UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DARIN JOHNSON On behalf of themselves and all others similarly situated, ROBERT WILLEY On behalf of themselves and all others similarly situated, Plaintiffs, v. NICE PAK PRODUCTS, INC., PROFESSIONAL DISPOSABLES INTERNATIONAL, INC., Defendants.	)	No. 1:23-cv-01734-JPH-CSW

ORDER GRANTING MOTION FOR PRELIMINARY CLASS APPROVAL

Plaintiffs Darin Johnson and Robert Willey brought this suit on behalf of themselves and those similarly situated, alleging that Defendants Nice-Pak Products, Inc. and Professional Disposables International, Inc., experienced a data breach which may have compromised private and protected information of Defendants' current and former employees. Plaintiffs filed an unopposed motion seeking preliminary approval of a class action settlement and a final approval hearing. Dkt. [71]. Plaintiffs seek preliminary approval of a Revised Settlement Agreement and Release (the "Revised Agreement") with Defendants, certification of the Settlement Class for settlement purposes, preliminary designation of Plaintiffs as Class Representatives, preliminary appointment of Class Counsel, and notice directed to all Class Members who would be bound

by the Revised Agreement and Release. Dkt. 71-2. For the reasons stated below, Plaintiffs' motion for preliminary approval, dkt. [71], is **GRANTED**.

I.
Facts and Background

On November 30, 2023, Plaintiffs filed their amended class action complaint. Dkt. 20. Plaintiffs allege that Nice-Pak and Professional Disposables suffered a data breach between May 28 and June 15, 2023, that affected approximately 8,500 current and former employees (the "Data Breach"). *Id.* at 8–9 ¶ 37, 11 ¶ 54; dkt. 76 at 2. Plaintiffs further allege that the Data Breach compromised Plaintiffs' personal identifiable information ("PII") and personal health information ("PHI," or collectively, "Private Information"), including "Class Members' full names, addresses, Social Security numbers, . . . and medical and health insurance information." Dkt. 20 at ¶ 6.

Plaintiffs allege that "Defendants had a duty to adopt reasonable measures to protect Plaintiffs' and Class Members' Private Information from involuntary disclosure to third parties." *Id.* at 8 ¶ 36. Plaintiffs further allege that Defendants did not detect the breach until two weeks after it occurred, *id.* at 11 ¶¶ 53–54, and thereafter did not notify employees until two months later. *Id.* at 12–13 ¶ 56. For relief, Plaintiffs demand that "Nice Pak compensate the class for their losses, protect their data and identities from fraud, and pay the costs required to deliver that relief." Dkt. 71-2 at 2.

Plaintiffs asserted claims of negligence, negligence per se in violation of the Federal Trade Commission Act, breach of implied contract, unjust

enrichment, bailment, and violation of the New York Deceptive Trade Practices Act. Dkt. 20 at 27–39. Defendants then moved to dismiss Plaintiffs' claims. Dkt. 26. The Court granted that motion in part but allowed Plaintiffs' claims for negligence, negligence per se, and breach of implied contract to proceed. Dkt. 45 at 20.

On August 11, 2025, Plaintiffs filed an unopposed motion for preliminary approval of class action settlement. Dkt. 71. The Court then ordered the parties to submit a supplemental memorandum to provide the Court with sufficient information to address the fairness and adequacy of the settlement to the Class Members who would be bound by it. *See* dkt. 72 at 4. Specifically, the parties were to address: (i) the total potential value for the class, (ii) whether the parties entered a "clear sailing agreement," and (3) the burden of requiring Class Members to submit additional documentation to receive compensation for Lost Time and Ordinary Expenses caused by the data breach. *Id.* at 2–4.

In response, the parties' submitted a supplemental brief and attached revised versions of the Agreement,[1] Class Action and Collective Action Notice of Settlement, and Claim Form. *See* dkts. 76; 76-1.

The Revised Agreement designates Darin Johnson and Robert Willey as the Class Representatives. Dkt. 76-1 at 6 (Revised Agreement ¶ 35).

The proposed Settlement Class includes:

[1] The Order incorporates the defined terms set forth in the Settlement Agreement, dkt. 76-1.

> All individuals in the United States who were sent a notice by Defendants informing them that their Personal Information was accessed without authorization in the Data Breach. Excluded from the Settlement Class are: (1) the judges presiding over this Litigation, and members of their direct families; (2) the Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or Defendants' parents have a controlling interest, and Defendants' current or former officers and directors; and (3) Settlement Class Members who submit a valid request for exclusion prior to the Opt-Out Deadline.

Id. at 7 (Revised Agreement ¶ 43).

The Revised Agreement and Release would resolve the claims against Defendants and provide relief for Class Members on a claims-made basis. *See* Dkt. 76-1. Some of the critical provisions are:

- Within 7 days of this Order, Defendants will provide to the Administrator the Settlement Class List. *Id.* at 12 (Revised Agreement ¶ 58).

- Within 30 days of this Order, the Administrator will send Notice to Class Members. *Id.* at 5 (Revised Agreement ¶¶ 27–28).

- Class Members may claim compensation for up to four hours of Lost Time at a rate of $22.50 per hour ($90.00 total) for time spent mitigating the potential effects of the Data Breach. The claim must include a written description of activities performed and an attestation that the activities were reasonably related to responding to the Data Breach. *Id.* at 8 (Revised Agreement ¶ 49(i)).

- Class Members may claim recovery of Ordinary Expenses up to $450.00 that were incurred because of the Data Breach. Ordinary Expenses include, but are not limited to, "professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit . . . credit monitoring costs . . . and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges." *Id.* (Revised Agreement ¶ 49(ii)).

- All Class Members may claim up to $50 in Ordinary Expenses without supporting documentation. To receive more than $50, Class Members must submit a valid Claim Form (either in paper form or on the Settlement Website) that includes third-party documentation of out-of-

pocket losses. Third-party documentation may include receipts or other documentation not "self-prepared" by the Class Member that documents the costs incurred. *Id.* (Revised Agreement ¶ 49(ii)).

- Using the same Claim Form and with third-party documentation, Class Members may also claim reimbursement of Extraordinary Expenses of up to $4,500 for proven monetary losses resulting from the Data Breach.

  To qualify for reimbursement, the loss must meet the following conditions:

  (i) the loss is an actual, documented and unreimbursed monetary loss caused by (A) misuse of the class member's personal information or (B) fraud or identity theft associated with the settlement class member's personal information; (ii) the loss was more likely than not caused by the Data Breach; (iii) the loss occurred between the date of the Data Breach and seven (7) days after Notice is sent to the Settlement Class; and (vi) the loss is not already covered by the Lost Time (§ 49(i)) and Ordinary Expenses (§ 49(ii)) categories and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all of the Settlement Class Member's credit monitoring insurance and identity theft insurance.

  Id. at 9 (Revised Agreement ¶49(iii)).

- Class Members will automatically receive the ability to enroll in three years of CyEx Privacy Shield Pro, an identity theft prevention program. Instructions for enrollment will be sent within thirty days of the Settlement's Effective date. *Id.* (Revised Agreement ¶ 49(iv)).

- Defendants also made business practice changes to adequately secure its systems. Defendants have: "(1) engaged SecureWorks to provide various data security systems; (2) deployed Microsoft Defender EDR; (3) engaged third-party penetration testing; (4) continued to rollout of Microsoft Intune; and (5) provided additional workforce training on information and data security topics." *Id.* (Revised Agreement ¶ 49(v)).

- The total maximum value for the Class Members is approximately $42,915,000. This amount includes: (1) over $7.5 million in value for CyEx Privacy Shield Pro (retail value of $24.99 per month x 36 months x 8,500 Class Members); (2) $765,000 for Lost Time ($90 x 8,500 Class Members); $3,825,000 in Ordinary Expenses ($450 x 8,500 Class Members); and $30,825,000 for Extraordinary Expenses ($4,500 x 8,500 Class Members). Dkt. 76 at 2.

- All claims for Lost Time, Ordinary Expenses, and Extraordinary Expenses must submitted by the Claims Deadline, which is 60 days after the Notice Deadline. Dkt. 76-1 at 3 (Revised Agreement ¶ 11).

- Defendants shall pay the costs sufficient to fund the settlement within 21 days of entry of the Preliminary Approval Order and recipient of payment instructions, including the name and address of payee, a form W-9 for payee and amount to be paid. The Defendants shall pay all costs in an amount estimated by the Settlement Administrator associated with notifying Class Members. *Id.* at 11 (Revised Agreement ¶ 57(i)).

- Within 21 days of the Effective Date and provision for amount of payment, Defendants shall provide the Settlement Administrator approved attorneys' fees, costs, expenses, and Service awards to be dispersed. *Id.* (Revised Agreement ¶ 57(ii)).

- Within 21 days of the Effective Date and provision for amount of payment, the Defendants shall pay the Settlement Administrator all costs to satisfy the full amount of Approved Claims. For claims finally approved after the deadline for initial payment, the Settlement Administrator shall send monthly statements to counsel of Defendants with additional amounts due to pay, and Defendants shall pay those within thirty days of receiving each monthly statement. *Id.* (Revised Agreement ¶ 57(iii)).

- Class Members may opt-out of the Class by submitting a written opt-out statement via United States Postal Service or digitally through the settlement website by the Opt-Out Deadline, which is 60 days after this Order. *Id.* at 6, 12 (Revised Agreement ¶¶ 31, 60).

- If more than 50 Class Members opt out of the settlement, Defendants have the sole right to terminate the Revised Settlement Agreement. If Defendants choose to terminate the Settlement, they must provide notice to Class Counsel no later than 10 days after the Opt-Out Deadline. *Id.* at 14 (Revised Agreement ¶ 68).

- Class Members may object to the Revised Agreement by submitting written objections to the Court no later than the Objection Deadline, which is 60 days after this Order. *Id.* at 6, 12 (Revised Agreement ¶¶ 30, 61).

- The Revised Agreement shall be considered null and void if termination occurs for any of the following reasons: the Settlement is not approved, the Effective Date does not occur, the Final Approval Order is modified or reversed in any material aspect by an Appellate Court, or if more than

fifty people of the total Settlement Class exclude themselves and Defendants elect to terminate the Settlement. The Parties' obligations under the Revised Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into this Revised Agreement, and the balance of any funds paid to fund the settlement shall be returned to Defendants within 30 days. *Id.* at 13–14 (Revised Agreement ¶¶ 67–69).

- Upon entry of the Final Approved Order, Class Members will release all known and unknown claims relating to the Data Breach. *Id.* at 14–15 (Revised Agreement ¶¶ 70–72).

- At least fourteen days before the Opt-Out and Objection Deadlines, Class Counsel will apply to the Court for an award of attorneys' fees and litigation expenses not to exceed $200,000. *Id.* at 16 (Revised Agreement ¶ 78).

- At least fourteen days before the Opt-Out and Objection Deadlines, Class Counsel will move for Class Representative Service Awards of $5,000 for each Plaintiff, totaling $10,000. *Id.* at 15–16 (Revised Agreement ¶ 76).

- The Revised Agreement and Release is not contingent on the Court's approval of the Service Award Payments. *Id.* at 16 (Revised Agreement ¶ 77).

II.
Applicable Law

Class actions were designed as "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 155 (1982). "Federal Rule of Civil Procedure 23 governs class actions." *Santiago v. City of Chicago*, 19 F.4th 1010, 1016 (7th Cir. 2021). "Rule 23 gives the district courts broad discretion to determine whether certification of a class-action lawsuit is appropriate," *Arreola v. Godinez*, 546 F.3d 788, 794 (7th Cir. 2008), and "provides a one-size-fits-all formula for deciding the class-action question." *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 399 (2010).

A court's approval is required when "a class [is] proposed to be certified for the purposes of settlement." Fed. R. Civ. P. 23(e). Also, courts must direct notice of a settlement class "in a reasonable manner to all class members who would be bound by the proposal." *Id.* A court is authorized to direct notice only if the court "will likely be able to (i) approve the proposal under 23(e)(2); and (ii) certify the class for purposes of the judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(e)(2) requires that a Court determine the settlement is "fair, reasonable, and adequate" before approving a binding class settlement. *See also Wong v. Accretive Health, Inc.*, 773 F.3d 859, 862 (7th Cir. 2014). The Court's notice must meet the requirements of Rule 23(c)(2)(B), which requires the Court to direct "the best notice that is practicable under the circumstances including individual notice to all members who can be identified through reasonable effort."

"Rule 23(a) enumerates four—and only four—requirements for class certification: numerosity, commonality, typicality, and adequacy of representation." *Simpson v. Dart*, 23 F.4th 706, 711 (7th Cir. 2022). In addition to those "prerequisites," the class must fit one of Rule 23(b)'s "particular types of classes, which have different criteria." *Santiago*, 19 F.4th at 1016. Here, the parties seek class certification under Rule 23(b)(3), dkt. 71-2 at 8, so "common questions of law or fact must predominate over individual inquiries, and class treatment must be the superior method of resolving the controversy." *Santiago*, F.4th at 1016.

"A class may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites for class certification have been met." *Id.* When parties seek class certification as part of a settlement, the provisions of Rule 23 "designed to protect absentees by blocking unwarranted or overbroad class definitions . . . demand undiluted, even heightened, attention." *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997).

III.
Analysis

A. Class certification

The fact that the parties have reached a settlement in relevant to the class-certification analysis. *See Smith v. Sprint Commc'ns Co., L.P.*, 387 F.3d 612, 614 (7th Cir. 2004); *Amchem Prods.*, 521 U.S. at 618–20. "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." *Smith*, 387 F.3d at 614 (quoting *Amchem Prods.*, 521 U.S. at 620). A court may not, however, "abandon the Federal Rules merely because a settlement seems fair, or even if the settlement is a 'good deal,' in some ways, the Rule 23 requirements may be even more important for settlement classes." *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 985 (7th Cir. 2002). "This is so because certification of a mandatory settlement class, however provisional technically, effectively concludes the proceeding save for the final fairness hearing." *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 849 (1999).

Here, Plaintiffs have met their burden of satisfying the Rule 23(a) and (b) requirements.

1. Rule 23(a) requirements

a. Numerosity

To satisfy the numerosity requirement, the proposed class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Here, the proposed Class consists of:

> All individuals in the United States who were sent a notice by Defendants informing them that their Personal Information was accessed without authorization in the Data Breach. Excluded from the Settlement Class are: (1) the judges presiding over this Litigation, and members of their direct families; (2) the Defendants, Defendants' subsidiaries, parent companies successors, predecessors, and any entity in which Defendants or Defendants' parents have a controlling interest, and Defendants' current or former officers and directors; and (3) Settlement Class Members who submit a valid request for exclusion prior to the Opt-Out Deadline.

Dkt. 76-1 at 7 (Revised Agreement ¶ 43). The parties estimate that 8,500 current and former employees' information was compromised. Dkt. 76 at 2. Courts in the Seventh Circuit have found that substantially smaller classes satisfy the numerosity requirement. *See Mulvania v. Sheriff of Rock Island Cnty.*, 850 F.3d 849, 860 (7th Cir. 2017) ("While there is no magic number that applies to every case, a forty-member class is often regarded as sufficient to meet the numerosity requirement."); *Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326, 1333 n.9 (7th Cir. 1969). Because the proposed Class is so numerous that joinder of all members would be impracticable, Plaintiffs have satisfied the numerosity requirement.

b. Commonality

To satisfy the commonality requirement, there must "be one or more common questions of law or fact that are capable of class-wide resolution and are central to the claims' validity." *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1026 (7th Cir. 2018) (citing *Bell v. PNC Bank, Nat'l Ass'n*, 800 F.3d 360, 374 (7th Cir. 2015)). Here, Plaintiffs contend that Nice-Pak and Professional Disposables failed to adequately safeguard the Settlement Class's protected information, and that failure led to the Data Breach. Dkt. 20 at 3. This is undoubtedly a question of law and fact that is common to the Proposed Class. For that reason, Plaintiffs have satisfied the commonality requirement.

c. Typicality

To satisfy the typicality requirement, "the claims or defenses of the representative party [must] be typical of the claims or defenses of the class." *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009) (quoting *Williams v. Chartwell Fin. Servs., Ltd.*, 204 F.3d 748, 760 (7th Cir. 2000)). "A claim is typical if it 'arises from the same event or practice or course of conduct that gives rise to the claims of other class members and . . . [the] claims are based on the same legal theory.'" *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006) (quoting *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)). "Although 'the typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members,' the requirement 'primarily directs the district court to focus on whether the named representatives' claims have the same essential

characteristics as the claims of the class at large.'" *Muro*, 580 F.3d at 492 (quoting *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)).

Plaintiffs have satisfied the typicality requirement because their claims are typical of those of the Class since their private information was also compromised after the Data Breach. Dkt. 20 at 5–6.

d. Adequacy of representation

To satisfy the adequacy of representation requirement, the representative parties must "fairly and adequately protect the interests of the class." *Amchem Prods.*, 521 U.S. at 625. "This adequate representation inquiry consists of two parts: (1) the adequacy of the named plaintiffs as representatives of the proposed class's myriad members, with their differing and separate interests, and (2) the adequacy of the proposed class counsel." *Gomez v. St. Vincent Health, Inc.*, 649 F.3d 583, 592 (7th Cir. 2011) (citing *Retired Chi. Police Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993)).

Plaintiffs have satisfied the adequacy of representation requirement. *Beaton*, 907 F.3d at 1027 ("A named plaintiff must be a member of the putative class and have the same interest and injury as other members."). Darin Johnson and Robert Willey's claims are not antagonistic to the class; they are in fact typical, *Amchem Prods.*, 521 U.S. at 626 n.20 ("adequacy-of-representation requirement 'tend[s] to merge' with . . . the commonality and typicality criteria"), and they have sufficient interest in the outcome of litigation. *See* Dkt. 20 at 5–6. Further, the fact that Plaintiffs seek Service

Awards does not undermine the adequacy of their representation. *See Scott v. Dart*, 99 F.4th 1076, 1082–83 (7th Cir. 2024) ("[I]ncentive awards to named plaintiffs are permitted so long as they comply with the requirements of Rule 23.").

Plaintiffs' counsel has also invested substantial time and resources in this case by investigating the underlying facts, researching the applicable law, litigating this case, and negotiating a detailed settlement. *See generally* dkt. 71-2 at 13–14; dkt. 71-3. Last, Plaintiffs' counsel has experience litigating complex consumer class actions, including data breach suits, and do not appear to have interests that conflict with those of the Class. *See* Dkt. 71-3 (Ex. A).

2. Rule 23(b)(3) requirements

Having determined that Plaintiffs' proposed Class satisfies all of Rule 23(a)'s requirements, the Court must evaluate whether it satisfies any one of the three requirements in Rule 23(b). Certification of a class under Rule 23(b)(3) is proper if "the questions of law or fact common to class members predominate over any questions affecting only individual members, and [when] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This rule requires two findings: predominance of common questions over individual ones and superiority of the class action mechanism. *Id.* In assessing whether those requirements have been met, courts should consider:

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

Id.

Plaintiffs have shown that common questions of law and fact predominate. Specifically, the core issue—whether Nice-Pak and/or Professional Disposables failed to adequately safeguard the Class Members' private information—is identical for all Class Members. *See* dkt. 20 at 2–3 ¶ 8.

Furthermore, Plaintiffs have shown that, for this case, a class action is vastly "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). It will be the most efficient way to resolve Plaintiffs' claims, especially considering that Plaintiffs would have a difficult and costly task in seeking relatively small damages solely on an individual basis. Dkt 71-2 at 12. Accordingly, class resolution would be superior to other available methods of pursuing these claims.

The Court certifies the class for settlement purposes under Rule 23(b)(3).

B. Preliminary appointment of class counsel

After a court certifies a Rule 23 class, the court is required to appoint class counsel to represent the class members. *See* Fed. R. Civ. P. 23(g)(1). In appointing counsel, the court must consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
> (ii) counsel's experience in handling class actions, or other complex litigation, and the types of claims asserted in the action;
> (iii) counsel's knowledge of the applicable law, and

(iv) the resources that counsel will commit the representing the class.

Fed. R. Civ. P. 23(g)(1)(A).

Plaintiffs are represented by Lynn Toops and Amina Thomas of Cohen & Malad, LLP, and Gary Klinger and David Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC. Dkt 76-1 at 4 (Revised Agreement ¶ 12); dkt. 71-3 at 5–8 (Joint Declaration). These attorneys have done substantial work identifying, investigating, prosecuting, and settling Plaintiffs' claims. *See* dkt. 71-2 at 5. Plaintiffs' counsel also have experience litigating consumer class actions, including numerous data breach cases they have filed, litigated, and settled around the country. Dkt. 71-3 at 5–8; *see also* dkt. 71-2 at 9–60 (Joint Declaration Exhibits A–C, which outline the expertise and prior experience of counsel and their respective law firms).

As such, the Court preliminary appoints Lynn Topps, Amina Thomas, Gary Klinger, and David Lietz as Class Counsel.

C. Preliminary Revised Settlement approval

"Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *see also Armstrong*, 616 F.2d at 313 ("Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources."). Because the proposed Revised Agreement would bind all class members, the Court may approve the settlement only after finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this determination, Federal Rule

of Civil Procedure 23(e)(2) requires the Court to consider whether (1) the class representatives and class counsel have adequately represented the class, (2) the proposal was negotiated at arm's length, (3) the proposal treats class members equitably relative to each other, and (4) the relief provided by the settlement is adequate.

Courts also consider the following five factors: (1) the strength of the plaintiffs' case compared against the amount of the defendants' settlement offer; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement; (4) the opinion of experienced counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (internal citation omitted).

1. Adequacy of representation of the class

As explained above, Plaintiffs and Class Counsel have adequately represented the class.

2. The Revised Agreement was negotiated at arm's length

The Revised Agreement and Release was negotiated at arm's length. As explained in Plaintiffs' brief, the Revised Agreement is the product of "extensive motion practice, discovery, and an in-person settlement conference." Dkt. 71-2 at 3. Further the consideration for all claims is to be paid by Defendants, and no portion of unclaimed funds will revert to Defendants. Dkt. 76-1 at 9, 11 (Revised Agreement ¶¶ 53–54, 57).

3. The Revised Agreement treats Class Members equitably relative to each other

The Revised Agreement and Release treats all Class Members equitably relative to each other. It guarantees Class Members a right to submit claims for Lost Time, Ordinary Expenses, and Extraordinary Expenses, so Class Members who experienced "actual" harms may be reimbursed for those harms, and all Class Members are eligible to enroll in Privacy Shield Pro no matter their losses. *See* dkt. 76-1 at 8–9 (Revised Agreement ¶ 49).

4. The relief provided by the Revised Agreement is adequate

The Revised Agreement is a claims-made settlement which does not "establish, definitively, an amount for benefit of the class members" and requires Defendants only "to give security against all potential claims." *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 831–32 (7th Cir. 2018). Although courts regularly approve claims-made settlements, they may be "less justifiable when combined with other provisions, such as burdensome claiming processes and clear sailing agreements." William B. Rubenstein, 4 Newberg Class Actions § 13:7 (6th ed. 2025).

Here, the proposed Revised Agreement provides for much of the relief sought by Plaintiffs. *See* dkt. 20 at 39–40. First, all Class Members are eligible to enroll in three years of CyEx Privacy Shield Pro no matter their losses for a total value of approximately $7.5 million for the class ($24.99/month x 36 months x 8,500 Class Members). Dkt. 76-1 at 9 (Revised Agreement ¶ 49(v)); dkt. 76 at 2. Next, Class Members may receive Lost Time expenses of up to $90 for time spent mitigating the effects of the Data breach. Dkt. 76-1 at 8

(Revised Agreement ¶ 49(i)). To receive Lost Time compensation, Class Members must submit a description of activities performed and an attestation that the activities were reasonably related to the Data Breach. *Id.* In total, the time lost reimbursements provide for up to $765,000 in relief to the approximately 8,500 Class Members. Dkt. 76 at 2.

Third, the Revised Agreement provides that Class Members may receive up to $450 for reimbursement of Ordinary Expenses caused by the Data Breach, for a total benefit of up to $3,825,000 for the Class. Dkt. 76-1 at 8 (Revised Agreement ¶ 49(ii)); dkt. 76 at 2. The Court expressed concerns that the originally proposed Settlement Agreement required Class Members to provide third-party documentation for all Ordinary Expenses, including small losses of "postage, copying, mileage, and long-distance telephone charges." Dkt. 72 at 3–4. However, under the terms of the Revised Agreement, Class Members may claim up to $50 in Ordinary Expenses without third-party documentation. Dkt. 76-1 at 8 (Revised Agreement ¶ 49(ii)). The Court is satisfied that by removing the burden of third-party documentation for up to $50 in Ordinary Losses, Class Members will receive adequate relief for smaller expenses caused by the Data Breach. *See* Rubenstein, 4 Newberg Class Actions § 13:7.

Last, the Agreement allows Class Members to seek reimbursement, with third-party documentation, for up to $4,500 for Extraordinary Losses caused by the Data Breach. Dkt. 76-1 at 9 (Revised Agreement ¶ 49(iii)). In total, up

to $30,825,000 in Extraordinary Losses may be claimed by Class Members. Dkt. 76 at 2.

Further, no unclaimed funds will revert to Defendants at the end of the Claims Deadline. *Id.* at 10–11 (Revised Agreement ¶ 53–54). Instead, remaining funds from returned and uncashed checks will be distributed to a Court-approved *cy pres* recipient. *Id.* at 10.

The parties have agreed to seek attorneys' fees and litigation expenses not to exceed $200,000. *Id.* at 16 (Revised Agreement ¶ 78). Considering that the total value to the class is up to $42,915,000, an award of up to $200,000 in attorneys' fees appears reasonable. Moreover, the parties do not have a "clear sailing agreement" whereby Plaintiffs have agreed they will not object to Plaintiffs' counsel's requested fee. Dkt. 76 at 3. However, the reasonableness of the attorneys' fees and litigation expenses is subject to the Court's approval after the claims process, when the total compensation received by Class Members is known. *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, 837 F.3d 791, 793 (7th Cir. 2017) ("[A] district court should compare attorney fees to what is actually recovered by the class[.]").

Last, the revised proposed notice provides Class Members with adequate notice, and the proposed method of distribution relief is effective in providing prompt payment. *See* dkt. 76-1 at 32–44 (revised class notice and claim form), 11 (Revised Agreement ¶ 57).

In sum, the Revised Agreement provides for up to $42,915,000 in benefits and compensation to Class Members. Although the Agreement is a

claims-made settlement, it does not contain terms to make approval "less justifiable." *See* Rubenstein, 4 Newberg Class Actions § 13:7. The Revised Agreement addresses the harm to the Class—the disclosure of sensitive personal information—by offering benefits and compensation to remedy that harm. Class Members may receive a three-year subscription to CyEx Privacy Shield Pro and up to $50 in Ordinary Expenses without supporting documentation. Dkt. 76-1 at 8–9 (Revised Agreement ¶ 49(ii), (iv)). Further, Class Members may claim up to $90 for Lost Time expenses with a written attestation, and with supporting third-party documentation, up to $450 in Ordinary Expenses and $4,500 in Extraordinary Expenses. *Id.* (Revised Agreement ¶ 49(ii)–(iii)). The Revised Agreement therefore provides adequate relief for the harms of the Data Breach. *See In re California Pizza Kitchen Data Breach Litig.*, 129 F.4th 667, 678 (9th Cir. 2025) (affirming approval of claims-made settlement for data-breach plaintiffs as fair, reasonable, and adequate, noting "the settlement does offer real benefits" of a credit monitoring service, and reimbursement for ordinary expenses, lost time, and monetary loss from identity theft.").

5. The strength of Plaintiffs' case compared against the amount of Defendants' settlement offer

The most important settlement-approval factor is "the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Synfuel*, 463 F.3d at 653 (quoting *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1132 (7th Cir. 1979)). In balancing the strength of the plaintiffs' case against the amount offered in a proposed

settlement, district courts "should begin by quantifying the net expected value of continued litigation to the class . . . [t]o do so, the court should 'estimate the range of possible outcomes and ascribe a probability to each point on the range.'" *Synfuel*, 463 F.3d at 653 (citing *Reynolds*, 288 F.3d at 279. However, "the *Synfuel/Reynolds* evaluation of potential outcomes need not always be quantified, particularly where there are other reliable indicators that the settlement reasonably reflects the merits of the case." *Kaufman v. Am. Express Travel Related Servs. Co.,* 877 F.3d 276, 285 (7th Cir. 2017). Other reliable indicators include extensive arm's-length negotiations with a third-party mediator, and the parties contentiously litigating a motion to dismiss. *Wong*, 773 F.3d at 864.

Here, the Settlement was reached after "extensive motion practice, discovery, and an in-person settlement conducted by Magistrate Judge Crystal Wildeman." Dkt. 71-2 at 3. Further, the parties contentiously litigated a motion to dismiss, in which the Court granted Defendants' motion as to three claims and allowed three claims to move forward in litigation. Dkt. 45 at 20. Because of these reliable indicators, the Court "need not undertake the type of mechanical mathematic valuation exercise," and "need only recognize that the proposed settlement ensures meaningful relief for the Class and weigh those benefits against substantial risks that the Class would face in seeking a better outcome at trial." *Sheffler v. Activate Healthcare, LLC.*, No. 1:23-cv-01206-SEB-TAB, 2024 WL 4008289, at *7 (S.D. Ind. Aug. 30, 2024) (citing *In re*

TikTok Inc., Consumer Priv. Litig., 565 F. Supp. 3d. 1076, 1089 (N.D. Ill. Sept. 30, 2021).

Continued litigation with Nice-Pak and Professional Disposables presents significant risks and costs—the most obvious risk is that Plaintiffs will not be successful on their claims. Furthermore, "[e]ven if [Plaintiffs were] to succeed on the merits at some future date, a future victory is not as valuable as a present victory. Continued litigation carries with it a decrease in the time value of money, for '[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.'" *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. Aug. 11, 2010) (quoting *Reynolds*, 288 F.3d at 284). The proposed relief appropriately accounts for the uncertainty of Plaintiffs' claims on the merits, the time value of money, and the seriousness of data breaches. Further, the proposed Revised Agreement delivers the relief Plaintiffs sought by initiating this lawsuit—compensation for actual losses and protection of their PII after the breach. Dkt. 20 at 39–40.

Accordingly, the strength of Plaintiffs' case compared to Defendants' proposed settlement weighs in favor of the fairness, reasonableness, and adequacy of the Revised Agreement.

6. The likely complexity, length, and expense of continued litigation

The likely complexity, length, and expense of trial weighs heavily in favor of the fairness, reasonableness, and adequacy of the Revised Agreement. Continuing to litigate this case will require vast expense and a great deal of time, on top of that already expended.

7. Opposition to the Revised Agreement

Because the parties have not yet sent the notice, it is premature to assess this factor.

8. The opinion of experienced counsel

The opinion of counsel weighs heavily in favor of the fairness, reasonableness, and adequacy of the Revised Agreement. Courts are "entitled to rely heavily on the opinion of competent counsel," *Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir. 1982) (quoting *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 325 (7th Cir. 1980)); *Isby*, 75 F.3d at 1200, and as explained above, counsel for the parties are experienced and highly competent. Further, there is no indication that the Revised Agreement is the victim of collusion. *See Isby*, 75 F.3d at 1200. Subject to this Court's approval, Class Counsel will be paid up to $200,000. Dkt. 76-1 at 16 (Revised Agreement ¶ 78).

9. The stage of the proceedings and the amount of discovery completed

"The stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims." *Armstrong*, 616 F.2d at 325. This litigation has been ongoing for years, including formal settlement negotiations. Dkt. 71-2 at 2–3. The Court denied Defendants' motion to dismiss in part in June 2024. Dkt. 45. The parties have engaged in continued negotiations and written discovery since that order. Dkt. 71-2 at 2. There is no indication that

additional discovery would further assist the parties in reaching a settlement agreement that is fair to the Class. Accordingly, this factor weighs in favor of the fairness, reasonableness, and adequacy of the proposed Revised Agreement.

D. Class Notice

Under Federal Rule of Civil Procedure Fed. R. Civ. P. 23(c)(2)(B), a notice must provide:

> The best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Further, when presented with a proposed class settlement, a court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). "The contents of a Rule 23(e) notice are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, and that any class member may appear and be heard at the hearing." 3 Newberg on Class Actions § 8:32 (4th ed. 2010).

The proposed revised notice satisfies Rule 23's requirements and puts Class Members on notice of the Revised Agreement. Dkt. 76-1 at 32–42. The

Administrator will mail notices to the Class Members within 30 calendar days of this Order. Dkt. 76-1 at 12 (Revised Agreement ¶ 58). Notice will also be published on a website established by the Administrator. *Id.* The website will contain all court documents related to the Settlement, Short- and Long-Form Class Notices, FAQs, Claim Form, deadlines, and the date of the Final Approval Hearing. *Id.* at 7 (Revised Agreement ¶ 47).

Moreover, the proposed notice is appropriate because it describes the terms of Revised Settlement, informs the Class about the allocations of attorney's fees and expenses, explains how Class Members may opt-out of the Class and object to the settlement, and provides specific information regarding the date time, and place of the fairness hearing. *Id.* at 32–44 (proposed revised notice of settlement); *see Air Lines Stewards & Stewardesses Assoc. v. Am. Airlines, Inc.*, 455 F.2d 101, 108 (7th Cir. 1972) (notice that provided summary of proceedings to date, notified of significance of judicial approval of settlement and informed of opportunity to object at hearing satisfied due process).

E. Preliminary appointment of settlement administrator

The parties "jointly selected" Simpluris "to administer the settlement." *See* dkt. 76-1 at 7 (Revised Agreement ¶ 42); dkt. 71-2 at 6–7. It is reasonable to infer from the parties' joint selection that of Simpluris is qualified to serve as the Settlement Administrator and its services will be helpful. Therefore, the Court preliminarily appoints Simpluris as Administrator.

IV.
Conclusion

Plaintiffs' Motion for Preliminary Approval, dkt. [71], is **GRANTED**.

Pursuant to Federal Rule of Civil Procedure 23(e)(1)(B), Plaintiffs have shown that the Court will likely be able to (i) approve the Revised Agreement under Rule 23(e)(2); and (ii) certify the Class for purposes of the Revised Agreement only.

The Court finds that it will likely be able to approve the Revised Agreement as fair, reasonable, and adequate, subject to the right of any Class Member to challenge the Revised Agreement at a hearing after notice has been disseminated to the class.

The Court finds that it will likely be able to hold that the proposed settlement consideration and class relief are fair, reasonable, adequate, and equitable for the purposes of the Revised Agreement, and to approve the Released Claims as provided by the Releases.

The Court preliminary appoints Simpluris, Inc. to serve as Administrator. The Court also finds that it will likely be able to approve Simpluris to serve as Administrator after final approval. Simpluris will be responsible for disseminating Class Notice in the form set forth at docket 76-1 at 32–44, and for undertaking all Administrator duties contemplated by the Revised Agreement prior to the Court's grant or denial of final approval.

The Court preliminary certifies the proposed class and designates Plaintiffs Darin Johnson and Robert Willey as the Class Representatives. The

Court preliminary appoints Lynn Toops, Amina Thomas, Gary Klinger, and David Lietz as Class Counsel.

The preliminary certification of the proposed Class, the preliminary designation of class representatives, and the preliminary designation of Class Counsel established by this Order shall be automatically vacated if the Revised Agreement is terminated or is disapproved by the Court, any appellate court and/or any other court of review, of if any of the settling parties successfully invokes its right to terminate the Revised Agreement, in which event the Revised Agreement and the fact that it was entered into shall not be offered by the settling parties or construed as an admission or as evidence for any purpose, including the "certifiability" of any class.

The Court determines that distribution of the Class Notice to be given as included in the Revised Agreement, dkt. 76-1 at 32–44, is reasonable and the best practicable notice under the circumstances; satisfies Rule 23(h) of the Federal Rules of Civil Procedure; is reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the Revised Agreement, their right to object to and opt-out of the Revised Agreement, the effect of the Revised Agreement (including the releases to be provided thereunder), Class Counsel's request for attorneys' fees, reimbursement of litigation expenses and settlement administration expenses, and the requested service awards for Plaintiffs; constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and meets the requirements of due process, the Federal Rules of Civil Procedure, and the United States Constitution.

The Court preliminarily finds that with an agreement between Plaintiffs, Nice-Pak, and Professional Disposables, it will likely to be able to certify and approve a settlement class under Federal Rule of Civil Procedure 23.

The Court preliminarily approves the Revised Agreement as sufficiently fair and reasonable to warrant sending notice to the Class preliminarily certified for settlement purposes and hereby directs Plaintiffs and Simpluris to give notice to the class as set forth in the Revised Agreement.

Plaintiffs shall file proof by affidavit of the distribution of the Class Notice at or before the Fairness Hearing.

Any attorneys hired by individual members of the Class for the purpose of objecting to the Revised Agreement shall file with the Clerk of the Court and serve on Class Counsel and Defendants' counsel a notice of appearance prior to the Fairness Hearing.

Class Members who object to the settlement must follow the procedure as outlined in the Revised Agreement ¶ 61.

Class Members who wish to exclude themselves must follow the procedure as outlined in the Revised Agreement ¶ 60. Class Members who do not file timely written requests for exclusion in accordance with the Revised Agreement shall be bound by all subsequent proceedings, orders, and judgments in this action, as outlined in the Revised Agreement ¶ 60.

Class Counsel and Defendants' counsel shall promptly furnish each other with copies of any and all objections and requests for exclusion that come into their possession.

Any objector requesting access to confidential materials must first obtain leave of Court and agree to be bound by an agreed confidentiality order issued by the Court, which shall provide for the same confidentiality obligations that applied to the parties during the litigation and as provided by the Revised Agreement.

The Court hereby adopts the following settlement procedure:

Event	**From Order Granting Preliminary Approval**
Defendants Provide Settlement Class Member Information to the Settlement Administrator	+7 days
Notice Sent to Class	+30 days
Plaintiffs' Motion for Attorney's Fees and Costs and Service Award to Class Representatives	+46 days
Opt-Out Deadline	+60 days
Objections Deadline	+60 days
Claims Deadline	+90 days

Final Approval Hearing	June 12, 2026, at 1:00 p.m.
Motion for Final Approval	14 Days before Final Approval Hearing

	From Effective Date
Payment of Attorneys' Fees and Litigation Expenses and Service Awards	+21 days
Payment of Approved Claims to Settlement Administrator	+21 days

A Fairness Hearing will be held on **June 12, at 1:00 p.m. in Room 307,** United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana.

SO ORDERED.

Date: 2/11/2026

James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

All electronically registered counsel