

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JAY HEATH, EDWARD SHAPIRO, and  
DAISY BECERRA LOPEZ, individually  
and on behalf of all similarly situated persons,

Plaintiffs,

v.

INSURANCE TECHNOLOGIES CORP. and  
ZYWAVE, INC.,

Defendants.

Case No. 3:21-cv-01444-N

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

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<i>Garza v. Sporting Goods Proprs., Inc.</i> , No. CIV. A. SA-93-CA-108, 1996 WL 56247 (W.D. Tex. Feb. 6, 1996).....	14
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*In re Chinese-Manufactured Drywall Prods. Liab. Litig.*,  
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*In re Combustion, Inc.*, 968 F. Supp. 1136 (W.D. La. 1997). ..... 26

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*Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468 (5th Cir. 1986). ..... 20

*Jenkins v. Trustmark Nat’l Bank*, 300 F.R.D. 291 (S.D. Miss. 2014). ..... 26

*Karvaly v. eBay, Inc.*, 245 F.R.D. 71 (E.D.N.Y. 2007). ..... 13

*Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501 (5th Cir. 1981). ..... 14

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*ODonnell v. Harris Cnty.*, No. H-16-1414, 2019 WL 422040 (S.D. Tex. Sept. 5, 2019). ..... 14, 22

*Parker v. Anderson*, 667 F.2d 1204 (5th Cir. 1982). ..... 14

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**STATUTES:** **PAGE(S):**

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

2 *McLaughlin on Class Actions* § 6:7 (8th ed. 2011). ..... 24

2 *McLaughlin on Class Actions* § 6:7 (15th ed. 2018). ..... 22

2 Newberg & Conte, *Newberg on Class Actions* § 11.22 (3d ed. 1992). ..... 13

2 Newberg & Conte, *Newberg on Class Actions* (“Newberg”) § 11.25 (3d ed. 1992). ..... 15

2 Newberg & Conte, *Newberg on Class Actions* § 11.27 (3d ed. 1992). ..... 13

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Fed. R. Civ. P. 23(b). ....	15, 19, 21, 30
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Plaintiffs Jay Heath, Edward Shapiro, and Daisy Becerra Lopez (“Plaintiffs”) submit this Memorandum in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement.

## **I. INTRODUCTION**

In May 2021, Defendants Zywave, Inc. and Insurance Technologies Corp. (“Defendants” or “ITC”) announced a data breach that had potentially affected the personal information of individuals who were customers of insurance brokers that were, in turn, Defendants’ customers (the “Data Breach”). As a result of the Data Breach, approximately 4,341,523 individuals’ personal identifying information was impacted. This class action arises out of ITC’s alleged failure to safeguard the personally identifiable information (“PII”) that it maintained regarding Plaintiffs and Class Members. ITC denies all liability and wrongdoing.

After extensive arm’s-length negotiations and with the assistance of an independent third-party mediator, the Parties have reached a settlement that is fair, adequate, and reasonable. The agreement creates an \$11,000,000 Settlement Fund, and provides for three separate categories (or “Tiers”) of relief: (1) statutory cash payments to eligible Class Members who reside in California; (2) reimbursement of up to \$5,000 of Out-of-Pocket expenses per Class Member, including payment for up to eight (8) hours of attested lost time, compensable at the rate of \$25 per hour; and (3) 12-months of Aura’s Financial Shield® product, automatically provided to every Settlement Class Member.<sup>1</sup> Plaintiffs strongly believe the Settlement is favorable to the Settlement Class.<sup>2</sup>

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<sup>1</sup> The Settlement Agreement (“Agr.”) in its entirety is attached as Exhibit A to the Declaration of Gary M. Klinger (“Klinger Decl.”), filed herewith. Capitalized terms shall have the same meaning as assigned to them in the Settlement Agreement.

<sup>2</sup> *Id.* at ¶¶ 4–5.



Pursuant to Rule 23(e), Plaintiffs move the Court for an Order certifying the Class for settlement purposes, preliminarily approving the proposed Settlement Agreement, and approving the content and manner of the proposed notice process. Accordingly, and relying on the following Memorandum of Points and Authorities, the Declaration of Plaintiffs' Counsel Gary M. Klinger and attached exhibits filed herewith, Plaintiffs respectfully request the Court preliminarily approve the Parties' Settlement Agreement and issue the Proposed Order attached as Exhibit A-3 to the Declaration of Gary M. Klinger in Support of Plaintiffs' Unopposed Motion for Preliminary Approval ("Klinger Decl."), filed herewith.

## **II. CASE SUMMARY**

### **A. The Data Incident**

Defendant ITC is a provider of marketing, rating, and management software and services for insurance companies and agents. ITC sells its services and products across the United States. Klinger Decl. ¶ 30.a. Defendant Zywave is an insurance technology provider focusing on cloud-based sales management, client delivery, content, and analytics solutions. Zywave acquired ITC in 2020 to expand its customer base to more than 15,000 insurance organizations globally. *Id.* ¶ 8.b. Defendant ITC is a wholly owned subsidiary of Zywave. *Id.* ¶ 30.c. In the ordinary course of doing business with Defendants, Defendants receive sensitive PII regarding consumers such as: names; addresses; phone numbers; driver's license numbers; Social Security numbers; dates of birth; email addresses; genders; and usernames and passwords. *Id.* at ¶ 30.d.

On or about May 10, 2021, Defendant ITC began notifying consumers and state Attorneys General about a data breach that occurred on February 27, 2021 (the "Data Breach"). *Id.* at ¶ 30.f. According to the Notice of Data Breach letters and letters sent to state Attorneys General, "an unauthorized third party gained access to [ITC's] AgencyMatrix application," and "acquired

certain personal information stored in that application.” *Id.* ¶ 30.g. Hackers obtained information from ITC including PII of thousands of its clients’ customers, potential customers, and other individuals, including, but not limited to, their names, Social Security numbers, driver’s license numbers, dates of birth, and username/password information. *Id.* ¶ 30.i.

Plaintiffs and the Class Members allege that they relied on ITC to keep their PII confidential and securely maintained, to use this information for business purposes only and to make only authorized disclosures of this information. *Id.* ¶ 30.j. Through the Data Breach, hackers allegedly were able to gain access to and exfiltrate the protected PII of hundreds of thousands of Class Members. *Id.* ¶ 30.k. Plaintiffs allege the Data Incident put them, and other Class Members, at risk of imminent, immediate and continuing risk of harm from fraud and identity theft. *Id.* ¶ 34.

#### **B. Procedural Posture**

Following the investigation conducted by Class Counsel, Plaintiffs Jay Heath and Edward Shapiro filed their original Class Action Complaint on June 18, 2021, asserting causes of action for: (1) Negligence; (2) Negligence *Per Se*; (3) Violation of Maryland’s Personal Information Privacy Act; (4) violation of Maryland’s Consumer Protection Act; (5) violation of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law; (6) Declaratory Judgment; and (7) Unjust Enrichment. *Id.* ¶ 32. Plaintiffs sought injunctive and equitable relief, an award of compensatory, statutory, nominal and punitive damages, reasonable fees and costs allowable by law, and any such further relief that the Court deems proper. *Id.* ¶ 33.

Soon after filing, the Parties began discussing the prospect for early resolution after an exchange of information necessary to evaluate the strengths and weaknesses of Plaintiffs’ claims and ITC’s defenses. *Id.* ¶ 35. In furtherance of settlement negotiations, and in accordance with the Court’s Order granting the Parties’ Joint Stipulation to Amend, on November 19, 2021, Plaintiffs

filed their operative and First Amended Complaint, adding Plaintiff Daisy Becerra Lopez, a California Subclass, and an eighth and ninth cause of action: (8) violation of California's Consumer Privacy Act; and (9) violation of California's Unfair Competition Law. *Id.* ¶ 36.

To further facilitate settlement negotiations, the Parties agreed to mediate Plaintiffs' claims with Christopher Nolland. Mr. Nolland is a widely respected mediator with decades of experience working as a neutral, both in mediation and arbitration. *Id.* ¶ 37. In advance of mediation, ITC provided informal discovery related to the merits of Plaintiffs' claims and class certification, and ITC's defenses, and the Parties discussed their respective positions on the merits of the claims and class certification. *Id.* ¶ 38. The Parties also fully briefed their respective positions for the mediator. *Id.* This informal exchange of information, combined with Plaintiffs' individual research, and the relevant experience of Class Counsel, allowed counsel to fully evaluate the strengths and weaknesses of Plaintiffs' case, and to conduct informed settlement negotiations. *Id.* ¶ 39.

On December 9, 2021 Counsel for Plaintiffs participated in a pre-mediation conference with Mr. Nolland. *Id.* ¶ 40. On December 13, 2021 the Parties attended a full-day mediation via Zoom Video Conference with Mr. Nolland. *Id.* ¶ 41. After a full day of arm's-length negotiations, and with the assistance of Mr. Nolland, the Parties agreed to a memorandum of understanding setting forth the essential terms of the Settlement Agreement. *Id.* ¶ 42. Over the next months, the Parties diligently drafted, negotiated, and finalized the Settlement Agreement, notice forms, and agreed upon a claims administrator. *Id.* ¶ 43.

### **III. SUMMARY OF SETTLEMENT**

#### **A. Settlement Benefits**

The Settlement negotiated on behalf of the Class provides for an \$11,000,000 Settlement Fund to cover three separate tiers of class relief, attorneys' fees and costs, Plaintiffs' Service

Awards (subject to court approval), and the costs of settlement administration. *Id.* ¶ 51. The Settlement provides for relief for the approximate 4,341,523 Members of the Settlement Class defined as follows:

All individuals whose PII was potentially subjected to the Data Breach, as confirmed by Defendants' business records.

Klinger Decl. ¶ 47. The Settlement Agreement provides additional relief for eligible Members of the California Subclass, defined as:

All residents of California at the time of the Data Breach whose PII Was potentially subjected to the Data Breach, as confirmed by Defendants' business records.

*Id.* ¶ 48. The California Subclass includes up to approximately 318,091 individuals. *Id.* ¶ 49. The Settlement Class specifically excludes the Court, the officers and directors of Defendants, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Breach, and persons who timely and validly request exclusion from the Settlement Class. *Id.* ¶ 50.

The three separate tiers of relief created by the Settlement include: (1) a "Tier One" fund providing for the payment of \$100 to \$300 for each California Subclass Member, subject to potential *pro rata* reduction; (2) a "Tier Two" fund providing for reimbursement of up to \$5,000 of Out-of-Pocket expenses per Class Member, including payment for up to eight hours of attested lost time, compensable at the rate of \$25 per hour; and (3) 12-months of Aura's Financial Shield® product, automatically provided to every Settlement Class Member. *Id.* ¶ 52. As described in detail below, the amounts designated for Tier One and Tier Two are in a way fungible: should the number and value of claims exceed the amount designated for a given Tier's fund, the residue from either fund will be transferred before the administrator resorts to any *pro rata* reduction. *Id.* ¶ 53.

*I. Tier One Relief*

First, the Settlement creates a tier (“the “Tier One Fund”) of \$1,590,400 (“the Tier One Maximum”) to provide a statutory payment of \$100 to each eligible Member of the California Subclass. *Id.* ¶ 54. If the total value of verified Tier One Claims submitted does not exceed the Tier One Maximum, then each verified Tier One claimant will have their Tier One payment of \$100 increased on a *pro rata* basis up to a maximum of three hundred dollars (\$300) subject to certain provisions described below. *Id.* ¶ 55.

The determination of whether the value of the amount of verified Tier One Claims does not exceed the Tier One Maximum will be made after a determination is made as to whether a Tier Two *pro rata* reduction of verified claims would be required (because the total value of such verified Tier Two claims exceeds the Tier Two Maximum), but before the transfer of funds from Tier One to Tier Two. *Id.* ¶ 56. In the event a *pro rata* reduction of the verified claims claimed by the Tier Two claimants would be necessary, but the total amount of verified Tier One Claims does not exceed the Tier One Maximum, then such excess amounts in the Tier One Fund (the “Tier One Residue”) shall be transferred by the Settlement Administrator to the Tier Two Fund up to the amount needed to pay in full the total value of verified Tier Two Claims without reducing each verified Tier One claim award below \$100 per claim. Any Tier One residue remaining after a \$100 to each Tier One Claimant, and full payment of valid Tier Two claims, will be used to increase, *pro rata*, the amount paid to each valid Tier One claimant. *Id.* ¶ 57.

Any funds remaining in the Tier One Fund will not revert to ITC: the Settlement provides any remaining amount be paid to the Texas Bar Foundation, subject to Court approval, as a *cy pres* recipient. *Id.* ¶ 60.

2. *Tier Two Relief*

Second, the Settlement creates a second tier (“the “Tier Two Fund”) of \$2,878,333 (“the Tier Two Maximum”) to provide reimbursement of up to \$5,000 per Class Member in Out-of-Pocket losses including compensation for lost time related to the Data Breach at the rate of \$25 per hour for up to 8 hours per valid claimant from the National Class. *Id.* ¶ 61. If the total value of verified Tier Two Claims submitted does not exceed the Tier Two Maximum, then any amount remaining (“Tier Two Residue”) shall be transferred by the Settlement Administrator to the Tier One Fund. *Id.* ¶ 62. If there are any funds remaining in the Tier Two Fund after the Tier Two Transfer (if any), then such funds shall be used to increase each verified Tier Two Claim on a *pro rata* basis. *Id.* ¶ 63. If the total amount of verified Tier Two Claims exceeds the Tier Two Maximum plus the Tier One Transfer (if any), payments to verified Tier Two claimants will be reduced on a *pro rata* basis. *Id.*

Out-of-Pocket losses are reimbursable if they are reasonably traceable, meaning: (1) the timing of the loss occurred on or after February 27, 2021; and (2) the personal information used to commit the purported identity theft or fraud consisted of the same type of personal information that was provided to Defendants prior to the Data Breach. *Id.* ¶ 65. A Settlement Class Member’s claim for Out-of-Pocket Losses may also include a claim for up to 8 hours of time spent remedying identity theft or fraud, including misuse of personal information, credit monitoring or freezing credit reports, and/or other issues related to the Data Breach at twenty-five dollars (\$25.00) per hour. Independent documentation is not required: a Class Member can claim compensation for lost time by providing a simple attestation as to the amount of time spent (“Attested Time”). *Id.* ¶ 66.

Any funds remaining in the Tier Two Fund will not revert to ITC: the Settlement provides any remaining amount be paid to the Texas Bar Foundation as a *cy pres* recipient. *Id.* ¶ 67.

3. *Tier Three Relief*

Third, the Settlement provides for one-year of Aura Financial Shield® services to be automatically provided to Settlement Class Members. *Id.* ¶ 68.

Aura Financial Shield® focuses on protecting financial assets, freezing identity at ten (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 (“EWS”) to provide real-time monitoring of financial accounts. Financial Shield® also carries a \$1 million policy protecting the subscriber. *Id.* ¶ 69. Aura Financial Shield® has a starting price of \$12 per month per individual:<sup>3</sup> this relief is thus valued at \$144 per Settlement Class Member. *Id.* ¶ 70.

All Settlement Class Members are eligible to access 12-months of Aura Financial Shield®, without the need to file a claim. *Id.* ¶ 71. The Settlement Administrator shall send an activation code to each Settlement Class Member within thirty (30) days of the Effective Date which can be used to activate the Services via an enrollment website maintained by Aura. *Id.* ¶ 72. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. *Id.* Aura shall provide Financial Shield to all valid claimants who timely activate those services for a period of 12-months from the date of activation. *Id.*

**B. The Notice and Claims Process**

The Parties have agreed to use Angeion as the Notice Provider and Claims Administrator in this case. *Id.* ¶ 74. The cost of notice and claims administration is capped at \$1,500,000. *Id.* ¶ 75.

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<sup>3</sup> See <https://www.aura.com/pricing> (last accessed Feb. 24, 2022).

*1. Notice*

The current and agreed upon Notice Plan calls for direct and individual Notice to be provided to Settlement Class Members via United States Postal Service first class mail. *Id.* ¶ 77. The Settlement Administrator will be responsible for obtaining the name and mailing address of Settlement Class Members from Defendants and performing a reverse lookup for email addresses to send notice via email when summary post card notice is returned as undeliverable. *Id.* ¶ 78. The Settlement Administrator will also establish a dedicated settlement website and will maintain and update the website throughout the claim period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as the Settlement Agreement, contact information for Class Counsel, ITC's Counsel and the Administrator. *Id.* ¶ 80. The Settlement Administrator will also make a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries, and establish and maintain a post office box for mailed written notifications of exclusion or objections from the Settlement Class. *Id.* ¶ 82.

*2. Claims*

The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to opt-out or object. *Id.* ¶ 83. Class Members will have seventy-five (75) days from the Notice Deadline to submit their Claim Form to the Settlement Administrator, either electronically or by mail. *Id.* ¶ 84. The Claim Form, attached to the Settlement Agreement as Exhibit 1, is written in plain language to facilitate Settlement Class Members' ease in completing it. *See Agr. Ex. 1.*



To submit a Tier One Claim, California Subclass Members must provide to the Settlement Administrator the information required to evaluate the claim, including: the California Subclass Member's full name, email address, mailing address, and phone number, which must be validated against the mailing address in Defendants' business records at the time of the Data Breach. *Id.* ¶ 58. Only the subset of California Subclass Members whose Social Security number and/or driver's license information were accessed or potentially accessed in the Data Breach, as confirmed by Defendants' business records, will be eligible to submit a Tier One Claim. *Id.* ¶ 59.

To submit a Tier Two claim, Settlement Class Members must provide to the Settlement Administrator the information required to evaluate the claim, including: the Settlement Class Member's name and mailing address, which must be validated against the mailing address in Defendants' business records at the time of the Data Breach; (2) Reasonable Documentation supporting their claim; and (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone. *Id.* ¶ 64. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Class Member that documents the costs incurred. *Id.* To claim up to \$200 in compensation for lost time (8 hours compensable at \$25 per hour), Settlement Class Members need only attest to the time spent dealing with the effects of the data breach. *Id.* ¶ 66.

Under Tier Three, enrollment codes for Aura Financial Shield® will automatically be sent to Settlement Class Members via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. *Id.* ¶ 72.

The Claims Administrator is given the authority to assess the validity of claims, and to ask for additional documentation. *Id.* ¶ 85. To the extent the Settlement Administrator determines a Claim Form, along with supporting materials, is deficient in whole or part, within a reasonable

time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent within twenty-one (21) days after the Claims Deadline and be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail if the claimant provided an address. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations. *Id.* ¶ 86.

3. *Requests for Exclusion and Objections*

Any Settlement Class Member who wishes to exclude themselves from or object to the Settlement shall have until fifty (50) days after the Notice Deadline to do so. *Id.* ¶¶ 87, 90.

The Request for Exclusion must include the individual's name and address; a statement that he or she wants to be excluded from the Action; and the individual's signature. Only one individual may be excluded from the Settlement Class per each written notification or exclusion form. No group opt-outs from the Settlement Class shall be permitted. *Id.* ¶ 88. Any Settlement Class Member who does not timely seek exclusion will be bound by the terms of the Settlement. *Id.* ¶ 89.

Objections to the Settlement or to the Motion for Fees, Costs, and Expenses and Service Awards must be timely filed electronically with the Court or mailed to the Clerk of the Court and, additionally, served concurrently on Class Counsel and Counsel for ITC. *Id.* ¶ 91. The written objection must include (a) the name of the filed action; (b) the objector's full name, address,

telephone number; email address; (c) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support for the objection; (e) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards; (f) any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between objector or objector's counsel and any other person or entity; (g) a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; (h) a statement confirming whether the objector intends to appear personally or through counsel and/or testify at the Final Approval Hearing; and (i) the objector's signature on the written objection (an attorney's signature is not sufficient).

**C. Plaintiffs' Service Awards, Attorneys' Fees and Costs**

The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or Service Award To Representative Plaintiffs, until after the substantive terms of the Settlement had been agreed upon, other than that ITC would pay reasonable attorneys' fees, costs, expenses, and a Service Award to Representative Plaintiffs as may be agreed to by ITC and Proposed Settlement Class Counsel and/or as ordered by the Court, or in the event of no agreement, then as ordered by the Court. *Id.* ¶ 93.

The Settlement Agreement calls for a reasonable Service Award to Plaintiffs in the amount of \$2,000 per Plaintiff, subject to Court approval. *Id.* ¶ 95. The Service Award is meant to compensate Plaintiffs for their efforts which include maintaining contact with counsel, reviewing and approving pleadings, assisting in the investigation of the case, remaining available for

consultation throughout mediation, reviewing the Settlement documents, and for answering counsel's many questions. *Id.* ¶ 96.

As part of the Settlement Agreement, ITC has agreed to pay attorneys' fees in the amount of up to \$3,666,666.67—one-third of the Settlement Fund—plus litigation costs and expenses not to exceed \$30,000 as approved by the Court. *Id.* ¶ 94.

Class Counsel will submit a separate motion seeking attorneys' fees, costs, and Plaintiffs' Service Awards prior to Settlement Class Members' deadline to exclude themselves from or object to the Settlement Agreement. *Id.* ¶ 97.

#### **IV. LEGAL AUTHORITY**

Rule 23(e) requires court approval of any class settlement, following notice to the class. The preliminary approval stage provides a forum for the initial evaluation of a settlement, and where no class has been previously certified, a determination as to whether a proposed settlement class should be certified. 2 Newberg & Conte, *Newberg on Class Actions* §§ 11.22, 11.27 (3d ed. 1992); *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 175 (5th Cir. 1979). “First, the court must preliminarily approve the settlement. Then, the members of the class must be given notice of the proposed settlement, and finally, after a hearing, the court must determine whether the proposed settlement is fair, reasonable, and adequate.” *In re Shell Oil Refinery*, 155 F.R.D. 552, 555 (E.D. La. 1993). At this preliminary approval stage, the settling parties bear the burden of demonstrating that the settlement is fair, reasonable, and adequate. *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, No. 11-CV-1363, 2012 WL 92498, at \*7 (E.D. La. Jan. 10, 2012). The standards at preliminary approval are not as stringent as those applied to a motion for final approval. *In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, 310 F.R.D. 300, 314 (E.D. La. 2015) (citing *Karvaly v. eBay, Inc.*, 245 F.R.D. 71, 86 (E.D.N.Y. 2007)). “If the proposed settlement discloses no reason to doubt

its fairness, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, does not grant excessive compensation to attorneys, and appears to fall within the range of possible approval, the court should grant preliminary approval.”

*In re Pool Prods. Distrib. Market Antitrust Litig.*, 310 F.R.D. at 314–15.

Plaintiffs here seek preliminary approval of the proposed Settlement—an initial evaluation of the fairness of the proposed Settlement. *See Manual for Complex Litigation* § 30.44 (4th ed.). Judicial and public policy favors the resolution of disputes through settlement. *ODonnell v. Harris Cnty.*, No. H-16-1414, 2019 WL 422040, at \*8 (S.D. Tex. Sept. 5, 2019); *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982); *see also Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 507 (5th Cir. 1981) (“Particularly in class action suits, there is an overriding public interest in favor of settlement.” (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977))). There is a strong presumption in favor of finding settlement agreements fair—particularly when they have been reached by experienced counsel, with the assistance of a third-party neutral, after a meaningful exchange of information. *ODonnell v. Harris Cnty.*, 2019 WL 4224040, at \*8 (citing *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02-CV-1152-M, 2018 WL 1942227, at \*4 (N.D. Tex. Apr. 25, 2018) (quoting *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1063 (S.D. Tex. 2012))). Settlement agreements are not required to “achieve some hypothetical standard constructed by imagining every benefit that might someday be obtained in contested litigation”—rather, compromise is the essence of settlement, and a court may rely on the judgment of experienced counsel for the parties. *Dehoyos v. Allstate Corp.*, 240 F.R.D. 269, 286 (W.D. Tex. Feb. 21, 2007) (quoting *Garza v. Sporting Goods Proprs., Inc.*, No. CIV. A. SA-93-CA-108, 1996 WL 56247 (W.D. Tex. Feb. 6, 1996)). In granting preliminary approval, the Court

determines it will “likely” be able to grant final approval of the Settlement under Rule 23(e)(2) and certify the Class for purposes of Settlement.

Because the proposed Settlement Agreement falls within the range of possible approval, this Court should grant Plaintiffs’ Motion and allow notice to be provided to the Class. *See* 2 Newberg & Conte, *Newberg on Class Actions* (“*Newberg*”) § 11.25 (3d ed. 1992).

## V. LEGAL DISCUSSION

### A. The Court Should Certify the Proposed Class for Settlement Purposes.

Plaintiff here seeks certification of a Nationwide Class consisting of “[a]ll individuals whose PII was potentially subjected to the Data Breach, as confirmed by Defendants’ business records,” and a California Subclass defined as “[a]ll residents of California at the time of the Data Breach whose PII was potentially subjected to the Data Breach, as confirmed by Defendants’ business records” with specific and limited exclusions. *See* Klinger Decl. ¶¶ 47–50. The *Manual for Complex Litigation (Fourth)* advises that in cases presented for both preliminary approval and class certification, the “judge should make a preliminary determination that the proposed class satisfies the criteria”. *Manual for Complex Litigation (Fourth)* § 21.632.

Under Rule 23, a class action may be maintained where the movants demonstrate (1) the class is so numerous that joinder is impracticable; (2) the class has common questions of law or fact; (3) the representatives’ claims are typical of the class claims; and (4) the representatives will fairly and adequately protect class interests. *Nelson v. Constant*, No. 17-14581, 2020 WL 5258454, at \*4 (E.D. La. Sept. 3, 2020) (citing Rule 23(a)). Additionally, under Rule 23(b)(3), a class may be maintained where “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”

Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court's evaluation is somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). 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.* Other certification issues however, such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions” require heightened scrutiny in the settlement-only class context “for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.*

Despite the necessarily rigorous analysis of certain prongs at the preliminary certification stage, class actions are regularly certified for settlement. In fact, similar data breach cases have been certified—on a *national* basis—including the record-breaking settlement in *In re Equifax*. *See In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT (N.D. Ga. 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). This case is no different.

*I. The Settlement Class is so numerous that joinder is impracticable.*

Numerosity requires “the class [be] so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). The Fifth Circuit has noted that a class of 20 individuals is “much too small to meet the numerosity requirement.” *Boykin v. Georgia-Pac. Corp.*, 706 F.2d 1384, 1386 (5th Cir. 1983). A class of 100 to 150 members, however, “is within the range that

generally satisfied the numerosity requirement.” *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999).

Here, both the Nationwide Class and the California Subclass clearly surpass the threshold required to establish numerosity. As the proposed Settlement Class includes 4,341,523 individuals who had PII compromised by the Data Breach, up to approximately 318,091 of whom are a part of the California Subclass, judicial economy would be well-served by certification. Accordingly, the Settlement Class is sufficiently numerous to justify certification.

2. *Questions of law and fact are common to the Settlement Class.*

Commonality requires Plaintiffs to demonstrate “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The threshold for meeting this prong is not high. Commonality does not require that every question be common to every member of the class, but rather that the questions linking class members are substantially related to the resolution of the litigation and capable of generating common answers “apt to drive the resolution of the litigation” even where the individuals are not identically situated. *In re Heartland Payment Sys.*, 851 F. Supp. 2d at 1052 (citing *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 347 (2011)). Commonality can be satisfied by an “instance of the defendant's injurious conduct, even when the resulting injurious effects—the damages—are diverse.” *Nelson v. Constant*, 2020 WL 5258454, at \*5 (quoting *In re Deepwater Horizon*, 739 F.3d 790, 810–11 (5th Cir. 2014)).

Here, the commonality requirement is met because Plaintiffs can demonstrate numerous common issues exist. For example, whether ITC failed to adequately safeguard the records of Plaintiffs and other Settlement Class Members is a question common across the entire Class. ITC’s data security safeguards were common across the Class, and those applied to the data of one Settlement Class Member did not differ from those safeguards applied to another.



Other specific common issues include (but are not limited to):

- Whether ITC failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of information compromised in the Data Incident;
- Whether ITC's data security systems prior to and during the Data Incident complied with applicable data security laws and regulations; and
- Whether ITC's conduct rose to the level of negligence.

These common questions, and others alleged by Plaintiffs in their First Amended Complaint, are central to the causes of action brought here, will generate common answers, and can be addressed on a class-wide basis. Thus, Plaintiffs have met the commonality requirement of Rule 23.

3. *Plaintiffs' claims and defenses are typical of the Settlement Class.*

Under Rule 23(a)(3), the typicality requirement is satisfied where “the claims or defenses of the class representatives have the same essential characteristics as those of the class as a whole.” “If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality.” *See Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002).

Here, Plaintiffs' and Settlement Class Members' claims all stem from the same event—the hacker's attack on ITC's computers and servers—and the cybersecurity protocols that ITC had (or did not have) in place to protect Plaintiffs' and Settlement Class Members' data. Thus, Plaintiffs' claims are typical of the Settlement Class Members' and the typicality requirement is satisfied.

4. *Plaintiffs and their counsel will provide fair and adequate representation for the Settlement Class.*

Representative plaintiffs must be able to provide fair and adequate representation for the class. To satisfy the adequacy of representation requirement, plaintiffs must establish that: (1) the

there is no antagonism or conflict of interest between the class representatives and other members of the class; and (2) counsel and the class representatives are competent, willing, and able to protect the interests of absent class members. *Feder v. Elec. Data. Sys. Corp.*, 429 F.3d 125, 130 (5th Cir. 2005).

Here, Plaintiffs' interests are aligned with those of the Settlement Class in that they seek relief for injuries arising out of the same Data Breach. Plaintiffs' and Settlement Class Members' data was all allegedly compromised by Defendants in the same manner. Under the terms of the Settlement Agreement, Plaintiffs and Settlement Class Members will all be eligible for the same reimbursement of Out-of-Pocket expenses and lost time and Aura's Financial Shield®. Moreover, Plaintiff Becerra Lopez (a California resident) and the California Subclass will all be eligible for the same statutory payment, reduced or increased *pro rata* based on the claims rate and availability of funds.

Further, counsel for Plaintiffs have decades of combined experience as vigorous class action litigators and are well suited to advocate on behalf of the Class. *See* Klinger Decl. ¶¶ 4–27; MLK Firm Resume at Klinger Decl., Ex. B1; Decl. of M. Andersen Berry at Klinger Decl., Ex. B2; Decl. of John Yanchunis at Klinger Decl., Ex. B3; Decl. of Joe Kendall at Klinger Decl. Ex. B4. Moreover, they have put their collective experience to use in negotiating an early-stage Settlement that guarantees immediate relief to Class Members. Thus, the requirements of Rule 23(a) are satisfied.

5. *Certification is also appropriate because common issues predominate over individualized ones, and class treatment is superior.*

Rule 23(b)(3) provides that class certification is proper when “questions of law or fact common to class members predominate over any questions affecting only individual members,

and that a class action is superior to other available methods for failure and efficiently adjudicating the controversy.” This inquiry is two-fold.

First, “[i]n order to ‘predominate,’ common issues must constitute a significant part of the individual cases.” *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472 (5th Cir. 1986). In this case, key predominating questions are whether ITC had a duty to exercise reasonable care in safeguarding, securing, and protecting the personal information of Plaintiffs and the Settlement Class, and whether ITC breached that duty. The common questions that arise from ITC’s 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 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); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312–15 (N.D. Cal. 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).

Second, the resolution of millions of claims in one action is far superior to litigation via individual lawsuits. Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating tens of thousands of individual data breach cases arising out of the *same* Data Breach. 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 Class should be certified for settlement purposes.

**B. The Settlement Terms are Fair, Adequate, and Reasonable.**

On preliminary approval, and prior to approving notice be sent to the proposed Class, the Court must determine that it will “likely” be able to grant final approval of the Settlement under Rule 23(e)(2). Under Rule 23(e)(2), in order to give a settlement final approval, the court must consider whether the proposed settlement is “fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(A)–(D). In determining whether the relief provided is adequate, Courts must consider: “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” *Id.* 23(e)(2)(C)(i)–(iv).

Before the 2018 revisions to Rule 23(e), the Fifth Circuit had developed its own factors for determining whether a settlement was fair, adequate, and reasonable including: (1) evidence that the settlement was obtained by fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the litigation and available discovery; (4) the probability of plaintiffs' prevailing on the merits; (5) the range of possible recovery and certainty of damages; and (6) the opinions of class counsel, class representatives, and absent class members. *Stott v. Cap. Fin. Servs. Inc.*, 277 F.R.D. 316, 343 (N.D. Tex. Nov. 8, 2005) (citing *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983)).

Because the Rule 23 and *Reed* factors overlap, Fifth Circuit Courts often combine them in analyzing class settlements. *ODonnell v. Harris Cnty.*, 2019 WL 4224040, at \*8 (citing *Hays v. Eaton Grp. Att'ys, LLC*, No. 17-88-JWD-RLB, 2019 WL 427331, at \*9 (M.D. La. Feb. 4, 2019)); *Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. H-17-3852, 2019 WL 387409, at \*3 (S.D. Tex. Jan. 30, 2019); *see also* Fed. R. Civ. P. 23(e)(2) Committee Notes to 2018 amendments (“The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.”).

Because the public interest strongly favors the voluntary settlement of class actions, there is a strong presumption in favor of finding the settlement fair, reasonable, and adequate. *Hays v. Eaton Grp. Att'ys, LLC*, 2019 WL 427331, at \*9; *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mex.*, 910 F. Supp. 2d 891, 930–31 (E.D. La. 2012). A proposed settlement “will be preliminarily approved unless there are obvious defects in the notice or other technical flaws, or the settlement is outside the range of reasonableness or appears to be the product of collusion, rather than arms-length negotiation.” 2 *McLaughlin on Class Actions* § 6:7 (15th ed. 2018). Here,

because the Settlement Agreement is fair, reasonable, and adequate under both the Rule 23 criteria and the Fifth Circuit's *Reed* factors, this Court should grant preliminary approval and allow notice to issue to the Class.

*I. Class Representatives and Counsel have Adequately Represented the Class. (Fed. R. Civ. P. 23(e)(2)(A)).*

As discussed at Section VI(A)(4) *supra*, to satisfy the adequacy of representation requirement, plaintiffs must establish that: (1) there is no antagonism or conflict of interest between the class representatives and other members of the class; and (2) counsel and the class representatives are competent, willing, and able to protect the interests of absent class members. *Feder v. Elec. Data. Sys. Corp.*, 429 F.3d at 130. Here, the Class Representatives, like all Class Members, have been the subjects of the same Data Breach, and thus have common interests with the Class. Moreover, they have ably represented the Class, maintaining contact with counsel, reviewing and approving pleadings, assisting in the investigation of the case, remaining available for consultation throughout mediation, reviewing the Settlement documents, and for answering counsel's many questions. Klinger Decl. ¶ 95.

Proposed Class Counsel too have vigorously pursued the interests of the Class in securing a Settlement that brings immediate benefits to Class and Subclass Members while avoiding the risks of continued litigation. In doing so, they leaned on their extensive experience in data breach litigation, their detailed investigation of this particular matter, and informal discovery exchanged during the course of their negotiations. Klinger Decl. ¶ 4–27, 28–31, 37–42. As such, this factor warrants preliminary approval.

2. *The Settlement is the product of good-faith arm's-length negotiations, and is absent of any collusion. (Fed. R. Civ. P. 23(e)(2)(B)).*

“The Court may . . . presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary.” *Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062-DAE, 2018 WL 7283639, at \*12 (W.D. Tex. Aug. 20, 2018). “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 Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation omitted). Here, there is no evidence of fraud or collusion that could possibly be presented. After fully briefing the issues, and convening for a pre-mediation conference, the Parties attended a day-long mediation via Zoom Video Conference where, with the assistance of respected neutral Christopher Nolland, the Parties eventually agreed to a memorandum of understanding. *Id.* ¶¶ 38–42. Following the mediation, the Parties spent months negotiating, drafting, and finalizing the finer points of the agreement presently before the Court. *Id.* ¶ 43. Moreover, the proposed Settlement also does not favor any Class Member or group of Class Members, which also weighs against any evidence of fraud or collusion and in favor of approval. *See Vaughn v. Am., Honda Motor Co.*, 627 F. Supp. 2d 738, 748 (E.D. Tex. 2007). Accordingly, and in absence of any facts suggesting negotiations were at all improper, the presumption of reasonableness should apply here, and Plaintiffs should be found to have met this requirement.

3. *The Settlement Agreement provides substantial relief to the Settlement Class, in light of the uncertainty of prevailing on the merits, the effectiveness of the proposed distribution of relief, and the attorneys' fees sought. (Fed. R. Civ. P. 23(e)(2)(C)).*

Most importantly, the Settlement guarantees Class Members real relief for harms and protections from potential future fall-out from the Data Breach. Thus, the third and most important factor weighs heavily in favor of preliminary approval.

First, all Settlement Class Members will *automatically* receive a code to enroll in 12-months of Aura Financial Shield®, a credit and identity protection service valued at \$144 per person that focuses on protecting financial assets, freezing identity at 10 different Bureaus, home and property title monitoring, and income tax protection, and carries a \$1 million policy protecting each subscriber. Klinger Decl. ¶¶ 68–71. Second, all Settlement Class Members are eligible to submit a claim for up to \$5,000 in reimbursements of Out-of-Pocket expenses and lost time related to the Data Breach. *Id.* ¶¶ 61–67. Lost time can be claimed for up to 8 hours at \$25 per hour, with a simple attestation. *Id.* And finally, California Subclass Members are eligible for a statutory payment of up to \$300, depending on the claims rate. *Id.* ¶¶ 54–60.

This Settlement terms are consistent with, and in fact exceed, agreement terms approved by Courts in other, similar data breach cases. *Mowery v. Saint Francis Healthcare Sys.*, No. 1:20-cv-00013-SPC (E.D. Mo. Dec. 22, 2020) (data breach settlement providing up to \$280 in value to settlement class members in the form of: reimbursement up to \$180 of out of pocket expenses and time spent dealing with the data breach; credit monitoring services valued at \$100; and equitable relief in the form of data security enhancements); *Baksh v. IvyRehab Network, Inc.*, No. 7:20-CV-01845 (S.D.N.Y. Jan. 27, 2021) (providing up to \$75 per class member out-of-pocket expenses incurred related to the data breach and \$20 reimbursement for lost time, with payments capped at \$75,000 in aggregate; credit monitoring for claimants; and equitable relief in the form of data



security enhancements); *Chacon v. Nebraska Med.*, No. 8:21-cv-00070 (D. Neb. Sept. 15, 2021) (data breach settlement providing up to \$300 in ordinary expense reimbursements including to 6 hours of lost time at \$20 per hour; up to \$3,000 in extraordinary expense reimbursements; one-year of automatic credit monitoring; data security enhancements); *Chatelain v. C, L & W PLLC, d/b/a Affordacare Urgent Care Clinics*, No. 50742-A (Tex. 42d Dist. Ct. Taylor Cnty. Nov. 5, 2020) (data breach settlement providing 12-months of credit monitoring services and no expense reimbursements). Upon final approval of the Settlement, the relief will be distributed by the Settlement Administrator to all Settlement Class Members.

Moreover, as will be discussed at length in Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, the attorneys' fees agreed to here constitute one-third of the \$11 million Settlement Fund. Attorneys' fees requests in the amount of one-third of a common fund are regularly granted by Fifth Circuit Courts. *In re Shell Oil Refinery*, 155 F.R.D. 552 (E.D. La. 1993) (awarding fees of one-third of a \$170 million common fund); *In re Combustion, Inc.*, 968 F. Supp. 1136, 1142 (W.D. La. 1997) (approving a 36% fee of a \$127 million common fund); *See Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 307 (S.D. Miss. 2014) (approving fees of 33.33% of a \$4 million common fund) (collecting additional cases).

The value achieved through the Settlement Agreement 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 ITC asserts 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 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).

Plaintiffs dispute the defenses ITC asserts—but it is obvious that their success at trial is far from certain. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

4. *The proposed Settlement treats Settlement Class Members equitably. (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 are eligible to make a claim for the same amount of Out-of-Pocket expense reimbursements and lost time. Moreover, all Settlement Class Members will also *automatically* receive a code for enrolling in 12 months of Aura Financial Shield® services. And, while California Subclass Members are eligible for an additional payment, such a payment is only available because they are eligible for additional statutory benefits that cover only residents of California. Importantly, direct Notice will be sent to Settlement Class Members, and all Settlement Class Members will also have the opportunity to object to or exclude themselves from the Settlement. And, while Plaintiffs will each be seeking a \$2,000 award for their services on behalf of the Class, this award is *less than* one-half of the amount that any given Class Member can claim in reimbursements, and is justified by the benefits brought to the Class by the work of the Plaintiffs.

Accordingly, this factor also weighs in favor of preliminary approval.

5. *The “Reed” Factors considered by Fifth Circuit Courts also weigh in favor of preliminary approval.*

The factors considered by Eight Circuit Courts prior to the amendment of Rule 23, and still considered by those Courts today, also weigh in favor of final approval.

*First*, as discussed at length above, there is no evidence of fraud or collusion between the Parties. In fact, the Settlement was only reached after months of arm’s-length negotiations and with the assistance of respected neutral Christopher Nolland. The Settlement provides for significant relief in light of the risks of proceeding with further litigation. As discussed extensively in Section V(b)(iii), *supra*, while Plaintiffs are confident in the merits of their claims, they face significant risk in further litigation due in part to the constantly evolving nature of data breach litigation. Thus, this factor weighs in favor of preliminary approval.

*Second*, continued litigation is likely to be complex, lengthy, and expensive. Although Plaintiffs are confident in the merits of their claims, the risks discussed above cannot be disregarded. Aside from the potential that either side will lose at trial, the Plaintiffs anticipate incurring substantial additional costs in pursuing this litigation further. Should litigation continue, Plaintiffs would likely need to defeat a motion to dismiss, counter a later motion for summary judgement, and both gain and maintain certification of the Class. The level of additional costs would significantly increase as Plaintiffs began their preparations for the certification argument and if successful, a near inevitable interlocutory appeal attempt. As at least one court has found in this Circuit, because the “legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-2522, 2015 WL 7253765, at \*2 (D. Minn. Nov. 17, 2015).

Third, Settlement was reached only after extensive investigation by the Parties and an informal exchange of information such that Class Counsel could fully understand the strengths and weaknesses of Plaintiffs' claims and ITC's defenses. Where Parties possess ample information with which to evaluate the merits of competing positions, a lack of formal discovery will not prevent preliminary approval of a settlement. *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004); *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 2007).

Fourth, continued litigation presents substantial risks. As discussed above, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at \*1 (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 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).

Fifth, the Settlement negotiated here provides for recovery that equals or surpasses that of similar Settlements approved by Courts across the country. *See* Section VI(B)(3), *supra*. As such, this factor—and the benefits to be provided by expediently providing Class Members relief—weigh in favor of preliminary approval.

Sixth, while this factor is most appropriately examined after the Class has been issued notice and had a chance to respond, Plaintiffs have no reason to believe there will be any antagonism to the Settlement. Plaintiffs approve of its terms. As importantly, proposed Class Counsel, with their depth of experience in litigating data breach class actions, maintain the Settlement provides significant relief to Members of the Class and Plaintiffs strongly believe that it is favorable for the Settlement Class, fair, reasonable, adequate, and worthy of preliminary approval. Klinger Decl. ¶¶ 25–26, 46.

Thus, these additional factors weigh in favor of approving a result exactly like that obtained by Plaintiffs and Class Counsel: significant cash payments for all Settlement Class Members who submit valid claims, credit monitoring services automatically provided to all Settlement Class Members, and statutory payments to the California Subclass Members who submit a valid claim. Accordingly, the Settlement should be preliminarily approved.

**C. The Proposed Settlement Administrator will Provide Adequate Notice.**

Rule 23(e)(1) requires the Court to “direct reasonable notice to all class members who would be bound by” a proposed Settlement. For classes, like this one, certified under Rule 23(b)(3), parties must provide “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is that which “is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Notice provided for by the Settlement Agreement is designed to meet all the criteria set forth by Rule 23 and the *Manual for Complex Litigation*. See Agr. Exs. A–C. Here, the Settlement provides for direct and individual notice, to be sent via first class mail to each Settlement Class Member. Klinger Decl. ¶ 77. Where the summary postcard notice is returned undeliverable, the Settlement Administrator will perform a reverse lookup for the Class Member email addresses to send notices via email. *Id.* ¶ 78. The mailing will be completed only after the Settlement Administrator within 35-days of receiving the Class List.

Not only has ITC agreed to provide Settlement Class Members with individualized notice via direct mail through the proposed claims administrator, but all versions of the Settlement Notice

will be available to Settlement Class Members on the Settlement Website, along with all relevant filings. *Id.* ¶ 80. The Settlement Administrator will also make post office box and toll-free telephone number available by which Settlement Class Members can seek answers to questions or request a notice or claim form be mailed to them at their address. *Id.* ¶ 82.

The notices themselves are clear and straightforward. They define the Class and Subclass; clearly describe the options available to Class Members and the deadlines for taking action; describe the essential terms of the Settlement; disclose the requested Service Award for the Class Representatives as well as the amount that proposed Settlement Class Counsel intends to seek in fees and costs; explain procedures for making claims, objections, or requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Fairness Hearing; and prominently display the address and phone number of Class Counsel. *See Agr. Exs. 1-2.*

The direct mail Notice proposed here is the gold standard, and is consistent with Notice programs approved in this Circuit. *See Stott v. Cap. Fin. Servs.*, 277 F.R.D. at 342 (approving notice sent to all class members by first class mail); *Billitri v. Secs. Am., Inc.*, Nos. 3:09-cv-01568-F, 3:10-cv-01833-F, 2011 WL 3586217, at \*9 (N.D. Tex. Aug. 4, 2011) (same). The Notice is designed to be the best practicable under the circumstances, apprises Settlement Class Members of the pendency of the action, and gives them an opportunity to object or exclude themselves from the Settlement. Accordingly, the Notice process should be approved by this Court.

## **VI. CONCLUSION**

Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that guarantees Settlement Class Members significant relief in the form of monetary payments and identity theft protections. The Settlement Agreement is well within the range of reasonable results, and an initial

assessment of factors required to be considered on final approval favors approval. For these and the above reasons, Plaintiffs respectfully request this Court certify the Class for settlement purposes and grant their Motion for Preliminary Approval of Class Action Settlement.

Dated: February 28, 2022

Respectfully submitted,

/s/ Gary M. Klinger

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# EXHIBIT A

## **STIPULATION OF AGREEMENT AND SETTLEMENT AND RELEASE**

This Stipulation of Agreement and Settlement and Release is entered into by and among Named Plaintiffs, for themselves and on behalf of the Settlement Class, and Defendants Insurance Technologies Corp. and Zywave, Inc. (“ITC” or “Defendants”), subject to preliminary and final Court approval as required by Federal Rule of Civil Procedure 23(e). As provided herein, Defendants and Named Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a final order and judgment, all claims of the Settlement Class against Defendants in connection with the Data Breach (defined below) as alleged in the action titled *Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.*, Case No. 3:21-cv-01444-N (N.D. Tex.) shall be settled and compromised upon the terms and conditions contained herein. Named Plaintiffs and Defendants are collectively referred to herein as the “Parties.”

### **I. RECITALS**

A. Defendants provide marketing and management software and services.

B. On May 14, 2021, Defendants announced a data breach potentially affecting the personal information of individuals who were customers of insurance brokers that were, in turn, Defendants’ customers (the “Data Breach”).

C. On June 18, 2021, Plaintiffs Jay Heath and Edward Shapiro (with Plaintiff Daisy Becerra Lopez, the “**Named Plaintiffs**”) filed a putative class action in this Court, captioned *Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.* Case No. 3:21-cv-01444-N (N.D. Tex.) (the “**Action**”). Plaintiffs Heath and Shapiro asserted claims against Defendants for negligence; negligence *per se*; violation of Maryland’s Personal Information Privacy Act; violation of Maryland’s Consumer Protection Act; violation of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law; and declaratory judgment. The Action was assigned to the Honorable David C. Godbey.

D. On August 20, 2021, the parties filed a stipulation extending the deadline for Defendants’ response to the sooner of the parties’ mediation reaching an impasse or November 20, 2021.

E. On November 19, 2021, Plaintiffs filed a First Amended Complaint adding Plaintiff Daisy Becerra Lopez and a putative class and claims for unjust enrichment, violation of California’s Consumer Privacy Act (“CCPA”), and violation of California’s Unfair Competition Law (the First Amended Complaint shall be incorporated into the term “Action”).

F. On November 9, 2021, Counsel for the Parties virtually mediated this matter before mediator Christopher Nolland, Offices of Christopher Nolland, Dallas, Texas.

G. During the mediation, Counsel for the Parties reached a tentative agreement with regard to the material terms of the proposed settlement, which are memorialized in this Settlement Agreement.

H. The Parties did not discuss attorneys' fees, costs, and expenses, or service awards for the Class Representatives prior to reaching an agreement as to the material terms of the relief for the Settlement Class.

I. The Parties now agree to settle this Action in its entirety, without any admission of liability, with respect to all Released Claims of the Settlement Class, as defined below. The Parties intend this Agreement to bind Named Plaintiffs, Defendants, and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Action be settled, compromised, and dismissed on the merits and with prejudice as to Defendants, subject to Court approval as required by Federal Rule of Civil Procedure 23(e), on the following terms and conditions:

## **II. DEFINITIONS**

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Settlement Agreement:

1. **"Action"** means or refers to the matter styled *Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.*, Case No. 3:21-cv-01444-N (N.D. Tex.) as amended.

2. **"Agreement"** or **"Settlement Agreement"** means this Stipulation of Agreement and Settlement and Release, including its attached Exhibits (which are an integral part of this Stipulation of Agreement and Settlement and Release and are incorporated in their entirety herein by reference).

3. **"Approved Claim"** means a Claim Form submitted by a Settlement Class Member that has satisfied the verification process outlined in Section IV paragraph 6, and is (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) fully and truthfully completed and executed, with all of the information requested in the Claim Form, including the Settlement Class Member's full name and the Settlement Class Member's current contact information; and (c) signed by the Settlement Class Member, physically or electronically, subject to the penalties of perjury, affirming that the Settlement Class Member is a member of the Settlement Class.

4. **"Claims Deadline"** means the time and date by which a Claim Form must be received by the Settlement Administrator, through any means, including U.S. Mail or through the Settlement Website established pursuant to Section VI below, in order for a

Settlement Class Member to be entitled to any of the monetary consideration contemplated in this Settlement Agreement. The Claims Deadline shall be 75 days after the Notice Deadline.

5. “**Claim Form**” or “**Claim**” means the form Settlement Class Members must submit to be eligible for relief under the terms of the Settlement, the proposed forms of which are attached hereto as Exhibit 1.

6. “**Class Counsel**” means:

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7. “**Class Representatives**” means Jay Heath, Edward Shapiro, and Daisy Becerra Lopez.

8. “**Court**” means the United States District Court for the Northern District of Texas.

9. “**Effective Date**” means the date ten (10) business days after which all of the following events have occurred: (a) Class Counsel and Defendants’ counsel and their respective clients have executed this Agreement; (b) the Court has entered the Final Approval Order (as defined in Paragraph 11) without material change to the Parties’ agreed-upon proposed Final Approval Order as described in Section VIII; and (c) either (i) the time for seeking rehearing or appellate or other review of the Final Approval Order has expired, and no appeal or petition for rehearing or review has been timely filed; or (ii) the Settlement is affirmed on appeal or reviewed without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired. The Effective Date shall not be delayed beyond the date ten (10) business days after the Court has entered the Final Approval Order in accordance with (b) above in the event the Court declines to approve, in whole or in part, solely the payment of attorneys’ fees, costs, and expenses, or of service awards, in the amounts that Class Counsel requests (“**Fee Request**”). Further, the Effective Date shall not be delayed beyond the date ten (10) days after an appeal is filed in the event that the sole issue on appeal is the Fee Request awarded to Class Counsel.

10. “**Final Approval**” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award (as defined in Section VIII). In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

11. “**Final Approval Order**” means the order and judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

12. “**Named Plaintiffs**” is defined as in Section I.C.

13. “**Notice**” means the notice of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

14. “**Notice Deadline**” means 30 days after the Court has entered the Preliminary Approval Order or as soon thereafter as is feasible for the Settlement Administrator.

15. “**Notice Program**” means the notice methods provided for in this Agreement and consists of (1) Notice to all Settlement Class Members via summary post card notice via United States Postal Service first class mail and (2) Notice posted on the Settlement Website. The forms of Notice shall be substantially in the forms attached as Exhibit 2A (Long Form) and Exhibit 2B (Short Form) to this Agreement and approved by the Court, and the Notice Program shall be effected in substantially the manner provided in Section VII.

16. “**Objection Deadline**” means 50 days after the Notice Deadline.

17. **“Opt-Out Deadline”** means 50 days after the Notice Deadline.

18. **“Out of Pocket Losses”** are documented unreimbursed costs or expenditures incurred by a Settlement Class Member that are reasonably traceable to the Data Breach. Out-of-Pocket Losses may include, without limitation, the following: (1) unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of a Settlement Class Member’s personal information; (2) costs incurred on or after February 27, 2021, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; (3) other miscellaneous expenses incurred related to any Out-of-Pocket Loss, such as notary, fax, postage, copying, mileage, and long-distance telephone charges; (4) credit monitoring or other mitigative costs that were incurred on or after February 27, 2021, through the date of the Settlement Class Member’s claim submission; and (5) Attested Time (defined below, IV.2.f.).

19. **“Personally Identifiable Information” or “PII”** means an individual’s name, address, Social Security number, financial information, driver’s license number, birth date, or username/password.

20. **“Reasonable Documentation”** means documentation tending to establish Out-of-Pocket Losses reasonably traceable to the Data Breach.

21. **“Released Claims”** means any and all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, existing or potential, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, liquidated or unliquidated, legal, statutory or equitable, that have been or could have been asserted, or in the future might be asserted, in the Action or in any court, tribunal or proceeding by or on behalf of Named Plaintiffs, any and all of the members of the Settlement Class, arising out of, or relating to, or in any way connected with, the Data Breach, and which have been asserted or could have been asserted in this Action against any of the Released Parties whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against any or all of the Released Party, which Named Plaintiffs or any member of the Settlement Class ever had, now has, or hereinafter may have had prior to entry of the final order and judgment in this Action, by reason of, resulting from, arising out of, relating to, or in connection with, the allegations, facts, events, transactions, acts, occurrences, statements, representations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the alleged claims or events in the Action or the Data Breach. Released Claims shall not include the right of Named Plaintiffs, Settlement Class Member or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Action.

The Released Claims include, without limitation, that the Named Plaintiffs and Settlement Class Member agree to waive any and all rights under Section 1542 of the

California Civil Code or any similar state, local, or federal law, statute, rule, order or regulation that might apply to them. Named Plaintiffs and Settlement Class Member each acknowledges that they have read Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Named Plaintiffs and Settlement Class Member each expressly agrees that Released Claims above shall extend and apply to all unknown, unsuspected and unanticipated injuries and damages as well as those that are now known or disclosed, relating to the Action or the Data Breach.

**22. “Released Party”** means Defendants and any and all of their present or past direct or indirect heirs, executors, estates, affiliates, divisions, predecessors, successors, assigns, parents, or subsidiaries and the associates, employers, employees, agents, consultants, contractors, independent contractors, vendors, insurers, directors, managers, managing directors, officers, partners, principals, members, attorneys, accountants, administrators, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, sellers, distributors, legal representatives, successors in interest, assigns and persons, firms, trustees, trusts, corporations, officers, directors, general or limited partners of the Released Entity, and any and all other individuals or entities in which Defendants have a controlling interest or which are affiliated with them, or any other representatives of any of these persons and entities.

**23. “Releasing Parties”** means Named Plaintiffs, any Settlement Class Member who does not timely and properly opt out from the Settlement, and any person claiming or receiving a benefit under this Settlement.

**24. “Settlement” or “Settlement Agreement”** means this settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement, including the exhibits hereto.

**25. “Settlement Administrator”** presumptively means Angeion Group as selected by Class Counsel to serve as the Settlement Administrator. In the absence of agreement, either Class Counsel or Defendants may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the Settlement Administrator.

**26. “Settlement Class Members” or “Settlement Class”** means all persons who fall within the Nationwide Class and the California Subclass definitions set forth in Section III.

27. “**Settlement Fund**” shall mean the sum of \$11,000,000.00 which Defendants agree to pay to resolve the claims of the Settlement Class.

28. “**Settlement Website**” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the commencement of the Notice Program, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Notice, Preliminary Approval Order, the Claim Forms, the complaints filed in the Action and such other documents as Class Counsel and Defendants agree to post or that the Court orders posted on the website. The URL of the Settlement Website shall be agreed upon by Class Counsel and Defendants. Settlement Class Members shall also be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least five (5) business days after the last payment or credit under this Settlement is made or the Settlement is terminated.

### **III. SETTLEMENT CLASS**

1. For settlement purposes only, the Parties agree that the Court should certify the following class and subclass pursuant to Federal Rule of Civil Procedure 23(c) (the “**Nationwide Class**” and the “**California Subclass**”) defined as:

**The Nationwide Class:** All individuals whose PII was potentially subjected to the Data Breach, as confirmed by Defendants’ business records.

**The California Subclass:** All residents of California at the time of the Data Breach whose PII was potentially subjected to the Data Breach, as confirmed by Defendants’ business records.

For purposes of determining membership in the Settlement Class, Defendants have identified up to 4,341,523 individuals who had PII compromised by the Data Breach. It is intended that these approximately 4,341,523 individuals shall constitute the members of the Nationwide Class.

2. Excluded from the Settlement Class are the Court, the officers and directors of Defendants, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Breach, and persons who timely and validly request exclusion from the Settlement Class. Named Plaintiffs will move for certification of the Nationwide Class and the California Subclass contemporaneously with their motion for preliminary approval of the Settlement. For purposes of this Settlement only, Defendants agree not to contest certification of the Nationwide Class and the California Subclass. Should the Settlement not be approved, Defendants reserve all rights and defenses on the merits and as to class certification.



3. For settlement purposes only, Named Plaintiffs shall also seek, and Defendants shall not oppose, the appointment of Class Counsel as Settlement Class counsel and appointment of Named Plaintiffs as Settlement Class representatives (“**Settlement Class Representatives**”).

#### **IV. SETTLEMENT CONSIDERATION**

In exchange for mutual releases of all claims by the Settlement Class and the payment of the non-reversionary sum of \$11,000,000.00, the Parties agree to the following multi-tiered settlement structure:

##### **1. Tier One Claims:**

- a. California Subclass members who claim that the CCPA was violated as to them will be eligible for a statutory damage payment in the amount of one hundred dollars (\$100) on a claims-made basis (“Statutory Claim(s)” or “Tier One Claim(s)”) subject to the terms below, and drawn from the Tier One Fund.
- b. Within thirty (30) business days of the Effective Date, Defendants will transfer one million five hundred ninety thousand four hundred dollars (\$1,590,400.00) to the Settlement Administrator to create a Tier One fund (“Tier One Fund”). Such one million five hundred ninety thousand four hundred dollars (\$1,590,400.00) will constitute the “Tier One Maximum,” and upon such transfer, Defendants will have no further financial obligation under Tier One.
- c. If the total value of verified Tier One Claims submitted does not exceed the Tier One Maximum, then each verified Tier One claimant will have their Tier One payment of \$100 increased on a *pro rata* basis up to a maximum of three hundred dollars (\$300) subject to the provisions below. The determination of whether the value of the amount of verified Tier One Claims does not exceed the Tier One Maximum will be made after a determination is made as to whether a Tier Two *pro rata* reduction of verified claims would be required (because the total value of such verified Tier Two claims exceeds the Tier Two Maximum), but before the transfer of funds from Tier One to Tier Two. In the event a *pro rata* reduction of the verified claims claimed by the Tier Two claimants would be necessary (as described in IV.2), but the total amount of verified Tier One Claims does not exceed the Tier One Maximum, then such excess amounts in the Tier One Fund (the “Tier One Residue”) shall be transferred by the Settlement Administrator to the Tier Two Fund up to the amount needed to pay in full the total value of verified Tier Two Claims without reducing each verified Tier One claim award below \$100 per claim (“Tier One Transfer”). If there is any Tier One Residue

remaining after the Tier One Transfer, then the Settlement Administrator shall use the remaining Tier One Residue to increase each verified Tier One claimant's \$100 Tier One payment on a *pro rata* basis up to a maximum three hundred dollars (\$300). If the total value of verified Tier One Claims exceeds the Tier One Maximum and there is no Tier Two Residue (defined below), each Tier One claimant will have their \$100 Tier One payment reduced and allocated on a *pro rata* basis. If the total value of verified Tier One Claims exceeds the Tier One Maximum, such that a *pro rata* reduction of the verified claims submitted by the Tier One claimants would be necessary, but there is a Tier Two Residue, then the Tier Two Residue shall be transferred by the Settlement Administrator to the Tier One Fund to either decrease the amount of *pro rata* reduction to each Tier One payment, or to increase each Tier One payment on a *pro rata* basis but not to exceed a total value for each verified Tier One claim beyond \$300 ("Tier Two Transfer").

- d. In order to submit a Tier One Claim, California Subclass members must provide to the Settlement Administrator the information required to evaluate the claim, including: the California Subclass member's full name, email address, mailing address, and phone number, which must be validated against the mailing address in Defendants' business records at the time of the Data Breach. Only the subset of California Subclass Members whose Social Security number and/or driver's license information were accessed or potentially accessed in the Data Breach, as confirmed by Defendants' business records, will be eligible to submit a Tier One Claim. The Parties acknowledge that not all California Subclass Members will be eligible for this relief. Eligible claims shall be paid to California Subclass Members electronically unless a California Subclass Member chooses to receive payment by written check.

## **2. Tier Two Claims:**

- a. Settlement Class members who suffered Out-of-Pocket Losses because of the Data Breach, and can provide supporting documentation for their claim, will be eligible for a payment of the amount of loss proven up to five thousand dollars (\$5,000.00) on a claims-made basis, but not more than the loss proven ("Loss Claim(s)" or "Tier Two Claim(s)") subject to the terms below, and drawn from the Tier Two Fund.
- b. Within thirty (30 business days of the Effective Date, Defendants will transfer two million eight hundred seventy-eight thousand three hundred thirty-three dollars (\$2,878,333.00) to the Settlement Administrator to create a Tier Two fund ("Tier Two Fund"). Such two million eight hundred seventy-eight thousand three hundred thirty-three dollars (\$2,878,333.00) will constitute the "Tier Two Maximum," and upon such

transfer, Defendants will have no further financial obligation under Tier Two.

- c. If the total value of verified Tier Two Claims submitted does not exceed the Tier Two Maximum, then any amount remaining (“Tier Two Residue”) shall be transferred by the Settlement Administrator to the Tier One Fund consistent with the Tier Two Transfer described above. If there are any funds remaining in the Tier Two Fund after the Tier Two Transfer (if any), then such funds shall be used to increase each verified Tier Two Claim on a pro rata basis. If the total amount of verified Tier Two Claims exceeds the Tier Two Maximum plus the Tier One Transfer (if any), payments to verified Tier Two claimants will be reduced on a pro rata basis.
- d. Settlement Class Members who elect to submit a Tier Two Claim for reimbursement of Out of Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member’s name and mailing address, which must be validated against the mailing address in Defendants’ business records at the time of the Data Breach; (2) Reasonable Documentation supporting their claim; and (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Documentation supporting Out of Pocket Losses can include receipts or other documentation not “self-prepared” by the Class Member that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.
- e. Out of Pocket Losses will be deemed “reasonably traceable” if: (1) the timing of the loss occurred on or after February 27, 2021; and (2) the personal information used to commit the purported identity theft or fraud consisted of the same type of personal information that was provided to Defendants prior to the Data Breach.
- f. Reimbursement for Attested Time. A Settlement Class Member’s claim under Tier Two for Out-of-Pocket Losses may also include a claim for up to 8 hours of time spent remedying identity theft or fraud, including misuse of personal information, credit monitoring or freezing credit reports, and/or other issues related to the Data Breach at twenty-five dollars (\$25.00) per hour by providing an attestation as to the amount of time spent (“Attested Time”).

**3. Tier Three Benefits:**

a. All Settlement class members are eligible to access, without the need to file a claim, for a period of 12 months of the Financial Shield service, an identity theft protection service provided by Aura. The Settlement Administrator shall send an activation code to each valid Financial Shield claimant within thirty (30) days of the Effective Date which can be used to activate the Services via an enrollment website maintained by Aura. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Aura shall provide Financial Shield to all valid claimants who timely activate those services for a period of 12 months from the date of activation.

b. All Settlement class members are also eligible to access identity restoration services offered through Aura for a period of 12 months from the Effective Date.

**4. Residual Funds**

Defendants shall not be entitled to the return of any residual Tier One Fund or Tier Two Fund. If any funds remain after the payments described in IV.1 and IV.2 are made as set forth in VI.2.k., including for uncashed checks, the remaining amount shall not be returned to Defendants, and shall instead be paid to the Texas Bar Foundation as a *cy pres* recipient.

**5. Claims**

a. For Tier One Claims, Tier Two Claims, and Tier Three Claims, Settlement Class Members shall have until the Claims Deadline to submit a valid Claim. Defendants will make best efforts to identify those Settlement Class Members who may be eligible to make a Tier One Claim, subject to validation through the claims process, so that the unique ID sent to each Settlement Class Member will make available to them the appropriate Claim form.

b. Claims will be subject to a verification process. The Claim Form must be validated against the mailing address in Defendants' business records at the time of the Data Breach. For Tier One Claims, the Settlement Administrator shall confirm according to Defendants' business records that the Settlement Class Member had a Social Security number and/or driver's license information accessed or potentially accessed in the Data Breach and that the information the Settlement Class Member provides at the time of the claim matches that information. Should the information provided by the Settlement Class Member not match the information in Defendants' business records as just described, the Settlement

Administrator shall have discretion to deny such Tier One Claim or allow such Tier One Claim if the address is sufficiently similar.

- c. Tier Two Claims will be subject to the further verification process in that such Settlement Class Members must provide Reasonable Documentation to support their claim for Out-of-Pocket Losses and the Settlement Administrator will be tasked with confirming that any offered materials support the Settlement Class Member's claim to Out of Pocket Losses under the criteria discussed above and in what amount (if any). The Settlement Administrator shall deny any Tier Two Claim, or any part thereof, that it decides, in its sole discretion, is not reasonably supported.
- d. The Settlement Administrator shall only make payments to Settlement Class Members who submit verified claims under Tier One or Tier Two as described in the verification process and such claims are also Approved Claims. To the extent the Settlement Administrator determines a Claim Form, along with supporting materials, is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent within twenty-one (21) days after the Claims Deadline and be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail if the claimant provided an address. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations.

## **6. Maximum Settlement Contribution**

Under this Settlement, the maximum total amount Defendants may be required to pay is eleven million dollars (\$11,000,000.00) (the "Settlement Amount"). This maximum includes the combined four million four hundred sixty-eight thousand seven hundred thirty-three dollars (\$4,468,733.00) Defendants will transfer to the Settlement Administrator for the funding of the Tier One Fund and the Tier Two Fund, the costs of identity protection services and identity restoration services under Tier Three, attorney's fees, costs, and expenses award by the Court to Class Counsel, the Service Awards to the Class Representatives, and notice and administrative costs to effectuate the Settlement. In no event shall Defendants' total financial obligation under this Settlement exceed eleven million dollars (\$11,000,000.00). Defendants agree further that within thirty (30) days after the entry of an order preliminarily entering an order approving the settlement, they shall pay to the Settlement Administrator the sum of \$1,300,000.00 to pay for the cost of notice (said amount

being part of and not in addition to the Settlement Amount). Defendants agree further that within thirty (30) days following the entry of the order granting preliminary approval of the Settlement, it shall pay into a Qualified Settlement Fund (QSF) to be established and maintained by the Settlement Administrator the remaining Settlement Amount.

**V. PRELIMINARY APPROVAL**

1. Class Counsel shall promptly move the Court for an order granting preliminary approval of this Settlement (“**Preliminary Approval Order**”), substantially in the form of Exhibit 3. The Parties agree that upon the execution of this Agreement and the filing of Defendants’ Answer, the Action shall otherwise be stayed pending the motion for preliminary approval and the Court’s ruling thereon. The motion for preliminary approval shall request that the Court: (1) preliminarily approve the terms of the Settlement as fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23 for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notice; (4) designate Jay Heath, Edward Shapiro, and Daisy Becerra Lopez as Class Representatives; (5) appoint John A. Yanchunis and Ryan D. Maxey of Morgan & Morgan; Gary E. Mason, David K. Lietz, and Gary M. Klinger of Mason Lietz & Klinger LLP; M. Anderson Berry of Clayco C. Arnold, a Professional Law Corp.; and Joe Kendall of Kendall Law Group, PLLC as Class Counsel; (6) approve the retention of the Settlement Administrator; (7) approve the procedures set forth in Section VII for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (8) further stay the Action or otherwise adjourn litigation deadlines pending Final Approval of the Settlement; (9) stay and/or enjoin, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning a Released Claim; and (10) schedule a Final Approval hearing for a time and date convenient for the Court, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel’s application for attorneys’ fees, costs, and expenses and Service Awards for the Class Representatives (“**Final Approval Hearing**”).

**VI. SETTLEMENT ADMINISTRATOR**

1. The Settlement Administrator shall administer various aspects of the Settlement as described in Section IV and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, overseeing the payment of Claims; providing Notice to Settlement Class Members via summary post card notice via United States Postal Service first class mail as described in Section VII; establishing and operating the Settlement Website and a toll-free number; administering the Claims processes including the verification processes described herein; and distributing cash payments according to the processes and criteria set forth in Section IV and Exhibit 3. The expense for the services of the Settlement Administrator shall be paid from the Settlement Fund.

2. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:

- a. Obtaining from Defendants the name and mailing address of Settlement Class Members for the purpose of sending Notice to Settlement Class Members via summary post card notice via United States Postal Service first class mail and performing a reverse lookup for email addresses to send notice via email when summary post card notice is returned as undeliverable;
- b. Obtaining from Defendants information necessary to establish a reasonably practical procedure to verify Settlement Class Members;
- c. Establishing and maintaining a post office box for mailed written notifications of exclusion or objections from the Settlement Class;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- f. Responding to any mailed Settlement Class Member inquiries;
- g. Processing all written notifications of exclusion from the Settlement Class;
- h. Providing weekly reports and, no later than ten (10) days after the Opt-Out Deadline, a final report to Class Counsel and Defendants, that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Defendants' counsel;
- i. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order and (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class;
- j. Reviewing, determining the validity of, and responding to all Claims submitted by Settlement Class Members, pursuant to criteria set forth in Section IV and in Exhibit 3.

- k. After the Effective Date, receiving money from Defendants and processing and transmitting distributions to Settlement Class Members in accordance with Section IV;
- l. Providing weekly reports and a final report to Class Counsel and Defendants that summarize the number of Claims since the prior reporting period, the total number of Claims received to date, the number of any Claims granted and denied since the prior reporting period, the total number of Claims granted and denied to date, and other pertinent information as requested by Class Counsel and Defendants' counsel; and
- m. Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and Defendants, including, but not limited to, verifying that cash payments have been distributed in accordance with Section IV.

## **VII. NOTICE, OPT-OUTS, AND OBJECTIONS**

1. Upon Preliminary Approval of the Settlement, at the direction of Class Counsel, the Settlement Administrator will implement the Notice Program provided herein, using forms substantially in the nature of the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may object to or opt out of the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information.

2. The Notice Program has two components: (1) Notice via summary post card notice via United States Postal Service first class mail and (2) Notice on the Settlement Website. The Settlement Administrator shall send Notice to all Settlement Class Members via summary post card notice via United States Postal Service first class mail.

3. The Notice shall include a procedure for Settlement Class Members to exclude themselves from the Settlement Class by notifying the Settlement Administrator in writing of the intent to exclude himself or herself from the Settlement Class. This procedure will provide for the submission of an opt-out or exclusion form to be provided to Settlement Class Members by the Settlement Administrator. Such written notification or exclusion form must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. Any written notification or exclusion form must include the individual's name and address; a statement that he or she wants to be excluded from the Action; and the individual's signature. Only one individual may be excluded from the Settlement Class per each written notification or exclusion form. No group opt-outs from the Settlement Class shall be permitted. The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all individuals who have timely and validly excluded themselves from the Settlement Class. Any Settlement Class Member who does



not timely and validly exclude himself or herself shall be bound by the terms of the Settlement.

4. The Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and Service Awards. Objections to the Settlement or to the application for fees, costs, and expenses and Service Awards must be filed electronically with the Court or mailed to the Clerk of the Court and, additionally, served concurrently therewith upon (a) John A. Yanchunis and Ryan D. Maxey, Morgan & Morgan Complex Litigation Group, 201 N Franklin Street, 7th Floor, Tampa, FL 33602, (b) Gary E. Mason, David K. Lietz, and Gary M. Klinger, Mason Lietz & Klinger LLP, 5101 Wisconsin Avenue NW, Suite 305, Washington DC 20016, (c) M. Anderson Berry, Clayco C. Arnold, a Professional Law Corp., 865 Howe Avenue, Sacramento, CA 95825, (d) Joe Kendall, Kendall Law Group, PLLC, 3811 Turtle Creek Blvd., Ste. 1450, Dallas TX 75219, (e) Eileen R. Ridley Foley & Lardner, LLP 555 California Street, Ste. 1700, San Francisco, California 94104-1520 [email: eridley@foley.com]; and Peter L. Loh and Sara Ann Brown Foley & Lardner, LLP 2021 McKinney Ave., Ste. 1600, Dallas, Texas 75201 [email: plog@foley.com; sbrown@foley.com].

For an objection to be considered by the Court, the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, at the address listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the filed action;
- b. the objector's full name, address, telephone number; email address;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards;
- f. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between objector or objector's counsel and any other person or entity;
- g. a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection;

- h. a statement confirming whether the objector intends to appear personally or through counsel and/or testify at the Final Approval Hearing;
- i. the objector's signature on the written objection (an attorney's signature is not sufficient); and
- j. all other cases in which the objector (directly or through counsel) or the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement, has been a named plaintiff in any class action, or has served as lead plaintiff class counsel, including the case name, court, and docket number for each.

5. The Parties and their counsel agree that each will not encourage any persons to Opt Out or file objections to this Settlement Agreement.

6. The summary post card notice via United States Postal Service first class mail shall be completed by the Notice Deadline, excluding any attempts to resend Notices that are returned undeliverable.

7. The Settlement Administrator shall post the Notice on the Settlement Website in the form agreed to by the Parties and approved by the Court. The Notice shall be posted on the Settlement Website by the Notice Deadline.

8. Within seven (7) days after the Notice Deadline, the Settlement Administrator shall provide Class Counsel and Defendants with one or more affidavits confirming that the Mail Notice Program, and posting of Notice on the Settlement Website, were completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with the motion for final approval of the Settlement.

9. Up to a total amount of one million five hundred thousand dollars (\$1,500,000.00) and provided the Court approves summary post card notice via United States Postal Service first class mail, Defendants further agree to pay all costs associated with providing appropriate notice of the Settlement to the Settlement Class Members, including potentially a second wave of notice depending on the claims rate, and settlement administrative costs including payment of the Settlement Administrator. Such costs shall be paid by Defendants out of the \$11 million Settlement Amount set forth in Section IV paragraph 7 and shall in no way increase the Settlement Amount. Notice will require a unique claim identifier. Defendants shall not be liable to pay any settlement administrator costs that exceed one million five hundred thousand dollars (\$1,500,000.00).

### **VIII. FINAL APPROVAL ORDER AND JUDGMENT**

1. Plaintiffs' motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Within 120 days after Preliminary Approval, Plaintiffs shall file a motion for final approval

of the Settlement and a motion for attorneys' fees, costs, and expenses and Service Awards. By no later than 14 days prior to the Final Approval Hearing, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for a Service Award to the Class Representative. At the Final Approval Hearing, the Court will consider Plaintiffs' motion for final approval of the Settlement, and Class Counsel's application for attorneys' fees, costs, and expenses and Service Awards to the Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the application for attorneys' fees, costs, and expenses and Service Awards, provided the objectors filed timely objections that meet all of the requirements listed in Section VII paragraph 4.

2. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting final approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, and expenses, and Service Awards. The proposed Final Approval Order that will be filed with the motion for final approval shall be in a form agreed upon by Class Counsel and Defendants. A current version is attached hereto as Exhibit 4, but may be subject to modification with the consent of Class Counsel and Defendants prior to the Final Approval Hearing. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfied Due Process requirements;
- d. Dismiss the Action with prejudice;
- e. Bar and enjoin the Releasing Parties from asserting any of the Released Claims, as set forth in Section IX, including during the pendency of any appeal from the Final Approval Order;
- f. Release Defendants and the Released Parties from the Released Claims, as set forth in Section IX; and
- g. Reserve the Court's continuing and exclusive jurisdiction over Defendants and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

## **IX. RELEASES**

1. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties of and from any and all Released Claims.

2. For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under consumer protection statutes in effect in the United States or in any states and territories of the United States); causes of action under the common or civil laws of any state or territory of the United States, including but not limited to: statutory claims of any kind (including, but not limited to, consumer protection or privacy and/or security claims, such as claims under the CCPA or any similar law), unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure; and also including, but not limited to, any and all claims in any state or federal court of the United States for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, and any other form of relief arising out of, or relating to, or in any way connected with, the Data Breach, and which have been asserted or could have been asserted in this Action against any of the Released Parties. The Released Claims do not include any claims arising from or relating to any conduct by Defendants after the date the Agreement is executed. Released Claims also do not include the right of Named Plaintiffs, Settlement Class Member or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Action.

3. As of the Effective Date, the Released Parties will be deemed to have completely released and forever discharged Named Plaintiffs and the Settlement Class Representatives, the other members of the Settlement Class, and Class Counsel from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Action.

4. Upon entry of the Final Approval Order, the Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

5. Section 1542 Waiver. Except as provided otherwise in this Settlement Agreement, the Parties intend the releases set forth in this Settlement Agreement to be binding, notwithstanding the discovery of facts not presently known by the Releasing Parties or Released Claims of which the Releasing Parties are not presently aware. The Releasing Parties understand and have been advised by counsel concerning the meaning of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Settlement Class Members expressly understand and acknowledge that it is possible that unknown losses or Released Claims exist or that present losses may have been underestimated in amount or severity, and the Parties explicitly took that into account in determining the amount of consideration for this Settlement Agreement, and a portion of said consideration has been bargained for between the Parties to this Agreement with the knowledge of the possibility of such unknown Released Claims, and was given in exchange for a full accord, satisfaction, and discharge of all such Released Claims. The Releasing Parties waive, release, and relinquish any and all rights and benefits they may have under the above provisions of Section 1542 as it may apply to the Released Claims to the fullest extent the Releasing Parties may lawfully waive these rights or benefits.

## **X. ATTORNEYS' FEES, COSTS, EXPENSES AND SERVICE AWARDS**

1. Service Awards. The Settlement Class Representatives will ask the Court to approve, and Defendants agree not to oppose, a Service Award not to exceed two thousand dollars (\$2,000.00), which is intended to compensate such individual for his effort in the litigation and commitment on behalf of the Settlement Class (“**Service Award**”). Neither Class Counsel’s application for, nor Class Representatives’ entitlement to, a Service Award shall be conditioned in any way upon support for this Agreement.

2. Attorneys’ Fees, Costs, and Expenses. Class Counsel will ask the Court to approve, and Defendants agree not to oppose, an award of Attorneys’ Fees of up to one-third of the Settlement Fund (\$3,666,666.67) plus costs and expenses not to exceed \$30,000.00 to be paid from the Settlement Fund. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount on their Fee Request and shall not alter the Effective Date. Defendants agree not to oppose Class Counsel’s request for fees and reimbursement of costs and expenses as detailed above. Any such award of attorneys’ fees, costs, and expenses shall be borne by and paid by Defendants exclusively out of the \$11 million Settlement Amount set forth in Section IV paragraph 7 and shall not increase said Settlement Amount. Defendants’ obligation to pay

such fees shall occur no earlier than the Effective Date and will be required when the time for seeking rehearing or appellate or other review of an order awarding attorney's fees and costs has lapsed, and no appeal or petition for rehearing or review has been timely filed; or the order awarding attorney's fees and costs is affirmed on appeal, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired. The Parties did not discuss attorneys' fees, costs, and expenses, or Service Awards for the Class Representatives prior to reaching an agreement as to the material terms of the relief for the Settlement Class.

3. The payment of attorneys' fees, costs, and expenses and Service Awards pursuant to Paragraph 2 shall be made through a wired deposit by the Settlement Administrator into the attorney client trust account to be designated by Class Counsel. After the attorneys' fees, costs, and expenses have been deposited into this account, Class Counsel shall be solely responsible for, and shall have sole discretion in, allocating such attorneys' fees, costs, and expenses and distributing to each participating Class Counsel firm an allocated share of such attorneys' fees, costs, and expenses to that firm, and Defendants shall have no responsibility for distribution of attorneys' fees, costs, or expenses among participating firms. The Settlement Administrator will disperse Service Awards, if any, directly to the Class Representatives.

4. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses in the amount that Class Counsel requests, the remaining provisions of this Agreement shall remain in full force and effect. No order of the Court, or modification, or reversal, or appeal, of any order of the Court, concerning the amount(s) of attorneys' fees, costs, and expenses shall constitute grounds for cancellation or termination of this Agreement. Any amount not awarded to Class Counsel will not revert back to Defendants.

#### **XI. NO ADMISSION OF LIABILITY**

1. Defendants dispute the claims alleged in the Action and do not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Defendants have agreed to enter into this Agreement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

2. Class Counsel and Named Plaintiffs believe that the claims asserted against Defendants have merit. Nevertheless, after a thorough examination of the facts and law, Named Plaintiffs and Class Counsel recognize and acknowledge that Defendants have raised factual and legal defenses that present a substantial risk that Named Plaintiffs and the Settlement Class may not prevail. Named Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risks of further protracted litigation, especially in complex, costly, and time-consuming actions such as this, as well as the difficulties and delays inherent in such litigation, particularly in light of the current economic and financial hardship faced by members of the Settlement Class as a result of the Data Breach. As a

result, Named Plaintiffs believe that it is desirable that the Released Claims be fully and finally compromised, settled and resolved with prejudice, and barred pursuant to the terms set forth herein.

3. Named Plaintiffs and Class Counsel believe, and the Parties have agreed, that the Settlement confers substantial benefits upon the Settlement Class. Based on their comprehensive examination and evaluation of the law and facts relating to the matters at issue in the Action, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

4. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

5. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Named Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

## **XII. MISCELLANEOUS**

1. Singular and Plurals. As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

2. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

3. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court disapproval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement, including securing certification of the Settlement Class for settlement purposes and the prompt, complete, and final dismissal with prejudice of the Action as to Defendants.

4. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

5. Integration. This Agreement (along with any Exhibits attached hereto) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

6. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

7. Governing Law. The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to its choice of law or conflict of laws principles.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through e-mail of an Adobe PDF shall be deemed an original. A copy of this Settlement Agreement may be used in the same manner as the original.

9. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

10. Notices. All notices to Class Counsel provided for herein shall be sent by overnight mail to:

John A. Yanchunis  
Ryan D. Maxey  
**MORGAN & MORGAN**  
**COMPLEX LITIGATION GROUP**



201 N Franklin Street, 7<sup>th</sup> Floor  
Tampa, FL 33602

Gary E. Mason  
David Lietz  
**MASON LIETZ KLINGER LLP**  
5101 Wisconsin Avenue NW, Suite 305  
Washington, DC 20016

M. Anderson Berry  
**CLAYEO C. ARNOLD,**  
**A PROFESSIONAL LAW CORP.**  
865 Howe Avenue  
Sacramento, CA 95825

All notices to Defendants provided for herein, shall be sent by overnight mail to:

Eileen R. Ridley  
**Foley & Lardner, LLP**  
555 California Street, Ste. 1700, San Francisco, California 94104-1520  
[email: eridley@foley.com]

Peter L. Loh  
Sara Ann Brown  
**Foley & Lardner, LLP**  
2021 McKinney Ave., Ste. 1600, Dallas, Texas 75201  
[email: plog@foley.com; sbrown@foley.com]

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

11. Authority. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

12. Signatures of All Settlement Class Members Unnecessary to be Binding. The Parties agree that, because the members of the Settlement Class are numerous, it is impractical, if not impossible, to have each Settlement Class Member execute this Agreement. The Notice discussed above advises all Settlement Class Members of the binding nature of the Release provided herein, and therefore the Release provided herein shall have the same force and effect as if this Agreement were executed by each individual Settlement Class Member.

13. No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed on their behalf by their authorized counsel of record, all as of the day set forth below.

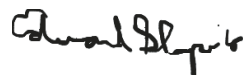
**Proposed Class Representative Jay Heath**

Dated: Feb 21, 2022

By:  Jay D. Heath (Feb 21, 2022 10:03 EST) -

**Proposed Class Representative Edward Shapiro**

Dated: 02 / 22 / 2022

By: 

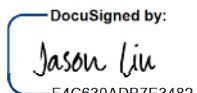
**Proposed Class Representative Daisy Becerra Lopez**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

**Defendant Insurance Technologies Corp.**

Dated: 2/22/2022

By:  Jason Liu  
E4C630ADB7E3482...

**Defendant Zywave, Inc.**

Dated: 2/22/2022

By:  Jason Liu  
E4C630ADB7E3482...

13. No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed on their behalf by their authorized counsel of record, all as of the day set forth below.

**Proposed Class Representative Jay Heath**

Dated: Feb 21, 2022

By:  \_\_\_\_\_  
Jay D. Heath (Feb 21, 2022 10:03 EST)

**Proposed Class Representative Edward Shapiro**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

**Proposed Class Representative Daisy Becerra Lopez**

Dated: 02 / 22 / 2022

By:  \_\_\_\_\_

**Defendant Insurance Technologies Corp.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

**Defendant Zywave, Inc.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

**Proposed Class Counsel**

Dated: 02/21/2022

By:   
John A. Yanchunis  
**MORGAN & MORGAN**  
**COMPLEX LITIGATION GROUP**  
201 N Franklin Street, 7th Floor  
Tampa, FL 33602


**Proposed Class Counsel**

Dated: 02/21/2022

By:   
Gary E. Mason  
**MASON LIETZ KLINGER LLP**  
5101 Wisconsin Avenue NW  
Washington, DC 20016

**Proposed Class Counsel**

Dated: 02/18/2022

By:   
M. Anderson Berry  
**CLAYEO C. ARNOLD,**  
**A PROFESSIONAL LAW CORP.**  
865 Howe Avenue  
Sacramento, CA 95825

**Defense Counsel**

Dated: 2/24/2022

By:   
Eileen R. Ridley  
**Foley & Lardner LLP**  
555 California Street, Ste. 1700  
San Francisco, CA 94104-1520

[Continued on next page.]

Dated: Feb 23, 2022



By: \_\_\_\_\_

Peter Loh

Sara Brown  
**Foley & Lardner, LLP**  
2021 McKinney Ave., Ste. 1600  
Dallas, Texas 75201

# EXHIBIT 1







**CLAIM INFORMATION**

***Section A. Confirm Your Eligibility***

**Did you receive a unique Claim Number indicating that you may be a member of the Settlement Class?**

Yes  No

*If yes, continue to the next question. If no, you are not a member of the Settlement Class and do not qualify to file a Claim.*

**Did you suffer any financial expenses or other financial losses that you believe was as a result of the Data Breach? For example, did you sign up and pay for a credit monitoring service, hire and pay for a professional service to remedy identity theft, etc. as a direct result of or attributed to the Data Breach?**

Yes  No

*If yes, you may be eligible to fill out **Section C** of this form and provide corroborating documentation. If no, you may not be eligible to submit a claim for “out-of-pocket” losses but may still be eligible to fill out **Section B** of this form for a Statutory Claim.*

***Section B. California Statutory Claims***

*Settlement Class Members who were California residents at the time of the Data Breach may be eligible to seek payment as relief for the Statutory Claim aspect of the settlement, subject to verification of certain information.*

*To verify eligibility, you must provide your full name, mailing address, email address, and phone number, which will be validated against the mailing address in Defendants' records at the time of the Data Breach. Only Settlement Class Members who resided in California at the time of the Data Breach and whose Social Security number or driver's license information were accessed or potentially accessed in the Data Breach may submit a Statutory Claim. If it is verified that you meet all the criteria described in the Settlement Agreement and the mailing address you provide above matches the mailing address in Defendants' business records, you will be eligible to receive a payment of up to **\$300**. The information you provide must match what was in Defendant's business records at the time of the Data Breach. If it does not, the Settlement Administrator will deny your claim, unless it determines in its discretion that the mailing address you provide above is sufficiently similar to the mailing address in Defendants' business records at the time of the Data Breach.*

*If the total dollar amount of Claims for losses exceeds the limits set by the Settlement Agreement, your Statutory Claim payment may be reduced, depending on the number of valid Claims received.*

*Payment for your Statutory Claim will be paid directly to you electronically. If you do not wish to receive an electronic payment, you can request to receive payment by check and sent to the mailing address you provided above.*

### Section C. Reimbursement for Documented Losses

*If you suffered verifiable financial losses that are reasonably traceable to the Data Breach, you may be eligible to receive a payment to compensate you for the losses and inconveniences suffered that are fairly traceable to the Data Breach.*

*If it is verified that you meet all the criteria described in the Settlement Agreement, and you **submit** proof of your losses and the dollar amount of those losses, you will be eligible to receive a payment compensating you for your documented losses of up to **\$5,000.00**. Examples of what can be used to prove your losses include: receipts, account statements, etc. You may also prove losses by submitting information in the claim form that describes time spent remedying suspected identity theft, fraud, or misuse of personal information and/or other issues reasonably traceable to the Data Breach. You will be required to provide an attestation and a brief description of (1) the action taken in response to the Data Breach; and (2) the time associated with each action. If you submit this information, you will be eligible for a payment of up to \$25.00 per hour, for up to 8 hours. Examples of what can be used to prove your losses related to time spent remedying issues fairly traceable to the Data Breach include: time spent monitoring credit, resolving disputes for unauthorized transactions, freezing or unfreezing your credit, remedying a falsified tax return, etc.*

*Providing adequate proof of your losses does not guaranty that you will be entitled to receive the full amount claimed. All Claims will also be subject to an aggregate maximum payment amount, as explained in the Settlement Agreement. If the amount of losses claimed exceeds the maximum amount of money available under the Settlement Agreement, then the payment for your Claim will be reduced on a pro rata basis. If you would like to learn more, please review the Settlement Agreement for further details.*

*Payment for your losses will be paid directly to you electronically, unless you request to be paid by check as indicated below.*

For each loss that you believe can be traced to the Data Breach, please provide a description of the loss, the date of the loss, the dollar amount of the loss, and the type of documentation you will be submitting to support the loss. **You must provide ALL this information for this Claim to be processed.** Supporting documents must be submitted electronically. Please do so as part of this Claim Form at [\[Insert Website\]](#) and provide the additional information required below. **If you fail to provide sufficient supporting documents, the Settlement Administrator will deny Your Claim.** Please provide only copies of your supporting documents and keep all originals for your personal files. The Settlement Administrator will have no obligation to return any supporting documentation to you. A copy of the Settlement Administrator’s privacy policy is available at [\[Insert Website\]](#). With the exception of your Insurance Technologies Corp. and/or Zywave, Inc. name, mailing address, email address, and phone number, supporting documentation will not be provided to Defendants in this action. Please do not directly communicate with Insurance Technologies Corp. and/or Zywave, Inc. regarding this matter. All inquiries are to be sent to the Claims Administrator.

*Examples of such losses include payments for identity theft protection or credit monitoring you made which are reasonably traceable to the Data Breach, financial losses due to stolen identity traceable to the Data Breach, etc. These are only examples and do not represent a complete list of losses eligible for compensation. Please provide a description of any loss that you claim was the result of the Data Breach.*

*Examples of documentation include receipts for identity theft protection services, etc.*

Description of the Loss	Date of Loss	Amount	Type of Supporting Documentation
Example: Identity Theft Protection Service	07 - 17 - 20 MM DD YY	\$50.00	Copy of identity theft protection service bill
Example: Fees paid to a professional to remedy a falsified tax return	02 - 30 - 21 MM DD YY	\$25.00	Copy of the professional services bill
	MM - DD - YY	\$ [ ] [ ] [ ] [ ] • [ ] [ ]	
	MM - DD - YY	\$ [ ] [ ] [ ] [ ] • [ ] [ ]	
	MM - DD - YY	\$ [ ] [ ] [ ] [ ] • [ ] [ ]	
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**Reimbursement for Attested Time:**

Settlement Class Members may submit a claim for up to 8 hours of time spent remedying identity theft, fraud, misuse of personal information, credit monitoring or freezing credit reports, and/or other issues reasonably traceable to the Data Breach at \$25.00 per hour by providing an attestation and a brief description of (1) the action taken in response to the Data Breach; and (2) the time associated with each action.

Date of Attested Time	Amount of Time	Description of the Action Taken																
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**Additional Information**

If you believe that there is additional information related to your losses that would be helpful for the evaluation of your Claim, please explain:

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By checking the below box, I hereby declare under penalty of perjury under the laws of the State of Texas that the information provided in this Claim Form to support my seeking relief for Attested Time (up to \$200.00) is true and correct. I further certify that any documentation that I have submitted in support of my Claim for Attested Time consists of unaltered documents in my possession.

**Yes, I understand that I am submitting this Claim Form and the affirmations it makes as to my seeking relief for Attested Time under penalty of perjury. I further understand that my failure to check this box may render my Claim for Attested Time null and void.**

**Section D. Payment**

You will receive payment for your losses under this Settlement electronically. If you do not wish to receive an electronic payment, payment for your losses will be paid in the form of a check sent to the mailing address you provided above.

Please check the box if you **do not** want to receive your payment electronically:

**If you wish to receive an electronic payment, you may receive it in the following manners:**

**[Settlement Administrator to provide for electronic payment manners and instructions]**

**Section E. Settlement Class Member Affirmation**

By submitting this Claim Form and checking the box below, I declare that I received notification from Insurance Technologies Corp. and/or Zywave, Inc. that I have been identified as a potential Settlement Class Member. As I have submitted claims of losses due to the Data Breach, I declare that I suffered these losses.

I understand that my Claim and the information provided above will be subject to verification.

I also understand that I may not be entitled to recover under this Settlement if I am employed by and/or affiliated with the Judge or Magistrate presiding over this action, and/or am employed by the Defendants or anyone acting on their behalf.

By submitting this Claim Form, I certify that any documentation that I have submitted in support of my Claim consists of unaltered documents in my possession.

**Yes, I understand that my failure to check this box may render my Claim null and void.**

Please include your name in both the Signature and Printed Name fields below.

Signature:

Date:   -   -    
MM DD YY

Printed Name:

**IN ORDER TO BE VALID, THIS CLAIM FORM MUST BE RECEIVED ONLINE AT [INSERT WEBSITE] NO LATER THAN [75 days after the Notice Deadline].**



# EXHIBIT 2A

Insurance Technologies Corp. and Zywave, Inc. Settlement Administrator  
P.O. Box [INSERT]  
[INSERT]

***Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.,  
Case No. 3:21-cv-01444-N***

**Court Approved Legal Notice**

**If you were a customer of an insurance broker that was, in turn, a customer of Insurance Technologies Corp. and/or Zywave, Inc. on or before February 27, 2021, you may be entitled to benefits from a class action settlement. The settlement relates to a claimed data breach at Insurance Technologies Corp. and Zywave, Inc. on February 27, 2021.**

*A United States District Court authorized this Notice.*

*This is not junk mail, an advertisement, or a solicitation from a lawyer.*

**[www.\[website\].com](http://www.[website].com)**

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Forwarding Service Requested

Postal Service: Please do not mark barcode  
Claim No.:

**[CLAIMANT INFO]**

**Unique ID No. [INSERT]**

**IMPORTANT MESSAGE FROM THE COURT:** A Settlement has been reached in a class action lawsuit concerning Insurance Technologies Corp. and Zywave, Inc. (“Defendants”) and a data breach (the “Data Breach”) that occurred on February 27, 2021, when one or more unauthorized individuals accessed or potentially accessed information stored on Insurance Technology Corp. and/or Zywave, Inc.’s computer system, including names, Social Security numbers, drivers’ license numbers, birth dates, and usernames/passwords.

**Who is Included?** The Settlement Class includes: All individuals whose PII was subjected to the Data Breach, as confirmed by Defendant’s business records.

**What does the Settlement Provide?** Please see the Settlement for full details. Generally, Settlement Class Members are eligible to receive the following relief: (1) for California residents at the time of the Data Breach, a cash payment of \$TBD to Class Members whose social security number and/or driver’s license number were exposed in the Data Breach, as confirmed by Defendants’ business records, which amount may be reduced pro rata to the extent total claims exceed \$TBD or increased up to \$TBD to the extent funds remain; (2) up to \$5,000 for certain expenses incurred on or after February 27, 2021, with supporting documentation such as receipts, account statements; (3) up to \$175 reimbursement of time spent remedying identity theft, misuse of personal information, credit monitoring, freezing credit reports, and/or other issues related to the Data Breach and which amount may be reduced pro rata to the extent total claims exceed TBD dollars (\$TBD) or increased pro rata to the extent funds remain, subject to the terms more fully described in the Settlement Agreement.; and (4) 12 months of Financial Shield, an identity theft detection services provided by Aura, and 12 months of identity restoration services, also provided by Aura. The Settlement Administrator will post additional information about the payment amount on [InsertWebsiteLink]. Defendants have also agreed to adopt and implement additional data security measures for a period of at least five years following approval of the Settlement. For complete details, please see the Settlement Agreement, whose terms control, available at [InsertWebsiteLink]. **To be eligible to enroll in Aura’s Financial Shield Services, you are not required to do anything. A link with a redeemable code to be used directly with Aura Financial Shield is provided below.**

**LINK**

**REDEMPTION CODE**

Under the Settlement, the maximum total amount Defendants may be required to pay is eleven million dollars (\$11,000,000.00). For full details, please review the Settlement Agreement. The Settlement is without an admission of liability.

**How To Get Benefits:** You must submit a Claim Form, available at www.[website].com. You will need the Unique ID number found on the front of this postcard under your contact information to submit a Claim Form. The Claim Form must be submitted at www.[website].com on or before 11:59 p.m. (Pacific) on **Month DD, 2022**. Claims will be subject to a verification process.

**Your Other Options.** If you file a Claim Form, object to the Settlement, or do nothing, you will stay in the Settlement Class and be bound to its terms including its Release. You will be legally bound by all orders of the Court and you will not be able to start, continue or be part of any other lawsuit against Defendants or related parties about the Data Breach. If you do not want to be legally bound by the Settlement or receive any benefits from it, you must exclude yourself by **Month DD, 2022**. If you do not exclude yourself, you may object to the Settlement by **Month DD, 20YY**. Please see the Settlement for full details.

**The Final Approval Hearing.** The Court has scheduled a hearing for **Month DD, 2022**, to decide whether to approve the Settlement, attorneys’ fees, costs, and expenses, service awards; and any objections. You may or your attorney may speak about your objection at the hearing.

**More Information.** More information about your rights and options can be found in the Detailed Notice and Settlement Agreement available at www.[website].com

# EXHIBIT 2B

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

***Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.,***  
**Case No. 3:21-cv-01444-N (N.D. Tex.)**

**If You Have Been a Customer of an Insurance Broker That Was, In Turn, a Customer of  
Insurance Technologies Corp. or Zywave, Inc.,  
A Class Action Settlement May Affect Your Rights.**

***A Federal Court authorized this Notice. You are not being sued.  
This is not a solicitation from a lawyer.***

- A Settlement has been reached in a class action lawsuit concerning Insurance Technologies Corp. and Zywave, Inc. and a data breach (the “Data Breach”) that occurred on February 27, 2021, when one or more unauthorized individuals accessed or potentially accessed information stored on Insurance Technology Corp. and/or Zywave, Inc.’s computer system, including names, Social Security numbers, drivers’ license numbers, birth dates, and usernames/passwords.
- The lawsuit is called *Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.*, Case No. 3:21-cv-01444-N (N.D. Tex.), and is pending in the United States District Court for the Northern District of Texas. The lawsuit asserts claims related to the Data Breach. The Defendants in the lawsuit are Insurance Technologies Corp. and Zywave, Inc. (“ITC” or “Defendants”). Defendants in the lawsuit deny they are or can be held liable for the claims made in the lawsuit. The Settlement does not establish who is correct, but rather is a compromise to end the lawsuit.
- Members of the Settlement Class are all individuals whose Personally Identifiable Information (“PII”) was potentially subjected to the Data Breach, as confirmed by Defendants’ business records. Eligible Settlement Class Members will be mailed notice of their eligibility, and Settlement Class Membership will be verified against that mailed list. The Settlement Class does not include (a) the Court; (b) the officers and directors of Defendants; (c) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (d) persons who have been separately represented by counsel for matters of, and have settled, claims related to the Data Breach with Defendants.
- Settlement Class Members are eligible to receive the following relief: (1) for California residents at the time of the Data Breach, a cash payment of \$100 to Class Members whose social security number and/or driver’s license number were potentially exposed in the Data Breach, as confirmed by Defendants’ business records, which amount may be reduced *pro rata* to the extent total claims exceed \$1,590,400.00 or increased up to \$300 to the extent funds remain; (2) up to \$5,000 for certain expenses incurred on or after February 27, 2021, with supporting documentation such as receipts, account statements; (3) up to \$200 reimbursement of time spent remediating identity theft, misuse of personal information, credit monitoring, freezing credit reports, and/or other issues related to the Data Breach and which amount may be reduced *pro rata* to the extent total claims exceed \$2,878,333.00; and (4) 12 months of Financial Shield, an identity theft detection services provided by Aura, and 12 months of

identity restoration services, also provided by Aura. The Settlement Administrator will post additional information about the payment amount on [\[InsertWebsiteLink\]](#). For complete details, please see the Settlement Agreement, whose terms control, available at [\[InsertWebsiteLink\]](#).

- Your legal rights are affected regardless of whether you act or do not act. Please read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	This is the only way you may receive benefits from this Settlement. The deadline to submit a Claim Form is <b>[75 Days after the Notice Deadline]</b> .
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	You will receive no payment, but you will retain any rights you currently have with respect to Defendants and the issues in this case. You may download an exclusion form at <a href="#">[InsertWebsiteLink]</a> . The deadline to exclude from the Settlement is <b>[50 Days after the Notice Deadline]</b> .
<b>OBJECT TO THE SETTLEMENT</b>	Write to the Court explaining why you do not agree with the Settlement. The deadline to object is <b>[50 Days after the Notice Deadline]</b> .
<b>ATTEND THE FINAL APPROVAL HEARING</b>	You may ask the Court for permission for you or your attorney to speak about your objection at the Final Approval Hearing. The Final Approval Hearing will be held on <b>[InsertHearingDate]</b> .
<b>DO NOTHING</b>	You get no payment, but will be eligible for 12 months of Financial Shield, and you give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. For complete details, please see the Settlement Agreement, whose terms control, available at [\[InsertWebsiteLink\]](#).
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

**BASIC INFORMATION**

## **1. What is this Notice and why should I read it?**

The Court authorized this Notice to inform you about a proposed Settlement with Defendants. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. You may be eligible to receive a cash payment as part of the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge David C. Godbey of the United States District Court for the Northern District of Texas is overseeing this class action. The case is called *Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.*, Case No. 3:21-cv-01444-N (the “Action”).

The persons who filed the lawsuit, Jay Heath, Edward Shapiro, and Daisy Becerra Lopez, are the Plaintiffs or Class Representatives. The companies they sued are Insurance Technologies Corp. and Zywave, Inc., are the Defendants.

## **2. What is a class action lawsuit?**

A class action is a lawsuit in which one or more plaintiffs—in this case, Jay Heath, Edward Shapiro, and Daisy Becerra Lopez—sue on behalf of a group of people who have similar claims. Together, this group is called a “Class” and consists of “Class Members.” In a class action, the court resolves the issues for all class members, except those who exclude themselves from the class. After the Parties reached an agreement to settle this case, the Court granted preliminary approval of the Settlement and recognized it as a case that should be treated as a class action for settlement purposes.

### **THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT**

## **3. What is this lawsuit about?**

The Plaintiffs claim that Defendants failed to implement and maintain reasonable security measures to protect customer and employee PII in their possession, in order to prevent the Data Breach from occurring.

Defendants deny that they are or can be held liable for the claims made in the lawsuit. More information about the complaint in the lawsuit and Defendants’ responses can be found in the “Court Documents” section of the Settlement Website at [\[InsertWebsite\]](#).

## **4. Why is there a Settlement?**

The Court has not decided whether the Plaintiffs or Defendants should win this case. Instead, both sides agreed to this Settlement. That way, they can avoid the uncertainty, risks, and expense of ongoing litigation, and Settlement Class Members will get compensation now rather than years later—if ever. The Class Representative and Class Counsel, attorneys for the Settlement Class Members, agree the Settlement is in the best interests of the Settlement Class Members. The Settlement is not an admission of wrongdoing by Defendants.

## WHO'S INCLUDED IN THE SETTLEMENT?

### 5. How do I know if I am in the Settlement Class?

You are part of the Settlement as a Settlement Class Member if you had an address on file in Defendants' business records at the time of the Data Breach and your PII was potentially subjected to the Data Breach. Eligible Settlement Class Members will have been mailed notice of their eligibility (including from [InsertMailingAddress]), and Settlement Class membership will be verified against that mailed list. Not all customers of insurance brokers that are customers of Defendants are Settlement Class Members.

If you are still not sure whether you are included, you can contact the Settlement Administrator by calling [INSERT], by emailing [INSERT], by visiting the website [INSERT]. Please do not contact Plaintiffs or Defendants directly. All inquiries should be directed to the Claims Administrator.

This Settlement Class does not include (a) any Judge assigned to this Action and members of their immediate families; (b) Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants have a controlling interest, and any of their current or former officers, directors, employees, representatives, managers, members, and any other person acting for or on behalf of Defendants; (c) persons who properly execute and file a timely request for exclusion from the Settlement Class; (d) persons who have been separately represented by counsel for matters of, and have settled and released claims related to the Data Breach with Defendants.

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

This Settlement provides eligible Settlement Class Members with (1) for California residents at the time of the Data Breach, a cash payment of up to one hundred dollars (\$100.00) not to exceed three hundred dollars (\$300.00) if funds remain, (2) reimbursement of certain Out-of-Pocket Losses, (3) reimbursement for time spent remediating identity theft or other issues related to the Data Breach such as misuse of personal information, credit monitoring, freezing credit reports, and (4) 12 months of identity theft protection services and 12 months of identity restoration services without the need to file a claim.

#### 6.A. Who May Receive a Cash Payment and for How Much?

- If you are a Settlement Class Member who resided in California at the time of the Data Breach and you claim that the California Consumer Privacy Act was violated as to you, you will be eligible for a payment of one hundred dollars (\$100.00) under Tier One of the Settlement Agreement ("Statutory Claim" or "Tier One Claim"). Only Settlement Class Members whose Social Security number and/or driver's license number were accessed or potentially accessed in the Data Breach, as confirmed by Defendants' business records, will be eligible to submit a Statutory Claim. Not all Settlement Class Members will be eligible for a Statutory Claim. The aggregate payments to the Settlement Class from this Tier One will be capped at a maximum of one million five



hundred ninety thousand four hundred dollars (\$1,590,400.00), such that verified claims may be increased on a *pro rata* basis (up to a maximum of \$300.00) or decreased on a *pro rata* basis depending on the total value of the verified Tier One Claims submitted and subject to the terms more fully described in the Settlement Agreement.

6.B. Who May Recover for Out-of-Pocket Losses and for How Much?

- If you are a Settlement Class Member and you suffered Out-of-Pocket Losses because of the Data Breach and provide Reasonable Documentation of losses, you may be eligible for a payment of up to five thousand dollars (\$5,000.00) on a claims-made basis, but not more than the loss proven under Tier Two of the Settlement Agreement (“Tier Two Claim”). Out-of-Pocket Losses may include: (1) unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of a Class Member’s personal information; (2) costs incurred on or after February 27, 2021, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; (3) other miscellaneous expenses incurred related to any Out-of-Pocket Loss, such as notary, fax, postage, copying, mileage, and long-distance telephone charges; (4) credit monitoring or other mitigative costs that were incurred on or after February 27, 2021, through the date of the Settlement Class Member’s claim submission; and (5) Attested Time, which may include Out-of-Pocket Losses for up to 8 hours of time spent remedying identity theft or fraud, including misuse of personal information, credit monitoring or freezing credit reports, and/or other issues related to the Data Breach at twenty-five dollars (\$25.00) per hour. To receive a payment for Attested Time, a Settlement Class Member must submit a brief description of (1) the action taken in response to the Data Breach; and (2) the time associated with each action. The aggregate payments to the Class from this tier will be capped at a maximum of two million eight hundred seventy-eight thousand three hundred thirty-three dollars (\$2,878,333.00), such that verified claims may be increased on a *pro rata* basis or decreased on a *pro rata* basis depending on the total value of the verified Tier Two Claims submitted and subject to the terms more fully described in the Settlement Agreement.
- For complete details, please see the Settlement Agreement, whose terms control, available at [InsertWebsiteLink]. Claims will be subject to a verification process and will be denied if they do not meet the verification requirements. The Settlement Administrator will post additional information about the payment amount on [InsertWebsiteLink], if necessary.

6.C. Who may receive 12 months of identity theft protection and 12 months of identity restoration services?

- Under Tier Three of the Settlement Agreement, all Settlement class members are eligible to enroll, without the need to file a claim, for a period of 12 months in Financial Shield, an identity theft protection service provided by Aura. All Settlement class members are also eligible to enroll, without the need to file a claim, for a period of 12 months in identity restoration services, also provided by Aura.

**Maximum Settlement Contribution:** Under this Settlement, the maximum total amount Defendants may be required to pay is eleven million dollars (\$11,000,000.00). This maximum includes the combined four million four hundred sixty-eight thousand seven hundred thirty-three dollars (\$4,468,733.00) Defendants will transfer to the Settlement Administrator for the funding of the Tier One Fund and the Tier Two Fund (as described in the Settlement Agreement), the costs of identity protection services and identity restoration services under Tier Three, attorneys' fees, costs, and expenses awarded by the Court to Class Counsel, any awarded class representative service award, and notice and administrative costs to provide the Settlement. In no event shall Defendants' total financial obligation under this Settlement exceed eleven million dollars (\$11,000,000.00).

## HOW TO GET BENEFITS

### 7. How do I make a Claim?

To qualify for a Settlement benefit, you must complete and submit a Claim Form.

Settlement Class Members who want to submit a Claim must fill out and submit a Claim Form online at [\[InsertWebsiteLink\]](#). Claim Forms are only available through the Settlement website at [\[InsertWebsiteLink\]](#).

Claims will be subject to a verification process. You will need the Unique ID provided with your notice to fill out a Claim Form. **All Claim Forms must be received online no later than [\[75 Days after the Notice Deadline\]](#).**

### 8. When will I get my payment?

The hearing to consider the fairness of the Settlement is scheduled for [\[insert date\]](#). If the Court approves the Settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will be sent payment within approximately [45 days](#) after all appeals and other reviews, if any, are completed. Please be patient. Eligible claims will be paid to Class Members electronically unless a Settlement Class Member chooses to receive payment by written check. All checks will expire and become void 90 days after they are issued.

## THE LAWYERS REPRESENTING YOU

### 9. Do I have a lawyer in this case?

Yes, the Court has appointed John A. Yanchunis Sr. and Ryan D. Maxey of Morgan & Morgan; Gary E. Mason, David K. Lietz, and Gary M. Klinger of Mason Lietz & Klinger LLP; M. Anderson Berry of Clayeo C. Arnold, a Professional Law Corp.; and Joe Kendall of Kendall Law Group, PLLC as "Class Counsel."

### **Should I get my own lawyer?**

You don't need to hire your own lawyer because Class Counsel are working on your behalf. These lawyers and their firms are experienced in handling similar cases. You will not be charged for these lawyers. You can ask your own lawyer to appear in Court for you if you want someone other than Class Counsel to represent you.

## **10. How will the lawyers be paid?**

Class Counsel will ask the Court for attorneys' fees, costs, and expenses that will be paid by or on behalf of Defendants separately. Class Counsel will not seek more than \$3,666,666.67 in attorneys' fees, costs, and expenses. Class Counsel will also request Service Awards of up to two thousand dollars (\$2,000.00) for the Class Representatives. The Court will determine the proper amount of any attorneys' fees, costs, and expenses to award Class Counsel and the proper amount of any service award to the Class Representative. The Court may award less than the amounts requested.

### **YOUR RIGHTS AND OPTIONS**

## **11. What claims do I give up by participating in this Settlement?**

If you do not exclude yourself from the Settlement, you will not be able to sue the Defendants about the issues in this case, and you will be bound by all decisions made by the Court in this case, the Settlement, and its included Release. This is true regardless of whether you submit a Claim Form. You can read the Settlement Agreement at [\[Insert Website\]](#). However, you may exclude yourself from the Settlement (see Question 14). If you exclude yourself from the Settlement, you will not be bound by any of the Released Claims.

“Released Claims” means any and all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, existing or potential, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, liquidated or unliquidated, legal, statutory or equitable, that have been or could have been asserted, or in the future could be asserted, in the Action or in any court, tribunal or proceeding by or on behalf of the Named Plaintiffs and/or any and all of the members of the Settlement Class by reason of, resulting from, arising out of, relating to, or in connection with, the allegations, facts, events, transactions, acts, occurrences, statements, representations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the alleged claims or events in the Action or the Data Breach against any of the Released Parties whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States. The Released Claims include an express waiver of California Civil Code section 1542 for all known and unknown claims related to the Data Breach and claims made in the Action. The Released Claims do not include any claims arising from or relating to any conduct by Defendants after the date the Agreement is executed. The Released Claims shall also not include the right of Named Plaintiff, any Settlement Class Member or any Released Person to enforce the terms of the Settlement Agreement.

## **12. What happens if I do nothing at all?**

If you do nothing, you will receive no payment under the Settlement for any losses incurred as a result of the Data Breach, but you will be entitled to access Aura's Financial Shield Services for a period of 12 months from the Effective Date of the Settlement, if it is finally approved. You will be in the Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments of the Court, the Settlement, and its included Release. You will be deemed to have participated in the Settlement and will be subject to the provisions of Section 11 above. Unless you exclude yourself, you won't be able to file a lawsuit or be part of any other lawsuit against Defendants for the claims or legal issues resolved in this Settlement.

## **13. What happens if I ask to be excluded?**

If you exclude yourself from the Settlement, you will receive no benefits or payment under the Settlement. However, you will not be in the Settlement Class and will not be legally bound by the Court's judgments related to the Settlement Class and Defendants in this class action.

## **14. How do I ask to be excluded?**

You can ask to be excluded from the Settlement. To do so, you must send a letter or exclusion form stating that you want to be excluded from the Settlement in *Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.*, Case No. 3:21-cv-01444-N. Your letter must also include (1) your name and address; (2) a statement that you wish to be excluded from the Settlement Class; and (3) your signature. You must mail your exclusion request, postmarked no later than **[50 Days after the Notice Deadline]**, to the following address:

**[Insert Address]**

You cannot exclude yourself by phone or email. Each individual who wants to be excluded from the Settlement must submit his or her own exclusion request. No group opt-outs shall be permitted.

A form to exclude yourself from the Settlement, also called opting-out of the Settlement, will be made available on the Settlement Website at **[InsertWebsite]**.

## **15. If I don't exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims being resolved by this Settlement even if you do nothing.

## **16. If I exclude myself, can I get anything from this Settlement?**

No. If you exclude yourself, do not submit a Claim Form to ask for a payment.

## **17. How do I object to the Settlement?**

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you do not agree with any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must file written notice with the Court stating that you object to the Settlement in *Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.*, Case No. 3:21-cv-01444-N no later than [50 Days after the Notice Deadline]. Your objection should be filed with the Court, which you can do by mailing your objection and any supporting documents to the United States District Court for the Northern District of Texas at the following address:

[INSERT]

If you are represented by a lawyer, the lawyer may file your objection through the Court’s e-filing system. If you are represented, you must include your lawyer’s contact information in the objection.

The objection must be in writing and include the case name *Heath, et al. v. Insurance Technologies Corp. and Zywave, Inc.*, Case No. 3:21-cv-01444-N. Your objection must be personally signed by you and include, among other things, the following information: (1) your name, address, and telephone number; (2) all arguments, citations, and evidence supporting the grounds for your objection; (3) an explanation of the basis upon which you claim to be a Settlement Class Member; (4) a statement indicating whether you are represented by counsel in connection with the objection, including the identity of your counsel and any agreements you have with counsel relating to your objection; (5) a list of all persons, if any, you will call to testify at the Final Approval Hearing in support of your objection; (6) all other class action settlements, if any, to which you or your counsel have filed an objection; (7) all other class actions, if any, in which you have been a named plaintiff or your counsel has been class counsel, including the case name, court, and docket number for each. In addition, if you wish to appear and be heard at the hearing on the fairness of the Settlement at the Final Approval Hearing, you or your attorney must say so in your written objection.

In addition to filing your objection with the Court, you must also mail copies of your objection and any supporting documents to both Class Counsel and Defendant’s lawyers at the addresses listed below, postmarked no later than [50 Days after the Notice Deadline]:

Class Counsel	Defense Counsel
John A. Yanchunis Ryan D. Maxey <b>MORGAN &amp; MORGAN</b> <b>COMPLEX LITIGATION GROUP</b> 201 N Franklin Street, 7 <sup>th</sup> Floor Tampa, FL 33602  Gary Mason David Lietz <b>MASON LIETZ KLINGER LLP</b> 5101 Wisconsin Avenue NW, Suite 305 Washington, DC 20016	Eileen R. Ridley (admitted to N.D. Tex.) <b>Foley &amp; Lardner LLP</b> 555 California Street, Suite 1700 San Francisco, CA 94104-1520 (415) 434-4484 (telephone) (415) 434-4507 (facsimile) eridley@foley.com

<p>Gary M. Klinger <b>MASON LIETZ KLINGER LLP</b> 227 W. Monroe Street, Suite 2100 Chicago, IL 60606</p> <p>M. Anderson Berry <b>CLAYEO C. ARNOLD,</b> <b>A PROFESSIONAL LAW CORP.</b> 865 Howe Avenue Sacramento, CA 95825</p> <p>Joe Kendall <b>KENDALL LAW GROUP, PLLC</b> 3811 Turtle Creek Blvd., Ste. 1450 Dallas TX 75219</p>	<p>Peter L. Loh Texas State Bar No. 24036982 Sara Ann Brown Texas State Bar No. 24075773 <b>Foley &amp; Lardner LLP</b> 2021 McKinney Ave., Suite 1600 Dallas, Texas 75201 (214) 999-3000 (telephone) (214) 999-4667 (facsimile) ploh@foley.com sabrown@foley.com</p>
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Class Counsel will file their request for attorneys' fees, costs, and expenses and Service Awards for the Class Representatives with the Court, which will also be posted on the Settlement Website, at [\[InsertWebsite\]](#).

## 18. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

### THE COURT'S FAIRNESS HEARING

## 19. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court will hold the Final Approval Hearing on [\[InsertDate\]](#) at the [\[ADDRESS\]](#). The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees, costs, and expenses and the Service Awards to the Class Representatives.

**Note:** The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, [\[InsertWebsite\]](#), or through the Court's publicly

available docket. You should check the Settlement Website to confirm the date and time have not been changed.

## **20. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed or mailed on time and meets the other criteria described in the Settlement, the Court will consider it. You may also pay a lawyer to attend on your behalf at your own expense, but you don't have to.

## **21. May I speak at the hearing?**

Yes. If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the Final Approval Hearing concerning any part of the proposed Settlement.

### **GETTING MORE INFORMATION**

## **22. Where can I get additional information?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at [InsertWebsite] or by writing to [insert settlement administrator address].

## **23. How do I get more information?**

Go to [INSERTWEBSITE], call [Insert toll-free number], email [insert settlement admin email] or write to [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]

**PLEASE DO NOT CALL THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR THE DEFENDANTS WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.**

# EXHIBIT 3



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

JAY HEATH, EDWARD SHAPIRO, and  
DAISY BECERRA LOPEZ,

on behalf of themselves and all others similarly  
situated,

Plaintiffs,

vs.

INSURANCE TECHNOLOGIES CORP.  
AND ZYWAVE, INC.,

Defendants.

Case No.: 3:21-cv-01444-N

Assigned for All Purposes to:  
Judge David C. Godbey

**CLASS ACTION**

[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AGREEMENT  
AND CONDITIONALLY CERTIFYING  
SETTLEMENT CLASS FOR SETTLEMENT  
PURPOSES ONLY

Complaint Filed: 06/18/21  
Trial Date: Not Yet Set

**DEMAND FOR JURY TRIAL**

WHEREAS, the above-styled Action was filed on June 18, 2021;

WHEREAS, Plaintiffs Jay Heath, Edward Shapiro, and Daisy Becerra Lopez (“Plaintiffs”), individually and on behalf of themselves and the proposed Settlement Class (defined below), and Defendants Insurance Technologies Corp. and Zywave, Inc. (“Defendants” or “ITC”) (collectively, the “Settling Parties”), have entered into a Settlement Agreement (the “Settlement”) resolving the Action, subject to Court approval;

WHEREAS, the Action was settled as a result of arm’s-length negotiations, investigation and informal discovery sufficient to permit counsel and the Court to act knowingly, and counsel are experienced in similar litigation; and

WHEREAS, Named Plaintiffs, the Proposed Class Representatives, have moved the Court for entry of an order preliminarily approving the Settlement, conditionally certifying the Settlement Class for settlement purposes only, and approving the form and method of notice upon the terms and conditions set forth in the Settlement, together with all exhibits thereto.

WHEREAS, the Court having considered the Settlement, together with all exhibits thereto and records in this case, and the arguments of counsel and for good cause appearing, hereby orders as follows:

#### **I. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

1. Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Conditionally Certifying Settlement Class for Settlement Purposes Only is GRANTED. The terms defined in the Settlement shall have the same meaning in this Order.

2. Having made the finding set forth below, the Court conditionally certifies the following Nationwide Class and California Subclass (collectively, the “Settlement Class”) for settlement purposes only:

The Nationwide Class: All individuals whose personally identifiable information was potentially subjected to the Data Breach, as confirmed by Defendants' business records.

The California Subclass: All residents of California at the time of the Data Breach whose personally identifiable information was potentially subjected to the Data Breach, as confirmed by Defendants' business records.

3. Excluded from the Settlement Class are the Court, the officers and directors of Defendant, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Breach, and persons who timely and validly request exclusion.

4. For settlement purposes only, with respect to the Settlement Class, the Court preliminary finds the prerequisites for a class action pursuant to Federal Rule 23 have been met, in that: (a) the Settlement Class is so numerous that joinder of all individual Settlement Class members in a single proceeding is impracticable; (b) questions of law and fact common to all Settlement Class members predominate over any potential individual questions; (c) the claims of the Named Plaintiffs are typical of the claims of the Settlement Class; (d) Named Plaintiffs and proposed Class Counsel will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is the superior method to fairly and efficiently adjudicate this controversy.

5. The Court hereby appoints Named Plaintiffs, Jay Heath, Edward Shapiro, and Daisy Becerra Lopez, as the Class Representatives for the Settlement Class.

6. The Court hereby appoints John A. Yanchunis and Ryan D. Maxey of Morgan & Morgan Complex Litigation Group; Gary E. Mason, David K. Lietz, and Gary M. Klinger of

Mason Lietz & Klinger LLP; M. Anderson Berry of Clayco C. Arnold, a Professional Law Corp.; and Joe Kendall of Kendall Law Group, PLLC as Class Counsel.

## **II. PRELIMINARY APPROVAL**

7. The terms of the Settlement, including its proposed releases, are preliminarily approved as within the range of fair, reasonable, and adequate, and are sufficient to warrant providing notice of the Settlement to the Settlement Class in accordance with the Notice Program, and are subject to further and final consideration at the Final Approval Hearing provided for below. In making this determination, the Court considered the fact that the Settlement is the product of arm's-length negotiations conducted by experienced and knowledgeable counsel, the current posture of the Action, the benefits of the Settlement to the Settlement Class, and the risk and benefits of continuing litigation to the Settling Parties and the Settlement Class.

8. As provided for in the Settlement, if the Court does not grant final approval of the Settlement, then the Settlement, and the conditional certification of the Settlement Class for settlement purposes only provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been conditionally certified for settlement purposes only, with no admission of liability or merit as to any issue, and no prejudice or impact as to any party's position on the issue of class certification or any other issue in the case, including Defendants' right to move to compel arbitration and assert all applicable defenses.

## **III. NOTICE OF THE SETTLEMENT TO THE SETTLEMENT CLASS**

9. The Court appoints Angeion Group as the Settlement Administrator. The responsibilities of the Settlement Administrator are set forth in the Settlement Agreement.

10. The Court has considered the Notice provisions of the Settlement, the Notice Program set forth in the Declaration of **TBD** (the “Notice Program”), and the Notice, attached as Exhibit 1 of the Settlement. The Court finds that the direct mailing of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with applicable law and due process. The Court approves as to form and content the Notice attached as Exhibit 1 to the Settlement. The Court orders the Settlement Administrator to commence the Notice Program following entry of this Order in accordance with the terms of the Settlement.

11. The Court approves as to form and content the Claim Forms attached as Exhibit 2 to the Settlement.

12. Settlement Class Members who qualify for and wish to submit a Claim Form under the Settlement shall do so in accordance with the requirements and procedures of the Settlement and the Claim Form under which they are entitled to seek relief. The Claims deadline is 75 days after the Notice Deadline. All Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures of the Settlement and respective Claim Form shall be forever barred from receiving any such benefit but will in all other respects be subject to and bound by the provisions of the Settlement and the releases contained therein.

#### **IV. REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS**

13. Each person wishing to opt out of the Settlement Class must sign and timely mail written notice of such intent to the designated address established by the Settlement Administrator. The written notice must clearly manifest an intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than 50 days after the Notice Deadline.

14. Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall neither receive any benefits of nor be bound by the terms of the Settlement.

15. Persons falling within the definition of the Settlement Class who do not timely and validly request to be excluded from the Settlement Class shall be bound by the terms of the Settlement, including its releases, and all orders entered by the Court in connection therewith.

## **V. OBJECTIONS**

16. Each Settlement Class Member desiring to object to the settlement must submit a timely written notice of his or her objection. Such notice must include: (a) the name of the filed action; (b) the objector's full name, address, telephone number and email address; (c) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support for the objection; (e) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for a service award; (f) any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between objector or objector's counsel and any other person or entity; (g) a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; (h) the objector's signature on the written objection (an attorney's signature is not sufficient); and (i) all other cases in which the objector (directly or through counsel) or the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement, has been a named plaintiff in any class action, or has served as lead plaintiff class counsel, including the case name, court, and docket number for each.

17. To be timely, written notice of an objection in appropriate form must be filed or mailed on or before 50 days after the Notice Deadline with the Clerk of the United States District Court for the Northern District of Texas, Dallas Division, at the address where filings are accepted by the Clerk and, additionally, served concurrently therewith upon: (a) John A. Yanchunis and Ryan D. Maxey, Morgan & Morgan Complex Litigation Group, 201 N Franklin Street, 7th Floor, Tampa, FL 33602, (b) Gary E. Mason and David K. Lietz, Mason Lietz & Klinger LLP, 5101 Wisconsin Avenue NW, Suite 305, Washington DC 20016, (c) Gary M. Klinger, Mason Lietz & Klinger LLP, 227 W. Monroe Street, Suite 211, Chicago IL 60606; (d) M. Anderson Berry, Clayeo C. Arnold, a Professional Law Corp., 865 Howe Avenue, Sacramento, CA 95825, (e) Joe Kendall, Kendall Law Group, PLLC, 3811 Turtle Creek Blvd., Ste. 1450, Dallas TX 75219, (f) Eileen R. Ridley, Foley & Lardner, LLP 555 California Street, Ste. 1700, San Francisco, California 94104-1520 [email: eridley@foley.com]; and (g) Peter Loh and Sara Ann Brown, Foley & Lardner, LLP 2021 McKinney Ave., Ste. 1600, Dallas, Texas 75201 [email: ploh@foley.com and sabrown@foley.com].

18. Unless otherwise ordered by the Court, any Settlement Class Member who does not timely object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Settlement, including its releases, the Order and Judgment approving the Settlement, and Class Counsels' motion for award of attorneys' fees, costs, and expenses, and Named Plaintiff's service award.

## **VI. THE FINAL FAIRNESS HEARING**

19. The Court will hold a Final Approval Hearing on [InsertHearingDate], at [InsertHearingTime] a.m., at the United States Courthouse, [ADDRESS IF IN PERSON] to

consider: (a) whether certification of the Settlement Class for settlement purposes only should be confirmed; (b) whether the Settlement should be approved as fair, reasonable, adequate and in the best interests of the Settlement Class; (c) the application by Class Counsel for an award of attorneys’ fees, costs and expenses as provided for under the Settlement; (d) the application for a Named Plaintiffs service award as provided for under the Settlement; (e) whether the Release of Released Claims as set forth in the Settlement should be provided; (f) whether the Court should enter the [Proposed] Final Order and Judgment; and (g) ruling upon such other matters as the Court may deem just and appropriate. The Final Approval Hearing may, from time to time and without further notice to Settlement Class Members be continued or adjourned by order of the Court.

20. No later than 120 days after Preliminary Approval, the Named Plaintiffs shall file their Motion for Final Approval of Class Action Settlement Agreement and for Award of Attorney’s Fees, Costs, and Expenses, and Representative Plaintiffs Service Award. No later than 14 days prior to the Final Approval Hearing, Named Plaintiffs shall file their Reply Brief in Support of Motion for Final Approval of Class Action Settlement Agreement and for Award of Attorneys’ Fees, Costs, and Expenses, and Named Plaintiffs Service Award, including as needed to respond to any valid and timely objections.

21. The related time periods for events preceding the Final Approval Hearing are as follows:

<b>Event</b>	<b>Timing</b>
Class Notice Mailed	30 Days after Preliminary Approval
Claims Deadline	75 Days after the Notice Deadline
Opening Papers in Support of Final Approval	120 Days after Preliminary Approval
Last Day to Object or Opt Out	50 Days after the Notice Deadline
Reply Papers in Support of Final Approval	14 Days Prior to the Final Approval Hearing
Final Approval Hearing	150 Days after Preliminary Approval, or shortly thereafter



22. The existing stay of the Action shall remain in effect pending the Court's ruling on preliminary approval. Any action brought by a Settlement Class Member concerning a Released Claim shall be stayed pending final approval of the Settlement.

**IT IS SO ORDERED.**

By: \_\_\_\_\_  
HON. DAVID C. GODBEY  
UNITED STATES DISTRICT JUDGE

# EXHIBIT 4

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

JAY HEATH, EDWARD SHAPIRO, and  
DAISY BECERRA LOPEZ, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

INSURANCE TECHNOLOGIES CORP.  
AND ZYWAVE, INC.,

Defendants.

Case No.: 3:21-cv-01444-N

Assigned for All Purposes to:  
Judge David C. Godbey

**CLASS ACTION**

[PROPOSED] FINAL ORDER AND  
JUDGMENT

Complaint Filed: 06/18/21  
Trial Date: Not Yet Set

**DEMAND FOR JURY TRIAL**

WHEREAS, the Court, having considered the Settlement Agreement filed [InsertFilingDate] (the “Settlement”) between and among Named Plaintiffs and Class Representatives, individually and on behalf of the Settlement Class, and Defendants Insurance Technologies Corp. and Zywave, Inc. (“ITC” or “Defendants”) (collectively, the “Settling Parties”), the Court’s Order Granting Preliminary Approval of Class Action Settlement Agreement and Conditionally Certifying Settlement Class for Settlement Purposes Only (“Preliminary Approval Order”), having held a Final Approval Hearing on [InsertHearingDate], having considered all of the submissions and arguments with respect to the Settlement, and otherwise being fully informed, and good cause appearing therefor;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. Plaintiffs’ Motion for Final Approval of Class Action Settlement Agreement and Award of Attorneys’ Fees, Costs, and Expenses, and Class Representative Service Award is GRANTED.

2. This Order and Judgment incorporates herein and makes a part hereof, the Settlement (including its exhibits) and the Preliminary Approval Order. Unless otherwise provided herein, the terms defined in the Settlement and Preliminary Approval Order shall have the same meanings for purposes of this Order and Judgment.

3. The Court has subject matter jurisdiction over this matter including, without limitation, jurisdiction to approve the Settlement, confirm certification of the Settlement Class for settlement purposes only, to settle and release all claims released in the Settlement, and to dismiss the Action with prejudice.

**I. CERTIFICATION OF THE SETTLEMENT CLASS**

4. Based on its review of the record, including the Settlement, all submissions in support of the Settlement, and all prior proceedings in the Action, the Court finally certifies the following Nationwide Class and California Subclass (collectively, the “Settlement Class”) for settlement purposes only:

The Nationwide Class: All individuals whose personally identifiable information was potentially subjected to the Data Breach, as confirmed by Defendants’ business records.

The California Subclass: All residents of California at the time of the Data Breach whose personally identifiable information was potentially subjected to the Data Breach, as confirmed by Defendants’ business records.

5. Excluded from the Settlement Class are the Court, the officers and directors of Defendants, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Breach, and persons who timely and validly request exclusion from the Settlement Class.

6. Also excluded from the Settlement Class are those persons identified in Exhibit A hereto, each of whom submitted a timely and valid request to be excluded from the Settlement Class. Such persons shall not receive the benefits of the Settlement and shall not be bound by this Order and Judgment.

7. For settlement purposes only, with respect to the Settlement Class, the Court confirms that the prerequisites for a class action pursuant to Federal Rule of Civil Procedure 23 have been met, in that: (a) the Settlement Class is so numerous that joinder of all individual Settlement Class members in a single proceeding is impracticable; (b) questions of law and fact common to all Settlement Class Members predominate over any potential individual questions; (c) the claims of the Named Plaintiffs are typical of the claims of the Settlement Class; (d) Named Plaintiffs and proposed Class Counsel will fairly and adequately represent the interests of the

Settlement Class; and (e) a class action is the superior method to fairly and efficiently adjudicate this controversy.

## **II. NOTICE TO THE SETTLEMENT CLASS**

8. The Court finds that Notice has been given to the Settlement Class in the manner directed by the Court in the Preliminary Approval Order. The Court finds that such Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the terms of the Settlement including its Releases, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), and any other applicable law.

## **III. FINAL APPROVAL OF THE SETTLEMENT**

9. The Court finds that the Settlement resulted from arm's-length negotiations between Class Counsel and Defendants.

10. The Court hereby finally approves in all respects the Settlement as fair, reasonable, and adequate, and in the best interest of the Settlement Class.

11. The Court finds that Named Plaintiffs and Class Counsel fairly and adequately represented the interests of Settlement Class Members in connection with the Settlement.

12. The Settling Parties shall consummate the Settlement in accordance with the terms thereof. The Settlement, and each and every term and provision thereof, including its Releases,

shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force and effect of an order of this Court.

#### **IV. DISMISSAL OF CLAIMS AND RELEASE**

13. The Action is hereby dismissed with prejudice as to all Parties including the Settlement Class and without cost to any party, except as otherwise provided herein or in the Settlement.

14. Upon the Effective Date, the Named Plaintiffs, any Settlement Class Member, any person claiming or receiving a benefit under this Settlement, and any and all of their respective present or past heirs, spouses, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons, whether individual, class, direct, representative, legal, equitable or any other type or in any other capacity, other than any such person who is a Settlement Class Member that does timely and properly opt-out from the Settlement, shall be deemed to have, and by operation of this Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims

15. For purposes of this Order and Judgment, “Released Claims” means any and all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, existing or potential, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, liquidated or unliquidated, legal, statutory or equitable, that have been or could have been asserted, or in the future could be asserted, in the

Action or in any court, tribunal or proceeding by or on behalf of the Named Plaintiffs and/or any and all of the members of the Settlement Class by reason of, resulting from, arising out of, relating to, or in connection with, the allegations, facts, events, transactions, acts, occurrences, statements, representations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the alleged claims or events in the Action or the Data Breach against any of the Released Parties whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States. The Released Claims includes an express waiver of California Civil Code Section 1542 as reflected in the Settlement Agreement which has been presented to this Court with both the preliminary and final settlement approval motion filed on behalf of Named Plaintiffs. The Released Claims do not include any claims arising from or relating to any conduct by Defendants after the date the Agreement is executed. The Released Claims shall also not include the right of Named Plaintiffs, any Settlement Class Member or any Released Person to enforce the terms of the Settlement Agreement.

16. Further, except as provided otherwise in this Settlement Agreement, with respect to any and all Released Claims, Named Plaintiffs and Defendants stipulate and agree that upon the Effective Date and with respect to the Released Claims, Named Plaintiffs expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**



Settlement Class Members, including Named Plaintiffs, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Named Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims.

17. Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Named Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in, any claim or action in this or any other forum (other than participation in the settlement as provided herein) in which any of any Released Claim(s) is/are asserted.

**V. ATTORNEYS' FEES, COSTS, AND EXPENSES AND REPRESENTATIVE PLAINTIFFS' SERVICE AWARD**

18. The Court awards attorneys' fees of \$[TBD] and reimbursement of costs and expenses in the amount of \$[TBD], totaling \$TBD, and payment of a service award in the amount of \$2,000.00 to each of Named Plaintiffs. The Court directs the Settlement Administrator to pay such amounts in accordance with the terms of the Settlement. Class Counsel, in their sole discretion to be exercised reasonably, shall allocate and distribute the attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' counsel of record in the Action.

**VI. OTHER PROVISIONS**

19. Without affecting the finality of this Judgment in any way, the Court retains continuing jurisdiction over the Settling Parties and the Settlement Class for the administration, consummation, and enforcement of the terms of the Settlement Agreement.

20. In the event the Effective Date does not occur, this Order and Judgment shall be rendered null and void and shall be vacated and, in such event, as provided in the Settlement, this Order and Judgment and all orders entered in connection herewith shall be vacated and null and void, the Settling Parties shall be restored to their respective positions in the Action, all of the Parties' respective pre-Settlement claims and defenses will be preserved, and the terms and provisions of the Settlement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement shall be treated as vacated, *nunc pro tunc*.

**IT IS SO ORDERED.**

Dated:

By: \_\_\_\_\_  
HON. DAVID C. GODBEY  
UNITED STATES DISTRICT JUDGE