

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 9:24-CV-80612-AMC**

**MARY JANE WHALEN, and
CHRISTINE V. RONA**, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**GUNSTER, YOAKLEY &
STEWART, PA**

Defendant.

**PLAINTIFFS’ UNOPPOSED MOTION AND
MEMORANDUM OF LAW IN SUPPORT
OF PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Honorable Aileen M. Cannon

I. INTRODUCTION¹

Plaintiffs, Mary Jane Whalen and Christine V. Rona (“Plaintiffs” or “Proposed Settlement Class Representatives”) move for preliminary approval of the Settlement Agreement² they reached with Defendant Gunster, Yoakley & Stewart, PA (“Gunster” or “Defendant”) (collectively, “the Parties”). The Parties have reached a proposed settlement that, if approved by the Court, will resolve the Plaintiffs’ and Settlement Class Members’ claims against Defendant arising from the Data Breach at issue in this Action. In support of this Motion, Plaintiffs submit herewith the Settlement Agreement as **Exhibit 1** and the Declaration of proposed Class Counsel as **Exhibit 2**.

This case arises from a Data Breach that Plaintiffs allege compromised the security of their and other Settlement Class Members’ Personal Information, including, but not limited to, data

¹ Gunster does not oppose the relief sought by this Motion for Preliminary Approval (the “Motion”) and agrees that the Court should grant the Motion. By not opposing this relief, Gunster does not concede the factual basis for any claim and denies liability. The language in this Motion, including the description of proceedings, as well as legal and factual arguments, is Plaintiffs’, and Gunster may disagree with certain of those characterizations and descriptions.

² Unless defined, capitalized terms have the same meaning attributed to them in the Settlement Agreement, attached to Plaintiffs Motion as Exhibit “1.”

that Gunster acquired from current and former employees, clients, and other persons during the ordinary course of its practice, and which Plaintiffs allege Gunster was duty bound to protect from unauthorized persons, including cyber criminals. The Personal Information affected by the Data Breach included a wide variety of information, including name, address, date of birth, Social Security number, medical or health insurance information, and other sensitive information, which in the hands of cyber criminals can result in identity theft.

II. SUMMARY OF THE LITIGATION

On or around November 27, 2022, Gunster determined that third-party cybercriminals had gained access to Gunster's systems (*i.e.*, the "Data Breach"). Defendant notified impacted individuals of the Data Breach beginning on or around August 2023. On May 13, 2024, Mary Jane Whalen ("Whalen") filed a putative class action complaint against Gunster in the United States District Court for the Southern District of Florida, asserting claims arising out of the Data Breach. On August 15, 2024, Gunster moved to dismiss Whalen's complaint for failure to state a claim. On September 17, 2024, Plaintiff Whalen filed her Amended Complaint, which, among other changes, added an additional Plaintiff, Christine V. Rona ("Rona"). On October 1, 2024, the Parties engaged in a full-day, in-person mediation session before former United States Magistrate Judge, Diane M. Welsh (ret.), a nationally recognized and experienced mediator with expertise in data breach class actions. Over the course of the day, the Parties engaged in arm's length, hard-fought negotiations, and with the assistance of Judge Welsh, the Parties reached an agreement in principle, the terms of which were later finalized by way of the Settlement Agreement and its attached exhibits.

The Settlement Agreement was executed, subject to preliminary and final approval by the Court.

III. SUMMARY OF SETTLEMENT

The Settlement Agreement negotiated on behalf of the Settlement Class provides for the creation of a non-reversionary cash settlement fund in the amount of eight million five hundred thousand United States Dollars \$8,500,000.00 (Settlement Amount) (the “Settlement Fund”). SA ¶ 2.39. The Settlement Fund shall be used to pay for (i) Administration and Notice Costs; (ii) the Approved Claims; and (iii) the Attorneys’ Fees and Expenses. SA ¶ 3.2. The Settlement Agreement provides further that the Settlement Fund shall be paid to the Settlement Administrator as follows: (i) within ten (10) Business Days of the Preliminary Approval Order, Gunster will pay or cause to be paid \$495,000.00 into the Settlement Fund Account to pay for Administration and Notice Costs, which amount will be credited towards the \$8,500,000.00 total amount of the Settlement Fund (SA ¶ 3.1.1) and (ii) within ten (10) Business Days of the Effective Date, Gunster shall deposit or cause to be deposited the remaining balance of the Settlement Fund (eight million five thousand United States Dollars (\$8,005,000.00)) into the Settlement Fund Account. SA ¶ 3.1.2. In no event shall Gunster be obligated to pay more than eight million five hundred thousand United States Dollars (\$8,500,000.00) in connection with the Settlement. SA ¶ 3.2.

A. The Settlement Class

The Settlement Class is defined as “all persons residing in the United States whose Personal Information was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach.” The Settlement Class specifically excludes: (i) Gunster, any Entity in which Gunster has a controlling interest, and individuals who at any time since November 27, 2022 served as Gunster directors or officers; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement.” SA ¶ 2.36.

B. The Settlement Benefits

1. Reimbursement for “Ordinary” Out-of-Pocket Losses and Ordinary Attested Time

All Settlement Class Members may submit a claim for Ordinary Out-of-Pocket Losses and/or Ordinary Attested Time up to a total of two thousand five hundred dollars (\$2,500) per Settlement Class Member. SA ¶ 7.2. The Settlement Fund will be used to pay valid and timely submitted claims for each of the following categories: (1) costs associated with accessing or freezing/unfreezing credit reports with any credit-reporting agency; (2) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and (3) credit monitoring or other mitigative costs. SA ¶ 7.2.1. Such claims will be evaluated by the Settlement Administrator as per the process set out in the Settlement Agreement.

Whether or not they incurred Ordinary Out-of-Pocket Losses, Settlement Class Members may also submit a claim for up to seven (7) hours of time spent responding to receiving notice of the Data Breach at a rate of thirty dollars (\$30) per hour. SA ¶ 7.2.3.

2. Reimbursement for “Extraordinary” Losses and Extraordinary Attested Time

In addition to submitting a claim for Ordinary Out-of-Pocket Losses and/or Ordinary Attested Time, Settlement Class Members who believe they have suffered identity theft, fraud, or other extraordinary losses may submit a claim for Extraordinary Losses and/or Extraordinary Attested Time up to thirty-five thousand dollars (\$35,000) per individual, in the aggregate as set forth in the Settlement Agreement. SA ¶ 7.3. The total amount of compensation that can be claimed for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses and

Extraordinary Attested Time cannot exceed \$35,000 per individual. *Id.* Such claims will be evaluated by the Settlement Administrator as per the process set out in the Settlement Agreement, which specifies that Claims for Ordinary Out-of-Pocket Losses and Extraordinary Losses shall require supporting third-party documentation. SA, ¶7.2.2 and ¶7.3.2. Whether or not they incurred Extraordinary Losses and whether or not they made a claim for Ordinary Out-of-Pocket Losses or Ordinary Attested Time, Settlement Class Members may submit a claim for up to ten (10) hours of time spent remedying identity theft, fraud, or other misuse of their information related to the Data Breach at a rate of thirty dollars (\$30) per hour. SA ¶ 7.3.4. The total Attested Time (“Ordinary” and “Extraordinary” Attested Time, combined) that can be claimed cannot exceed ten (10) hours. *Id.*

3. Credit Monitoring Services

Settlement Class Members, regardless of whether they make a claim for reimbursement, can elect to enroll in three (3) years of three bureau identity theft protection and credit monitoring services under the Settlement Agreement that will include the following features: (1) dark web scanning with user notification if potentially unauthorized use of a Settlement Class Member’s personal information is detected; (2) identity theft insurance; (3) real-time credit monitoring with Equifax, Experian, and TransUnion; and (4) access to fraud resolution agents. SA ¶ 7.4. The cost of providing the credit monitoring services described here shall be paid from the Settlement Fund.

4. Pro Rata Increase or Reduction of Approved Claims

If the total amount of Approved Claims submitted (as determined in the process set out in SA ¶ 7.5), when aggregated with Administration and Notice Costs and Attorneys’ Fees and Expenses as approved by the Court, is less than the amount of the Settlement Fund, then Approved Claims shall be increased on a pro rata basis such that the total aggregate amount of Approved

Claims, Administration and Notice Costs, and Attorneys' Fees and Expenses equals (as reasonably close as possible without exceeding) the amount of the Settlement Fund. SA ¶ 7.6. If the total amount of Approved Claims submitted, when aggregated with Administration and Notice Costs and Attorneys' Fees and Expenses as approved by the Court exceeds the amount of the Settlement Fund, then Approved Claims shall be reduced on a pro rata basis such that the total aggregate amount of Approved Claims, Administration and Notice Costs, and Attorneys' Fees and Expenses does not exceed the amount of the Settlement Fund. *Id.* The Settlement Administrator shall reasonably exercise its discretion for purposes of implementing any pro rata increase or reduction provided herein to account for estimated, but not yet incurred, Administration and Notice Costs. For the avoidance of doubt, in no event shall Gunster's liability or obligation under the Settlement Agreement exceed the Settlement Fund. SA ¶ 7.6.

5. Payment of Approved Claims

Approved Claims will be paid via an electronic payment, or a check mailed to the Settlement Class Member. SA ¶ 7.7. Settlement Class Members will have ninety (90) days to cash the checks or electronically receive the payment, after which any uncashed checks will be void and the ability to receive the electronic payment will expire. *Id.* If the aggregate value of void checks and lapsed electronic payments makes it economically feasible, such funds (after decreasing the total by the cost of any anticipated tax reporting requirements and other ancillary expenses) will be disbursed pro rata via a second round of payments issued to those who successfully received electronic payments or cashed checks issued during the first round of disbursement. *Id.* After ninety (90) days of the second disbursement, any uncashed checks will be void and the ability to receive electronic payment will also expire. *Id.* The aggregate value of void checks and unclaimed electronic payments after the second round (or, if there is no second round

of checks, after the first round of checks) and/or remaining funds following the preparation of any required tax documents will be paid to increase the length of credit monitoring for those who elect it if possible, or if not, to the Florida Bar Foundation if approved by the Court. *Id.* However, if the second round of payments is not economically feasible, funds remaining in the Settlement Fund will be directly given to the Florida Bar Foundation, if approved by the Court. *Id.*

6. Information Security Enhancements

In response to the Data Breach and the Action, Gunster has further enhanced its data security infrastructure by, among other things, engaging in a comprehensive SOC II Type II review and audit; deploying a best in class EDR tool; implementing a centralized logging and monitoring solution with 24/7 third-party monitoring for log aggregation, threat detection, and response capabilities; enhancing backup solutions and disaster recovery protocols; expanding and hardening cloud environments; implementing enhanced access controls, including but not limited to a Privileged Access Management solution; enhancing application security testing; and engaging in a comprehensive review and modification of firewall rules and configurations. SA ¶8.1.

7. Release

As set forth in more detail the Settlement Agreement, as of the Effective Date, all Releasing Parties, on behalf of themselves, their heirs, assigns, beneficiaries, executors, administrators, insurers, predecessors, and successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely, unconditionally, and forever release and discharge any and all Released Claims against the Released Parties, except for claims relating to the enforcement of the Settlement or Agreement. SA ¶14.1 The Parties expressly intend that all Released Parties, including Released Parties who are third-party beneficiaries (*e.g.*, current and former clients whose information was impacted in the Data Breach), shall have the right to directly enforce the Releases

herein. SA ¶14.2. The Parties understand that if the facts upon which the Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that the Agreement, including the releases, shall remain effective notwithstanding such difference in facts. SA ¶ 14.3 The Parties agree that in entering the Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein. *Id.* Notwithstanding any other provision of the Agreement, nothing in the Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of the Agreement, or any court order implementing the Agreement, in a manner consistent with the terms of the Agreement. *Id.*

Within ten (10) Business Days after the Effective Date, proposed Class Counsel and the proposed Settlement Class Representatives shall dismiss with prejudice all claims, Actions, or proceedings that are released pursuant to the Agreement. SA ¶14.4.

C. The Notice and Claims Process

1. Notice

The Settlement Administrator shall be responsible for implementing and executing the Notice Plan. Within fourteen (14) days after the Court's entry of a Preliminary Approval Order, Gunster shall provide the Settlement Administrator with available contact information for Settlement Class Members. SA ¶10.1.

Should the Settlement be terminated for any of the reasons identified in the Settlement Agreement, the Settlement Administrator shall immediately destroy all contact information received from Gunster for Settlement Class Members. SA ¶10.2. As specified in Paragraph 3.2 of the Settlement Agreement, all costs incurred by the Settlement Administrator or otherwise relating

to providing notice to Settlement Class Members shall be paid from the Settlement Fund. SA ¶10.3.

Subject to the Court’s approval, the Parties propose a Notice Plan (Exhibit D) requiring a customary form of short notice to be mailed (and, where possible, emailed) to Settlement Class Members and a customary long form notice (“Long Notice”). Notice Plan, Exhibit D ¶ 9. The Settlement Class consists of approximately 746,000 Settlement Class Members, approximately 549,000 of which will be provided with direct notice to their last-known address. The remainder of the class will be provided with notice through a media campaign, as described in the Notice Plan. *Id.* Verita Global, LLC (“Settlement Administrator”) will establish and maintain a dedicated settlement website that will be updated throughout the claims period with the Long Notice and Claim Form approved by the Court, as well as the Settlement Agreement. Notice Plan, Exhibit D ¶18. The Settlement Administrator will also maintain a toll-free help line, post office box, and e-mail address where Settlement Class Members may submit hard copy Claim Forms, exclusion requests and other case correspondence to allow Settlement Class Members to easily correspond with Verita. Exhibit D ¶¶18-20.

Additionally, Defendant will serve or cause to be served the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notice”), not later than ten (10) days after the Settlement Agreement is filed with the Court. The cost of providing notice pursuant to 28 U.S.C. § 1715 shall be paid as an Administration and Notice Cost from the Settlement Fund. SA ¶11.1.

2. Requests for Opt-Outs

Any individual who wishes to exclude themselves from the Settlement must submit a written request for exclusion to the Settlement Administrator, which shall be postmarked or submitted electronically no later than the Opt-Out Deadline. SA ¶ 16.1.

The written request for exclusion must:

- (i) Identify the case name of the Action;
- (ii) Identify the name and address of the individual seeking exclusion from the Settlement;
- (iii) Be personally signed by the individual seeking exclusion;
- (iv) Include a statement clearly indicating the individual's intent to be excluded from the Settlement; and
- (v) Request exclusion only for that one individual whose personal signature appears on the request. SA ¶ 16.2.

Opt-out requests seeking exclusion on behalf of more than one individual shall be deemed invalid by the Settlement Administrator. SA ¶ 16.3. Any individual who submits a valid and timely request for exclusion in the manner described herein shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement. SA ¶ 16.4. Any individual who does not submit a valid and timely request for exclusion in the manner described herein shall be deemed to be a Settlement Class Member upon expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments applicable to the Settlement Class. SA ¶ 16.5.

3. Objections

Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Court on or before the Objection Deadline, as specified in the Preliminary Approval Order. SA ¶ 17.1.

The written objection must include:

- (i) The case name and number of the Action;
- (ii) The name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;
- (iii) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- (iv) A statement of the specific grounds for the objection; and
- (v) A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel. SA ¶ 17.2.

In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney), the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing. SA ¶ 17.3. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Agreement, the Preliminary Approval Order, and in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of the Agreement by appeal or any other means. SA ¶ 17.4.

4. Claims Process

The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim or decide whether they would like to opt-out or object. The Claim Form, attached to the Settlement Agreement as Exhibit A, is written in plain language to facilitate Settlement Class Members' ease in completing it.

D. Attorneys' Fees and Expenses

Proposed Class Counsel shall submit a request to the Court for payment of Attorneys' Fees, expressed as a percentage of the value conferred by the Settlement on the Settlement Class, and for reimbursement of Expenses incurred in prosecuting and settling the Action. SA ¶ 18.1. Any request for Attorneys' Fees and Expenses will be filed with the Court at least thirty-five (35) days before the Objection Deadline. *Id.* If approved by the Court, such Attorneys' Fees and Expenses will be paid by the Settlement Administrator from the Settlement Fund within twenty-one (21) Business Days after the Effective Date. *Id.* Gunster agrees not to oppose any request to the Court for Attorneys' Fees and Expenses, provided such request does not exceed thirty percent of the Settlement Fund. SA ¶ 18.2.

IV. ARGUMENT

A. Legal Standards³

Approval of a proposed settlement is a two-step process. First, the court decides whether the proposed settlement is "within the range of possible approval," *Fresco v. Auto Data Direct, Inc.*, 2007 WL 2330895, at *4 (S.D. Fla. May 14, 2007), to decide "whether to direct notice ...

³ In addition to its substantive review of the Settlement's terms, the Court must have subject matter jurisdiction over this case. CAFA's jurisdictional requirements are easily met here (minimal diversity, an amount in controversy exceeding \$5,000,000, and more than 100 putative class members). Moreover, CAFA's home-state controversy exception does not apply because, based on available address information, less than one-third of the Settlement Class has a Florida address.

to the class, invite the class's reaction, and schedule a final fairness hearing." 4 William B. Rubenstein, *Newberg on Class Actions* § 13:10 (5th ed. 2015). Second, at the final approval hearing, the court decides if the settlement is fair, reasonable, and adequate. *Id.*

Under Rule 23(e)(1), as amended on December 1, 2018, the Court must direct notice to the class of a class action settlement upon determining that notice is justified because the Court concludes it is "more likely than not" to finally approve the settlement and certify a settlement class. *See* Fed. R. Civ. P. 23(e)(1)(B). The amendments specify that before finally approving a settlement, a court should consider whether (1) the class was adequately represented; (2) the settlement was negotiated at arm's length; (3) the relief is adequate, taking into account the costs, risks, and delay of trial and appeal; how the relief will be distributed; the terms governing attorneys' fees; and any side agreements; and (4) whether settlement class members are treated equitably relative to each other. *Id.*

In assessing whether a settlement is fair, reasonable, and adequate, courts in this Circuit may also consider the so-called *Bennett* factors, which include: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of the litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir.1984). In weighing these factors, the court's "judgment is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Id.* (citations omitted).

Settlement "has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient

use of judicial resources, and achieve the speedy resolution of justice[.]” *Turner v. Gen. Elec. Co.*, 2006 WL 2620275, at *2 (M.D. Fla. Sept. 13, 2006). It is with this sentiment and for these reasons that this Court has previously approved Class Settlements. *See, e.g., In re Miranda v. Waste Mgmt., Inc. of Fla.*, 2021 WL 12299676, at *1 (S.D. Fla. May 5, 2021); *See, e.g., In re Peng v. Mastroianni*, 2023 WL 5926732, at *1 (S.D. Fla. Aug. 3, 2023). Accordingly, “[p]ublic policy strongly favors the pretrial settlement of class action lawsuits.” *In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992).

B. The Proposed Settlement is Fair, Reasonable, and Adequate

1. The Class was Adequately Represented

Adequacy of representation is an issue traditionally considered in connection with class certification and involves two questions: “(1) whether plaintiffs’ counsel are qualified, experienced, and generally able to conduct the proposed litigation” and “(2) whether plaintiffs have interests antagonistic to those of the rest of the class.” *Ibrahim v. Acosta*, 326 F.R.D. 696, 701 (S.D. Fla. 2018) (quotations omitted). Here, the Plaintiffs have the same interests as other Settlement Class Members as they are asserting the same claims and share the same alleged injuries. Further, the record shows proposed Class Counsel worked diligently to bring this case to resolution by engaging in a full-day, in-person mediation before former United States Magistrate Judge, Diane M. Welsh (ret.), an experienced data breach class action mediator. *See JAY Decl.*, Section I ¶1.

2. The Proposed Settlement was Negotiated at Arm’s-Length

The Settlement resulted from arm’s-length negotiations between experienced proposed Class Counsel with an understanding of the strengths and weaknesses of their respective positions in this lawsuit, assisted by an experienced former U.S magistrate judge with significant experience

in cyber litigation serving as mediator. JAY Decl., Section I ¶1; Section II ¶ 1.2. These circumstances weigh in favor of approval. *See, e.g., In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 662 (S.D. Fla. 2011) (approving settlement where it “was reached in the absence of collusion, is the product of informed, good-faith, arms’-length negotiations between the parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator”); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding that class settlement was not collusive in part because it was overseen by “an experienced and well-respected mediator”); *see also* Manual for Complex Litig. at § 30.42 (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted).

Additionally, the Parties spent significant time negotiating the terms of the final written Settlement Agreement which is now presented to the Court for approval. At all times, these negotiations were at arm’s length and, while courteous and professional, the negotiations were intense and hard-fought on all sides. *Id.*

3. Plaintiffs Have Sufficient Information to Weigh the Benefits of Settlement

“The stage of the proceedings at which a settlement is achieved is evaluated to ensure that plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation.” *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) (citations omitted). In addition, “[e]arly settlements are favored” such that “vast formal discovery need not be taken.” *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (S.D. Fla. 2014) (citations omitted).

While the Parties settled relatively early in the litigation, before Plaintiffs’ putative class

was certified, the Parties had sufficient information to adequately evaluate the merits of the case. The Parties exchanged significant information in conjunction with settlement negotiations that included the class size and demographics, information regarding the technical aspects of the breach, discovery of the breach and duration of the breach. Additionally, proposed Class Counsel relied on their experience presenting expert evidence and litigating the key legal issues in other major data breach cases to assist in evaluating the merits of this case. JAY Decl., ¶¶1-15. As recognized in other cases, “[i]nformation obtained from other cases may be used to assist in evaluating the merits of a proposed settlement of a different case.” *Lipuma*, 406 F. Supp. 2d at 1325. Accordingly, Plaintiffs had more than sufficient information available to weigh the benefits of Settlement against further litigation. *See, e.g., Gonzalez v. TCR Sports Broad. Holding, LLP*, 2019 WL 2249941, at *5 (S.D. Fla. May 24, 2019) (“the early settlement reached between the parties and the extent to which the parties were informed about the merits of their claims and defenses weighs in favor of approving the Settlement Agreement.”).

4. The Settlement Relief is Fair, Reasonable, and Adequate

In terms of relief offered, the Settlement is as comprehensive as nearly any other data breach settlement on record, and the specific benefits compare favorably to what has been previously approved, including:

- A sizeable, \$35,000 cap on Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses and Extraordinary Attested Time.
- Compensation for up to 10 hours of Ordinary and Extraordinary Attested Time.

- Three years of three-bureau identity theft protection and credit monitoring services available to all Settlement Class Members regardless of whether they make a claim for Reimbursement.
- Pro Rata Cash Payments from the remainder of the Settlement Fund to all Settlement Class Members that file a claim, through two rounds of distributions, if economically feasible.
- Information Security Practice commitments that are narrowly tailored to further enhance Defendant's cybersecurity posture.

For example, the relief made available under the Settlement compares very favorably to the relief made available to victims of large data breaches in common fund cases that has previously received approval and provides for a significantly greater recovery on a per-person basis. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *2 (N.D. Ga. Mar. 17, 2020) (describing settlement benefits made available from \$380.5 million fund on behalf of 147 million class members); *In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 2019 WL 3410382, at *23-24 (D. Or. July 29, 2019) (describing settlement benefits made available from \$32 million fund on behalf of 11 million class members); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D. Cal. 2018) (approving \$115 million settlement on behalf of more than 79 million class members). The settlement fund also compares favorably to the relief offered in comparably sized cases. *See, e.g., In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, (S.D. Fla. Oct. 5, 2024) (approving \$6 million settlement on behalf of 2,712,790 class members); *See, e.g., In re Citrix Data Breach Litig.*, 2021 WL 2410651, at *3 (S.D. Fla. June 11, 2021) (approving \$2.275 million settlement on behalf of 24,316 class members); *See, e.g., Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, 2019 WL 3183651, at *7

(D. Md. July 15, 2019) (approving \$3.25 million settlement on behalf of 61,000 class members).

Proposed Class Counsel, a group with extensive experience in leading major data breach class actions, believe that the relief is fair, reasonable, adequate, and superior to many comparable settlements on record. JAY Decl., Section II ¶ 1. The Court may rely upon such experienced counsel's judgment in assessing the fairness of the Settlement. *See, e.g., Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012) ("Absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel.").

a. The Risks, Costs, and Delay of Continued Litigation

While Plaintiffs are confident in the merits of their claims, they also understand that Defendant will assert a number of potentially case-dispositive defenses and are pragmatic in their awareness of the various defenses available to Defendant, as well as the risks inherent to continued litigation. Defendant has consistently denied the allegations raised by the Plaintiffs and made clear at the outset that they would vigorously defend the case. The Settlement Agreement avoids these uncertainties and provides the Settlement Class with meaningful and certain relief.

Due at least in part to their cutting-edge nature and the rapidly evolving law, class actions can involve some level of risk, expense, and complexity, which is one reason that judicial policy so strongly favors resolving class actions through settlement. *See In re U.S. Oil & Gas Litig.*, 967 F.2d at 493. Should this litigation continue, class certification is a significant hurdle that introduces additional complexities, including the potential for denial of certification. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). A settlement today not only avoids the risks of continued litigation, but it also eliminates the risk that the Court would not certify the class or certification might not be upheld on appeal, and it also

provides benefits to Settlement Class Members of the type designed to address the common repercussions which arise following a data breach.

Thus, the costs and risks of trial and appeal support a finding that this Court will likely approve the Settlement.

b. The Method of Distributing Relief is Effective

The settlement distribution process, developed with proposed Class Counsel's knowledge and experience overseeing the administration of dozens of data breach settlements, will be efficient and effective. Settlement Class Members can easily file claims for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses and Extraordinary Attested Time, and Credit Monitoring Services. SA ¶7. Documentation requirements are not onerous, and not even required for many benefits. *Id.*

c. The Terms Relating to Attorneys' Fees and Expenses are Reasonable

Proposed Class Counsel will separately move for Attorneys' Fees and Expenses in the amount of \$2,550,000 to be paid from the Settlement Fund that will be set forth in the fee motion. SA ¶ 18.1. Pursuant to the Settlement Agreement, proposed Class Counsel will file their motion for attorneys' fees and expenses at least thirty-five (35) days before the Objection Deadline and Gunster agrees not to oppose any request to the Court for Attorneys' Fees and Expenses, provided such request does not exceed thirty percent of the Settlement Fund. SA ¶ 18.2. If approved by the Court, such Attorneys' Fees and Expenses shall be paid by the Settlement Administrator from the Settlement Fund within twenty-one (21) Business Days after the Effective Date. SA ¶ 18.1.

“Although there is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee, an award of one-third of the common fund is consistent with the trend in this Circuit.” *Gonzalez*, 2019 WL 2249941, at *6 (internal quotations omitted and citing

cases); *see also Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (“The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third”); Theodore Eisenberg, *et al.*, *Attorneys’ Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 951 (2017) (empirical study showing the median award in the 11th Circuit is 33%).

While proposed Class Counsel will provide a more thorough analysis of the reasonableness of its forthcoming motion for Attorneys’ Fees and Expenses, at this stage, the Court can conclude that it is likely to approve the Settlement for purposes of sending notice to the class, even if it has not yet made a final determination as to Attorneys’ Fees and Expenses.

5. Agreements Required to be Identified by Rule 23(e)(3)

Under Rule 23(e)(3), “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” There is no agreement between the Parties, except as set forth in the Settlement Agreement, including (but not limited to) the separate writing referenced in Paragraph 6.2 of the Settlement Agreement.

6. Settlement Class Members are Treated Equitably Relative to Each Other

The last requirement under Rule 23(e) is that the Settlement “treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement treats all Settlement Class Members equitably relative to one another because all are eligible to receive reimbursement based on expenses incurred and time spent, not on any unequitable basis. JAY Decl., Section II ¶1.6; Section III.

C. Certification of the Settlement Class is Appropriate

The second requirement in Rule 23(e)(1) for issuance of notice to the class is a finding that the Court will “likely be able to . . . certify the class for purposes of judgment” on the proposed

settlement. Here, the Settlement Class meets the requirements for certification under Rule 23(b)(3), so the Court should conclude that issuing notice is justified.

“A class may be certified solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.” *Lipuma*, 406 F. Supp. 2d at 1313-14 (quotations omitted). The Supreme Court has held that because a class settlement obviates a trial, the district judge deciding whether to certify a settlement class action “need not inquire whether the case, if tried, would present intractable management problems,” under Rule 23(b)(3). *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 ((U.S.Pa. June 25, 1997). However, the settlement context demands “undiluted, even heightened, attention” to “unwarranted or overbroad class definitions.” *Id.* Class certification is proper if the proposed class, proposed class representatives, and class counsel satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a). Fed. R. Civ. P 23(a)(1)–(4); *see also Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 313 (S.D. Fla. 2001). Additionally, where (as in this case) certification is sought under Rule 23(b)(3), the Plaintiffs must demonstrate that common questions of law or fact predominate over individual issues and that a class action is superior to other methods of adjudicating the claims. Fed. R. Civ. P. 23(b)(3); *Amchem*, 521 U.S. at 615-16. District courts are given broad discretion to determine whether certification of a class action lawsuit is appropriate. *Walco Investments, Inc. v. Thenen*, 168 F.R.D. 315, 323 (S.D. Fla. 1996).

Because this case meets all of the requirements of Rule 23(a) and (b)(3), as set forth below, certification is appropriate.

1. The Settlement Class Meets the Requirements of Rules 23(a) and (b)(3)

a. Numerosity

Numerosity requires “the class [be] so numerous that joinder of all members is

impractical.” Fed. R. Civ. P. 23(a)(1). “While ‘mere allegations of numerosity are insufficient,’ Fed. R. Civ. P. 23(a)(1) imposes a ‘generally low hurdle,’ and ‘a plaintiff need not show the precise number of members in the class.’” *Manno v. Healthcare Revenue Recovery Grp., LLC*, 289 F.R.D. 674, 684 (S.D. Fla. 2013) (citation omitted). Courts require only that plaintiffs provide “some evidence of the number of members in the purported class, or at least a reasonable estimate of that number.” *Leszczynski v. Allianz Ins.*, 176 F.R.D. 659, 669 (S.D. Fla. 1997). Here, Defendant identified approximately 745,636 individuals affected by the Data Breach. Numerosity is thus easily satisfied.

b. Commonality

“The threshold for commonality under Rule 23(a)(2) is not high.” *In re Checking*, 275 F.R.D. at 659. “[C]ommonality requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members.” *Williams v. Mohawk Industries, Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009).

Here, the commonality requirement of Rule 23(a)(2) is readily satisfied because class members are joined by the common questions of law and fact that arise from the same event—the Data Breach. As alleged by Plaintiffs, the critical issues posed by this action include: (1) whether and to what extent Defendant had a duty to protect and safeguard the Personal Information of Plaintiffs and the Settlement Class Members from access to that Personal Information by unauthorized third parties; (2) whether Defendant breached that duty to Plaintiffs and the Settlement Class Members by failing to implement and maintain data security procedures and practices commensurate with the nature and scope of the Personal Information compromised in the Data Breach; and (3) whether Plaintiffs and the Settlement Class Members were injured as a result of the Data Breach. These common issues aggregate toward the singular conduct of Gunster

with respect to the Data Breach. *See, e.g., In re Countrywide Fin Corp. Customer Data Sec. Breach Litig.*, 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) (“All class members had their private information stored in Countrywide’s databases at the time of the data breach”); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig.*, 851 F.Supp.2d 1040, 1059 (S.D. Tex. 2012) (“Answering the factual and legal questions about Heartland’s conduct will assist in reaching class wide resolution.”).

c. Typicality

The next prerequisite to certification, typicality, “measures whether a significant nexus exists between the claims of the named representative and those of the class at large.” *Hines v. Widnall*, 334 F.3d 1253, 1256 (11th Cir. 2003); Fed. R. Civ. P. 23(a)(3). A class representative’s claims are typical of the claims of the class if they “arise from the same event or pattern or practice and are based on the same legal theory.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984); *see also Cooper v. S. Co.*, 390 F.3d 695, 714 (11th Cir. 2004) (“Neither the typicality nor the commonality requirement mandates that all putative class members share identical claims, and . . . factual differences among the claims of the putative members do not defeat certification.”) (internal quotations omitted). Simply put, when the same course of conduct is directed at both the named plaintiffs and the members of the proposed class, the typicality requirement is met. *Kennedy v. Tallant*, 710 F.2d 711, 717 (11th Cir. 1983).

Here, the typicality requirement is satisfied for the same reasons that Plaintiffs’ claims meet the commonality requirement. Specifically, Plaintiffs’ claims are typical of those of the putative class because they arise from the same Data Breach and from the same legal duty they allege Gunster had to secure the Personal Information of Plaintiffs and the Settlement Class

Members, comprising a clear nexus between Plaintiffs' claims and those of the Settlement Class Members. *Hines*, 334 F.3d at 1256. Typicality is thus satisfied.

d. Adequacy

Rule 23(a)(4) requires that the class representative “not possess interests which are antagonistic to the interests of the class.” 1 *Newberg on Class Actions* § 3:21. Additionally, the class representatives' counsel “must be qualified, experienced, and generally able to conduct the litigation.” *Id.*; *Amchem*, 521 U.S. at *625–26. As noted above, the Plaintiffs are members of the Settlement Class and do not possess any interests antagonistic to the Settlement Class. JAY Decl., Section III. They each allege they provided their Personal Information to Gunster and that they were harmed because of the Data Breach. Additionally, Plaintiffs have vigorously prosecuted this case for the benefit of all Settlement Class Members by filing the underlying action, reviewing pleadings, conferring with proposed Class Counsel, and providing input in crafting and approving the Settlement. *Id.*

In addition, proposed Class Counsel are qualified to represent the Settlement Class. They have extensive experience in prosecuting data breach cases, having represented data breach victims in numerous cases across the country. JAY Decl., ¶¶1-15. In this case, they have spent considerable time investigating Settlement Class Members' injuries and claims and negotiating a well-informed Settlement on behalf of the Settlement Class. Accordingly, the Rule 23(a) prerequisites have been met.

e. Predominance

Rule 23(b)(3)'s predominance requirement focuses primarily on whether a defendant's liability is common enough to be resolved on a class basis, *see Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551–57 (2011), and whether the proposed class is “sufficiently cohesive to

warrant adjudication by representation,” *Amchem*, 521 U.S. at 623. Common issues of fact and law predominate in a case if they have “a direct impact on every class member’s effort to establish liability and on every class member’s entitlement to injunctive and monetary relief.” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1254 (11th Cir. 2004).

In this case, the key predominating questions are whether Gunster had a duty to exercise reasonable care in safeguarding, securing, and protecting the Personal Information of Plaintiffs and the Settlement Class Members and whether Gunster breached that duty. The many common questions of fact and law that arise from Gunster’s conduct predominate over any individualized issues. Other courts have recognized that these types of common issues arising from a data breach predominate over individualized issues. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 312-315 (finding predominance was satisfied because “plaintiffs’ case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect plaintiffs’ personal information,” such that “the claims rise or fall on whether [the defendant] properly secured the stolen personal information,” and that these issues predominated over “potential individual issues based on state-law variations”); *Hapka v. CareCentrix, Inc.*, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case, stating “[t]he many common questions of fact and law that arise from the E-mail Security Incident and CareCentrix’s alleged conduct predominate over any individualized issues”); *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members’ personal and financial information, whether it had a legal duty to do so, and whether it failed to timely notify class members of the data breach); *In re Heartland*, 851 F. Supp. 2d at 1059 (finding predominance satisfied in data breach case despite variations in state

laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class). Additionally, because the claims are being certified for purposes of settlement, there are no issues with manageability, and resolution of thousands of claims in one action is far superior to individual lawsuits. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial.”). Accordingly, the common questions of fact and law that arise from Defendants’ conduct predominate over any individualized issues.

f. Superiority

Finally, a class action is superior to other methods available to fairly, adequately, and efficiently resolve the claims of the Settlement Class. To determine if superiority requirements are met for certification of a settlement class, courts consider: (1) the settlement class members’ interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; and (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum. See Fed. R. Civ. P. 23(b)(3). At its most basic, “[t]he inquiry into whether the class action is the superior method for a particular case focuses on ‘increased efficiency.’” *Agan v. Katzman & Korr, P.A.*, 222 F.R.D. 692, 700 (S.D. Fla. 2004) (quoting *Sikes v. Teleline, Inc.*, 281 F.3d 1350, 1359 (11th Cir. 2002)).

Proceeding as a class action in this case is superior to other means of adjudication. There is no indication in this case that any Settlement Class Member wishes to litigate their claims on an individual basis. And with the high cost of litigating a case like this—requiring expert investigation and testimony to prove how and why the data breach occurred—almost certainly swamping

individual damages, individualized litigation is impracticable. *See In re Checking*, 286 F.R.D. at 659 (“The class action fills an essential role when the [plaintiffs] would not have the incentive or resources to prosecute relatively small claims in individual suits, leaving the defendant free from legal accountability.”).

Finally, this Court is a desirable forum for this Action. It is where the case was filed and the jurisdiction where the Defendant is headquartered. Accordingly, resolution of this case through a class action settlement in this Court will achieve significant economies for the Parties, the proposed settlement class, and the court, satisfying the superiority requirement. The Court respectfully should certify the Settlement Class, as the superiority requirement, along with all other requirements Rule 23(a) and (b), is satisfied.

D. The Proposed Class Notice Satisfies Rule 23

Under Rule 23(e)(1)(B), “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement] proposal.” Likewise, in directing notice “to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

1. The Notice Plan, which is attached herein as Exhibit D, satisfies the requirements of Rule 23 and due process and is designed to be the best practicable and to meet all the criteria set forth by the *Manual for Complex Litigation*. Here, a customary form of short notice is to be mailed to Settlement Class Members, and a customary long form notice will be provided on the settlement website (“Long Notice”). The Settlement Class consists of approximately 746,000 Settlement Class Members, approximately 549,000 of which will be provided with direct notice to their last-known address. Exhibit D ¶8. The remainder of the class will be provided with notice

through a media campaign, as described in the Notice Plan. *Id.* Verita will establish and maintain a dedicated settlement website that will be updated throughout the claims period with the Long Notice and Claim Form approved by the Court, as well as the Settlement Agreement. Notice Plan, Exhibit D ¶¶17. A toll-free help line, post office box, and e-mail address will be maintained where Settlement Class Members may submit hard copy Claim Forms, exclusion requests and other case correspondence to allow Settlement Class Members to easily correspond with Verita. Exhibit D ¶¶17-19.

The notices are clear and straightforward. They define the Settlement Class; clearly describe the options available to Settlement Class Members and the deadlines for taking action; describe the essential terms of the settlement; disclose the amount that proposed Class Counsel intend to seek in fees and costs; explain procedures for making claims, objections, or requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Fairness Hearing; and prominently display the address and phone number of proposed Class Counsel. Exhibit 1, SA Ex. A, Ex. C and Ex. F. Thus, the notices satisfy the specific requirements of Federal Rule of Civil Procedure 23(c)(2)(B), sufficiently informing Settlement Class Members of the terms of the proposed Settlement and their available options and are the best notices that are practicable under the circumstances.

E. Plaintiffs' proposed Class Counsel should be appointed Class Counsel.

In appointing class counsel, courts must consider (i) counsel's work in identifying or investigating claims; (ii) counsel's experience in handling the types of claims asserted; (iii) counsel's knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). proposed Class Counsel have worked

cooperatively and efficiently and committed substantial time and resources to this case. This work has included (1) investigating the Data Breach, (2) researching and evaluating the appropriate legal claims to assert, (3) interviewing potential class representatives about their experiences, (4) preparing and filing a class action complaint, (5) opposing the motion to dismiss, (6) preparing and filing an amended class action complaint, (7) engaging in informal discovery with Defendant in advance of the mediation; (8) participating in a mediation session and subsequent settlement discussions, and (9) negotiating the proposed settlement, preparing the settlement documentation, and moving for preliminary approval. *See* Exhibit 2, JAY Dec., Section II ¶ 1. Because proposed Class Counsel have demonstrated their commitment to litigating these claims, the Court should appoint John A. Yanchunis, Morgan & Morgan Complex Litigation Group and Brian Murray of Glancy Prongay & Murray LLP as Class Counsel.

V. CONCLUSION

Plaintiffs have negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members significant relief in the form of direct reimbursements for expenses incurred and time spent relevant to the Data Breach, and three bureau identity theft protection services for three years after the Data Breach, and Defendant's commitment to make information security enhancements. For these and the above reasons, Plaintiffs respectfully requests this Court grant their Motion for Preliminary Approval of the Class Action Settlement.

Dated: November 7, 2024

Respectfully submitted,

/s/ John A. Yanchunis

/s/ Brian Murray

*Attorneys for Plaintiffs and the Proposed Settlement
Class*

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2024 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 7, 2024

By: /s/ John A. Yanchunis

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 9:24-CV-80612-AMC**

**MARY JANE WHALEN,
and CHRISTINE V. RONA,**
individually and on behalf of
all others similarly situated,

Plaintiff,
v.

**GUNSTER,
YOAKLEY &
STEWART, PA**

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made by and between, as hereinafter defined, (a) the Settlement Class Representatives,¹ on behalf of themselves and the Settlement Class, and (b) Gunster, Yoakley & Stewart, PA (“Gunster”). This Agreement fully and finally compromises and settles any and all claims that are, were, or could have been asserted in the litigation styled *Whalen v. Gunster, Yoakley & Stewart, PA*, Case No. 9:24-CV-80612-AMC pending in the United States District Court for the Southern District of Florida, as set forth herein.

1. Recitals

- 1.1. On or around November 27, 2022, Gunster determined that third-party cybercriminals had gained access to Gunster’s systems (*i.e.*, the “Data Breach”).
- 1.2. On May 13, 2024, Mary Jane Whalen (“Whalen”) filed a putative class action complaint against Gunster in the United States District Court for the Southern District of Florida, asserting claims arising out of the Data Breach.
- 1.3. On August 15, 2024, Gunster moved to dismiss Whalen’s complaint for failure to state a claim.
- 1.4. On September 17, 2024, Plaintiff Whalen filed her Amended Complaint, which, among other changes, added an additional Plaintiff, Christine V. Rona (“Rona”).
- 1.5. On October 1, 2024, the Parties engaged in a full-day, in-person mediation session before former United States Magistrate Judge, Diane M. Welsh (ret.), an experienced mediator selected by the parties. Over the course of the day, the Parties engaged in arm’s length negotiations, and with the assistance of Judge Welsh, the Parties reached an agreement in principle.

¹ All capitalized terms are defined in Section 2 below.

- 1.6. On October 8, 2024, the Parties executed a written Term Sheet. Once this Agreement is fully executed, it supersedes and replaces all terms in the Parties' written Term Sheet.
- 1.7. Gunster denies all material allegations of the Amended Complaint and specifically denies that it failed to properly protect any personal data, had inadequate data security, was unjustly enriched by the use of personal data of the impacted individuals, breached any fiduciary duty or implied contract, or violated state consumer statutes and/or other laws.
- 1.8. The Parties recognize the expense and length of proceedings necessary to continue litigation of the Action through further motion practice, discovery, trial, and any possible appeals. The Parties have considered the uncertainty and risk of the outcome of further litigation, and the expense, difficulties, and delays inherent in such litigation. The Parties are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. The Parties have determined that the settlement set forth in this Agreement is in their respective best interests and that the Agreement is fair, reasonable, and adequate. The Parties have therefore agreed to the settlement set forth in the terms and provisions of this Agreement, subject to Court approval.
- 1.9. It is the intention of the Parties to resolve the disputes and claims as set forth in the terms below.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of the Parties to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree as follows:

2. Definitions

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

- 2.1. “Action” means the action filed in the Court and captioned *Whalen v. Gunster, Yoakley & Stewart, PA*, Case No. 9:24-CV-80612-AMC (S.D. Fla.).
- 2.2. “Administration and Notice Costs” means all reasonable costs and expenses incurred by the Settlement Administrator in carrying out its duties under this Agreement, including all costs and expenses incurred in connection with implementing and executing the Notice Plan and notice required by the Class Action Fairness Act.
- 2.3. “Agreement” or “Settlement Agreement” or “Settlement” means this Class Action Settlement Agreement and Release and all of its attachments and exhibits, which the Parties understand and agree set forth all material terms and conditions of the Settlement of the Action between them and which is subject to approval by the Court.
- 2.4. “Amended Complaint” means the Amended Class Action Complaint, at Docket Entry Number 17, filed in the Action on September 17, 2024.
- 2.5. “Approved Claims” means Settlement Claims completed using a Claim Form, submitted by the Claims Deadline, and found to be valid and in an amount approved by the Settlement Administrator.
- 2.6. “Attorneys’ Fees” means the attorneys’ fees that Class Counsel request the Court to approve for payment from the Settlement Fund as compensation for work in prosecuting and settling the Action.
- 2.7. “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the U.S. federal government.

- 2.8. “Claims Deadline” means the deadline by which Settlement Class Members must submit any Settlement Claims. Settlement Claims submitted after the Claims Deadline will not be timely and will not qualify for approval and will be rejected. The Claims Deadline shall be set by the Court in the Preliminary Approval Order and shall be ninety (90) days after the Notice Date.
- 2.9. “Claim Form” shall mean the claim form attached as Exhibit A, or a claim form approved by the Court that is substantially similar to Exhibit A.
- 2.10. “Class Counsel” means John A. Yanchunis of Morgan & Morgan and Brian Murray of Glancy Prongay & Murray LLP.
- 2.11. “Court” means the United States District Court for the Southern District of Florida, where the Action is pending.
- 2.12. “Data Breach” means the unauthorized third-party access to Gunster’s network that was detected by Gunster on or around November 27, 2022, and which is the subject of the Action.
- 2.13. “Defendant” or “Gunster” means Gunster, Yoakley & Stewart, PA.
- 2.14. “Effective Date” means the date set forth in Section 6 of this Agreement; provided, however, that neither Gunster nor the Settlement Class Representatives have exercised their respective rights of termination under Paragraph 6.2 or Paragraph 6.3 of this Agreement.
- 2.15. “Entity” means any corporation, partnership, limited liability company, association, trust, or other organization of any type.
- 2.16. “Expenses” means the reasonable costs and expenses incurred in litigating the Action that Class Counsel request the Court to approve for payment from the Settlement Fund.

- 2.17. “Final Approval” means entry of a Final Approval Order and Judgment.
- 2.18. “Final Approval Hearing” means the hearing to be conducted before the Court to determine the fairness, adequacy, and reasonableness of the Agreement pursuant to Federal Rule of Civil Procedure 23 and whether to enter a Final Approval Order and Judgment. The Final Approval Order and Judgment shall be entered no earlier than ninety (90) days after the CAFA notices are mailed to ensure compliance with 28 U.S.C. § 1715.
- 2.19. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which, among other things, finally approves the Agreement, finally certifies the Settlement Class for settlement purposes, dismisses all claims in the Action against Defendant with prejudice, releases the Released Parties from the Released Claims as set forth herein, bars and enjoins the Releasing Parties from asserting any of the Released Claims (including during the pendency of any appeal from the Final Approval Order and Judgment), includes as an exhibit a list of individuals who timely and validly opted out of the Settlement, satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23 in all respects, and in the form of or materially in the form of the proposed Final Approval Order and Judgment attached as Exhibit B.
- 2.20. “Judgment” means the Final Approval Order and Judgment.
- 2.21. “Long Notice” means the long form notice attached as Exhibit C or substantially similar to the long form notice attached as Exhibit C.
- 2.22. “Gunster’s Counsel” means the undersigned attorneys for Gunster from the law firms of Alston & Bird LLP and Akerman LLP.

- 2.23. “Notice Date” means the date by which notice will be fully commenced, which shall be sixty (60) days after the Court enters the Preliminary Approval Order.
- 2.24. “Notice Plan” means the Settlement notice program attached as Exhibit D to be presented to the Court for approval in connection with a motion seeking a Preliminary Approval Order.
- 2.25. “Objection Deadline” means the deadline by which written objections to the Settlement must be filed in the Action’s electronic docket or postmarked as set forth in the Preliminary Approval Order. Such deadline shall be sixty (60) days after the Notice Date.
- 2.26. “Opt-Out Deadline” means the deadline by which written requests for exclusion from the Settlement must be postmarked or submitted electronically as set forth in the Preliminary Approval Order. Such deadline shall be sixty (60) days after the Notice Date.
- 2.27. “Parties” means the Settlement Class Representatives, on behalf of themselves and the Settlement Class, and Gunster.
- 2.28. “Parties’ Counsel” means Class Counsel and Gunster’s Counsel.
- 2.29. “Personal Information” is intended to be broadly construed and includes any information that could be used to identify, locate, or contact a person (whether on its own or in combination with other information). The term Personal Information also includes, without limitation, name, address, date of birth, Social Security number, financial information, driver’s license numbers, government-issued identification numbers, health information (expressly including but not limited to Protected Health Information as defined by the Health Insurance Portability and Accountability Act), and any and all other personally identifiable information. For the avoidance of doubt, the term Personal

Information includes all information compromised, accessed, exfiltrated, or otherwise impacted as a result of the Data Breach.

2.30. “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement Agreement and, among other things, ordering that notice be provided to the Settlement Class, and in the form of, or materially in the form of, the proposed Preliminary Approval Order attached as Exhibit E.

2.31. “Released Claims” means any and all claims, defenses, demands, actions, causes of action, rights, offsets, setoffs, suits, remedies, damages, lawsuits, costs, relief for contempt, losses, attorneys’ fees, expenses, or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including but not limited to monetary sanctions or damages for contempt, injunctive or declaratory relief, mandamus, rescission, general, direct, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, statutory damages, penalties, interest, attorneys’ fees, costs, or expenses, whether a known or unknown (including Unknown Claims), suspected or unsuspected, existing or potential, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to the Data Breach, any legal, factual, or other allegations in the Action, or any theories of recovery that were, or could have been, raised at any point in the Action.

2.31.1. For the avoidance of doubt, Released Claims are to be construed broadly and include, without limitation, any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under the California

Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 *et seq.* and any similar statutes in effect in the United States or in any states in the United States); causes of action under the common or civil laws of any state in the United States, including but not limited to: unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; any statutory claims under state or federal law; and also including, but not limited to, any and all claims in any state or federal court of the United States, for damages, injunctive relief, restitution, mandamus, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit or financial account monitoring services, identity theft insurance, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief.

2.32. "Released Parties" means:

2.32.1. Gunster and its current and former shareholders, associates, attorneys, of counsel attorneys, in-house attorneys, officers, employees, directors, divisions, and affiliated companies (Gunster and the foregoing entities and persons described in this Paragraph 2.32.1 are collectively referred to as the "Gunster Persons"), as well as the Gunster Persons' respective predecessors, successors, assigns, current and former parents, subsidiaries, divisions, and affiliated companies, whether indirect or direct, as well as

their directors, officers, members, managers, employees, agents, vendors, insurers, reinsurers, sureties, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, contractors, wholesalers, resellers, distributors, service providers, and retailers; *and*

2.32.2. Entities and persons, including but not limited to former and current Gunster Persons' clients, whose information, including but not limited to information contained in files relating to representation of such current and former clients, was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach, as well as those entities' and persons' respective predecessors, successors, assigns, current and former parents, subsidiaries, divisions, and affiliated companies, whether indirect or direct, as well as their directors, officers, members, managers, employees, agents, vendors, insurers, reinsurers, sureties, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, contractors, wholesalers, resellers, distributors, service providers, and retailers. For the avoidance of doubt, the Released Parties also include the business associates and/or covered entities who were the data owners of information accessed, compromised, or impacted by the Data Breach. It is the Parties' intent that all entities that are Released Parties benefit from the Agreement and are entitled to enforce the Agreement fully and directly, including without limitation the Agreement's releases in Section 14.

2.33. "Releasing Parties" means the Settlement Class Representatives and all Settlement Class Members who do not timely and validly opt out of the Settlement.

- 2.34. “Settlement Administrator” means Verita Global, LLC (“Verita”) f/k/a KCC Class Action Services, LLC. A different Settlement Administrator may be substituted if approved by order of the Court.
- 2.35. “Settlement Claim” means a claim or request for settlement benefits provided for in this Settlement Agreement.
- 2.36. “Settlement Class” means all persons residing in the United States whose Personal Information was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach. The Settlement Class specifically excludes: (i) Gunster, any Entity in which Gunster has a controlling interest, and individuals who at any time since November 27, 2022 served as Gunster directors or officers; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement.
- 2.37. “Settlement Class Member” means any person within the definition of Settlement Class.
- 2.38. “Settlement Class Representatives” means Plaintiffs Mary Jane Whalen and Christine V. Rona.
- 2.39. “Settlement Fund” means the eight million five hundred thousand United States Dollars (\$8,500,000.00) that Gunster shall cause to be paid pursuant to Section 3 of this Agreement.
- 2.40. “Settlement Fund Account” means the account described in Section 4 of this Agreement.
- 2.41. “Short Notice” means the short form notice attached as Exhibit F or substantially similar to the short form notice attached as Exhibit F.
- 2.42. “Taxes” means (i) any applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) arising in any

jurisdiction with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon the Parties or the Parties' Counsel with respect to any income or gains earned by or in respect of the Settlement Fund; (ii) any other taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) relating to the Settlement Fund that the Settlement Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities, and costs incurred in connection with the taxation of the Settlement Fund (including without limitation, expenses of tax attorneys and accountants).

2.43. "Unknown Claims" means any and all Released Claims that any Settlement Class Representative or Settlement Class Member does not know or suspect to exist in his or her favor as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Settlement Class Representatives and Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which includes or is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

The Settlement Class Representatives and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

3. Settlement Fund

- 3.1. The Settlement Fund shall consist of a non-reversionary fund of eight million five hundred thousand United States Dollars (\$8,500,000.00), which shall be paid as follows:
 - 3.1.1. Within ten (10) Business Days of the Preliminary Approval Order, Gunster will pay or cause to be paid \$495,000.00 into the Settlement Fund Account to pay for Administration and Notice Costs, which amount will be credited towards the \$8,500,000.00 total amount of the Settlement Fund.
 - 3.1.2. Within ten (10) Business Days of the Effective Date, Gunster shall deposit or cause to be deposited the remaining balance of the Settlement Fund (eight million five thousand United States Dollars (\$8,005,000.00)) into the Settlement Fund Account.
- 3.2. The Settlement Fund shall be used to pay for (i) Administration and Notice Costs; (ii) the Approved Claims; and (iii) Attorneys’ Fees and Expenses approved by the Court. In no event shall Gunster be obligated to pay more than eight million five hundred thousand United States Dollars (\$8,500,000.00) in connection with the Settlement.
- 3.3. No later than three (3) Business Days after entry of the Preliminary Approval Order, Class Counsel and/or the Settlement Administrator shall furnish to Gunster in writing any required account information, wiring instructions, or necessary forms (including a properly completed and signed IRS Form W-9 that includes the employer identification number for the Settlement Fund Account).

4. Settlement Fund Account

- 4.1. The Settlement Fund monies shall be held in the Settlement Fund Account, which shall be established and maintained by the Settlement Administrator.
- 4.2. All funds held in the Settlement Fund Account shall be deemed to be in the custody of the Court until such time as the funds shall be disbursed pursuant to this Agreement or further order of the Court.
- 4.3. No amounts may be withdrawn from the Settlement Fund Account unless (i) authorized by this Agreement; (ii) authorized by the Notice Plan approved by the Court; or (iii) otherwise approved by the Court.
- 4.4. The Parties agree that the Settlement Fund Account is intended to constitute a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, *et seq.*, and that the Settlement Administrator shall be the “administrator” within the meaning of Treasury Regulation § 1.468B-2(k)(3). The Parties further agree that the Settlement Fund Account shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund Account as a qualified settlement fund from the earliest date possible.
- 4.5. Upon or before establishment of the Settlement Fund Account, the Settlement Administrator shall apply for an employer identification number for the Settlement Fund Account utilizing IRS Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4) and shall provide Gunster with that employer identification number on a properly completed and signed IRS Form W-9.
- 4.6. The Settlement Administrator shall file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings

statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). Any contract, agreement, or understanding with the Settlement Administrator relating to the Settlement Fund Account shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder the costs of which shall be considered Administration and Notice Costs and paid from the Settlement Fund.

4.7. All Taxes relating to the Settlement Fund Account shall be paid out of the Settlement Fund Account, shall be considered to be an Administration and Notice Cost of the Settlement, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund Account shall indemnify and hold harmless the Parties and the Parties' Counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments).

4.8. Gunster shall have no responsibility, financial obligation, or liability whatsoever with respect to selection of the Settlement Fund Account, investment of Settlement Fund Account funds, payment of federal, state, and local income, employment, unemployment, excise, and any other Taxes, penalties, interest, or other charges related to Taxes imposed on the Settlement Fund Account or its disbursements, or payment of the administrative,

legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund Account.

5. Presentation of Settlement to the Court

5.1. As soon as practicable after the execution of the Settlement Agreement, the Settlement Class Representatives and Class Counsel shall submit this Settlement Agreement to the Court and file a motion for preliminary approval of the Settlement with the Court requesting entry of a Preliminary Approval Order substantially in the form attached hereto as Exhibit E, requesting, among other things:

5.1.1. Certification of the Settlement Class for settlement purposes only;

5.1.2. Preliminary approval of the Settlement Agreement;

5.1.3. Appointment of Class Counsel;

5.1.4. Appointment of the Settlement Class Representatives;

5.1.5. Approval of the Notice Plan attached hereto as Exhibit D;

5.1.6. Approval of a Short Notice substantially similar to the one attached hereto as Exhibit F;

5.1.7. Approval of a Long Notice substantially similar to the one attached hereto as Exhibit C;

5.1.8. Approval of a Claim Form substantially similar to the one attached hereto as Exhibit A; and

5.1.9. Appointment of the Settlement Administrator.

5.2. The Long Notice, Short Notice, and Claim Form shall be reviewed by the Settlement Administrator and may be revised as agreed by the Parties prior to the submission to the Court for approval.

- 5.3. After entry by the Court of a Preliminary Approval Order, and no later than thirty-five (35) days before the Final Approval Hearing, Settlement Class Representatives shall file a motion seeking final approval of the Settlement and entry of a Final Approval Order and Judgment, including a request that the preliminary certification of the Settlement Class for settlement purposes be made final.
- 5.4. Class Counsel shall share drafts of any memoranda in support of preliminary approval, final approval, and Attorneys' Fees and Expenses with Gunster at least two (2) Business Days before filing the same and shall consider any proposed edits by Gunster in good faith.

6. Effective Date and Termination

- 6.1. The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:
- 6.1.1. The Parties execute this Agreement;
- 6.1.2. The Court enters the Preliminary Approval Order without material change to the Parties' agreed-upon proposed Preliminary Approval Order attached as Exhibit E, which shall include approval of the Notice Plan;
- 6.1.3. Notice is provided to the Settlement Class in accordance with the Preliminary Approval Order and Notice Plan;
- 6.1.4. The Court enters the Final Approval Order and Judgment consistent with the requirements of Paragraph 2.19 and without material change to the Parties' agreed-upon proposed Final Approval Order and Judgment attached as Exhibit B; and
- 6.1.5. The Final Approval Order and Judgment has become final because (i) the time for appeal, petition, rehearing, or other review has expired; or (ii) if any appeal,

petition, or request for rehearing or other review has been filed, the Final Approval Order and Judgment is affirmed without material change, or the appeal is dismissed or otherwise disposed of, and no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, and requests for rehearing or other review has expired.

- 6.2. Gunster may, in its sole discretion, terminate this Agreement if more than a specified number of Settlement Class Members submit valid and timely requests to exclude themselves from the Settlement, as agreed to by the Parties in a separate writing that has been executed by them contemporaneously with the execution of this Agreement, and, if requested, submitted to the Court for *in camera* review. If Gunster elects to terminate the Settlement pursuant to this Paragraph 6.2, it shall provide written notice to Class Counsel no later than fifteen (15) Business Days after the Opt-Out Deadline.
- 6.3. This Settlement may be terminated by either the Settlement Class Representatives or by Gunster by serving on counsel for the opposing Party and filing with the Court a written notice of termination within ten (10) Business Days (or such longer time as may be agreed between Class Counsel and Gunster) after any of the following occurrences:
 - 6.3.1. The Settlement Class Representatives and Gunster mutually agree to termination before the Effective Date;
 - 6.3.2. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement as set forth in this Settlement Agreement;

- 6.3.3. An appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
 - 6.3.4. The Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the proposed Preliminary Approval Order, the Preliminary Approval Order, the proposed Final Approval Order and Judgment, the Final Approval Order and Judgment, or the Settlement; or
 - 6.3.5. The Effective Date does not occur.
- 6.4. If this Agreement is terminated under Paragraphs 6.2 or 6.3 above, the following shall occur:
- 6.4.1. Within ten (10) Business Days of receiving notice of any termination event from Gunster's Counsel, the Settlement Administrator shall pay to Gunster an amount equal to the Settlement Fund, together with any interest or other income earned thereon, less (i) any Taxes paid or due with respect to such income and (ii) any reasonable and necessary Administration and Notice Costs already actually incurred and paid or payable from the Settlement Fund pursuant to the terms of this Agreement;
 - 6.4.2. The Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement;
 - 6.4.3. Any Court orders approving certification of the Settlement Class and any other orders entered pursuant to this Agreement shall be null and void and vacated, and neither those orders nor any statements made in connection with seeking

approval of the Agreement may be used in or cited by any person or Entity in support of claims or defenses or in support or in opposition to a class certification motion in connection with any further proceedings in the Action or in any other action, lawsuit, arbitration, or other proceeding involving any Released Claims; and

- 6.4.4. This Agreement shall become null and void, and the fact of this Settlement and that Gunster did not oppose certification of the Settlement Class shall not be used or cited by any person or entity in support of claims or defenses or in support of or in opposition to a class certification motion in connection with any further proceedings in the Action or in any other action, lawsuit, arbitration, or other proceeding involving, concerning, relating to or arising from (a) any Released Claims, (b) the Data Breach, or (c) any of the facts and circumstances alleged in the Action.

7. Settlement Benefits

- 7.1. All Settlement Class Members who submit an Approved Claim using the Claim Form, which is attached as Exhibit A to this Settlement Agreement, are eligible to receive:
- 7.2. Reimbursement for “Ordinary” Out-of-Pocket Losses and Ordinary Attested Time. All Settlement Class Members may submit a claim for Ordinary Out-of-Pocket Losses and/or Ordinary Attested Time as set forth herein up to a total of two thousand five hundred dollars (\$2,500) per individual. The Settlement Fund will be used to pay valid and timely submitted claims for each of the following categories:
- 7.2.1 “Ordinary Out-of-Pocket Losses” are unreimbursed costs, losses, or expenditures incurred by a Settlement Class Member in responding to the notice of the Data Breach or in response to the Data Breach. Ordinary Out-of-Pocket Losses may

include, without limitation, the following: (1) costs associated with accessing or freezing/unfreezing credit reports with any credit-reporting agency; (2) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and (3) credit monitoring or other mitigative costs.

7.2.2 Settlement Class Members who elect to submit a claim for reimbursement of Ordinary Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim as set forth in the Claim Form, including but not limited to: (1) the Settlement Class Member's name and current address; (2) documentation supporting the unreimbursed cost, loss, or expenditure; and (3) a brief description of the documentation describing the nature of the cost, loss, or expenditure, if the nature of the cost, loss, or expenditure is not apparent from the documentation alone. Documentation supporting Ordinary Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Settlement Class Member that documents the costs incurred. "Self-prepared" documents, such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation.

7.2.3 Whether or not they incurred Ordinary Out-of-Pocket Losses, Settlement Class Members may also submit a claim for up to seven (7) hours of time spent responding to receiving notice of the Data Breach at a rate of thirty dollars (\$30) per hour by providing an attestation and a brief description of: (1) the actions

taken in response to receiving notice of the Data Breach; and (2) the time associated with each action (“Ordinary Attested Time”).

7.3 Reimbursement for “Extraordinary” Losses and Extraordinary Attested Time. In addition to submitting a claim for Ordinary Out-of-Pocket Losses and/or Ordinary Attested Time, Settlement Class Members who believe they have suffered identity theft, fraud, or other extraordinary losses may submit a claim for Extraordinary Losses and/or Extraordinary Attested Time up to thirty-five thousand dollars (\$35,000) per individual, in the aggregate as set forth herein. However, the total amount of compensation that can be claimed for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses, and Extraordinary Attested Time cannot exceed thirty-five thousand dollars (\$35,000) per individual.

7.3.1 “Extraordinary Losses” are unreimbursed costs, losses, or expenditures incurred by a Settlement Class Member that are fairly traceable to the Data Breach, and are costs, losses, or expenditures that are not reimbursable as Ordinary Out-of-Pocket Losses. Extraordinary Losses may include, without limitation, the unreimbursed costs, losses, or expenditures incurred as a result of identity theft or identity fraud, falsified tax returns, real estate title fraud, banking fraud, or other misuse of the Settlement Class Member’s personal information.

7.3.2 Settlement Class Members who elect to submit a claim for reimbursement of Extraordinary Losses must provide to the Settlement Administrator all information required to evaluate the claim as set forth in the Claim Form, including but not limited to: (1) the Settlement Class Member’s name and current address; (2) documentation supporting the unreimbursed cost, loss, or

expenditure; and (3) a brief description of the documentation describing the nature of the cost, loss, or expenditure, if the nature of the cost, loss, or expenditure is not apparent from the documentation alone. Documentation supporting Extraordinary Losses can include receipts or other documentation not “self-prepared” by the Settlement Class Member that documents the unreimbursed cost, loss, or expenditure incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation.

7.3.3 Extraordinary Losses will be deemed “fairly traceable” if (1) the unreimbursed cost, loss, or expenditure was incurred in responding to the notice of the Data Breach or in response to the Data Breach and (2) the personal information used to commit identity theft, fraud, or other misuse consisted of the same type of personal information that was provided to Defendant prior to the Data Breach or that can be reasonably easily obtained on the basis of information that was provided to Defendant prior to the Data Breach.

7.3.4 Whether or not they incurred Extraordinary Losses and whether or not they made a claim for Ordinary Out-of-Pocket Losses or Ordinary Attested Time, Settlement Class Members may also submit a claim for up to ten (10) hours of time spent remedying identity theft, fraud, or other misuse of their information related to the Data Breach at a rate of thirty dollars (\$30) per hour by providing an attestation and a brief description of: (1) the actions taken to remedy identity theft, fraud, or other misuse of their information related to the Data Breach; and

(2) the time associated with each action (“Extraordinary Attested Time”). The total Attested Time (“Ordinary” and “Extraordinary” Attested Time, combined) that can be claimed cannot exceed ten (10) hours.

7.4 Credit Monitoring Services. Settlement Class Members, regardless of whether they make a claim for reimbursement, can elect to enroll in three (3) years of three bureau identity theft protection and credit monitoring services that will include the following features: (1) dark web scanning with user notification if potentially unauthorized use of a Settlement Class Member’s personal information is detected; (2) identity theft insurance; (3) real-time credit monitoring with Equifax, Experian, and TransUnion; and (4) access to fraud resolution agents. These services will be made available to all Settlement Class Members who choose to enroll regardless of whether they submit a claim for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses, and/or Extraordinary Attested Time. A unique redemption code allowing Settlement Class Members to enroll in these services will be sent to each Settlement Class Member who submits an Approved Claim for such services. The cost of providing the credit monitoring services described in this Paragraph 7.4 shall be paid from the Settlement Fund. For the avoidance of doubt, under no circumstances will Gunster be obligated to pay more than the Settlement Fund.

7.5 Settlement Class Members requesting any benefits under the Settlement must complete and submit either a hard copy or online Claim Form to the Settlement Administrator, postmarked or electronically submitted on or before the Claims Deadline. For Settlement Class Members seeking Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses, and Extraordinary Attested Time, the Claim Form must be verified

by the Settlement Class Member with an attestation that the claimant believes that the time and/or unreimbursed costs, losses, or expenditures claimed were incurred as a result of the Data Breach. Settlement Class Members who received written notice must include their Unique Class Member ID on their Claim Form. The Unique Class Member ID can be found on the Short Form Notice. Individuals who received substitute notice of the Data Breach must submit documentation demonstrating why they believe their information was impacted in the Data Breach.

7.6 Pro Rata Increase/ Reduction. If the total amount of Approved Claims submitted under Section 7 when aggregated with Administration and Notice Costs and Attorneys' Fees and Expenses as approved by the Court exceeds the amount of the Settlement Fund, then Approved Claims under Section 7 shall be reduced on a pro rata basis such that the total aggregate amount of Approved Claims under Section 7, Administration and Notice Costs, and Attorneys' Fees and Expenses does not exceed the amount of the Settlement Fund. If the total amount of Approved Claims submitted under Section 7, when aggregated with Administration and Notice Costs and Attorneys' Fees and Expenses as approved by the Court, is less than the amount of the Settlement Fund, then Approved Claims under Section 7 shall be increased on a pro rata basis such that the total aggregate amount of Approved Claims under Section 7, Administration and Notice Costs, and Attorneys' Fees and Expenses equals (as reasonably close as possible without exceeding) the amount of the Settlement Fund. The Settlement Administrator shall reasonably exercise its discretion for purposes of implementing any pro rata increase or decrease provided herein to account for estimated, but not yet incurred, Administration and Notice

Costs. For the avoidance of doubt, in no event shall Gunster's liability or obligation under this Settlement Agreement exceed the Settlement Fund.

7.7 Approved Claims will be paid via an electronic payment or a check mailed to the Settlement Class Member. Settlement Class Members will have ninety (90) days to cash the checks or electronically receive the payment, after which any uncashed checks will be void and the ability to receive the electronic payment will expire. If the aggregate value of void checks and lapsed electronic payments makes it economically feasible, such funds (after decreasing the total by the cost of any anticipated tax reporting requirements and other ancillary expenses) will be disbursed pro rata via a second round of payments issued to those who successfully received electronic payments or cashed checks issued during the first round of disbursement. After ninety (90) days of the second disbursement, any uncashed checks will be void and the ability to receive electronic payment will also expire. The aggregate value of void checks and unclaimed electronic payments after the second round (or, if there is no second round of checks, after the first round of checks) and/or remaining funds following the preparation of any required tax documents will be paid to increase the length of credit monitoring for those who elect it if possible, or if not, to the Florida Bar Foundation if approved by the Court. However, if the second round of payments is not economically feasible, funds remaining in the Settlement Fund will be directly given to the Florida Bar Foundation, if approved by the Court. For the avoidance of doubt, as set forth in Paragraph 4.8 above, following its payment of the Settlement Fund monies as described in Section 3 of this Agreement, Gunster shall have no responsibility, financial obligation, or liability whatsoever with respect to payment of federal, state, and local income, employment, unemployment,

excise, and any other Taxes, penalties, interest, or other charges related to Taxes imposed on the Settlement Fund Account or its disbursements.

8. Information Security Enhancements

8.1 In response to the Data Breach and the Action, Gunster has further enhanced its data security infrastructure by, among other things, engaging in a comprehensive SOC II Type II review and audit; deploying a best in class EDR tool; implementing a centralized logging and monitoring solution with 24/7 third-party monitoring for log aggregation, threat detection, and response capabilities; enhancing backup solutions and disaster recovery protocols; expanding and hardening cloud environments; implementing enhanced access controls, including but not limited to a Privileged Access Management solution; enhancing application security testing; and engaging in a comprehensive review and modification of firewall rules and configurations.

9. Duties of Settlement Administrator

9.1. The Settlement Administrator shall perform the functions specified in this Agreement, any functions specified in the Notice Plan after Court approval, and any other functions approved by the Court. In addition to other responsibilities that are described elsewhere in this Agreement (and in the Notice Plan, once approved by the Court), the duties of the Settlement Administrator shall include:

9.1.1. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members. Specifically, the Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has provided all information required to complete the Claim Form by the Claims Deadline, including any documentation that may be necessary to reasonably support

amounts claimed under Paragraphs 7.2 and 7.3; and (iii) the information submitted would lead a reasonable person to conclude, for a Settlement Claim for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses, and/or Extraordinary Attested Time submitted under Paragraphs 7.2 and 7.3, that the alleged losses and time are fairly traceable to the Data Breach.

- 9.1.2. The Settlement Administrator may at any time (but is not required to) request from the claimant (including via email) supplemental claim information as the Settlement Administrator may reasonably require in order to evaluate the Settlement Claim, *e.g.*, documentation requested on the Claim Form and information regarding the claimed losses. If supplemental claim information is requested, the Settlement Administrator shall give the claimant reasonable time in the Settlement Administrator's discretion but not exceeding thirty (30) days to provide the supplemental information before rejecting the claim. Requests for supplemental claim information shall be made as promptly as reasonably possible after the Claims Deadline (or earlier in the discretion of the Settlement Administrator). If the supplemental claim information does not cure a claim defect as reasonably determined by the Settlement Administrator, then the Settlement Claim will be deemed invalid and there shall be no obligation to pay the Settlement Claim. For the avoidance of doubt, the Settlement Administrator is not required to request supplemental claim information, and in reasonably exercising its discretion, may deny a claim without requesting supplemental claim information.

- 9.1.3. Establishing and maintaining a post office box for, among other things, receiving requests for exclusion from the Settlement;
- 9.1.4. Establishing and maintaining a Settlement website;
- 9.1.5. Responding to Settlement Class Member inquiries via U.S. mail, email, or telephone;
- 9.1.6. Establishing a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries;
- 9.1.7. Paying all Taxes relating to the Settlement Fund and Settlement Fund Account;
- 9.1.8. Receiving and processing all written requests for exclusion from the Settlement and providing copies thereof to the Parties' Counsel. If the Settlement Administrator receives any requests for exclusion or other requests after the Opt-Out Deadline, the Settlement Administrator shall promptly provide copies thereof to the Parties' Counsel;
- 9.1.9. Providing weekly reports that summarize the number of claims, written requests for exclusion, objections, and any other information requested by the Parties' Counsel;
- 9.1.10. Within five (5) Business Days after the Opt-Out Deadline, providing a final report to the Parties' Counsel summarizing the number of written requests for exclusion (*i.e.*, requests to opt out), a list of all individuals who have timely and validly excluded themselves from the Settlement in accordance with the requirements of the Settlement, and any other information requested by the Parties' Counsel;

- 9.1.11. After the Effective Date, processing and transmitting any and all distributions to Settlement Class Members;
 - 9.1.12. Prior to the Final Approval Hearing, preparing and executing an affidavit or declaration to submit to the Court that identifies each Settlement Class Member who timely and validly requested exclusion from the Settlement; and
 - 9.1.13. Performing any other functions that the Parties jointly agree are necessary to accomplish administration of the Settlement.
- 9.2. As specified in Paragraph 3.2, all Administration and Notice Costs incurred by the Settlement Administrator or otherwise in connection with administering the Settlement shall be paid from the Settlement Fund.
 - 9.3. Neither the Parties nor the Parties' Counsel shall have any liability whatsoever with respect to any act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement, or under the Notice Plan once approved by the Court.
 - 9.4. The Settlement Administrator shall indemnify and hold harmless the Parties and the Parties' Counsel for any liability arising from any act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement, or under the Notice Plan once approved by the Court.

10. Notice Plan

- 10.1. The Settlement Administrator shall be responsible for implementing and executing the Notice Plan. Within fourteen (14) days after the Court's entry of a Preliminary Approval Order, Gunster shall provide the Settlement Administrator with available contact information for Settlement Class Members.

- 10.2. Should the Settlement be terminated for any of the reasons identified in Paragraphs 6.2 or 6.3, the Settlement Administrator shall immediately destroy all contact information received from Gunster for Settlement Class Members.
- 10.3. As specified in Paragraph 3.2, all costs incurred by the Settlement Administrator or otherwise relating to providing notice to Settlement Class Members shall be paid from the Settlement Fund.

11. CAFA Notice

- 11.1. Gunster will serve or cause to be served the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, not later than ten (10) days after this Agreement is filed with the Court. The cost of providing notice pursuant to 28 U.S.C. § 1715 shall be paid as an Administration and Notice Cost from the Settlement Fund.

12. Covenants Not to Sue

- 12.1. The Settlement Class Representatives covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any Released Claim, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Member but who requested to be excluded from the Settlement, in a separate class for purposes of pursuing any action based on or relating to any Released Claim or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any Released Claim against any of the Released Parties.

13. Representations and Warranties

- 13.1. Each Party represents that:

- (i) such Party has the full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval;
- (ii) such Party is voluntarily entering into the Agreement as a result of arm's-length negotiations conducted by its counsel;
- (iii) such Party is relying solely upon its own judgment, belief, and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof;
- (iv) such Party has been represented by, and has consulted with, the counsel of its choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and has been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein;
- (v) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party;
- (vi) except as provided herein, such Party has not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party to the Agreement;
- (vii) each of the Parties assumes the risk of mistake as to facts or law;
- (viii) this Agreement constitutes a valid, binding, and enforceable agreement; and
- (ix) no consent or approval of any person or Entity is necessary for such Party to enter into this Agreement.

13.2. The Settlement Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Released Claims against any of the Released Parties.

13.3. The Settlement Class Representatives represent and warrant that they have no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

14. Releases

- 14.1. As of the Effective Date, all Releasing Parties, on behalf of themselves, their heirs, assigns, beneficiaries, executors, administrators, insurers, predecessors, and successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely, unconditionally, and forever release and discharge any and all Released Claims against the Released Parties, except for claims relating to the enforcement of the Settlement or Agreement.
- 14.2. The Parties expressly intend that all Released Parties, including Released Parties who are third-party beneficiaries (*e.g.*, current and former clients whose information was impacted in the Data Breach), shall have the right to directly enforce the Releases herein.
- 14.3. The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein. Notwithstanding any other provision of this Agreement (including, without limitation, this Section), nothing in this Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any court order implementing this Agreement, in a manner consistent with the terms of this Agreement.

14.4. Within ten (10) Business Days after the Effective Date, Class Counsel and the Settlement Class Representatives shall dismiss with prejudice all claims, Actions, or proceedings that are released pursuant to this Agreement.

15. No Admission of Wrongdoing

15.1. This Agreement compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. This Agreement shall not be offered or received against Gunster or any Gunster Persons as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Gunster or any Gunster Persons with respect to the truth of any fact alleged by any Settlement Class Representative or any Settlement Class Member or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of Gunster or any Gunster Persons.

15.2. This Agreement shall not be construed as or received in evidence as an admission, concession, or presumption against any Settlement Class Representative or any Settlement Class Member that any of their claims are without merit, or that any defense asserted by Gunster has any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund.

15.3. The negotiation, terms, and entry of the Parties into this Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, all similar state statutes, rules of evidence, and arbitral rules, and the mediation privilege.

15.4. Notwithstanding the foregoing provisions of this Section 15 or any other terms in this Settlement, Gunster may use, offer, admit, or refer to this Agreement and to the

Settlement, if approved, where it deems necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitral, or other proceeding, as it deems necessary to comply with or address regulatory and/or disclosure obligations, to pursue insurance and/or other indemnification, and/or to enforce this Agreement and the Settlement, including the releases contained therein.

16. Opt-Outs

- 16.1. Any individual who wishes to exclude themselves from the Settlement must submit a written request for exclusion to the Settlement Administrator, which shall be postmarked or submitted electronically no later than the Opt-Out Deadline.
- 16.2. The written request for exclusion must:
- (i) Identify the case name of the Action;
 - (ii) Identify the name and address of the individual seeking exclusion from the Settlement;
 - (iii) Be personally signed by the individual seeking exclusion;
 - (iv) Include a statement clearly indicating the individual's intent to be excluded from the Settlement; and
 - (v) Request exclusion only for that one individual whose personal signature appears on the request.
- 16.3. Opt-out requests seeking exclusion on behalf of more than one individual shall be deemed invalid by the Settlement Administrator.
- 16.4. Any individual who submits a valid and timely request for exclusion in the manner described herein shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement.

- 16.5. Any individual who does not submit a valid and timely request for exclusion in the manner described herein shall be deemed to be a Settlement Class Member upon expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments applicable to the Settlement Class.
- 16.6. Class Counsel agree that this Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class Members.

17. Objections

- 17.1. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Court on or before the Objection Deadline, as specified in the Preliminary Approval Order.
- 17.2. The written objection must include:
- (i) The case name and number of the Action;
 - (ii) The name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;
 - (iii) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
 - (iv) A statement of the specific grounds for the objection; and
 - (v) A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.
- 17.3. In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney), the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing.

17.4. Any Settlement Class Member who fails to object to the Settlement in the manner described in this Agreement, the Preliminary Approval Order, and in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of this Agreement by appeal or any other means.

18. Attorneys' Fees and Expenses

18.1. Class Counsel shall submit a request to the Court for payment of Attorneys' Fees, expressed as a percentage of the value conferred by the Settlement on the Settlement Class, and for reimbursement of Expenses incurred in prosecuting and settling the Action. Any request for Attorneys' Fees and Expenses must be filed with the Court at least thirty-five (35) days before the Objection Deadline. If approved by the Court, such Attorneys' Fees and Expenses shall be paid by the Settlement Administrator from the Settlement Fund within twenty-one (21) Business Days after the Effective Date. For the avoidance of doubt, Attorneys' Fees and Expenses shall be paid from the Settlement Fund.

18.2. Gunster agrees not to oppose any request to the Court for Attorneys' Fees and Expenses, provided such request does not exceed thirty percent of the Settlement Fund. For the avoidance of doubt, Attorneys' Fees and Expenses shall be paid from the Settlement Fund.

18.3. The Parties agree that the effectiveness of this Agreement is not contingent upon the Court's approval of the payment of any Attorneys' Fees or Expenses. If the Court declines to approve, in whole or in part, a request for Attorneys' Fees or Expenses, all remaining provisions in this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court,

concerning the payment of Attorneys' Fees or Expenses, or the amount thereof, shall be grounds for cancellation or termination of this Agreement.

19. Confidentiality

19.1. The Parties and the Parties' Counsel agree that the terms of this Settlement shall remain confidential and shall not be disclosed until the Agreement is publicly filed in connection with the Settlement Class Representatives' motion seeking a Preliminary Approval Order. Notwithstanding the foregoing, Gunster may disclose this Agreement for legal, compliance, and regulatory-related purposes.

20. Notices

20.1. All notices to Class Counsel provided for in this Agreement shall be sent by email and First Class U.S. mail to the following:

John A. Yanchunis
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 North Franklin Street 7th Floor
Tampa, FL 33602
JYanchunis@forthepeople.com

Brian Murray
GLANCY PRONGAY & MURRAY LLP
230 Park Avenue, Suite 358
New York, NY 10169
bmurray@glancylaw.com

20.2. All notices to Gunster or Gunster's Counsel provided for in this Agreement shall be sent by email and First Class U.S. mail to the following:

Kristine M. Brown
Donald M. Houser
ALSTON & BIRD LLP
1201 West Peachtree Street NW
Atlanta, GA 30309
kristine.brown@alston.com
donald.houser@alston.com

and to:

Jacqueline Arango
AKERMAN LLP
Three Brickell City Centre
98 Southeast Seventh Street
Suite 1100
Miami, FL 33131
jacqueline.arango@akerman.com

and to:

Clinton Losego
GUNSTER, YOAKLEY & STEWART, PA
Brickell World Plaza
600 Brickell Ave., Suite 3500
Miami, FL 33131
closego@gunster.com

- 20.3. All notices to the Settlement Administrator provided for in this Agreement shall be sent by either email or First Class U.S. mail to the following:

Whalen v. Gunster, Yoakley & Stewart, PA,
Settlement Administrator – GUL
PO Box 301132
Los Angeles, CA 90030-1132
Info@gysdatabreachsettlement.com

- 20.4. The notice recipients and addresses designated in this Section may be changed by written notice posted to the Settlement website.

21. Miscellaneous Provisions

- 21.1. Further Steps. The Parties agree that they each shall undertake any further required steps to effectuate the purposes and intent of this Agreement.
- 21.2. Cooperation. The Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement and (ii) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Settlement Agreement and to

exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement.

21.3. Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the exhibits hereto, are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

21.4. Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

21.5. Integration. Subject to Section 6.2 above, this Agreement constitutes the entire agreement among the Parties and no representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants expressly contained and memorialized herein.

21.6. Exhibits. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

21.7. Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall

not be construed against any Party and any canon of contract interpretation to the contrary shall not be applied.

- 21.8. Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by an express writing signed by the Parties who executed this Agreement, or their successors.
- 21.9. Waiver. The failure of a Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 21.10. Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.
- 21.11. Counterparts. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court. This Agreement may be executed using DocuSign.
- 21.12. Electronic Mail. Transmission of a signed Agreement by electronic mail shall constitute receipt of an original signed Agreement by mail.

- 21.13. Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto.
- 21.14. Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of Florida, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.
- 21.15. Interpretation. The following rules of interpretation shall apply to this Agreement:
- (i) Definitions apply to the singular and plural forms of each term defined.
 - (ii) Definitions apply to the masculine, feminine, and neuter genders of each term defined.
 - (iii) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”
- 21.16. Fair and Reasonable. The Parties and the Parties’ Counsel believe this Agreement is a fair and reasonable compromise of the disputed claims and in the best interest of the Parties. The Parties have arrived at this Agreement as a result of extensive arms-length negotiations.
- 21.17. Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement. The Court also shall retain exclusive jurisdiction over any determination of whether any subsequent suit is released by the Settlement Agreement.
- 21.18. Third-Party Beneficiaries. It is the Parties’ intent that all third parties who are Released Parties as defined in Paragraph 2.32 shall benefit from this Agreement and shall be entitled to enforce the Agreement, including its releases, fully and directly. By way of

example but without limitation, it is the Parties' intent that such Released Parties shall be entitled to fully and directly enforce the releases in response to any action, lawsuit, or proceeding asserting a Released Claim.

- 21.19. No Government Third-Party Rights or Beneficiaries. No government agency or official can claim any rights under this Agreement or Settlement.
- 21.20. No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack, including by any Settlement Class Member or any recipient of notices of the Settlement after the Judgment is entered.
- 21.21. Public Statements. The Parties agree not to make disparaging statements to the press regarding the Settlement or any Party. Subject to the confidentiality provision in Paragraph 19.1, the Parties may publicly discuss the Settlement, the terms of the Settlement, any matter addressed in Plaintiffs' motion for Preliminary Approval Order, or any other matter as required by law or regulation.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized counsel:

Class Counsel on behalf of the Settlement Class Representatives and the Settlement Class:

John A. Yanchunis
John A. Yanchunis (Nov 6, 2024 17:48 EST)

Name: John A. Yanchunis
Date: Nov 6, 2024

B.M.
Brian Murray (Nov 6, 2024 19:37 EST)

Name: Brian Murray
Date: Nov 6, 2024

Settlement Class Representatives

MJ Whalen
Name: Mary Jane Whalen
Date:

Christine V. Rona

Name: Christine V. Rona
Date: 11/7/2024

Defendant Gunster, Yoakley & Stewart, PA

Clinton R. Losego
Clinton R. Losego (Nov 6, 2024 17:03 EST)

Name: Clinton R. Losego
Title: Co-General Counsel and Authorized Representative of Gunster
Date: Nov 6, 2024

Whalen/Gunster Settlement

Final Audit Report

2024-11-07

Created:	2024-11-06
By:	Ashley Miller (Ashley.Miller@alston.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAARa_pT6JZkGve_7Ta6Zvw_xcZn3V0PVps

"Whalen/Gunster Settlement" History

-  Document created by Ashley Miller (Ashley.Miller@alston.com)
2024-11-06 - 9:39:20 PM GMT
-  Document emailed to Clinton R. Losego (closego@gunster.com) for signature
2024-11-06 - 9:40:35 PM GMT
-  Document emailed to John A. Yanchunis (jyanchunis@forthepeople.com) for signature
2024-11-06 - 9:40:36 PM GMT
-  Document emailed to Brian Murray (bmurray@glancylaw.com) for signature
2024-11-06 - 9:40:36 PM GMT
-  Email viewed by Clinton R. Losego (closego@gunster.com)
2024-11-06 - 9:58:15 PM GMT
-  Document e-signed by Clinton R. Losego (closego@gunster.com)
Signature Date: 2024-11-06 - 10:03:01 PM GMT - Time Source: server
-  Email viewed by John A. Yanchunis (jyanchunis@forthepeople.com)
2024-11-06 - 10:48:09 PM GMT
-  Document e-signed by John A. Yanchunis (jyanchunis@forthepeople.com)
Signature Date: 2024-11-06 - 10:48:56 PM GMT - Time Source: server
-  Email viewed by Brian Murray (bmurray@glancylaw.com)
2024-11-07 - 0:37:05 AM GMT
-  Document e-signed by Brian Murray (bmurray@glancylaw.com)
Signature Date: 2024-11-07 - 0:37:42 AM GMT - Time Source: server
-  Agreement completed.
2024-11-07 - 0:37:42 AM GMT

CLAIM FORM FOR GUNSTER, YOAKLEY & STEWART, PA DATA BREACH BENEFITS

Mary Jane Whalen and Christine V. Rona v. Gunster, Yoakley & Stewart, PA,
Case No. 9:24-CV-80612-AMC (S.D. Florida)

COMPLETE AND SIGN THIS FORM AND FILE ONLINE NO LATER THAN [DUE DATE]
AT [www.gysdatabreachsettlement.com] OR FILE BY MAIL POSTMARKED BY [due date].

*You **MUST** use this form to make a claim for benefits under the Settlement.*

Questions? Call 1-XXX-XXXX or visit the website, [www.gysdatabreachsettlement.com]

CLASS MEMBER INFORMATION

Full Name: _____

Mailing Address: _____

City: _____ State: _____ ZIP: _____

Telephone Number: _____

Email Address: _____

(This field is required to receive free credit monitoring. If provided, we will also communicate with you about your claim primarily by email.)

Unique Claim Form Identifier: _____

If you received a notice of this Settlement by U.S. mail, your Unique Claim Form Identifier is on the envelope or postcard. If you misplaced your notice, please contact the Settlement Administrator at 1-888-8888 or [Info@gysdatabreachsettlement.com]. If you received substitute notice of the Data Breach (i.e., if you believe your personal information was compromised, accessed, exfiltrated, or otherwise impacted in the Data Breach but you did not receive written notice from Gunster), you must include documentation along with your claim demonstrating why you believe your information was compromised, accessed, exfiltrated, or otherwise impacted in the Data Breach. If you do not include either a Unique Claim Form Identifier or the documentation referenced above, your claim will be denied.

SETTLEMENT OVERVIEW

“Ordinary” Out-of-Pocket Losses and Ordinary Attested Time: If you have incurred unreimbursed costs, losses, or expenditures responding to the notice of the Data Breach or in response to the Data Breach, you can make a claim for reimbursement for ordinary out-of-pocket losses and ordinary attested time up to \$2,500.00 in the aggregate, subject to the following:

Ordinary Out-of-Pocket Losses: Examples of ordinary out-of-pocket losses include: (i) costs associated with accessing or freezing/unfreezing credit reports with any credit-reporting agency; (ii) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; (iii) credit monitoring or other mitigative costs. To submit a valid claim, you must provide third-party documentation (not “self-prepared”) to support the unreimbursed cost, loss, or expenditure as well as a brief description of the documentation if the nature of the cost, loss, or expenditure is not apparent from the documentation alone.

Ordinary Attested Time: If you spent time responding to receiving the notice of Data Breach, you may also submit a claim for reimbursement for up to 7 hours of time at a rate of \$30.00/hour. To submit a valid claim, you must provide an attestation and brief description of the actions taken in response to receiving notice of the Data Breach and the time associated with each action.

“Extraordinary” Losses and Extraordinary Attested Time: If you believe you suffered identity theft, fraud, or other extraordinary losses, you may submit a claim for extraordinary losses and extraordinary attested time up to \$35,000.00 in the aggregate. The total amount of compensation you may claim for ordinary out-of-pocket losses, ordinary attested time, extraordinary losses, and extraordinary attested time cannot exceed \$35,000.00, subject to the following:

Extraordinary Losses: Extraordinary losses are unreimbursed costs, losses, or expenditures that are fairly traceable to the Data Breach and that are not reimbursable as ordinary out-of-pocket losses. Examples of extraordinary losses include unreimbursed costs, losses, or expenditures incurred as a result of identity theft or identity fraud, falsified tax returns, real estate title fraud, banking fraud, or other possible misuse of your personal information. To submit a valid claim, you must provide third-party documentation (not “self-prepared”) to support the unreimbursed cost, loss, or expenditure as well as a brief description of the documentation if the nature of the cost, loss, or expenditure is not apparent from the documentation alone. Extraordinary Losses will be deemed “fairly traceable” if (1) the unreimbursed cost, loss, or expenditure was incurred in responding to the notice of the Data Breach or in response to the Data Breach and (2) the personal information used to commit identity theft, fraud, or other misuse consisted of the same type of personal information that was provided to Defendant prior to the Data Breach or that can be reasonably easily obtained on the basis of information that was provided to Defendant prior to the Data Breach.

Extraordinary Attested Time: If you spent time remedying identity theft, fraud, or other misuse of your information related to the Data Breach, you may also submit a claim for reimbursement for up to 10 hours of time at a rate of \$30.00/hour. To submit a valid claim, you must provide an attestation and brief description of the actions taken to remedy identity theft, fraud, or other misuse of your information related to the Data Breach and the time associated with each action.

Credit Monitoring: You can submit a claim for three years of three-bureau credit monitoring services, including dark web scanning, identity theft insurance, real-time credit monitoring with Equifax, Experian, and TransUnion, and access to fraud resolution agents.

The total amount of compensation that can be claimed for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses, and Extraordinary Attested Time cannot exceed \$35,000 per individual and the total amount of Attested Time (Ordinary and Extraordinary) cannot exceed 10 hours per person.

ALL BENEFITS (AND THE AMOUNT PAID TO SETTLEMENT CLASS MEMBERS UNDER THIS SETTLEMENT) MAY BE HIGHER OR LOWER DEPENDING ON THE TOTAL AMOUNT OF APPROVED CLAIMS.

Failure to provide all required information will result in your claim being rejected by the Settlement Administrator.

1. Were you sent a notice that your information may have been impacted in the Data Breach?

Yes (Proceed to Question 2) No (Proceed to Question 2)

2. Do you believe you received substitute notice of the Data Breach?

Yes (Please provide documentation supporting your belief that your information was impacted in the Data Breach, and proceed to Question 3)

No (If you answered "No" to questions 1 and 2, you are not eligible to submit a claim)

CLAIM FOR CREDIT MONITORING

3. Do you wish to receive three years of three-bureau credit monitoring?

Yes (You must include your email on the first page to receive this benefit and proceed to Question 4)

No (Proceed to question 4)

CLAIM FOR REIMBURSEMENT FOR “ORDINARY” OUT-OF-POCKET LOSSES AND ORDINARY ATTESTED TIME

4. Do you have documentation supporting that, as a result of the Data Breach, you experienced (i) unreimbursed costs associated with accessing or freezing/unfreezing credit reports with any credit-reporting agency; (ii) other miscellaneous unreimbursed expenses incurred related to any Ordinary Out-of-Pocket Losses such as notary, fax, postage, copying, mileage, and long-distance telephone charges; or (iii) credit monitoring or other unreimbursed mitigative costs? If so, you may submit a claim, with supporting documentation, for ordinary out-of-pocket losses up to \$2,500.00 in the aggregate.

Yes (Complete chart at the bottom of this Claim Form and proceed to Question 5)

No (You are not eligible to submit a claim for ordinary out-of-pocket losses. Proceed to Question 5)

5. Did you spend time responding to receiving notice of the Data Breach?

Yes (Proceed to Question 6)

No (You are not eligible to submit a claim for ordinary attested time. Proceed to Question 7)

6. If you selected “Yes” for Question 5, please fill out the below statement indicating how many hours you spent responding to receiving notice of the Data Breach and please provide a description of the actions taken and time associated with each action.

**I spent ____ (up to 7) total hours responding to receiving notice of the Data Breach to be reimbursed at a rate of \$30.00/hour.
Please provide an attestation and brief description of the actions taken and the time associated with each action:**

CLAIM FOR REIMBURSEMENT FOR “EXTRAORDINARY” LOSSES AND EXTRAORDINARY ATTESTED TIME

7. Do you have documentation showing you incurred unreimbursed costs, losses, or expenditures as a result of identity theft or identity fraud, falsified tax returns, real estate title fraud, banking fraud, or other possible misuse of your personal information that is fairly traceable to the Data Breach? If so, you may submit a claim, with supporting documentation, for extraordinary losses up to \$35,000.00 in the aggregate.

Yes (*Complete the chart on the next page and proceed to Question 8*)

No (*You are not eligible to submit a claim for extraordinary losses. Proceed to Question 8*)

8. Did you spend time remedying identity theft, fraud, or other misuse of your information related to the Data Breach?

Yes (*Proceed to Question 9*)

No (*You are not eligible to submit a claim for extraordinary attested time. Proceed to certification and signature*)

9. If you selected “Yes” for Question 8, please fill out the below statement indicating how many hours you spent remedying identity theft, fraud, or other misuse of your information relating to the Data Breach and please provide a description of the actions taken and time associated with each action.

I spent ____ (up to 10) total hours remedying identity theft, fraud, or other misuse of my information related to the Data Breach to be reimbursed at a rate of \$30.00/hour.

Please provide an attestation and brief description of the actions taken and the time associated with each action:

THIS CHART MUST BE COMPLETED IF YOU ARE SEEKING ORDINARY OUT OF POCKET LOSSES OR EXTRAORDINARY LOSSES. FAILURE TO COMPLETE THE CHART MAY RESULT IN YOUR CLAIM BEING DENIED.			
Loss Type (Check all that apply)	Date of Loss	Amount of Loss	Description of Supporting Documentation (Identify what you are attaching and why)
<input type="checkbox"/> Bank fees incurred as a result the Data Breach			<i>Example: Account statement with fees incurred as a result of the Data Breach highlighted.</i> <i>The description of the fees in the documentation must be specific enough to enable the settlement administrator to determine why the fees were incurred and you must explain why the fees were incurred as a result of the Data Breach.</i>
<input type="checkbox"/> Costs associated with accessing or freezing/unfreezing credit reports with any credit-reporting agency			<i>Example: Receipts or account statements reflecting costs incurred freezing/unfreezing credit reports with any credit-reporting agency.</i>
<input type="checkbox"/> Long distance phone charges incurred as a result of the Data Breach			<i>Example: Phone bills with long distance telephone calls made as a result of the Data Breach, and corresponding charges, highlighted, along with an explanation of what the calls were for and why they were incurred as a result of the Data Breach.</i> <i>You must explain who the calls were made to and why they were made as a result of the Data Breach. You must also provide sufficient documentation to demonstrate the amount you were charged for the specific calls that you made as a result of the Data Breach.</i>

THIS CHART MUST BE COMPLETED IF YOU ARE SEEKING ORDINARY OUT OF POCKET LOSSES OR EXTRAORDINARY LOSSES. FAILURE TO COMPLETE THE CHART MAY RESULT IN YOUR CLAIM BEING DENIED.			
Loss Type (Check all that apply)	Date of Loss	Amount of Loss	Description of Supporting Documentation (Identify what you are attaching and why)
<input type="checkbox"/> Cell phone charges (only if charged by the minute) incurred as a result of the Data Breach			<i>Example: Cell phone bill with calls made as a result of the Data Breach, and corresponding charges, highlighted, along with an explanation of what the calls were for and why they were incurred as a result of the Data Breach. You must explain who the calls were made to and why they were made as a result of the Data Breach. You must also provide sufficient documentation to demonstrate the amount you were charged for the specific calls that you made as a result of the Data Breach.</i>
<input type="checkbox"/> Data charges (only if charged based on the amount of data used) incurred as a result of the Data Breach			<i>Example: Cell phone bill with data charges incurred as a result of the Data Breach, and corresponding charges, highlighted, along with an explanation of what the data charges are for and why they were incurred as a result of the Data Breach. You must explain what activities the data charges correspond to and why they were incurred as a result of the Data Breach. You must also provide sufficient documentation to demonstrate the amount you were charged for the specific activities that incurred data charges that you undertook as a result of the Data Breach.</i>
<input type="checkbox"/> Postage charges incurred as a result of the Data Breach			<i>Example: Receipts from the United States postal service or other shipping companies, along with an explanation of what you sent and why you sent it. You must explain what you sent to incur the charges, to whom you sent it, and why you sent it as a result of the Data Breach.</i>

THIS CHART MUST BE COMPLETED IF YOU ARE SEEKING ORDINARY OUT OF POCKET LOSSES OR EXTRAORDINARY LOSSES. FAILURE TO COMPLETE THE CHART MAY RESULT IN YOUR CLAIM BEING DENIED.			
Loss Type (Check all that apply)	Date of Loss	Amount of Loss	Description of Supporting Documentation (Identify what you are attaching and why)
<input type="checkbox"/> Gasoline charges for local travel incurred as a result of the Data Breach			<i>Example: Gasoline receipt for gasoline used driving to the police station to file a police report regarding the Data Breach.</i> <i>You are only entitled to claim reimbursement for the gasoline you used as a result of the Data Breach, which may be less than a full tank. You must describe where you drove, the distance you traveled, why the travel was connected to the Data Breach, and the portion of any gasoline receipt that you attribute to the trips that you made as a result of the Data Breach.</i>
<input type="checkbox"/> Credit monitoring or other mitigative costs			<i>Example: Receipts or account statements reflecting charges incurred to view a credit report.</i>
<input type="checkbox"/> Other unreimbursed out-of-pocket, costs, losses, and/or expenditures caused by the Data Breach (including, but not limited to, unreimbursed costs, losses, or expenditures incurred as a result of identity theft or identity fraud, falsified tax returns, real estate title fraud, banking fraud or other misuse of your information)			<i>Example: Receipts documenting out-of-pocket losses not set forth above, and an explanation of why the loss was more likely than not caused by the Data Breach and a statement that you made reasonable efforts to avoid or seek reimbursement for the loss, including exhaustion of all available credit monitoring insurance and identity theft insurance. Other losses could include, solely by way of example, the costs associated with addressing a fraudulent tax return or unemployment claim made in your name.</i>

CERTIFICATION AND SIGNATURE

By submitting this Claim Form, I certify that I am a Settlement Class Member and am eligible to make a claim in this settlement and that the information provided in this Claim Form and any attachments is true and correct. I do hereby swear (or affirm), under penalty of perjury, that the information provided above is true and accurate to the best of my knowledge and that any cash compensation or benefits I am claiming are based on losses or expenses I reasonably believe, to the best of my knowledge, were incurred as a result of the Data Breach.

I understand that this claim may be subject to audit, verification, and Court review and that the Settlement Administrator may require supplementation of this Claim or additional information from me. I also understand that all claim payments are subject to the availability of settlement funds and may be reduced, depending on the type of claim and the determinations of the Settlement Administrator.

Name: _____

Signature: _____

Date: _____

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 9:24-CV-80612-AMC

**MARY JANE WHALEN, and
CHRISTINE V. RONA**, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**GUNSTER, YOAKLEY &
STEWART, PA**

Defendant.

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

On _____[DATE], this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) (Doc. ____) of the Settlement between the Settlement Class Representatives, on behalf of themselves and the Settlement Class, and Gunster, Yoakley & Stewart, PA (“Gunster”), as memorialized in Exhibit __ (Doc. __) to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement;¹

On _____[DATE], pursuant to the notice requirements set forth in the Settlement and in the Preliminary Approval Order, the Settlement Class Members were apprised of the nature and pendency of the Action, the terms of the Settlement, and their rights to request exclusion, object, and/or appear at the Final Approval Hearing;

¹ The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Settlement except as may otherwise be indicated.

On _____[DATE], the Court held a Final Approval Hearing to determine, inter alia: (1) whether the Settlement is fair, reasonable, and adequate; and (2) whether judgment should be entered dismissing all claims in the Amended Complaint with prejudice. Prior to the Final Approval Hearing, Class Counsel filed a declaration from the Settlement Administrator confirming that the Notice Plan was completed in accordance with the Parties' instructions and the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement and the award of attorney's fees, costs, and expenses.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Gunster, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, adequate, and reasonable, having considered the application made by Class Counsel for Attorney's Fees and Expenses, and having reviewed the materials in support thereof, and good cause appearing:

IT IS HEREBY ORDERED THAT:

1. The Court has subject matter jurisdiction. Specifically, the Court finds that the parties are minimally diverse, that there are more than 100 members of the Settlement Class, and that the amount in controversy exceeds \$5,000,000, as required by 28 U.S.C. § 1332. The Court also has personal jurisdiction over the Parties and the Settlement Class Members.

2. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive.

3. The Settlement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays and uncertainties, including as to the outcome, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the Settlement.

4. This Court grants final approval of the Settlement, including, but not limited to, the releases in the Settlement and the plans for distribution of the settlement relief. The Court finds that the Settlement is in all respects fair, reasonable, adequate, and in the best interest of the Settlement Class. Therefore, all Settlement Class Members who have not opted out are bound by the Settlement and this Final Approval Order and Judgment.

5. The Settlement and every term and provision thereof—including, without limitation, the Releases—are incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

6. The Parties shall effectuate the Settlement in accordance with its terms.

OBJECTIONS AND OPT-OUTS

7. _____ objections were filed by Settlement Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement approval, and the objections are hereby overruled in all respects.

8. All persons who have not objected to the Settlement in the manner provided in the Settlement are deemed to have waived any objections to the Settlement, including, but not limited to, by appeal, collateral attack, or otherwise.

9. A list of those persons who have timely and validly elected to opt out of the Settlement in accordance with the requirements in the Settlement (the “Opt-Out Members”) has been submitted to the Court in the Declaration of _____, filed in advance of the Final Approval Hearing. That list is attached as Exhibit A to this Order. The persons listed in Exhibit A are not bound by the Settlement, or this Final Approval Order and Judgment, and are not entitled to any of the benefits under the Settlement. Opt-Out Members listed in Exhibit A shall be deemed not to be Releasing Parties.

CLASS CERTIFICATION

10. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby finally certifies for settlement purposes only the following Settlement Class:

All persons residing in the United States whose Personal Information was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach. The Settlement Class specifically excludes: (i) Gunster, any Entity in which Gunster has a controlling interest, and individuals who at any time since November 27, 2022 served as Gunster directors or officers; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement.

11. The Court determines that for settlement purposes the Settlement Class meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), namely that the class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the class representatives

are typical of absent class members; that the class representatives will fairly and adequately protect the interests of the class as they have no interests antagonistic to or in conflict with the class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

12. The Court grants final approval to the appointment of Mary Jane Whalen and Christine V. Rona as the Settlement Class Representatives. The Court concludes that the Settlement Class Representatives have fairly and adequately represented the Settlement Class and will continue to do so.

13. The Court grants final approval to the appointment of John A. Yanchunis of Morgan & Morgan and Brian Murray of Glancy, Prongay & Murray LLP as Class Counsel. The Court concludes that Class Counsel has adequately represented the Settlement Class and will continue to do so.

NOTICE TO THE SETTLEMENT CLASS

14. The Court finds that the Notice Plan, set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class Members of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement, their right to exclude themselves, their right to object to the Settlement and to appear at the final approval hearing, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable laws.

15. The Court finds that Gunster has fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

AWARD OF ATTORNEYS' FEES

16. The Court has considered Class Counsel's Motion for Attorneys' Fees and Expenses.

17. The Court awards Class Counsel ___% of the gross Settlement Fund as an award of attorneys' fees and \$_____ as an award of costs and expenses to be paid in accordance with the Settlement, and the Court finds this amount of fees, costs, and expenses to be fair and reasonable. This award of attorneys' fees, costs, and expenses, and any interest earned thereon, shall be paid from the Settlement Fund in accordance with the Settlement. This award of attorneys' fees, costs, and expenses is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement.

OTHER PROVISIONS

18. The Parties to the Settlement shall carry out their respective obligations thereunder.

19. Within the time period set forth in the Settlement, the relief provided for in the Settlement shall be made available to the Settlement Class Members who submitted valid Claim Forms, pursuant to the terms and conditions of the Settlement.

20. As of the Effective Date, all Releasing Parties, on behalf of themselves, their heirs, assigns, beneficiaries, executors, administrators, insurers, predecessors, and successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely, unconditionally, and forever release and

discharge any and all Released Claims against the Released Parties, except for claims relating to the enforcement of the Settlement or Agreement.

21. “Releasing Parties” means the Settlement Class Representatives and all Settlement Class Members who do not timely and validly opt out of the Settlement.

22. “Released Parties” means Gunster and its current and former shareholders, associates, attorneys, of counsel attorneys, in-house attorneys, officers, employees, directors, divisions, and affiliated companies (Gunster and the foregoing entities and persons described in this Paragraph are collectively referred to as the “Gunster Persons”), as well as the Gunster Persons’ respective predecessors, successors, assigns, current and former parents, subsidiaries, divisions, and affiliated companies, whether indirect or direct, as well as their directors, officers, members, managers, employees, agents, vendors, insurers, reinsurers, sureties, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, contractors, wholesalers, resellers, distributors, service providers, and retailers; *and* all entities and persons, including but not limited to former and current Gunster Persons’ clients, whose information, including but not limited to information contained in files relating to representation of such current and former clients, was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach, as well as those entities’ and persons’ respective predecessors, successors, assigns, current and former parents, subsidiaries, divisions, and affiliated companies, whether indirect or direct, as well as their directors, officers, members, managers, employees, agents, vendors, insurers, reinsurers, sureties, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, contractors, wholesalers, resellers, distributors, service

providers, and retailers. For the avoidance of doubt, the Released Parties also include the business associates and/or covered entities who were the data owners of information accessed, compromised, or impacted by the Data Breach. All entities that are Released Parties benefit from the Agreement and are entitled to enforce the Agreement fully and directly, including without limitation the Agreement's releases.

23. "Released Claims" means any and all claims, defenses, demands, actions, causes of action, rights, offsets, setoffs, suits, remedies, damages, lawsuits, costs, relief for contempt, losses, attorneys' fees, expenses, or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including but not limited to monetary sanctions or damages for contempt, injunctive or declaratory relief, mandamus, rescission, general, direct, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, statutory damages, penalties, interest, attorneys' fees, costs, or expenses, whether a known or unknown (including Unknown Claims), suspected or unsuspected, existing or potential, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to the Data Breach, any legal, factual, or other allegations in the Action, or any theories of recovery that were, or could have been, raised at any point in the Action.

24. For the avoidance of doubt, Released Claims are to be construed broadly and include, without limitation, any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of

action under the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 *et seq.* and any similar statutes in effect in the United States or in any states in the United States); causes of action under the common or civil laws of any state in the United States, including but not limited to: unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; any statutory claims under state or federal law; and also including, but not limited to, any and all claims in any state or federal court of the United States, for damages, injunctive relief, restitution, mandamus, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit or financial account monitoring services, identity theft insurance, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief.

25. "Unknown Claims" means any and all Released Claims that any Settlement Class Representative or Settlement Class Member does not know or suspect to exist in his or her favor as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Settlement Class Representatives and Settlement Class Members shall

have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which includes or is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

The Settlement Class Representatives and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

26. This Final Approval Order and Judgment, the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement shall not be offered or received against Gunster or any Gunster Persons as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Gunster or any Gunster Persons with respect to the truth of any fact alleged by any Settlement Class Representative or any Settlement Class Member or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of Gunster or any Gunster Persons; *provided, however*, that nothing in the foregoing, the Settlement, or this Final Approval Order and Judgment shall be interpreted to

prohibit the use of the Settlement or this Final Approval Order and Judgment in a proceeding to consummate or enforce the Settlement or this Final Approval Order and Judgment (including all releases in the Settlement and Final Approval Order and Judgment), or to defend against the assertion of any Released Claims in any other proceeding, or as otherwise required by law.

27. This Final Approval Order and Judgment and the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement are not, and shall not be construed as or received in evidence as an admission, concession, or presumption against any Settlement Class Representative or any Settlement Class Member that any of their claims are without merit, or that any defense asserted by Gunster has any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund.

28. The Settlement (including without limitation the releases therein) shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims that are brought, initiated, or maintained by, or on behalf of, any Settlement Class Member who is not an Opt-Out Member or any other person subject to the provisions of this Final Approval Order and Judgment.

29. The Court hereby dismisses the Action and the Amended Complaint and all claims therein on the merits and with prejudice, without fees or costs to any Party except as provided in this Final Approval Order and Judgment.

30. Consistent with Paragraph 6.4 of the Settlement, if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final

Approval Order and Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into the Settlement. In such an event, the Parties shall be restored to their respective positions in the Action as if the Settlement Agreement had never been entered into (and without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue).

31. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

32. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain exclusive jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement for all purposes, including enforcement of its terms at the request of any party, and resolution of any disputes that may arise relating in any way to the implementation of the Settlement or the implementation of this Final Approval Order and Judgment.

ENTERED:

DATED: _____, 2024

By: _____

NOTICE OF CLASS ACTION SETTLEMENT

SOUTHERN DISTRICT OF FLORIDA

Mary Jane Whalen and Christine V. Rona v. Gunster, Yoakley & Stewart, PA,
Case No. 9:24-CV-80612-AMC

If your personal information was compromised, accessed, exfiltrated, or otherwise impacted in a data breach announced by Gunster, Yoakley & Stewart, PA, you are eligible for benefits from a class action settlement.

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

A settlement has been proposed (the “Settlement” or “Settlement Agreement”) with Gunster, Yoakley & Stewart, PA (“Gunster”) in a class action lawsuit about a security incident impacting Gunster (the “Data Breach”). This notice summarizes the proposed settlement. If you are a Settlement Class Member, there are benefits available to you from the proposed settlement. The settlement includes all individuals residing in the United States whose personal information was impacted by the Data Breach. **The easiest way to submit a claim under the Settlement is online at [\[\[www.gysdatabreachsettlement.com\]\]](http://www.gysdatabreachsettlement.com).**

The settlement provides payments and other benefits to people who submit valid claims for lost time, certain documented out-of-pocket expenses, and additional credit monitoring services. More specifically, the settlement relief includes:

- **Compensation for “Ordinary” Out-of-Pocket Losses and Ordinary Attested Time:** If you have incurred unreimbursed costs, losses, or expenditures responding to the notice of Data Breach or in response to the Data Breach, you can make a claim for reimbursement for ordinary out-of-pocket losses and ordinary attested time up to \$2,500.00 in the aggregate, subject to the following:
 - **Ordinary Out-of-Pocket Losses:** Examples of ordinary out-of-pocket losses include: (i) costs associated with accessing or freezing/unfreezing credit reports with any credit-reporting agency; (ii) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; (iii) credit monitoring or other mitigative costs. To submit a valid claim, you must provide third-party documentation (not “self-prepared”) to support the unreimbursed cost, loss, or expenditure as well as a brief description of the documentation if the nature of the cost, loss, or expenditure is not apparent from the documentation alone.
 - **Ordinary Attested Time:** If you spent time responding to receiving notice of the Data Breach, you may also submit a claim for reimbursement for up to 7 hours of time at a rate of \$30.00/hour. To submit a valid claim, you must provide an attestation and brief description of the actions taken in response to receiving notice of the Data Breach and the time associated with each action.
- **Compensation for “Extraordinary” Losses and Extraordinary Attested Time:** If you believe you suffered identity theft, fraud, or other extraordinary losses, you may submit a claim for extraordinary losses and extraordinary attested time up to \$35,000.00 in the aggregate. The total amount of compensation you may claim for ordinary out-of-pocket losses, ordinary attested time, extraordinary losses, and extraordinary attested time cannot exceed \$35,000.00, subject to the following:

Questions? Visit [\[www.gysdatabreachsettlement.com\]](http://www.gysdatabreachsettlement.com) or Call 1-XXX-XXX-XXXX

- **Extraordinary Losses:** Extraordinary losses are unreimbursed costs, losses, or expenditures that are fairly traceable to the Data Breach and that are not reimbursable as ordinary out-of-pocket losses. Examples of extraordinary losses include unreimbursed costs, losses, or expenditures incurred as a result of identity theft or identity fraud, falsified tax returns, real estate title fraud, banking fraud, or other possible misuse of your personal information. To submit a valid claim, you must provide third-party documentation (not “self-prepared”) to support the unreimbursed cost, loss, or expenditure as well as a brief description of the documentation if the nature of the cost, loss, or expenditure is not apparent from the documentation alone. Extraordinary Losses will be deemed “fairly traceable” if (1) the unreimbursed cost, loss, or expenditure was incurred in responding to the notice of the Data Breach or in response to the Data Breach and (2) the personal information used to commit identity theft, fraud, or other misuse consisted of the same type of personal information that was provided to Defendant prior to the Data Breach or that can be reasonably easily obtained on the basis of information that was provided to Defendant prior to the Data Breach.
- **Extraordinary Attested Time:** If you spent time remedying identity theft, fraud, or other misuse of your information related to the Data Breach, you may also submit a claim for reimbursement for up to 10 hours of time at a rate of \$30.00/hour. To submit a valid claim, you must provide an attestation and brief description of the actions taken to remedy identity theft, fraud, or other misuse of your information related to the Data Breach and the time associated with each action.
- **Credit Monitoring:** You can submit a claim for three years of three-bureau credit monitoring services, including dark web scanning, identity theft insurance, real-time credit monitoring with Equifax, Experian, and TransUnion, and access to fraud resolution agents.

The total amount of compensation that can be claimed for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses, and Extraordinary Attested Time cannot exceed \$35,000 per individual and the total amount of Attested Time (Ordinary and Extraordinary) cannot exceed 10 hours per person.

ALL BENEFITS (AND THE AMOUNT PAID TO SETTLEMENT CLASS MEMBERS UNDER THIS SETTLEMENT) MAY BE HIGHER OR LOWER DEPENDING ON THE TOTAL AMOUNT OF APPROVED CLAIMS.

Your legal rights are affected even if you do nothing. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
File a claim for Settlement Benefits	You must submit a claim form in order to receive credit monitoring and compensation for lost time and out-of-pocket expenses. Your claim form must include your Unique Class Member ID found on the postcard notice sent to you or available from the Settlement Administrator, or, if you believe your personal information was compromised, accessed, exfiltrated, or otherwise impacted in the Data Breach but you did not receive written notice from Gunster, you must include documentation demonstrating why you believe your information was compromised, accessed, exfiltrated, or otherwise impacted. For more detailed information, see Question 9.	90 days from date of Notice
	You can exclude yourself from the Settlement by informing the Settlement Administrator that you want to “opt-out” of the Settlement. If the Settlement becomes final, this is the only option that allows you to retain your rights to separately sue Gunster (or any other Released	60 days from date of Notice

Questions? Visit www.gysdatabreachsettlement.com or Call 1-XXX-XXX-XXXX

Exclude yourself from the Settlement	Parties) for claims related to the Data Breach. If you opt-out, you may not make a claim for benefits under the Settlement. For more detailed information, see Question 15.	
Object to or comment on the Settlement	You may object to the Settlement by writing to explain to the Court why you don't think the Settlement should be approved. If you object, you will remain a Settlement Class Member, and if the Settlement is approved, you will be eligible for the benefits of the Settlement and give up your right to sue Gunster (or any other Released Parties) for claims related to the Data Breach, as described in the Settlement Agreement available on the Settlement website [www.gysdatabreachsettlement.com]]. For more detailed information, see Question 16.	60 days from date of Notice
Do Nothing	If you do nothing, you will not be entitled to any of the above-listed benefits. If the Settlement becomes final, you will give up your rights to sue Gunster (or any other Released Parties) separately for claims relating to the Data Breach or to continue to pursue any such claims you have already filed.	

These rights and options – **and how and when you need to exercise them** – are explained in this notice.

The Court that is presiding over this case still has to decide whether to grant final approval of the settlement. Payments will only be made after the Court grants final approval of the settlement and after any appeals are resolved.

Questions? Visit [www.gysdatabreachsettlement.com] or Call 1-XXX-XXX-XXXX

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION Page 5

1. What is this notice, and why did I get it?

2. What is this lawsuit about?

3. Why is this a class action?

4. Why is there a Settlement?

WHO IS PART OF THE SETTLEMENT? Page 6

5. How do I know if I am part of the Settlement?

SETTLEMENT BENEFITS Page 6

6. What does the Settlement provide?

7. How will the Settlement help me protect against future identity theft and fraud?

8. What happens if the amount of claims exceeds the amount of the settlement?

HOW DO YOU RECEIVE A BENEFIT? Page 7

9. How do I file a claim for credit monitoring, Out-of-Pocket Expenses, or Lost Time?

10. How will claims be decided?

11. When will I get my payment?

LEGAL RIGHTS RESOLVED THROUGH THE SETTLEMENT Page 8

12. What am I giving up as part of the Settlement?

THE LAWYERS REPRESENTING YOU Page 9

13. Do I have a lawyer in this case?

14. How will the lawyers be paid?

EXCLUDING YOURSELF FROM THE SETTLEMENT Page 9

15. How do I exclude myself from the Settlement?

OBJECTING TO THE SETTLEMENT Page 10

16. How do I tell the Court that I like or do not like the Settlement Agreement?

GETTING MORE INFORMATION Page 11

17. How do I get more information?

Questions? Visit [www.gysdatabreachsettlement.com] or Call 1-XXX-XXX-XXXX

BASIC INFORMATION

1. What is this notice, and why did I get it?

A Court authorized this notice to inform you how you may be affected by this proposed settlement. This notice describes the lawsuit, the general terms of the proposed settlement and what it may mean to you. This notice also explains how to participate in, or exclude yourself from, the Settlement if your information was compromised in the Data Breach.

For information on how to determine if you are a Settlement Class Member, and therefore eligible for benefits under this settlement, see Question 5.

2. What is this lawsuit about?

On November 27, 2022, Gunster determined that third-party cybercriminals had gained access to Gunster's systems (the "Data Breach"). The lawsuit claims that Gunster is responsible for the Data Breach. Specifically, Plaintiffs are bringing, on behalf of a putative nationwide class, negligence claims, breach of implied contract claims, unjust enrichment claims, breach of fiduciary duty claims, and claims under the Florida Deceptive and Unfair Trade Practices Act against Gunster. The crux of Plaintiffs' claims is that Gunster should be liable for allowing the Data Breach to occur because it should have had more stringent cybersecurity.

Gunster denies these claims and any wrongdoing. It contends that the Data Breach was carried out by a sophisticated threat actor(s) who was able to overcome Gunster's cybersecurity defenses. No court or other judicial entity has made any judgment or other determination of any wrongdoing by Gunster. The settlement was reached before Gunster filed its response to Plaintiffs' Amended Complaint and before the Parties engaged in formal discovery (including the production of documents and presentation of witnesses for deposition). If litigation had continued, each party would have offered expert witnesses to testify as to whether Gunster's cybersecurity program was reasonable and whether Plaintiffs could prove damages on a class-wide basis. Gunster would also likely move for summary judgment, arguing that the undisputed evidence proves that Plaintiffs' claims would fail. Motion practice and discovery would create significant uncertainty as to whether Plaintiffs would be able to continue to assert claims on behalf of a nationwide class and whether Plaintiffs or Gunster would ultimately prevail in the litigation.

3. Why is this a class action?

In a class action, one or more people called "class representatives" sue on behalf of themselves and other people with similar claims. All of these people together are the "class" or "class members." Because this is a class action settlement, even persons who did not file their own lawsuit can obtain benefits provided under the settlement, except for those individuals who exclude themselves from the settlement class by the deadline.

4. Why is there a Settlement?

The Court has not decided in favor of Plaintiffs or Gunster. Instead, both sides agreed to a settlement after a lengthy mediation process overseen by a neutral mediator. Settlements avoid the costs and uncertainty of a trial and related appeals, while more quickly providing benefits to members of the settlement class. The class representatives appointed to represent the class and the attorneys for the settlement class ("Class Counsel," *see* Question 13) believe that the settlement is in the best interests of the Settlement Class Members.

WHO IS PART OF THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

You are a Settlement Class Member if your personal information was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach.

If you are not sure whether you are included in the settlement, you may call 1-888-8888 or Info@gysdatabreachsettlement.com with questions.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

The Settlement provides:

- Compensation for lost time addressing issues related to the Data Breach;
- Compensation for unreimbursed, out-of-pocket expenses;
- Three years of three-bureau credit monitoring (Question 7);
- Payment of costs of notifying Settlement Class Members and administering the Settlement;
- Payment of Attorneys' Fees, costs, and expenses, as approved by the Court (Question 14).
- Injunctive relief, including a number of security commitments by Gunster designed to prevent attacks similar to the Data Breach from occurring in the future.

Settlement Benefit: Cash Payment for Ordinary Attested Time: Settlement Class Members who spent time responding to the notice of the Data Breach or in response to the Data Breach can make a claim for reimbursement for up to 7 hours of time at a rate of \$30.00/hour.

To claim reimbursement for Ordinary Attested Time, you must provide an attestation and brief description of the actions taken in response to receiving notice of the Data Breach and the time associated with each action.

Settlement Benefit: Payment for Ordinary Out-of-Pocket Losses: Settlement Class Members who have documented out-of-pocket losses as a result of the Data Breach can make a claim for reimbursement up to \$2,500.00. Ordinary Out-of-Pocket Losses that are eligible for reimbursement include the following:

- costs associated with accessing or freezing/unfreezing credit reports with any credit reporting agency;
- other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and
- credit monitoring or other mitigative costs.

To claim reimbursement for Ordinary Out-of-Pocket Losses, you must submit documentation supporting this claim, including, but not limited to credit card statements, bank statements, invoices, telephone records, and receipts.

The total amount of compensation you may claim for ordinary out-of-pocket losses and ordinary attested time cannot exceed \$2,500.00 in the aggregate.

Settlement Benefit: Cash Payment for Extraordinary Attested Time: Settlement Class Members who spent time remedying identity theft, fraud, or other misuse of personal information related to the Data Breach can make a claim for reimbursement for up to 10 hours of time at a rate of \$30.00/hour.

To claim reimbursement for Extraordinary Attested Time, you must provide an attestation and brief description of the actions taken to remedy identity theft, fraud, or other misuse of your information related to the Data Breach and the time associated with each action.

Settlement Benefit: Payment for Extraordinary Losses: Settlement Class Members that have documented identity theft, fraud, or other extraordinary losses that are fairly traceable to the Data Breach can make a claim for reimbursement of up to \$35,000.00. Extraordinary Losses that are eligible for reimbursement include unreimbursed costs, losses, or expenditures incurred as a result of identity theft or identity fraud, falsified tax returns, real estate title fraud, banking fraud, or other possible misuse of your personal information.

To claim reimbursement for Extraordinary Losses, you must submit documentation to support that the loss claimed was the result of the Data Breach.

The total amount of compensation that can be claimed for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses, and Extraordinary Attested Time cannot exceed \$35,000 per individual and the total amount of Attested Time (Ordinary and Extraordinary) cannot exceed 10 hours per person.

* * *

The Settlement Administrator will decide if your claim for Ordinary Attested Time, Ordinary Out-of-Pocket Losses, Extraordinary Attested Time, and/or Extraordinary Losses is valid. Only valid claims will be paid. The deadline to file a claim for Ordinary Attested Time, Ordinary Out-of-Pocket Losses, Extraordinary Attested Time, and/or Extraordinary Losses is **[CLAIMS DEADLINE]**. **The amount of your claim may be reduced or increased depending on the total amount of claims. See Question 8.**

7. How will the Settlement help me protect against future identity theft and fraud?

Settlement Class Members can submit a claim for three years of three-bureau credit monitoring services, including dark web scanning, identity theft insurance, real-time credit monitoring with Equifax, Experian, and TransUnion, and access to fraud resolution agents.

The deadline to file a claim for Credit Monitoring is **[CLAIMS DEADLINE]**. If you submit a valid claim form and elect to enroll in Credit Monitoring, you will receive enrollment instructions by email after the settlement is final. You must provide your e-mail on the Claim Form to receive this benefit.

8. What happens if the amount of claims exceeds the amount of the settlement?

The aggregate amount Gunster shall be responsible to pay under this Settlement Agreement is capped at \$8,500,000.00. If the total amount of Approved Claims made by Settlement Class Members, together with the Administration and Notice Costs and Attorneys' Fees, and Expenses, exceeds the aggregate cap, Approved Claims will be subject to a pro rata reduction such that the total amount of Settlement benefits paid by Gunster does not exceed the amount of the settlement.

HOW DO YOU RECEIVE A BENEFIT?

9. How do I file a claim for Credit Monitoring, Out-of-Pocket Expenses, Lost Time, or Cash Payments?

To file a claim for credit monitoring, for reimbursement for Ordinary Attested Time, Ordinary Out-of-Pocket Losses, Extraordinary Attested Time, and/or Extraordinary Losses, you will need to file a claim form with your Unique Class Member ID, which can be found on the post-card notice you received or by contacting the Settlement Administrator. If you believe your personal information was compromised, accessed, exfiltrated, or otherwise impacted in the Data

Breach but you did not receive written notice from Gunster, you must include documentation demonstrating why you believe your information was compromised, accessed, exfiltrated, or otherwise impacted.

The easiest way to submit a claim form is online, by filling out the form at [[WEBSITE]]. You can also download a paper claim form and return a completed claim form by mail addressed to:

Whalen v. Gunster, Yoakley & Stewart, PA,
Settlement Administrator – GUL
PO Box 301132
Los Angeles, CA 90030-1132
Info@gysdatabreachsettlement.com

The deadline to file a claim is [CLAIMS DEADLINE] (this is the last day to file online and the postmark deadline for mailed claims).

10. How will claims be decided?

The Settlement Administrator will decide whether the information provided on each Claim Form is complete and valid. The Settlement Administrator may require additional information. If you do not provide the additional information in a timely manner the claim will be considered invalid and will not be paid.

Approved Claims are those submitted in a timely manner and found to be valid by and in an amount approved by the Settlement Administrator.

Gunster's payments under the Settlement are subject to the aggregate cap discussed in Question 8.

11. When will I get my payment?

The Court will hold a hearing on [FINAL APPROVAL DATE] to decide whether to approve the Settlement Agreement. This hearing date and time may be moved without notice to the class. If the Court approves the Settlement Agreement, there may still be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

LEGAL RIGHTS RESOLVED THROUGH THE SETTLEMENT

12. What am I giving up as part of the Settlement?

If you make a claim under the Settlement, or if you do nothing, you will be releasing all of your claims relating to the Data Breach against Gunster and any Released Parties when the Settlement becomes final. By releasing your legal claims, you are giving up the right to file, or to continue to pursue, separate legal claims against or seek further compensation from Gunster or any Released Parties for any harm related to the Data Breach or the claims alleged in the lawsuits—whether or not you are currently aware of those claims.

Unless you exclude yourself from the Settlement (*see* Question 15), all of the decisions by the Court will bind you. That means you will be bound to the terms of the Settlement and accompanying court orders, and cannot bring a lawsuit or be part of another lawsuit against Gunster or any Released Parties regarding the Data Breach.

Paragraphs 2.31, 2.32, and 2.43 of the Settlement Agreement defines the claims and parties that will be released by Settlement Class Members who do not exclude themselves from the Settlement. You can access the Settlement Agreement and read the specific details of the legal claims being released at [[www.gysdatabreachsettlement.com]].

If you have any questions, you can contact the Settlement Administrator (*see* Question 17).

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes. The Court appointed John A. Yanchunis of Morgan & Morgan and Brian Murray of Glancy Prongay & Murray LLP as Settlement Class Counsel. You will not be charged by these lawyers for their work on this case. If you want to be represented by your own lawyer, you may hire one at your own expense.

Settlement Class Counsel can be reached at **(813) 223-5505**.

14. How will the lawyers be paid?

Class Counsel has undertaken this case on a contingency-fee basis, meaning they have paid for all of the expenses in the case and have not been paid any money in relation to their work on this case. Accordingly, Class Counsel will ask the Court to award them Attorneys' Fees and Expenses. The Court will decide the amount of Attorneys' Fees and Expenses to be paid. You will not have to separately pay any portion of these fees yourself. Class Counsel's request for Attorneys' Fees and Expenses (which must be approved by the Court) will be filed by **[DATE]** and will be available to view on the Settlement website at [www.gysdatabreachsettlement.com]. Any amount approved by the Court will be subject to the aggregate cap referenced in Question 8.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I exclude myself from the Settlement?

If you are a member of the Settlement Class, you may exclude yourself from the Settlement (also known as "opting out"). If you exclude yourself, you will lose any right to participate in the Settlement, including any right to receive the benefits outlined in this notice.

If you decide on this option, you may keep any rights you have, if any, against Gunster, and you may file your own lawsuit against Gunster based upon the same legal claims that are asserted in this lawsuit, but you will need to find your own attorney at your own cost to represent you in that lawsuit. If you are considering this option, you may want to consult an attorney to determine your options.

IMPORTANT: You will be bound by the terms of the Settlement Agreement unless you submit a timely and signed written request to be excluded from the Settlement. To exclude yourself from the Settlement you must submit a "request for exclusion," postmarked or electronically submitted no later than **[DATE]**, as follows:

To submit the written request for exclusion via U.S. Mail, please send to:

Whalen v. Gunster, Yoakley & Stewart, PA,
Settlement Administrator – GUL
PO Box 301132

To submit the written request for exclusion electronically, please scan or otherwise attach a photo of the completed request for exclusion and send to the following e-mail address:

Info@gysdatabreachsettlement.com

Los Angeles, CA 90030-1132	
----------------------------	--

The statement must contain the following information:

- (i) Identify the case name of the Action;
- (ii) Identify the name and address of the individual seeking exclusion from the Settlement;
- (iii) Be personally signed by the individual seeking exclusion;
- (iv) Include a statement clearly indicating the individual’s intent to be excluded from the Settlement; and
- (v) Request exclusion only for that one individual whose personal signature appears on the request.

If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the Settlement, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Court.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I like or do not like the Settlement Agreement?

You can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must include:

- (i) The case name and number of the Action (“*Mary Jane Whalen and Christine V. Rona v. Gunster, Yoakley & Stewart, PA*, Case No. 9:24-CV-80612-AMC”);
- (ii) The name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;
- (iii) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- (iv) A statement of the specific grounds for the objection; and
- (v) A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.

In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney), the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing.

To be considered by the Court, your written objection must be filed electronically with the Court by [DATE] or mailed, postmarked no later than [DATE], to the following addresses:

Clerk of Court:	Defendant’s Counsel:	Class Counsel:
Paul G. Rogers Federal Building and U.S. Courthouse	Kristine M. Brown Donald Houser	John A. Yanchunis MORGAN & MORGAN

701 Clematis Street, Room 202 West Palm Beach, FL 33401	ALSTON & BIRD LLP 1201 West Peachtree Street NW Suite 4900 Atlanta, GA 30309-3424	COMPLEX LITIGATION GROUP 201 North Franklin Street 7th Floor Tampa, FL 33602 Brian Murray GLANCY PRONGAY & MURRAY LLP 230 Park Avenue, Suite 358 New York, NY 10169 bmurray@glancylaw.com
--	--	---

If you do not comply with these procedures and the deadline for objections, you may lose any opportunity to have your objection considered at the Final Approval Hearing or otherwise to contest the approval of the settlement or to appeal from any orders or judgments entered by the Court in connection with the proposed settlement. You will still be eligible to receive settlement benefits if the settlement becomes final even if you object to the settlement.

The Court has scheduled a Final Approval Hearing to listen to and consider any concerns or objections from Settlement Class Members regarding the fairness, adequacy, and reasonableness of the terms of the Settlement Agreement. That hearing is currently scheduled to take place on [DATE and TIME] before the Honorable Aileen M. Cannon, at the United States District Court for the Southern District of Florida located in Alto Lee Adams, Sr. United States Courthouse, 101 South U.S. Highway 1 Chambers 4044, Fort Pierce, Florida 34950. This hearing date and time may be moved without notice to the class. Please refer to the Settlement website www.gysdatabreachsettlement.com for notice of any changes.

GETTING MORE INFORMATION

17. How do I get more information?

If you have questions about this notice or the Settlement, you may go to the Settlement website at [www.gysdatabreachsettlement.com] or call [PHONE]. You can also contact the Settlement Administrator at [Info@gysdatabreachsettlement.com] or by mailing a letter to Gunster Data Breach Class Action Settlement Administrator, Whalen v. Gunster, Yoakley & Stewart, PA, Settlement Administrator – GUL PO Box 301132 Los Angeles, CA 90030-1132 Info@gysdatabreachsettlement.com for more information or to request that a copy of this document be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them at **(813) 223-5505**. You may also seek advice and guidance from your own private lawyer at your own expense if you wish to do so.

This notice is only a summary of the lawsuit and the Settlement. Other related documents can be accessed through the Settlement website. If you have questions about the proposed settlement or wish to receive a copy of the Settlement Agreement but do not have access to the Internet to download a copy online, you may contact the Settlement Administrator. The Court cannot respond to any questions regarding this notice, the lawsuit, or the proposed settlement.

Please do not contact the Court, its Clerks, or Gunster

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 9:24-CV-80612-AMC**

**MARY JANE WHALEN, and
CHRISTINE V. RONA**, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**GUNSTER, YOAKLEY &
STEWART, PA**

Defendant.

**DECLARATION OF CHRISTIE K. REED
IN SUPPORT OF SETTLEMENT NOTICE PLAN**

I, Christie K. Reed, declare as follows:

1. I am a Vice President of Legal Notification Services for Verita Global, LLC (“Verita”) f/k/a KCC Class Action Services, LLC (“KCC”), a firm that provides comprehensive class action services, including claims administration, legal notification, email and postal mailing campaign implementation, website design, call center support, class member data management, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related services critical to the effective administration of class action settlements. As such, I have personal knowledge of the matters set forth herein.

2. Verita’s experience includes many of the largest and most complex settlement administrations of both private litigation and of actions brought by state and federal government regulators. Verita has been retained to administer more than 7,500 class actions and distributed settlement payments totaling well over a trillion dollars in assets.

3. The purpose of this declaration is to provide information related to Verita's qualifications and experience,¹ and to detail the settlement notice program (the "Notice Plan" or "Notice Program") proposed here for the settlement in *Whalen v. Gunster, Yoakley & Stewart, PA*, Case No. 9:24-CV-80612-AMC.

4. Unless noted otherwise, capitalized terms have the same meaning ascribed to them as in the Settlement Agreement.

VERITA BACKGROUND AND EXPERIENCE

5. Verita has administered class action settlements for hundreds of consumer protection cases, including data breach cases. Some examples of data breach cases with which Verita has been involved include: *Braun v. VisionQuest Eyecare, PC, et al.*, 49D07-1705-PL-020189 (Ind. Super. Ct.); *Carroll v. Macy's Inc. et al.*, No. 2:18-cv-01060-RDP (N.D. Ala.); *Cochran v. Burgerville LLC*, No. 18-cv-44864 (Cir. Ct. Ore); *Debaeke v. St. Joseph Health System, et al.*, No. JCCP 4716 (Cal. Super. Ct.); *Elvey v. TD Ameritrade, Inc.*, No. C 07 2852 VRW (N.D. Cal.); *Experian Data Breach Litig.*, No. 8:15-cv-01592 AG (DFMx) (C.D. Cal.); *Groveunder v. Wellpoint*, No. JCCP 4647 (Cal. Super. Ct.); *In re Anthem, Inc. Data Breach Litig.*, No. 5:15-MD-02617-LHK (N.D. Cal.); *In re Arby's Restaurant Group, Inc. Data Security Litig.*, No. 18-mi-55555-AT (N.D. Ga.); *In re LinkedIn User Privacy Litig.*, No. 12-cv-03088-EJD (N.D. Cal.); *In re Medical Informatics Engineering, Inc. Customer Data Security Breach Litig.*, No. 15-md-2667 (N.D. Ind.); *In re Yapstone Data Breach Litig.*, 15-cv-04429-JSW (N.D. Cal.); *Lozanski v. The Home Depot Inc. Canada*, No. 14-51262400CP (Ontario Superior Court of Justice, Canada); *Ramsey v. 41 E. Chestnut Crab Partners, LLC, et al.*, No. 2019-CH-2759 (Ill. Cir. Ct.); *Saenz v. SEIU United Healthcare Workers-West*, No. RG09478973 (Cal. Super. Ct.); *Shurtleff v.*

¹ Verita acquired Gilardi & Co. LLC in 2015. KCC and Gilardi & Co. LCC rebranded as Verita Global, LLC in June 2024. This Declaration combines the class action notice and administration experience of both firms.

Health Net of California, Inc., No. 34-2012-00121600 (Cal. Super. Ct.); *Sonic Corp Customer Data Security Breach Litig.*, No. 1:17-md-02807 (N.D. Ohio); *Storm v. Paytime, Inc.*, No. 14-cv-01138 (M.D. Pa.); *The Home Depot, Inc. Customer Data Security Breach Litig.*, No. 1:14-md-02583 (N.D. Ga.); *Torres v. Wendy's International, LLC*, No. 6:16-cv-00210-PGB-DCI (M.D. Fla.); and *Winstead v. ComplyRight, Inc.*, No. 18-cv-4990 (N.D. Ill.).

NOTICE PLAN

6. The proposed Notice Plan has been designed to reach approximately 80% of likely Settlement Class Members via an individual notice and paid media campaign.

7. The expected reach of the Notice Program is consistent with other effective court-approved class certification notice programs and is designed to meet due process requirements. The Federal Judicial Center's (FJC's) Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (the "FJC Checklist") considers 70% reach among class members to be a "high percentage" and reasonable.

8. It is my understanding the Settlement Class consists of approximately 746,000 Settlement Class Members, approximately 549,000 of which will be provided with direct notice to their last-known address. The remainder of the class will be provided with notice through a media campaign, as described below.

Class Definition

9. The Notice Plan is designed to provide notice to the following Settlement Class: all persons residing in the United States whose Personal Information was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach.

10. The Settlement Class specifically excludes: (i) Gunster, any Entity in which Gunster has a controlling interest, and individuals who at any time since November 27, 2022

served as Gunster directors or officers; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement.

Individual Notice

11. Defendants will provide Verita with the names and contact information for all persons identified by Gunster to be Settlement Class Members. This information comprises the “Class List” and is expected to contain approximately 549,000 names and last-known addresses.

12. A single-postcard Summary Notice will be sent to all Settlement Class Members on the Class List.

13. Prior to mailing, the addresses would be checked against the National Change of Address (NCOA)² database maintained by the United States Postal Service (USPS); certified via the Coding Accuracy Support System (CASS);³ and verified through Delivery Point Validation (DPV).⁴

14. Notices returned by USPS as undeliverable will be re-mailed to any address available through postal service forwarding order information, if appropriate. For any returned mailing that does not contain an expired forwarding order with a new address indicated, Verita will conduct further address searches using credit and other public source databases to attempt to locate new addresses and will re-mail these notices, if applicable.

² The NCOA database contains records of all permanent change of address submissions received by the United States Postal Service (“USPS”) for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

³ Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP+4 coding systems.

⁴ Records that are ZIP+4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

Media Campaign

15. The results of the individual notice effort will be continuously monitored and analyzed to confirm that the results fall within expectations. Should the results be less than expected, additional indirect notification methods will be added to ensure the notice program provides at least 80% of likely Settlement Class Members with an opportunity to see a notice.

16. Verita will implement a digital media campaign consisting of approximately 116,640,000 impressions. An impression is a metric that counts the number of times a user sees a website or other digital content, such as a digital advertisement. The digital ads will be purchased programmatically and distributed on various websites and mobile apps on multiple ad exchanges (e.g., Google Display Network), as well as Facebook and Instagram. The types and formats of the advertisements might include banners ads, in-line image ads, and other types of advertisements specific to each platform. The digital ads will be targeted to adults 18 years of age or older nationwide. The text of these digital ads will allow users to identify themselves as potential Settlement Class Members and provide a direct link to the case-specific website for more information.

Response Mechanisms

17. Verita will establish and maintain a case-specific website to allow likely Settlement Class Members to obtain additional information and documents about the Settlement and file a Claim Form online. The settlement website will allow users to read, download, and print the Settlement Agreement, Preliminary Approval Order, Long-Form Notice, and Claim Form, as well as other important documents and deadlines. Settlement Class Members will also be able to review a list of Frequently Asked Questions (FAQs) and Answers (which will match

the Long Form Notice) and file a claim online. The website address will be displayed in the Claim Form, Long-Form Notice, and Short Form Notice.

18. Verita will establish a case-specific toll-free number to allow Settlement Class Members to call and learn more about the case in the form of frequently asked questions and request a Long Form Notice and/or Claim Form be mailed to them. The toll-free number will be displayed in the Long-Form Notice, Short Form Notice, Claim Form, and on the settlement website.

19. Verita will establish and monitor a settlement mailbox and e-mail address where Settlement Class Members may submit hard copy Claim Forms, exclusion requests and other case correspondence to allow Settlement Class Members to easily correspond with Verita.

CONCLUSION

20. In my professional opinion, the Notice Plan proposed for this case is the best notice that is practicable under the circumstances.

21. In Verita's experience, this notice is also consistent with other settlement notice programs in analogous cases. The expected reach of the Notice Plan is also consistent with other effective court-approved settlement notice programs and is designed to meet due process requirements. The Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers 70-95% reach among class members to be a "high percentage" and reasonable.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 7th day of November, 2024, at Lakewood, CA.



Christie K. Reed

Summary report: Litera Compare for Word 11.8.0.56 Document comparison done on 11/1/2024 8:32:27 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: Ex. D (Gunster 10.21.2024) - Notice Plan.docx	
Modified DMS: iw://dms.alston.com/LEGAL02/45011778/2	
Changes:	
<u>Add</u>	22
<u>Delete</u>	23
<u>Move From</u>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<u>Table Delete</u>	0
<u>Table moves to</u>	0
<u>Table moves from</u>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	45

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 9:24-CV-80612-AMC

**MARY JANE WHALEN, and
CHRISTINE V. RONA**, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**GUNSTER, YOAKLEY &
STEWART, PA**

Defendant.

[PROPOSED] PRELIMINARY APPROVAL ORDER

This matter is before the Court for consideration of whether the Settlement reached by the Parties should be preliminarily approved, the proposed Settlement Class preliminarily certified, and the proposed plan for notifying the Settlement Class approved. Having reviewed the proposed Settlement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court has determined the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class should be preliminarily certified, and the proposed notice plan approved.¹ Accordingly, good cause appearing in the record, **IT IS HEREBY ORDERED THAT:**

Provisional Certification of The Settlement Class

(1) The Court provisionally certifies the following Settlement Class:

All persons residing in the United States whose Personal Information was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach. The

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement.

Settlement Class specifically excludes: (i) Gunster, any Entity in which Gunster has a controlling interest, and individuals who at any time since November 27, 2022 served as Gunster directors or officers; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement.

This Settlement Class is provisionally certified for purposes of settlement only.

(2) The Court has subject matter jurisdiction. Specifically, the Court finds that the parties are minimally diverse, that there are more than 100 members of the Settlement Class, and that the amount in controversy exceeds \$5,000,000 exclusive of interest and costs, as required by 28 U.S.C. § 1332. The Court also has personal jurisdiction over the Parties and the Settlement Class Members.

(3) The Court determines that for settlement purposes the proposed Settlement Class meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), namely that the class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the class representatives are typical of absent class members; that the class representatives will fairly and adequately protect the interests of the class as they have no interests antagonistic to or in conflict with the class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

(4) Mary Jane Whalen and Christine V. Rona are designated and appointed as the Settlement Class Representatives.

(5) John A. Yanchunis of Morgan & Morgan and Brian Murray of Glancy, Prongay & Murray LLP are designated as Class Counsel pursuant to Fed. R. Civ. P. 23(g). The Court finds that Mr. Yanchunis and Mr. Murray are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Proposed Settlement

(6) Upon preliminary review, the Court finds the proposed Settlement is fair, reasonable, and adequate, otherwise meets the criteria for approval, and warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Final Approval Hearing

(7) A Final Approval Hearing shall take place before the Court on _____, 2024, at ___ a.m./p.m at the Alto Lee Adams, Sr. United States Courthouse 101 South U.S. Highway 1, Fort Pierce, Florida 34950 to determine, among other things, whether: (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to Federal Rule of Civil Procedure 23; (b) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the Amended Complaint should be dismissed with prejudice; (c) Settlement Class Members should be bound by the releases set forth in the Settlement; (d) the proposed Final Approval Order and Judgment should be entered; and (e) the application of Class Counsel for an award of attorney's fees, costs, and expenses should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing. The hearing may be re-scheduled without further notice to the class.

(8) Class Counsel shall submit their application for Attorneys' Fees and Expenses no later than thirty-five (35) days before the Objection Deadline.

(9) Any Settlement Class Member that has not timely and properly excluded itself from the Settlement in the manner described below, may appear at the Final Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Settlement Class Member that has elected to exclude themselves from the Settlement shall be entitled to object or otherwise appear, and, further provided, that no Settlement

Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described below.

Administration

(10) Verita Global, LLC (“Verita”) f/k/a KCC Class Action Services, LLC is appointed as the Settlement Administrator, with responsibility for reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members, and all other obligations of the Settlement Administrator as set forth in the Settlement. All Administration and Notice Costs incurred by the Settlement Administrator will be paid out of the Settlement Fund, as provided in the Settlement.

Notice to the Class

(11) The Notice Plan, along with the Claim Form, Long Notice Form, and Short Notice, attached to the Settlement as Exhibits A, C, and F, respectively, satisfy the requirements of Federal Rule of Civil Procedure 23 and due process and thus are approved. Non-material modifications to these exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Plan and to perform all other tasks that the Settlement requires.

(12) The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Notice Plan, Short Notice, Long Notice, and Claim Form: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the

notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

Exclusions from the Class

(13) Any individual that wishes to be excluded from the Settlement must submit a written notification of such intent either electronically or by United States mail to the designated address established by the Settlement Administrator, postmarked or submitted electronically no later than sixty (60) days after the Notice Date (the “Opt-Out Deadline”). The written notification must include the name of this Action (*Whalen v. Gunster, Yoakley & Stewart, PA*, Case No. 9:24-CV-80612-AMC (S.D. Fla.)); the full name and address of the individual seeking exclusion from the Settlement; be personally signed by the individual seeking exclusion; include a statement in the body of the document clearly indicating the individual’s intent to be excluded from the Settlement; and request exclusion only for that one individual whose personal signature appears on the request. To submit electronically, individuals requesting exclusion should prepare the written notification as required above and scan an image or take a photo of the written notification and attach it to an e-mail to the Settlement Administrator. Any individual who does not submit a valid and timely request for exclusion in the manner described herein shall be bound by the Settlement, including all releases and covenants therein, as well as all subsequent proceedings, orders, and judgments applicable to the Settlement Class.

(14) All individuals who submit valid and timely requests for exclusion from the Settlement shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Settlement; (iii) gain any rights by virtue of the Settlement; or (iv) be entitled to object to any aspect of the Settlement.

(15) The Settlement Administrator shall provide the parties with copies of all requests for exclusion promptly upon receipt, a weekly report which includes a summary of the number of requests for exclusion, and, within five (5) Business Days after the Opt-Out Deadline, a final list of all that have timely and validly excluded themselves from the Settlement Class in accordance with the terms of the Settlement and herein. Prior to the Final Approval Hearing, the Settlement Administrator shall also prepare and execute a declaration identifying each individual who timely and validly requested exclusion from the Settlement.

Objections to the Settlement

(16) A Settlement Class Member that complies with the requirements of this Order may object to the Settlement.

(17) No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless a written objection is submitted to the Court on or before the Objection Deadline, which shall be sixty (60) days after the Notice Date. For the objection to be considered by the Court, the written objection must include:

- a. the case name and number of the Action (*Whalen v. Gunster, Yoakley & Stewart, PA*, Case No. 9:24-CV-80612-AMC (S.D. Fla.));
- b. the name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;
- c. a statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- d. a statement of the specific grounds for the objection; and

e. a statement identifying whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.

(18) In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney), the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing.

(19) A written notice of objection may be either: (1) electronically filed in the Action’s electronic docket on or before the Objection Deadline; or (2) sent via first class, postage-prepaid United States Mail, postmarked no later than the Objection Deadline to: (a) the Clerk of Court; (b) Class Counsel; and (c) Defendant’s Counsel at the addresses listed below:

Clerk of Court:	Defendant’s Counsel:	Class Counsel:
Paul G. Rogers Federal Building and U.S. Courthouse 701 Clematis Street, Room 202 West Palm Beach, FL 33401	Kristine M. Brown Donald Houser ALSTON & BIRD LLP 1201 West Peachtree Street NW Suite 4900 Atlanta, GA 30309-3424	John A. Yanchunis MORGAN & MORGAN COMPLEX LITIGATION GROUP 201 North Franklin Street 7th Floor Tampa, FL 33602 Brian Murray GLANCY PRONGAY & MURRAY LLP 230 Park Avenue, Suite 358 New York, NY 10169 bmurray@glancylaw.com

(20) Any Settlement Class Member who fails to object to the Settlement in the manner described herein shall be deemed to have waived any such objection, shall not be permitted to

object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of this Order by appeal or any other means.

Claims Process and Distribution Plan

(21) The Settlement establishes a process for assessing and determining the validity and value of claims and a methodology for paying Settlement Class Members that submit a timely, valid Claim Form. The Court preliminarily approves this process.

(22) Settlement Class Members that qualify for and wish to submit a claim shall do so in accordance with the requirements and procedures specified in the Settlement, including the requirements and procedures in the Claim Form. If the Settlement is finally approved, all Settlement Class Members that qualify for any benefit under the Settlement, but who fail to submit a claim in accordance with the requirements and procedures specified in the Settlement, including the requirements and procedures in the Claim Form, shall be forever barred from receiving any such benefit. Such Class Members, however, will in all other respects be subject to and bound by the provisions of the Settlement, including the releases included in the Settlement, and the Final Approval Order and Judgment.

Termination of the Settlement and Use of this Order

(23) This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court, the Settlement is terminated in accordance with its terms, or there is no Effective Date. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Order,

relating to the Settlement shall be used or referred to for any purpose whatsoever.

(24) If the Settlement is not finally approved by the Court, the Settlement is terminated in accordance with its terms, or there is no Effective Date, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against Gunster or any Gunster Persons of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any Settlement Class Representative or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense (including without limitation any defense to class certification) or claims he or she may have in this Action or in any other lawsuit.

Stay of Proceedings

(25) Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

Continuance of Final Approval Hearing

(26) The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

Actions By Settlement Class Members

(27) The Court stays and enjoins, pending Final Approval of the Settlement, any actions, lawsuits, or other proceedings brought by Settlement Class Members against Gunster or any Gunster Persons related to the Data Breach, including but not limited to the case styled as *Ohlman*

v. Gunster, Yoakley & Stewart, PA, 9:24-cv-80992 (S.D. Florida).

Summary of Deadlines

(28) The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include but are not limited to the following:

ACTION	DEADLINE
Notice Date	60 days after entry of this Preliminary Approval Order
Motion for Attorneys' Fees and Expenses	35 days prior to Objection Deadline
Claims Deadline	90 days after Notice Date (<i>i.e.</i> , 150 days after entry of this Preliminary Approval Order)
Opt-Out/ Exclusion Deadline	60 days after Notice Date (<i>i.e.</i> , 120 days after entry of this Preliminary Approval Order)
Objection Deadline	60 days after Notice Date (<i>i.e.</i> , 120 days after entry of this Preliminary Approval Order)
Final Approval Brief and Response to Objections Due	35 days prior to Final Approval Hearing
Final Approval Hearing	[No earlier than 90 days after Notice Date (<i>i.e.</i> , 150 days after entry of this Preliminary Approval Order)]

IT IS SO ORDERED this ____ day of _____, 2024.

FIRST CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

Court Approved Legal Notice

Whalen v. Gunster, Yoakley & Stewart, PA,
Case No. 9:24-CV-80612-AMC

If your personal information was compromised, accessed, exfiltrated, or otherwise impacted by a data breach announced by Gunster, Yoakley & Stewart, PA (“Gunster”), you are eligible for benefits from a class action settlement.

[CLASS MEMBER NAME]
[ADDRESS LINE 1]
[ADDRESS LINE 2]
[CITY, STATE ZIP]

Unique Class Member ID:

A federal court authorized this Notice. This is not a solicitation from a lawyer.

A proposed Settlement has been reached with Gunster related to a data breach that Gunster experienced in 2022 (the “Data Breach”). The lawsuit, which is pending in the U.S. District Court for the Southern District of Florida, alleges that Gunster did not adequately protect certain personal information. Gunster denies any wrongdoing. No judgment or determination of wrongdoing has been made. This notice summarizes the proposed settlement. For the precise terms and additional information, please visit www.gysdatabreachsettlement.com.

Who is Included? Records indicate you are included in this Settlement as a Settlement Class Member. The Class includes the U.S. residents whose personal information was compromised, accessed, exfiltrated, or otherwise impacted in the Data Breach.

What does the Settlement Provide? Gunster will pay a total of \$8,500,000 (the “Settlement Fund”). The Settlement Fund will be used to provide compensation for ordinary attested time in addressing issues related to the Data Breach (up to 7 hours at \$30.00/hour), payment of ordinary out-of-pocket losses related to the Data Breach (up to \$2,500.00 per person), compensation for extraordinary attested time remedying identity theft, fraud, or other misuse of personal information related to the Data Breach (up to 10 hours at \$30.00/hour), payment of extraordinary losses related to the Data Breach (up to \$35,000.00 per person), three years of complimentary credit monitoring; attorneys’ fees and expenses; and costs of notice and administration. The total amount of compensation that can be claimed for an individual cannot exceed 10 hours per person. The Settlement Fund will pay for the costs of notice and administration and attorneys’ fees and expenses not to exceed thirty (30) percent of the Settlement Fund. ALL BENEFITS (AND THE AMOUNT PAID TO SETTLEMENT CLASS MEMBERS UNDER THIS SETTLEMENT) MAY BE HIGHER OR LOWER DEPENDING ON THE TOTAL AMOUNT OF APPROVED CLAIMS.

How To Get Benefits: You must submit a claim form, including any required documentation. The deadline to file a claim form is **Month XX**, 2024. You can easily file a claim online at www.gysdatabreachsettlement.com. You can also get a paper claim form at the website or by calling toll free **1-xxx-xxxx**, and file by mail. When filing your claim use your unique Class Member ID (printed on the front of this notice).

Your Other Options: If you file a claim form, object to the Settlement and/or Attorneys’ Fees and Expenses, or do nothing, you are choosing to stay in the Settlement Class. You will be legally bound by all orders of the Court and you will not be able to start, continue, or be part of any other lawsuit against Gunster or Released Parties about the Data Breach. If you don’t want to be legally bound by the Settlement or

receive any benefits from it, you must exclude yourself by **Month XX, 2024**. If you do not exclude yourself, you may object to the Settlement and/or Attorneys' Fees and Expenses by **Month XX, 2024**. The Court has scheduled a hearing in this case for **Month XX, 2024**, to consider whether to approve the Settlement, Attorneys' Fees and Expenses, as well as any objections. This date may be changed without further notice. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. The Motion for Attorneys' Fees and Expenses will be posted on the website after it is filed. For complete information about all of your rights and options, as well as claim forms, the Long Form Notice and Settlement Agreement, visit www.gysdatabreachsettlement.com, or call 1-**xxx-xxxx**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 9:24-CV-80612-AMC**

**MARY JANE WHALEN, and
CHRISTINE V. RONA**, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**GUNSTER, YOAKLEY &
STEWART, PA**

Defendant.

**DECLARATION OF JOHN A. YANCHUNIS IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

John A. Yanchunis, pursuant to 28 U.S.C § 1746, hereby declares as follows:

1. John A. Yanchunis of Morgan and Morgan Complex Litigation Group, proposed Class Counsel¹ in this action (“Plaintiffs’ Counsel” or “Proposed Class Counsel”) hereby submits this Declaration in connection with Mary Jane Whalen and Christine V. Rona’s (“Plaintiffs” or “Proposed Settlement Class Representatives”) Unopposed Motion for Preliminary Approval of the Class Action Settlement with Defendant, Gunster, Yoakley & Stewart, PA (“Gunster” or “Defendant”)

2. I lead Morgan & Morgan’s class action group. Morgan & Morgan is America’s largest injury law firm with over 1,000 lawyers in offices throughout the United States. Its depth as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country. My career as a trial lawyer began over 42 years ago

¹ All capitalized terms used in this joint declaration shall have the same meanings as set forth in the Settlement Agreement (Exhibit 1).

following the completion of a two-year clerkship with United States District Judge Carl O. Bue, Southern District of Texas (now deceased)—and I have efficiently and expeditiously led many privacy-related Multidistrict Litigation (MDL) and non-MDL class action proceedings, including as lead or co-lead counsel in some of the largest privacy class actions. I have focused my practice on class action litigation for over 28 years.

3. I began my work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, I served as co-lead counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). See *Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). Subsequently, I also served as co-lead counsel in the DPPA class cases, *Davis v. Bank of America*, No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

4. As a result of my experience in insurance and complex litigation, beginning in 2005, I was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a member of the Florida Cabinet, to serve as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigations of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. I served as lead regulator counsel and worked with a core group of state Attorneys

General from the National Association of Attorneys General, which were selected to conduct the investigations. The insurance regulator for Florida was the only insurance regulator in the group. The litigation that was filed and the related investigations netted millions of dollars in restitution for Florida consumers and resulted in significant changes in the way commercial insurance is sold in Florida and across the country.

5. During my career, I have tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by the Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, I served as lead counsel for several insurance companies regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. I was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of his clients.

6. I have been appointed and served in leadership positions in most of the largest data breach cases filed in the area of privacy and data breaches: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.) (settlement for \$190,000,000 approved for 98 million consumers), a case litigated by two of the law firms seeking interim class counsel, along with a third firm. With almost no assistance from any other firms other than to assist in preparing their individual clients for deposition, I and my two co-lead attorneys and our respective staffs took this case almost to trial before Capital One and Amazon agreed to settle the case. In his order approving the settlement, United States District Judge Anthony Trenga found that:

“In pursuing this complex, years-long litigation, [c]lass [c]ounsel engaged in, inter alia, extensive discovery—including reviewing nearly three million pages of documents and

taking nearly fifty depositions—and significant motion practice—including for class certification, summary judgment, and expert exclusion. In total, [c]lass [c]ounsel devoted more than 65,000 hours to what Plaintiffs call “almost undoubtedly, the most heavily litigated data breach case in history.” *In Re: Capital One Consumer Data Security Breach Litigation*, 1:19-md-02915-AJT (E.D. Va.) [Doc. No. 2231] at 1.

In an order approving the proposed attorneys’ fees, Judge Trenga wrote:

“Factor 1, Results for the Class: This Court previously commended [c]lass and [d]efense [c]ounsel at the September 8, 2022 [f]inal [a]pproval [h]earing for the “exceptional outcome for all the parties given the difficult legal issues,” calling it an “outstanding result” attributed “in no small measure, to counsel, counsel’s efforts, and . . . the level of competence and professionalism that they’ve brought to every aspect of this case.” [Doc. No. 2261] at 30:19-31:3. The [c]ourt stands by that statement. Class [c]ounsel effectively and efficiently pursued the case, resulting in purportedly the second largest data breach settlement to date, in addition to the injunctive relief.”

7. I have also served in leadership positions in the following data breach *MDLs*: *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) (“Yahoo”) (Lead Counsel, which led a four firm plaintiffs steering committee) (Court approved \$117,500,000.00 common fund settlement for approximately 194 million US residents and 270,000 Israeli citizens); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (Co-Lead Counsel)(four- member PSC) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, No. 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs’ Steering Committee) (final judgment entered

approving \$380.5 million fund for 145 million consumers); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-01394-ABJ (D.D.C.) (“OPM”) (member of the Executive Committee) (motion for preliminary approval of a \$60,000,000 common fund); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers).

8. My court-appointed leadership experience in non-MDL, data breach class actions is likewise significant, and to just name a few: *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.) (Co-Lead Counsel) (“Facebook”) (class certified over Facebook’s opposition for 8 million residents, subsequently settlement of the class was approved by the court); *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387 (N.D. Cal.) (Lead Counsel) (class action settlement final approval order entered July 11, 2019); and *In re: Arby’s Restaurant Group, Inc. Data Security Litigation*, Nos. 1:17-cv-514 and 1:17-cv-1035 (N.D. Ga.) (co-Liaison Counsel) (final approval of a class settlement entered June 6, 2019); and *Jackson, et al., v. Wendy’s International, LLC*, No. 6:16-cv-210-PGB (M.D. Fla.) (final approval of a class settlement entered February 26, 2019); *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Montana Eighth Judicial Court – Cascade County) (final approval of class settlement entered January 5, 2021); *In re: Citrix Data Breach Litigation*, No. 19-cv-61350 (S.D. Fla.) (preliminary approval of class action settlement entered on January 26, 2021); *Kuss v. American HomePatient, Inc., et al.*, No. 18-cv-2348 (M.D. Fla.) (final approval of class action settlement entered on August 13, 2020); *Fulton-Green v. Accolade, Inc.*, No. 18-cv-274 (E.D. Pa.) (final approval of class action settlement entered September 23, 2019); *Nelson v. Roadrunner Transportation Systems, Inc.*, No. 18-cv-7400 (N.D. Ill.) (final approval of class action settlement entered September 15, 2020).

9. I have also been appointed co-lead counsel in a data privacy case that was certified as a class over Google's opposition, *Brown. et al., v. Google, LLC*, No. 20-cv-03664 (N.D. Cal.). The case was settled weeks before the commencement of trial, and final approval of the class action settlement benefiting well over a hundred million consumers is underway. In another data privacy case against Google pending in the Northern District of California, San Francisco Division, *Rodriguez, et al, v. Google, LLC*, No. 20-cv-04688 (N.D. Cal.), my co-counsel and I obtained an order certifying a class of almost 100 million consumers over Google's opposition. This class case will be tried in 2025.

10. In 2023 I led a team of lawyers which obtained reversals of lower courts in the Eleventh Circuit and the Second Circuit Courts of Appeals: *Bohnak v. Marsh & McLennan Companies*, No. 22-319 (2d Cir. 2023), *Ramirez v. The Paradies Shops, LLC*, No. 22-12853-HH (11th Cir. 2023), and *Sheffler v. Americold Realty Trust*, No. 22-11789-CC (11th Cir. 2023). On December 7, 2023, I presented oral arguments before the Fourth Circuit in *Ford v Sandhills Medical Ctr., Inc.*, No.22-2268 (4th Cir. 2023), a class case arising out of a health care facility.

11. I now serve as an appointed member of the newly formed Cyber Security and Privacy Subcommittee of The Florida Bar.

12. I was recognized in 2024, 2020 and 2019 by Law360 as one of four MVPs in the area of Cybersecurity and Privacy. Similarly, in 2016 and then in 2020, I was recognized by the National Law Journal as a Trailblazer in the Area of Cybersecurity & Data Privacy. In 2020, I was named Florida Lawyer of the Year by the Daily Business Review, and in 2022, I was awarded the Best Mentor award in the state of Florida by the same publication. In 2023, I was named Consumer Lawyer of the Year by The Florida Bar's Consumer Protection Committee for my accomplishments in the area of data privacy. Again, for my accomplishments in the area of data

privacy and cyber security, in 2023, I was recognized as a Titan of the Plaintiffs' Bar by Law360. In 2024, I was named a finalist for Attorney of the Year by ALM/Law360 and I was a finalist for Lawyer of Year by The National Law Journal. In 2024, the class action practice group that I lead was awarded Litigation Department of the Year in the state of Florida by ALM/Law360, and my practice group was a national finalist for Litigation Department of the Year by The National Law Journal.

13. Because of my experience in the area of cyber security and privacy and data breach litigation, I am a frequent speaker nationally and internationally. I spoke on these topics in May and October of this year in London, and I am scheduled to speak in Lisbon and Mexico, in November at two separate symposiums on data privacy and cyber security. Presently, I am organizing with several universities in the United States, the European Union, and Israel, a symposium to focus on data privacy. It is planned to be held in Rome in 2025. I am also a frequent lecturer at Baylor College of Law in its LLM program on cyber security, most recently in June 2024.

14. Exhibiting my leadership skills and ability to work collaboratively with others, I have served in leadership positions on many professional committees and boards, most prominently as a member of the Board of Directors of The Florida Bar Foundation, a member of The Florida Board of Bar Examiners appointed by the Florida Supreme Court (5-year term, and I continue by appointment to date as an Emeritus Member), and an elected member for two terms to The Board of Governors of The Florida Bar, and to The Young Lawyers Division of The Florida Bar. I have served on The Florida Bar's Consumer Protection Committee, including serving as its Chair. I have also served as an expert in ethical issues in class litigation for The Florida Bar in disciplinary proceedings.

15. In my profession, I received the Florida Bar Foundation President’s Award of Excellence, the Public Justice Impact Change Award, and for my work in representing a class of elderly indigent Floridians on Medicaid in a suit against the state of Florida, which resulted in an increase in the benefits to class members, I was awarded The Florida Bar Elder Law Section Chair’s Honor Award. I have been recognized as a Super Lawyer for over two decades and is AV rated by Martindale Hubbell.

I. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS

1. On or around November 27, 2022, Gunster determined that third-party cybercriminals had gained access to Gunster’s systems (*i.e.*, the “Data Breach”). Defendant notified impacted individuals of the Data Breach beginning on or around August 2023. On May 13, 2024, Mary Jane Whalen (“Whalen”) filed a putative class action complaint against Gunster in the United States District Court for the Southern District of Florida, asserting claims arising out of the Data Breach. On August 15, 2024, Gunster moved to dismiss Whalen’s complaint for failure to state a claim. On September 17, 2024, Plaintiff Whalen filed her Amended Complaint, which, among other changes, added an additional Plaintiff, Christine V. Rona (“Rona”). On October 1, 2024, the Parties engaged in a full-day, in-person mediation session before former United States Magistrate Judge, Diane M. Welsh (ret.), a nationally recognized and experienced mediator with expertise in data breach class actions. Over the course of the day, the Parties engaged in arm’s length, hard-fought negotiations, and with the assistance of Judge Welsh, the Parties reached an agreement in principle, the terms of which were later finalized by way of the Settlement Agreement and its attached exhibits.

II. COUNSEL’S RECOMMENDATION

1. Based on my years of experience of as a consumer advocate representing

individuals in complex class actions—including data breach and privacy class I believe that the settlement now before the Court for approval is fair reasonable and adequate as I will explain below. While I believe in the merits of the claims brought in this case, I am also aware that a successful outcome is uncertain and would be achieved only after prolonged, arduous litigation with the attendant risk of drawn-out appeals. The work done on this case has included (1) investigating the Data Breach, (2) researching and evaluating the appropriate legal claims to assert, (3) interviewing potential class representatives about their experiences, (4) preparing and filing a class action complaint, (5) opposing the motion to dismiss, (6) preparing and filing an amended class action complaint, (7) engaging in informal discovery with Defendant in advance of the mediation; (8) participating in a mediation session and subsequent settlement discussions, and (9) negotiating the proposed settlement, preparing the settlement documentation, and moving for preliminary approval. My team and I have spent considerable time investigating class members' injuries and the claims in this case and were able to negotiate a well-informed Settlement on behalf of the Settlement Class. The Court has previously recognized the importance and benefits of settling complex cases to achieve speedy resolution of justice. *See, e.g., In re Miranda v. Waste Mgmt., Inc. of Fla.*, 2021 WL 12299676, at *1 (S.D. Fla. May 5, 2021); *See, e.g., In re Peng v. Mastroianni*, 2023 WL 5926732, at *1 (S.D. Fla. Aug. 3, 2023). Based upon my substantial experience, it is my opinion that the proposed settlement of this matter provides significant relief to the Settlement Class, addresses the common types of repercussions sustained by consumers following a data breach, and warrants the Court's preliminary approval as the Settlement is Fair, Reasonable, and Adequate:

1) The Class was Adequately Represented

Adequacy of representation is an issue traditionally considered in connection with class certification and involves two questions: “(1) whether plaintiffs’ counsel are qualified, experienced, and generally able to conduct the proposed litigation” and “(2) whether plaintiffs have interests antagonistic to those of the rest of the class.” *Ibrahim v. Acosta*, 326 F.R.D. 696, 701 (S.D. Fla. 2018) (quotations omitted). Here, the Plaintiffs have the same interests as other Settlement Class Members as they are asserting the same claims and share the same alleged injuries. Further, as mentioned above, I along with team worked diligently to bring this case to resolution after engaging in a full-day, in-person mediation session before former United States Magistrate Judge, Diane M. Welsh (ret.), an experienced data breach class action mediator.

2) The Proposed Settlement was Negotiated at Arm’s-Length

The Settlement resulted from arm’s-length negotiations between the Parties with an understanding of the strengths and weaknesses of our respective positions in this lawsuit, assisted by an experienced former U.S magistrate judge with significant experience in cyber litigation. These circumstances weigh in favor of approval. *See, e.g., In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 662 (S.D. Fla. 2011) (approving settlement where it “was reached in the absence of collusion, is the product of informed, good-faith, arms’-length negotiations between the parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator”); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding that class settlement was not collusive in part because it was overseen by “an experienced and well-respected mediator”); *see also* Manual for Complex Litig. at § 30.42 (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in

arm's-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted).

Additionally, the Parties spent significant time negotiating the terms of the final written Settlement Agreement which is now presented to the Court for approval. At all times, these negotiations were at arm's length and, while courteous and professional, the negotiations were intense and hard-fought on all sides.

3) **Plaintiffs Have Sufficient Information to Weigh the Benefits of Settlement**

“The stage of the proceedings at which a settlement is achieved is evaluated to ensure that plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation.” *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) (citations omitted). In addition, “[e]arly settlements are favored” such that “vast formal discovery need not be taken.” *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (S.D. Fla. 2014) (citations omitted).

While the Parties settled relatively early in the litigation, before Plaintiffs' putative class was certified, the Parties had sufficient information to adequately evaluate the merits of the case. The Parties exchanged significant information in conjunction with settlement negotiations that included the class size and demographics, information regarding the technical aspects of the breach, discovery of the breach and duration of the breach. Additionally, I along with my team relied on our experience presenting expert evidence and litigating the key legal issues in other major data breach cases to assist in evaluating the merits of this case. As recognized in other cases, “[i]nformation obtained from other cases may be used to assist in evaluating the merits of a proposed settlement of a different case.” *Lipuma*, 406 F. Supp. 2d at 1325. Accordingly, Plaintiffs had more than sufficient information available to weigh the benefits of Settlement against further

litigation. *See, e.g., Gonzalez v. TCR Sports Broad. Holding, LLP*, 2019 WL 2249941, at *5 (S.D. Fla. May 24, 2019) (“the early settlement reached between the parties and the extent to which the parties were informed about the merits of their claims and defenses weighs in favor of approving the Settlement Agreement.”).

4) The Settlement Relief is Fair, Reasonable, and Adequate

In terms of relief offered, the Settlement is as comprehensive as nearly any other data breach settlement on record, and the specific benefits compare favorably to what has been previously approved, including:

- A sizeable, \$35,000 cap on Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses and Extraordinary Attested Time.
- Compensation for up to 10 hours of Ordinary and Extraordinary Attested Time.
- Three years of three-bureau identity theft protection and credit monitoring services available to all Settlement Class Members regardless of whether they make a claim for Reimbursement.
- Pro Rata Cash Payments from the remainder of the Settlement Fund to all Settlement Class Members that file a claim, through two rounds of distributions, if economically feasible.
- Information Security Practice commitments that are narrowly tailored to further enhance Defendant’s cybersecurity posture.

For example, the relief made available under the Settlement compares very favorably to the relief made available to victims of large data breaches in common fund cases that has previously received approval and provides for a significantly greater recovery on a per-person basis. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *2 (N.D. Ga. Mar. 17, 2020) (describing settlement benefits made available from \$380.5 million fund on behalf of 147 million class members); *In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 2019 WL 3410382, at *23-24 (D. Or. July 29, 2019) (describing settlement benefits made available

from \$32 million fund on behalf of 11 million class members); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D. Cal. 2018) (approving \$115 million settlement on behalf of more than 79 million class members). The settlement fund also compares favorably to the relief offered in comparably sized cases. *See, e.g.*, *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, (S.D. Fla. Oct. 5, 2024) (approving \$6 million settlement on behalf of 2,712,790 class members); *See, e.g.*, *In re Citrix Data Breach Litig.*, 2021 WL 2410651, at *3 (S.D. Fla. June 11, 2021) (approving \$2.275 million settlement on behalf of 24,316 class members); *See, e.g.*, *Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, 2019 WL 3183651, at *7 (D. Md. July 15, 2019) (approving \$3.25 million settlement on behalf of 61,000 class members).

I have extensive experience in leading major data breach class actions and believe that the relief is fair, reasonable, adequate, and superior to many comparable settlements on record. The Court may rely upon such experienced counsel's judgment in assessing the fairness of the Settlement. *See, e.g.*, *Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012) ("Absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel.").

a. The Risks, Costs, and Delay of Continued Litigation

While Plaintiffs are confident in the merits of their claims, they also understand that Defendant will assert a number of potentially case-dispositive defenses and are pragmatic in their awareness of the various defenses available to Defendant, as well as the risks inherent to continued litigation. Defendant has consistently denied the allegations raised by Plaintiffs and made clear at the outset that they would vigorously defend the case. The Settlement Agreement avoids these uncertainties and provides the Settlement Class with meaningful and certain relief.

Due at least in part to their cutting-edge nature and the rapidly evolving law, class actions can involve some level of risk, expense, and complexity, which is one reason that judicial policy so strongly favors resolving class actions through settlement. *See In re U.S. Oil & Gas Litig.*, 967 F.2d at 493. Should this litigation continue, class certification is a significant hurdle that introduces additional complexities, including the potential for denial of certification. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). A settlement today not only avoids the risks of continued litigation, but it also eliminates the risk that the Court would not certify the class or certification might not be upheld on appeal, and it also provides benefits to Settlement Class Members of the type designed to address the common repercussions which arise following a data breach.

Thus, the costs and risks of trial and appeal support a finding to approve the Settlement.

b. The Method of Distributing Relief is Effective

The settlement distribution process, developed with my inputs, knowledge and experience overseeing the administration of dozens of data breach settlements, will be efficient and effective. Settlement Class Members can easily file claims for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses and Extraordinary Attested Time, and Credit Monitoring Services. Documentation requirements are not onerous, and not even required for many benefits. *Id.*

c. The Terms Relating to Attorneys' Fees and Expenses are Reasonable

I will separately move for Attorneys' Fees and Expenses in the amount of \$2,550,000 to be paid from the Settlement Fund that will be set forth in the fee motion. SA ¶ 18.1. Pursuant to the Settlement Agreement, I will file the motion for attorneys' fees and expenses at least thirty-five (35) days before the Objection Deadline and Gunster agrees not to oppose any request to the

Court for Attorneys' Fees and Expenses, provided such request does not exceed thirty percent of the Settlement Fund. SA ¶ 18.2. If approved by the Court, such Attorneys' Fees and Expenses shall be paid by the Settlement Administrator from the Settlement Fund within twenty-one (21) Business Days after the Effective Date. SA ¶ 18.1.

“Although there is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee, an award of one-third of the common fund is consistent with the trend in this Circuit.” *Gonzalez*, 2019 WL 2249941, at *6 (internal quotations omitted and citing cases); *see also Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (“The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third”); Theodore Eisenberg, *et al.*, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 951 (2017) (empirical study showing the median award in the 11th Circuit is 33%).

While I will provide a more thorough analysis of the reasonableness of my forthcoming motion for Attorneys' Fees and Expenses, at this stage, it is clear that the request for fees is reasonable and based upon previously approved fees in similar cases.

5) Agreements Required to be Identified by Rule 23(e)(3)

Under Rule 23(e)(3), “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” There is no agreement between the Parties, except as set forth in the Settlement Agreement, including (but not limited to) the separate writing referenced in Paragraph 6.2 of the Settlement Agreement.

6) Settlement Class Members are Treated Equitably Relative to Each Other

The last requirement under Rule 23(e) is that the Settlement “treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement treats all Settlement Class Members equitably relative to one another because all are eligible to receive

reimbursement based on expenses incurred and time spent, not on any unequitable basis. JAY Decl., Section II ¶¶ 2-5.

2. Thus, The Settlement Agreement's benefits unquestionably provide a favorable result to the members of the Settlement Class, placing the Settlement Agreement well within the range of possible final approval and satisfying the requirements for preliminary approval; therefore, the Court should grant preliminary approval.

3. Additionally, the Notice Plan contemplated by the Settlement Agreement provides the best practicable method to reach the Settlement Class Members and is consistent with other class action notice programs that have been approved by various courts for similarly situated matters.

4. Thus, I ask the Court to grant preliminary approval of the Settlement Agreement and enter the proposed Preliminary Approval Order

III. PROPOSED SETTLEMENT CLASS REPRESENTATIVES

1. Plaintiffs have demonstrated that they are well-suited to represent the Settlement Class. They have been involved in this matter since prior to the filings of the initial pleadings, including participating in approving the terms of the Settlement Agreement and being prepared to participate in discovery. Their interests interests are aligned with those of the other Settlement Class Members.

I declare that this has been signed under penalty of perjury of the United States of America that the foregoing is true and correct.

Executed on November 7, 2024

/s/ John A. Yanchunis