UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUSTIN SHERWOOD, on behalf of himself and all others similarly situated, Plaintiffs, vs. HORIZON ACTUARIAL SERVICES, LLC, Defendant.	)	Case No. 1:22-CV-01495-ELR

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

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I. INTRODUCTION

Plaintiffs move for final approval of the Settlement[1] they have reached with Defendant Horizon Actuarial Services, LLC, ("Horizon Actuarial" or "Defendant"). The parties have reached a proposed settlement that, if approved by the Court, will resolve millions of claims (including Plaintiffs' and Class Members') against Horizon Actuarial arising from the cyber security incident at issue in this litigation.

The Court previously granted preliminary approval of the proposed Settlement (ECF 71) and the parties finalized the Settlement through the Amended Settlement Agreement (hereinafter, "Settlement" or "SA").[2] ECF 79-1. Notice of the Settlement has now been disseminated to Class Members pursuant to the Notice Program set forth in the Settlement Agreement. By this motion, Plaintiffs respectfully ask the Court to grant final approval to the Settlement. The Settlement, reached following extensive mediating and arm's-length negotiations, is fair, reasonable, and adequate and it meets and exceeds the established legal standards governing final approval. Fed. R. Civ. P. 23(e)(2). The Settlement provides

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[1] Unless defined, capitalized terms have the same meaning attributed to them in the Amended Settlement Agreement. ECF 79-1.

[2] The Court subsequently entered an Order granting the Parties' Motion for Amendment of the Settlement Agreement and Approval of Revised Forms. *See* ECF 77.

significant benefits to the Settlement Class Members that are well-tailored to the nature of the harm alleged.

In support of their Motion, Plaintiffs rely on the Amended Settlement Agreement and attachments (ECF 79-1), the Joint Declaration of Co-Lead Counsel in Support of Preliminary Approval of Class Action Settlement (ECF 70-3), and the Declaration of the Settlement Administrator (Exhibit 1).

The Settlement negotiated on behalf of the Class provides for the creation of a $8,733,446.36 non-reversionary Settlement Fund. The Settlement Fund shall be used by the Settlement Administrator to pay for the following: (1) reimbursement for Out-of-Pocket Losses, Lost Time, and Cash Compensation; (2) Notice and Administrative Expenses; (3) a Fee Award and Expenses as awarded by the Court; and (4) transfer of remainder funds *cy pres* to the benefit of all Class Members. SA ¶ 56.

The deadline to file a claim was February 21, 2024, as of March 4, 2024, 77,333 claims have been submitted. *See* Ex. 1, ¶ 26. The Opt-Out and Objection deadlines were January 22, 2024 and as of March 4, 2024, 102 individuals have opted out of the Settlement. No objections to the Settlement have been received by the Settlement Administrator, but two purported objections have been submitted to the Court and entered on the docket.

II. SUMMARY OF THE LITIGATION

This case arises from a cybersecurity incident (the "Data Security Incident") that Plaintiffs Justin Sherwood, Lindsey Quan, Tabatha Bedont f/k/a Tabatha Johnson, Greg Torrano, Jennifer Hill, Sia Moody, Anthony Ruiz, Alice Dodd, Frederick Lewis, Douglas Ackman, Ryan Evans, Amber Thomas, and Maria Chavez allege compromised the security of their personally identifiable information ("PII").

After Horizon Actuarial announced the Data Security Incident, several class action lawsuits were filed by Plaintiffs throughout the country. Class Counsel coordinated with counsel for all Plaintiffs and sought consolidation of all of the lawsuits filed before this Court. ECF 6. Simultaneously, counsel sought to be appointed Interim Co-Lead Class Counsel and Liaison Counsel. ECF 7. The Court consolidated the actions, appointed the undersigned as Interim Co-Lead Class Counsel, and set deadlines for filing a consolidated complaint and any responsive pleadings. ECF 16. To prepare the consolidated complaint, Interim Co-Lead Class Counsel extensively researched the law and publicly available facts surrounding the Data Security Incident. Joint Declaration, ECF 70-3 ¶ 5.

After the initial investigation and filing of separate complaints on behalf of various Plaintiffs, Plaintiffs and Interim Co-Lead Counsel drafted and filed their comprehensive 126-page Consolidated Class Action Complaint on July 13, 2022

("Complaint"). ECF 21. The Complaint alleged seventeen (17) claims, including: negligence, negligence per se, unjust enrichment, declaratory judgment and injunctive relief, invasion of privacy, violations of the Arkansas Deceptive Trade Practices Act, violation of the California Consumer Privacy Act, violation of California's Customer Records Act, violation of the unlawful and unfair prong of California's Unfair Competition Law, violation of Idaho's Consumer Protection Act, violations of the Illinois Consumer Fraud Act, violation of Louisiana's Database Security Breach Notification Law, violation of Louisiana's Unfair Trade Practices and Consumer Protection Law, violation of Nevada's Deceptive Trade Practices Act, violation of North Carolina's Unfair Trade Practices Act, violations of Oregon's Unfair Trade Practices Act, and violations of O.C.G.A. § 13-6-11.

The Complaint alleged that in November of 2021, Horizon experienced a Data Security Incident in which unauthorized third parties gained access to its network and file server. Following discovery of this Data Security Incident, Horizon began investigating the scope and cause of the incident and determined that files containing Plaintiffs' and Settlement Class Members' names, addresses, Social Security numbers, benefit plan enrollment data, and dates of birth were accessed without authorization and reported stolen by the threat actors. Horizon began the process of

notifying the victims of this data security incident on or around January 13, 2022, although some Settlement Class Members were not notified until June 9, 2022.

Horizon Actuarial moved to dismiss the Complaint on September 12, 2022, arguing lack of Article III standing and failure to state any plausible claim for relief against Horizon Actuarial. ECF 32. After the Motion to Dismiss was fully briefed, the parties began to conduct informal arm's-length negotiations and eventually filed a joint Motion to Stay Pending Mediation on February 22, 2023 (ECF 51), which this Court granted (ECF 52) and subsequently extended (ECF 55).

Before conducting any settlement discussions in this case, Plaintiffs submitted informal settlement discovery requests to Defendant for the purpose of gaining sufficient information to submit a well-informed demand to Defendant. Joint Decl., ECF 70-3, ¶ 8. In response to the informal settlement requests, Defendant disclosed information about this case including that the Data Security Incident at issue was the result of a zero-day event, the class size, the data sets impacted in the Data Security Incident, and other important information regarding the Data Security Incident. *Id.* With this information in hand, Plaintiffs and Defendant participated in settlement discussions and formal mediation.

Following extensive mediating and arm's-length negotiations from July 2022 through June 2023, the parties reached a settlement pursuant to a mediator's

recommendation from highly experienced mediator and retired Article III federal judge, the Honorable Wayne Andersen (Ret.) of JAMS. Plaintiffs submitted an Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Plan on September 20, 2023. ECF 70. The Court granted preliminary approval of the Class Action Settlement and Notice Plan on September 21, 2023. ECF 71. On October 23, 2023, the parties filed a Joint Motion for Amendment of Preliminary Approval Order to Extend Notice and Settlement Deadlines (ECF 73), which the Court granted on November 3, 2023. ECF 74. On November 8, 2023, the parties filed a Joint Motion for Amendment of Settlement Agreement and Approval of Revised Forms (ECF 76), enlarging the class from 3,892,966 individuals to 4,386,969 individuals and the Settlement Fund from $7,750,000 to $8,733,446.36. The Court granted the amendment of Settlement Agreement and Revised Forms on November 9, 2023. ECF 77.

III. SUMMARY OF SETTLEMENT

This Settlement would resolve all claims related to the Data Security Incident on behalf of the Settlement Class. ECF No. 79-1, Amended Settlement Agreement ("SA").

A. The Settlement Class

The Settlement defines the Settlement Class as:

> [T]he individuals whose personal information may have been impacted during the Data Security Incident, including those individuals who received a letter from Horizon Actuarial notifying them of the Data Security Incident. Excluded from the Settlement Class are: (1) the judge presiding over this Action, and members of the presiding judge's direct family; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline. [3]

SA, ¶ 43. The Settlement Class is comprised of approximately 4,386,969 individuals nationwide. ECF 80-2, ¶ 7. Under the Proposed Settlement, Horizon agreed to pay a total of $8,733,446.36 into the Settlement Fund, which will be used to make payments to Settlement Class Members and to pay the costs of Notice and Administrative Expenses, and attorneys' fees and expenses. *See* SA, ¶¶ 58, 82; ECF 77, ¶¶ 2-4.

B. The Settlement Benefits

1. Settlement Payments

Each Settlement Class Member is eligible to receive reimbursement for documented out-of-pocket losses incurred as a result of the Data Security Incident ("Out-of-Pocket Losses") subject to the Reimbursement Cap. SA ¶ 59. Amounts that

[3] "Data Security Incident" shall mean the November 2021 cybersecurity incident against Horizon giving rise to the action.

are eligible to be reimbursed as Out-of-Pocket Losses include, without limitation, losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after Horizon Actuarial' s notice of the Data Security Incident to the Class Members through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges, provided that the amount in question must represent an amount that was actually paid out of pocket to a third party and has not otherwise been reimbursed to the Settlement Class Member. SA ¶ 59(ii).

The Settlement Fund will also compensate the Settlement Class for lost time. Settlement Class Members may self-certify the amount of time they actually spent remedying issues related to the Data Security Incident ("Attested Time") and, upon submission of a valid self-certification supporting the foregoing, shall be eligible for an amount of $25 per hour of Attested Time for up to five (5) hours of such Attested Time (for a total of up to $125). SA ¶ 59 (iii).

No Settlement Class Member's aggregate reimbursement for Out-Of-Pocket Losses together with any reimbursement for Time Losses may exceed $5,000 (the "Reimbursement Cap"). SA ¶ 59(ii)-(iii).

Additionally, the Settlement Fund will be used to pay for any attorneys' fees, expenses, and the cost of Settlement Administration, as approved by the Court. SA ¶¶ 58, 82.

2. California Claims

Settlement Class Members may claim *via* the Claim Form an additional benefit of $50.00 *pro rata* per Settlement Class Member as compensation for their statutory claim(s) under California law ("California Claims"). To be eligible to receive compensation for California Claims, Settlement Class Members must attest, under penalty of perjury, that they were residents of California at the time of the Data Security Incident. To redeem this *pro rata* $50.00 benefit, Settlement Class Members need not submit any documentation. SA ¶ 59(iv).

3. Pro Rata Cash Payment

After the distribution of attorneys' fees, Class Counsel's Litigation Expenses, Administrative Fees, Compensation for Out-of-Pocket Losses and Lost Time, payments for California Claims, and reservation of the *Cy Pres* Reserve, the Settlement Administrator will make settlement payments of $50 per class member from any remaining funds to each Settlement Class Member who submits a claim and requests such payment, subject to a *pro rata* reduction. SA ¶ 59(i).

4. *Cy Pres* Reserve

The Settlement Administrator will also reserve $50,000 from the Settlement Fund to be distributed *cy pres* for the benefit of all Class Members (the "*Cy Pres* Reserve)." SA ¶ 59(v).

5. Release

The release in this case is tailored to the claims that have been pleaded or could have been pleaded in this case. Settlement Class Members who do not opt-out from the Settlement Agreement will release claims related to the Data Security Incident. SA ¶ 78.

C. The Notice and Claims Process

1. Notice

The parties agreed to use Epiq as the Claims and Settlement Administrator ("Settlement Administrator"). SA ¶ 42.

With Court approval, Counsel and the Settlement Administrator implemented multiple types of notice to ensure the broadest possible reach, including individual notice to all members who could be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2). On November 22, 2023, the Settlement Administrator posted the Notice to the Settlement Website located at www.horizondatasettlement.com. Ex. 1, ¶ 11. On November 22, 2023, the Settlement Administrator commenced mailing Notice

to 3,109,805 Settlement Class Members via U.S. Mail. *Id.*, ¶¶ 10-11. On November 22, 2023, the Settlement Administrator began a digital media campaign targeted to Google Display Network, Facebook, Instagram, and X (f/k/a Twitter). *Id.*, ¶ 17. The digital media campaign ran through January 20, 2024. *Id.*, ¶ 20.

2. Payment of Administrative and Notice Costs

Horizon Actuarial agreed to pay the cost of providing CAFA notice, separate and apart from the Settlement Fund. SA ¶ 10. The remainder of the notice costs and administration expenses will be paid out of the Settlement Fund.

3. Opt-Out and Objection Procedures

Class Members had up to and including January 22, 2024 to decide whether to object to or exclude themselves from the Settlement. SA ¶¶ 30, 31. Any Class Member wishing to opt out of the Settlement Class was required to individually submit a Request For Exclusion to the Settlement Administrator postmarked no later than January 22, 2024, as described in the Long Notice. SA ¶ 67.

Any Settlement Class Member who wished to object to the Settlement was required to submit a timely written notice of his or her objection to the Court and the Settlement Administrator no later than January 22, 2024.

4. Fees and Costs

On January 8, 2024, Class Counsel filed Plaintiffs' Motion for Attorney's Fees and Litigation Expenses. ECF 80. Class Counsel seek $2,911,148.79, or 33.33% of the Settlement Fund to proposed Class Counsel for attorneys' fees and up to $18,285.14 in costs and expenses.

IV. LEGAL AUTHORITY

Plaintiffs bring this motion pursuant to Federal Rule Civil Procedure 23(e), under which court approval is required to finalize a class action settlement. There is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation. *In re U.S. Oil & Gas Litig*., 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits"); *see also Meyer v. Citizens & Southern Nat'l Bank*, 677 F. Supp. 1196, 1200 (M.D. Ga. 1988) (There is a "strong judicial policy favoring settlement," and an "overriding public interest in favor of settlements."). Class action settlements ensure class members a benefit, as opposed to the "mere possibility of recovery at some indefinite time in the future." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 306 (N.D. Ga. 1993). "Settlements conserve judicial resources by avoiding the expense of a complicated and protracted litigation process and are

highly favored by the law." *In re Motorsports Merchandise Antitrust Litig.,* 112 F. Supp. 2d 1329, 1333 (N.D. Ga. 2000).

In approving a settlement under Federal Rule of Civil Procedure 23(e), the district court must find that it "is fair, adequate and reasonable and is not the product of collusion between the parties." *Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984) (internal quotations omitted). "The Court [must] make a two part determination that: 1) there is no fraud or collusion in reaching the settlement, and 2) the settlement is fair, adequate and reasonable." *Warren v. City of Tampa*, 693 F. Supp. 1051, 1054 (M.D. Fla. 1988), *aff'd*, 893 F.2d 347 (11th Cir. 1989).

V. ARGUMENT

A. The Settlement Is the Result of Good Faith, Arm's-Length Negotiations Conducted by Informed and Experienced Counsel with the Assistance of an Experienced Mediator.

A threshold consideration in evaluating a proposed settlement is whether it is the product of fraud or collusion between the parties. *See In re Motorsports*, 112 F. Supp. 2d at 1333. "In determining whether there was fraud or collusion, the court examines whether the settlement was achieved in good faith through arm's-length negotiations, whether it was the product of collusion between the parties and/or their attorneys, and whether there was any evidence of unethical behavior or want of skill or lack of zeal on the part of class counsel." *Canupp v. Sheldon*, No. 2:04-cv-260,

2009 WL 4042928, at *9 (M.D. Fla. Nov. 23, 2009) (citing *Bennett*, 737 F.2d at 987 n.9), *aff'd sub nom. Canupp v. Liberty Behavioral Healthcare Corp*., 447 F. App'x 976 (11th Cir. 2011).

Here, there was no fraud or collusion. The parties engaged in good faith negotiations over a period of approximately a year, including an all-day mediation session under the guidance of Retired United State District Judge Wayne Andersen. *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) ("The fact that the entire mediation was conducted under the auspices of … a highly experienced mediator, lends further support to the absence of collusion."). Although the mediation was not initially successful, the parties continued discussions and negotiations until Judge Andersen eventually submitted a mediator's proposal for a $7.75 million non-reversionary common fund, which the parties accepted (and that was the foundation for the increase of the Settlement Fund to $8,733,446.36). As part of their negotiations, the parties exchanged information about the size and scope of the class, possible injunctive relief, the merits of Plaintiffs' claims, and certain cybersecurity business practice changes Horizon Actuarial implemented to limit the potential for future data security incidents. This exchange of information ensured sophisticated and meaningful settlement negotiations.

In evaluating settlement, the Court is also "entitled to rely upon the judgment of experienced counsel for the parties." *Canupp*, 2009 WL 4042928, at *5. Through arm's-length negotiations between sophisticated counsel experienced in litigating complex cases, the parties were able to reach an agreement that compares very favorably to settlements in data breach class actions that have been approved by other courts. *See, e.g.*, *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *1 (D. Minn. Nov. 17, 2015) (approving settlement that provided $10 million settlement to pay for losses and time spent as a result of Target data breach, and injunctive relief, but no relief specifically addressing future harm); *In re Heartland Payment Sys., Inc. Customer Data Security Breach Litig.*, 851 F. Supp. 2d 1040, 1048-1069 (S.D. Tex. 2012) (approving settlement that provided up to $2.4 million to pay for out-of-pocket losses); *In re Countrywide Financial Corp. Customer Data Security Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *1-4 (W.D. Ky. Dec. 22, 2009) (approving settlement that provided up to $1.5 million to pay out-of-pocket costs, up to $5 million to pay identity theft losses).

B. The Settlement is Fair, Adequate and Reasonable.

In deciding whether to approve the settlement, the Court must analyze whether it is fair, adequate, and reasonable. *Bennett*, 737 F.2d at 986. In *Bennett*, the Eleventh Circuit articulated six factors to be considered in the analysis:

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

Id. An analysis of these factors shows the Settlement is eminently fair, adequate, and reasonable and thus should be approved.

1. The Settlement Benefits Outweigh the Uncertainty of Success at Trial.

The trial court weighs the first *Bennett* factor, the likelihood of success at trial, "against the amount and form of relief contained in the settlement." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014) (quoting *Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1319 (S.D. Fla. 2005)). "As settlements are construed upon compromise, the merits of the parties' claims and defenses are deliberately left undecided. Judicial evaluation of a proposed settlement of a class action thus involves a limited inquiry into whether the possible rewards of continued litigation with its risks and costs are outweighed by the benefits of the

settlement." *Ressler v. Jacobson*, 822 F. Supp. 1551, 1552-53 (M.D. Fla. 1992). "Furthermore, public policy strongly favors the pretrial settlement of class action lawsuits." *Shane v. Humana, Inc.*, No. 00-1334-CIV, 2009 WL 7848518, at *9 (S.D. Fla. Nov. 5, 2009), *R. & R. adopted sub nom. In re Managed Care Litig.*, 2009 WL 7848638 (S.D. Fla. Dec. 1, 2009). This factor weighs in favor of final approval where "success at trial is not certain for Plaintiff[s]." *Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013).

Here, Settlement Class Members who submit valid claims are eligible to receive up to $5,000 in out-of-pocket expense reimbursements and payments for lost time, an additional benefit of a $50 pro rata payment to Settlement Class members who were residents of California at the time of the Data Security Incident, and a $50 cash payment, subject to pro rata reduction, to each Settlement Class Member who submits a claim after the distribution of attorneys' fees, Class Counsel's Litigation Expenses, Administrative Fees, Compensation for Out-of-Pocket Losses and Lost Time, and payments for California Claims. In addition, $50,000 of the Settlement Fund is reserved for *cy pres* to the benefit of all Class Members. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain.

Despite their firm belief that the record evidence would establish Horizon Actuarial's liability and prove damages on a class-wide basis, Plaintiffs faced multiple, ongoing, and potentially case-ending risks, including the risks of Horizon Actuarial prevailing on its motion to dismiss or hurdles with respect to class certification.

Due at least in part to their cutting-edge nature and the rapidly evolving law, cybersecurity cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp*., No. 08 Civ. 6060, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). As one federal district court recently observed in finally approving a settlement with similar class relief:

> Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc*., No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases ... are particularly risky, expensive, and complex.").

Fox v. Iowa Health Sys., No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021).

Cybersecurity incident cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. While Plaintiffs are confident in the strength of their claims, they

are also pragmatic in their awareness of the various defenses available to Horizon Actuarial, as well as the risks inherent to continued litigation. Horizon Actuarial has consistently denied the allegations raised by Plaintiffs and made clear at the outset that they would vigorously defend the case. The proposed Settlement avoids these uncertainties and provides the Settlement Class with meaningful and certain relief.

2. The Settlement Is Within the Range of Possible Recoveries and Is Fair, Adequate, and Reasonable.

The second and third *Bennett* factors—whether the settlement falls within the range of possible recoveries and is fair, adequate, and reasonable—can be considered together. *Burrows*, 2013 WL 10167232, at *6. When considering the question of a possible recovery, the focus is on the possible recovery at trial. *See In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 212 (5th Cir. 1981). However, "[a] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of single percent of the potential recovery." *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd sub nom. Behrens v. Wometco Enterprises*, 899 F.2d 21 (11th Cir. 1990); *see also Bennett*, 737 F.2d at 986 (where range of possible recovery is zero to $12,000,000, a settlement fund of $675,000.00 (or 5.6%) is a fair and adequate sum in view of the risks of further litigation).

The proposed Settlement here is fair, reasonable, and adequate because it squarely addresses and resolves the issues raised by Plaintiffs in this litigation by providing monetary compensation (up to $5,000 per Class Member) to redress Class Members with past monetary harm, and providing two different additional payments to the Class via the $50 CCPA payment and the $50 Pro Rata Cash Payment. The Settlement thus establishes a means for prompt resolution of Plaintiffs' claims against Horizon Actuarial, while avoiding protracted and expensive litigation that could lead to little or no recovery at all. Given the multi-faceted forms of relief available under the Settlement, and the avoidance of the risk and expense of further litigation, this factor likewise weighs in favor of final approval.

3. Continued Litigation Would Be Complex, Expensive, and Lengthy.

The complexity, expense, and duration of the litigation all weigh in favor of final approval. In considering this factor, courts "should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." *Lipuma*, 406 F. Supp. 2d at 1323 (citation omitted). "The law favors compromises in large part because they are often a speedy and efficient resolution of long, complex, and expensive litigation." *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1380 (S.D. Fla. 2007) (quotations omitted).

If not settled, this case inevitably will result in a massive expenditure of time and money by the parties and the Court, as would be true of any class action involving complex facts, such as those here. The parties would move forward with intense fact and expert discovery, followed by briefing on class certification, summary judgment, *Daubert* challenges, a lengthy trial, and possibly appeals. During this process, likely lasting years, the parties would incur significant fees and out-of-pocket expenses, and the Court would have to spend its own resources.

In contrast, the Settlement avoids this outcome; ends the litigation; saves the parties and Court considerable time and expenses; and provides immediate and substantial relief to the Class. *See In re U.S. Oil & Gas Litig*., 967 F.2d 489, 493 (11th Cir. 1992) (noting that complex litigation "can occupy a court's docket for years on end, depleting the resources of the parties and taxpayers while rendering meaningful relief increasingly elusive"); *In re Domestic Air Transp. Antitrust Litig*., 148 F.R.D. at 325-26 & n.32. This factor thus weighs in favor of final approval.

4. The Substance and Degree of Opposition to the Settlement.

The reaction to the Settlement is overwhelmingly positive. As of the March 4, 2024 deadline, 102 Settlement Class Members have opted out of the Settlement Class. Ex. 1, ¶ 24. This means only 0.0023 percent of the Class sought exclusion, a minimal amount. Only two objections out of millions of Class Members have been

submitted: one from Natalie Campagna on behalf of her minor daughter (ECF 78) and one from Walter L. Ross (ECF 81). The minimal opt-outs and small amount of opposition further supports the reasonableness of the Settlement. *See, e.g.*, *Ressler v. Jacobson*, 822 F. Supp. 1551, 1556 (M.D. Fla. 1992) ("small amount of opposition strongly supports approving the Settlement"); *In re Checking Account Overdraft Litig.*, No. 09-MD-02036, 2012 WL 13013257, at *1 (S.D. Fla. Apr. 26, 2012) (noting that 2 objections from roughly 50,000 class members was "extraordinarily" low and supported final approval).

Moreover, the two objections should be overruled because they lack merit. The Campagna objection (ECF 78) claims that the Settlement does not "address the unique needs of minors who were victimized," fails to include sufficient credit monitoring, and is insufficient because it does not include "an alternate structure to be sensitive to the minors, who have yet sought credit and might not be in a position to realized (sic.) they have been harmed by this breach, in some cases, a decade or more." Notably, the Campagna objection does not submit any evidence in support of the objection. Courts overrule objections that fail to provide any evidence supporting the allegation that the Settlement is deficient. *Rosado v. Ebay, Inc.*, No. 5:12-cv-4005, 2016 WL 3401987, at *9 (N.D. Cal. June 21, 2016) (overruling objection for failure to provide any evidence to support it); *Ryder v. Wells Fargo*

Bank, NA, No. 1:19-cv-638, 2022 WL 223570, at *2 (S.D. Ohio Jan. 25, 2022) (overruling objection, in part, because the objection failed to submit any evidence supporting the objection). The Campagna objection also fails to recognize that minors are eligible to receive the same relief that is afforded to all other Class Members: the ability to receive several forms of cash payments. Plaintiffs ensured that all Class Members were treated equally, including minors (according to Campagna, ~0.1% of the Class), which is consistent with the requirements for class actions to treat all Class Members equitably. Fed. R. Civ. P. 23(e)(2)(D).[4] Accordingly, the Campagna objection should be overruled.

Mr. Ross's objection generally complains that he should receive the "full $5125.00 dollars" because he "should have been notified immediately not at the last minute were (sic) [he's] rushing to fill out paperwork." ECF 81. While Mr. Ross did

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[4] Last, the Campagna objection complains that she was not consulted about the Settlement and stretches the Court's Order Granting the Motion to Consolidate as one that provides her outright authority to reject the Settlement in total. *Doe I v. Horizon Actuarial Services, LLC*, No. 1:22-cv-2358. The Court's Order, ECF 7, noted "counsel for Plaintiffs shall consider any unique issues that may arise affecting minors, to raise them with the Court as appropriate and to consult with Doe I and Doe II regarding any potential harm to minors or special protections that may be appropriate for minors if such issues arise." *Id*. However, no such issues ever arose. The objection filed by Ms. Campagna, proceeding pro se, is wholly absent of any evidence that her minor daughter has experienced anything adverse due to the Data Security Incident that would perhaps require different settlement relief than that already afforded to all other Class Members.

complete a claim form that was attached to his objection that qualifies for up to $125 for a Lost Time Payment, he did not claim a pro rata cash payment, and inadequately filled out section for reimbursement of documented out-of-pocket losses because he failed to identify any specific losses, instead listing "N/A -----------" *Id*. at 6-7. Moreover, Mr. Ross completed his claim form on December 28, 2023. *Id*. at 8. The Claim Deadline under the Settlement was February 21, 2024 – almost two months after Mr. Ross completed his claim form. Mr. Ross had ample time to complete his claim form under the Settlement timeline because he had almost two additional months to complete his claim from the date he signed his claim form. This indicates that Mr. Ross was not notified at the "last minute" and still had ample time to complete his claim form including collecting any information to further support his claim. Mr. Ross's claim form also does not identify any documented out-of-pocket losses nor does it even attempt to identify any such losses. Accordingly, Mr. Ross's objection that he should receive $5,000 for unreimbursed out-of-pocket losses should be overruled because he had ample time under the Settlement to attempt to support a claim for such losses and failed to complete the section of the claim form that required the identification of such losses.[5]

[5] Also, determining the validity of any particular claim for benefits under the terms of this Settlement is delegated to the Settlement Administrator. SA ¶ 60. It is not the province of the Court to determine whether any particular claim is valid.

5. The Stage of Proceedings Allowed Plaintiffs to Evaluate the Merits of the Case and the Settlement Relief.

The stage of proceedings at which the settlement was achieved also supports final approval. The purpose of this factor is "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*, 406 F. Supp. 2d at 1324. As set forth above, before filing the Complaint, Class Counsel devoted significant time to investigating the facts related to the data breach and Horizon Actuarial's response. These efforts are reflected in Plaintiffs' comprehensive 126-page Complaint. Class Counsel also extensively researched potential claims under the laws of the various U.S. states.

After filing the Complaint, Class Counsel fully briefed the motion to dismiss and engaged in protracted negotiations with Horizon Actuarial's counsel over the scope of the settlement. Although significant formal discovery had not yet taken place, substantial informal discovery armed Counsel with a sufficient understanding of the facts and legal merits of the case, including its strengths and weaknesses, when negotiating the Settlement. As highlighted above, early settlements are particularly beneficial in the data breach context because Class Members can take advantage of settlement benefits that immediately help prevent and address possible future harm. *See Target*, 2015 WL 7253765, at *2 ("early settlement of this case benefits the

Plaintiff class immensely”). The parties settled while Horizon Actuarial’s motion to dismiss had not yet been ruled on. Thus, the parties were incentivized to reach a fair deal while substantial risk remained on both sides. Like the other *Bennett* factors, this factor weighs in favor of final approval as Class Members benefited significantly from early resolution of the case.

C. The Court Should Certify the Proposed Settlement Class.

For settlement purposes only, Plaintiffs request that the Court confirm the certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure. When “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is there be no trial,” but must ensure satisfaction with other Rule 23 requirements. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *see also Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 557 (N.D. Ga. July 20, 2007). The Settlement Class satisfies each of the requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy of representation) and of Rule 23(b)(3) (predominance and superiority).

Class actions are regularly certified for settlement. In fact, similar cybersecurity incident cases have been certified—on a *national* basis—including the record-breaking settlement in *In re Equifax Inc. Customer Data Sec. Breach Litig.*,

No. 1:17-md-2800, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020), *aff'd in part, rev'd in part*, 999 F.3d 1247 (11th Cir. 2021), and in *In re Brinker Data Incident Litig.*, No. 3:18-cv-686, 2021 WL 1405508, at *1 (M.D. Fla. Apr. 14, 2021), *vacated in part by Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883 (11th Cir. 2023), where a class was certified over objection to plaintiffs' damage calculation; *see also, e.g., In re Target*, 309 F.R.D. 482 (D. Minn. 2015). Georgia state courts have also certified similar cyber security class actions for settlement. *See e.g., Cece v. St. Mary's Health Care System, Inc.*, No. SU20CV0500 (Ga. Super. Ct. Athens/Clarke County) (final approval granted of data breach class action settlement on April 4, 2022)*; Jackson-Battle v. Navicent Health, Inc.*, No. 2020cv072287 (Ga. Super. Ct. Bibb County) (final approval of data breach class settlement granted August 4, 2021). This case should be similarly certified, and the settlement similarly approved.

1. The Proposed Settlement Class Meets the Requirements of Rule 23(a).

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

Numerosity requires the members of the class be so numerous that separate joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). To demonstrate numerosity, "plaintiffs need not prove that joinder is impossible; rather, plaintiffs 'need only show that it would be extremely difficult or inconvenient to join all

members of the class.'" *Columbus Drywall*, 258 F.R.D. at 557 (*quoting Anderson v. Garner*, 22 F. Supp. 2d 1379, 1384 (N.D. Ga. 1997)).

Here, the parties have identified approximately 4,386,969 individuals in the proposed Class. Joinder of so many parties would certainly be impracticable. Thus, the numerosity requirement is easily satisfied.

b. Questions of law and fact common to the class.

The second prerequisite to certification is that there exist questions of law or fact common to the class. Rule 23(a)(2). To demonstrate commonality, plaintiffs must demonstrate class members have suffered the same injury such that their claims can be productively litigated at once. *In re Equifax Inc. Cust. Data Sec. Breach Litig.*, 2020 WL 256132 *11 (*citing Sellers v. Rushmore Loan Mgmt. Servs., LLC,* 949 F.3d 1031, 1039 (11th Cir. 2019)). Courts have previously addressed this requirement in the context of cybersecurity incident class actions and found it readily satisfied. *In re Equifax*, 2020 WL 256132 at *11 (*citing In re Home Depot, Inc., Cust. Data Sec. Breach Litig.*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding that multiple common issues center on the defendant's conduct, satisfying the commonality requirement)); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 308 (N.D. Cal. Aug. 15, 2018) (noting that the complaint contains

a common contention capable of class-wide resolution—one type of injury claimed to have been inflicted by one actor in violation of one legal norm).

Here also, the commonality requirement is readily satisfied, as Plaintiffs and Settlement Class Members all have common questions of law and fact that arise out of the same event—the Data Security Incident.

As in other cybersecurity incident cases, these common issues all center on Horizon Actuarial's conduct, or other facts and law applicable to all Class Members, thus satisfying the commonality requirement. *See, e.g., In re Countrywide Fin. Corp. Cust. Data Sec. Breach Litig*., 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) ("All class members had their private information stored in Countrywide's databases at the time of the data breach"); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig*., 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) ("Answering the factual and legal questions about Heartland's conduct will assist in reaching class wide resolution.").

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

The next prerequisite to certification, typicality, measures whether the claim or defense of the representative party is typical of the claim or defense of each member of the class. Rule 23(a)(3). "[T]ypicality 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) *(internal quotation omitted*). Like the commonality requirement, typicality does not require all putative class members share identical claims; factual difference amongst the claims will not necessarily defeat certification. *Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004). The named representatives need only share the same "essential characteristics" of the larger class. *Id.* The typicality requirement is regularly met in data breach class actions. *In re Equifax*, 2020 WL 256132 at *12.

Here, the typicality requirement is satisfied for the same reasons that Plaintiffs' claims meet the commonality requirement. Specifically, Plaintiffs' claims are typical of those of the other Settlement Class Members because they arise from the same Data Security Incident. They are also based on the same legal theory, i.e., that Horizon Actuarial had a legal duty to protect Plaintiffs' and Settlement Class Members' personal information. Because there is a "strong similarity of legal theories" between Representative Plaintiffs' claims and the claims of the Settlement Class Members, the typicality requirement is satisfied.

d. Plaintiffs have fairly and adequately protected the interests of the Class.

Rule 23(a)(4) requires that Plaintiffs fairly and adequately protect the interest of the Class. This requirement involves a two-part test that asks: (1) whether plaintiffs have interests antagonistic to the interests of the other class members; and

(2) whether the proposed class counsel has the necessary qualifications and experience to lead the litigation. *In re Tri-State Crematory Litig.*, 215 F.R.D. 660, 690-691 (N.D. Ga. Mar. 17, 2013).

As for the first prong, the Plaintiffs are members of the Class and do not possess any interests antagonistic to the Class. They allege that their personal information was compromised as a result of the same Data Security Incident in which the personal information of the Class was also allegedly compromised. Plaintiffs have vigorously prosecuted these cases for the benefit of all Class Members. Plaintiffs have participated in the litigation, reviewed pleadings, and participated in the factual investigation of the case.

The second prong is also met. Class Counsel have extensive experience in class actions generally, and, in particular, data breach class actions. *See*, Joint Decl. ECF 70-3, ¶¶ 25-27. Because Plaintiffs and their counsel possess substantial experience and track records in similar litigation and have vigorously prosecuted the case at hand to get the best result for Plaintiffs and Class Members, the adequacy requirement is satisfied.

2. The Proposed Class Meets the Requirements of Rule 23(b)(3).

In addition to the requirements discussed at length above, Plaintiffs must demonstrate that one of the requirements of Rule 23(b) are met. Here, questions of

law or fact common to class members predominate over any individual issues, making class treatment superior to other available methods of adjudication. *See* Rule 23(b)(3).

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

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

Common issues readily predominate here because the central liability question in this case—whether Defendant failed to safeguard Plaintiffs' information, like that of every other Class Member—can be established through generalized evidence. *See Klay v. Humana, Inc*., 382 F.3d 1241, 1264 (11th Cir. 2004) ("When there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position, the predominance test will be met."). Several case-dispositive questions can be resolved identically for all members of the Class, such as whether Horizon Actuarial had a duty to exercise reasonable care in

safeguarding, securing, and protecting the personal information of Plaintiffs and Class Members and whether Horizon Actuarial breached that duty. The many common questions of fact and law that arise from Horizon Actuarial's conduct predominate over any individualized issues.

Other courts have recognized that these types of common issues arising from a cybersecurity incident predominate over individualized issues. *See, e.g.*, *In re Countrywide Fin. Corp. Cust. Data Sec. Breach Litig*., No. 3:08-MD-01998, 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) (finding predominance where proof would focus on data breach defendant's conduct both before and during the theft of class members' personal information); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig*., 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) (finding predominance where "several common questions of law and fact ar[ose] from a central issue: Heartland's conduct before, during, and following the data breach, and the resulting injury to each class member from that conduct").

b. Class treatment is superior to individual litigation.

Finally, a class action is superior to other methods available to resolve the claims of the proposed Class fairly, adequately, and efficiently. A superiority analysis involves an examination of "the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the

plaintiffs." *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). The focus is efficiency. *In re Equifax*, 2020 WL 256132 at *14.

Here, resolution of numerous claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. Absent class treatment, each Class Member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. Moreover, there is no indication that Class Members have an interest in individual litigation or an incentive to pursue their claims individually, given the amount of damages likely to be recovered, relative to the resources required to prosecute such an action. *See Dickens v. GC Servs. Ltd. P'ship*, 706 F. App'x 529, 538 (11th Cir. 2017) (describing "the ways in which the high likelihood of a low per-class-member recovery militates in favor of class adjudication").

Additionally, the proposed Settlement will give the parties the benefit of finality, and because this case has now been settled pending Court approval, the Court need not be concerned with issues of manageability relating to trial. Class certification—and class resolution—guarantee an increase in judicial efficiency and

conservation of resources over the alternative of individually litigating hundreds of thousands of individual data breach cases arising out of the *same* Data Security Incident. As the superiority requirement is satisfied, along with all other requirements of Rule 23, the Court should certify the Class.

D. The Notice Program, as Implemented, Satisfied Due Process and Rule 23.

Rule 23(e) provides "notice of the proposed . . . compromise shall be given to all members of the class in such a manner as the court directs." Due process requires provision of the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. *See* Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is that which "is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also In re Domestic Air Trans. Antitrust Litig.,* 141 F.R.D. 534, 539 (N.D. Ga. 1992) ("[W]hat amounts to reasonable efforts under the circumstances is for the Court to determine after evaluation of the available information and the possible methods of identification.").

The Notice Program was implemented by the Court-appointed Settlement Administrator, Epiq , a nationally-recognized notice and claims administration firm,

under the supervision of Class Counsel. On November 21, 2023, the Settlement Administrator posted the Notice to the Settlement Website located at www.horizondatasettlement.com. Ex. 1, ¶ 21) On November 22, 2023, the Settlement Administrator commenced mailing Notice to 3,109,805 Settlement Class Members via U.S. Mail. *Id.*, ¶¶ 10-11. On November 22, 2023, the Settlement Administrator began a digital media campaign targeted to Google Display Network, Facebook, Instagram, and X (f/k/a Twitter). *Id.*, ¶ 17. The digital media campaign ran through January 20, 2024. *Id.*, ¶ 20.

The Notice described in plain language the Settlement terms, the claims at issue, the process for objecting to the Settlement and opting out of the Settlement Class, how to make a claim, all pertinent deadlines, and the time, date, and place of the Final Approval Hearing. Moreover, the Settlement Administrator established a dedicated telephone call center and a website to assist potential Settlement Class Members with the Settlement or the claims process. Class Counsel also assisted potential claimants who called requesting information about the Settlement and the claims process. These efforts to inform Settlement Class Members of the Settlement, and their rights and obligations associated therewith, satisfy due process. *See In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104 (5th Cir. 1977) (holding that notice must contain "an adequate description of the proceedings written in

objective, neutral terms, that . . . may be understood by the average absentee class member").

The Court approved the proposed notice plan in its Preliminary Approval Order. ECF 71. To date, Plaintiffs, Class Counsel, and the Settlement Administrator have satisfied all of the elements of the notice plan approved by the Court. *See generally* Ex. 1. Accordingly, the notice program implemented in this action constitutes the best notice practicable under the circumstances and satisfies the requirements of due process and Federal Rule of Civil Procedure 23. *See Agnone v. Camden County, Georgia*, No. 1:14-cv-024, 2019 WL 1368634, *9 (S.D. Ga. Mar. 26, 2019) (finding class notice mailed directly to settlement class members was the best practicable and satisfied concerns of due process); *Barkwell v. Sprint Communications Company LP*, No. 4:09-CV-56, 2014 WL 12704984, *6 (M.D. Ga. Apr. 18, 2014) (finding a notice program that involved direct mail notice to satisfy due process). Accordingly, this Court should approve the Notice process.

VI. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that the Court: (1) grant final approval of the proposed class action Settlement; (2) finally certify the Settlement Class pursuant to Federal Rules of Civil Procedure 23(b)(3) and (e); and (3) enter an order and final judgment in this action.

Dated: March 11, 2024

Respectfully submitted,

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Class Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1(D), I hereby certify that the foregoing has been prepared in Times New Roman 14 point, one of the fonts and points approved by the Court in LR 5.1(C), with a top margin of not less than 1.5 inches and a left margin of not less than 1 inch.

/s/ MaryBeth V. Gibson
MaryBeth V. Gibson

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was filed and served using the Court's CM/ECF system which will send notification of such filing to ECF registered participants.

DATED this 11th day of March, 2024.

By: /s/ MaryBeth V. Gibson
MaryBeth V. Gibson