value of the two years of Credit

Monitoring and Insurance Services product is $360. The Credit Monitoring and Insurance Services available under this Settlement are similar to the credit monitoring and insurance services available under the other FTA Data Breach settlements.

To receive Credit Monitoring and Insurance Services, you must submit a completed Claim Form selecting to receive Credit Monitoring and Insurance Services.

10. Documented Loss Payment.

In the alternative to a Cash Fund Payment or Credit Monitoring and Insurance Services, you may elect to submit a Claim Form for reimbursement of Documented Losses. If you spent money remedying or addressing identity theft and fraud that was more likely than not related to the FTA Data Breach or you spent money to protect yourself from future harm because of the FTA Data Breach, and this amount was not otherwise recoverable through insurance or any other FTA Data Breach settlement, you may make a claim for a Documented Loss Payment for reimbursement of up to $10,000 in Documented Losses.

Documented Losses consist of unreimbursed losses incurred on or after December 16, 2020, that were related to identity theft and fraud and are more likely than not a result of the FTA Data Breach, as well as any expenses related to the FTA Data Breach. For example, credit card or debit card cancellation or replacement fees, late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, credit-related costs associated with purchasing credit reports, credit monitoring or identity theft protection, costs to place a freeze or alert on credit reports, costs to replace a driver's license, state identification card, Social Security number, professional services, and out-of-pocket expenses for notary, fax, postage, delivery, copying, mileage, and long-distance telephone charges. Other losses or costs related to the FTA Data Breach that are not insurance reimbursable may also be eligible for reimbursement. To protect the Settlement Fund and valid claims, all Claim Forms submitted that seek payment related to credit or debit card fraudulent transactions will be carefully reviewed by the Settlement Administrator.

Claims for Documented Loss Payments must be supported by Reasonable Documentation. Reasonable Documentation means written documents supporting your claim, such as credit card statements, bank statements, invoices, telephone records, and receipts.

Individual cash payments may be reduced or increased pro rata (equal share) depending on the number of Class Members that participate in the Settlement.

To receive a Documented Loss Payment, you must submit a completed Claim Form electing to receive a Documented Loss Payment. If you file a Claim Form for a Documented Loss Payment and it is rejected by the Settlement Administrator and you do not correct it, your Claim Form will be considered a claim for a Cash Fund Payment.

11. Cash Fund Payment.

In the alternative to Credit Monitoring and Insurance Services or Documented Loss Payment, you may elect to receive a cash payment. This is the "Cash Fund Payment." The amount of the Cash Fund Payment will vary depending on the number of valid claims that are submitted. An estimated range for the Cash Fund Payment is $15-$50. To receive a Cash Fund Payment, you must submit a completed Claim Form electing to receive a Cash Fund Payment.

You are <u>not</u> required to provide Reasonable Documentation with your Claim Form to receive a Cash Fund Payment. Individual Cash Fund Payments may be reduced or increased pro rata (equal share) depending on the number of Class Members that participate in the Settlement and the amount of money that remains in the Cash Fund after payments of other Settlement Benefits and charges with priority for payment under the Settlement. *See* Number 12 below.

12. How will Settlement Benefits be paid?

Before determining which Settlement Benefit option from the Settlement is best for you (selecting a Cash Fund Payment, or Credit Monitoring and Insurance Services, or Documented Loss Payment), it is important for you to understand how Settlement payments will be made. Court awarded attorneys' fees up to a maximum of 25% of the $8.1 million Settlement Fund (i.e., $2,025,000), reasonable costs and expenses incurred by attorneys for the Class, Administrative Expenses for costs of the settlement administration, and Service Awards of up to $1,500 to each of the Class Representatives will be deducted from the Settlement Fund before making payments to Class Members. The Court may award less than these amounts. The remainder of the Settlement Fund will be distributed in the following order:

1. Credit Monitoring and Insurance Services claims will be paid first.
2. If money remains in the Settlement Fund after paying for the Credit Monitoring and Insurance Services, Documented Loss Payment claims will be paid second. If your claim for a Documented Loss Payment is rejected by the Settlement Administrator and you do not correct it, your claim for a Documented Loss Payment will instead be considered a claim for a Cash Fund Payment.
3. If money remains in the Settlement Fund after paying Credit Monitoring and Insurance Services claims and Documented Loss Payment claims, the amount of the Settlement Fund remaining will be used to create a "Post DC Net Settlement Fund," which will be used to pay all Cash Fund Payment claims. As stated in Number 11 above, those are an estimated range of $15-$50. This is just an estimate, not a guarantee, based on Class Counsel's experience and belief.

13. Tell me more about Accellion's remedial measures and enhanced security measures.

Accellion has completed an investigation into the cause and scope of the FTA Data Breach and has ceased licensing FTA to customers and migrated to a new secure file transfer solution. Specifically, Accellion implemented end-of-life of FTA effective April 30, 2021, and represents and warrants that it has not extended any existing FTA licenses since that date except as necessary for a temporary period to ensure transition to its new file sharing product. No such FTA license extension shall extend beyond January 31, 2022, for Accellion's United States customers. Accellion will use its best efforts to migrate any remaining FTA Customers to an alternative file transfer solution, before the expiration of those customers' existing FTA license terms. Furthermore, as a result of the Action, for a period of four years, Accellion has agreed to institute policies, procedures, and additional security-related remedial measures.

14. What is the total value of the Settlement?

The Settlement provides an $8.1 million Settlement Fund and remedial actions to be taken by Accellion for the benefit of the Class. Any court-approved attorneys' fees, costs, and expenses, Service Awards to the Class Representatives, taxes due on any interest earned by the Settlement Fund, if necessary, and any notice and settlement administration expenses will be paid out of the Settlement Fund, and the balance ("Net Settlement Fund") will be used to pay for the above Settlement Benefits. Any costs associated with Accellion's remedial and enhanced security measures will be paid by Accellion in addition to the Settlement Fund.

15. What am I giving up to get a Settlement Benefit or stay in the Class?

Unless you exclude yourself, you are choosing to remain in the Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against Accellion and related parties about the legal issues in this Action, resolved by this Settlement and released by the Class Action Settlement Agreement and Release. The specific rights you are giving up are called Released Claims (*see* next question).

16. What are the Released Claims?

In exchange for the Settlement, Class Members agree to release Accellion and their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing and specifically excludes all FTA Customers ("Released Parties") from any claim, liability, right, demand, suit, obligation, damage, including consequential damage, loss or cost, punitive damage, attorneys' fees, costs, and expenses, action or cause of action, of every kind or description—whether known or Unknown (as the term "Unknown Claims" is defined in the Settlement Agreement), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that was or could have been asserted on behalf of the Settlement Class in the Action related to or arising from the compromise of any Class Member's Personal Information arising out of the Attacks ("Released Claims"). "Released Claims" do not include any claims against any entity other than Released Parties.

The Class Representatives and all Settlement Class Members, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, release and discharge all Released Claims, including Unknown Claims, against each of the Released Parties and agree to refrain from instituting, directing or maintaining any lawsuit, contested matter, adversary proceeding, or miscellaneous proceeding against each of the Released Parties that relates to the Attacks or otherwise arises out of the same facts and circumstances set forth in the Second Amended Class Action Complaint in this Action. This Settlement releases claims against only the Released Parties. This Settlement does not release, and it is not the intention of the Parties to this Settlement to release, any claims against any third party, including, without limitation, any of Accellion's FTA Customers who are not parties to this Action (including, for example, but not limited to, The Kroger Co., Flagstar Bank, Health Net/California Health and Wellness, the University of California, the Office of the Washington State Auditor, and the University of Colorado).

More information is provided in the Class Action Settlement Agreement and Release which is available at www.FTADataBreach.com.

HOW TO GET SETTLEMENT BENEFITS—SUBMITTING A CLAIM FORM

17. How do I make a claim for Settlement Benefits?

You must complete and submit a Claim Form by **xxxx xx, 2022**. Claims must be filed or postmarked by this deadline. Claim Forms may be submitted online at www.FTADataBreach.com, or printed from the website and mailed to the Settlement Administrator at the address on the form. Claim Forms are also available by calling 1-888-888-8888 or by writing to FTA Data Breach Settlement Administrator, P.O. Box 5956, Beaverton, OR 97228-5956. The quickest way to file a claim is online.

If you received a Notice by mail, use your Claim Number to file your Claim Form. If you lost or do not know your Claim Number, please call 1-888-888-8888 to obtain it.

You may submit a claim for a Cash Fund Payment, or Credit Monitoring and Insurance Services, or a Documented Loss Payment by submitting a Claim Form on the Settlement Website, or by downloading, printing, and completing a Claim Form, and mailing it to the Settlement Administrator.

You may file a claim for only one of the Settlement Benefits provided under the Settlement: 1) a Cash Fund Payment, or 2) Credit Monitoring and Insurance Services, or 3) a Documented Loss Payment.

18. How do I make a claim for a Cash Fund Payment?

To file a claim for a Cash Fund Payment, you must submit a valid Claim Form electing to receive the Cash Fund Payment. To submit a claim for a Cash Fund Payment, you may either complete a Claim Form on the Settlement Website or print and mail a completed Claim Form to the Settlement Administrator, postmarked on or before **xxxx xx, 2022.**

If you wish to receive your payment via PayPal, Venmo, or digital card instead of a check, simply provide your email address (optional). Anyone who submits a valid claim for Cash Fund Payment and does not elect to receive payment via PayPal, Venmo, or digital payment card, will receive their payment via regular check sent through U.S. Mail.

Instructions for filling out a claim for a Cash Fund Payment are included on the Claim Form. You may access the Claim Form at www.FTADataBreach.com.

The deadline to file a claim for a Cash Fund Payment is **xxxx xx, 2022**. Claims must be filed or postmarked if mailed by this deadline.

19. How do I make a claim for Credit Monitoring and Insurance Services?

To file a claim for Credit Monitoring and Insurance Services, you must submit a valid Claim Form electing to receive Credit Monitoring and Insurance Services. To submit a claim for Credit Monitoring and Insurance Services, you may either complete a Claim Form on the Settlement Website or print and mail a completed Claim Form to the Settlement Administrator, postmarked on or before **xxxx xx, 2022.**

Instructions for filling out a claim for Credit Monitoring and Insurance Services are included on the Claim Form. You may access the Claim Form at www.FTADataBreach.com.

The deadline to file a claim for Credit Monitoring and Insurance Services is **xxxx xx, 2022.** Claims must be filed or postmarked if mailed by this deadline.

20. How do I make a claim for a Documented Loss Payment for reimbursement?

To file a claim for a Documented Loss Payment of up to $10,000 for reimbursement of Documented Losses, you must submit a valid Claim Form electing to receive a Documented Loss Payment. To submit a claim for a Documented Loss Payment, you may either complete a Claim Form on the Settlement Website or print and mail a completed Claim Form to the Settlement Administrator, postmarked on or before **xxxx xx, 2022.**

The Claim Form requires that you sign the attestation regarding the information you provided and that you include Reasonable Documentation, such as credit card statements, bank statements, invoices, telephone records, and receipts.

If your claim for a Documented Loss Payment is rejected by the Settlement Administrator and you do not correct it, your claim for a Documented Loss Payment will instead be considered a claim for a Cash Fund Payment.

Instructions for filling out a claim for a Documented Loss Payment are included on the Claim Form. You may access the Claim Form at www.FTADataBreach.com.

The deadline to file a claim for a Documented Loss Payment is **xxxx xx, 2022.** Claims must be filed or postmarked if mailed by this deadline.

21. What happens if my contact information changes after I submit a claim?

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling 1-888-888-8888 or by writing to:

FTA Data Breach Settlement Administrator
P.O. Box 5956
Beaverton, OR 97228-5956

22. When and how will I receive the Settlement Benefits I claim from the Settlement?

If you make a valid claim for Credit Monitoring and Insurance Services, the Settlement Administrator will send you information on how to activate your credit monitoring after the Settlement becomes final. If you received a notice in the mail, keep it in a safe place as you will need the unique Claim Number provided on the Notice to activate your Credit Monitoring and Insurance Services.

Payment for valid claims for a Cash Fund Payment or a Documented Loss Payment will be provided by the Settlement Administrator after the Settlement is approved and becomes final. You may elect to receive payment for valid claims for a Cash Fund Payment or a Documented Loss Payment via PayPal, Venmo, or digital payment card instead of a check, by submitting your e-mail address with your

Claim Form. Anyone who does not elect to receive payment via PayPal, Venmo, or digital payment card, will receive their payment via regular check sent through U.S. Mail.

The approval process may take time. Please be patient and check www.FTADataBreach.com for updates.

23. What happens if money remains after all of the Settlement Claims are paid?

None of the money in the $8.1 million Settlement Fund will be paid back to Accellion. Any money left in the Settlement Fund after 150 days after the distribution of payments to Class Members will be distributed pro rata (equal share) among all Class Members with approved claims, who cashed or deposited their initial check or received the Settlement proceeds through digital means, as long as the average payment amount is $3 or more. If there is not enough money to provide qualifying Class Members with an additional $3 payment, the remaining funds will be distributed to non-profit organizations, or "Non-Profit Residual Recipients." The proposed Non-Profit Residual Recipient is the Electronic Frontier Foundation, a 26 U.S.C. § 501(c)(3) non-profit organization. Approval of this Non-Profit Residual Recipient is subject to final court approval.

THE LAWYERS REPRESENTING YOU

24. Do I have a lawyer in this case?

Yes, the Court has appointed Tina Wolfson, Robert Ahdoot, and Andrew W. Ferich of Ahdoot & Wolfson, PC, and Ben Barnow and Anthony Parkhill of Barnow and Associates, P.C. as Class Counsel to represent you and the Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this Action.

25. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award them attorneys' fees of up to a maximum of 25% of the $8.1 million Settlement Fund (i.e., $2,025,000), plus reasonable costs and expenses. They will also ask the Court to approve up to $1,500 Service Awards to each of the Class Representatives for participating in this Action and for their efforts in achieving the Settlement. If awarded, these amounts will be deducted from the Settlement Fund before making payments to Class Members. The Court may award less than these amounts.

Class Counsel's application for attorneys' fees and expenses, and Service Awards will be made available on the Settlement Website at www.FTADataBreach.com before the deadline for you to comment or object to the Settlement. You can request a copy of the application by contacting the Settlement Administrator, at 1-888-888-8888.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a Class Member and want to keep any right you may have to sue or continue to sue Accellion on your own based on the claims raised in this Action or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from – or "opting out" of – the Settlement.

26. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must complete and sign a Request for Exclusion. The Request for Exclusion must be in writing and identify the case name *Fehlen, et al. v. Accellion, Inc.*, Case No. 5:21-cv-01353 (N.D. Cal.); state the name, address and telephone number of the Class Members seeking exclusion; be physically signed by the Person(s) seeking exclusion; and must also contain a statement to the effect that "I/We hereby request to be excluded from the proposed Settlement Class in *Fehlen, et al. v. Accellion, Inc.*, Case No. 5:21-cv-01353 (N.D. Cal)." The Request for Exclusion must be (i) submitted electronically on the Settlement Website, or (ii) postmarked or received by the Settlement Administrator at the address below postmarked no later than **xxxx xx, 2022**:

FTA Data Breach Settlement Administrator
P.O. Box 5956
Beaverton, OR 97228-5956

You cannot exclude yourself by telephone or by e-mail.

27. If I exclude myself, can I still get Credit Monitoring and Insurance Services, or a Settlement Payment?

No. If you exclude yourself, you are telling the Court that you do not want to be part of the Settlement. You can only get Credit Monitoring and Insurance Services, or a cash payment if you stay in the Settlement and submit a valid Claim Form.

28. If I do not exclude myself, can I sue Accellion for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Accellion and Released Parties for the claims that this Settlement resolves. You must exclude yourself from this Action to start or continue with your own lawsuit or be part of any other lawsuit against Accellion or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

OBJECT TO OR COMMENT ON THE SETTLEMENT

29. How do I tell the Court that I do not like the Settlement?

You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Fehlen, et al. v. Accellion, Inc.*, Case No. 5:21-cv-01353 (N.D. Cal.)); (b) state your full name, current mailing address, and telephone number; (c) contain a signed statement that you believe you are a member of the Settlement Class; (d) identify the specific grounds for the objection; (e) include all documents or writings that you desire the Court to consider; (f) contain a statement regarding whether you (or counsel of your choosing) intend to appear at the Final Approval Hearing; (g) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, San Jose, California 95113, or by filing the objection in person at any location of the United States District Court for the Northern District of California; and (h) be filed with the Court or postmarked on or before **xxxx xx, 2022**.

30. What is the difference between objecting and requesting exclusion?

Objecting is telling the Court you do not like something about the Settlement. You can object only if you stay in the Class (that is, do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Class or the Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer affects you.

THE FINAL APPROVAL HEARING

31. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on **xxxx xx, 2022** at **__:_0 _.m.** before the Honorable Edward J. Davila, United States District Court for the District of the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, Courtroom 4, 5th Floor, San Jose, California 95113.

The date and time of the Final Approval Hearing is subject to change without further notice to the Settlement Class. Class Members should monitor the Settlement Website or the Court's PACER site (see Question 35) to confirm whether the date for the Final Approval Hearing is changed.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and will decide whether to approve: the Settlement; Class Counsel's application for attorneys' fees, costs and expenses; and the Service Awards to the Class Representatives. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing.

32. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time the Court will consider it.

33. May I speak at the Final Approval Hearing?

Yes. If you wish to attend and speak at the Final Approval Hearing, you must indicate this in your written objection (see Question 29). Your objection must state that it is your intention to appear at the Final Approval Hearing and must identify any witnesses you may call to testify or exhibits you intend to introduce into evidence at the Final Approval Hearing. If you plan to have your attorney speak for you at the Fairness Hearing, your objection must also include your attorney's name, address, and phone number.

IF YOU DO NOTHING

34. What happens if I do nothing at all?

If you are a Class Member and you do nothing, you will not receive any Settlement Benefits. You will also give up certain rights, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Accellion or any of the Released Parties about the legal issues in this Action and released by the Settlement Agreement.

GETTING MORE INFORMATION

35. How do I get more information?

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www.FTADataBreach.com, or by contacting Class Counsel (see below), by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, San Jose, California 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

If you have questions about the proposed Settlement or anything in this Notice, you may contact Class Counsel at:

Ahdoot & Wolfson, PC c/o FTA Data Breach Settlement [redacted] *info@FTADataBreach.com*	Barnow and Associates, P.C. c/o FTA Data Breach Settlement [redacted] *info@FTADataBreach.com*

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS FEHLEN, TONY BLAKE, DAVID ARTUSO, TERESA BAZAN, LORRIEL CHHAY, SAMANTHA GRIFFITH, ALLEN CHAO, and AUGUSTA MCCAIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ACCELLION, INC.,

Defendant.

Case No. 5:21-cv-01353-EJD

Hon. Edward J. Davila

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, Plaintiffs and Accellion, Inc. (together, the "Parties") in the above-described class action ("Action") have applied for an order, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, regarding certain matters in connection with a proposed settlement of the Action, in accordance with a Class Action Settlement Agreement and Release (the "Settlement" or "Settlement Agreement") entered into by the Parties as of January 3, 2022 (which, together with its exhibits, is incorporated herein by reference) and dismissing the Action as to Accellion upon the terms and conditions set forth in the Settlement Agreement;

WHEREAS, all defined terms used in this Order have the same meanings as set forth in the Settlement;

WHEREAS, Class Counsel have conducted an extensive investigation into the facts and law relating to the matters alleged in the Action;

WHEREAS, on July 19, 2021, after considerable meet and confer, the Parties engaged in an all-day mediation session before the Honorable Jay C. Gandhi (Ret.) of JAMS. Although that mediation session did not result in a settlement, the Parties attended a second mediation session with Judge Gandhi on September 7, 2021. This mediation session also did not result in a settlement.

WHEREAS, the Parties continued to attempt to resolve their dispute and, following months of additional arm's length negotiations after the second mediation session, the Parties were able to finalize all of the terms of this Settlement; and

WHEREAS, the Court has carefully reviewed the Settlement Agreement, including the exhibits attached thereto and all files, records, and prior proceedings to date in this matter, and good cause appearing based on the record.

NOW THERFORE, IT IS HEREBY ORDERED that:

The Settlement, including the exhibits attached thereto, are preliminarily approved as fair, reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, pending a Final Approval Hearing on the Settlement as provided herein.

1. Stay of the Action. Pending the Final Approval Hearing, all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby stayed.

2. Certification for Settlement Purposes Only. Solely for purposes of effectuating the proposed Settlement, the Court finds, pursuant to Rule 23(e)(1), that the prerequisites for class certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are likely to be found to be satisfied as: (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in this Action is impracticable, (b) there are questions of law and fact that are common to the Settlement Class; (c) Plaintiffs' claims are typical of the claims of the Settlement Class; (d) the interests of all Settlement Class members are adequately represented by Plaintiffs and Class Counsel; (e) the questions of law and fact common to Settlement Class members predominate over any individualized questions of law and fact; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. These findings shall be vacated if the Settlement is terminated or if for any reason the Effective Date does not occur.

3. Class Definition. The Settlement Agreement defines the Settlement Class as: all natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their Personal Information may have been compromised in the Attacks. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Accellion, its subsidiaries, parent companies, successors, predecessors, and any entity in which Accellion or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

4. Class Representatives. For purposes of the Settlement only, the Court finds and determines, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, that Plaintiffs

Douglas Fehlen, Tony Blake, David Artuso, Teresa Bazan, Lorriel Chhay, Samantha Griffith, Allen Chao, and Augusta McCain will fairly and adequately represent the interests of the Class in enforcing their rights in the Action and appoints them as Class Representatives. The Court preliminarily finds that they are similarly situated to absent Class Members and therefore typical of the Class, and that they will be adequate Class Representatives.

5. Class Counsel. For purposes of the Settlement, the Court appoints Tina Wolfson, Robert Ahdoot, and Andrew W. Ferich of Ahdoot & Wolfson, PC, and Ben Barnow and Anthony Parkhill of Barnow and Associates, P.C. as Class Counsel to act on behalf of the Settlement Class and the Class Representatives with respect to the Settlement. The Court authorizes Class Counsel to enter into the Settlement on behalf of the Class Representatives and the Settlement Class, and to bind them all to the duties and obligations contained therein, subject to final approval by the Court of the Settlement.

6. Administration. The firm of Epiq Class Action and Claims Solutions, Inc. is appointed as Settlement Administrator to administer the notice procedure and the processing of claims, under the supervision of Class Counsel.

7. Class Notice. The Court (a) approves, as to form and content, the proposed Claim Form, Long Form Notice, and the summary notices of the proposed Settlement ("Summary Notice") submitted by the Parties as Exhibits A, D, and E, respectively, to the Settlement Agreement, and (b) finds and determines that emailing (where available) and mailing the Summary Notice, reminder emails to Class Members (if available), and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, along with the internet advertisement publication notice, (i) constitutes the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to submit a claim (if applicable), their right to exclude themselves from the Settlement Class, the effect of the proposed Settlement (including the releases to be provided thereunder), Class Counsel's motion for Service Awards and a Fee Award and Costs, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate, and

sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

The Court further finds that all of the notices are written in simple terminology, and are readily understandable by Class Members. The date and time of the Final Approval Hearing shall be included in all notices before they are disseminated. The Parties, by agreement, may revise the notices in ways that are appropriate to update those notices for purposes of accuracy and clarity, and may adjust the layout of those notices for efficient electronic presentation and mailing. No Class Member shall be relieved from the terms of the proposed Settlement, including the releases provided for thereunder, based solely upon the contention that such Class Member failed to receive adequate or actual notice.

8. Notice Date. The Court directs that the Settlement Administrator cause a copy of the Summary Notice be mailed to all members of the Class who have been identified by Accellion through its records, if any, or provided to the Settlement Adminstrator by FTA Customers. The mailing is to be made via e-mail or by first class United States mail, postage prepaid, no later than the Notice Date, i.e., within 30 days of entry of this Order. Direct notice shall be substantially completed within 21 days of the Notice Date. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement ("Settlement Website").

9. Deadline to Submit Claim Forms. Class Members will have 90 days from the Notice Date to submit their Claim Forms ("Claims Deadline"), which is due, adequate, and sufficient time. By submitting a claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his or her claim and the subject matter of the Settlement.

10. Exclusion from Class. Any person falling within the definition of the Settlement Class may, upon request, be excluded or "opt out" from the Settlement Class. Any such person

who desires to request exclusion from the Settlement Class must submit a fully-completed Request For Exclusion. To be valid, the Request for Exclusion must be (i) submitted electronically on the Settlement Website, or (ii) postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. In the event the Settlement Class members submit a Request for Exclusion to the Settlement Administrator via US Mail, such Request for Exclusion must be in writing and must identify the case name *Fehlen, et al. v. Accellion, Inc.,* U.S.D.C. Case No. 5:21-cv-01353 (N.D. Cal.); state the name, address and telephone number of the Settlement Class members seeking exclusion; be physically signed by the natural person(s) seeking exclusion; and must also contain a statement to the effect that "I/We hereby request to be excluded from the proposed Settlement Class in *Fehlen, et al. v. Accellion, Inc.,* U.S.D.C. Case No. 5:21-cv-01353 (N.D. Cal.)." Any Person who elects to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. No person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs.

11. Final Approval Hearing. A hearing will be held by this Court in the Courtroom of The Honorable Edward J. Davila, United States District Court for the District of the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, Courtroom 4 – 5th Floor, San Jose, California 95113 at _____ __.m. on _____, 2022 ("Final Approval Hearing"), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the Final Approval Order and Judgment should be entered in substance materially the same form as Exhibit B to the Settlement Agreement; (c) whether the Class Representatives' proposed Settlement Benefits as described in Sections 2 and 3 of the Settlement Agreement should be approved as fair, reasonable, and adequate to the Settlement Class; (d) whether to approve the application for Service Awards for the Class Representatives or an award of attorneys' fees and litigation expenses; and (e) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or

adjournment by the Court without further notice to the Settlement Class. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

12. Objections and Appearances. Any Settlement Class Member may comment in support of or in opposition to the Settlement and may do so in writing, in person, or through counsel, at his or her own expense, at the Final Approval Hearing. Except as the Court may order otherwise, no objection to the Settlement shall be heard, and no papers, briefs, pleadings, or other documents submitted by any objector shall be received and considered by the Court unless such objector mails to the Court (c/o the Class Action Clerk, U.S. District Court for the Northern District of California) or files in person at any location of the United States District Court for the Northern District of California a written objection with the caption *Fehlen, et al. v. Accellion, Inc.,* U.S.D.C. Case No. 5:21-cv-01353 (N.D. Cal.), that includes: (i) the Settlement Class member's full name, current mailing address, and telephone number; (ii) a signed statement that he or she believes himself or herself to be a member of the Settlement Class; (iii) whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class, (iv) the specific grounds for the objection; (v) all documents or writings that the Settlement Class member desires the Court to consider; and (vi) a statement regarding whether they (or counsel of their choosing) intend to appear at the Final Approval Hearing. All written objections must be postmarked no later than the Objection Deadline. Any objector who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and forever be barred from making any such objections in the Action or in any other action or proceeding

13. Claimants. Class Members who submit within 90 days of the Notice Date a valid Claim Form approved by the Settlement Administrator may qualify to receive Credit Monitoring and Insurance Services, a Documented Loss Payment, or a Cash Fund Payment. Any Class Member who does not submit a timely Claim Form in accordance with this Order shall not be entitled to receive Credit Monitoring and Insurance Services, a Documented Loss Payment, or a Cash Fund Payment, but shall nevertheless be bound by any final judgment entered by the

Court. The Settlement Administrator shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Settlement Administrator, so long as distribution of the Net Settlement Fund to authorized Claimants for Approved Claims is not materially delayed thereby. No person shall have any claim against Class Counsel or the Settlement Administrator by reason of the decision to exercise discretion whether to accept late-submitted claims.

14. Release. Upon the entry of the Court's order for final judgment after the Final Approval Hearing, and as provided in Section 4.1 of the Settlement Agreement, the Class Representatives and all Class Members, whether or not they have filed a Claim Form within the time provided, shall be permanently enjoined and barred from asserting any claims (except through the Claim Form procedures) against Accellion and the Released Parties arising from the Released Claims, and the Class Representatives and all Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

15. Funds Held by Settlement Administrator. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Settlement or further order of the Court.

16. Motion for Service Awards and Fee Award and Costs; Final Approval Motion; Response to Objection(s). At least 35 days before the Objection Deadline, Class Counsel may file a motion for an award of Service Awards to the Class Representatives and for reasonable attorneys' fees, costs, and expenses. No later than 14 days after the Objection Deadline, Class Counsel must file the motion, supporting brief, and supporting documents in support of a request for final approval of the Settlement and the Settlement Benefits, and response(s) to any Objection to the Settlement. Any reply papers must be filed and served no later than 7 days prior to the Final Approval Hearing.

17. Reasonable Procedures. Class Counsel and Accellion's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content

of the Long Form Notice, Summary Notice, and other exhibits that they jointly agree are reasonable or necessary.

18. Extension of Deadlines. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Class. Class Members must check the Settlement Website (www.FTADataBreach.com) regularly for updates and further details regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Class.

19. If Effective Date Does Not Occur. In the event that the Effective Date does not occur, certification shall be automatically vacated and this Preliminary Approval Order, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

IT IS SO ORDERED:

Date: _____, 2022

HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

EXHIBIT E

Court Approved Legal Notice
Case No. 5:21-cv-01353 (N.D. Cal.)

As a Result of the FTA DATA BREACH, You Can Get Cash or Credit Monitoring and Insurance Services to Protect Your Information.

A federal court has authorized this Notice.
This is not a solicitation from a lawyer.

Complete and Return the Claim Form by Month XX, 2022.

www.FTADataBreach.com

1-888-888-8888

Para una notificación en Español, llamar 1-888-888-8888 o visitar nuestro sitio web www.FTADataBreach.com.

Fehlen, et al. v. Accellion, Inc.
P.O. Box _____
_____, __ _____

Forwarding Service Requested

Postal Service: Please do not mark barcode
Claim No.:

[CLAIMANT INFO]

A proposed Settlement for a data breach has been reached with Accellion, Inc. In December 2020 and January 2021, in a criminal cyberattack of file transfer software developed by Accellion and licensed to customers, called File Transfer Appliance ("FTA"), criminals illegally accessed information stored on certain of Accellion's customers' FTA systems. As a result, Personal Information of millions of individuals who are customers, employees, or otherwise affiliated with or conducted business with Accellion's FTA Customers may have been accessed. Impacted Personal Information may have included names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers (SSNs), drivers' license information, tax records, bank account and routing information, and other personally identifying information, as well as information used to process health insurance claims, prescription information, medical records and data, and other personal health information.

Who is Included? If you received this Notice by mail or email, records indicate you are included in this Settlement. The Court decided that a Class Member is all natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their Personal Information may have been compromised in the Attacks.

What does the Settlement Provide? The Settlement establishes an $8.1 million Settlement Fund to be used to pay for Credit Monitoring and Insurance Services, Documented Loss Payments for reimbursement of Documented Losses, or Cash Fund Payments to valid claimants; costs of Notice and administration; Service Awards to the Class Representatives; and a Fee Award and Costs. Also, Accellion has agreed to undertake certain remedial measures and enhanced data security measures. Claimants may select one of the following options, which will be made from the Fund in the following order:

Credit Monitoring and Insurance Services – two years of Credit Monitoring and Insurance Services.

Documented Loss Payments – reimbursement for certain Documented Losses, i.e., money spent or lost, as a result of the FTA Data Breach (up to $10,000), not otherwise reimbursable by insurance or another FTA Customer data breach settlement.

Cash Fund Payments – you may submit a Cash Fund Payment claim for a cash payment, in an amount to be determined consistent with the Settlement, if you do not make a claim for a Documented Loss Payment or Credit Monitoring. An estimated range for the Cash Fund Payment is $15-$50, but this is just an estimate, not a guarantee.

All payments may be increased or reduced pro rata (equal share) depending on the number of Class Members that participate in the Settlement.

How To Get Benefits: You must complete and file a Claim Form online or by mail postmarked by **Month XX, 2022**, including required documentation. You can file your claim online at **www.FTADataBreach.com**. You may also get a paper Claim Form at the website, or by calling the toll-free number, and submit by mail.

Your Other Options. If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month XX, 2022**. If you do not exclude yourself, you will release any claims you may have against Accellion or related parties related to the FTA Data Breach, as more fully described in the Settlement Agreement, available at the settlement website. If you do not exclude yourself, you may object to the Settlement by **Month XX, 2022**.

The Final Approval Hearing. The Court has scheduled a hearing in this case (*Fehlen, et al. v. Accellion, Inc.*, Case No. 5:21-cv-01353 (N.D. Cal.)) for **Month XX, 2022**, to consider: whether to approve the Settlement, Service Awards, a Fee Award and Costs, as well as any objections. You or your attorney may attend and ask to appear at the hearing, but you are not required to do so.

More Information. Complete information about your rights and options, as well as the Claim Form, the Long Form Notice, and Settlement Agreement are available at **www.FTADataBreach.com**, or by calling toll free 1-888-888-8888.

Email Notice

As a Result of the FTA DATA BREACH, You Can Get Cash or Credit Monitoring and Insurance Services to Protect Your Information.

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

Para una notificación en Español, llamar 1-888-888-8888 o visitar nuestro sitio web www.FTADataBreach.com.

Click here to file a claim by Month XX, 2022.

A proposed Settlement for a data breach has been reached with Accellion, Inc. In December 2020 and January 2021, in a criminal cyberattack of file transfer software developed by Accellion and licensed to customers, called File Transfer Appliance ("FTA"), criminals illegally accessed information stored on certain of Accellion's customers' FTA systems. As a result, Personal Information of millions of individuals who are customers, employees, or otherwise affiliated with or conducted business with Accellion's FTA Customers may have been accessed. Impacted Personal Information may have included names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers (SSNs), drivers' license information, tax records, bank account and routing information, and other personally identifying information, as well as information used to process health insurance claims, prescription information, medical records and data, and other personal health information.

Who is Included? If you received this Notice by mail or email, records indicate you are included in this Settlement. The Court decided that a Class Member is all natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their Personal Information may have been compromised in the Attacks.

What does the Settlement Provide? The Settlement establishes an $8.1 million Settlement Fund to be used to pay for Credit Monitoring and Insurance Services, Documented Loss Payments for reimbursement of Documented Losses, or Cash Fund Payments to valid claimants; costs of Notice and administration; Service Awards to the Class Representatives; and a Fee Award and Costs. Also, Accellion has agreed to undertake certain remedial measures and enhanced data security measures. Claimants may select one of the following options, which will be made from the Fund in the following order:

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- **Documented Loss Payments** – reimbursement for certain Documented Losses, i.e., money spent or lost, as a result of the FTA Data Breach (up to $10,000), not otherwise reimbursable by insurance or another FTA Customer data breach settlement.

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The Final Approval Hearing. The Court has scheduled a hearing in this case (*Fehlen, et al. v. Accellion, Inc.*, Case No. 5:21-cv-01353 (N.D. Cal.)) for **Month XX, 2022**, to consider: whether to approve the Settlement, Service Awards, Attorneys' Fees and Costs, as well as any objections. You or your attorney may attend and ask to appear at the hearing, but you are not required to do so.

More Information. Complete information about your rights and options, as well as the Claim Form, the Long Form Notice, and Settlement Agreement are available at **www.FTADataBreach.com**, or by calling toll free 1-888-888-8888.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS FEHLEN, TONY BLAKE, DAVID ARTUSO, TERESA BAZAN, LORRIEL CHHAY, SAMANTHA GRIFFITH, ALLEN CHAO, and AUGUSTA MCCAIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ACCELLION, INC.,

Defendant.

Case No. 5:21-cv-01353-EJD

Hon. Edward J. Davila

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, Plaintiffs and Accellion, Inc. (together, the "Parties") in the above-described class action ("Action") have applied for an order, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, regarding certain matters in connection with a proposed settlement of the Action, in accordance with a Class Action Settlement Agreement and Release (the "Settlement" or "Settlement Agreement") entered into by the Parties as of January 3, 2022 (which, together with its exhibits, is incorporated herein by reference) and dismissing the Action as to Accellion upon the terms and conditions set forth in the Settlement Agreement;

WHEREAS, all defined terms used in this Order have the same meanings as set forth in the Settlement;

WHEREAS, Class Counsel have conducted an extensive investigation into the facts and law relating to the matters alleged in the Action;

WHEREAS, on July 19, 2021, after considerable meet and confer, the Parties engaged in an all-day mediation session before the Honorable Jay C. Gandhi (Ret.) of JAMS. Although that mediation session did not result in a settlement, the Parties attended a second mediation session with Judge Gandhi on September 7, 2021. This mediation session also did not result in a settlement.

WHEREAS, the Parties continued to attempt to resolve their dispute and, following months of additional arm's length negotiations after the second mediation session, the Parties were able to finalize all of the terms of this Settlement; and

WHEREAS, the Court has carefully reviewed the Settlement Agreement, including the exhibits attached thereto and all files, records, and prior proceedings to date in this matter, and good cause appearing based on the record.

NOW THERFORE, IT IS HEREBY ORDERED that:

The Settlement, including the exhibits attached thereto, are preliminarily approved as fair, reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, pending a Final Approval Hearing on the Settlement as provided herein.

1. Stay of the Action. Pending the Final Approval Hearing, all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby stayed.

2. Certification for Settlement Purposes Only. Solely for purposes of effectuating the proposed Settlement, the Court finds, pursuant to Rule 23(e)(1), that the prerequisites for class certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are likely to be found to be satisfied as: (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in this Action is impracticable, (b) there are questions of law and fact that are common to the Settlement Class; (c) Plaintiffs' claims are typical of the claims of the Settlement Class; (d) the interests of all Settlement Class members are adequately represented by Plaintiffs and Class Counsel; (e) the questions of law and fact common to Settlement Class members predominate over any individualized questions of law and fact; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. These findings shall be vacated if the Settlement is terminated or if for any reason the Effective Date does not occur.

3. Class Definition. The Settlement Agreement defines the Settlement Class as: all natural persons who are residents of the United States whose Personal Information was stored on the FTA systems of FTA Customers and was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by an FTA Customer that their Personal Information may have been compromised in the Attacks. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Accellion, its subsidiaries, parent companies, successors, predecessors, and any entity in which Accellion or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

4. Class Representatives. For purposes of the Settlement only, the Court finds and determines, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, that Plaintiffs

Douglas Fehlen, Tony Blake, David Artuso, Teresa Bazan, Lorriel Chhay, Samantha Griffith, Allen Chao, and Augusta McCain will fairly and adequately represent the interests of the Class in enforcing their rights in the Action and appoints them as Class Representatives. The Court preliminarily finds that they are similarly situated to absent Class Members and therefore typical of the Class, and that they will be adequate Class Representatives.

5. Class Counsel. For purposes of the Settlement, the Court appoints Tina Wolfson, Robert Ahdoot, and Andrew W. Ferich of Ahdoot & Wolfson, PC, and Ben Barnow and Anthony Parkhill of Barnow and Associates, P.C. as Class Counsel to act on behalf of the Settlement Class and the Class Representatives with respect to the Settlement. The Court authorizes Class Counsel to enter into the Settlement on behalf of the Class Representatives and the Settlement Class, and to bind them all to the duties and obligations contained therein, subject to final approval by the Court of the Settlement.

6. Administration. The firm of Epiq Class Action and Claims Solutions, Inc. is appointed as Settlement Administrator to administer the notice procedure and the processing of claims, under the supervision of Class Counsel.

7. Class Notice. The Court (a) approves, as to form and content, the proposed Claim Form, Long Form Notice, and the summary notices of the proposed Settlement ("Summary Notice") submitted by the Parties as Exhibits A, D, and E, respectively, to the Settlement Agreement, and (b) finds and determines that emailing (where available) and mailing the Summary Notice, reminder emails to Class Members (if available), and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, along with the internet advertisement publication notice, (i) constitutes the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to submit a claim (if applicable), their right to exclude themselves from the Settlement Class, the effect of the proposed Settlement (including the releases to be provided thereunder), Class Counsel's motion for Service Awards and a Fee Award and Costs, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate, and

sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

The Court further finds that all of the notices are written in simple terminology, and are readily understandable by Class Members. The date and time of the Final Approval Hearing shall be included in all notices before they are disseminated. The Parties, by agreement, may revise the notices in ways that are appropriate to update those notices for purposes of accuracy and clarity, and may adjust the layout of those notices for efficient electronic presentation and mailing. No Class Member shall be relieved from the terms of the proposed Settlement, including the releases provided for thereunder, based solely upon the contention that such Class Member failed to receive adequate or actual notice.

8. Notice Date. The Court directs that the Settlement Administrator cause a copy of the Summary Notice be mailed to all members of the Class who have been identified by Accellion through its records, if any, or provided to the Settlement Adminstrator by FTA Customers. The mailing is to be made via e-mail or by first class United States mail, postage prepaid, no later than the Notice Date, i.e., within 30 days of entry of this Order. Direct notice shall be substantially completed within 21 days of the Notice Date. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement ("Settlement Website").

9. Deadline to Submit Claim Forms. Class Members will have 90 days from the Notice Date to submit their Claim Forms ("Claims Deadline"), which is due, adequate, and sufficient time. By submitting a claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his or her claim and the subject matter of the Settlement.

10. Exclusion from Class. Any person falling within the definition of the Settlement Class may, upon request, be excluded or "opt out" from the Settlement Class. Any such person

who desires to request exclusion from the Settlement Class must submit a fully-completed Request For Exclusion. To be valid, the Request for Exclusion must be (i) submitted electronically on the Settlement Website, or (ii) postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. In the event the Settlement Class members submit a Request for Exclusion to the Settlement Administrator via US Mail, such Request for Exclusion must be in writing and must identify the case name *Fehlen, et al. v. Accellion, Inc.,* U.S.D.C. Case No. 5:21-cv-01353 (N.D. Cal.); state the name, address and telephone number of the Settlement Class members seeking exclusion; be physically signed by the natural person(s) seeking exclusion; and must also contain a statement to the effect that "I/We hereby request to be excluded from the proposed Settlement Class in *Fehlen, et al. v. Accellion, Inc.,* U.S.D.C. Case No. 5:21-cv-01353 (N.D. Cal.)." Any Person who elects to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. No person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs.

11. Final Approval Hearing. A hearing will be held by this Court in the Courtroom of The Honorable Edward J. Davila, United States District Court for the District of the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, Courtroom 4 – 5th Floor, San Jose, California 95113 at _____ __.m. on _____, 2022 ("Final Approval Hearing"), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the Final Approval Order and Judgment should be entered in substance materially the same form as Exhibit B to the Settlement Agreement; (c) whether the Class Representatives' proposed Settlement Benefits as described in Sections 2 and 3 of the Settlement Agreement should be approved as fair, reasonable, and adequate to the Settlement Class; (d) whether to approve the application for Service Awards for the Class Representatives or an award of attorneys' fees and litigation expenses; and (e) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or

adjournment by the Court without further notice to the Settlement Class. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

12. Objections and Appearances. Any Settlement Class Member may comment in support of or in opposition to the Settlement and may do so in writing, in person, or through counsel, at his or her own expense, at the Final Approval Hearing. Except as the Court may order otherwise, no objection to the Settlement shall be heard, and no papers, briefs, pleadings, or other documents submitted by any objector shall be received and considered by the Court unless such objector mails to the Court (c/o the Class Action Clerk, U.S. District Court for the Northern District of California) or files in person at any location of the United States District Court for the Northern District of California a written objection with the caption *Fehlen, et al. v. Accellion, Inc.,* U.S.D.C. Case No. 5:21-cv-01353 (N.D. Cal.), that includes: (i) the Settlement Class member's full name, current mailing address, and telephone number; (ii) a signed statement that he or she believes himself or herself to be a member of the Settlement Class; (iii) whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class, (iv) the specific grounds for the objection; (v) all documents or writings that the Settlement Class member desires the Court to consider; and (vi) a statement regarding whether they (or counsel of their choosing) intend to appear at the Final Approval Hearing. All written objections must be postmarked no later than the Objection Deadline. Any objector who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and forever be barred from making any such objections in the Action or in any other action or proceeding

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Court. The Settlement Administrator shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Settlement Administrator, so long as distribution of the Net Settlement Fund to authorized Claimants for Approved Claims is not materially delayed thereby. No person shall have any claim against Class Counsel or the Settlement Administrator by reason of the decision to exercise discretion whether to accept late-submitted claims.

14. Release. Upon the entry of the Court's order for final judgment after the Final Approval Hearing, and as provided in Section 4.1 of the Settlement Agreement, the Class Representatives and all Class Members, whether or not they have filed a Claim Form within the time provided, shall be permanently enjoined and barred from asserting any claims (except through the Claim Form procedures) against Accellion and the Released Parties arising from the Released Claims, and the Class Representatives and all Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

15. Funds Held by Settlement Administrator. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Settlement or further order of the Court.

16. Motion for Service Awards and Fee Award and Costs; Final Approval Motion; Response to Objection(s). At least 35 days before the Objection Deadline, Class Counsel may file a motion for an award of Service Awards to the Class Representatives and for reasonable attorneys' fees, costs, and expenses. No later than 14 days after the Objection Deadline, Class Counsel must file the motion, supporting brief, and supporting documents in support of a request for final approval of the Settlement and the Settlement Benefits, and response(s) to any Objection to the Settlement. Any reply papers must be filed and served no later than 7 days prior to the Final Approval Hearing.

17. Reasonable Procedures. Class Counsel and Accellion's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content

of the Long Form Notice, Summary Notice, and other exhibits that they jointly agree are reasonable or necessary.

18. Extension of Deadlines. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Class. Class Members must check the Settlement Website (www.FTADataBreach.com) regularly for updates and further details regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Class.

19. If Effective Date Does Not Occur. In the event that the Effective Date does not occur, certification shall be automatically vacated and this Preliminary Approval Order, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

IT IS SO ORDERED:

Date: _____, 2022

HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE