IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

IRMA CARRERA AGUALLO, DROR HERTZ, KELVIN HOLMES, MELISSA ANTONIO, MARY MACARONIS, and GREGGORY VEECH, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

KEMPER CORPORATION and INFINITY INSURANCE COMPANY,

Defendants.

Case No. 1:21-cv-01883

Hon. Martha M. Pacold

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Irma Carrera Aguallo, Dror Hertz, Kelvin Holmes, Mary Macaronis, and Greggory Veech (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, by and through their undersigned counsel, hereby move without opposition for an Order granting final approval of the proposed class action settlement. In support of the instant Motion, Plaintiffs incorporate their concurrently filed Memorandum of Law; the Declaration of Melissa Baldwin; and the individual Declaration of counsel Gary M. Klinger.

Dated: December 23, 2021

Respectfully submitted,

/s/ Gary M. Klinger

Gary M. Klinger
gklinger@masonllp.com
MASON LIETZ & KLINGER LLP
227 W. Monroe Street, Suite 2100
Chicago, Illinois 60606
Tel: (202) 429-2290
Fax: (202) 429-2294

Rachele R. Byrd
byrd@whafh.com
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
750 B Street, Suite 1820
San Diego, California 92101
Tel: (619) 239-4599
Fax: (619) 234-4599

M. Anderson Berry
aberry@justice4you.com
CLAYEO C. ARNOLD, APLC
865 Howe Avenue
Sacramento, California 95825
Tel: (916) 777-7777
Fax: (916) 924-1829

Jean S. Martin
jeanmartin@forthepeople.com
MORGAN & MORGAN COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Tel: (813) 559-4908
Fax: (813) 222-4795

Counsel for Plaintiffs and the Settlement Class

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IRMA CARRERA AGUALLO, DROR HERTZ, KELVIN HOLMES, MELISSA ANTONIO, MARY MACARONIS, and GREGGORY VEECH, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

KEMPER CORPORATION and INFINITY INSURANCE COMPANY,

Defendants.

Case No. 1:21-cv-01883

Honorable Martha M. Pacold

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

TABLE OF CONTENTS

SECTION: **PAGE:**

TABLE OF CONTENTS II

TABLE OF AUTHORITIES IV

I. INTRODUCTION 1

II. SUMMARY OF THE LITIGATION 2

III. THE TERMS OF THE SETTLEMENT AGREEMENT 4

A. Settlement Class 4

B. The Settlement Benefits 4

1. Monetary Benefits for Settlement Class Members 4

2. Remedial Measures Attributable to the Settlement 6

C. Notice and Claims Process 6

1. Notice 6

2. Claims, Objections, and Requests for Exclusion 7

D. Attorneys' Fees, Costs, and Service Awards 7

IV. ARGUMENT 8

A. Certification of the Settlement Class is Appropriate 8

B. The National Class and California Subclass Meet the Requirements of Rule 23(a) 9

1. The Members of the Settlement Class and California Settlement Subclass are so Numerous that Joinder of All of Them is Impracticable. 10

2. Questions of Law and Fact are Common to the Members of the Settlement Classes. 10

3. Plaintiffs' Claims are Typical of the Claims of the Members of the Classes They Represent. 11

4. The Adequacy Requirement is Satisfied. 12

5. The Predominance and Superiority Requirements of Rule 23(b)(3) Are Satisfied. 13

a. Common Questions of Fact and Law Predominate. 13

b. A Class Action is the Superior Method for Resolving These Claims. 15

C. Plaintiffs' Counsel Should Be Appointed as Settlement Class Counsel. 16

D. The Settlement Should be Finally Approved as Fair, Reasonable and Adequate 16

1. The Class Representatives and Settlement Class Counsel have Adequately Represented the Settlement Class. 18

2. The Settlement was Negotiated at Arm's-Length by Vigorous Advocates, and There has been no Fraud or Collusion. 20

3. The Settlement Provides Substantial Relief for the Class. 21

a. The Costs, Risks, and Delay of Trial and Appeal Favor Approval of the Settlement. 23

b. The Method of Providing Relief is Effective. 24

c. The Proposed Award of Attorneys' Fees is Fair and Reasonable. 25

d. There are No Additional Agreements Required to be Identified Under Rule 23(e)(3). 25

4. The Settlement Agreement Treats Class Members Equitably Relative to Each Other. 25

5. The Opinions of Class Counsel, Class Representatives, and Absent Settlement Class Members Favor Approval of the Settlement. 26

V. CONCLUSION 27

TABLE OF AUTHORITIES

CASES: **PAGE(S):**

Amchem Prods. Inc. v. Windsor, 521 U.S. 591 (1997). 8, 9, 13, 15

Armstrong v. Bd. of Sch. Dirs. of Milwaukee, 616 F.2d 305 (7th Cir. 1980). 17, 18

Atkinson v. Minted, Inc., No. 3:20-cv-03869-VC, 2021 WL 2411041 (N.D. Cal. May 14, 2021). 23

Burrows v. Purchasing Power, LLC, No. 1:12-CV-22800, 2013 WL 10167232 (S.D. Fla. Oct. 7, 2013). 9

Cath. Healthcare W. v. U.S. Foodservice Inc., 729 F.3d 108 (2d Cir. 2013). 13

CV Reit, Inc. v. Levy, 144 F.R.D. 690 (S.D. Fla. 1992). 12

D'Amato v. Deutsche Bank, 236 F.3d 78 (2d Cir. 2001). 20

Felzen v. Andreas, 134 F.3d 873 (7th Cir. 1998). 17

G.M. Sign, Inc. v. Finish Thompson, Inc., No. 07 C 5953, 2009 U.S. Dist. LEXIS 73869 (N.D. Ill. Aug. 20, 2009). 19

Gehrich v. Chase Bank USA, N.A., 316 F.R.D. 215 (N.D. Ill. 2016). 22

Grady v. de Ville Motor Hotel, Inc., 415 F.2d 449 (10th Cir. 1969). 21

Hall v. Bank of Am., N.A., No. 1:12-cv-22700, 2014 WL 7184039 (S.D. Fla. Dec. 17, 2014). 27

Hammond v. The Bank of N.Y. Mellon Corp., No. 08 Civ. 6060(RMB)(RLE), 2010 WL 2643307 (S.D.N.Y. June 25, 2010). 23

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998). 22

Hapka v. CareCentrix, Inc., No. 2:16-cv-02372-KGG, 2018 WL 1871449 (D. Kan. Feb. 15, 2018). 14

Hinman v. M & M Rental Ctr., 545 F. Supp. 2d 802 (N.D. Ill. 2008). 12

In re Anthem, Inc. Data Breach Litig., 327 F.R.D. 299 (N.D. Cal. Aug. 15, 2018). 14

In re AT & T Mobility Wireless Data Servs. Sales Litig., 270 F.R.D. 330 (N.D. Ill. 2010). .. 17, 21

In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.,
No. 3:08-MD-01998, 2009 WL 5184352 (W.D. Ky. Dec. 22, 2009). 11

In re Domestic Air Transp. Antitrust Litig., 148 F.R.D. 297 (N.D. Ga. 1993). 26

In re Equifax, Inc. Customer Data Sec. Breach Litig.,
No. 1:17-md-2800-TWT (N.D. Ga. July 25, 2019). 9

In re Hannaford Bros. Co. Customer Data Sec. Breach Litig., 293 F.R.D. 21 (D. Me. 2013). ... 24

In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.,
851 F. Supp. 2d 1040 (S.D. Tex. 2012). 9, 15

In re Mex. Money Transfer Litig., 164 F. Supp. 2d 1002 (N.D. Ill. 2000). 27

In re Northfield Labs., Inc. Sec. Litig., No. 06 C 1493,
2012 WL 366852 (N.D. Ill. Jan. 31, 2012). 17

In re Sears, Roebuck & Co. Front-loading Washer Prods. Liab. Litig.,
No. 06 C 7023, 2016 WL 772785 (N.D. Ill. Feb. 29, 2016). 18

In re Target Corp. Customer Data Sec. Breach Litig., 309 F.R.D. 482 (D. Minn. 2015). 9

In re The Home Depot, Inc., Customer Data Sec. Breach Litig.,
No. 1:14-md-02583-TWT, 2016 WL 6902351 (N.D. Ga. Aug. 23, 2016). 14

In re TikTok, Inc., Consumer Priv. Litig., MDL No. 3948,
2021 WL 4478403 (N.D. Ill. Sept. 30, 2021). 8, 12

Isby v. Bayh, 75 F.3d 1191 (7th Cir. 1996). 17

Johnson v. Brennan, No. 10-4712, 2011 WL 1872405 (S.D.N.Y. May 17, 2011). 20

Karpilovsky v. All Web Leads, Inc., No. 17 C 1307,
2018 WL 3108884 (N.D. Ill. June 25, 2018). 10, 19

Keele v. Wexler, 149 F.3d 589 (7th Cir. 1998). 12

Lipuma v. Am. Express Co., 406 F. Supp. 2d 1298 (S.D. Fla. 2005). 9

McCabe v. Crawford & Co., 210 F.R.D. 631 (N.D. Ill. 2002). 10

Milliron v. T-Mobile USA, Inc., No. 08-4149, 2009 WL 3345762 (D.N.J. Sept. 14, 2009)......... 20

Oshana v. Coca-Cola Co., 472 F.3d 506 (7th Cir. 2006). 12

Parker v. Risk Mgmt. Alts., Inc., 206 F.R.D. 211 (N.D. Ill. 2002). 11

Retired Chi. Police Ass'n v. City of Chi., 7 F.3d 584 (7th Cir. 1993). 12

Roach v. T.L. Cannon Corp., 778 F.3d 401 (2d Cir. 2015). 13

Sandoval v. Tharaldson Emp. Mgmt., Inc., No. 08-482,
2010 WL 2486346 (C.D. Cal. June 15, 2010). 20

Savanna Grp., Inc. v. Trynex, Inc., No. 10-cv-7995, 2013 WL 66181 (N.D. Ill. 2013).............. 10

Spates v. Roadrunner Transp. Sys., Inc., No. 15 C 8723,
2016 WL 7426134 (N.D. Ill. 2016). 11

Steele v. GE Money Bank, No. 1:08-CIV-1880,
2011 WL 13266350 (N.D. Ill. May 17, 2011). 20, 21

Steele v. GE Money Bank, No. 1:08-CIV-1880,
2011 WL 13266498 (N.D. Ill. June 1, 2011). 20

Synfuel Techs, Inc. v. DHL Express (USA), Inc., 463 F.3d 646 (7th Cir. 2006).......................... 21

Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036 (2016). 14

Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011). 10, 13

Wright v. Nationstar Mortg. LLC, No. 14 C 10457,
2016 WL 4505169 (N.D. Ill. Aug. 29, 2016). 20, 21, 24

STATUTES: **PAGE(S):**

California Consumer Privacy Act ("CCPA"),
Cal. Civ. Code §§ 1798.100, *et seq.* (2018)... 22, 23, 26

OTHER AUTHORITIES: **PAGE(S):**

2 *McLaughlin on Class Actions* § 6:7 (8th ed. 2011). 20

4 *Newberg on Class Actions* § 11.41 (4th ed. 2002).. 17

7AA C. Wright, A. Miller, & M. Kane,
Federal Practice and Procedure § 1778 (3d ed. 2005)... 14

Manual for Complex Litig. § 21.632 (4th ed. 2004). 8

Newberg on Class Actions § 11:50. 21

RULES: **PAGE(S):**

Fed. R. Civ. P. 12(b)(6).. 24

Fed. R. Civ. P. 23(a) ....passim

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

Fed. R. Civ. P. 23(c). 25

Fed. R. Civ. P. 23(e) ....passim

Fed. R. Civ. P. 23(g). 16

Fed. R. Civ. P. 23. .... 10, 11, 16

Fed. R. Civ. P. 56. 24

On October 14, 2021, Plaintiffs Irma Carrera Aguallo, Dror Hertz, Kelvin Holmes, Mary Macaronis, and Greggory Veech (collectively, "Plaintiffs") moved for preliminary approval of the proposed class action settlement and for certification of the Settlement Class in the above captioned action ("Prelim. Approval Mot."). ECF No. 35. The Court preliminarily approved the settlement on October 27, 2021, finding that the terms of the settlement were "fair, reasonable, and adequate" and that the Class should be given notice. ECF No. 43 ("Prelim. Approval Order").

Plaintiffs now move for final approval of the settlement and for certification of the Settlement Class. As set forth in the Declaration of Melissa Baldwin Regarding Notice to the Class ("Baldwin Declaration" or "Baldwin Decl."), the Claims Administrator, RG/2, implemented an extensive Court-approved Notice Program with direct notice of the settlement delivered by email to the valid email addresses in Defendants' possession and via U.S. first-class mail otherwise. As further set forth in the Baldwin Declaration, although the claims, opt-out and objection deadlines have not yet passed, the response from the Settlement Class has been positive: to date RG/2 has received more than 500 claims, no opt-outs and no objections. *See* Baldwin Decl. ¶¶ 12–13.

I. <u>INTRODUCTION</u>

The present case arises out of two separate data security incidents (the "Data Incidents") that allegedly compromised the personal and private identifying information of over six million of Defendants' employees and/or customers. Plaintiffs, individually and on behalf of the Settlement Class (as defined below), filed suit against Defendants Kemper Corporation and Infinity Insurance Company (collectively, "Defendants" and, together with Plaintiffs, the "Parties"), alleging Defendants failed to adequately protect their personal and private information. Throughout the pendency of the litigation, Defendants have denied allegations of wrongdoing and liability and asserted defenses to the individual and representative claims.

As discussed in detail in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Unopposed Motion For Preliminary Approval Of Class Action Settlement (ECF No. 35-1), the settlement is fair, reasonable, and adequate, and represents an excellent result for the Settlement Class. Through mediation and extensive negotiations, the Parties reached an agreement that provides for significant monetary and equitable relief for the Settlement Class. All 6,151,872 Settlement Class Members will be provided automatic access to 18-months of credit monitoring and financial services. Additionally, every Settlement Class Member has the opportunity to make a claim for up to $10,000 in reimbursements for out-of-pocket losses, including for up to six hours in lost time. An additional benefit in the form of a cash payment of up to $50 is available for each California Settlement Subclass Member.

If approved, the settlement will resolve all claims arising out of the Data Breach and will provide Class Members with the precise relief this action was filed to obtain. In light of the current pandemic that has upended the lives and finances of so many, immediate relief is now more valuable than ever. Accordingly, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Settlement Agreement, Plaintiffs respectfully request that the Court enter an Order granting final approval of the settlement and finally certifying the Settlement Class.

II. SUMMARY OF THE LITIGATION

Plaintiffs allege that on December 14, 2020 and March 25, 2021, respectively, Defendants were the targets of two separate security incidents in which an unauthorized user accessed Defendants' network and computer systems, and which resulted in unauthorized access of personal information (the "Project K Data Incident" and "Scraping Incident," respectively, or collectively, the "Data Incidents"). *See* Decl. of Gary Klinger ¶ 23, filed concurrently herewith ("Klinger Decl."). Plaintiffs allege that, as a result of the Data Incidents, an unauthorized user gained access

to Plaintiffs' and Defendants' customers', current and former employees' and agents' personally identifiable information, including, but not limited to, names, addresses, Social Security numbers ("SSN"), driver's license numbers, medical leave information, and/or workers' compensation claim information (collectively, "PII"). *Id.* ¶ 24.

On April 8, 2021, Plaintiffs Carrera Aguallo, Hertz, and Holmes brought suit against Defendants related to claims arising from the Project K Data Incident. *Id.* ¶ 29. Plaintiff Antonio filed a separate, related action on April 9, 2021. *Id.* ¶ 30. Counsel for Plaintiffs thereafter learned that Plaintiff Macaronis also intended to file suit. *Id.* ¶ 31. Instead of continuing to litigate on separate but parallel tracks, counsel for Plaintiffs convened with counsel for Defendants and agreed to file a Consolidated Amended Complaint. *Id.* ¶ 32. On April 19, 2021, Plaintiffs Carrera Aguallo, Hertz, Holmes, Antonio and Macaronis filed their consolidated Amended Class Action Complaint, followed shortly by a Second Amended Class Action Complaint. *Id.* ¶¶ 27–29; ECF Nos. 2, 21. On September 3, 2021, Plaintiffs filed their Third Amended (and operative) Class Action Complaint, adding Plaintiff Veech as an additional named Plaintiff in connection with the Scraping Incident. Klinger Decl. ¶ 36; ECF No. 30.

Recognizing the risks of protracted litigation, the Parties engaged in settlement negotiations. *Id.* ¶ 41. To facilitate their negotiations, they agreed to use experienced mediator Rodney A. Max of Upchurch Watson White & Max. *Id.* ¶ 42. On July 12, 2021, the Parties attended a full-day mediation via Zoom with Mr. Max. While the Parties made significant progress toward resolving the case, a few issues remained. *Id.* ¶ 43. On July 30, 2021, the Parties participated in a second full-day mediation, this time with mediator Bennett Picker of Stradley Ronan Stevens & Young. *Id.* ¶ 44. Following the second mediation, the Parties were able to reach an agreement on all central settlement terms and execute a term sheet. *Id.* ¶ 45. Over the next eight to ten weeks,

the Parties continued negotiating the finer points of and drafting the Settlement Agreement and Notice and Claim Forms, and Plaintiffs drafted the Motion for Preliminary Approval for presentment to the Court. *Id.* ¶ 47.

III. THE TERMS OF THE SETTLEMENT AGREEMENT

A. Settlement Class

The settlement provides for a nationwide Settlement Class as well as a California Settlement Subclass with definitions that mirror those in the operative complaint:

> **The Settlement Class**: all natural persons residing in the United States who were sent notice letters notifying them that their PII was compromised in the Data Incidents announced by Defendants on or about March 16, 2021 and on or about May 25, 2021.
>
> **The California Settlement Subclass**: all natural persons residing in the State of California who were sent notice letters notifying them that their PII was compromised in the Data Incidents announced by Defendants on or about March 16, 2021 and on or about May 25, 2021.

Id. ¶¶ 52–53. As defined, the Settlement Class and California Settlement Subclass include individuals affected by both the Project K Incident and the Scraping Incident. *Id.* ¶ 54.

B. The Settlement Benefits

The settlement provides for both monetary and equitable relief.

1. Monetary Benefits for Settlement Class Members

There are three types of monetary relief provided for by the Settlement Agreement. First, upon final approval of the Settlement Agreement, all 6,151,872 Settlement Class Members will be provided ***automatic*** access to Aura's Financial Shield Services for a period of 18 months from the Effective Date of the settlement ***without the need to submit a Settlement Claim***. *Id.* ¶ 55. Each Settlement Class Member received a unique code with the Short Form Notice to be used to enroll directly with Aura Financial Shield. *Id.* ¶ 56. Upon the Effective Date of the settlement, Settlement

Class Members may enroll at any point during the 18-month period for the duration of the 18-month period.[1] *Id.*

Second, Settlement Class Members who submit a valid and timely Claim Form may receive compensation for "Out-of-Pocket Losses" and "Lost-Time Losses." *Id.* ¶ 57. While there is an individual cap of $10,000 per person on Out-of-Pocket Losses, there is no cap in the aggregate, meaning if every Settlement Class Member submitted a valid claim for $10,000 in Out-of-Pocket Losses, the Settlement Agreement would require every Settlement Class Member be paid. *Id.* ¶ 58.

Settlement Class Members can also claim up to six hours in lost time spent dealing with the effects of the Data Incidents, referred to as "Lost-Time Losses." *Id.* ¶ 60. Three hours of lost time can be claimed at $18 per hour with a simple attestation and brief description of the activities performed during that time. *Id.* An additional three hours of Lost-Time Losses can be claimed with documented evidence of the lost time. *Id.* Documented lost time will be paid at $18 per hour; however, if Settlement Class Members missed work in order to address the Data Incidents, Settlement Class Members can be reimbursed at the rate of documented compensation up to $50 per hour. *Id.*

Third, California Subclass Members can make a claim for an additional cash payment of $50. *Id.* ¶ 61.

The total of California Subclass Claimed Benefits and Lost-Time Losses is capped at $4,000,000. *Id.* ¶ 62. If the total of California Subclass Claimed Benefits and Lost-Time Losses

---

[1] Importantly, among the many benefits all Settlement Class Members will receive from the Aura Financial Shield is a $1 million insurance policy for financial theft. So, even if Settlement Class Members do not make a monetary claim now, they will still be covered up to $1,000,000 for any stolen funds if they are a victim of financial fraud during the life of the policy.

exceeds $4,000,000, then the claims for Lost Time Losses and each California Claim will be reduced *pro rata* until the total is no higher than $4,000,000. *Id.* ¶ 62.

2. Remedial Measures Attributable to the Settlement

In addition to the monetary benefits described, as part of the settlement, Defendants have agreed to equitable relief in the form of changes to Defendants' business practices to adequately secure their systems and environments, not limited to the network and/or servers that were used to store certain data and were subject to the Data Incidents. *Id.* ¶ 63. The changes are listed in Exhibit E to the Motion for Preliminary Approval and were filed under seal.

C. Notice and Claims Process

1. Notice

On October 27, 2021, the Court appointed RG/2 Claims Administration LLC ("RG/2") as the Claims Administrator. ECF No. 43. On November 26, 2021, RG/2 commenced the Notice Program. Baldwin Decl. ¶¶ 5–8. The Notice Program included providing notice to the Settlement Class via email to the email addresses in Defendants' possession. *Id.* ¶ 8. Where the Short-Form Notice was undeliverable via email or where an email address was not available, the Short-Form Notice was sent via first-class mail to the address in Defendant's possession. Prior to mailing, addresses were run through the National Change of Address database. *Id.* ¶¶ 10–11. Short Notices returned with forwarding addresses were forwarded, and those returned with no forwarding address were resent to any valid address found after performing a skip trace. *Id.*

The Claims Administrator also created a Settlement Website, which RG/2 is maintaining and updating throughout the claim period, with the Long Form Notice and Claim Form approved by the Court, as well as the Settlement Agreement, and the Third Amended Complaint. *Id.* ¶ 5. Settlement Class Members are able to submit claim forms through the Settlement Website. *Id.*

Finally, the link to the Settlement Website is posted on Defendants' own websites, https://www.kemper.com/Settlement and https://www.infinityauto.com.

Defendants agreed to pay all costs associated with providing Class Notice and Settlement Administration. Klinger Decl. ¶ 69. Such payment is in addition to and in no way affects the amount of settlement consideration available to Settlement Class Members. *Id.*

2. Claims, Objections, and Requests for Exclusion

The Notice Program advised Settlement Class Members of their rights to object to or opt out of the settlement and directed Settlement Class Members to the Settlement Website for more information. The Long-Form Notice provided instructions for Settlement Class Members to exclude themselves from the Settlement Class. The Long-Form Notice also provided instructions for Settlement Class Members to object to the settlement and/or to Settlement Class Counsel's application for attorneys' fees, costs, and expenses. Baldwin Decl. at Ex. A. The claims process was structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object. *Id.* ¶ 70.

The exclusion and objection deadline is January 25, 2022. To date, no objections have been filed and RG/2 has received no requests for exclusion.[2] Baldwin Decl. ¶¶ 12–13.

D. Attorneys' Fees, Costs, and Service Awards

Simultaneously with this Motion, Plaintiffs will move for Attorneys' Fees, Costs, and Service Awards. Plaintiffs will request a total for both attorneys' fees and expenses of $2,500,000. Plaintiffs will also request a service award for each of the Representative Plaintiffs in the amount

[2] The Parties will provide the Court with an update on the number of exclusions and opt outs, if any, prior to the Final Approval Hearing.

of $1,500. Attorneys' fees, costs, expenses, and the service awards were negotiated only after all substantive terms of the settlement were agreed upon by the Parties.

IV. ARGUMENT

A. Certification of the Settlement Class is Appropriate

This Court provisionally certified the Settlement Class for settlement purposes in its Preliminary Approval Order finding that the Settlement Class meets the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a), and the predominance requirement of Rule 23(b). *See* ECF No. 43; Fed. R. Civ. P. 23(a)(1)–(4), (b)(3); *Manual for Complex Litig.* § 21.632 (4th ed. 2004); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Since that time, there have been no developments that would alter this conclusion. Based on the facts and arguments stated herein and for the reasons set forth in Plaintiff's Preliminary Approval Motion, the Settlement Class should now be finally certified for settlement purposes.

Where (as in this case) final certification is sought under Rule 23(b)(3), the plaintiff must demonstrate that common questions of law or fact predominate over individual issues and that a class action is superior to other methods of adjudicating the claims. Fed. R. Civ. P. 23(b)(3); *Amchem*, 521 U.S. at 615–16. District courts are given broad discretion to determine whether certification of a class action lawsuit is appropriate. *In re TikTok, Inc., Consumer Priv. Litig.*, MDL No. 3948, 2021 WL 4478403, at *5 (N.D. Ill. Sept. 30, 2021) (slip copy) (internal citations omitted).

Because a court evaluating certification of a settled class action is considering certification only in the context of settlement, the court's evaluation is somewhat different than in a case that has not yet settled. *Amchem*, 521 U.S. at 620. In some ways, the court's review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the

case management issues inherent in the ascertainable class determination need not be confronted. *See id.* "[A] class may be certified 'solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.'" *Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 WL 10167232, at *1 (S.D. Fla. Oct. 7, 2013) (quoting *Lipuma v. Am. Express Co*., 406 F. Supp. 2d 1298, 1314 (S.D. Fla. 2005)). "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620.

Courts regularly certify class actions for settlement. In fact, courts have certified similar data breach cases—on a national basis—including the record-breaking settlement in *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT (N.D. Ga. July 25, 2019). *See, also, e.g.*, *In re Target Corp. Customer Data Sec. Breach Litig.*, 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig*., 851 F. Supp. 2d 1040 (S.D. Tex. 2012). The Court should similarly certify the Settlement Class as it meets all of the Rule 23(a) and (b)(3) prerequisites, and for the reasons set forth below, certification is appropriate.

B. The National Class and California Subclass Meet the Requirements of Rule 23(a)

Rule 23(a) sets out four specific prerequisites to class certification: (1) the class must be so numerous that joinder of all members is impracticable; (2) there must be questions of law and fact common to the class; (3) the claims or defenses of the class representatives must be typical of the claims or defenses of the class; and (4) the representative parties must fairly and adequately protect the interests of the class. Further, under Rule 23(b)(3), the Court must find that common questions of law or fact predominate over any questions affecting only individual members, and that a class

action is superior to other available methods for the fair and efficient adjudication of the controversy.

1. The Members of the Settlement Class and California Settlement Subclass are so Numerous that Joinder of All of Them is Impracticable.

Rule 23(a) requires that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "A class of forty generally satisfies the numerosity requirement." *See Savanna Grp., Inc. v. Trynex, Inc.*, No. 10-cv-7995, 2013 WL 66181, at *4 (N.D. Ill. 2013). Here, there are approximately 6,151,872 Settlement Class Members. Joinder, therefore, is clearly impracticable, and the Settlement Class thus easily satisfies Rule 23's numerosity requirement. *See, e.g.*, *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at *6 (N.D. Ill. June 25, 2018) (class of 40 or more is sufficient); *McCabe v. Crawford & Co.*, 210 F.R.D. 631, 643 (N.D. Ill. 2002) (same).

2. Questions of Law and Fact are Common to the Members of the Settlement Classes.

The second prerequisite to class certification is commonality, which "requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" and the plaintiff's common contention "must be of such a nature that it is capable of class-wide resolution–which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2545 (2011) (citation omitted). "[F]or purposes of Rule 23(a)(2) even a single common question will do." *Id.* at 2556.

Here, commonality is readily satisfied because the circumstances of each particular class member retain a common core of factual or legal issues with the rest of the class, regardless of whether the individual is a member of the Settlement Class or both the Settlement Class and the California Settlement Subclass. Plaintiffs' claims center on whether Defendants failed to

adequately safeguard the records of Plaintiffs and other Settlement Class Members. For example, issues common to all Class and Subclass Members include:

- Whether Defendants owed and breached a duty to exercise due care in collecting, storing, and/or safeguarding their PII;
- Whether Defendants knew or should have known that they may not have employed reasonable measures to keep the PII of Plaintiffs and Settlement Class Members secure; and
- Whether Defendants violated the law by failing to promptly notify Plaintiffs and members of the Classes that their PII had been compromised.

These common questions, and others alleged by Plaintiffs in their operative complaint, are central to the causes of action brought here and can be addressed on a class-wide basis, because they all tie back to the same common nucleus of operative fact—the Data Incidents and Defendants' data protection measures. *See Parker v. Risk Mgmt. Alts., Inc.*, 206 F.R.D. 211, 213 (N.D. Ill. 2002) ("[A] common nucleus of operative fact is usually enough to satisfy the [commonality] requirement"); *see also In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) ("All class members had their private information stored in Countrywide's databases at the time of the data breach") Thus, Plaintiffs have met the commonality requirement of Rule 23.

3. Plaintiffs' Claims are Typical of the Claims of the Members of the Classes They Represent.

"Rule 23(a) further requires that 'the claims or defenses of the representative parties are typical of the claims or defenses of the class.'" *Spates v. Roadrunner Transp. Sys., Inc.*, No. 15 C 8723, 2016 WL 7426134, at *2 (N.D. Ill. 2016). "A claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and . . . [the]

claims are based on the same legal theory." *Id.* (quoting *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 513 (7th Cir. 2006)). Put another way, where the defendant engages "in a standardized course of conduct vis-a-vis the class members, and plaintiffs' alleged injury arises out of that conduct," typicality is "generally met." *Hinman v. M & M Rental Ctr.*, 545 F. Supp. 2d 802, 806–07 (N.D. Ill. 2008) (citing, *e.g.*, *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998)).

Here, the typicality requirement is satisfied for the same reasons that Plaintiffs' claims meet the commonality requirement. Specifically, Plaintiffs' claims are typical of those of other Settlement Class Members because they arise from the Data Breach. They are also based on the same legal theory, *i.e.*, that Defendants had a legal duty to protect Plaintiffs' and Settlement Class Members' PII. Because there is a "sufficient nexus" between the Plaintiffs' claims and the claims of Settlement Class Members, the typicality requirement is satisfied.

4. The Adequacy Requirement is Satisfied.

The test for evaluating adequacy of representation under Rule 23(a)(4) has two components: (1) "the representatives must not possess interests which are antagonistic to the interests of the class," and (2) "the representatives' counsel must be qualified, experienced and generally able to conduct the proposed litigation." *In re TikTok, Inc. Consumer Priv. Litig.*, 2021 WL 4478403, at *7 (quoting *CV Reit, Inc. v. Levy*, 144 F.R.D. 690, 698 (S.D. Fla. 1992)); *Retired Chi. Police Ass'n v. City of Chi.,* 7 F.3d 584, 598 (7th Cir. 1993). Here, the Class Representatives and Settlement Class Counsel meet the test of adequacy.

First, there is no conflict between Plaintiffs and the Settlement Class Members. Plaintiffs are members of the Settlement Class and do not possess any interests antagonistic to the Settlement Class. Plaintiffs were harmed in the same way as all Settlement Class Members when Defendants failed to adequately secure their PII. Plaintiffs and all Settlement Class and California Settlement

Subclass Members seek relief for injuries arising out of the same Data Incidents. In light of this common event and injury, the named Plaintiffs have every incentive to vigorously pursue the class claims and have prosecuted this case for the benefit of all Settlement Class Members.

Further, Settlement Class Counsel are qualified to represent the Class. They have extensive experience in data privacy and consumer class actions. *See* Klinger Decl. ¶¶ 3–11. Contemporaneously with this filing, Settlement Class Counsel have submitted declarations demonstrating their skills and experience. *See also* ECF No. 35. The results obtained by this settlement confirm counsel's adequacy.

5. The Predominance and Superiority Requirements of Rule 23(b)(3) Are Satisfied.

In addition to meeting the prerequisites of Rule 23(a), the proposed Settlement Class must also meet one of the three requirements of Rule 23(b). Here, Plaintiffs seek certification under Rule 23(b)(3), which requires that "questions of law or fact common to class members predominate over any questions affecting only individual members," and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

a. Common Questions of Fact and Law Predominate.

Rule 23(b)(3)'s predominance requirement focuses primarily on whether a defendant's liability is common enough to be resolved on a class basis, *see Dukes*, 131 S. Ct. at 2551–57, and whether the proposed class is "sufficiently cohesive to warrant adjudication by representation," *Amchem*, 521 U.S. at 623. "Predominance is satisfied if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015) (quoting *Cath. Healthcare W. v. U.S. Foodservice Inc.*, 729 F.3d 108, 118 (2d Cir. 2013) (internal quotation

marks omitted)). "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) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (quoting 7AA C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 1778, 123–124 (3d ed. 2005)).

In this case, the key predominating questions are whether Defendants had a duty to exercise reasonable care in safeguarding, securing, and protecting the PII of Plaintiffs and the Settlement Class, and whether Defendants breached that duty. The common questions that arise from Defendants' conduct predominate over any individualized issues. Other courts have recognized that the types of common issues arising from data breaches predominate over any individualized issues. *See, e.g.*, *In re Anthem, Inc. Data Breach Litig*., 327 F.R.D. 299, 312–315 (N.D. Cal. Aug. 15, 2018) (finding predominance was satisfied because "Plaintiffs' case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect Plaintiffs' personal information," such that "the claims rise or fall on whether [the defendant] properly secured the stolen personal information," and that these issues predominated over potential individual issues); *see also Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case, stating "[t]he many common questions of fact and law that arise from the E-mail Security Incident and [Defendant's] alleged conduct predominate over any individualized issues"); *In re The Home Depot, Inc., Customer Data Sec. Breach Litig*., No. 1:14-md-02583-TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members' personal and financial information, whether it

had a legal duty to do so, and whether it failed to timely notify class members of the data breach); *In re Heartland*, 851 F. Supp. 2d at 1059 (finding predominance satisfied in data breach case despite variations in state laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class). Thus, this case meets the requirement of predominance.

b. A Class Action is the Superior Method for Resolving These Claims.

Finally, a class action is superior to other methods available to fairly, adequately, and efficiently resolve the claims of the proposed Settlement Class. Because the claims are being certified for purposes of settlement, there are no issues with manageability, and resolution of thousands of claims in one action is far superior to individual lawsuits. *Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.").

The resolution of millions of claims in one action is far superior to litigation via individual lawsuits because it promotes consistency and efficiency of adjudication. *See* Fed. R. Civ. P. 23(b)(3). Indeed, absent class treatment in the instant case, each Settlement Class Member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating millions of individual data breach cases arising out of the *same* Data Incidents.

The common questions of fact and law that arise from Defendants' conduct predominate over any individualized issues, a class action is the superior vehicle by which to resolve these issues, and the requirements of Rule 23(b)(3) are met. Accordingly, the Court should finally certify the Settlement Class for settlement purposes.

C. Plaintiffs' Counsel Should Be Appointed as 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, the court must consider 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).

As discussed herein, and as fully explained in Mr. Klinger's Declaration, proposed Settlement Class Counsel have extensive experience prosecuting similar class actions and other complex litigation. *Id.* ¶¶ 2–12, 83. The proposed Settlement Class Counsel have diligently investigated and efficiently prosecuted the claims in this matter, dedicated substantial resources toward the endeavor, and have successfully and fairly negotiated the settlement of this matter to the benefit of Plaintiffs and the Settlement Class. *Id.* ¶¶ 13, 19–50. Accordingly, Plaintiffs request that the Court appoint Gary M. Klinger of Mason Lietz & Klinger LLP, Rachele R. Byrd of Wolf Haldenstein Adler Freeman & Herz LLP, and Jean S. Martin of Morgan & Morgan Complex Litigation Group as Settlement Class Counsel.

D. The Settlement Should be Finally Approved as Fair, Reasonable and Adequate

As the Seventh Circuit has recognized, federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs,

delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain:

> It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

Armstrong v. Bd. of Sch. Dirs. of Milwaukee, 616 F.2d 305, 312–13 (7th Cir. 1980) (citations and quotations omitted), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *see also Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."); 4 *Newberg on Class Actions* § 11.41 (4th ed. 2002) (citing cases).

Under Rule 23(e) of the Federal Rules of Civil Procedure, a class-action settlement may be approved if the settlement is "fair, reasonable, and adequate." *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 345 (N.D. Ill. 2010). "Approval of a class action settlement is a two-step process." *In re Northfield Labs., Inc. Sec. Litig.*, No. 06 C 1493, 2012 WL 366852, at *5 (N.D. Ill. Jan. 31, 2012) (citing *In re AT & T Mobility*, 270 F.R.D. at 346 (quoting *Armstrong*, 616 F.3d at 314)). "First, the court holds a preliminary, pre-notification hearing to consider whether the proposed settlement falls within a range that could be approved." *Id*. "If the court preliminarily approves the settlement, the class members are notified." *Id*.

On October 27, 2021, this Court preliminarily found the settlement to be fair, adequate, and reasonable. ECF No. 43. This Court ordered that the notice process commence and set a final fairness hearing for March 15, 2022. *Id.*

Where, as here, the proposed settlement would bind class members, it may only be finally approved after the fairness hearing and a finding that the settlement is fair, reasonable, and adequate, based on the following factors:

> (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 attorneys' 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). As explained below, consideration of the relevant factors supports finally approving the settlement.

1. The Class Representatives and Settlement Class Counsel have Adequately Represented the Settlement Class.

By their very nature, because of the many uncertainties of outcome, difficulties of proof, and lengthy duration, class actions readily lend themselves to compromise. Indeed, there is an "overriding public interest in favor of settlement," particularly in class actions that have the well-deserved reputation as being most complex. *In re Sears, Roebuck & Co. Front-loading Washer Prods. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at *6 (N.D. Ill. Feb. 29, 2016); *Armstrong*, 616 F.2d at 313 ("In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources."). This matter is no exception.

Here, the Parties entered into the settlement only after both sides were fully apprised of the facts, risks, and obstacles involved with protracted litigation. *See* Klinger Decl. ¶¶ 19–50. At the outset of their investigation, Settlement Class Counsel conducted extensive research regarding the Plaintiffs' claims, Defendants, and the Data Incidents. *Id.* The culmination of that process led to an agreement by the Parties to mediate the case with respected mediator Rodney A. Max, and later to engage in a second mediation with the assistance of experienced mediator Bennett Picker *Id.* ¶¶ 42–44. Prior to the first mediation, the Parties fully briefed the relevant issues, and Defendants produced nearly 1,000 pages of documents. *Id.* ¶ 42. Even after reaching an agreement on the central terms at the second mediation, the Parties spent months fully negotiating the finer points of the Settlement Agreement. *Id.* ¶ 47. As such, and considering counsel's extensive experience in data breach litigation (*see, e.g.*, Klinger Decl. ¶¶ 2–112), the Parties were able to enter into settlement negotiations with a full understanding of the strengths and weaknesses of the case, as well as the potential value of the claims.

In addition, the adequacy of representation requirement is satisfied because Plaintiffs' interests are coextensive with, and not antagonistic to, the interests of the Settlement Class. *See G.M. Sign, Inc. v. Finish Thompson, Inc.*, No. 07 C 5953, 2009 U.S. Dist. LEXIS 73869, at *15–16 (N.D. Ill. Aug. 20, 2009). Here, as discussed *supra*, the Plaintiffs' claims are aligned with the claims of the other Settlement Class Members. They thus have every incentive to vigorously pursue the claims of the Class, as they have done to date by remaining actively involved in this matter since its inception, participating in the pre-suit litigation process, and involving themselves in the settlement process. Further, Plaintiffs retained qualified and competent counsel with extensive experience in litigating consumer class actions, and privacy actions in particular. *See, e.g.*, *Karpilovsky*, 2018 WL 3108884, at *8.

2. The Settlement was Negotiated at Arm's-Length by Vigorous Advocates, and There has been no Fraud or Collusion.

"A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion." 2 *McLaughlin on Class Actions* § 6:7 (8th ed. 2011); *see also Steele v. GE Money Bank*, No. 1:08-CIV-1880, 2011 WL 13266350, at *4 (N.D. Ill. May 17, 2011), *report and recommendation adopted*, No. 1:08-CIV-1880, 2011 WL 13266498 (N.D. Ill. June 1, 2011) ("the involvement of an experienced mediator is a further protection for the class, preventing potential collusion"); *Wright v. Nationstar Mortg. LLC*, No. 14 C 10457, 2016 WL 4505169, at *11 (N.D. Ill. Aug. 29, 2016) (similar).[3]

Here, the settlement resulted from good faith, arm's-length settlement negotiations over many months, including a mediation session with respected mediator Rodney A. Max of Upchurch Watson White & Max, and a second mediation with a likewise respected mediator Bennett Picker of Stradley Ronan Stevens & Young. Klinger Decl. ¶¶ 42–45. Plaintiffs and Defendants put together detailed mediation submissions setting forth their views as to the strengths of their claims and defenses, respectively, and Defendants produced nearly a thousand pages of documents. *Id.* ¶ 42. At all times, the settlement negotiations were highly adversarial, non-collusive, and at arm's length. *Id.* ¶ 44. By the end of the second full-day mediation, the Parties reached an agreement on

[3] *See also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) ("[A] mediator[ ] helps to ensure that the proceedings were free of collusion and undue pressure."); *Johnson v. Brennan*, No. 10-4712, 2011 WL 1872405, at *1 (S.D.N.Y. May 17, 2011) (The participation of an experienced mediator "reinforces that the Settlement Agreement is non-collusive."); *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, No. 08-482, 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."); *Milliron v. T-Mobile USA, Inc.*, No. 08-4149, 2009 WL 3345762, at *5 (D.N.J. Sept. 14, 2009) ("[T]he participation of an independent mediator in settlement negotiation virtually insures that the negotiations were conducted at arm's length and without collusion between the parties.").

the central terms and executed a term sheet, but still spent weeks finalizing all settlement terms and documents. *Id.* ¶¶ 45–47.

Accordingly, it is clear that the Parties negotiated their settlement at arm's-length, and absent any fraud or collusion. *See, e.g.*, *Steele*, 2011 WL 13266350, at *4 (finding no evidence of fraud or collusion where the settlement was negotiated at arms' length, and where the mediation was overseen by an experienced mediator); *Wright*, 2016 WL 4505169, at *11 (finding no evidence of fraud or collusion where the parties participated in two prior mediations and engaged in lengthy discovery). Thus, this factor weighs in favor of preliminary approval.

3. The Settlement Provides Substantial Relief for the Class.

The settlement provides for substantial relief, especially considering the costs, risks, and delay of trial, the effectiveness of distributing relief, and the proposed attorneys' fees.

"The most important factor relevant to the fairness of a class action settlement is the first one listed: the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement." *Synfuel Techs, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (internal quotes and citations omitted). Nevertheless, "[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs." *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. at 347.

"In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Newberg on Class Actions* § 11:50. This is, in part, because "the law should favor the settlement of controversies, and should not discourage settlement by subjecting a person who has compromised a claim to the hazard of having the settlement proved in a subsequent trial . . . ." *Grady v. de Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969). It is also, in part, because "[s]ettlement is the offspring

of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) ("The essential point here is that the court should not "reject[ ]" a settlement "solely because it does not provide a complete victory to plaintiffs," for "the essence of settlement is compromise.").

Here, the settlement provides for both automatic and claims-made monetary relief, as well as equitable relief in the form of specific data security enhancements designed to better protect Settlement Class Members' PII. All Settlement Class Members will receive access to enroll in 18-months of comprehensive Aura Financial Shield services, valued at $202 per person. Klinger Decl. ¶¶ 55–56. Moreover, all members of the Settlement Class are able to submit a claim for Out-of-Pocket Losses up to $10,000 per person. *Id.* ¶ 58. Notably, while there is an individual cap of $10,000 per person on Out-of-Pocket Losses, there is no aggregate cap, meaning if every Settlement Class Member submits a valid claim for $10,000 in Out-of-Pocket Losses, the Settlement Agreement would require that every Settlement Class Member be paid. Settlement Class Members may also claim up to three (3) hours of time spent with a simple attestation, and an additional three (3) hours of time spent with documentation, all at $18 per hour (or, if they lost work dealing with the Data Incidents, their rate of pay up to $50 per hour). *Id.* ¶ 60.

Members of the California Settlement Subclass can make an additional monetary claim for $50, simply by attesting that they were residing in the State of California when Defendants notified them of the Data Incidents. *Id.* ¶ 61. The California Consumer Privacy Act ("CCPA"), which took effect on January 1, 2020, allows consumers to seek statutory damages of up to $750 per violation. Given the infancy of this statute, however, very few courts have had the opportunity to opine on

the appropriate monetary value of these claims. In *Atkinson v. Minted, Inc.*, No. 3:20-cv-03869-VC, 2021 WL 2411041 (N.D. Cal. May 14, 2021), the court granted preliminary approval of a settlement where plaintiffs alleged that in violation of the landmark CCPA, defendant failed to protect consumers' PII from exfiltration. In plaintiffs' motion for preliminary approval of the settlement, plaintiffs contended that the settlement would provide 4.1 million class members with, among other relief, an estimated cash payment of $43 per person, which the court found to be fair, reasonable, and adequate. *See Atkinson*, No. 3:20-cv-03869-VC, Pl.'s Mem. in Supp. of Mot. for Prelim. Approval, ECF No. 42 at 4. Here, members of the California Settlement Subclass, who allege similar harms to those alleged by the plaintiffs in *Atkinson*, can make a claim for $50 each, which Plaintiffs believe is fair, reasonable and adequate under the circumstances. A *pro rata* reduction of the California Claims will only occur *if* the total of Lost-Time Losses and California Claims exceeds $4,000,000. *Id.* ¶ 62.

The settlement benefits are therefore fair, adequate, and reasonable compared to the range of possible recovery.

a. The Costs, Risks, and Delay of Trial and Appeal Favor Approval of the Settlement.

The value achieved through the Settlement Agreement here is guaranteed, where chances of prevailing on the merits are uncertain. While Plaintiffs strongly believe in the merits of their case, they also understand that Defendants would assert a number of potentially case-dispositive defenses. In fact, should litigation continue, Plaintiffs would likely have to immediately survive a motion to dismiss in order to proceed with litigation. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060(RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010)

(collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that has been denied in other data breach cases. *See, e.g.*, *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig*., 293 F.R.D. 21 (D. Me. 2013). Moreover, due to the quickly evolving nature of case law pertaining to data protection, it is likely that a win by any party will result in appeals, which will further increase costs and extend the time until Plaintiffs and Class Members can have a chance at relief.

Plaintiffs dispute the defenses Defendants are likely to assert, but it is obvious that their likelihood of success at trial is far from certain. "In light of the potential difficulties at class certification and on the merits . . . , the time and extent of protracted litigation, and the potential of recovering nothing, the relief provided to class members in the Settlement Agreement represents a reasonable compromise." *Wright*, 2016 WL 4505169, at *10.

b. The Method of Providing Relief is Effective.

"[T]he effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," is also a relevant factor in determining the adequacy of relief. Fed. R. Civ. P. 23(e)(2)(C)(ii). The Committee Note to the 2018 amendments to Rule 23(e)(2) says that this factor is intended to encourage courts to evaluate a proposed claims process "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."

This settlement proposes the gold-standard in class member relief: automatic provision of Aura Financial Shield monitoring services *and* cash payments *and* equitable relief. Access to Financial Shield was automatically provided, by code, on the Short-Form Notice sent to Settlement Class Members. Cash Awards will be distributed based upon information provided by claimants

on their respective claim forms. Class Members have the opportunity to receive some compensation with a simple attestation, and greater compensation by providing documentary evidence. *Id.* Claims will be paid within 60-days of the Effective Date, or within 30-days of the date that the claim is approved, whichever is later *Id*. Accordingly, all Settlement Class Members will receive their award within a reasonable amount of time. For these reasons, the means by which the relief will be distributed is fair, efficient, and effective.

c. The Proposed Award of Attorneys' Fees is Fair and Reasonable.

"[T]he terms of any proposed award of attorney's fees, including timing of payment," are also factors in considering whether the relief provided to the Class in a proposed settlement is adequate. Fed. R. Civ. P. 23(c)(2)(C)(iii). Plaintiffs' counsel will seek an award of attorneys' fees and costs in the amount of $2,500,000—a small fraction of the value of the total settlement. In fact, the fees and costs requested are approximately 15 percent of the $17.1 million conservative valuation of the settlement. *See* Plaintiffs' Unopposed Motion for Approval of Attorneys' Fees Award, Expense Reimbursement, and Service Awards to Representative Plaintiffs, filed concurrently herewith. This amount falls well below other approved class settlements, including privacy class settlements.

d. There are No Additional Agreements Required to be Identified Under Rule 23(e)(3).

As no additional agreements requiring identification exist, this factor does not weigh either in favor of or against final approval.

4. The Settlement Agreement Treats Class Members Equitably Relative to Each Other.

Finally, Rule 23(e) requires that the settlement "treat[] class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Here, the proposed settlement does not improperly

discriminate between any segments of the Settlement Class. All Settlement Class Members and California Settlement Subclass Members will *automatically* receive a code by which they can utilize up to 18-months of Shield Services. Similarly, all are eligible to make a claim for up to $10,000 in reimbursements for Out-of-Pocket Losses and can also claim up to six (6) hours of Lost-Time Losses. *Id.* ¶¶ 58–60. While members of the California Settlement Subclass can recover $50 (subject to pro ration), such a recovery is warranted, as California Settlement Subclass Members have additional and valuable California state claims, such as the CCPA, that they would be able to recover for, should the case move forward through trial. *Id.* ¶¶ 61–62.

Direct Notice was sent to all Settlement Class Members, and all Settlement Class Members have the opportunity to object to or exclude themselves from the settlement. And, while Plaintiffs will each be seeking a $1,500 award for their services on behalf of the Class, this award is significantly less than the amount that any given Settlement Class Member can claim in reimbursements, and thus does not create an improper motivation to settle or give rise to undue inequities across the Class.

5. The Opinions of Class Counsel, Class Representatives, and Absent Settlement Class Members Favor Approval of the Settlement

The Court should also give great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation. *See In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 312–13 (N.D. Ga. 1993) ("In determining whether to approve a proposed settlement, the Court is entitled to rely upon the judgment of the parties' experienced counsel. '[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.'") (citations omitted).

Here, Settlement Class Counsel have substantial experience prosecuting large, complex consumer class actions. Klinger Decl. ¶¶ 2–12, 83. After informal discovery, independent factual

investigation and mediation before a well-qualified and experienced mediator, Settlement Class Counsel are confident that the settlement provides significant relief to the Settlement Class and is in their best interests. *Id.* ¶ 20. Settlement Class Counsel whole-heartedly endorse the settlement. Additionally, the reaction of the Settlement Class has been positive. To date, there are no objections, no opt-outs, and more than 500 claims have been filed. This is "strong circumstantial evidence" that the settlement is fair, reasonable, and adequate and deserves final approval. *In re Mex. Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000); *see also Hall v. Bank of Am., N.A.*, No. 1:12-cv-22700, 2014 WL 7184039, at *5 (S.D. Fla. Dec. 17, 2014) (noting where objections from settlement class members "equates to less than .0016% of the class" and "not a single state attorney general or regulator submitted an objection," "such facts are overwhelming support for the settlement and evidence of its reasonableness and fairness").

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant final approval to the settlement and certify the Settlement Class.

Dated this 23rd day of December, 2021.

Respectfully Submitted,

By: /s/ *Gary M. Klinger*

Gary M. Klinger
MASON LIETZ & KLINGER LLP
227 W. Monroe Street, Suite 2100
Chicago, Illinois 60606
Telephone: (202) 429-2290
Facsimile: (202) 429-2294
gklinger@masonllp.com

Rachele R. Byrd
WOLF HALDENSTEIN ADLER

FREEMAN & HERZ LLP
750 B Street, Suite 1820
San Diego, California 92101
Telephone: (619) 239-4599
Facsimile: (619) 234-4599
byrd@whafh.com

Jean S. Martin
MORGAN & MORGAN COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 559-4908
Facsimile: (813) 222-4795
jeanmartin@forthepeople.com

M. Anderson Berry
CLAYEO C. ARNOLD, A PROFESSIONAL LAW CORP.
865 Howe Avenue
Sacramento, California 95825
Telephone: (916) 777-7777
Facsimile: (916) 924-1829
aberry@justice4you.com

Counsel for Plaintiffs and the Settlement Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IRMA CARRERA AGUALLO, DROR HERTZ, KELVIN HOLMES, MELISSA ANTONIO, MARY MACARONIS, and GREGGORY VEECH, individually and on behalf of all others similarly situated, Plaintiffs, v. KEMPER CORPORATION and INFINITY INSURANCE COMPANY, Defendants.	Case No. 1:21-cv-01883 Honorable Martha M. Pacold

DECLARATION OF MELISSA BALDWIN REGARDING NOTICE TO THE CLASS

I, Melissa Baldwin, hereby declare and state as follows:

1. I am the Director of Claims Administration for RG/2 Claims Administration LLC ("RG/2"), located at 30 South 17th Street, Philadelphia, PA 19103. I am over the age of 18, have personal knowledge of the matters set forth herein, and if called upon to do so, could testify competently to them.

2. RG/2 is a full-service class action settlement administrator that provides, among other things, notice, claims processing, allocation, distribution, tax reporting, and class action settlement consulting services. RG/2's experience includes the provision of notice and administration services for numerous settlements relating to antitrust, consumer fraud, civil rights, employment, negligent disclosure, and securities fraud class action lawsuits. Since 2000,

RG/2 has administered and distributed in excess of $1.8 billion in class action settlement proceeds.

3. As required by the Class Action Fairness Act ("CAFA"), on October 22, 2021, RG/2 caused to be served by First-Class mail a Notice of Proposed Settlement to the United States Attorney General and 54 State and Territory Attorneys General. A copy of the Notice of Proposed Settlement is attached hereto as **Exhibit A.** RG/2 has received no objections or other responses from any Attorney General.

4. As approved in the Court's Preliminary Approval Order dated October 27, 2021, the Parties agreed to have RG/2 be responsible for: creating a website with an online claims portal; creating and undertaking the Notice Plan; processing Claims, Opt Out letters and objections; corresponding with Claimants; making all payments to Claimants from the Settlement; all required tax reporting and withholding; and communicating the information regarding status of claims and payment to the Parties' counsel. Subsequent to this Order, RG/2 has performed the services detailed below.

5. RG/2 created a website with the URL www.InfinityClassSettlement.com, which went live on November 26, 2021 and contained the following:

a. The "Homepage" contains a brief summary of the Settlement and advises potential Settlement Class Members of their rights under the Settlement;

b. The "Notice/Claim Form" page contains pdf copies of the Long Form Notice and the Claim Form. The page also contains a link to the Claim Form online filing portal;

c. The "Court Documents" page contains various documents filed with the Court for this Settlement, such as the Settlement Agreement and Third Amended Complaint;

d. The "Contact" page contains the contact information of the Claims Administrator; and

e. A portal to allow Settlement Class Members to enter their email address to receive a reminder email when their credit monitoring redemption code is active following the Effective Date of the settlement.

As of December 21, 2021, the website has received 22,546 unique visits.

6. Also on November 26, 2021, the toll-free phone number for Settlement Class Members to obtain information or speak with an operator went live. This IVR includes a menu of frequently asked questions for Settlement Class Members to review at their convenience. Settlement Class Members can also submit a request to have a notice and/or claim form mailed to them through the automated system. As of December 21, 2021, the toll-free line has received 2,189 calls.

7. On November 1, 2021, RG/2 received a secure file from Baker & Hostetler LLP containing the emails, names and addresses of Kemper and Infinity customers who were previously notified of the Data Incidents. Review of the data showed that the total number of Settlement Class Members was 6,148,631.

8. Commencing on November 30, 2021, RG/2 arranged for the Short-Form Notice to be sent to the 1,581,463 Settlement Class Members identified as having valid email addresses. The Short-Form Notice provided each Settlement Class Member with a username and password to be used to get access to the claims portal to file a claim online, as well as a redemption code for the credit monitoring benefit. A sample of the Short-Form Notice is attached hereto as Exhibit **B**.

9. Of the 1,581,463 emails sent, a total of 195,711 (or 12.38%) were returned as undeliverable. As a result, RG/2 arranged to have the Short-Form Notice printed and mailed via First-Class mail to each of these Settlement Class Members.

10. Concurrent with the sending of the Email Notice, RG/2 caused to be mailed via First-Class mail the Short-Form Notice to the Settlement Class Members who did not have valid email addresses associated with their records in the data. The Short-Form Notice was mailed to the 4,567,168 Settlement Class Members without valid email addresses. Prior to mailing the Short-Form Notice, the Settlement Class Member addresses were processed through the United States Postal Service National Change of Address Database and updated where a new address was provided.

11. To-date, RG/2 has received 13,123 of the mailed Short-Form Notices returned as undeliverable by the USPS. Of the 13,123 returned notices, 278 Short-Form Notices were returned with forwarding addresses for the Settlement Class Members, and a new Short-Form Notice was promptly re-mailed to those Settlement Class Members. Through standard skip-tracing procedures, RG/2 mailed new Short-Form Notices to 10,412 Settlement Class Members for whom updated addresses were located. The deadline to process returned mail is January 11, 2022.

12. The Short-Form Notice advised Settlement Class Members of their right to exclude themselves from the Settlement and that their request must be postmarked by January 25, 2022. To date, RG/2 has not received any Requests for Exclusion from the Settlement.

13. The Short-Form Notice also advised Settlement Class Members of their right to object to the Settlement and that their objection must be filed with the Court by January 25, 2022. To date, and to RG/2's knowledge, no timely objections have been filed with the Court.

14. Class Members have until February 24, 2022 to either submit a claim through the claims portal or have their mailed Claim Form postmarked. To date, RG/2 has received 480 Claims filed online and 44 Claims filed by mail.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on December 22, 2021 at Philadelphia, Pennsylvania.

Melissa Baldwin

EXHIBIT A

October 22, 2021

VIA «Via_Mail»
«First» «Last», «Esquire»
«Title»
«Street_1» «Street2»
«City», «State1» «Zip»

Re: *Aguallo, et al. v. Kemper Corporation* and *Infinity Insurance Company*
Case No. 1:21-cv-01883, Notice Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

On behalf of Defendants, Kemper Corporation and Infinity Insurance Company ("Defendants"), RG/2 Claims Administration LLC ("RG/2 Claims"), hereby provides this Notice of a Proposed Class Action Settlement in the above-referenced class action pursuant to the Class Action Fairness Act of 2005 ("CAFA"). The proposed settlement will resolve the case.

In accordance with its obligations under CAFA, RG/2 Claims encloses the following:

(1) The Complaint, any materials filed with the Complaint, and any Amended Complaints.

Plaintiff's Class Action Complaint, the Amended Class Action Complaint, the Second Amended Class Action Complaint and the Third Amended Class Action Complaint filed in the *Aguallo, et al. v. Kemper Corporation* and *Infinity Insurance Company* case can be found on the enclosed CD as "Exhibit 1- Aguallo v Kemper Complaints."

(2) Notice of any scheduled judicial hearing in the class action.

The Court has scheduled a Preliminary Approval Hearing for October 27, 2021 at 11:00 a.m. via telephone before the Honorable Martha M. Pacold. The Minutes Order Setting Telephone Hearing can be found on the enclosed CD as "Exhibit 2 – Minutes Order Setting Preliminary Approval Hearing." The Court has not yet scheduled a fairness hearing regarding the settlement. Once the Court sets a hearing date, such date(s) can be found on PACER as follows: (1) enter PACER, (2) click on "Query," (3) enter the civil case number, 1:21-cv-01883, (4) click on "Run Query," and (5) click on the link "Docket Report." The order(s) scheduling hearing(s) will be found on the docket entry sheet.

(3) Any proposed or final notification to class members.

The long-form and email Notice of Pending Class Action and Proposed Settlement and the Claim Form as submitted to the Court can be found on the enclosed CD as "Exhibit 3 – Notice of Pending Class Action and Proposed Settlement."

(4) Any proposed or final class action settlement.

The Settlement Agreement entered into by the parties and as submitted to the Court can be found on the enclosed CD as "Exhibit 4 – Settlement Agreement." There are no other agreements contemporaneously made between Class Counsel and counsel for the defendants.

(5) A final judgment or notice of dismissal.

Final judgment has not yet been entered. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed online as follows: (1) enter PACER, (2) click on "Query," (3) enter the civil case number, 1:21-cv-01883, (4) click on "Run Query," and (5) click on the link "Docket Report." The order(s) entering final judgment will be found on the docket entry sheet.

(6) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.

As of today, it is not feasible to identify the names of every Class Member who resides in your state; the list of class member totals by state can be found on the enclosed CD as "Exhibit 5 – Class Member Totals by State" represents our best current estimate of the total number of Class Members residents in your state. The specific settlement allocation to each Class Member will be determined by the Settlement Agreement and each Class Member's election of benefits according to Court-approved guidelines. As a result, we do not yet know which Class Members will receive settlement benefits or the financial value of the benefits each Class Member will receive, and it is not feasible to determine the estimated proportionate share of the claims of the Class Members who reside in each state to the entire settlement. Upon final approval of the Court, the settlement benefits will be distributed to the Class Members according to the relevant provisions of the Settlement Agreement.

(7) Any written judicial opinion relating to the materials described in (3) through (5).

The Court has not yet entered a Preliminary Approval Order or any opinions relating to the materials described in sections (3) through (5). Upon entry, a copy of said Order or opinion can be found online through the process described in section (5) above.

Final judgment has not yet been entered. Upon entry, a copy of said judgment can be found online through the process described in section (5) above.

If you have questions about this notice, the lawsuits, or the enclosed materials, please do not hesitate to contact me.

Sincerely,
RG/2 Claims Administration LLC

Enclosures

EXHIBIT B

Kemper and Infinity Customers who were sent notice letters on or about March 16, 2021 and May 25, 2021 notifying them that their Personal Identifiable Information ("PII") was compromised in the Data Incidents may be eligible for a payment from a class action settlement.

A federal court ordered this notice. This is not a solicitation from a lawyer.

Si desea recibir esta notificación en español, llámenos al 1-800-347-9165.

A settlement has been reached with Kemper Corporation and Infinity Insurance Company ("collectively, the Defendants") in a class action lawsuit about the data incidents that occurred on December 14, 2020 and March 25, 2021 ("the Data Incidents"). Defendants announced the Data Incidents on or about March 16, 2021 and on or about May 25, 2021. The lawsuit was filed asserting claims against Defendants relating to the Data Incidents. Defendants deny all of the claims and say they did not do anything wrong.

WHAT HAPPENED? Plaintiffs allege that on December 14, 2020 and March 25, 2021, respectively, Defendants were the targets of two separate data security incidents in which unauthorized users accessed Defendants' network and computer systems and which resulted in unauthorized access of personal information. Plaintiffs allege that, as a result of the Data Incidents, unauthorized users gained access to Plaintiffs' and Defendants' customers', current and former employees', and agents' PII, including, but not limited to, names, addresses, Social Security numbers, driver's license numbers, medical leave information, and/or workers' compensation claim information.

WHO IS INCLUDED? You received this email because Defendants' records show you are a member of the Settlement Class. The Settlement Class includes all residents of the United States who were sent notice letters notifying them that their information was compromised in one or more of the Data Incidents. There is a separate settlement subclass for Settlement Class Members that are California residents.

SETTLEMENT BENEFITS. All Settlement Class Members will be provided access to Aura's Financial Shield fraud monitoring and protection services for a period of 18 months from the Effective Date of the Settlement without the need to submit a Claim Form. A link with a redemption code to be used to enroll directly with Aura Financial Shield is provided below.

LINK HTPS://APP.FINANCIALSHIELD.COM/INFORMATION/KEMP
REDEMPTION CODE:

The Settlement also provides reimbursement of up to $10,000 for documented out-of-pocket expenses and lost time that resulted from the Data Incidents for persons who file a valid Claim Form. The Settlement also provides an additional cash payment benefit for Class Members who are California residents. Information on the Settlement's benefits is available on the website: **www.InfinityClassSettlement.com**.

CLAIM FORM. You must file a Claim Form to receive a cash payment for documented out-of-pocket expenses, lost time or the California benefit. You can file a claim online at www.InfinityClassSettlement.com, download a Claim Form at the website and mail it, or you may call 1-800-347-9165 and ask that a Claim Form be mailed to you. The claim deadline is **February 24, 2022**. You must use the following username and password to file a Claim Form to verify your identity as a member of the Settlement Class.

Username:
Password:

Please call 1-800-347-9165 to receive further information on how to file a claim.

OTHER OPTIONS. If you do not want to be legally bound by the Settlement, you must exclude yourself by **January 25, 2022**. If you stay in the Settlement, you may object to it by **January 25, 2022**. A more detailed notice is available to explain how to exclude yourself or object. Please visit the website www.InfinityClassSettlement.com or call the toll-free number below for a copy of the more detailed notice. On March 15, 2022, the Court will hold a hearing on whether to approve the Settlement, Class Counsel's request for attorneys' fees and reasonable costs and expenses of up to $2,500,000, and service awards of up to $1,500 for each of the six Representative Plaintiffs. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. Detailed information is available at the website and by calling the toll-free number below.

Questions? Call 1-800-347-9165 or visit www.InfinityClassSettlement.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IRMA CARRERA AGUALLO, DROR HERTZ, KELVIN HOLMES, MELISSA ANTONIO, MARY MACARONIS, and GREGGORY VEECH, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

KEMPER CORPORATION and INFINITY INSURANCE COMPANY,

Defendants.

Case No. 1:21-cv-01883

Honorable Martha M. Pacold

DECLARATION OF GARY M. KLINGER IN SUPPORT OF: (1) PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND (2) PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES AWARD, EXPENSE REIMBURSEMENT, AND SERVICE AWARDS TO REPRESENTATIVE PLAINTIFFS

I, **Gary M. Klinger**, being competent to testify, make the following declaration based on my personal knowledge. I declare:

1. I am currently a partner of the law firm Mason Lietz & Klinger LLP ("MLK"), which was founded on March 16, 2020. I was appointed as one of the three Plaintiffs' Co-Lead Counsel and Settlement Class Counsel in this matter. I submit this declaration in support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Plaintiffs' Unopposed Motion for Approval of Attorneys' Fees Award, Expense Reimbursement, and Service Awards to Representative Plaintiffs. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

Counsel Qualifications

2. Settlement Class Counsel have extensive experience prosecuting complex class actions. This experience was detailed for the Court in the Motion for Appointment of Interim Class Counsel (ECF No. 11) and is further described by the individual declarations of Class Counsel submitted herewith.

3. My experience, and that of my partners, is described in MLK's Firm Resume, attached hereto as **Exhibit 1**.

4. As members of MLK and other prior law firms, the firm's attorneys have represented both plaintiffs and defendants in more than 100 class action lawsuits in state and federal courts throughout the United States.

5. With respect to privacy cases, MLK is currently litigating more than sixty cases across the country involving violations of the TCPA, BIPA, privacy violations, data breaches, and ransomware attacks.

6. While the firm's partners have decades of class action experience, it is noteworthy that just in the time since Mason Lietz & Klinger's inception on March 14, 2020, I, and/or my partners (either individually, or as a member of MLK), have been appointed class counsel in a number of data breach or data privacy cases, including:

a. *Baksh v. Ivy Rehab Network, Inc*., Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class counsel in a data breach class action settlement; final approval granted Feb. 2021);

b. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action);

c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted Dec. 2020);

d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over $7 million; final approval granted Feb. 2021);

e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (Mr. Lietz appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);

f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Sept. 2020);

g. *Nelson, et al. v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County, Idaho) (Mr. Klinger appointed co-lead counsel in data breach class action involving 17,000 class members; settlement valued at $3.3 million; final approval granted June 2021)

h. *In Re: Canon U.S.A. Data Breach Litigation*, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (Mr. Klinger appointed co-lead counsel);

i. *Richardson v. Overlake Hospital Medical Center et al*., Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington (Mr. Lietz, Mr. Klinger, and Ms. Perry appointed class counsel in data breach case; final approval granted Sept. 2021);

j. *Kenney et al. v. Centerstone of America, Inc. et al.*, Case No. 3:20-cv-01007-EJR (M.D. Tenn.) (Mr. Klinger appointed co-lead class counsel; final approval granted Aug.2021);

k. *Klemm et al. v. Maryland Health Enterprises, Inc. D/B/A Lorien Health Services,* C-03-CV-20-002899 (Circuit Court for Baltimore County, Maryland) (appointed Settlement Class Counsel, final approval granted Dec. 2021);

l. *Martinez et al. v. NCH Healthcare System, Inc.,* Case No. 2020-CA-000996 (Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida) (final approval granted Oct. 2021).

m. *Carr et al. v. Beaumont Health, et al.,* Case No. 2020-181002-NZ (Circuit Court for the County of Oakland, State of Michigan) (data breach class action, final approval granted Oct. 2021)

7. I have personally resolved dozens of class action cases involving consumer and privacy statutes in state and federal courts across the country. Some representative cases include the following: *Smith v. State Farm Mut. Auto. Ins. Co*., No. 1:13-cv-2018 (N.D. Ill.); *Jochan v. State Farm Mut. Auto. Ins. Co*., No. 1:15-cv-04326 (N.D. Ill.) (Leinenweber, J.); *Burk v. State Farm Fire & Cas. Co.*, No. 14-cv-02642-PHX-GMS (D. Ariz.); *Aguilar v. State Farm Mut. Auto. Ins. Co*., No. 16-cv-01211 (C.D. Ill.); *Kim v. State Farm Mut. Auto. Ins. Co.*, No. 2015-CH-08655 (Cook Cty. Ill. Cir. Ct.); *Sweis v. State Farm Mut. Auto. Ins. Co*., No. 2015-CH-18757 (Cook Cty. Ill. Cir. Ct.); *Ghose Inc. v. 7 Eleven, Inc*., No. 2012-CH-04114 (Cook Cty. Ill. Cir. Ct.); *Schumacher v. State Auto. Ins. Co*., No. 13-cv-00232 (S.D. Ohio); *Block v. Lifeway Foods, Inc.,* No. 17-cv-01717 (N.D. Ill.); *Chavez v. Church & Dwight Co*., Inc., No. 17-cv-01948 (N.D. Ill.); *Craftwood Lumber Co. v. CMT USA, Inc*., No. 14-cv-06864 (N.D. Ill*.); LaBrier v. State Farm Fire & Cas. Co.*, No. 15-cv-04093 (W.D. Mo.); *Dennington v. State Farm Fire & Cas. Co*., No. 14-cv-04001 (W.D. Ark.); *Selby v. State Farm Mut. Auto. Ins. Co*., No. 2010-CH-43684 (Cook Cty. Ill. Cir. Ct.); *O'Sullivan v. iSpring Water Sys., LLC*, No. 17-cv-2237 (N.D. Ga.); *In re Auto Body Shop*

Antitrust Litig., No. 14-md-02557 (M.D. Fla.); *Pine v. A Place for Mom, Inc*., No. 2:17-cv-01826 (W.D. Wash.); *Karpilovsky v. All Web Leads, Inc*., No. 1:17-cv-01307 (N.D. Ill. 2017); *Accardi v. Hartford Underwrites Ins. Co*., No. 18-cvs-2162 (N.C. Bus. Ct.); *Burk v. Direct Energy, LP*, No. 4:19-cv-663 (S.D. Tex.); *Bellenger v. Accounts Receivable Mgmt., Inc*., No. 19-cv-60205 (S.D. Fla.); *Drake v. Mirand Response Sys., Inc*., No. 1:19-CV-1458-RLY-DML (S.D. Ind*.); Fry v. Gen. Revenue Corp*., No. 19-cv-172 (S.D. *Ohio); Poole v. Benjamin Moore, No. 18-cv-05168 (W.D. Wash.); Thomas* v. Fin. Corp. of America, No. 3:19-cv-00152 (N.D. Tex.); *Bonoan v. Adobe Inc.,* No. 3:19-cv-01068 (N.D. Cal.); *Musto v. American Express Co*., No. 19-cv-01782 (S.D. N.Y.); *Palmer v. KCI USA, Inc*., No. 19-cv-3084 (D. Neb.).

8. In addition, MLK serves as Court-appointed Liaison Counsel in *In re U.S. Off. of Pers. Mgmt. Data Security Breach Litig*., 266 F. Supp. 3d 1 (D.D.C. 2017).

9. Attorneys at MLK were also Co-Lead Counsel in *In re Dep't of Veterans Aff. (VA) Data Theft Litig.*, No. 1:06-MC-00506, 2007 WL 7621261 (D.D.C. Nov. 16, 2007) (unlawful disclosure of PPI of 28.5 million military veterans and active duty personnel; $20 million settlement fund).

10. Attorneys at MLK were court-appointed Lead Counsel in *In re Google Buzz Privacy Litig*., No. C 10-00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011) ($10 million settlement fund in case arising for unauthorized disclosure or personal information).

11. MLK Attorneys have also served as Lead Counsel, Co-Counsel or Class Counsel in dozens of class actions ranging from defective construction materials (*i.e.*, defective radiant heating systems, siding, shingles, and windows), to misrepresented and recalled products (*e.g.*, dog food, prenatal vitamins), and environmental incidents (the Exxon Valdez, BP Oil Spill).

12. These cases include: Co-Lead Counsel in *In re: Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation*, MDL No. 2887 (D. Kansas, order granting final approval of $12 million settlement entered July 30, 2021); court-appointed Co-Lead Counsel in *In Re: Deva Concepts Products*, Master File No. 1:20-cv-01234-GHW (S.D.N.Y.) (order granting preliminary approval of $5.2 million settlement entered July 30, 2021); *Cox v. Shell Oil Co*., No. 18844, 1995 WL 775363 (Ch. Ct. Tenn., July 31, 1995) (defective polybutylene pipe; $950 million settlement); *Hobbie v. RCR Holdings, II, LLC*, No. 10-113, MDL No. 2047 (E.D. La. filed April 20, 2010) (354-unit condominium built with Chinese Drywall; settlement for complete remediation at cost of $300 million); *Adams v. Fed. Materials*, No. 5:05-CV-90-R, 2006 WL 3772065 (W.D. Ky. Dec. 19, 2006) (350 owners of commercial and residential property whose structures were built with defective concrete; $10.1 million settlement); *In re MI Windows & Doors Inc. Prod. Liab. Litig*., No. 2:12-MN-00001-DCN, MDL No. 2333, 2015 WL 4487734 (D.S.C. July 23, 2015) (defective windows; claims made settlement for over 1 million homes*); In re Synthetic Stucco Litig*., No. 5:96-CV-287-BR(2), 2004 WL 2881131 (E.D.N.C. May 11, 2004) (settlements with four EIFS Manufacturers for North Carolina homeowners valued at more than $50 million); *Posey v. Dryvit Sys., Inc*., No. 17,715-IV, 2002 WL 34249530 (Tenn. Cir. Ct. Oct. 1, 2002) (Co-Lead Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants); *Galanti v. Goodyear Tire & Rubber Co*., No. 03CV00209, 2004 WL 6033527 (D.N.J. Nov. 17, 2004) (Class counsel; defective radiant heating systems; $330 million settlement); and *In re Zurn Pex Prod. Liab. Litig*., No. 08-MDL-1958, 2013 WL 716088 (D. Minn. Feb. 27, 2013) (Plaintiffs' Executive Committee; $20 million settlement).

13. The work done by my firm in this case includes: researching causes of action and drafting the complaint; organize consolidation of cases; assist in drafting the consolidated amended

complaint; assist in structuring leadership and petitioning court for leadership position; reviewed and revised informal discovery requests; drafted second amended complaint; reviewed and revised mediation statement; reviewed documents produced by Defendant; participated in pre-mediation conference and in mediation; negotiated of settlement terms; reviewed and revised settlement agreement and all associated exhibits; drafted preliminary approval motion and associated filings; appeared at preliminary approval hearing; coordinated with Settlement Administrator to issue notice; reviewed and revised fee and final approval motions, and drafted declaration in support..

14. My firm kept detailed records regarding the amount of time the attorneys and professional staff spent on this litigation, and the lodestar calculation is based on my firm's current billing rates. The information was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. Based upon these records, my firm has expended 244.9 hours on this litigation as of December 21, 2021, which, multiplied by the current hourly rates of the attorneys and other professionals, amounts to $169,549.50. The chart below reflects a breakdown of the amount of time spent by myself and other attorneys and professional support staff at my firm in the prosecution of this case:

Timekeeper	**Position**	**Rate**	**Total Hours**	**Total Amount**
Gary Mason	Partner	$875/hr	16.10	$14,087.50
David Lietz	Partner	$800/hr	69.70	$55,760.00
Gary Klinger	Partner	$800/hr	83.70	$66, 960.00
Danielle Perry	Partner	$700/hr	36.20	$25, 340.00
David Beiss	J.D. Law Clerk	$350/hr	4.5	$1,575.00
Taylor Heath	Paralegal	$170/hr	19.40	$3,298.00

Sandra Martin	Paralegal	$170/hr	13.70	$2,329.00
Carol Corneilse	Client Specialist	$125/hr	1.6	$200.00
		TOTALS:	**244.9**	**169,549.50**

15. In my judgment, and based on my years of experience in class action litigation and other litigation, the number of hours expended and the services performed by my firm were reasonable and necessary for my firm's representation of Plaintiffs and the Settlement Class.

16. The hourly rates of the professionals in my firm, including my own, reflect experience and accomplishments in the area of class litigation. The rate of $800 per hour which I charge for my time is commensurate with hourly rates charged by my contemporaries around the country, including those rates charged by lawyers with my level of experience who practice in the area of class litigation across the nation, and courts have approved my firms' rates in the following examples: *Morales et al v. Cano Health, LLC,* Circuit Court for the Eleventh Judicial Circuit of Florida, Case No. CACE-20-013998-CA-01; *Chatelain et al.v. C, L and W PLLC*, 42nd district Court for Taylor County Texas, Case No. 50742-A.

17. The time described above does not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in my firm's billing rates. Based upon my firm's records, MLK incurred $6,091.29 in expenses. These costs were necessary to the investigation, prosecution, and settlement of this Action. A breakdown of my firm's costs and expenses, which I assert are reasonable, are pulled from a computerized database maintained by individuals in the accounting office of my firm and which were checked for accuracy, are reflected below:

Description	Amount
Filing Fees	$640.63
Travel	$1,605.75
Mediation	$3,844.91
GRAND TOTAL:	**$6,091.29**

18. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. It is anticipated that costs may continue to accrue, including, but not limited to, costs associated with preparation and filing of the motion for attorneys' fees and motion for final approval of the settlement.

Initial Investigation and Communication

19. Plaintiffs' counsel's years of experience representing individuals in complex class action cases contributed to an awareness of Plaintiffs' settlement leverage, as well as the needs of the Plaintiffs and the class. We believed, and continue to believe, that our clients have claims that would ultimately prevail in the litigation on a class-wide basis. However, we are also aware that a successful outcome is uncertain and could be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals. In my opinion, as well as the opinion of my co-counsel, based on our substantial experience, the settlement provides significant relief to the members of the Settlement Class and warrants the Court's final approval.

20. The sections that follow detail the lengthy and hard-fought negotiations that resulted in the Settlement Agreement now before the Court for final approval. As described below, the settlement provides significant relief to Defendants' customers, potential customers,

employees and other consumers. It is, in the opinion of the undersigned and the other Settlement Class Counsel, fair, reasonable, adequate, and worthy of final approval.

21. Prior to filing Plaintiffs' class action complaints, Class Counsel conducted an investigation of the Plaintiffs' claims, and of the Data Incidents.

22. Plaintiffs' preliminary investigation showed the following facts, alleged in Plaintiffs' various complaints:

a. Kemper Corporation ("Kemper") is one of the nation's leading specialized insurers, offering insurance for home, life, auto, business, property, and umbrella insurance. Prior to its acquisition by Kemper in 2018, Defendant Infinity Insurance Company ("Infinity") was a provider of auto insurance focused on serving the specialty, nonstandard segment.

b. Infinity is wholly owned by Kemper.

c. In the ordinary course of doing business with Defendants or working for Defendants, employees, customers and prospective customers are required to provide Defendants with personal private information such as names, addresses, Social Security numbers ("SSN"), driver's license numbers, medical leave information, and/or workers' compensation claim information.

23. Plaintiffs allege that on December 14, 2020, and March 25, 2021, respectively, Defendants were the targets of two separate security incidents in which an unauthorized user accessed Defendants' network and computer systems and which resulted in unauthorized access of personal information (the "Project K Data Incident" and "Scraping Incident," respectively or, collectively, the "Data Incidents"). *See* Settlement Agreement § I (ECF No. 35-3) ("SA").

24. Plaintiffs allege that, as a result of the Data Incidents, an unauthorized user gained access to Plaintiffs' and Defendants' customers', current and former employees', and agents' personally identifiable information, including, but not limited to, names, addresses, SSN, driver's license numbers, medical leave information, and/or workers' compensation claim information (collectively, "PII"). *Id.*

25. After Defendants learned of the Data Incidents, they notified the potentially affected individuals that their PII may have been compromised and offered 12 months of credit monitoring services. *Id.*

26. Of the individuals notified, approximately 5,827,542 were impacted by the Project K Incident and 324,330 individuals were impacted by the Scraping Incident, for a total of 6,151,872 notified individuals. *Id.*

27. After receiving notice that her PII had been impacted by the Data Incident, Plaintiff Antonio retained my firm. Similarly, Plaintiffs Carrera Aguallo, Hertz, Holmes and Veech retained Arnold Law Firm and Wolf Haldenstein Adler Freeman & Herz LLP, and Plaintiff Macaronis retained Morgan & Morgan Complex Litigation Group.

28. After an internal investigation, I, along with other Settlement Class Counsel filed Plaintiffs' Complaints.

Procedural Posture

29. On April 8, 2021, Plaintiffs Carrera Aguallo, Hertz, and Holmes brought suit against Defendants related to claims arising from the Project K Data Incident. *Carrera Aguallo et al. v. Kemper Corporation et al.*, Case No. 1:21-cv-01883 (N.D. Ill.), ECF No. 1.

30. Plaintiff Antonio filed a separate, related action on April 9, 2021. *Antonio et al v. Kemper Corporation et al.*, Case No. 1:21-cv-01921 (N.D. Ill) ("Antonio Matter"), ECF No. 1.

31. Counsel for Plaintiffs thereafter learned that Plaintiff Macaronis also intended to file suit.

32. Instead of continuing to litigate on separate but parallel tracks, counsel for Plaintiffs convened with Counsel for Defendants and agreed that Plaintiffs would file a consolidated Amended Complaint.

33. Plaintiff Antonio dismissed her initially filed lawsuit. *See* Antonio Matter, ECF No. 7.

34. On April 19, 2021 Plaintiffs Carrera Aguallo, Hertz, Holmes, Antonio and Macaronis filed their consolidated Amended Class Action Complaint. ECF No. 2.

35. On May 26, 2021, with the consent of Defendants, Plaintiffs filed a Second Amended Class Action Complaint, asserting claims related to the Data Incidents. ECF No. 21.

36. On September 3, 2021, Plaintiffs filed their Third Amended (and operative) Class Action Complaint, adding Plaintiff Veech as an additional named Plaintiff. ECF No. 30.

37. The operative complaint is brought on behalf of Plaintiffs and "[a]ll natural persons residing in the United States whose PII was compromised in the Data Breach announced by Defendants on or about March 16, 2021 and on or about May 25, 2021." ECF No. 30, ¶ 161.

38. The operative complaint also names a California Subclass, defined as: "All natural persons residing in California whose PII was compromised in the Data Breach announced by Defendants on or about March 16, 2021 and on or about May 25, 2021." ECF No. 30, ¶ 162.

39. The operative complaint alleges claims for: (1) negligence; (2) negligence *per se*; (3) unlawful practices in violation of California's Unfair Competition Law; (4) unfair practices in violation of California's Unfair Competition Law; (5) violation of the California Consumer

Privacy Act; (6) violation of the California Consumers Legal Remedies Act; (7) Breach of Implied Contract; (8) Declaratory Judgement; and (9) Unjust Enrichment. ECF No. 30, ¶¶ 173-259.

40. Plaintiffs seek credit monitoring services for class members, compensatory damages, statutory damages, equitable relief, and such other relief as the Court deems just and proper. ECF No. 30.

History of Negotiations

41. Recognizing the risks of protracted litigation, the Parties engaged in settlement negotiations.

42. To facilitate their negotiations, they agreed to use experienced mediator Rodney A. Max of Upchurch Watson White & Max. Mr. Max has extensive experience in class action mediation generally, and data breach mediation in particular.[1] Prior to the mediation, the Parties fully briefed the relevant issues, and Defendants produced nearly 1,000 pages of documents.

43. On July 12, 2021, the Parties attended a full day mediation via Zoom with Rodney A. Max. While the Parties made significant progress toward resolving the case, a few issues remained. Therefore, the Parties agreed to participate in a second mediation.

44. On July 30, 2021, the Parties participated in a second full-day mediation, this time with Bennett Picker of Stradley Ronan. Mr. Picker is a heavily credentialed mediator, with extensive experience in class actions, including data breach cases.[2] At all times the negotiations were highly adversarial, non-collusive, and at arms' length.

45. Following the second mediation, the Parties were able to reach an agreement on all central settlement terms and execute a term sheet.

---

[1] *See* https://www.uww-adr.com/biography/rodney-a-max.
[2] *See* https://www.stradley.com/professionals/p/picker-bennett-g.

46. Thereafter, the Parties asked the Court to vacate all currently pending deadlines, and set a deadline for Plaintiffs to file their motion for preliminary approval. ECF No. 27.

47. Over the next eight to ten weeks, the Parties continued negotiating the finer points of the Settlement Agreement. Plaintiffs' counsel expended significant time drafting and negotiating the Settlement Agreement, Claim Form, and notice documents, and drafting and preparing the motion for preliminary approval and accompanying documents.

48. Throughout the settlement process, Plaintiffs' counsel carefully weighed: (1) the benefits to the Class Representatives and the Class under the terms of this settlement, which provides significant relief to the Class; (2) the attendant risks and uncertainty of litigation; (3) the desirability of consummating the present settlement to ensure that the Class receives a fair and reasonable settlement; and (4) providing Plaintiffs and Class Members prompt relief.

49. On October 14, 2021, Plaintiffs moved for preliminary approval of the proposed class action settlement and for certification of the Settlement Class. ECF No. 35. The Court preliminarily approved the settlement on October 27, 2021. ECF No. 43.

50. The Court found the terms of the settlement to be "fair, reasonable, and adequate" and that the Settlement Class should be given notice. The Court appointed RG/2 Claims Administration LLC ("RG/2") as the Claims Administrator and ordered that the notice process commence. A final approval hearing is set for March 15, 2022. ECF No. 43.

The Settlement Agreement

Settlement Benefits

51. The settlement negotiated on behalf of the Settlement Class provides for two separate forms of relief: (1) monetary relief; and (2) equitable relief in the form of information

security enhancements.[3]

52. The Settlement Class includes:

> [A]ll natural persons residing in the United States who were sent notice letters notifying them that their PII was compromised in the Data Incidents announced by Defendants on or about March 16, 2021 and on or about May 25, 2021.

The Settlement Class specifically excludes: (i) Defendants and their respective officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incidents or who pleads *nolo contendere* to any such charge.[4]

53. Included within the Settlement Class is the California Settlement Subclass, defined as:

> [A]ll natural persons residing in the State of California who were sent notice letters notifying them that their PII was compromised in the Data Incidents announced by Defendants on or about March 16, 2021 and on or about May 25, 2021.

The California Settlement Subclass specifically excludes: (i) Defendants and their respective officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incidents or who pleads *nolo contendere* to any such charge.[5]

---

[3] SA, ¶ 2.
[4] SA, ¶ 1.27.
[5] SA, ¶ 1.2.

54. The Settlement Class includes individuals affected by both the Project K Incident and the Scraping Incident. Approximately 5,827,542 individuals were notified of the Project K Incident and 324,330 individuals were notified of the Scraping Incident. The class numbers a total of 6,151,872 notified individuals.[6]

55. The monetary relief is divided into two categories. First, all 6,151,872 Settlement Class Members will be provided access to Aura's Financial Shield Services ("Aura Financial Shield" or "Shield Services") for a period of 18 months from the Effective Date of the settlement *without the need to submit a Settlement Claim*.[7]

56. This benefit will be provided with the Short Notice as a link with a redeemable code to be used directly with Aura Financial Shield. Financial fraud coverage provided through Aura Financial Shield focuses on protecting financial assets, freezing identity at 10 different Bureaus including the three main credit bureaus, home and property title monitoring, income tax protection and other services. This service is integrated with Early Warning Services to provide real-time monitoring of financial accounts. Financial Shield also carries a $1,000,000 policy protecting the subscriber. This service will be available to all Settlement Class Members for a period of 18 months with the ability of Settlement Class Members to enroll at any point during the 18 month period for the duration of the 18 month period.[8] Financial Shield Services from Aura, like those provided for by the Settlement Agreement, retail for $135 per year. Thus, the value of these services for 18 months is at least $202 per person. Because all Settlement Class Members will automatically receive this benefit, the value of this benefit obtained for the Class could be valued at $1.2 billion ($202 x 6.1 million class members) given that is approximately what it would cost

---

[6] SA, § I.
[7] SA, ¶ 2.2.
[8] SA, ¶ 2.2.

for each class member to individually purchase this product on the open market. However, even if only 1% of the Class (or approximately 60,000 class members) utilizes the Shield Services, the value of that benefit equates to a conservative value of $12.1 million.[9]

57. In addition to the Automatic Benefits, Settlement Class Members may submit a claim for documented "Out-of-Pocket Losses" and "Lost-Time Losses."

58. Out-of-Pocket Losses are capped at $10,000 per individual and will include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after December 14, 2020, through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

59. Notably, while there is an individual cap of $10,000 per person on Out-of-Pocket Losses, there is no cap in the aggregate, meaning if every Settlement Class Member submitted a valid claim for $10,000 in Out-of-Pocket Losses, the Settlement Agreement would require every Settlement Class Member be paid.[10]

60. Lost-Time Losses can include up to 3 hours claimed at $18/hour with an attestation and brief description; and up to an additional 3 hours of documented Lost Time at $18/hour, or, if work was missed, Settlement Class Members can seek reimbursement at the rate of documented compensation up to $50/hour.[11]

---

[9] *See* https://www.aura.com/pricing.
[10] SA, ¶ 2.3.
[11] SA, ¶ 2.3.

61. In addition to the above benefits, California Settlement Subclass Members will also be eligible for an additional benefit of $50 each by attesting that they were a resident of California at the time Defendants notified them of the Data Incidents. The $50 payment is subject to a potential *pro rata* reduction.[12]

62. A pro rata reduction of the Lost-Time Losses and the California Claims will only occur *if* the total of Lost-Time Losses and California Claims exceeds $4,000,000.[13]

63. In addition to the monetary benefits described, the Settlement Agreement also provides for equitable relief in the form of changes to Defendants' business practices. Defendants have taken or will be taking steps listed in Exhibit E to Plaintiffs' Motion for Preliminary Approval, which was filed under seal. ECF No. 38.[15]

Notice and Claims Process

64. On October 14, 2021, the Court appointed RG/2 Claims Administration LLC as the Claims Administrator and ordered that the notice process commence. ECF No. 43.

65. On November 26, 2021, the Claims Administrator provided notice to the Settlement Class via email to the email addresses in Defendants' possession. Where the Short Notice was undeliverable via email or where an email address was not available, the Short Notice was sent via First Class mail to the address in Defendants' possession. Prior to the mailing, addresses were run through the National Change of Address database. Short Notices returned with forwarding addresses were forwarded, and those returned with no forwarding address were resent to any valid address found after performing a skip trace.[16]

[12] SA, ¶ 2.3.
[13] SA, ¶ 2.3.
[15] SA, ¶ 2.4.
[16] SA, ¶ 3.2(d).

66. The Claims Administrator also created a Settlement Website, which it maintains and updates throughout the claim period, with the Long Notice and Claim Form approved by the Court, as well as this Settlement Agreement, the Third Amended Complaint, and any other materials agreed upon or requested by the Court. Settlement Class Members are able to submit claim forms through the Settlement Website.[17]

67. The Claims Administrator also created and maintains a toll-free help line with a live operator to provide Settlement Class Members with additional information about the settlement. The Claims Administrator provides copies of the Long Notice, Claim Form, and Settlement Agreement to Class Members upon request.[18]

68. Additionally, Defendants posted a link to the Settlement Website on their own websites, https://www.kemper.com/Settlement and https://www.infinityauto.com.[19]

69. Notice was paid for by Defendants, separate and apart from any funds available to Settlement Class Members.[20]

70. The timing of the claims process was structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object.

71. Class Members have until February 24, 2022 to submit their claim form to the Claims Administrator, either by mail or online.[21]

---

[17] SA, ¶ 3.2(c).
[18] SA, ¶ 3.2(f).
[19] SA, ¶ 3.2(g).
[20] SA, ¶ 3.2.
[21] SA, ¶ 1.7.

72. Class Members who wish to opt-out of the settlement have until January 25, 2022 to provide written notice that they would like to be excluded from the Settlement Class.[22]

73. Similarly, Class Members who wish to object to the terms of the Settlement Agreement have until January 25, 2021, to provide written notice of their objection.[23]

74. The overall response from the class has been positive. As of the date of this filing, the Claims Administrator has not received, and Plaintiffs' Counsel is not aware of, any objections by Class Members to any aspect of the settlement, including the request for attorneys' fees and expenses or service awards for the Representative Plaintiffs. Furthermore, to date no one has requested to be excluded from the Settlement.

Attorneys' Fees, Costs, and Service Awards

75. The Parties did not discuss the payment of attorneys' fees, costs, expenses and/or incentive awards to the Representative Plaintiffs until after the substantive terms of the settlement had been agreed upon, other than that Defendants would pay reasonable attorneys' fees, costs, expenses, and service awards to the Representative Plaintiffs as may be agreed to by Defendants and Settlement Class Counsel and approved by the Court, or, in the event of no agreement, then as ordered by the Court.

76. I believe that the relief achieved through the settlement is close to if not the same relief we would have achieved had we taken the case to trial and succeeded. For our successful efforts on behalf of the Settlement Class, Plaintiffs' counsel request an award of attorneys' fees and expenses of $2,500,000, which is fifteen percent of the $17.1 million conservative valuation of this settlement.

[22] SA, ¶ 1.18.
[23] SA, ¶ 1.7.

77. Plaintiffs' Counsel have expended a total of 890.65 hours of attorney and paralegal time on this matter. Based on the billing rates of the law firms representing Plaintiffs, the total lodestar calculation is $593,564.85.

78. Additional time will be spent by Plaintiffs' Counsel to respond to any objections, to prepare for and attend the Final Approval Hearing, to defend any appeals taken from the final judgment approving the settlement if such appeals are taken, to respond to inquiries from Settlement Class Members about the case and the Settlement, and to ensure that the distribution of settlement proceeds to Settlement Class Members is done in a timely manner in accordance with the terms of the settlement.

79. Throughout this action, Defendants have been represented by highly experienced and skilled counsel who deployed very substantial resources on Defendants' behalf.

80. The hourly rates for the attorneys for whom time was submitted in this matter range from $319 to $875, and the hourly rates for non-lawyer billing staff range from $125 to $350. These hourly rates have been accepted and approved in other contingent litigation and are comparable to rates charged by class action counsel in similar cases.

81. Contemporaneous, daily time records were regularly prepared and maintained by all law firms. Settlement Class Counsel monitored time expended throughout the litigation to ensure that the time spent on the case was necessary. The vast majority of the time expended in this case was by Class Counsel, who worked to avoid duplication while actively prosecuting the case.

82. Pursuant to the terms of the settlement, costs and expenses are included in Plaintiffs' counsel's request for $2,500,000. Plaintiffs' counsel incurred a total of $ $24,886.72 in expenses. These expenses include costs for filing fees, mediation fees, travel, telephone charges,

document management, photocopying, printing, postage, process service fees, copies, and electronic research. These expenses were incurred in the normal course of litigation and Class Counsel made every effort to keep expenses contained.

83. As set forth in previously-filed firm resumes and declarations, Plaintiffs' Counsel have considerable experience in class actions and have litigated to resolution many, large data breach and privacy cases. We all have active litigation practices. The time and effort we devoted to this case would have been spent on other cases but for our commitment to Plaintiffs and their claims.

84. Plaintiffs' counsel represented Plaintiffs on a contingent fee basis. Plaintiffs are of modest means and would not have been able to obtain counsel to pursue their claims on a fixed-fee basis. Plaintiffs' counsel have vigorously litigated this matter and incurred significant expenses with the risk of not being paid.

85. The Settlement Agreement also provides for a reasonable service award to each Representative Plaintiff in the amount of $1,500.[24]

86. The service awards are meant to compensate Plaintiffs for their efforts which include maintaining contact with counsel, assisting in the investigation of the case, reviewing pleadings, remaining available for consultation throughout mediations, answering counsel's many questions, and reviewing the Settlement Agreement.

87. I believe the requested service awards of $1,500 to each Representative Plaintiff are reasonable, justified, and accord with common practice.

* * * * *

[24] SA, ¶ 7.3.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23rd day of December, 2021, in Chicago, Illinois.

Gary M. Klinger

EXHIBIT 1

FIRM RESUME

With offices in Washington, D.C., and Chicago, Illinois, Mason Lietz & Klinger LLP is dedicated to representing plaintiffs in class actions, mass torts and individual actions in courts throughout the United States.

ATTORNEY PROFILES

Gary E. Mason
Managing Partner

Gary is a nationally recognized leader of the class action bar. Focusing on consumer class actions and mass torts, Gary has recovered more than $1.5 billion in the 30 years he has represented plaintiffs.

With his broad experience, Gary is nationally known for representing consumers in class actions involving a wide range of defective products, including Chinese drywall, fire retardant plywood, polybutylene pipe, high-temperature plastic venting, hardboard siding, pharmaceutical products, consumer electronics and automobiles.

Gary has served in leadership positions in many consumer class actions in State and Federal Courts nationwide as well as in Multi-District Litigation. Gary writes and speaks frequently on topics related to class action litigation. He was the 2012-2013 Co-Chair of the Class Action Litigation group for the American Association for Justice. He has repeatedly been named as a Washington, DC Superlawyer for Class Actions.

Gary also serves as Executive Director and President of the Board of Directors of The Bethesda Blues and Jazz Foundation.

Gary graduated magna cum laude, Phi Beta Kappa, from Brown University in 1984 and earned his law degree from Duke University Law School. He then clerked for the Honorable Andrew J. Kleinfeld, U.S. District Court Judge, in Anchorage, Alaska. Gary is admitted to practice law in Washington, D.C, New York and Maryland. He is a member of the Bar of the United States Supreme Court and numerous federal Courts of Appeals and District Courts across the country.

David K. Lietz
Partner

David Lietz's practice concentrates in the areas of complex civil litigation, consumer class actions, and mass torts in federal and state courts nationwide. His class action experience includes a wide range of subject matters, including violations of federal consumer protection laws (such as the FDCPA and TCPA), violations of state consumer protection law, defective products, wage abuse, and data privacy. Mass tort experience includes pharmaceutical litigation.

David also has decades of experience as a trial lawyer, representing plaintiffs in complex actions involving wrongful death and critical injury. Through both trials and settlement, he has recovered millions and millions of dollars for the victims of commercial trucking accidents, commercial airplane crashes, bus crashes, manufacturing and power plant explosions and fires, and construction related injuries and deaths.

David's practice includes appellate work, having briefed and argued multiple cases before federal appellate courts, including *Home Depot v. Jackson* at the Fourth Circuit. David then served as part of the winning brief-writing and oral advocacy team for *Home Depot v. Jackson* at the United States Supreme Court.

David holds an AV rating from the Martindale-Hubbell Law Directory, an honor he has held since 1998. He is listed in the Bar Register of Preeminent Lawyers, Washington D.C. & Baltimore's Top Rated Lawyers, 2012–2015 edition, and has a Martindale-Hubbell Client Distinction Award.

Outside of the law, David served for 12 years on the Board of Regents of his alma mater, Luther College, and was appointed Regent Emeritus in 2017. He was a member of the Luther College Presidential Search Committee, and received the Luther College Distinguished Service Award in 2018.

David received his undergraduate degree in Political Science from Luther College in 1988, where he graduated with honors. He received his J.D. from the Georgetown University Law Center in 1991. He is admitted to practice law in the District of Columbia, and is admitted to practice before a number of federal district and appellate courts.

Gary M. Klinger
Partner

Gary is a natural competitor and relishes the challenge of being a litigator. He is a tenacious and dedicated advocate of his client's interests and welcomes every opportunity to help them prevail in complex, high-stakes litigation.

Gary represents clients in class actions involving wide-ranging theories of liability including consumer fraud, breach of contract, privacy violations, conspiracy, violation of the antitrust laws, and other torts. He has been appointed as class counsel to millions of consumers across the country. Gary has recovered tens of millions of dollars for consumers in class action settlements.

Prior to forming Mason Lietz & Klinger LLP, Gary was an attorney at one of the premier litigation firms in Chicago where he focused on class action litigation. Gary has successfully represented clients from pre-litigation disputes through trials and appeals in federal and state jurisdictions throughout the country.

Gary is a graduate of the University of Illinois where he received both his undergraduate and law degrees. He is licensed to practice in Illinois and numerous federal district courts across the country.

Danielle L. Perry
Partner

Danielle's primary focus is in protecting employee and consumer rights through class action lawsuits

Danielle graduated from the University of California, Berkeley in 2010 with a Bachelor of Arts in Peace and Conflict Studies. During her undergraduate studies, she managed and rowed for

the university's Lightweight Crew Team and also spent a year in Budapest, Hungary, where she interned with the Helsinki Committee, an international human rights organization. Danielle went on to attend Loyola Law School, where she was on the Board of the Public Interest Law Foundation and headed efforts to promote alternative dispute resolution, including founding a club structured to inform students of developments in mediation and working at The Center for Conflict Resolution.

During law school, she held an externship as a law clerk for the Honorable Victoria Chaney of the California Court of Appeals, worked with the Labor Division of the Los Angeles Office of the City Attorney, and was a Board Member for the Public Interest Law Foundation.

Prior to joining Mason Lietz & Klinger, Danielle practiced at a plaintiffs' class action firm in Los Angeles, where she worked as an advocate for victims of wage theft–employees who were being deprived of pay and not provided with legally required meal and rest periods. Danielle spent much of her time working on lawsuits brought to recover lost wages and penalties for banking, manufacturing, retail, property management, and trucking industry employees.

Danielle is a member of the American Association for Justice and regularly volunteers as an advising attorney at the Employment Justice Center.

NOTABLE CLASS ACTION CASES LITIGATED BY MLK ATTORNEYS

Antitrust

In re: TFT-LCD (Flat Panel) Antitrust Litigation, No. 3:07-cv-01827, MDL No. 1827 (N.D. Cal.) (combined settlement totaling nearly $1.1 billion in suit alleging the illegal formation of an international cartel to restrict competition in the LCD panel market) (2012).

Appliances

Ersler, et. al v. Toshiba America et. al, No. 07- 2304 (D.N.J.) (settlement of claims arising from allegedly defective television lamps) (2009).

Maytag Neptune Washing Machines (class action settlement for owners of Maytag Neptune washing machines).

Stalcup, et al. v. Thomson, Inc. (Ill. Cir. Ct.) ($100 million class settlement of clams that certain GE, PROSCAN and RCA televisions may have been susceptible to temporary loss of audio when receiving broadcast data packages that were longer than reasonably anticipated or specified) (2004).

Hurkes Harris Design Associates, Inc., et al. v. Fujitsu Computer Prods. of Am., Inc. (settlement provides $42.5 million to pay claims of all consumers and other end users who bought certain Fujitsu Desktop 3.5" IDE hard disk drives) (2003).

Turner v. General Electric Company, No. 2:05-cv-00186 (M.D. Fla.) (national settlement of claims arising from allegedly defective refrigerators) (2006).

Automobiles

In re General Motors Corp. Speedometer Prods. Liab. Litig., MDL No. 1896 (W.D. Wash.) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective speedometers) (2007).

Baugh v. The Goodyear Tire & Rubber Company (class settlement of claims that Goodyear sold defective tires that are prone to tread separation when operated at highway speeds; Goodyear agreed to provide a combination of both monetary and non-monetary consideration to the Settlement Class in the form of an Enhanced Warranty Program and Rebate Program) (2002).

Lubitz v. Daimler Chrysler Corp., No. L-4883-04 (Bergen Cty. Super. Ct, NJ 2006) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective brake system; creation of $12 million fund; 7th largest judgment or settlement in New Jersey) (2007).

Berman et al. v. General Motors LLC, No. 2:18-cv-14371 (S.D. Fla.) (Co-Lead Counsel; national settlement for repairs and reimbursement of repair costs incurred in connection with Chevrolet Equinox excessive oil consumption).

Civil Rights

In re Black Farmers Discrimination Litigation, No. 1:08-mc-00511 (D.D.C.) ($1.25 billion settlement fund for black farmers who alleged U.S. Department of Agriculture discriminated against them by denying farm loans) (2013).

Bruce, et. al. v. County of Rensselaer et. al., No. 02-cv-0847 (N.D.N.Y.) (class settlement of claims that corrections officers and others employed at the Rensselaer County Jail (NY) engaged in the practice of illegally strip searching all individuals charged with only misdemeanors or minor offenses) (2004).

Commercial

In re: Outer Banks Power Outage Litigation, No. 4:17-cv-141 (E.D.N.C) (Co-Lead Counsel; $10.35 million settlement for residents, businesses, and vacationers on Hatteras and Ocracoke Islands who were impacted by a 9-day power outage) (2018)

Construction Materials

Cordes et al v. IPEX, Inc., No. 08-cv-02220-CMA-BNB (D. Colo.) (class action arising out of defective brass fittings; court-appointed member of Plaintiffs' Steering Committee) (2011).

Elliott et al v. KB Home North Carolina Inc. et al, No. 08-cv-21190 (N.C. Super. Ct. Wake County) (Lead Counsel; class action settlement for those whose homes were constructed without a weather-resistant barrier) (2017)

In re: Pella Corporation Architect and Designer Series Windows Marketing, Sales Practices and Products Liability Litigation, MDL No. 2514 (D.S.C.)(class action arising from allegedly defective windows; Court-appointed Co-Lead Counsel).

In re MI Windows and Doors, Inc., Products Liability Litigation, MDL No. 2333 (D.S.C) (National class action settlement for homeowners who purchased defective windows; Court-appointed Co-Lead Counsel).

In re Atlas Roofing Corporation Chalet Shingle Products Liability Litig., MDL No. 2495 (N.D. Ga.) (class action arising from allegedly defective shingles; Court-appointed Co-Lead Counsel).

Helmer et al. v. Goodyear Tire & Rubber Co., No. 12-cv-00685-RBJ (D. Colo. 2012) (class action arising from allegedly defective radiant heating systems; Colorado class certified, 2014 WL 3353264, July 9, 2014)).

In re: Zurn Pex Plumbing Products Liability Litigation, No. o:08-md-01958, MDL No. 1958 (D. Minn.) (class action arising from allegedly plumbing systems; member of Executive Committee; settlement) (2012).

Hobbie, et al. v. RCR Holdings II, LLC, et al., No. 10-1113 , MDL No. 2047 (E.D. La.) ($30 million settlement for remediation of 364 unit residential high-rise constructed with Chinese drywall) (2012).

In re Chinese Manufactured Drywall Products Liability Litigation, No. 2:09-md-02047, MDL No. 2047 (E.D. La.) (litigation arising out of defective drywall) (appointed Co-Chair, Insurance Committee) (2012).

Galanti v. Goodyear Tire & Rubber Co., No. 03-209 (D.N.J. 2003) (national settlement and creation of $330 million fund for payment to owners of homes with defective radiant heating systems) (2003).

In re Synthetic Stucco Litig., No. 5:96-CV-287-BR(2) (E.D.N.C.) (member of Plaintiffs' Steering Committee; settlements with four EIFS Manufacturers for North Carolina homeowners valued at more than $50 million).

In re Synthetic Stucco (EIFS) Prods. Liability Litig., MDL No. 1132 (E.D.N.C.) (represented over 100 individuals homeowners in lawsuits against homebuilders and EIFS manufacturers).

Posey, et al. v. Dryvit Systems, Inc., No. 17,715-IV (Tenn. Cir. Ct) (Co-Lead Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants) (2002).

Sutton, et al. v. The Federal Materials Company, Inc., et al, No. 07-CI-00007 (Ky. Cir. Ct) (Co-Lead Counsel; $10.1 million class settlement for owners of residential and commercial properties constructed with defective concrete).

Staton v. IMI South, et al. (Ky. Cir. Ct.) (Co-Lead Counsel; class settlement for approximately $30 million for repair and purchase of houses built with defective concrete).

In re Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation, No. 15-cv-0018, MDL No. 2577 (D.N.J.) (Lead Counsel; national settlement to homeowners who purchased defective GAF decking and railings).

Bridget Smith v. Floor and Decor Outlets of America, Inc., No. 1:15-cv-4316 (N.D. Ga.) (Co-Lead Counsel; National class action settlement for homeowners who purchased unsafe laminate wood flooring).

In re Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation MDL No. 1:15-md-2627 (E.D. Va.) (Formaldehyde case; $36 million national class action settlement for member who purchased a certain type of laminate flooring).

In re Lumber Liquidators Chinese-Manufactured Laminate Flooring Durability Marketing, Sales Practices Litigation MDL No. 1:16-md-2743 (E.D. Va.) (Co-Lead Counsel; Durability case; $36 million national class action settlement for member who purchased a certain type of laminate flooring).

In re Windsor Wood Clad Window Products Liability Litigation MDL No. 2:16-md-02688 (E.D. Wis.) (National class action settlement for homeowners who purchased defective windows; Court-appointed Lead Counsel).

In re Allura Fiber Cement Siding Products Liability Litigation MDL No. 2:19-md-02886 (D.S.C.) (class action arising from allegedly defective cement board siding; Court-appointed Lead Counsel).

Environmental

Nnadili, et al. v. Chevron U.S.A., Inc, No. 02-cv-1620 (D.D.C.) ($6.2 million settlement for owners and residents of 200 properties located above underground plume of petroleum from former Chevron gas station) (2008).

In re Swanson Creek Oil Spill Litigation, No. 00-1429 (D. Md.) (Lead Counsel; $2.25 million settlement of litigation arising from largest oil spill in history of State of Maryland) (2001).

Fair Labor Standards Act/Wage and Hour

Craig v. Rite Aid Corporation, No. 08-2317 (M.D. Pa.) (FLSA collective action and class action settled for $20.9 million) (2013).

Stillman v. Staples, Inc., No. 07-849 (D.N.J. 2009) (FLSA collective action, plaintiffs' trial verdict for $2.5 million; national settlement approved for $42 million) (2010).

Lew v. Pizza Hut of Maryland, Inc., No. CBB-09-CV-3162 (D. Md.) (FLSA collective action, statewide settlement for managers-in-training and assistant managers, providing recompense of 100% of lost wages) (2011).

Food and Drug Misrepresentation

Smid et al. v. Nutranext, LLC, No. 20L0190 (St. Clair Cty. Ill., 2020) ($6.7 million settlement)

In re Hill's Pet Nutrition, Inc. Dog Food Prods. Liab. Litg., MDL No. 2887, No. 2:19-md-02887 (D. Kan. filed June 6, 2019) (Court-appointed Co-Lead Counsel)

Financial

Roberts v. Fleet Bank (R.I.), N.A., No. 00-6142 (E. D. Pa. 2003) ($4 million dollar settlement on claims that Fleet changed the interest rate on consumers' credit cards which had been advertised as "fixed.").

Penobscot Indian Nation et al v United States Department of Housing and Urban Development, No. 07-1282 (PLF) (D.D.C. 2008) (represented charitable organization which successfully challenged regulation barring certain kinds of down-payment assistance; Court held that HUD's promulgation of rule violated the Administrative Procedure Act),

Insurance

Young, et al. v. Nationwide Mut. Ins. Co, et al., No. 11-5015 (E.D. Ky. 2014) (series of class actions against multiple insurance companies arising from unlawful collection of local taxes on premium payments; class certified and affirmed on appeal, 693 F.3d 532 (6th Cir., 2012); settlements with all defendants for 100% refund of taxes collected).

Nichols v. Progressive Direct Insurance Co., et al., No. 2:06-cv-146 (E.D. Ky. 2012) (Class Counsel; class action arising from unlawful taxation of insurance premiums; statewide settlement with Safe Auto Insurance Company and creation of $2 million Settlement Fund; statewide settlement with Hartford Insurance Company and tax refunds of $1.75 million)

Privacy / Data Breach

In re U.S. Office of Personnel Management Data Security Breach Litigation, No. 15-1393 (ABJ), MDL No. 2664 (D.D.C.) (court appointed interim Liaison Counsel).

In re Google Buzz Privacy Litigation, No. 5:10-cv-00672 (N.D. Cal. 2010) (court-appointed Lead Class Counsel; $8.5 million *cy pres* settlement).

In re Dept. of Veterans Affairs (VA) Data Theft Litig., No. 1:2006-cv-00506, MDL 1796 (D.D.C. 2009) (Co-Lead counsel representing veterans whose privacy rights had been compromised by the theft of an external hard drive containing personal information of approximately 26.6 million veterans and their spouses; creation of a $20 million fund for affected veterans and a cy pres award for two non-profit organizations).

In re Adobe Systems Inc. Privacy Litigation, No. 5:13-cv-05226 (N.D. Cal. 2015) (settlement requiring enhanced cyber security measures and audits).