

IN THE CIRCUIT COURT FOR ST. LOUIS CITY, MISSOURI

M.W., D.L., T.K. and ELIZABETH
TAGUE, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

ST. LOUIS UNIVERSITY, d/b/a SAINT
LOUIS UNIVERSITY and SSM-SLUH,
INC.

Defendants.

Case No. 2422-CC00888

**PLAINTIFFS' MOTION AND MEMORANDUM
IN SUPPORT OF UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

COMES NOW Plaintiffs, by and through counsel of record, and moves this Court for Preliminary Approval of the Class Action Settlement herein. In support of this Motion, Plaintiffs state as follows:

The Court should grant Preliminary Approval¹ of the Parties' Settlement. because this case satisfies the requirements necessary to certify a class under Missouri Supreme Court Rule 52.08 for settlement purposes. *See* Mo. S. Ct. 52.08(a)-(c) (noting that the elements necessary to certify a class and that the court shall determine whether a case can be maintained as a class action).

¹ The capitalized terms herein shall have the same meanings as those defined in Section II of the Settlement Agreement, attached hereto as ***Exhibit A***.

Moreover, the Court should also preliminarily approve the Settlement because the Settlement is “fair, reasonable and adequate” as it provides substantial relief to the Settlement Class, particularly in light of the uncertainty of the legal issues presented in this Action. *See generally Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. App. 2011) (noting that a class settlement must be “fair, reasonable and adequate” to be approved). The Court should therefore grant Plaintiffs’ Motion for Preliminary Approval.

I. Background

A. The Data Incident

On or about March 2, 2023, Defendant SLU discovered it was the victim of unauthorized access of current and former students’, employees’, and other patients’ Private Information, including addresses, dates of birth, telephone numbers, driver’s license numbers, passport numbers, online credentials, digital signatures, email addresses, and Social Security numbers, and health insurance information, and other medical information. *See* Agreement ¶¶ 1, 3, 49. An investigation revealed that the unauthorized actors had access to the Private Information for eight months, from December 2022 to July 2023. *Id.* ¶ 3. Defendant SLU then sent out notice letters to the 88,686 people whose information was accessed in the Data Incident. *See* Joint Declaration of Class Counsel Maureen Brady, Jeff Ostrow, and Andrew Shamis (“Joint Dec.”), attached hereto as *Exhibit B*, ¶ 13.

B. The Litigation and Settlement History

As a result of the Data Incident, in March 2024, Defendants were named in three related actions with overlapping claims, seeking to represent the same putative class

members, and arising out of the Data Incident. Agreement ¶ 5. Then, the Plaintiffs in the three cases informally coordinated and agreed to work cooperatively. *Id.* ¶ 6.

On May 23, 2024, Plaintiffs filed their consolidated Petition against Defendants regarding the Data Incident. *See* Petition. Plaintiffs alleged, among other things, that Defendants' failures to safeguard the protected health information and/or personally identifiable information of Plaintiffs and the other current and former patients and students affected by the Data Incident. *See id.* Specifically, Plaintiffs asserted counts against Defendants for breach of implied contract, negligence, invasion of privacy by public disclosure of private facts, breach of fiduciary duty of confidentiality, violations of the Missouri Merchandising Practices Act, negligent training and supervision, negligence *per se*. *Id.* ¶¶ 96-188.

Class Counsel consulted with multiple data experts to understand how the breach occurred, the type of information involved, and whether the information was published on the dark web. Agreement ¶ 8. Class Counsel prepared and but for the Settlement would have served written discovery, including interrogatories and requests for production, a Rule 57.03(b)(4) notice of deposition, a draft ESI protocol and a proposed protective order. *Id.* ¶ 9. On August 12, 2024, Defendant SLU moved to dismiss the Petition.

The Parties then began discussing early resolution and scheduled a mediation with experienced data breach class action mediator, Thomas V. Bender, Esq. Agreement ¶ 10. Plaintiffs propounded informal discovery, to which Defendants responded, and the Parties exchanged mediation briefs outlining their positions on liability, damages, and settlement-related issues. *Id.* ¶ 11. On November 25, 2024, the Parties participated in the all-day

mediation and agreed to the essential terms of a settlement. *Id.* ¶ 12. Since that point, the Parties continued to negotiate the specific terms of the Agreement. Joint Dec. ¶ 7. In addition, the Parties negotiated the language of the Postcard Notice, Long Form Notice, Claim Form, and Preliminary Approval Order. *Id.* On January 22, 2025, the Parties executed the Agreement.

C. Settlement Consideration

The Settlement provides significant financial relief to the Settlement Class. Defendant SLU will make available up to \$2,000,000.00 in cash to pay Settlement Class Members' claims. Agreement ¶ 61. Specifically, each Settlement Class Member who submits a Valid Claim will receive one of the following payments:

Cash Payment A – Documented Losses - Settlement Class Members may submit a Claim for a Cash Payment for up to \$2,500.00 upon presentment of actual documented losses fairly traceable to the Data Incident. The loss must have occurred after April 24, 2023, and before the close of the Claim Deadline.

Cash Payment B – Flat Payment - In addition to Cash Payment A, Class Member may submit a claim for a payment of an estimated \$100.00 (subject to *pro rata* increase or decrease depending on the number of Valid Claims filed).

Id. ¶ 67(a), (b).

In addition to electing Cash Payment A and Cash Payment B, Settlement Class Members may elect up to one year of three-bureau Credit Monitoring that will provide the following benefits: three-bureau credit monitoring, dark web monitoring, identity theft insurance coverage for up to \$1,000,000, and fully managed identity recovery services. *Id.*

¶ 67(c). Moreover, Plaintiffs have received assurances that Defendants have undertaken reasonable steps to further secure their systems and environments. *Id.* ¶ 69.

Further, as part of the Settlement, Defendant SLU will separately pay all Settlement Administration Costs, and any Court-approved Service Awards to Class Representatives, and attorneys' fees and costs to Class Counsel. *Id.* ¶¶ 56, 100-01.

D. The Settlement Class

Plaintiffs now seeks to certify the following Settlement Class:

All individuals residing within in the United States who received notice that their Private Information was potentially exposed to unauthorized third parties as result of Data Incident.

Id. ¶ 57. Excluded from the Settlement Class are (a) executives or board members of the Defendants; (b) governmental entities; and (c) the Court, the Court's immediate family, and Court staff. *Id.*

E. The Settlement Administrator, Notice Program, and Claims Process

The Parties have agreed to utilize Eisner Advisory Group LLC as the third-party Settlement Administrator to assist with the dissemination of Notice and for the implementation of the Claims process. Joint Dec. ¶ 39. The Notice Program shall begin 30 days after the entry of a Preliminary Approval Order and shall conclude no later than 45 days before the original date set for the Final Approval Hearing. Agreement ¶¶ 77, 84. Defendant SLU will provide the Settlement Administrator with the Class List within 10 days of the date of entry of the Preliminary Approval Order. *Id.* ¶ 76.

The proposed Notice Program includes sending direct mail to Settlement Class members by Postcard Notice with a detachable Claim Form, along with a Long Form

Notice available to Settlement Class members who choose to review it or request a copy. *See id.* ¶ 74 & Exs. 1-3. The Settlement Administrator shall perform reasonable address traces for Postcard Notices that are returned as undeliverable and re-mail the Postcard Notice to those with identifiable new addresses. *Id.* ¶ 83. In addition to the Notices, the Settlement Administrator will establish a toll-free number to answer frequently asked questions and for Class Members to request a paper Claim Form or Long Form Notice. *Id.* ¶ 74(e).

The Notice Program is designed to provide members of the Settlement Class with important Settlement information and their rights thereunder, including a description of the material Settlement terms; how to access and submit a Claim Form; how to opt-out of or object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards; the Final Approval Hearing date; and information regarding the Settlement Website where Settlement Class members may access the Agreement and other important documents, including the Long Form Notice. *Id.* ¶ 78. Complete opt-out and objection requirements are listed in the Agreement and in the Long Form Notice. *Id.* ¶¶ 80-82.

D. Opt-Out and Objection Procedures

In accordance with the opt-out procedures detailed in the Long Form Notice and the Agreement, Settlement Class Members who do not wish to participate in the Settlement may opt-out by the last day of the Opt-Out Period (30 days before the Final Approval Hearing). Agreement ¶¶ 42, 80. Written opt-out requests must be mailed to the Settlement Administrator. *Id.* ¶ 80.

Settlement Class Members who wish to object to the Settlement and/or the

Application for Attorneys' Fees, Costs, and Service Awards must do so no later than the last day of the Objection Period (30 days before the Final Approval Hearing). *Id.* ¶ 41. The Agreement and the Long Form Notice state all the objection requirements and instruct that objectors must send a written objection that includes: (a) the objector's full name, mailing address, telephone number, and email address (if any); (b) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (c) the identity of all counsel who represent the objector, including the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (d) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any); (e) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (f) the objector's signature (an attorney's signature is not sufficient). *Id.* ¶ 82.

E. Release of Claims

Plaintiffs and Settlement Class Members who do not timely and validly opt-out of the Settlement will be bound by the terms of the Settlement, including the release and discharge of the Released Claims against the Released Parties. Agreement ¶ 103.

F. Service Awards and Class Counsel Attorneys' Fees and Costs.

In recognition of the Class Representatives' time and effort expended in pursuing this Action and for fulfilling their obligations and responsibilities as Class Representatives, and of the relief conferred on all Settlement Class members through their assistance, Class Counsel will ask the Court to approve Service Awards of up to \$2500.00 for each Class Representative. Agreement ¶ 100 & Exs. 1-2. The Notice will inform the Settlement Class

that Class Counsel will be seeking the Service Award and the amount of such award. Joint Dec. ¶ 17.

In addition, Class Counsel may request attorney's fees of up to \$700,000.00 and reasonable litigation costs. *Id.* ¶ 101 & Exs. 1-2. The Notice will inform the Settlement Class that Class Counsel will be seeking attorneys' fees in that amount and reasonable costs. Joint Dec. ¶ 16.

II. Legal Standard

Whether a class should be certified is "based primarily upon the allegations in the petition." *Elsea v. U.S. Eng'g Co.*, 463 S.W.3d 409, 417 (Mo. App. 2015). Plaintiff's allegations are accepted as true when determining whether to certify a class. *Id.* A class is properly certified if the evidence in the record, taken as true, satisfies each requirement to certify a class under Rule 52.08. *Id.* While the instant case is a quintessential case to be certified as a class action, "courts should err in close cases in favor of certification because the class can be modified as the case progresses." *Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W.3d 712, 715 (Mo. banc 2007).

A class is properly certified when it meets the requirements of Rule 52.08(a) and the requirements of Rule 52.08(b)(1), (2) or (3). Rule 52.08(a) requires that the class be sufficiently numerous (numerosity), that questions of law or fact are common to the class (commonality), that the claims or defenses of the class representatives are typical of the claims or defenses of the class (typicality) and the class representatives will adequately represent the interest of the class (adequacy). MO. S. CT. R. 52.08(a)(1)-(4).

Here, Plaintiff seeks to certify a Rule 52.08(b)(3) class for settlement purposes. Rule 52.08(b)(3) requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” (predominance) and that a class action be “superior to other available methods for the fair and efficient adjudication of the controversy” (superiority). MO. S. CT. R. 52.08(b)(3).

Plaintiffs have satisfied all of the requirements of Rules 52.08(a) and 52.08(b)(3) for settlement purposes. The court should therefore certify the case as a class action for settlement purposes.

III. The Court should grant Preliminary Approval to the Settlement because each of the Rule 52.08 requirements necessary to certify a class are satisfied.

A. Each Rule 52.08(a) requirement is satisfied.

1. Numerosity is satisfied.

Numerosity is satisfied when “the class is so numerous that joinder of all members is impracticable.” MO. S. CT. R. 52.08(a)(1). There is no specific number of class members that makes a class sufficiently numerous. However, numerosity has been found to have been satisfied with as few as eighteen class members. *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 168 (Mo. App. W.D. 2006) (citing cases).

Here, there are 88,686 people including Plaintiffs who are part of the putative Class. Joint Dec. ¶ 13. This is a sufficient number of Settlement Class members. Moreover, joinder of all these persons would be impracticable. Thus, the numerosity requirement is satisfied.

2. Commonality is satisfied.

Commonality is satisfied when “there are questions of law or fact common to the class.” MO. S. CT. R. 52.08(a)(2). The rule “does not require that all issues in the litigation be common, only that common questions exist.” *Elsea*, 463 S.W.3d at 419. Commonality exists if “a single common issue [overrides] the litigation, despite the fact that the suit also entails numerous remaining individual issues.” *Id.* quoting *Meyer*, 220 S.W.3d at 716 (emphasis omitted). In other words, what matters most in class certification “is not the raising of common questions, but the ability of a classwide proceeding to generate common answers apt to drive resolution of the litigation.” *Id.* (internal quotation and citations omitted). The questions common to Plaintiffs and the putative class members, include, *inter alia*: (1) Defendants failed to execute reasonable procedures to prevent unauthorized access to Settlement Class members’ Private Information; (2) whether Defendants properly stored the Settlement Class members’ Private Information and properly monitored its employees’ access to such information; and, (3) whether Defendants breached their duties to the Settlement Class members in the handling of their Private Information.

Thus, the commonality requirement of Rule 52.08(a)(2) is satisfied.

3. Typicality is satisfied.

Typicality is satisfied when “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” MO. S. CT. R. 52.08(a)(3). Typicality is “fairly easily met so long as other class members have claims similar to the named

plaintiff.” *Smith v. Leif Johnson Ford, Inc.*, 632 S.W.3d 798, 806 (Mo. App. 2021) quoting *Dale*, 204 S.W.3d at 169.

All three elements of typicality are met in this case. First, Plaintiffs’ and Settlement Class members’ claims all arise from the same cybersecurity incident wherein their Private Information was unlawfully obtained. Joint Dec. ¶¶ 18, 45. Second, this identical conduct gives rise to Plaintiffs’ claims in the Action. *Id.* Third, the facts underlying Plaintiffs’ and Settlement Class members’ claims are not markedly different—they are identical. *Id.* The pertinent fact is that each person’s information may have been accessed by an unauthorized third party and each person received a letter from Defendants notifying them of such. *Id.* Plaintiffs’ claims are therefore typical of the claims of the Settlement Class.

4. Adequacy is satisfied.

Adequacy is satisfied when “the representative parties will fairly and adequately protect the interests of the class.” MO. S. CT. R. 52.08(a)(4). The adequacy requirement applies to the class counsel and class representatives. Adequacy is satisfied where “class counsel is competent and qualified to conduct the litigation” and the proposed class representatives have “no interests antagonistic to the other proposed class members.” *Lucas Subway MidMo, Inc. v. Mandatory Poster Agency, Inc.*, 524 S.W.3d 116, 130 (Mo. App. 2017).

Plaintiffs’ counsel have extensive experience litigating class action cases and are competent and qualified to represent the class. *See* Joint Dec. ¶¶ 6, 9, 37; *see also* Exs. 1-3 thereto. Counsel are undoubtedly competent and qualified to litigate this matter.

Plaintiffs are also adequate to serve as the Class Representatives. Class representatives meet the adequacy requirement if they do not have a conflict of interest that will adversely affect the interests of the class. *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 172-73 (Mo. App. 2006). Plaintiffs are not related to Class Counsel. Joint Dec. ¶ 19. Plaintiffs' interests are only antagonistic to those of Defendants, not to Settlement Class members, as they are pursuing this action to seek recourse from Defendants. *Id.* ¶¶ 19, 47. Moreover, Plaintiffs have served as effective class representatives as they have stayed in touch with counsel, responded to discovery, and made themselves available during mediation. *Id.* ¶¶ 20, 47. In short, Plaintiffs are undoubtedly qualified to serve as class representatives.

Each of the Rule 52.08(a) requirements have therefore been satisfied and this case should be certified as a class action for settlement purposes.

B. The Requirements of Rule 52.08(b)(3) are satisfied.

The requirements of Rule 52.08(b)(3) are also satisfied for settlement purposes.

1. Common issues of law or fact predominate over individual issues.

The predominance requirement of Rule 52.08(b)(3) is satisfied. Rule 52.08(b)(3) provides that a class may be certified if “the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” MO. S. CT. R. 52.08(b)(3).

The predominance inquiry simply requires the court to determine whether the class seeks “to remedy a common legal grievance.” *Karen S. Little, L.L.C. v. Drury Inns, Inc.*, 306 S.W.3d 577, 580 (Mo. App. 2010) quoting *Dale v. DaimlerChrysler Corp.*, 204

S.W.3d 151, 175 (Mo. App. 2006). Predominance does not require that all questions of law or fact be common to the class, but that “common issues substantially predominate over individual ones.” *Id.* at 581. To determine whether a question is common or individual, the court looks at the “nature of the evidence required to show the allegations of the petition.” *Id.* A question is common, and therefore predominates, if the same evidence is necessary to answer the pertinent question of law or fact for each class member. *Id.*

The nature of the privacy incident at issue applied equally to all class members. Moreover, the Data Incident was not individualized, and Defendants’ process of safeguarding Private Information applies equally to all Settlement Class members. Moreover, the same evidence will be necessary to answer the question of whether Plaintiffs and Settlement Class members’ Private Information was accessed by an unauthorized third party, *i.e.* the notice from Defendants. Common issues therefore predominate.

2. A class action is a superior method of adjudicating this dispute.

The superiority requirement of Rule 52.08(b)(3) is also satisfied. Rule 52.08(b)(3) provides that a class may be certified if that a class action is “superior to other available methods for the fair and efficient adjudication of the controversy.” MO. S. CT. R. 52.08(b)(3).

The court considers the following factors when analyzing the superiority element:

- (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,

(D) the difficulties likely to be encountered in the management of a class action.

MO. S. CT. R. 52.08(b)(3)(A)-(D); *see generally Karen S. Little, L.L.C.*, 306 S.W.3d at 583.

The ultimate question, however, is whether it is more a class action is more efficient than other methods of adjudication. *Dale*, 204 S.W.3d at 182. Here, each of the Rule 52.08(b)(3) factors establish that a class action is the most efficient mechanism of adjudicating this dispute.

A class action is superior because it is in the interest of the members of the class to adjudicate this case on a class basis rather than by way of hundreds of individual actions. MO. S. CT. R. 52.08(b)(3)(A). To this end, the court considers “the inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually.” *Elsea*, 463 S.W.3d at 417 quoting *Dale*, 204 S.W.3d at 182. Here, damages per Settlement Class member are relatively small, even if a given Settlement Class member, for example, occurred out-of-pocket expenses to mitigate the increased risk of identity theft and/or identity fraud following the Data Incident. *See* Petition ¶¶ 82, 102.

A class action is also superior because there is no pending litigation concerning this controversy with Defendants. MO. S. CT. R. 52.08(b)(3)(B). Counsel is unaware of any active litigation involving the issues presented in this case. Joint Dec. ¶ 51.

Furthermore, a class action is superior because it is desirable to adjudicate this dispute before this Court. MO. S. CT. R. 52.08(b)(3)(C). The Parties have no qualms

litigating the case in this Court and agree that this Court is a desirable forum to adjudicate this dispute. Moreover, Defendants have a physical business located in St. Louis.

Finally, a class action is superior because there are no difficulties likely to be encountered in the management of a class action. MO. S. CT. R. 52.08(b)(3)(D). Manageability considers the potential practical problems of maintaining the case as a class action. *Elsa*, 463 S.W.3d at 423. Here, there are no practical problems maintaining this Action as a class action. Class Members are readily identified by Defendants' records.

Each of the Rule 52.08(b)(3) requirements have been satisfied and this case should be certified as a class action for settlement purposes.

IV. The Settlement is fair, reasonable and adequate.

This Settlement should be approved as it provides substantial relief to the Settlement Class. Defendants will make available up to \$2,000,000.00 in cash to pay Settlement Class members' out-of-pocket losses and to otherwise compensate them for the Data Incident. *Id.* ¶ 59. Specifically, the Settlement provides that each Settlement Class member who submits a Valid Claim will receive either cash for out-of-pocket documented losses of up to \$2500.00 or a flat cash payment of an estimated \$100.00, plus up to one year of three-bureau credit monitoring. *Id.* ¶ 63.

Ultimately, the Court's primary concern in determining whether to approve a settlement is to determine whether the settlement is "fair, reasonable and adequate." *Bachman*, 344 S.W.3d at 266. To make this determination, the Court considers:

- (1) the existence of fraud or collusion behind the settlement;
- (2) the complexity, expense, and likely duration of the litigation;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the probability of

the plaintiff's success on the merits; (5) the range of potential recovery; and (6) the opinions of class counsel[.]

Id. Each of these factors support a finding that the settlement is “fair, reasonable and adequate.”

First, there is no fraud or collusion behind the Settlement. Rather, the Settlement was the product of extensive arm's-length negotiations, including at a mediation with a Missouri attorney and experienced data breach class action litigator, and after extensive negotiations between the Parties thereafter. Joint Dec. ¶¶ 8, 10.

Second, this case presented an unsettled issue of law in this Court as to whether Defendants violated the law as to their data security practices and the injuries to Plaintiffs resulting from the Data Incident. *See id.* ¶¶ 24-29. Had the case progressed further, the parties would have fully briefed and argued class certification, fully briefed and argued summary judgment, and likely would have prepared for trial. *Id.* Even if Plaintiffs and the Settlement Class ultimately prevailed at trial, recovery could be delayed for years by an appeal. *Id.* This would have potentially taken years and there would be no guarantee of recovery to Plaintiffs and Settlement Class members. *Id.*

As to the third factor, the Parties only reached the terms of the Settlement after the cases were informally coordinated by Plaintiffs' counsel, the Parties engaged in informal discovery, and they attended mediation. *See id.* ¶¶ 5-8. As such, this factor also supports approval of the settlement.

The fourth factor, probability of success on the merits, also supports approval of the Settlement. Class Counsel are confident in the strength of Plaintiffs' case. *Id.* ¶ 24. However, they are also pragmatic of the risks and challenges. *See id.* ¶¶ 24-33. They are

aware that there are uncertainties in a trial, particularly given the case theory, and expert issues here. *Id.* Class Counsel are also aware of the risks inherent from any appeal and subsequent proceedings of a successful trial verdict. *Id.* Further, it is unclear whether Plaintiffs would be able to certify a class for purposes of trial. *Id.* Under the circumstances, Class Counsel determined the Settlement outweighs the risks of continued litigation. *Id.* ¶ 34. The Settlement provides substantial relief to the Settlement Class without further delay and avoids the risk of an adverse judgment at trial or on appeal.

The fifth factor, the range of potential recovery, also supports approval of the Settlement. Here, the law is unsettled as to what damages, if any, Plaintiffs may be entitled to regarding the Data Incident. *Id.* ¶ 27. The relief afforded by the Settlement, however, is substantial for any Settlement Class member with out-of-pocket losses, and provides significant relief to the Settlement Class as a whole. *Id.* ¶ 36. The significant monetary relief to which the Settlement entitled Class Members warrants approval of the Settlement.

Finally, as to the final factor, Class Counsel recommends approval of the Settlement. *Id.* ¶¶ 30, 34.

In short, the Settlement is “fair, reasonable and adequate” and should be approved by the Court.

V. The Court should also approve the Notice Plan.

The Court must also make sure that notice to the Settlement Class is “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” MO. S. CT. R. 52.08(c)(2). The parties’ Notice

Program readily satisfies this standard, and provides the best notice practicable. Joint Dec. ¶ 42.

The Parties have retained the highly experienced firm, Eisner Advisory Group, LLC, as Settlement Administrator effectuate the Notice Program, handle the Claims process, administer the Settlement Fund, and distribute the Cash Payments and Credit Monitoring activate codes to Settlement Class Members who submit Valid Claims. Agreement ¶¶ 77-79. Settlement Class members will receive notice by mail, have access to a user-friendly Settlement Website which will provide important information about the Action and through which Claim Forms can be electronically submitted, and an easy-to-complete Claim Form, the form of which is attached to the Settlement Agreement as Exhibit 3. *See id.* ¶ 78 & Ex. 3. Settlement Class members will also have access to an automated toll-free telephone line to call with Settlement-related inquiries, and to obtain answers to frequently asked questions of individuals in the Settlement Class. *Id.* ¶ 74(e). If a Postcard Notice is returned as undeliverable, the Settlement Administrator will perform reasonable traces to locate a new address for the Settlement Class member and send them a new Notice. *Id.* ¶ 83. No later than 45 days before the initial date scheduled for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces. *Id.*

In short, the Notice Plan readily satisfies the requirements of Rule 52.08(c)(2) and due process. The Court should therefore approve the Notice Plan.

V. Conclusion

Based on the foregoing, Plaintiffs and Class Counsel respectfully request the Court: (1) grant Preliminary Approval to the Settlement; (2) certify for settlement purposes the proposed Settlement Class; (3) approve the Notice Program and the form of the Notice; (4) approve the Claim Form and Claim process; (5) approve the opt-out and objection procedures set forth in the Agreement; (6) appoint Plaintiffs as Class Representatives; (7) appoint Maureen Brady, Jeff Ostrow, and Andrew Shamis as Class Counsel; (8) stay the Civil Action pending Final Approval; and (9) schedule a Final Approval Hearing.

A proposed Preliminary Approval Order is attached as ***Exhibit C***.

Dated: January 23, 2025.

Respectfully submitted,

By: /s/ Maureen M. Brady

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2025, a copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Maureen M. Brady
Maureen M. Brady