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Clerk of Superior Court
Chatham County
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IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

IN RE FIRST CHATHAM BANK CUSTOMER DATA SECURITY BREACH LITIGATION	Case No.: SPCV25-00142-MI **PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT**

Plaintiffs[1] submit this Motion for Preliminary Approval of Class Action Settlement and Memorandum in support pursuant to O.C.G.A. § 9-11-23. Plaintiffs request the Court preliminarily approve the Settlement, certify the Settlement Class, approve the proposed Notice plan, and schedule a Final Approval Hearing. In support thereof, Plaintiffs submit this Memorandum, the executed Settlement Agreement ("S.A."), and corresponding exhibits, which is attached hereto as ***Exhibit A***, the proposed Preliminary Approval Order jointly agreed to by the parties and submitted herewith as Ex. 4 to the Settlement Agreement, the Joint Declaration of Mary Beth Gibson, Mark S. Reich, Ra O. Amen, and Steven Sukert which is attached hereto as ***Exhibit B*****.** ("Joint Decl.").[2]

I. INTRODUCTION

This case arises from a data incident that the Plaintiffs allege compromised the security of their Private Information. After extensive arms'-length negotiations, the Parties have negotiated a Settlement that provides significant relief for Plaintiffs and the Settlement Class Members they seek to represent. Because the Settlement is fair, reasonable, and adequate, it should be

[1] All capitalized terms not defined herein have the same meaning as those defined in the Settlement Agreement.

[2] Defendant agrees with the relief afforded by this Motion, but for the avoidance of doubt, Defendant does not concede the factual basis for any claim asserted in the Complaint and denies liability. The language in this Motion, including the description of proceedings, as well as legal and factual arguments, is Plaintiffs', and Defendant may disagree with certain of those characterizations and descriptions.

preliminarily approved by the Court, and notice should be provided to Settlement Class Members.

II. CASE SUMMARY

A. The Data Incident[3]

Defendant First Chatham Bank is a community bank offering business and personal banking services across the greater Savannah area. In the ordinary course of receiving banking services from Defendant, Plaintiffs and Class Members were required to and did provide Defendant with sensitive, personal, and private information such as names, addresses, dates of birth, driver's license numbers or other issued identification numbers, Social Security numbers, financial account numbers, and payment card information.

Plaintiffs allege that on or around September 25, 2024, an unauthorized actor accessed First Chatham Bank's IT network and obtained unauthorized access to confidential files containing clients' Private Information. Plaintiffs allege that the Data Incident resulted in access to, and compromise of Private Information of 17,561 individuals.

B. Procedural Posture

After the Data Incident was announced, four separate class action complaints were filed: *Ricky Robertson, individually and on behalf of all others similarly situated v. First Chatham Bank*, Case No. SPCV25-00142-MI—the first case concerning the Data Incident (the "*Robertson* Action"); *Lucas Orr, individually and on behalf of all others similarly situated v. First Chatham Bank*, Case No. SPCV25-00204-MI (the "*Orr* Action"); *Michael Blankski, individually and on behalf of all others similarly situated v. First Chatham Bank*, Case No. SPCV25-00234-MI (the "*Blanski* Action"); and *Lisa Fort, individually and on behalf of all others similarly situated v. First*

[3] The facts in this section are those set forth in the Consolidated Class Action Complaint. Defendant makes no admission as to the facts alleged in the Complaint, and Defendant reserves its right to challenge the alleged facts should the Court deny this Motion, in whole or in part.

Chatham Bank, Case No. SPCV25-00295-CO. Joint Decl. ¶ 6. The cases were consolidated on March 28, 2025, in the Superior Court of the State of Georgia, Chatham County. *Id.* ¶ 7. On May 22, 2025, Plaintiffs filed their Consolidated Class Action Complaint ("Complaint"). *Id.* Thereafter, the parties engaged in several extensive discussions regarding the potential merits of the claims asserted in the Complaint and the Parties' interest in exploring an early resolution. *Id.* ¶¶ 10-11. Plaintiffs propounded informal discovery requests on Defendant which Defendant responded to by providing information related to, the nature and cause of the Data Incident, the number and geographic location of victims impacted, the specific type of information breached and remedial measures implemented by Defendant. *Id.* The Parties entered a stipulation extending the time for Defendant to respond to the Complaint from July 7, 2025, to September 5, 2025, and entered a second stipulation extending the deadline to October 6, 2025 to allow Parties to continue negotiations. *Id.* ¶ 11. The Parties reached an agreement in principle on October 1, 2025. *Id.*

C. Negotiations and Settlement

The settlement is the result of back-and-forth, often adversarial arm's-length negotiations and bargaining. *Id.* ¶ 9. The Parties exchanged written informal discovery, including, but not limited to, information about the allegations in the Complaint, the class size, the types of data impacted in the Data Incident, certain remedial measures implemented by Defendant following the Data Incident, and information supporting Plaintiff's damages allegations. *Id*. ¶ 10. Through the informal discovery process, Plaintiffs and Settlement Class Counsel were able to properly evaluate damages on a class-wide basis. *Id*.

Following months of further arm's-length negotiations regarding the finer points of the settlement, the Settlement Agreement and its exhibits were finalized and signed on December 10, 2025. *Id.* ¶ 11; *see generally* Ex. A. Plaintiffs and Class Counsel strongly believe that this

Settlement is fair, reasonable, and adequate, and represents an excellent result for the Settlement Class. Joint Decl. ¶ 13. Plaintiffs now bring this Motion to request that the Court grant preliminary approval and order that notice of the Settlement be sent to the Settlement Class.

III. SUMMARY OF SETTLEMENT TERMS

A. Class Definition

The Settlement Class is defined as: "all living individuals residing in the United States who were sent a notice by Defendant that their Private Information was impacted in the Data Incident." S.A. ¶ 59. Excluded from the Settlement Class are (a) Defendant, any entity in which Defendant has a controlling interest, and Defendant's senior executive management, successors, subsidiaries, and assigns; (b) governmental entities; and (c) the Judge assigned to the Action, that Judge's immediate family, and Court staff. *Id.*

B. Settlement Class Member Benefits

The Settlement creates numerous benefits for the Settlement Class, consisting of approximately 17,561 individuals. These benefits are designed to address the repercussions to consumers following a data incident of the type that occurred here.

Defendant will fund a non-reversionary common fund of $475,000.00 for the benefit of the Settlement Class Members (the "Settlement Fund"). S.A. ¶ 62. The Settlement Fund shall be used to pay all Settlement Administration Costs, any Court-awarded attorneys' fees, costs, and Service Awards, and all Settlement Class Member Benefits. *Id.* ¶ 66.

Settlement Class Members may claim the *pro rata* Cash Payment in an estimated amount of $100.00. *Id.* ¶ 71. Settlement Class Cash Payments will be subject to a *pro rata* increase in the event the amount of Valid Claims is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount

of the Cash Payments will be reduced *pro rata* accordingly. Any *pro rata* increases or decreases to Cash Payments will be on an equal percentage basis. *Id.* ¶ 72.

C. Releases

The release in this case is tailored to the claims that have been pled or could have been pled in this case. Joint Decl. ¶ 19. If a Settlement Class Member does not submit a Valid Claim or opt-out of the Settlement, the Settlement Class Member will release claims against Defendant related to the Data Incident. *Id.* ¶ 20; S.A. ¶ 105.

D. The Notice and Claims Process

1. Notice

The cost of notice shall be paid for out of the Settlement Fund. S.A. ¶ 66. The Parties agreed to use Simpluris, Inc. ("Settlement Administrator") as the Claims and Settlement Administrator. Joint Decl. ¶ 21; S.A. ¶ 75.

Subject to approval of the Court, within 5 days following entry of the Preliminary Approval Order, Defendant will provide to the Claims Administrator a class list that includes the Settlement Class Members' full names, and postal addresses. S.A. ¶¶ 26, 78. Within 20 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence notice via direct mail to the postal addresses used by Defendant for providing initial notice of the Data Incident to the Settlement Class Members. Joint Decl. ¶ 22; S.A. ¶¶ 42, 79. The Postcard Notice is clear and concise and provides information about the Settlement as well as the sources Settlement Class Members can go to for additional information. Joint Decl. ¶ 23; *see also* S.A., Ex. 1.

In addition to the individual direct notice provided, the Claims Administrator will establish and maintain a dedicated settlement website that will be updated throughout the claims period with the forms of Postcard Notice, Long Form Notice, and Claim Form approved by the

Court, as well as the Settlement Agreement. Joint Decl. ¶ 24; S.A. ¶ 77. The Long Form Notice, available at the Settlement Website, explains the terms of the Settlement Agreement, provides contact information for Proposed Class Counsel, and explains Settlement Class Cash Payments, opt-out and objection procedures. Joint Decl. ¶ 25; S.A. ¶ 82. The Claims Administrator will also establish and maintain a toll-free help line to provide Settlement Class Members with additional information about the settlement. Joint Decl. ¶ 26; S.A. ¶ 77.

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. Joint Decl. ¶ 27. Class members will be able to submit claim forms until the Claim Form Deadline, which will be 15 days before the scheduled Final Approval Hearing. *Id.* ¶ 28. The Claim Form, attached to the Settlement Agreement at Exhibit 3, is written in plain language to facilitate Settlement Class Members' ease in completing it. *Id.* ¶ 29; *see also* S.A., Ex. 3.

3. Requests for Exclusion and Objections

Settlement Class Members will have until 15 days before the scheduled Final Approval Hearing to opt-out or object to the Settlement. Joint Decl. ¶ 30. Similar to the timing of the claims process, the timing with regard to objections and exclusions is structured to give Settlement Class Members sufficient time to review the Settlement documents—including Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards. *Id.* ¶¶ 31, 36; *see also* Proposed Preliminary Approval Order at S.A., Ex. 4.

Any individual wishing to opt out of the Settlement Class shall individually sign and timely submit a written notice of such intent to the designated Post Office box established by the Claim

Administrator. The written notice must clearly manifest the individual's intent to be excluded from the Settlement Class. Joint Decl. ¶ 32; S.A. ¶ 82. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Valid Claim. Joint Decl. ¶ 33; S.A. ¶ 82.

Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (iii) the number of times the objector has objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case; (iv) 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 and/or Application for Attorneys' Fees, Costs, and Service Awards; (v) the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years; (vi) the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing; (vii) a list of all persons who will be called to testify at the Final Approval Hearing in support of

the objection (if any); (viii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (ix) the objector's signature (an attorney's signature is not sufficient). Joint Decl. ¶¶ 34-35; S.A. ¶¶ 83-84.

E. Service Awards, Fees, and Costs

The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses or service awards to Representative Plaintiffs during settlement negotiations. Joint Decl. ¶ 37. Class Counsel will submit a separate motion seeking attorneys' fees, costs, and Plaintiffs' Service Awards. *Id.* ¶ 40.

Pursuant to the Settlement Agreement and as part of the Motion for Final Approval, Class Counsel shall apply to the Court for a reasonable service award for each of the Class Representatives in the amount of $2,000. Joint Decl. ¶ 38; S.A. ¶ 101. The Service Award is meant to compensate Plaintiffs for their efforts on behalf of the Settlement Class, including assisting in the investigation of the case, reviewing the pleadings, remaining available for consultation throughout the settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement. Joint Decl. ¶ 61. As part of the Motion for Final Approval, Class Counsel shall apply to the Court for an award of attorneys' fees of up to 35% of the Settlement Fund, plus reimbursement of reasonable costs. Joint Decl. ¶ 39; S.A. ¶ 102.

IV. LEGAL AUTHORITY

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

Since its enactment, Georgia courts have read the statute to track Federal Rule 23. In 2003,

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

"The approval of a class action settlement is a two-step process. First, the Court must conduct a preliminary review to determine whether the proposed class settlement "is within the range of possible approval." *Fresco v. Auto Data Direct, Inc.*, 2007 WL 2330895, at *4 (S.D. Fla. May 11, 2007) (internal citations omitted); *see also See* MAN. FOR COMPLEX LITIG. § 30.41 (Third ed. 1995). This first step involves both preliminary certification of the class and an initial assessment of the proposed settlement. *Id*. It is only after a court has preliminarily approved a settlement, and notice has been provided to the Class, that the Court makes a final determination of the fairness, adequacy, and reasonableness of a Settlement.

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

V. ARGUMENT

A. Certification of the Settlement Class Is Warranted.

Prior to granting preliminary approval of a proposed settlement, the Court should first determine that the proposed Settlement Class is appropriate for certification. *See* MAN. FOR

COMPLEX LITIG., § 21.632 (4th ed. 2013); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Class certification is proper if the proposed class, proposed class representative, and proposed class counsel satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of O.C.G.A. § 9-11-23. Additionally, where (as in this case), certification is sought under O.C.G.A § 9-11-23(b)(3), Plaintiffs must demonstrate that common questions of law or fact predominate over individual issues and that a class action is superior to other methods of adjudicating the claim. O.C.G.A § 9-11-23(b)(3); *Amchem Prods. Inc.*, 521 U.S. at 615-16.

"A class may be certified 'solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue."' *Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 WL 10167232, at *1 (S.D. Fla. Oct. 7, 2013) (quoting *Lipuma v. Am. Express Co*., 406 F. Supp. 2d 1298, 1314 (S.D. Fla. 2005)). Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court's evaluation is somewhat different from that in a case that has not yet settled. *Amchem Prods., Inc.*, 521 U.S. at 620. In some ways, the court's review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id; see also Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 557 (N.D. Ga. July 20, 2007). Other certification issues, however, such as "those designed to protect absentees by blocking unwarranted or overbroad class definitions," require heightened scrutiny and an active role as a guardian of the interests of the absent class members. *Amchem Prods., Inc*, 521 U.S. at 620. "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems…for the

proposal is that there be no trial." *Id*. Even under the heightened scrutiny required, this case meets all the requirements set forth in O.G.C.A. § 9-11-23, and for the reasons set forth below, certification is appropriate.

Class actions are regularly certified for settlement. In fact, similar data incident cases have been certified—on a *national* basis—including the record-breaking settlement in *In re Equifax. See In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT (N.D. Ga. July 25, 2019); *see, also, e.g.*, *In re Target*, 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig*., 851 F. Supp. 2d 1040 (S.D. Tex. 2012). This case should be similarly certified.

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

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

Numerosity requires the members of the class to be so numerous that separate joinder of all members is impracticable. O.C.G.A. § 9-11-23(a)(1). To demonstrate numerosity, "plaintiffs need not prove that joinder is impossible; rather, Plaintiffs need only show that it would be extremely difficult or inconvenient to join all members of the class." *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 557 (N.D. Ga. July 20, 2007) (quoting *Anderson v. Garner*, 22 F. Supp. 2d 1379, 1384 (N.D. Ga. 1997)). Here, the Parties have identified approximately 17,561 individuals in the proposed settlement class. Joinder of so many parties would certainly be impracticable. Thus, the numerosity requirement is easily satisfied.

b. Questions of law and fact common to the class

The second prerequisite to certification is that there exist questions of law or fact common to the class. O.C.G.A. § 9-11-23(a)(2). To demonstrate commonality, Plaintiffs must demonstrate class members have suffered the same injury such that their claims can be productively litigated

at once. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *11 (N.D. Ga. Mar. 17, 2020) (citing *Sellers v. Rushmore Loan Mgmt. Servs., LLC,* 949 F.3d 1031, 1039 (11th Cir. 2019)). Courts have previously addressed this requirement in the context of data breach class actions and found it readily satisfied. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 220 WL 256132 *11, *citing In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding that multiple common issues center on the defendant's conduct, satisfying the commonality requirement); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 308 (N.D. Cal. Aug. 15, 2018) (noting that the data breach complaint contains a common contention capable of class-wide resolution—one type of injury claimed to have been inflicted by one actor in violation of one legal norm).

Here, the commonality requirement is readily satisfied, as Plaintiffs and Settlement Class Members all have common questions of law and fact that arise out of the same event—the Data Incident. Specifically, Plaintiffs have alleged that the following questions of law and fact are common to the class:

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

Similar to other data breach cases, these common issues all center on Defendant's conduct, or other facts and law applicable to all class members, thus satisfying the commonality requirement. *See, e.g.*, *In re Countrywide Fin. Corp. Cust. Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) ("All class members had their private information stored in Countrywide's databases at the time of the data breach"); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) ("Answering the factual and legal questions about Heartland's conduct will assist in reaching class-wide resolution.").

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

The next prerequisite to certification, typicality, measures whether the claim or defense of the representative party is typical of the claim or defense of each member of the class. O.C.G.A. § 9-11-23(a)(3). "[T]ypicality measures whether a sufficient nexus exists between the claims of the named representative and those of the class at large." *Hines v. Widnall,* 334 F.3d 1253, 1256 (11th Cir. 2003) (internal quotation omitted). Like the commonality requirement, typicality does not require that all putative class members share identical claims; factual differences amongst the claims will not necessarily defeat certification. *Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004). The named representatives need only share the same "essential characteristics" of the larger class. *Id.* The typicality requirement is regularly met in data breach class action settlements. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *12.

Here, the typicality requirement is satisfied for the same reasons that Plaintiffs' claims meet the commonality requirement. Specifically, Plaintiffs' claims are typical of those of the other Settlement Class Members because they arise from the same Data Incident. They are also based on the same legal theory, i.e., that Defendant had a legal duty to protect Plaintiffs' and Settlement

Class Members' PII. Because there is a "strong similarity of legal theories" between Plaintiffs' claims and the claims of the Settlement Class Members, the typicality requirement is satisfied.

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

O.C.G.A. § 9-11-23(a)(4) requires that Plaintiffs—the representative parties—will fairly and adequately protect the interests of the class. This requirement involves a two-part test that asks:

1. whether plaintiffs have interests antagonistic to the interests of the other class members; and
2. whether the proposed class's counsel has the necessary qualifications and experience to lead the litigation.

In re Tri-State Crematory Litig., 215 F.R.D. 660, 690-91 (N.D. Ga. Mar. 17, 2013).

As for the first prong, there is nothing to suggest that this requirement has not been satisfied in this case. Plaintiffs are members of the Settlement Class and do not possess any interests antagonistic to the Settlement Class. They provided their PII to Defendant and allege that their PII was compromised as a result of the Data Incident, as the PII of the Settlement Class was also allegedly compromised. Indeed, Plaintiffs' claims coincide identically with the claims of the Settlement Class, and Plaintiffs and the Settlement Class desire the same outcome of this litigation. Plaintiffs have vigorously prosecuted these cases for the benefit of all Settlement Class Members. Plaintiffs have participated in the litigation, reviewed pleadings, and participated in the factual investigation of the case.

The second prong is also met. Proposed class counsel has extensive experience in class actions generally, and in Data Incident cases in particular. Joint Decl. ¶¶ 42-54, Ex. 1. Because Plaintiffs and their counsel possess substantial experience and track records in similar litigation

and have vigorously prosecuted the case at hand to get the best result for Plaintiffs and Class Members, the adequacy requirement is satisfied.

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

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

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

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

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

that duty. The many common questions of fact and law that arise from Defendant's conduct predominate over any individualized issues.

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

b. Class treatment is superior to individual litigation.

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

Here, resolving numerous claims in a single action is far superior to individual lawsuits because it promotes consistency and adjudicatory efficiency. Indeed, absent class treatment in the instant case, each Settlement Class Member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. Moreover, there is no indication that Settlement Class Members have an interest in

individual litigation or an incentive to pursue their claims individually, given the amount of damages likely to be recovered, relative to the resources required to prosecute such an action. *See Dickens v. GC Servs. Ltd. P'ship*, 706 F. App'x 529, 538 (11th Cir. 2017) (describing "the ways in which the high likelihood of a low per-class-member recovery militates in favor of class adjudication").

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

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

B. Plaintiffs' Counsel should be appointed Settlement Class Counsel.

As discussed above, in Counsel's Joint Declaration and as fully explained in Counsel's motion for appointment of class counsel, which this Court granted previously, the proposed Settlement Class Counsel have extensive experience prosecuting similar class actions and other complex litigation. Joint Decl. ¶¶ 42-54, Ex. 1. Further, proposed Settlement Class Counsel have diligently investigated and prosecuted the claims in this matter, have dedicated substantial resources to the investigation and litigation of those claims, and have successfully negotiated the Settlement of this matter to the benefit of Plaintiffs and the Settlement Class. *See generally*, Joint

Decl. Accordingly, the Court should appoint MaryBeth V. Gibson of Gibson Consumer Law Group, LLC, Mark S. Reich of Levi & Korsinsky, LLP, Ra O. Amen of Mason LLP, and Steven Sukert of Kopelowitz Ostrow P.A., as Settlement Class Counsel.

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

After determining that certification of the Settlement Class is appropriate, the court must determine whether the Settlement Agreement itself is worthy of preliminary approval and of providing notice to the Settlement Class. Some courts in the Eleventh Circuit find preliminary approval appropriate "where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlements falls within the range of reason." *In re Checking Account Overdraft Litigation*, 275 F.R.D. 653, 661 (S.D. Fla. 2011) (internal quotations omitted). Other courts take a preliminary look at the factors considered fully at the second—or final approval—stage, known as the *Bennet* factors. The *Bennet* factors include:

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

Columbus Drywall & Insulation, Inc. v. Masco Corp., 258 F.R.D. 545, 557 (N.D. Ga. July 20, 2007), quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir 1984). In either case, courts consider the relevant factors "informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Bennett*, 737 F.2d at 986; *see also Meyer v. Citizens & S. Bank*, 677 F. Supp. 1196, 1200 (M.D. Ga. 1988). The proposed Settlement warrants preliminary approval under each approach.

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

Here, the Settlement is the result of intensive, arm's-length negotiations, including the exchange of discovery and several conferrals, involving experienced attorneys who are familiar with class action litigation and with the legal and factual issues in these cases. Joint Decl. ¶¶ 9-13, 42-54, 67-68. Moreover, as discussed at greater length below, the Settlement provides real value to valid claimants who have been harmed, where continued litigation would provide significant risks.

2. The *Bennett* factors support preliminary approval.

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

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

Settlement Class Members who submit valid claims are eligible to receive a pro rata cash payment. Joint Decl. ¶¶ 14-18. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are, as with all cases in litigation, uncertain.

While Plaintiffs strongly believe in the merits of their case, they also understand that Defendant will assert a number of potentially case-dispositive defenses. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one can face hurdles at the pleadings stage. *See Hammond v. The Bank of N.Y. Mellon Corp*., 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 5

stage). Should this litigation continue, class certification is another hurdle that introduces additional complexities, including the potential for denial of certification. *See, e.g.*, *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig*., 293 F.R.D. 21 (D. Me. 2013).

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

b. The settlement is within the range of possible recoveries and is fair, adequate, and reasonable.

The second and third *Bennett* factors are often considered together. *See Burrows v. Purchasing Power, LLC*, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013). In evaluating the range of possible recoveries and the fairness, reasonableness, and adequacy of the settlement, "[t]he Court's role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but to evaluate the proposed settlement in its totality." *Lipuma v. Am. Express Co.,* 406 F. Supp. at 1323. Here, Settlement Class Members can submit a claim to receive a *pro rata* cash payment, which will be paid out of the Settlement Fund. Importantly, Settlement Class Members will receive these benefits immediately, as opposed to waiting years to receive any recovery obtained through a trial and protracted appeals. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. at 559 (court found settlement fair, reasonable, and adequate, and preliminary approval warranted where there was an immediate and substantial benefit to the class). Accordingly, this settlement is eminently reasonable, especially considering that it avoids the potential contingencies of continued litigation.

c. Continued litigation would be lengthy and expensive.

Data breach litigation is difficult and complex, and while the rapid evolution of case law is trending favorably for consumers, its outcome is less than certain. Early settlement has allowed costs to stay modest; protracted litigation would only serve to increase costs and have a potentially negative effect on class recovery, which is itself far from certain. Continued litigation would also increase the burden on the court, without any guaranteed benefit to Plaintiffs or Settlement Class Members. "Complex litigation . . . 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'" *Woodward v. NOR–AM Chem. Co.,* No. Civ-94-0870, 1996 WL 1063670 *21 (S.D. Ala. May 23, 1996), quoting *In re U.S. Oil & Gas Litig.,* 967 F.2d 489, 493 (11th Cir. 1992)). Where a settlement, like here, "will alleviate the need for judicial exploration of . . . complex subjects [and] reduce litigation costs" this factor weighs in favor of approval. *See Lipuma v. American Express Co.,* 406 F. Supp. 2d at 1324.

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

Plaintiffs have no reason to believe there will be opposition to the settlement. This factor, however, is better considered after notice has been provided to Settlement Class Members and they are given the opportunity to object. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. at 561. Thus, at this point, this factor is neutral in the analysis.

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

The final *Bennett* factor allows a Court to consider whether "plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation." *Lipuma v. Am. Express Co.,* 406 F. Supp. 2d at 1324.

Comprehensive formal discovery is not a requirement. *Id.* (quoting *Cotton v. Hinton,* 559 F.2d 1326, 1332 (5th Cir. 1977)).

This case, though at an early stage when settled, has been thoroughly investigated by counsel experienced in data breach litigation. Joint Decl. ¶ 9-13. Counsel's experience and investigation, combined with the informal exchange of information, put Plaintiffs in a position to proficiently evaluate the case and negotiate a settlement they view as fair, reasonable, and adequate, and worthy of preliminary approval. *Id*.

D. The Proposed Notice Plan Should be Approved.

O.C.G.A. § 9-11-23(e) provides "notice of the proposed . . . compromise shall be given to all members of the class in such a manner as the court directs." Due process requires the provision of the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. *See* Fed. R. Civ. P. 23(c)(2)B). The best practicable notice is that which "is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950).

The Notice provided for by the Settlement Agreement is designed to be the best practicable and to meet all the criteria set forth in the MANUAL FOR COMPLEX LITIGATION. Joint Decl. ¶¶ 58-59, Ex. 2. Here, Notice shall be provided to Settlement Class Members via direct mail to the postal address provided by Defendant. *Id.* ¶¶ 22-27. In addition to this individualized and direct mailing, the Settlement Administrator establish and maintain a settlement website and toll-free helpline through which Settlement Class Members can receive additional information about the Settlement. *Id.* ¶¶ 24, 26.

The notices are clear and straightforward. They define the Settlement Class; clearly describe the options available to Settlement 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 informs Settlement Class Members that Settlement Class Counsel intends to seek 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 contact information for Class Counsel. Joint Decl. ¶¶ 22-26; S.A., Ex. 1-3.

The Notice here 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. *See Agnone v. Camden Cnty.,* Georgia, 2019 WL 1368634, *9 (S.D. Ga. Mar. 26, 2019) (finding class notice mailed directly to settlement class members was the best practicable and satisfied concerns of due process); *Barkwell v. Sprint Communications Company L.P.*, 2014 WL 12704984, *6 (M.D. Ga. Apr. 18, 2014) (finding a notice program that involved direct mail notice to satisfy due process). Accordingly, the Notice process should be approved by this Court.

VI. CONCLUSION

Plaintiffs have negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members significant relief. For these and the above reasons, Plaintiffs respectfully request the Court grant their Motion for Preliminary Approval of Class Action Settlement.

Respectfully submitted 16th day of December, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT was electronically filed with the Clerk of Court using the Court's CM/ECF system which automatically issues Notice of Electronic Filing to all counsel of record.

Dated: December 16, 2025

/s/ MaryBeth V. Gibson
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