UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

IN RE FOREFRONT DATA BREACH LITIGATION	)	
This Document Relates to: ALL ACTIONS.	)	Master File No. 1:21-cv-00887-LA

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Judith Leitermann, Lynn Anderson, and Milan E. Kunzelmann (collectively, "Plaintiffs" or "Class Representatives") respectfully seek final approval of the class action Settlement with Defendants Forefront Dermatology, S.C. and Forefront Management, LLC (collectively, "Forefront"). The Settlement resolves all claims against Forefront, on behalf of approximately 2,413,552 Class Members, arising out of the Ransomware Attack on Forefront's computer network.

As detailed in Plaintiffs' preliminary approval motion (ECF No. 57-1), the Settlement is fair, reasonable, and adequate and represents an excellent result for the Class. Through mediation and extensive negotiations, the Parties reached a Settlement that provides for immediate and significant benefits for the Class.

The Settlement establishes a non-reversionary common fund of $3,750,000 to pay for valid claims. Class Members may elect to receive: two years of Credit Monitoring and Insurance Services ("CMIS"), and/or a payment of up to $10,000 for Documented Losses, and/or a payment for Lost Time of up to five hours at $25 per hour (maximum of $125). In the alternative to the foregoing, Class Members can elect a *pro rata* cash payment ("Cash Fund Payment"). In addition, as part of the Settlement, Forefront has agreed to implement various valuable data security measures to help protect Class Members' Personal Information from future ransomware attacks.

The Settlement is the result of prolonged arm's length negotiations between experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses. If approved, the Settlement will provide Class Members with the precise relief this Action was filed to obtain.

The Court preliminarily approved the Settlement and the Settlement's proposed Notice Plan on October 3, 2022. *See* Order Granting Preliminary Approval of Class Action Settlement ("Prelim. App. Order"), ECF No. 58. The Settlement Administrator, Postlethwaite & Netterville ("P&N"), successfully implemented the robust, multi-pronged Notice Plan, and the user-friendly claims process which the Court approved.[1]

The reaction from Class Members to the Settlement is resoundingly positive. The deadline for Class Members to opt-out or object to the Settlement was January 24, 2023. As of February 3, 2023, out of the approximately 2.4 million Class Members, only 137 persons opted out of the Settlement and there was only one objection. *See* concurrently filed Declaration of Brandon Schwartz Regarding the Status of Notice and Settlement Administration ("Schwartz Decl."); Objection of Christopher Ian Pryby to Settlement Agreement and Motion for Attorney's Fees, ECF Nos. 66-67. As discussed in detail below, the single objection is meritless and should be denied. By contrast, as of February 3, 2023, a total of 35,349 Claims have been submitted (the Claims Deadline is February 8, 2023).

The Settlement delivers tangible and immediate benefits to Class Members that address the potential harms of the Ransomware Attack, without protracted litigation and the inherent risks of data breach class action litigation. It delivers a fair, reasonable, and adequate resolution for the Class, and merits final approval. Fed. R. Civ. P. 23(e)(2).

II. SUMMARY OF THE LITIGATION

This litigation arose from the Ransomware Attack that allowed an unauthorized actor to potentially access, from May 28, 2021 to June 4, 2021, the Personal Information of approximately

[1] Unless otherwise indicated, capitalized terms used in this Memorandum have the same meanings as in the Class Action Settlement Agreement and Release (the "Settlement Agreement" or "SA"). ECF No. 57-1.

2,413,552 of Forefront's patients, employees, employee beneficiaries, and other individuals. Forefront detected the intrusion on June 4, 2021 and announced the Attack in a Notice of Data Breach sent to customers on June 24, 2021. The proposed Settlement resolves the following now-consolidated class action lawsuits against Forefront under the captions: *Leitermann v. Forefront Dermatology, S.C.*, *et al.*, No. 1:21-cv-00887, *Anderson v. Forefront Dermatology, S.C., et al.*, No. 1:21-cv-00891, *Kunzelmann v. Forefront Dermatology S.C., et al*, No. 1:21-CV-00980, and *Alonso v. Forefront Dermatology S.C., et al.*, No. 1:21-CV-01105.[2]

Plaintiffs filed their Consolidated Class Action Complaint ("Consolidated Complaint" or "Comp.") on February 28, 2022. ECF No. 35. It alleges that, as a result of Forefront's failure to employ adequate data privacy and security measures, Plaintiffs' and Class Members' sensitive personal information was exposed, compromised, and unlawfully accessed. *Id.* ¶ 7. Plaintiffs allege that the information compromised in the Attack included patient names, addresses, dates of birth, patient account numbers, health insurance plan member identification numbers, medical record numbers, dates of service, accession numbers, provider names, and/or medical and clinical treatment information. *Id.* ¶¶ 8, 50. Of note, no financial information was known to be compromised in the Ransomware Attack. The Consolidated Complaint avers five causes of action: (1) Negligence; (2) Breach of Implied Contract; (3) Unjust Enrichment; (4) Breach of Fiduciary Duty; and (5) Breach of Confidence. *Id.* ¶¶ 186-256.

[2] For a detailed account of the factual and procedural history of this matter and the work performed by Class Counsel, *see* Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of the Class Action Settlement ("Motion for Preliminary Approval"), ECF No. 57 at pp.1-3; Plaintiffs' Memorandum of Law in Support of Motion for Attorneys' Fees, Costs, Expenses, and Service Awards for Class Representatives ("Fee Motion"), ECF No. 61-1 at pp.3-5, and supporting Declarations of Andrew W. Ferich ("Ferich Fee Decl."), ECF No. 61-2 ¶¶ 5-27, and Gary M. Klinger ("Klinger Fee Decl."), ECF No. 61-3 ¶¶ 3-20, 24-25, all of which are incorporated by reference herein.

On May 10, 2022, Defendant filed a Motion to Dismiss. ECF No. 42; Fed. R. Civ. P. 12(b)(6). Prior to and after this filing, the Parties continued to make meaningful progress towards resolution and eventually agreed to mediation. Ferich Fee Decl. ¶ 10; Klinger Fee Decl. ¶ 10. Prior to mediation, the Parties negotiated a stipulated protective order, and Forefront produced information that allowed Plaintiffs to conduct a meaningful evaluation of the claims and defenses in this matter. *Id.*

On June 10, 2022, the Parties attended a mediation session with Jill Sperber of Judicate West—a well-known and respected data breach mediator. Ferich Fee Decl. ¶ 15; Klinger Fee Decl. ¶ 12. While the Parties were unable to resolve the matter on June 10, they continued to negotiate with the assistance and supervision of Ms. Sperber. Ferich Fee Decl. ¶ 17; Klinger Fee Decl. ¶ 14. After additional weeks of hard-fought negotiations, on June 28, 2022, the Parties agreed to a mediator's proposal that set forth a settlement in principle. *Id.* Thereafter, the Parties negotiated the myriad details regarding the Settlement, circulating drafts back and forth of the Settlement Agreement and its many exhibits. *Id.* Class Counsel obtained competitive bids from various experienced Settlement Administrators and thereafter agreed to recommend that the Court designate P&N. Ferich Fee Decl. ¶ 18; Klinger Fee Decl. ¶ 15. The Settlement Agreement was finalized on or about August 31, 2022. Ferich Fee Decl. ¶ 20; Klinger Fee Decl. ¶ 17.

On September 1, 2022, Plaintiffs filed their Motion for Preliminary Approval, which included supporting documents, declarations, and exhibits. ECF Nos. 56-57. As discussed therein, in light of the uncertainty and expense of prolonged litigation, the Settlement is an outstanding result. ECF No. 57, at 12-19.

On October 3, 2022, the Court preliminarily approved the Settlement and ordered that the P&N disseminate Notice to the Settlement Class. *See* Prelim. App. Order, ECF No. 58. After the

Court preliminarily approved the Settlement, the Parties continued to work with P&N to supervise dissemination of Notice to Class Members. Ferich Fee Decl. ¶ 25; Klinger Fee Decl. ¶ 25.

Notice was successfully disseminated pursuant to the plan approved by the Court. Schwartz Decl. ¶¶ 5-17. As of February 3, 2023, P&N reports that, out of the approximately 2,416,078 individuals who were sent direct Notice commencing on November 7, 2022, 137 individuals submitted timely requests for exclusion (meaning only 0.0057% of the Settlement Class has requested exclusion from the Settlement). *Id.* ¶ 19. There is only one objection to the Settlement. ECF Nos. 66, 67; Schwartz Decl. ¶ 20. The objection is meritless and addressed below.

III. THE SETTLEMENT

A. The Settlement Class

The provisionally certified Settlement Class is defined as:

> All natural persons who are residents of the United States whose Personal Information was potentially compromised in the Ransomware Attack and were sent, either by U.S. Mail or e-mail, notice by Forefront that their Personal Information may have been compromised in the Ransomware Attack.

See Prelim. App. Order, ECF No. 58 ¶¶ 15-16; SA ¶ 1.45.[3]

B. The Settlement Confers Substantial Benefits to Class Members

The Settlement is outstanding. It establishes a $3,750,000 cash non-reversionary cash Settlement Fund. Class Members have the opportunity to submit a Claim for either: (1) (a) Credit Monitoring and Insurance Services ("CMIS") (two years of 3B credit monitoring, up to $1,000,000 of coverage for identity theft, credit monitoring, fraud consultation, and identity theft restoration

[3] The Settlement Class excludes: (1) the Judges presiding over the Action and members of their families; (2) Forefront, its subsidiaries, parent companies, successors, predecessors, and any entity in which Forefront or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person. SA ¶ 1.45.

services), (b) a payment to compensate for Documented Losses,[4] and/or (c) a payment for Lost Time;[5] ***or in the alternative to any of the foregoing***, (2), a Cash Fund Payment. *See* SA ¶¶ 3.1, 3.2(a)-(d). In addition to this direct relief, all Class Members will benefit from the Settlement's prospective relief which obligates Forefront to implement valuable data security measures for a period of no less than two years from the Effective Date of the Settlement. *See id.* ¶ 2.1. These measures are designed to help protect Class Members' Personal Information from future ransomware attacks.

C. Claims, Opt-Outs & Objections

Class Members must submit a Claim Form by February 8, 2023. Prelim. App. Order ¶¶ 34, 48. P&N reports that, as of February 3, 2023, 35,349 Claims have been submitted. Schwartz Decl. ¶ 18.

Class Members were provided an opportunity to opt out of, or object to, the Settlement by doing so on or before January 24, 2023. Prelim. App. Order ¶¶ 25-28, 48. P&N reports that, as of February 3, 2023, only 137 Class Members submitted valid requests for exclusion from the Settlement Class and there was only one objection to the Settlement. Schwartz Decl. ¶¶ 19-20.

D. Payment of Settlement Administration Expenses, Service Awards, and Attorneys' Fees and Expenses

On January 3, 2023, Plaintiffs and Class Counsel filed an application for Attorneys' Fees, Costs, Expenses, and for Service Awards for Class Representatives. *See* Fee Motion, ECF No. 61.

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[4] "Documented Losses" are monetary losses (up to $10,000) supported by Reasonable Documentation, for attempting to remedy or remedying issues that are more likely than not traceable to the Ransomware Attack, and that are not otherwise recoverable through insurance. SA ¶¶ 1.16, 3.2(b).

[5] "Lost Time Payments" mean a Class Members' lost time (up to 5 hours at $25 per hour) resulting from efforts undertaken to prevent or mitigate fraud and identity theft following the announcement of the Ransomware Attack. SA ¶¶ 1.27, 3.2(c).

Class Counsel requested attorneys' fees in the amount of $1,250,000.00, plus reimbursement of litigation expenses in the amount of $13,868.76, and Service Awards for the Class Representatives in the amount of $2,500 each (for a total of $7,500). *Id.* As explained therein, the requested fee award is consistent with market rates for similar attorney services in this Circuit, is supported by decisional law in this Circuit, and fairly reflects the results achieved in this Settlement. *Id.*

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. The Settlement Is Fair, Reasonable, and Adequate, and Should Be Approved

As the Seventh Circuit has recognized, federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain:

> It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

Armstrong v. Bd. of Sch. Dirs. of Milwaukee, 616 F.2d 305, 312–13 (7th Cir. 1980) (citations and quotations omitted), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *see also Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."); 4 NEWBERG ON CLASS ACTIONS § 11:41 (4th ed. 2002) (citing cases).

Under Rule 23(e) of the Federal Rules of Civil Procedure, a class action settlement may be approved if the settlement is "fair, reasonable, and adequate." *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 345 (N.D. Ill. 2010); Fed. R. Civ. P. 23(e). "Approval of a class action settlement is a two-step process." *In re Northfield Labs., Inc. Sec. Litig.*, No. 06 C

1493, 2012 WL 366852, at *5 (N.D. Ill. Jan. 31, 2012) (citing *In re AT & T Mobility*, 270 F.R.D. at 346 (quoting *Armstrong*, 616 F.3d at 314)). "First, the court holds a preliminary, pre-notification hearing to consider whether the proposed settlement falls within a range that could be approved." *Id*. "If the court preliminarily approves the settlement, the class members are notified." *Id*.

Where, as here, the proposed settlement would bind class members, it may only be finally approved after the fairness hearing and a finding that the settlement is fair, reasonable, and adequate, based on the following factors:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's-length;
> (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2)(A)-(D).

The Seventh Circuit has developed its own list of factors for consideration in determining whether to grant final approval of a class action settlement:

> (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.

Isby, 75 F.3d at 1199; *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (citation omitted); *accord Holmes v. Roadview, Inc*., No. 15-CV-4-JDP, 2016 WL 1466582, at *4 (W.D. Wis. Apr. 14, 2016). In reviewing these factors, courts view the facts "in a light most favorable to the settlement" and "should not substitute their own judgment as to the optimal settlement terms for the judgment of the litigants and their counsel." *Isby*, 75 F.3d at 1199; *In re Sears, Roebuck &*

Co. Front-loading Washer Prods. Liab. Litig., No. 06 C 7023, 2016 WL 772785, at *7 (N.D. Ill. Feb. 29, 2016) (citing *Armstrong*, 616 F.2d at 315).

As explained below, consideration of the relevant Rule 23(e)(2) and Seventh Circuit factors supports finally approving the Settlement.

1. <u>The Settlement Warrants Approval Under Rule 23</u>

a. The Class Representatives and Class Counsel Have Adequately Represented the Class

By their very nature, because of the many uncertainties of outcome, difficulties of proof, and lengthy duration, class actions readily lend themselves to compromise. Indeed, there is an "overriding public interest in favor of settlement," particularly in class actions that have the well-deserved reputation as being most complex. *In re Sears, Roebuck & Co. Front-loading Washer Prods. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at *6 ; *Armstrong*, 616 F.2d at 313 ("In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.") (quotation marks and citation omitted). This matter is no exception.

Here, the Parties entered into the settlement only after both sides were fully apprised of the facts, risks, and obstacles involved with protracted litigation. Ferich Fee Decl. ¶ 21; Klinger Fee Decl. ¶ 20. The Parties participated in informal confirmatory discovery. Plaintiffs requested, received, and reviewed information from Forefront in connection with mediation and settlement negotiations. Ferich Fee Decl. ¶¶ 16-17, 21; Klinger Fee Decl. ¶¶ 18-20. Additionally, given Forefront's Rule 12(b)(6) motion (ECF No. 42), Plaintiffs expended significant efforts researching and preparing their oppositions to Forefront's motion and continued their factual investigation of

the Ransomware Attack in anticipation of discovery. Ferich Fee Decl. ¶ 10; Klinger Fee Decl. ¶ 10.

Here, the Class Representatives and Class Counsel adequately represent the Class and the Settlement was negotiated at arm's length. Fed. R. Civ. P. 23(e)(2)(A), (B). Class Counsel are highly experienced in complex consumer class-action litigation—in particular, data breach class actions—and negotiated this Settlement at arm's length. Wolfson Decl. ¶ 2; Klinger Decl. ¶ 2. Plaintiffs have no conflicts of interest with the other members of the Settlement Class, had their Personal Information allegedly comprised in the same Ransomware Attack as the other Class Members, and share the Class's interests of maximizing their recovery and preventing future harm. Wolfson Decl. ¶ 14.

Additionally, Plaintiffs achieved an excellent result for the Class. All Class Members are eligible for two years of three bureau credit monitoring and up to $1,000,000 of coverage for identity theft incidents. SA ¶ 3.2(a). Class Members may also claim up to $10,000 in Documented Loss Payments and an additional Lost Time Payment for up to $125.00. *Id.* ¶ 3.2(b), (c). In the alternative to the foregoing, Class Members can elect a pro rata Cash Fund Payment. *Id.* ¶ 3.2(d). Moreover, Forefront is implementing data security upgrades to prevent a reoccurrence of the harm that Plaintiffs allege resulted from its data security practices. *Id.* ¶ 2.1(a)-(g).

b. The Settlement Was Negotiated at Arm's-Length

A proposed settlement is presumed to be fair and reasonable when it is the result of arm's length negotiations. *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Tr. Co. of Chicago*, 834 F.2d 677, 681-82 (7th Cir. 1987); *Armstrong*, 616 F.2d at 325; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 375-76 (D.D.C. 2002) ("A 'presumption of fairness, adequacy, and reasonableness may attach to a

class settlement reached in arms-length negotiations'") (internal quotations and citation omitted)); *In re Holocaust Victim Assets Litig*., 105 F. Supp. 2d 139, 145-46 (E.D.N.Y. 2000) (in determining fairness, the "consideration focuses on the negotiating process by which the settlement was reached") (quotation marks and citation omitted)). This presumption applies here.

As discussed above, the Settlement is the result of prolonged arm's length negotiations, including a mediation and numerous telephone conferences and e-mails directly between experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses. *See* concurrently filed Declarations of (i) Tina Wolfson in Support of Unopposed Motion for Final Approval of Class Action Settlement ("Wolfson Decl.") ¶ 5; and (ii) Gary Klinger in Support of Unopposed Motion for Final Approval of Class Action Settlement ("Klinger Decl.") ¶ 5. The negotiations were mediated and facilitated by an experienced mediator with substantial experience in class actions, including data breach class actions. Wolfson Decl. ¶ 5; Klinger Decl. ¶ 5. The involvement of a neutral mediator in the settlement process confirms a settlement as non-collusive. *See, e.g., G. F. v. Contra Costa Cnty.*, No. 13-cv-03667, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) ("[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.") (quotation marks and citation omitted). Moreover, the Settlement was reached only after Class Counsel analyzed information provided by Forefront in informal and confirmatory discovery and performed other research and investigation related to the Ransomware Attack. Wolfson Decl. ¶ 6; Klinger Decl. ¶ 6. Given these facts, the Settlement is shown to be non-collusive.

Class Counsel's knowledge of facts of this case and of the practice area more broadly informed Plaintiffs' clear view of the strengths and weaknesses of the case, the decision to

participate in mediation with Forefront, and the decision to recommend that the Court grant preliminary (and now final) approval to the Settlement.

c. The Settlement Provides Substantial Relief for the Class

The Settlement provides for substantial relief, especially considering the costs, risks, and delay of trial, the effectiveness of distributing relief, and the proposed attorneys' fees. "The most important factor relevant to the fairness of a class action settlement is the first one listed: the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement." *Synfuel Techs, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (quotation marks and citations omitted). Nevertheless, "[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs." *In re AT & T Mobility*, 270 F.R.D. at 347 (quotation marks and citations omitted).

"In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." 4 NEWBERG ON CLASS ACTIONS § 11:50 (4th ed. 2002). This is, in part, because "the law should favor the settlement of controversies, and should not discourage settlement by subjecting a person who has compromised a claim to the hazard of having the settlement proved in a subsequent trial . . . ." *Grady v. de Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969). It is also, in part, because "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) ("The essential point here is that the court should not 'reject[]' a settlement 'solely because it does not provide a complete victory to plaintiffs,' for "the essence of settlement is compromise.") (citation omitted).

Here, the Settlement provides substantial and immediate monetary relief, as well as non-monetary relief in the form of specific data security enhancements designed to better protect Class Members' Personal Information.

i. The Costs, Risks, and Delay of Trial and Appeal Favor Approval of the Settlement

The value achieved through the Settlement Agreement here is guaranteed, where chances of prevailing on the merits are uncertain. While Plaintiffs believe their case is a strong one, there would be substantial risk in litigating the case. Data breach cases are, by nature, especially risky and expensive. Such cases also are innately complex. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800, 2020 WL 256132, at **32-33 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues in data breach class actions). This case is no exception to that rule. It involves over two million Class Members, complicated and technical facts, and a well-funded and motivated defendant.

There are numerous substantial hurdles that Plaintiffs would have to overcome before the Court might find a trial appropriate. Wolfson Decl. ¶¶ 3, 11; Klinger Decl. ¶¶ 3, 11. Data breach cases, particularly, face substantial hurdles in surviving even past the pleading stage and are among the most risky and uncertain of all class action litigation. Wolfson Decl. ¶ 11; Klinger Decl. ¶ 11.

Here, Defendant disputes Plaintiffs' allegations and denies that it is liable for any harm caused to Plaintiffs from the cyberattack. Defendant indicated it will vigorously defend the case and has already filed an extensive motion to dismiss for failure to state a claim upon which relief can be granted. ECF No. 42; Wolfson Decl. ¶ 12; Klinger Decl. ¶ 12. While Plaintiffs have arguments and authorities that can support their allegations, the number of issues in this case, which centers on a developing area of law—data breach litigation—creates significant uncertainty. Even assuming Plaintiffs can defeat Defendants' pending motion to dismiss, there is no guarantee that

the Court or a jury would find Plaintiffs' arguments more persuasive during a trial or subsequent appeals. Thus, despite Plaintiffs' confidence in the strength of this case, numerous legal issues and factual disputes exist that undermine the certainty of a more favorable outcome for the Class. Wolfson Decl. ¶ 13; Klinger Decl. ¶ 13.

In addition, there are inherent risks associated with taking any data breach class action to trial, including pre-trial risks of obtaining class certification and defeating summary judgment. And plaintiffs in data breach cases often allege injuries, such as the risk of future identity theft, and loss of control of their sensitive information, which are the subject of intense controversy. Even if class certification is obtained and Plaintiffs are successful at trial, or if Forefront obtains summary judgment, Forefront or Plaintiffs would likely appeal, causing further delay and raising expenses. The Settlement allows for Class Members to obtain benefits within the near future—as opposed to potentially waiting for years—and eliminates the possibility of receiving no benefits. Resolution in the near-term also helps mitigate any harm that the Class Members may have suffered by providing access to credit monitoring benefits in the near-term, rather than after prolonged litigation.

Moreover, the complexity, length, and expense of further litigation favors settlement now. Continued litigation would likely involve motions to dismiss, costly discovery involving experts regarding damages, motions for summary judgment, a motion for class certification, and one or more interlocutory appeals, all of which would delay final resolution. Litigating this case to a favorable conclusion will require a considerable amount of time and resources, and weighs in favor of accepting the Settlement now. *Gen. Elec. Cap. Corp. v. Lease Resol. Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997); *see also In re AT & T Mobility*, 270 F.R.D. at 347 ("Even if Plaintiffs were to succeed on the merits at some future date, a future victory is not as valuable as a present victory.

Continued litigation carries with it a decrease in the time value of money, for '[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.'") (citation omitted).

The $3.75 million non-reversionary cash Settlement Fund is an excellent result for the Settlement Class. With this fund, all Class Members will be eligible for a Settlement Payment in the form of distribution for the CMIS, Documented Loss Payment, or a Cash Fund Payment. SA ¶ 3.2. The Settlement Fund will be applied to pay all Administrative Expenses, Notice Expenses, the taxes to the Settlement Fund, any Service Awards, and any payment of a Fee Award and Costs. *Id*. ¶ 3.1. Any funds remaining in the Net Settlement Fund after distribution(s) to Class Members will be distributed in a subsequent Settlement Payment to Class Members. *Id*. ¶ 3.7.

Based on the size of the breach and per-capita figures, the Settlement presents a robust relief package and valuable outcome for the Settlement Class compared to other recent data breach class action settlements. *See, e.g., In re The Home Depot, Inc. Customer Data Sec. Breach Litig*., No. 1:14-MD-02583, 2016 WL 6902351, at *7 (N.D. Ga. Aug. 23, 2016) and ECF No. 181-2 ¶¶ 22, 38 ($13 million settlement for approximately 40 million class members); *In re Target Corp. Customer Data Sec. Breach Litig*., MDL No. 14-2522, 2017 WL 2178306, at **1-2 (D. Minn. May 17, 2017) ($10 million dollar settlement for nearly 100 million class members); *In re LinkedIn User Priv. Litig*., 309 F.R.D. 573, 582 (N.D. Cal. 2015) (settlement fund of $1.25 million for claims related to approximately 6.4 million LinkedIn users' stolen account passwords). Furthermore, Plaintiffs successfully obtained substantive and meaningful injunctive relief as part of this Settlement. *See e.g., Campbell v. Facebook*, *Inc*., 951 F.3d 1106, 1114 (9th Cir. 2020) (inclusion of "enhanced disclosures and practice changes" in settlement agreement).

The Settlement is a prudent course in view of the risks Plaintiffs face going forward. Wolfson Decl. ¶ 13; Klinger Decl. ¶ 13. Given that all Class Members will be eligible to elect CMIS

or a cash payment, the Settlement provides benefits that address all potential harms of a data breach without the substantial risk of continued litigation, which includes the risk of dismissal or judgement against Plaintiffs. Wolfson Decl. ¶ 13; Klinger Decl. ¶ 13.

ii. The Method of Providing Relief is Effective

"[T]he effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," is also a relevant factor in determining the adequacy of relief. Fed. R. Civ. P. 23(e)(2)(C)(ii). The Committee Note to the 2018 amendments to Rule 23(e)(2) says that this factor is intended to encourage courts to evaluate a proposed claims process "to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." Here, a similar claims process employed in numerous data breach class action settlements is being employed and overseen by a highly experienced Settlement Administrator. *See generally* Schwartz Decl.; Wolfson Decl. ¶ 10; Klinger Decl. ¶ 10. This supports final approval.

iii. The Proposed Award of Attorneys' Fees Is Fair and Reasonable

"[T]he terms of any proposed award of attorney's fees, including timing of payment," are also factors in considering whether the relief provided to the Class in a proposed settlement is adequate. Fed. R. Civ. P. 23(c)(2)(C)(iii). Here, Class Counsel request an award of attorneys' fees in the amount of $1,250,000.00, plus reasonable litigation costs and expenses in the amount of $13,868.76. As explained in the Fee Motion (ECF No. 61), Class Counsel's fee request is reasonable when considered under the applicable Seventh Circuit standards and is well within the normal range of awards in contingent-fee class actions in this Circuit.

iv. There are No Additional Agreements Required to be Identified Under Rule 23(e)(3)

As no additional agreements requiring identification exist, this factor does not weigh either in favor of or against final approval.

d. The Settlement Treats Class Members Equitably to Each Other

The proposed Settlement treats Class Members equitably relative to each other, as all Class Members whose Personal Information was allegedly compromised in the Ransomware Attack will have the same remedy options. Each Class Member has until February 8, 2023 to make a claim for Settlement Benefits. Similarly, each Class Member had until January 24, 2023 to object to or exclude themselves from the Settlement. As such, each Class Member has had an equal opportunity to benefit from the Settlement. This factor weighs in favor of Settlement Approval.

2. The Settlement Satisfies the Seventh Circuit Factors for Final Approval

Here, the Settlement before the Court is fair, reasonable, and adequate, and well within the range of approval because it provides credit monitoring and monetary benefits to Class Members, injunctive relief in the form of robust cybersecurity enhancements for Forefront's IT systems, avoids the uncertainty and expense of prolonged litigation, and avoids the need to resolve contentious factual and legal issues. The Settlement Agreement further satisfies the factors set forth by the Seventh Circuit in assessing whether a proposed settlement agreement is within the range of fairness, reasonableness, and adequacy:

> (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.

Wong, 773 F.3d at 863 (citation omitted).

In weighing these factors, a district court should "recognize[] that the first factor, the relative strength of plaintiffs' case on the merits as compared to what the defendants offer by way of settlement, is the most important consideration." *Isby*, 75 F.3d at 1199. The Seventh Circuit has explained that district courts should "consider the facts in the light most favorable to the settlement." *Id.* at 1198-99 (internal quotations and citation omitted). Further, "[t]he essence of settlement is compromise . . . [t]hus, the parties to a settlement will not be heard to complain that the relief afforded is substantially less than what they would have received from a successful resolution *after* trial." *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985), cert. denied, 478 U.S. 1004 (1986) (emphasis original). Indeed, a district court should not reject a settlement "solely because [the settlement] does not provide a complete victory to the plaintiffs." *Isby*, 75 F.3d at 1200. Consideration of these factors confirms that the proposed Settlement here weighs in favor of the Court granting final approval of the Settlement.

a. The Strength of Plaintiffs' Case Is Well-Balanced Against the Amount Offered in the Settlement and the Complexity, Length, and Expense of Further Litigation Favors Settlement Now

"[A]n integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan v. Est. of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985). Here, Defendant disputes Plaintiffs' allegations and denies that it is liable for any harm caused to Plaintiffs from the cyberattack. Defendant indicated it will vigorously defend the case and has already filed an extensive motion to dismiss for failure to state a claim upon which relief may be granted. ECF No. 42. Plaintiffs detail the inherent risks to data breach litigation and continuing to litigate this particular action above. *See* Section IV(A)(1)(c)(i), *supra*. Given the risks Plaintiffs face going forward, the amount offered in Settlement—both monetary and non-monetary—is well-balanced against the hurdles Plaintiffs will have to overcome

to find success later down the road. Seventh Circuit factors 1 and 2 clearly weigh in favor of preliminary approval.

b. The Reaction of the Members of the Class to the Settlement Has Been Overwhelmingly Positive with Limited Opposition

The reaction of Class Members has been overwhelmingly positive. As discussed above, 35,349 total Claims have been submitted and only 137 Class Members submitted valid requests for exclusion from the Settlement Class as of February 3, 2023. Schwartz Decl. ¶¶ 18-19. Out of the approximately 2.4 million Class Members, there was only one objection to the Settlement. *Id.* ¶ 20. As addressed below, the objection is without merit. Accordingly, Seventh Circuit factors 3 and 4 weigh strongly in favor of final approval.

3. The Opinion of Competent Counsel Is That the Settlement Is Fair, Reasonable, and Adequate, and Should Be Approved

As discussed in the motions for appointment as lead counsel (ECF No. 10) and for preliminary settlement approval (ECF No. 57), Class Counsel is highly experienced in data breach class action litigation and they fully endorse the proposed Settlement. Wolfson Decl. ¶¶ 2-3; Klinger Decl. ¶¶ 2-3. Appointed Class Counsel continue to demonstrate that they are well-qualified to represent the Settlement Class and opine on the fairness of the proposed Settlement. Wolfson Decl. ¶ 16; Klinger Decl. ¶ 16. Seventh Circuit factor 5 strongly weighs in favor of approval.

4. The Stage of the Proceedings and the Amount of Discovery Completed Favors Settlement Now

As discussed below and in the granted preliminary approval motion, the Parties have participated in informal confirmatory discovery. Plaintiffs requested, received, and reviewed information from Forefront in connection with mediation and settlement negotiations. Forefront also has a Rule 12(b)(6) motion pending before this Court. ECF No. 42. Plaintiffs have expended significant efforts researching and preparing their opposition to Defendant's motion and continued

their factual investigation of the Ransomware Attack in anticipation of discovery. *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 587-89 (N.D. Ill. 2011) (finding factor 7 satisfied where parties engaged in informal discovery, plaintiff's counsel conducted research to evaluate his claims, defendant was required to provide confirmatory discovery, and defendant had filed a motion to dismiss "suggesting the parties began the litigation in an adversarial posture"); Wolfson Decl. ¶ 6; Klinger Decl. ¶ 6. The Settlement came at a critical juncture in the litigation, before litigation risks, efforts, and costs would truly begin to increase. Wolfson Decl. ¶ 6; Klinger Decl. ¶ 6. Thus, the final Seventh Circuit factor weighs in favor of approving the Settlement.

B. Certification of the Settlement Class Is Appropriate

Class certification under Rule 23 is a two-step process. First, the plaintiff must demonstrate that numerosity, commonality, typicality, and adequacy are met. Fed. R. Civ P. 23(a). A plaintiff must then establish that one of the bases for certification in Rule 23(b) is satisfied. Here, Plaintiffs must demonstrate that "questions of law or fact common to Class Members predominate over any questions affecting only individual members, and . . . [that] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

In its Preliminary Approval Oder, the Court found that the Class could be certified as defined in ¶ 1.45 of the Settlement Agreement and that the proposed Settlement Class met the requirements of notice. Prelim. App. Order ¶ 15. In doing so, the Court found that the Class Representatives satisfied both Rule 23(a) and (b)(3) requirements and that Class Counsel were adequate representatives of the Class. *Id.* ¶¶ 18-19.

Nothing has occurred that would change the Court's previous determination that Plaintiffs have satisfied the requirements under Rule 23. First, pursuant to Rule 23(a)(1), there can be no doubt that numerosity is satisfied as it is undisputed that the class consists of approximately

2,413,552 Class Members. Pursuant to Rule 23(a)(2), there are questions of law or fact common to the class, including: the nature of Forefront's data security practices, whether Forefront owed duties of care to Class Members to safeguard their Personal Information, and whether Forefront breached those duties, among others. Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Here, Plaintiffs' claims are typical of the claims of the Settlement Class. Plaintiffs' and Class Members' claims arise out of the same course of conduct by Forefront—the Ransomware Attack—and rest on exactly the same legal theories. Finally, under Rule 23(a)(4), Plaintiffs and Class Counsel do not have any conflicts of interest with other Class Members and have demonstrated their commitment to prosecute the action vigorously on behalf of the Class.

The requirements under Rule 23(b) are also satisfied. Rule 23(b)(3) requires that "questions of law and fact common to class members predominate over any questions affecting only individual members; and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Here, the numerous questions common to the Class, including those listed above, demonstrate commonality under Rule 23(a)(3), and predominate over any individual issues. The key elements of Plaintiffs' claims—the existence of inadequate data security protections, Forefront's knowledge or constructive knowledge of those failures, the exposure of Class Members' Personal Information as a result of the Ransomware Attack, and the existence and amount of resulting damages, for example—are common issues, and thus the class is "sufficiently cohesive to warrant adjudication by representation," *Chicago Tchrs. Union, Loc. No. 1 v. Bd. of Educ. Of City of Chicago*, 797 F.3d 426, 444 (7th Cir. 2015) (citation omitted). Moreover, the predominance requirement "scarcely demands commonality as to all questions." *Id.*

Further, as this Court already found in its Preliminary Approval Order, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Prelim App. Order ¶ 17. Here, the potential damages suffered by individual Class Members have relatively low dollar amounts and may be uneconomical to pursue on an individual basis given the burden and expense of prosecuting individual claims. Moreover, there is little doubt that resolving all Class Members' claims jointly, particularly through a class-wide settlement negotiated on their behalf by experienced counsel well-versed in class action litigation, is superior to a series of individual lawsuits and promotes judicial economy. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 658 (7th Cir. 2015).

C. The Lone Objection Is Without Merit and Should Be Overruled

Objections to class action settlements can be a productive contribution to the democratic process of class actions. Though Class Counsel appreciate the comments made by the only objector to the settlement, respectfully, the objection of Christopher Ian Pryby (ECF No. 66) has no merit and is not based on legal analysis and/or accurate facts. Mr. Pryby's arguments are based on incorrect facts, inaccurate characterizations of the Settlement, and are comprised of opinion and unfounded conclusions. As discussed below, the Objection should be overruled.

1. The Settlement Provides Substantial and Tangible Benefits to the Class

Pryby challenges the adequacy of the relief afforded by the Settlement on several grounds, complaining that:

- the average amount of monetary relief per class member "is trivial." ECF No. 66 at pp. 1-2. Without addressing the actual settlement or recognizing that the per capita amount is determined based on the total benefit made available to class members, Pryby incorrectly estimates the average recovery per class members to be 75 cents. *Id.*

- "the credit-monitoring service is overvalued at $720 per class member." ECF No. 66 at p. 2. With no analysis, evidence or authority, Pryby summarily argues that the

CMIS adds "marginal value" as Class Members may have access to similar products through other avenues. *Id.* Pryby does not address the many specific benefits presented by the Settlement's Credit Monitoring and Insurance Services, including up to $1 million dollars of identity theft insurance coverage, three bureau credit monitoring, dark web monitoring, and identity recovery services, as described in the expert Declaration of Robert Siciliano (ECF No. 57-5) ¶ 4. Pryby also ignores that Class Members have the *option* to choose a cash benefit *or* a credit monitoring benefit.

- the injunctive relief is "virtually worthless" in that the benefit "would run out at the same time that the defendants would no longer have to maintain those data security measures." *Id.* at p. 5. Pryby also argues that "the settlement does not adequately redress the theft of highly sensitive medical data" and complains that "there is no provision for preventing or redressing the emotional harms that would flow from the disclosure of extremely sensitive medical data." ECF No. 66 at p. 4.

Here, all material terms of the Settlement, i.e. the Settlement relief, were negotiated at arm's length. Contrary to Pryby's assertions, a $3.75 million cash common fund is not a trivial settlement. This provides approximately $1.55 per class member on a per capita basis, which is well within the range of approved data breach class actions. *See e.g., Adlouni v. UCLA Health Systems Auxiliary, et al.,* No. BC 589243 (Cal. Super. Ct. June 28, 2019) ($2 million settlement in medical information data breach for approximately 4,500,000 Class Members; 44 cents per Class Member); *In re Anthem, Inc. Data Breach Litig.*, No. 5:15-md-02617 (N.D. Cal. Aug. 15, 2018) ($115 million settlement in medical information data breach for 79,200,000 Class Members; $1.45 per Class Member); *In re The Home Depot, Inc. Customer Data Sec. Breach Litig*., No. 1:14-MD-02583, 2016 WL 6902351, at *7 (N.D. Ga. Aug. 23, 2016) and ECF No. 181-2 ¶¶ 22, 38 ($13 million settlement for approximately 40 million class members; 32.5 cents per Class Member); *In re Target Corp. Customer Data Sec. Breach Litig*., MDL No. 14-2522, 2017 WL 2178306, at **1-2 (D. Minn. May 17, 2017) ($10 million settlement for nearly 100 million Class Members; 10 cents per Class Member); *In re LinkedIn User Priv. Litig*., 309 F.R.D. 573, 582 (N.D. Cal. 2015) ($1.25 million settlement for approximately 6.4 million Class Members; 20 cents per Class Member).

Furthermore, Plaintiffs successfully obtained substantive and meaningful injunctive relief as part of this Settlement. *See e.g., Campbell*, 951 F.3d at 1114 (inclusion of "enhanced disclosures and practice changes" in settlement agreement). The two years of security commitments was heavily negotiated, and is intended to protect against further intrusions that may impact class members or other members of the public.

An individual can easily critique a settlement after the parties have reached a hard-fought compromise, but often do not realize settlements, by their nature, rarely confer optimal relief; they are assessed instead, for fairness, adequacy, and reasonableness, *not* whether it provides "a complete victory to the Plaintiff." *Isby*, 75 F.3d at 1200; *see also Armstrong*, 616 F.2d at 315 (noting that "the essence of a settlement is compromise[,] an abandonment of the usual total-win versus total-loss philosophy of litigation in favor of a solution somewhere between the two extremes").

At the end of the day, no settlement of this size and scope will satisfy each and every Class Member. To the extent that Class Members are unhappy with the relief provided and believe that they are entitled to additional compensation, they were provided an opportunity to *simply opt out* of the Settlement and pursue claims individually. *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 700 (S.D. Fla. 2014) ("[T]o the extent that these objectors believe that they are entitled to additional relief due to unique cases, they were entitled to opt out of the settlement.").

Mr. Pryby's objection is nothing more than a complaint that this settlement amount is not enough. Mr. Pryby's solution, however, was to opt out as this reason is not a valid basis for an objection. *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2019 WL 2103379, at *9 (N.D. Ill. May 14, 2019) (overruling various objectors because "objectors' reservations about the amount of the settlement could have been resolved by simply opting out of the class and filing separate

suit"); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 (N.D. Cal. 2018) (overruling twenty-eight (28) objections that claimed "the Settlement is too low or otherwise insufficient"; "the positive response from the Class favors approval of the Settlement."); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 497 (N.D. Ill. 2015) (overruling twenty (20) objections that claimed the settlement was inadequate because "[a] class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.").

When the benefits of the Settlement are compared to the risks of the litigation (of zero gain), added expenses, and time and effort associated with continued litigation, it becomes clear the Settlement merits final approval and objections based on inadequacy of the Settlement relief should be overruled.

Furthermore, prior to filing his objection, Mr. Pryby contacted counsel for Forefront, seeking, among other things, a stipulation from Forefront to allow him to conduct "limited early discovery." Such a request is not warranted and has since been mooted. In lieu of burdening the Court and in full transparency, Forefront voluntarily provided answers to each of the six questions posed by Mr. Pryby, offered to provide Mr. Pryby with a complete copy of his medical records, and invited any further questions. Additionally, Forefront offered to assist Mr. Pryby with making a claim and agreed to accept a claim from Mr. Pryby, even if it was made after the Claims Deadline. Wolfson Decl. ¶ 17.

2. The Settlement Was the Product of Arm's Length Negotiations

Mr. Pryby's contention that a presumption of fairness should not be applied here is also without merit. As this Court has already found, the Settlement was the product of arms' length and informed negotiations, and was reached only after extensive, and highly contested litigation—the

Settlement here was *not* the product of collusion. *See* ECF No. 58 ¶ 4 ("The Court finds that the Parties' Settlement . . . was entered into after extensive, arm's length negotiations"). Mr. Pryby provide no evidence or facts to the contrary.

Class Counsel do not simply rely on "assurances" that negotiations were not collusive, or "bare assertions" that they adequately represented the Settlement Class. Instead, Class Counsel submitted corroborating declarations that they drew upon collective decades of experience, including from their appointments in various high profile data breach cases, to reach the outcome here. Wolfson Decl. ¶¶ 2-3, 15-16; Klinger Decl. ¶¶ 2-3, 15-16. As officers of the Court, Class Counsel have opined as to the non-collusive nature of the Parties' negotiations. Wolfson Decl. ¶¶ 5-6; Klinger Decl. ¶¶ 5-6. Mr. Pryby nevertheless urges this Court to disregard these facts, "[g]iven class counsel's interest (attorney's fees) in this Court's approval of the settlement agreement." ECF No. 66 at p. 5. The Court must reject this invitation.

Here, all Settlement terms were negotiated at a mediation with the assistance of a neutral, experienced and reputable mediator at Judicate West (a national and well-known mediation firm), and (per standard practice) it was only after those terms were agreed upon did the Parties discuss fees. Wolfson Decl. ¶ 5; Klinger Decl. ¶ 5. That the Parties agreed to the substantive terms of the Settlement prior to negotiating attorneys' fees is additional evidence that the Settlement was free of collusion.

Other than opinion and conclusion, and dissatisfaction with the Settlement, Mr. Pryby provides no evidence to support the contention that Class Counsel have made any "demonstrated errors" or "misrepresentations" such that they have not adequately represented the Class.

Here, Class Counsel have not made any misrepresentations regarding the Class's response to the Settlement, which Class Counsel have acknowledged in the Preliminary Approval Motion,

is a factor "neutral in the analysis" at the preliminary approval stage. ECF No. 57 at p. 15. In addition, no misrepresentations were made regarding the number of objections filed in this case. The January 3, 2023 Letter filed by Nancy Milford (ECF No. 60) was in fact a request from Ms. Milford to be excluded from the Settlement—it was not an objection to the Settlement. As such, she is no longer a Class Member, does not fall within the Class Definition, and is not bound in any way by the Settlement. *See* Prelim. App. Order ¶¶ 16, 25. The Objection filed by Mr. Pryby remains the sole objection to the Settlement and should be overruled.

3. The Requested Attorneys' Fees and Service Awards Are in Line with This Court's and Seventh Circuit Jurisprudence

Mr. Pryby contends that Class Counsel "inaccurately portrays its fee request as 'typical'," that Class Counsel "fails to substantiate its fee request," and that the requested Service Awards "are not justified" (ECF No. 66 at pp. 9-14). While the Court may consider these comments in determining the amount of fees, costs and service awards to allow, these issues have nothing to do with the fairness of the Settlement and provide no basis for denying final approval. In any event, Mr. Pryby's objections here also fail.

Here, Class Counsel's proposed fee of $1,250,000.00 equates to 33% of the gross Settlement Fund and represents 40% of the Net Settlement Fund. As Class Counsel explained in the Fee Motion and supporting declarations from Class Counsel, the fee request is reasonable when considered under the applicable Seventh Circuit standards and is well within the normal range of awards in contingent-fee class actions in this Circuit. *See generally* Fee Motion, ECF Nos. 61-1; Ferich Fee Decl., ECF No. 61-2; Klinger Fee Decl. ECF No. 61-3. Likewise, the requested Service Awards are reasonable and routinely awarded in this Circuit.

Pryby also complains that Class Counsel inadequately notified the Class about their requested fees. Pryby is wrong. While Pryby contends that "no notice of motion for attorneys' fees

was directed to the class," Pryby also acknowledges that Class Counsel "*did* post its motion to the settlement website at some point." ECF No. 66 at p. 7 (emphasis added). Pryby also admits that the Long Form Notice "*did* state that class counsel could seek up to $1,250,000 in fees." *Id.* at p. 8 (emphasis added).

Here, Notice was provided in a reasonable manner that was calculated to reach as many Class Members as possible, including via: (1) the Long Form Notice, which was made available to Class Members in English and Spanish on the Settlement Website; (2) the Settlement Agreement; (3) the Summary Notice, which direct Class Members to the Settlement Website; (4) the Settlement Website for all Class Members to review before the deadline for exclusions and objections; and (5) the Preliminary Approval Motion. Moreover, the Fee Motion itself was filed well before the Objection Deadline and was available on the Settlement Website (Schwartz Decl. ¶ 7) and was publicly available through such services such as Pacer. In sum, the Settlement Class had more than adequate notice of the requested attorneys' fees and service awards pursuant to the multi-pronged Notice Plan, which the Court approved.

Accordingly, Mr. Pryby's objections against Class Counsel's proposed attorneys' fees and service awards lack merit and should be overruled.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant final approval to the Settlement and certify the Settlement Class.

Dated: February 8, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 8, 2023, the foregoing document was filed via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on the following ECF-registered counsel of record.

/s/ Tina Wolfson
Tina Wolfson