THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

CONCETTA C. VERDERAME, on behalf of herself and all others similarly situated **Plaintiff,** **v.** **FUTURITY FIRST INSURANCE GROUP, LLC,** **Defendant.**	**Case No: 3:24-cv-01262-KAD**

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, AND TO AUTHORIZE CLASS NOTICE, AND SCHEDULE A FINAL APPROVAL HEARING

I. Preliminary Statement

Plaintiff Concetta C. Verderame, individually and on behalf of all other similarly situated individuals, by and through her undersigned attorneys and with the consent of, for settlement purposes only, Defendant Futurity First Insurance Group, LLC ("Futurity" or "Defendant"), submits this Memorandum of Law in Support of her Unopposed Motion for Preliminary Approval of Class Action Settlement, and to Authorize Class Notice and Schedule a Final Approval Hearing ("Motion"). The Parties agreed to settle the above-captioned action ("Action") on a class-wide basis as set forth in the Settlement Agreement. This will create a $335,000.00 all cash non-reversionary fund that Defendant has agreed to pay or cause to be paid under the terms of the Settlement to benefit the Settlement Class. If approved, the proposed Settlement will resolve and release all claims asserted in this Action. Plaintiff submits that the recovery here is commensurate with the result that could have been obtained at trial, which is a fantastic result given the inherent risks and expenses of continued litigation. Additionally, it provides substantial relief comparable to or better than other settlements approved in similar data breach cases. Plaintiff believes the proposed Settlement is not only in the best interests of the Settlement Class, and should be approved by the Court on that basis alone, but is also an excellent

result, especially considering the uncertainties, risks, and delay that continued litigation would bring, which might then result in a smaller recovery or no recovery.

As outlined below, Plaintiff respectfully requests that the Court review and preliminarily approve the terms of the proposed Settlement as fair and reasonable, and certify the Settlement Class under Fed. R. Civ. P. 23 for Plaintiff's and the Settlement Class's claims arising from a cyber security incident that impacted Defendant's network on or around November 24, 2023 and was disclosed by Defendant in July 2024 (the "Incident").

Specifically, Plaintiff requests an order (1) granting preliminary approval of the Settlement; (2) certifying the Class for the purpose of the Settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3); (3) ordering the Settlement Administrator to direct and issue notice to the Class under the terms of the Settlement Agreement; (4) appointing Concetta C. Verderame as Class Representative for the purpose of the Settlement; (5) appointing Marc Edelson, Edelson Lechtzin LLP, and Seth Lesser, Klafter Lesser LLP, as Plaintiff's Counsel for the Settlement Class; and (6) entering the Settlement schedule as proposed by the terms of the Settlement Agreement. Futurity does not oppose the relief sought in this motion.[1]

The executed Settlement Agreement is attached to the Declaration of Marc H. Edelson ("Edelson Dec.") as Exhibit A. Plaintiff also submits proposed Notices of the Settlement advising Settlement Class Members of the settlement, informing them of the terms of the Settlement Agreement, advising them of their rights under the proposed Settlement, and allowing them to be heard in the proceedings for the Final Settlement Approval. *See* Settlement Agreement Exhibits 1 (Short Form Notice) and 2 (Long Form Notice) . In addition, Plaintiff submits a Claim Form that will

[1] The Declarations of Marc H. Edelson ("Edelson Dec.), Seth R. Lesser ("Lesser Dec."), and Richard W. Simmons ("Simmons Dec.") are filed concurrently herewith.

allow Settlement Class Members to submit a claim for the benefits provided by the settlement. *Id.*, Exhibit 3.

II. Factual Background

Plaintiff filed this lawsuit after cybercriminals accessed Futurity's network environment. *See* Complaint, ECF No. 1 ¶¶ 3, 23. Futurity provides financial security and income planning products for seniors, pre-retirees, families and businesses nationwide through a nationwide network of wealth advisors, investment specialists, and financial representatives. *Id.* ¶ 20. In conjunction with the services it provides, Futurity collects certain personally identifiable information ("PII"), from its clients and customers, including PII related to Plaintiff and the Settlement Class, and stores the PII on its network. *Id*. ¶¶ 1-3, 23. At the time of the Incident, Plaintiff and her husband were Futurity customers and their PII was present on Futurity's network. *Id.*

On or about May 23, 2024, Defendant learned of a cybersecurity incident on its network that occurred on or around November 24, 2023, during which an unauthorized third party gained access to several employee and independent agent email accounts. *Id.* ¶¶ 4, 5, 24-26. The potentially accessed data included certain of Futurity's customers' PII, including full names, birthdates, addresses, gender, signature, social security number, federal/state identification numbers, financial account information, telephone and/or fax number, and driver's license or state identification numbers. *Id.* ¶¶ 1, 3, 26. Plaintiff Verderame received a letter notifying her of the Incident, via email, directly from Defendant dated July 26, 2024. *Id*. ¶ 19; Notice of Data Breach, Exhibit 1 to the Complaint.

Prior to filing this Action, Plaintiff vigorously gathered all available information regarding the Incident, including publicly available documents concerning announcements and notice of the Incident and non-public information concerning the size and makeup of the putative class and the circumstances that led to the Incident. Thereafter, since Plaintiff was among those whose PII had

potentially been compromised, she brought this putative class action. Plaintiff alleges that she and the putative Class Members were, and continue to be, at significant risk of identity theft and various other forms of personal, social, and financial harm, including the sharing and detrimental use of their sensitive information. *Id*. ¶ 10. While Futurity generally denies the allegations, it agreed to engage in settlement negotiations to avoid disruption to its business operations associated with further litigation and the litigation cost and expenses, distractions, and burdens associated with protracted litigation. *See* Settlement Agreement, ¶ 8. The parties subsequently reached a class-wide settlement and, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiff files this motion for preliminary approval of that Settlement.

III. Procedural History

Plaintiff filed the operative Class Action Complaint on July 29, 2024. *See* ECF. No. 1. On October 30, 2024, the Parties filed a Joint Motion to Stay Proceedings Pending Mediation, *see* ECF. No. 15, which the Court granted by Order dated October 31, 2024. *See* ECF. No. 17. Per the Court's Order, proceedings were stayed until January 30, 2025. The Parties subsequently notified the Court that they reached a settlement in principle and anticipated filing this Motion for Preliminary of the Settlement. *See* ECF. Nos. 21, 22 and 28.

The parties also engaged in several meet and confer sessions, and Defendant provided informal discovery responses to permit Plaintiff's counsel to facilitate informed settlement negotiations and evaluate settlement proposals. Defendant's responses enabled Plaintiff to discern the putative Class size and Defendant's potential liability exposure. The negotiation was under the direction of a mutually agreed upon mediator, Rodney A. Max of Upchurch Watson White & Max Mediation Group, who has extensive experience mediating and managing multiparty and multifaceted cases. The Parties engaged in a mediation session on January 29, 2025.

Plaintiff also conducted research concerning other similar data breach settlements to compare with the settlement proposals to determine whether the instant Settlement compares favorably with other cases. This information was sufficient to facilitate informed settlement discussions among the Parties. The Parties reached an agreement to settle the case in principle during the mediation session. As a result, the Parties have agreed to resolve Plaintiff's claims for a gross Settlement Amount of $335,000. The Parties agreement, reached with the mediator's assistance, tends to support a finding that the agreement was non-collusive.

IV. Settlement Negotiations

Plaintiff considered several factors in this settlement. Initially, the settlement provides substantial relief comparable to or better than other settlements approved in similar data breach cases. Plaintiff's Counsel has substantial experience in data breach cases and concludes that the terms and conditions of this Settlement are fair, reasonable, and adequate to Settlement Class Members. Further litigation would be protracted and expensive, considering the uncertainty and risks inherent in litigation, including obtaining and maintaining class certification, retaining experts, conducting multiple depositions of Plaintiff's and Defendant's witness, defending multiple motions, and preparing the case for trial. Further, the costs associated with protracted litigation would reduce the potential benefits to putative Class Members. Counsel for both Parties have determined that it is desirable to effectuate a full and final settlement of the claims asserted in the Action to avoid the associated burdens, risks, uncertainty, and extensive costs.

Plaintiff's Counsel believes the claims asserted in the Action have merit, but also believes that the Proposed Settlement is the best outcome. To come to this conclusion, Plaintiff's Counsel examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming

litigation, and the likelihood of success on the merits of the Action. Plaintiff's Counsel fully investigated the facts and law relevant to the merits of the claims, and conducted an independent investigation of the alleged claims. As a result of these efforts, Plaintiff's Counsel concludes that the proposed Settlement set forth in the Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation that could impact its primary business functions.

V. Proposed Settlement Terms

The proposed Settlement Agreement provides that Defendant will make a total Settlement Payment of $335,000 in a non-reversionary Settlement Fund. This amount shall include all individual settlement payments, Service Awards, Claims Administrator Costs, and Class Counsel Attorneys' Fees and Costs. The Settlement amount is a fair, adequate, and reasonable resolution of this claim, given the anticipated costs and delays as outlined above. It is well within the range of potential outcomes for the Plaintiff and the Settlement Class Members, given the potential issues with litigating the case through trial.

A. Proposed Settlement Class

The Settlement Class is defined as "all individuals residing in the United States whose PII was affected by the Incident." *See* Settlement Agreement, ¶ 47. Excluded from the Settlement Class are "(1) the Judge presiding over this Action, and members of their direct families; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest, and its current or former officers and directors; and (3) Settlement Class Members who submit a request to opt-out prior to the Opt-Out Deadline." *Id.*

B. Releases

In exchange for receiving payments from the Settlement, the Settlement Class Members will agree to release Defendant from "all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based upon, or relate to (a) the Incident; (b) the Action; or (c) which could have been asserted in the Action." *See* Settlement Agreement at ¶ XIV.1.

C. Compensation to Class Members

The Settlement provides significant relief to participating Class Members. The Settlement Agreement establishes three potential benefits for Settlement Class members. It provides cash compensation for Documented Losses for Settlement Class members who experienced financial loss, up to $10,000. *See* Settlement Agreement at ¶¶ 4, 18, V.1.a. Next, Settlement Class members may elect to receive Time Compensation, for their time and effort undertaken to secure their credit, up to 5 hours compensated at $30 per hour. *Id*. ¶¶ 5, 54, V.1.b. Last, Settlement Class members are also entitled to three years of no-cost credit protection coverage. ¶¶ 14, V.1.d. Alternatively, they may choose to receive a cash payment in lieu of the credit protection. ¶¶ 6, 15, V.1.c. If the total claims exceed the settlement amount, claims would be subject to a *pro rata* reduction. *Id*. ¶ V.1.e. Further, should the total claims not exhaust the settlement fund, the remaining funds would be distributed, *pro rata*, to those Valid Claimants who have already received their Cash Payments.[2] *Id*. ¶ XIII.

[2] *Pro rata* distribution will only take place if there are at least 10 Valid Claimants who would receive at least $25. *Id.* ¶ XIII. If, however, there are less than 10 Valid Claimants and/or the Valid Claimants would receive less than $25, the remaining funds will be donated. *Id.*

D. Notice

If the Court grants the instant Motion, Defendant will provide the Settlement Administrator with a Class List with the best available contact information for the Settlement Class Members. *Id.* at ¶ VIII.1. The Settlement Administrator will send the Notice of Settlement and the Claim Form to all Settlement Class Members within 45 days following entry of the Preliminary Approval Order via postcard sent via U.S. mail. *Id*. at ¶ VIII.2. The Settlement Class Members will have 90 days to return a Claim Form. *Id*. at ¶ 9. The Settlement Administrator will create a website with the Notice of Settlement and other documents and information related to the litigation. *Id*. at ¶ VIII.3. The Settlement Administrator will also establish a toll-free phone number with information about the Settlement. *Id*. at ¶ VII.f.

a. Settlement Award Eligibility

The Settlement Administrator will determine eligibility and the amount of Settlement Awards to be paid to the Settlement Class Members. *Id*. at ¶ X.

b. Objections and Requests for Exclusions

Settlement Class Members who wish to object to the Settlement must submit an objection in writing prior to the Claim Deadline, signed by the objector, indicating the grounds for objecting, and whether they intend to attend and be heard at the Final Approval Hearing. *Id*. at ¶ IX. To be heard at the Final Approval Hearing, the objector must file notice with the Court and serve notice on both Plaintiff and Defense counsel. *Id*. To be excluded from the Settlement, a Settlement Class Member must submit a signed, written statement indicating that they do not wish to participate in the Settlement prior to the Claim Deadline. *Id*.

c. Final Approval Hearing

Twenty-one (21) days prior to the Final Fairness Hearing, Plaintiff will file a Motion for Final

Approval, requesting that the Court enter an order finding that the Notice met due process requirements and that the Settlement was fair, reasonable and adequate, and directing that the Settlement Funds be distributed, the Action be dismissed with prejudice, and retaining jurisdiction to oversee settlement administration. The Motion for Final Approval will also seek the approval of attorneys' fees and expenses, as well as a service award for Plaintiff. *Id*. at ¶ XI.

d. Distribution of Settlement Funds

i. ***Gross Settlement Funds and Non-Reversion***

Defendant will fund the full amount of the Settlement Fund within twenty-one (21) days of the entry of a Preliminary Approval Order ("Gross Settlement Amount"). *Id*. at ¶ III.1.[3] The Gross Settlement Fund shall be used to pay (1) all Cash Payments to Settlement Class Members who submit Valid Claims and the cost of Credit Monitoring for Settlement Class Members who do not elect Cash Payment C; (2) any Service Award awarded to Plaintiff; (3) any attorneys' fees and costs awarded to Plaintiff's Counsel; and (4) all Notice and Administrative Expenses. Prior to the Effective Date, the Settlement Fund may be used only to pay Settlement Administration Costs. *Id*. at ¶ III.2. There will be no reversion of any portion of the Gross Settlement Amount to the Defendant after the Effective Date. *Id*. at ¶ 51.

ii. ***Service Awards***

Subject to the Court's approval, Plaintiff Verderame may receive five thousand dollars ($5,000) as a service award for her efforts in prosecuting the case. *Id.* at ¶ XII. Plaintiff Verderame worked diligently with Class Counsel to prosecute the matter. This involved multiple extended phone calls with Class Counsel prior to filing the Complaint wherein Verderame described her interactions

[3] To the extent the settlement is not finally approved, all amounts remaining in the Gross Settlement Amount at that time will be returned to Defendant. *Settlement Agreement*, XV.5.

with Defendant's agents, her interactions with Defendant prior to the Incident, the inclusion of her PII among Defendant's account information and the subsequent steps she took to determine what PII may have been exfiltrated and protect herself from identity theft.

iii. Settlement Awards

Settlement Class Members will receive a payment out of the Net Settlement Amount within 75 days of the Effective Date.[4] *Id*. at ¶ 11. The Named Plaintiff will not need to submit a Claim Form to receive an award, but all other Settlement Class Members must do so. *Id*. at ¶¶ 8-10, VII, and X. Any unclaimed Settlement Funds, subject to Court approval, will be donated to *cy pres* recipient National Cybersecurity Alliance.[5] *Id*. at ¶ XIII.

iv. Settlement Administrator

The parties will engage Analytics, LLC as the Settlement Administrator.[6] The Settlement Administrator shall perform all the duties, tasks, and responsibilities associated with providing notice and administering the Settlement. *Id*. at VII. The Settlement Administrator will provide Plaintiffs' Counsel with periodic reports regarding requests for exclusions or objections. *Id*.

v. Attorneys' Fees and Costs

Subject to the Court's Final Approval Order, the Parties agreed that Class Counsel may seek an award of attorneys' fees in an amount of one-third (1/3) of the Gross Settlement Amount ($111,655), which will compensate Class Counsel for all work performed in the Action. Also subject to the Court's Final Approval Order, Class Counsel will be reimbursed for their out-of-pocket costs from the Gross Settlement Amount. *Id*. at ¶ XII.2. Pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2),

[4] *See id* at ¶ 28, defining the Net Settlement Amount as "the Settlement Fund after payment of all attorneys' fees, costs, and the Service Award, as approved by the Court."
[5] *See* https://www.staysafeonline.org/ (last accessed on May 20, 2025).
[6] *See* https://www.analyticsllc.com (last accessed May 18, 2025).

Class Counsel will file a motion for approval of attorneys' fees and reimbursement of expenses with its motion for final approval of the Settlement if preliminary approval is granted.

VI. Class Certification under Fed. R. Civ. P. 23

A. Legal Standards

Rule 23 of the Federal Rules of Civil Procedure governs traditional class actions. The Supreme Court has noted that the drafters of Rule 23 intended class actions to vindicate the rights of a group of injured persons who otherwise would be without sufficient strength or inclination to bring suit on an individual basis. *See Amchem Prods. Inc. v. Windsor*, 512 U.S. 591 (1997). The Rule requires that "[t]he claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval." *In re Synchrony Fin. Sec. Litig*., No. 18-cv-1818, 2023 WL 4992933, at *3 (D. Conn. Aug. 4, 2023); Fed. R. Civ. P. 23(e). "In the Second Circuit, '[t]here is a strong judicial policy in favor of settlements, particularly in the class action context.'" *Cruz Guerrero v. Montefiore Health Sys. Inc*., No. 22-cv-9194, 2025 WL 100889, at *3 (S.D.N.Y. Jan. 15, 2025) (citing *In re MetLife Demutualization Litig*., 689 F. Supp. 2d 297, 330 (E.D.N.Y. 2010)). Before granting final approval of a class action settlement, courts must consider whether the proposed settlement class satisfies the requirements enumerated in Fed. R. Civ. P. 23. *Amchem,* 512 U.S. *at* 620. Courts must perform a "rigorous analysis" to determine that "the requirements of Rule 23[are] met, [and] not just supported by some evidence." *In re Initial Public Offerings Securities Litigation*, 471 F.3d 24, 33 (2d Cir. 2006).

Courts may approve class action settlements "only after a hearing and only on finding that [the proposed settlement] is fair, reasonable, and adequate." *In re Synchrony Fin. Sec. Litig*., 2023 WL 4992933, at *3; Fed. R. Civ. P. 23(e)(2). In evaluating the appropriateness of class certification, the Court should not consider the factual merits of the case or the strengths or weaknesses of the

underlying claims. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 158 (1974).

To obtain class certification under Rule 23, Plaintiff must demonstrate the four threshold requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy. *See Teamsters Local 445 Freight Division Pension Fund v. Bombardier Inc.*, 546 F.3d 196, 201-02 (2d Cir. 2008). Numerosity exists where the proposed class is "so numerous that joinder of all members is impracticable." *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 90 (D. Conn. 2010); Fed. R. Civ. P. 23(a)(1). Numerosity is presumed where a court can reasonably infer that the class contains 40 members or more. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). In this case, Plaintiff understands that there are over 15,000 potential class members, based on information Defendant provided during informal discovery.

Under Fed. R. Civ. P. 23(a)(2) and (3), the commonality and typicality factors require Plaintiff to show "a common contention ... capable of classwide resolution," and that "the claims or defenses of the class representatives be typical of the claims or defenses of the class members." *Kaye v. Amicus Mediation & Arb. Grp., Inc*., 300 F.R.D. 67, 78 (D. Conn. 2014).

"Commonality exists where there are questions of law or fact common to the class." *Menkes*, 270 F.R.D. at 90 (finding that "commonality exists because identical questions of both law and fact would be raised by the claims of each class member if these were to be asserted individually.") (internal citations and quotations omitted); Fed. R. Civ. P. 23(a)(2). "This is not a demanding standard, as it is established so long as the plaintiffs can identify some unifying thread among the [class] members' claims." *Id.* Here, each class member received the same notice informing them that their PII may have been involved in the Incident. *See* Settlement Agreement, ¶¶ 2, 3, 24, 35 and 47.

Typicality exists where "the claims or defenses of the representative parties are typical of the claims or defenses of the class." *Menkes*, 270 F.R.D. at 91–92 (citing *In re Flag Telecom Holdings,*

Ltd. Securities Litigation, 574 F.3d 29, 35 (2d Cir.2009) (quotation marks omitted); Fed. R. Civ. P. 23(a)(3). "To establish typicality under Rule 23(a)(3), the party seeking certification must show that each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." *Id. at* 92. Thus, "[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *Id.* (citing *Robidoux v. Celani*, 987 F.2d 931, 936–37 (2d Cir.1993). As above, each class member received the same notice letter informing them that their PII may have been involved in the Incident. The same event affected both the named plaintiff and the class in the same manner and, accordingly, Plaintiff's claims are "typical."

The adequacy of representation requirement demands that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The requirement is satisfied where: (1) the proposed class representative's interests are to vigorously pursue the claims of the class and are not antagonistic to the interests of other class members; and (2) the proposed class counsel are qualified, experienced and able to conduct the litigation. *Menkes*, 270 F.R.D. at 92. To satisfy the adequacy requirement, Plaintiff must show that her interests are not antagonistic to those of the class, and the same strategies that will prove their claims also apply to the class. Here, there are no antagonistic or conflicting interests between Plaintiff and her counsel and the absent class members; and Plaintiff and her counsel have vigorously prosecuted the action on behalf of the class and will continue to do so.

Once this threshold showing is made, the claims must fit into one or more of the categories of permissible class actions described in Rule 23(b). Under Rule 23(b)(3), Plaintiff must show that "the questions of law or fact common to Class Members predominate over any questions affecting only

individual members," and that "a class litigation is superior to other available methods for fairly and efficiently adjudicating the controversy." *In Re Petrobras Sec. Litig*., 862 F.3d 250, 260 (2d Cir. 2017) (citing *Brown v. Kelly*, 609 F.3d 467, 476 (2d Cir. 2010)). Rule 23(b)(3) identifies four factors for courts to consider in making findings of "predominance" and "superiority": (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. Fed. R. Civ. P. 23(b)(3).

"Preliminary settlement approval, provisional class certification, and appointment of class counsel have several practical purposes, including avoiding the costs of litigating class status while facilitating a global settlement, ensuring all class members are notified of the terms of the proposed Agreement, and setting the date and time of the final approval hearing." *Medina v. NYC Harlem Foods Inc*, No. 21-cv-1321, 2024 WL 2751127, at *1 (S.D.N.Y. May 29, 2024).

B. Certification of the Settlement Class Under Fed. R. Civ. P. 23 is Appropriate

Plaintiff requests the Court certify the following class under Rule 23: "all individuals residing in the United States whose PII was affected by the Incident." *See* Settlement Agreement, ¶ 47. The Named Plaintiff has alleged, and the evidence adduced during discovery and during the mediation process shows that the proposed Settlement Class satisfies the requirements of class certification. The numerosity requirement is met because the Settlement Class consists of over 15,000 Class Members. *See Menkes*, 270 F.R.D. at 90 (numerosity is satisfied when "a putative class exceeds 40 members."). Plaintiff can demonstrate commonality through common questions of law and fact that apply to every member of the Settlement Class under Fed. R. Civ. P. 23 (a)(2). The common facts to be considered include that Plaintiff and each member of the Settlement Class may have been affected by the Incident

and each received Defendant's notice that their PII was potentially included as part of the Incident. Thus, there are common questions applicable to Plaintiff and every member of the Settlement Class. Resolution of Plaintiff's claims equally applies to that of each other potential Settlement Class Member. Thus, Named Plaintiff's claims are not antagonistic to those of the Settlement Class. Plaintiff and the Settlement Class can also show that that "the claims or defenses of the representative parties are typical of the claims or defenses of the class" under Fed. R. Civ. P. 23(a)(3). The Named Plaintiff is an adequate representative of the Settlement Class because her interests are aligned with those of the Settlement Class. In addition, Class Counsel will adequately represent the class. Plaintiff's attorneys Marc Edelson, Edelson Lechtzin LLP, and Seth Lesser, Klafter Lesser LLP have substantial experience vigorously litigating class actions, including consumer class actions and data breach class actions, and are well suited to advocate on behalf of the Class. *See* Edelson Dec. ¶¶ 3-6; Lesser Dec. ¶¶ 3-5.

The Named Plaintiff and the Settlement Class meet the "predominance" requirement of Fed. R. Civ. P. 23(b)(3). The predominate questions involved include whether Defendant used reasonable data security measures to protect consumers' PII. That question can be resolved, for purposes of settlement, using the same evidence for all Members of the Settlement Classes, and thus is precisely the type of predominant question that makes a class-wide settlement worthwhile. There are no individual issues that would predominate over the issues common to the Named Plaintiff and the Settlement Class Members for purposes of settlement.

A class action is superior to other methods of adjudicating this matter under Fed. R. Civ. P. 23(b)(3). First, having all the Settlement Class Members' claims adjudicated in one lawsuit is far more efficient for the Court and the Parties than requiring the Settlement Class Members to initiate over 15,000 individual lawsuits. Second, there are no other existing lawsuits by any Settlement Class

Members concerning issues like this litigation. Third, the District of Connecticut is the most appropriate forum for this matter since Defendant and most of the Settlement Class Members reside in the Connecticut metropolitan area. Finally, there should be no difficulties in managing the proposed case as a class action since certification is being sought in the context of a settlement.

Because each of the prerequisites for class certification under Fed. R. Civ. P. 23 are met, the Named Plaintiff respectfully requests that the Court certify the Settlement Class.

C. The Court Should Appoint Concetta Verderame as Class Representative

"To appoint Lead Plaintiff as Class Representative, a court must 'find, by a preponderance of the evidence, that [she] is both an adequate and typical representative of the class....'" *Menkes*, 270 F.R.D. at 104. As explained above, Plaintiff has actively participated in this litigation since inception. Her claims are both adequate and typical of the claims which would be made by other Settlement Class Members. Accordingly, Plaintiff requests the Court to appoint her as Class Representative.

D. Appointment of Counsel for the Settlement Classes

The Court should appoint Marc Edelson, Edelson Lechtzin LLP, and Seth Lesser, Klafter Lesser LLP, as Plaintiff's Counsel for the Settlement Class. Rule 23 required "a court that certifies a class must appoint class counsel [who must] fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1). Courts generally consider the following attributes: the proposed class counsel's (1) work in identifying or investigating potential claims; (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the class. Rule 23(g)(1)(A); *Menkes*, 270 F.R.D. at 104.

Here, proposed Class Counsel have extensive experience prosecuting class actions and other complex cases, including data breach cases. *See* Edelson Dec. ¶¶ 3-6; Lesser Dec. ¶¶ 3-5. As discussed

above, proposed Class Counsel have worked extensively on identifying and investigating the claims here, know the law regarding class actions and data breach class actions, specifically, and have shown that they possess the resources available to represent the Class. Accordingly, the Court should appoint Marc Edelson, Edelson Lechtzin LLP, and Seth Lesser, Klafter Lesser LLP as Class Counsel.

E. Appointment of the Settlement Administrator

In connection with implementation of the Notice Program and administration of the settlement benefits, Plaintiff requests that the Court appoint Analytics, LLC to serve as the Settlement Administrator. Analytics, LLC has a trusted and proven track record of supporting thousands of class action administrations and distributing billions of settlement funds. Simmons Dec. ¶ 3. Notice and administration are expected to cost approximately $27,000.00 to be deducted from the overall settlement fund. Settlement Agreement ¶¶ 46; VII.

VII. Preliminary Approval of the Settlement is Appropriate

Courts may preliminarily approve a class action settlement when "it is the result of serious, informed, and non-collusive negotiations, where there are no grounds to doubt its fairness and no other obvious deficiencies ..., and where the settlement appears to fall within the range of possible approval." *Menkes*, 270 F.R.D. at 101. Pursuant to Fed. R. Civ. P. 23(e), at the preliminary approval stage, the court must determine whether it "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Rule 23(e)(2), in turn, specifies factors the court must ultimately consider at the final approval stage:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3)[7]; and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). As discussed below, each of these factors are met here.

Plaintiff submits that the proposed Settlement here is procedurally and substantively fair, reasonable, adequate, and is not a product of collusion. *Moses v. New York Times Co*. 79 F.4th 235 (2d Cir. 2023) requires courts to evaluate settlements according to Rule 23(e)(2)'s factors for both procedural and substantive fairness. *Id*. at 242-43 ("The first two factors are procedural in nature and the latter two guide the substantive review of a proposed settlement). Courts in the Second Circuit also consider whether a settlement is "fair, reasonable, and adequate" under the nine factors set out in *City of Detroit v. Grinnell Corp*., 495 F.2d 448 (2d Cir. 1974). *Moses*, 79 F.4th at 243 (this analysis does not displace the "traditional *Grinnell* factors, which remain a useful framework for considering the substantive fairness of a settlement."). Each of these factors are met here.

As above, Plaintiff has diligently pursued this litigation. The Parties participated in multiple meet and confers and a formal mediation session in January 2025. The settlement reached is the result of an arms-length negotiation with the mediator's assistance. During the negotiations the Parties each considered the strengths and weaknesses of their position and that of the opposing party. Moreover, the relief is adequate in that the settlement amount is commensurate with other data breach settlements

[7] Rule 23(e)(3) requires that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(3). There are no agreements here.

and within Plaintiff's projected damages. The settlement places all Settlement Class Members on an equal footing vis-a-vis their settlement award and *pro rata* shares. Plaintiff's counsel will request a one-third fee and there are no other agreements concerning the settlement.

"Fairness is determined upon review of both the terms of the settlement agreement and the negotiating process that led to such agreement." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184 (W.D.N.Y., April 29, 2005); *see also City of Providence v. Aeropostale, Inc*., 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014). Courts consider a settlement arising out of the adversarial process as an indication of fairness. *See Wright v. Stern*, 553 F. Supp. 2d 337, 343 (S.D.N.Y. 2008); *Henry v. Little Mint, Inc.*, 2014 WL 2199427, at *6 (S.D.N.Y. May 23, 2014). "The assistance of an experienced mediator reinforces that the settlement agreement is non-collusive." *Chen-Oster v. Goldman Sachs & Co*., 2023 WL 7325264, at *4 (S.D.N.Y. Nov. 7, 2023). "[Courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *In re EVCI Career Colls. Holding Corp. Sec. Litig*., 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007).

In determining whether a settlement agreement is substantively fair, courts in the Second Circuit also consider the *Grinnell* factors including: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendant to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Id.* 495 F.2d at 463.

Grinnell Factor No. 1 looks at the complexity, expense, and likely duration of the litigation. *Id.* Here, continuing the litigation through substantive discovery (including the production of technical

data and custodial documents and multiple depositions), motions to compel, motions for class certification, motions for summary judgment, and potential trial would significantly increase expenses to both Parties and substantially extend the duration of the case.

Grinnell Factor No. 2 considers the reaction of the class to the settlement. *Id.* Consideration of this factor is premature at this point. While the Named Plaintiff supports the Settlement, other Settlement Class Members have yet to receive notice and/or the opportunity to participate.

Grinnell Factor No. 3 considers the stage of the proceedings and the amount of discovery completed. *Id.* The Parties here have exchanged informal discovery and participated in the mediation which identified additional factors concerning the class, its size and composition. Named Plaintiff received sufficient discovery to determine to a fair degree of certainty the number of class members, and the types of data involved. These materials were sufficient for the parties to conduct informed negotiations.

Grinnell Factor No. 4 considers the risks of establishing liability. *Id.* The Named Plaintiff is confident she could establish liability on her claim.

Grinnell Factor No. 5 considers the risks of establishing damages. *Id.* The Settlement Agreement provides cash compensation for Documented Losses that Settlement Class members along with Time Compensation and three (3) years of credit monitoring, or a cash equivalent. Settlement Class Members are required to attest under penalty and provide documentation establishing their losses for Cash Payment A and attest under penalty for Cash Payment B.

Grinnell Factor No. 6 considers the risks of maintaining the class action through trial. *Id.* While Plaintiff is confident that her claims are meritorious and that evidence based on Defendant's information network's security policies would be sufficient to maintain class certification, the Settlement eliminates the risk and the expense and delay inherently involved in litigating both a motion

to certify the class, and a potential motion to decertify the class, and, to that extent, this factor weighs in favor of approval. *See Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 200 (S.D.N.Y. 2012), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013).

Grinnell Factor No. 7 considers the ability of the defendant to withstand a greater judgment. *Id.* Futurity is a small, privately owned company. It has limited resources to withstand protracted litigation or pay much more in damages.

Grinnell Factor No. 8 considers the range of reasonableness of the settlement fund in light of the best possible recovery. *Id.* As above, the Settlement amount is well within the range of reasonableness. Plaintiff believes the Settlement is well within the damages that could have been awarded on the claim at trial.

Grinnell Factor No. 9 considers the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Id.* As discussed above, the risks of litigation are substantial. Defendant could prevail on any one of its defenses regarding class certification, liability, or damages. Given these risks, the Settlement is within the range of reasonableness.

Plaintiff submits that the Settlement here satisfies both the Rule 23 (e) and *Grinnell* factors for the settlement of a Rule 23 class action.

IX. Proposed Notice

Plaintiff seeks approval of the proposed notices to the class. Under Federal Rule of Civil Procedure 23(c)(2)(B), a "court must direct to class members the best notice that is practicable under the circumstances...." *Menkes*, 270 F.R.D. at 105.

> With respect to substance, this requires that the notice clearly and concisely state in plain, easily understood language: (1) the nature of the action; (2) the definition of the class certified; (3) the class claims, issues, or defenses; (4) that a class member may enter an appearance through an attorney if the member so desires; (5) that the Court will exclude from the class any member who requests exclusion; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on class

members. Fed. R. Civ. P. 23(c)(2)(B).

Id.

With respect to method, Rule 23(c)(2)(B) requires "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 176 (1974) ("[I]ndividual notice to identifiable class members is not a discretionary consideration to be waived in a particular case. It is, rather, an unambiguous requirement of Rule 23.").

X. Conclusion

Plaintiffs respectfully request that the Court certify the Settlement Class under Fed. R. Civ. P. 23 for settlement purposes only, preliminarily approve the Settlement Agreement, order that Notice of the Settlement and Claim Forms be sent to the Settlement Class Members and set a hearing date for Final Settlement Approval.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

s/ Seth R. Lesser
Seth R. Lesser