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Joseph B. Roesch
7th Judicial Circuit
Sangamon County, IL
2024LA000198

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT
COUNTY OF SANGAMON

AARON UMBERGER and TRACEY BRUNER, on behalf of themselves and all others similarly situated, Plaintiffs, v. KERBER, ECK & BRAECKEL LLP, Defendant.	)	Case No: 2024LA000198

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

Plaintiffs Aaron Umberger and Tracy Bruner,[1] individually and on behalf of the Settlement Class,[2] hereby respectfully submit this Unopposed Motion for Preliminary Approval of Settlement and Memorandum of Law in Support and request the Honorable Court preliminarily approve the Settlement, certify the Settlement Class, appoint Plaintiffs as Class Representatives, appoint Strauss Borrelli PLLC, Siri & Glimstad LLP, and Milberg Coleman Phillips Grossman PLLC as Class Counsel ("Class Counsel"), approve the proposed notice program and claims process, and order Notice to the Settlement Class.

[1] Also joining in this motion and as an additional proposed Class Representative is Plaintiff Jessica Kurtz ("Plaintiff Kurtz"), the named plaintiff in a related class action also in this Court captioned *Jessica Kurtz v. Kerber, Eck & Braeckel LLP*, Case No. 2024LA000264, commenced on October 24, 2024, and assigned to the Honorable Joseph B. Roesch, and bringing claims for negligence, negligence *per se*, unjust enrichment, and breach of implied contract. The *Kurtz* Action is also being resolved pursuant to the proposed Settlement. Plaintiffs Umberger, Bruner and Kurtz may be collectively referred to herein as "Plaintiffs" or "Class Representatives."

[2] Unless otherwise stated, all capitalized terms herein shall have the same meanings as those defined in the Settlement Agreement ("S.A."), which is attached as **Exhibit 1** to the *Declaration of Cassandra P. Miller In Support of Preliminary Approval of Class Action Settlement* ("Miller Prelim. App. Decl."), filed herewith.

I. INTRODUCTION AND RELEVANT BACKGROUND

Defendant Kerber, Eck & Braeckel LLP ("KEB" or "Defendant") is a certified public accounting firm that reportedly provides various services, including management and financial consulting, investigative accounting, litigation support, business valuation, employee benefit plans and administration, financial planning, and wealth management. KEB reportedly has eight offices throughout Missouri, Illinois, and Wisconsin.

On or between January 27 and February 7, 2023, Defendant's computer systems were accessed by an unauthorized actor, including systems holding the personal information of Plaintiffs' and Settlement Class Members', including names, Social Security numbers, addresses, dates of birth, driver's license numbers, financial account numbers, medical treatment information and health insurance information (the "Data Incident"). Plaintiffs received formal notice of the Data Incident from Defendant through *Notice of Security Incident* letters mailed on or around August 12, 2024.

On August 21, 2024, Plaintiff Aaron Umberger, individually and on behalf of a putative class, filed the *Umberger* Action in this Court, bringing claims for negligence, negligence *per se*, breach of implied contract, unjust enrichment, breach of fiduciary duty, breach of confidence, breach of third-party beneficiary contract, and declaratory judgment. The *Umberger* Action was assigned to the Honorable Judge Robert Hall.

On October 25, 2024, Plaintiff Kurtz, individually and on behalf of the putative class, commenced the *Kurtz* Action against KEB, also in this Court, and bringing claims for negligence, negligence per se, unjust enrichment, and breach of implied contract. The *Kurtz* Action was assigned to the Honorable Joseph B. Roesch.

On November 22, 2024, Plaintiff Umberger amended his complaint in the *Umberger* Action to add Plaintiff Bruner and asserting the same claims for negligence, negligence *per se*, unjust enrichment, breach of fiduciary duty, and breach of third-party beneficiary contract.

Rather than pursue protracted litigation, the parties exchanged information and engaged in settlement discussions. On February 5, 2025, the parties participated in a formal mediation with Hon. Ronald B. Leighton (Ret.). The parties made substantial progress toward a settlement during the mediation and maintained communications afterward with the continued assistance of the mediator, as a result finally reaching an agreement in principle on or about February 12, 2025, to resolve all claims on a class-wide basis. As part of these settlement discussions, Plaintiffs Umberger and Burner filed an amended complaint on April 11, 2025, and Plaintiff Kurtz has stayed her case pending Court approval of this settlement. Afterward, the parties negotiated the terms of the Settlement Agreement, described below, and executed that Agreement on June __, 2025.

II. THE SETTLEMENT AGREEMENT

The Settlement provides significant monetary and non-monetary relief, including a one million four hundred thousand dollars and no/100 cents ($1,400,000.00) non-reversionary common fund to be paid by KEB. From this Settlement Fund, Settlement Class Members may claim reimbursement of up to ten thousand dollars and no/100 cents ($10,000.00) for documented out-of-pocket losses resulting from the Data Incident and/or a *pro rata* Cash Payment. Class Counsel estimates the pro rata Cash Payments will exceed fifty dollars and no/100 cents ($50.00) per valid claim, subject to the number of valid claims and available funds. All Settlement Class Members are also entitled to claim two (2) years of free three-bureau credit monitoring, regardless of whether they seek monetary compensation.

In addition to these benefits, Defendant has agreed to implement and maintain meaningful improvements to its information security, which is currently estimated to cost approximately nine hundred thousand dollars and no/100 cents ($900,000.00). The cost of the information security improvements will be paid by Defendant separately from the agreed-upon Settlement Fund.

As detailed below, the Settlement falls within the range of fairness and reasonableness meriting final judicial approval and includes a comprehensive notice program. Plaintiffs therefore seek, and the Court should grant, preliminary approval to this proposed Class Settlement. Defendant does not oppose the relief requested in this motion.

A. THE SETTLEMENT CLASS

The parties contemplate certification of a nationwide class defined as follows:

> All Individuals in the United States whose Private Information was identified as being actually or potentially accessed, compromised or impacted in connection with the Data Incident discovered by KEB in February 2023.

S.A. ¶¶ 51, 63. The Settlement Class specifically excludes: (1) the judges presiding over this Litigation, and members of their direct families; (2) the Defendant, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or their 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. *Id.*

B. THE SETTLEMENT TERMS

Defendant will pay one million and four hundred thousand dollars and no/100 cents ($1,400,000.00) to a non-reversionary Settlement Fund, which will be used for: (1) reimbursement for documented Unreimbursed Economic Losses; (2) *Pro Rata* Cash Payments; (3) Notice and Administrative Expenses; (4) Court-approved Service Awards; and (5) the Fee Award and Expenses.

i. Settlement Class Benefits

Settlement Class Members may submit a claim for reimbursement of up to ten thousand dollars and no/100 cents ($10,000.00) of documented Unreimbursed Economic Losses, elect to receive a pro rata cash payment, and also receive two (2) years of three-bureau credit monitoring, as described below.

1. Compensation for Unreimbursed Economic Losses

Under the Settlement, Defendant will reimburse documented out-of-pocket losses—referred to in the Settlement Agreement as "Ordinary Losses"—incurred as a result of the Data Incident up to ten thousand dollars and no/100 cents ($10,000.00) per Settlement Class Member. S.A. ¶ 75(i). Such out-of-pocket losses include, but not limited to, unreimbursed 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 the Data Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. *Id*. To receive payment, a Settlement Class Member must submit a valid claim and documentation of the expenses incurred. *Id*. Settlement Class Members who claim these documented Unreimbursed Losses may also claim a pro rata cash payment.

2. Pro Rata Cash Payment

Participating Settlement Class Members can elect to make a claim for a *pro rata* share of the Net Settlement Fund, which is the amount remaining in the Settlement Fund less all valid claims for Unreimbursed Losses, the cost of credit monitoring claimed, the costs of notice and administration, and any attorneys' fees, expenses, and service awards. To receive this particular benefit, Participating Settlement Class Members must submit a valid claim form, but no

documentation is required to make a claim. The amount of the Cash Payments will be increased or decreased on a pro rata basis to exhaust the Settlement Fund, depending upon the number of valid claims filed and the amount of funds available for these payments. Class Counsel predicts the value of *pro rata* payments will exceed fifty dollars and no/100 cents ($50.00) per valid claimant. S.A. ¶ 75(ii).

3. Identity Theft Protection and Credit Monitoring

In addition to the cash payments describe above, regardless of whether a Settlement Class Member submits a claim for Unreimbursed Economic Losses or the *Pro Rata* Cash Payment, all Participating Settlement Class Members are eligible to enroll in two (2) years of Three Bureau Credit Monitoring Services. S.A. ¶¶ 20, 75(iii). To claim this credit monitoring services benefit, Class Members must provide a valid email address where the Class Member can receive the enrollment code. *Id*. The Settlement Administrator shall send an activation code to each valid Credit Monitoring Services claimant within thirty (30) days of the Effective Date of the Settlement that can be used to activate Credit Monitoring Services. Such enrollment codes shall be sent via email. *Id*. Codes will be active for one hundred and eighty (180) days after the date of emailing and may be used to activate the full term if used at any time during that one hundred and eighty (180) day period. *Id*. The cost of credit monitoring will be paid for from the Settlement Fund. *Id*.

4. Remedial Measures

In addition to the direct compensation to Settlement Class Members listed above, the Settlement Agreement also protects Settlement Class Members' data that is still in Defendant's possession, by requiring Defendant to attest to attest to the implementation of additional data security procedures put in place since the Data Incident. *Id*., ¶ 92; (discussing implementation and maintenance of meaningful improvements to KEB's information security). The value of these

remedial measures is approximately nine hundred thousand dollars and no/100 cents ($900,000.00). Miller Prelim. App. Decl. ¶ 10. None of the past or future costs associated with the development and implementation of these additional security procedures has been or will be paid by the Plaintiffs or the Settlement Class, and no portion of the relief available to Settlement Class Members will be used for this purpose. *Id*.

C. SETTLEMENT ADMINISTRATION

i. Settlement Administrator

The Parties have chosen RG2 as the third-party Settlement Administrator. RG2 is a company experienced in administering class action settlements, including settlements of data breach litigation. The Settlement Administrator will provide Notice to the Settlement Class and otherwise administer the Settlement in accordance with the Settlement Agreement, including but not limited to, verifying that each person who submits a Claim Form is a Settlement Class Member; determining the validity or invalidity of every Claim submitted by Settlement Class Members; overseeing administration of the Settlement; providing direct notice by U.S. Mail to Settlement Class Members; implementing the Notice Plan; establishing and operating the Settlement Website and a toll-free number; administering the Claims processes; and distributing payments according to the Settlement Agreement. S.A. ¶ 97.

ii. Notice

The Notice Program is straightforward and structured to satisfy due process. Within ten (10) days after entry of the Preliminary Approval Order, Defendant will provide the Class List to the Settlement Administrator. S.A. ¶ 93. Within thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator will send the Short Form Notice via U.S. Mail to

all such Settlement Class Members for whom Defendant can ascertain a mailing address from its records with reasonable effort. *Id*.

To the extent that Class Counsel believes that reminder notices to Settlement Class Members are warranted, Class Counsel may direct the Settlement Administrator to send reminder notices to Settlement Class Members. If sent, such reminder notices shall be sent sixty (60) days after the Notice Date. The cost any reminder notices shall be paid from the Settlement Fund. *Id*.

iii. Opt-Outs and Objections

Settlement Class Members who do not wish to be included in the Settlement may choose to opt-out of the Settlement by submitting a timely written request to opt-out to the Settlement Administrator. S.A. ¶ 95. To be effective, written notice of the intent to opt-out must be postmarked no later than sixty (60) days after entry of the Preliminary Approval Order. *Id*. Additionally, any Settlement Class Member who does not submit a timely written request to opt-out from the Settlement Class may object to the Settlement by the Objection Deadline and may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any relevant evidence or argument. *Id*., ¶ 96.

iv. Distribution of Benefits

Payments for approved Claims shall be issued in the form of a check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date. S.A. ¶¶ 55, 80, 90, 97.ix,

D. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

The Settlement Agreement authorizes Class Counsel to seek attorney's fees in an amount not to exceed four hundred and sixty-six thousand, six hundred and sixty-six dollars and 67/100 cents ($466,666.67), plus reasonable out-of-pocket case expenses (exclusive of Notice and

Administration Expenses) of up to twenty thousand dollars and no/100 cents ($20,000.00) (subject to Court approval). S.A. ¶ 114. Likewise, the Settlement Agreement also authorizes Class Counsel to seek Service Awards in an amount not to exceed five thousand dollars and no/100 cents ($5,000.00) for each of the proposed Class Representatives ($15,000 total), for their time and effort on behalf of the Settlement Class. *Id*., ¶ 112.

III. ARGUMENT

A. LEGAL STANDARD

Proponents of a class-action settlement must demonstrate that the settlement is "fair, reasonable, and in the best interest of all who will be affected by it, including absent class members." *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 Ill. App. (5th) 180033, ¶ 54. To that end, courts have wide discretion in deciding whether to approve a settlement. *People ex rel. Wilcox v. Equity Funding Life Ins. Co.*, 61 Ill. 2d 303, 316 (1975). "Since the result is a compromise, the court in approving it should not judge the legal and factual questions by the same criteria applied in a trial on the merits. Nor should the court turn the settlement approval hearing into a trial. To do so would defeat the purposes of a compromise such as avoiding a determination of sharply contested issues and dispensing with expensive and wasteful litigation." *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992).[4]

The settlement of a class action is governed by Section 2-806 of the Illinois Code of Civil Procedure, which states that: "[a]ny action brought as a class action…shall not be compromised or dismissed except with the approval of the court[.]" 735 Ill. Comp. Stat. Ann. 5/2-806. Where a settlement is reached on a class-wide basis, the Court's analysis of whether to permit the settlement is twofold. First, even where a class will be conditionally certified for settlement purposes only, the Court must determine whether the settlement class is appropriate for certification under Section

2-801 of the Illinois Code of Civil Procedure [735 Ill. Comp. Stat. Ann. 5/2-801]. *See, e.g., Gebel v. Salvation Army*, 2020 Ill. Cir. LEXIS 1314, *3. After determining that the settlement class is suitable for certification, the Court must determine if the proposed settlement agreement is "fair, reasonable, and in the best interest of the class." *Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 169 (1st Dist. 1999).

Courts review proposed class-action settlements using a well-established two-step process. *See Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009)[3]; *GMAC*, 236 Ill. App. 3d at 492; *Fauley v. Metro. Life Ins. Co.*, 2016 Ill. App. (2d) 150236, ¶¶ 4, 7, 15. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Kaufman*, 264 F.R.D. at 447. The purpose of the initial hearing is to ascertain whether there is any reason to notify the settlement class members of the proposed settlement and proceed with a fairness hearing. *Fauley*, 2016 IL App (2d) 150236, ¶ 35-37. Once the settlement is found to be "within the range of possible approval" at the preliminary approval hearing, the final approval hearing is scheduled, and notice is provided to the class. In this case, the settlement is within the range of possible approval, and notice should issue to the proposed Settlement Class.

The second step is a post-notification fairness hearing, where the Court must determine whether a settlement is fair, reasonable, and adequate. *Kaufman,* 264 F.R.D. at 447. In determining whether a settlement is fair, reasonable, and adequate, courts consider the following factors: "(1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion; (6)

[3] Because Section 2-801 is patterned after Federal Rule of Civil Procedure 23, federal decisions under Rule 23 are persuasive authority. See *Smith v. Ill. Cent. R.R. Co*., 223 Ill. 2d 441, 447–48 (2006).

the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *Id*. These factors also support preliminary approval here.

B. THE SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiffs respectfully move the Court to grant class certification to a Settlement Class under 735 ILCS 5/2-801 and 735 ILCS 5/2-802. Illinois courts recognize that:

> Provisional settlement, class certification, and appointment of class counsel have several practical purposes, including avoiding the costs of litigating class status while facilitating a global settlement, ensuring all class members are notified of the terms of the proposed Settlement Agreement, and setting the date and time of the final approval hearing.

Gebel, 2020 Ill. Cir. LEXIS 1314, *2-3. Indeed, "[t]he validity of use of a temporary settlement class is not usually questioned." Newberg § 11.22. As the *Manual for Complex Litigation* explains:

> Settlement classes – cases certified as class actions solely for settlement – can provide significant benefits to Settlement Class Members and enable the defendants to achieve final resolution of multiple suits. Settlement classes also permit defendants to settle while preserving the right to contest the propriety and scope of the class allegations if the settlement is not approved[.]… An early settlement produces certainty for the plaintiffs and defendants and greatly reduces litigation expenses.

Manual for Complex Litigation (Fourth) § 21.612.

Pursuant to Section 2-801 of the Illinois Rules of Civil Procedure:

> An action may be maintained as a class action…if the court finds:
>
> (1) The class is so numerous that joinder of all members is impracticable.
> (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
> (3) The representative parties will fairly and adequately protect the interest of the class [and];
> (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801.

Here, as explained, *infra*, the Settlement Class satisfies each of these requirements. Accordingly, conditional certification for settlement purposes only should be granted.

i. The Settlement Class is so numerous that joinder of all members is impactable.

The numerosity requirement is satisfied where "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). "Although there is no bright-line test for numerosity, a class of forty is generally sufficient[.]" *Hinman v. M & M Rental Center, Inc.*, 545 F. Supp. 2d 802, 805- 06 (N.D. Ill. 2008); *Kulins v. Malco, A Microdot Co., Inc.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (finding that 47 Settlement Class Members was sufficient to satisfy numerosity). Here, according to information provided by Defendant, there are approximately 103,645 putative Settlement Class members. Miller Prelim. App. Decl. ¶ 10. Joinder of 103,645 Settlement Class members would be impractical, and far exceeds the traditionally excepted threshold of forty class members. Accordingly, the Settlement Class satisfies the numerosity requirement.

ii. Common questions of fact or law predominate over any questions affecting only individual Class Members.

The commonality requirement is met when "[t]here are questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Common questions of fact or law exist where putative Settlement Class Members have been aggrieved by the same or similar misconduct. *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673-74 (2d Dist. 2006); *Steinberg.*, 69 Ill. 2d at 340- 42; *Ellerbrake v. Campbell-Hausfeld*, No. 01-L-540, 2003 Ill. Cir. LEXIS 23, at *3 (Ill. Cir. Ct. July 2, 2003); *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). Also, where a "defendant allegedly acted wrongfully in the same basic manner as to an entire class ... the common class questions

predominate the case[.]" *Walczak*, 365 Ill. App. 3d at 674 (citing *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 548 (2003)).

Here, the Settlement Class members share common claims all arising out of the same conduct and incident—the Data Incident. Determination of the allegations set forth in Plaintiffs' operative Complaints regarding the unauthorized access of Settlement Class members' Personal Information in Defendant's possession requires resolution of the same central factual and legal issues, including, but not limited to, whether: (1) Defendant failed to implement and maintain reasonable security procedures and practices to preserve the confidentiality of Plaintiffs' and Settlement Class members' Private Information; (2) Defendant breached implied contracts; (3) Defendant negligently maintained, preserved, or stored Plaintiffs' and Settlement Class members' Personal Information; (4) Defendant was unjustly enriched as a result of the acts and/or omissions alleged in the Complaint; (5) Defendant breached its fiduciary duties to Plaintiffs and Settlement Class members; and (6) Plaintiffs and Settlement Class members were injured by Defendant's acts and/or omissions that failed to prepare for and prevent the Data Incident. Resolution of these claims involves an analysis of common legal issues and an examination of common facts regarding the Data Incident and Defendant's data privacy policies and practices.

The predominance "standard is met 'when there exists generalized evidence that proves or disproves an element on a simultaneous, class-wide basis ... [since s]uch proof obviates the need to examine each class member's individual position.'" *Golon v. Ohio Savs. Bank*, No. 98-cv-7430, 1999 U.S. Dist. LEXIS 16452, at *4 (N.D. Ill. Oct. 15, 1999) (quoting *In re Industrial Gas Antitrust Litig.*, 100 F.R.D. 280, 288 (N.D.Ill.1983); *see also JT's Frames, Inc. v. Sunhill NIC Co*., 2012 IL App (2d) 110676-U, at *6 (Ill. App. 2d Dist. Mar. 26, 2012) (same).

In this case, common questions resulting from Defendant's alleged conduct predominate over any individual issues that may exist and can be answered on a class-wide basis based on common evidence maintained by Defendant. Therefore, this factor is satisfied.

iii. Settlement Class Counsel and the Settlement Class Representatives have and will continue to fairly and adequately protect the interest of the Settlement Class.

This element of Section 2-801 is met where "[t]he representative parties will fairly and adequately protect the interest of the class." 735 ILCS 5/2-801(3). "The purpose of the adequate representation requirement is to ensure all Settlement Class Members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Walczak*, 365 Ill. App. 3d at 678 (citing *P.J.'s Concrete Pumping Service, Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 1004 (2nd Dist. 2004)); *Purcell & Wardrope Chartered v. Hertz Corp.*, 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988). The adequacy requirement is satisfied where "the interests of those who are parties are the same as those who are not joined" such that the "litigating parties fairly represent [them]" and where the "attorney for the representative party '[is] qualified, experienced and generally able to conduct the proposed litigation.'" *CE Design Ltd.*, supra, 2015 IL App (1st) 131465, ¶ 16 (citing *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981)). Thus, the class representative's and settlement class members' interests must be generally aligned, and class counsel must be "qualified, experienced and generally able to conduct the proposed litigation." *Miner*, 87 Ill. 2d at 14.

Plaintiffs and their counsel are adequate. First, Plaintiffs do not have any conflicts of interest with the absent Settlement Class members, as their claims are coextensive with those of the Settlement Class. Miller Prelim. App. Decl. ¶ 6-7. Plaintiffs have the same interests as the proposed Settlement Class members because they allege the same injuries caused in the same

manner, based on a common event—the Data Incident. Additionally, they reviewed their respective complaints before they were filed and understand the allegations. *Id*. at 6. Plaintiffs are further willing to prosecute this matter on behalf of themselves and the putative Settlement Class. *Id*. Plaintiffs were also advised of and understand their obligations as class representatives. Plaintiffs regularly communicated with Class Counsel regarding various issues pertaining to this case and will continue to do so until the Settlement is approved, and its administration completed. *Id*. Plaintiffs have been consistently involved in the Action, providing valuable insight and useful facts allowing Class Counsel to effectively litigate this Action, conduct informal discovery, research the claims and defenses, and negotiate this Settlement.

Second, proposed Class Counsel are well qualified and experienced in complex class action litigation and have an established track record in litigating cases involving consumer protection and consumer privacy—and data breaches in particular. Miller Prelim. App. Decl. ¶¶ 19-49 and Exhibits 2-5 thereto. Proposed Class Counsel have been appointed as class counsel in numerous complex class actions in courts throughout the country, including data breach class action settlements, and each has significant class action experience. *Id*.

Proposed Class Counsel vigorously prosecuted this Action and will continue to do so through final approval. *Id*., ¶¶ 3-9. They identified and investigated the claims in this lawsuit and the underlying facts, and successfully negotiated this Settlement on behalf of the Settlement Class. *Id*.

iv. A Class Action is an appropriate method for the fair and efficient adjudication of Plaintiffs' and Class Members' claims arising out of the Data Incident.

The final class certification prerequisite is met where "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). To

evaluate this prerequisite, "a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon v. Boden*, 224 Ill. App. 3d 195, 203 (1st Dist. 1991). As a practical matter, "holding that the first three prerequisites of section 2- 801 are established makes it evident that the fourth requirement is fulfilled." *Id*. at 204; *Purcell & Wardrope Chartered*, 175 Ill. App. 3d at 1079 ("the predominance of common issues [may] make a class action ... a fair and efficient method to resolve the dispute."). Therefore, because the case at bar has demonstrated numerosity, commonality and predominance, and adequacy of representation, it is "evident" the appropriateness requirement is satisfied as well.

Additional considerations also support certifying this case as a class action. A class action is superior to multiple individual actions where the "litigation costs are high, the likely recovery is limited" and individuals are unlikely to prosecute individual claims absent the cost-sharing efficiencies of a class action. *Maxwell v. Arrow Fin. Servs., LLC*, 2004 U.S. Dist. LEXIS 5462, at *6 (N.D. Ill. Mar. 31, 2004). In fact, a "controlling factor in many cases is that the class action is the only practical means for Settlement Class Member to receive redress— particularly where the claims are small." *Gordon*, 224 Ill. App. 3d at 203-04; *see also Eshaghi v. Hanley Dawson Cadillac Co.*, 214 Ill. App. 3d 995, 1004 (1st Dist. 1991). The traditional means for handling claims like those at issue in the case at bar would tax the court system, require a massive expenditure of public and private resources, and given the relatively low value of Settlement Class Members' individual claims, would make individual resolution impracticable.

Because Plaintiffs' and Settlement Class Members' claims involve identical alleged claims arising from identical conduct, this case is well-suited for class treatment. The costs of litigating Settlement Class Members' individual claims would likely exceed their potential recovery.

Therefore, it is unlikely individuals would invest the resources and time needed to bring an individual action—making litigation prohibitive absent class treatment.

Further, when evaluating "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 that there be no trial." *Amchem Products v. Windsor*, 521 U.S. 591, 620 (1997). The Court need not be concerned with issues of manageability relating to trial because the action will now settle. Nor should the Court "judge the legal and factual questions" regarding certification of the proposed Settlement Class by the same criteria as a proposed class being adversely certified. *G M A C Mortgage Corp. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992).

All this demonstrates that a class action is the superior method of adjudicating this matter, and the Settlement Class should be certified for settlement purposes because it will "achieve economies of time, effort, and expense, and promote ... uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615.

C. THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE, AND IN THE BEST INTEREST OF THE CLASS

In determining whether a settlement is fair, reasonable, and adequate, Illinois Courts consider the factors posed by the First District Court of Appeals in *Chicago v. Korshak*, aptly referred to as the *Korshak* Factors. 206 Ill. App. 3d 968, 972 (1st Dist. 1990). They are:

> (1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement;
> (2) the defendant's ability to pay;
> (3) the complexity, length and expense of further litigation;
> (4) the amount of opposition to the settlement;
> (5) the presence of collusion in reaching a settlement;
> (6) the reaction of members of the class to the settlement;
> (7) the opinion of competent counsel; and
> (8) the stage of proceedings and the amount of discovery completed.

Id. In the instant matter, the *Korshak* factors strongly support approval of the Settlement.

i. The recovery offered by the Settlement Agreement is favorable considering the inherent risk present in this litigation.

Numerous courts have recognized that the first *Korshak* factor—"'the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement'"— "is the most important factor in determining whether a settlement should be approved." *Steinberg*, Ill. App. 3d at 170 (quoting *Korshak*, 206 Ill. App. 3d at 972, 565 N.E.2d at 70-71). In evaluating this factor, Courts should be cognizant that "there exists a strong public policy in favor of settlement and the avoidance of costly and time-consuming litigation," particularly in the context of class action litigation, which is inherently costly, lengthy, and complex. *Leb. Chiropractic Clinic, P.C. v. Liberty Mutual Insurance Co.*, 2016 IL App (5th) 150111-U, ¶ 41. Since a settlement is ultimately a "compromise," the court weighing approval:

> should not judge the legal and factual questions by the same criteria applied in a trial on the merits. Nor should the court turn the settlement approval hearing into a trial. To do so would defeat the purposes of a compromise such as avoiding a determination of sharply contested issues and dispensing with expensive and wasteful litigation.

G M A C, 236 Ill. App. 3d at 493.

The Settlement established here ensures that Settlement Class Members can receive substantial relief by filing a claim. Settlement Class Members who submit valid claims may select a *Pro Rata* Cash Payment currently estimated at $50, and claim unreimbursed of economic losses of up to $10,000. Settlement Class Members can also elect to receive two years of free credit monitoring services, with the benefits described in Sec. II(D)(iv), *supra*. Finally, all Settlement Class Members will benefit from the cybersecurity enhancements KEB has committed to

undertake and maintain, which will protect Settlement Class Members' Private Information from future attempts at unauthorized access.

The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain – especially where questions of law and fact exist. A data breach litigation is an evolving field, Settlement Class Members have no guarantee of attaining a favorable result. *See Gordon v. Chipotle Mexican Grill, Inc*., No. 17-cv-01415-CMA-SKC, 2019 U.S. Dist. LEXIS 215430, at *3 (D. Colo. Dec. 16, 2019) ("Data breach cases ... are particularly risky, expensive, and complex."). Furthermore, absent an early resolution, the parties would likely be litigating this action for years to come. In contrast, this settlement makes significant relief *immediately* available to Settlement Class Members.

While Plaintiffs strongly believe in the merits of their case, they also understand that Defendant will assert a number of potentially case-dispositive defenses. Defendant has denied, and continues to deny, all liability alleged in this matter, maintaining that it has meritorious defenses to the claims alleged therein. In the absence of a settlement, Defendant would likely highlight the difficulty of evaluating the alleged damages and the individualized nature thereof, subjecting Plaintiffs to the risks inherent in trying to achieve and maintain class certification and prove liability.

Indeed, should litigation continue, Plaintiffs would have to immediately survive an anticipated motion to dismiss merely to proceed out of the pleading stage and into litigation that could prove costly to both Defendant and Plaintiffs, without any promise of resolution in their favor. Through motions practice, Plaintiffs and their Counsel would be faced with many legal theories which have resulted in the dismissal of similar data breach claims in other matters. *See,*

e.g., Hammond v. The Bank of N.Y. Mellon Corp., 2010 U.S. Dist. LEXIS 71996, at *4 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage).

Moreover, if Plaintiffs survived a motion to dismiss, they would then have to achieve class certification—a significant hurdle that other data breach plaintiffs have failed to overcome. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig*., 293 F.R.D. 21 (D. Me. 2013). Indeed, Settlement Class Counsel understand that Defendant would vigorously oppose class certification of a litigation class and, even if Plaintiffs were successful in certifying the class (which they believe they would be), they could face an interlocutory appeal of any such order. Many resources would undoubtedly be consumed during the continued litigation of this action, with no guarantee of any recovery for Plaintiffs or the Class. Then, as class certification is never a settled issue, Plaintiffs would have to expend further time and resources, and incur further risk, to maintain class certification through trial.

As stated herein, Plaintiffs strongly dispute the defenses it anticipates Defendant would likely assert if the litigation were to continue, but it is obvious that their success at trial is far from certain. Through the Settlement, Plaintiffs and Settlement Class Members gain significant relief without having to face further risk of not receiving any relief at all.

ii. The Defendant's ability to pay is a neutral factor.

As neither party disputes the Defendant's ability to pay, the second *Korshak* factor neither weighs for or against granting preliminary approval of the Settlement.

iii. Data breach litigation is notoriously complex, expensive, and lengthy.

Courts nationwide have noted the inherent complexity of data breach litigation. *See, e.g., Chipotle Mexican Grill*, No. 17-cv-01415-CMA-SKC, 2019 U.S. Dist. LEXIS 215430, at *3) ("Data breach cases ... are particularly risky, expensive, and complex."); *In re Wawa, Inc. Data*

Sec. Litig., No. 19-CV-6019, 2024 U.S. Dist. LEXIS 65200, at *20 (E.D. Pa. Apr. 9, 2024) ("Data breach litigation is inherently complex"); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 17-MD-2807, 2019 U.S. Dist. LEXIS 135573, at *6 (N.D. Ohio Aug. 12, 2019); *Fulton-Green v. Accolade, Inc.*, No. 18-CV-274, 2019 U.S. Dist. LEXIS 164375, at *8 (E.D. Pa. Sept. 24, 2019) ("This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare."). Undoubtedly, if the case had proceeded past a motion to dismiss, class certification, summary judgment, and trial would have been complex, time-consuming, and very expensive for both parties.

Even if this matter was certified and went to trial, it would likely take several years to be resolved. Establishing liability and damages at trial would require multiple experts' extensive work and testimony. Defendant would attempt to interpose defenses that might either cause a jury to reject Plaintiffs' claims or award the class a fraction of their losses—and potentially no requirement for Defendant to upgrade its security. Thus, continued litigating would incur additional expenses and considerable time to proceed through trial and post-trial motions.

Moreover, given the complexity of the issues and the amount in controversy due to the putative class size, the defeated party would likely appeal any decision on the merits (at summary judgment and/or trial), as well as any decision on class certification. As such, the immediate and considerable monetary and prospective relief provided to the Settlement Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appellate process.

iv. At this stage, any opposition to the Settlement cannot be evaluated.

As notice of the Settlement will not be disseminated until and unless the Court grants this Motion, it is impossible to evaluate any opposition by the Settlement Class at this time. However,

Plaintiffs approved of the Settlement and believe that it is a fair and reasonable settlement in light of the defenses raised by Defendant and the potential risks involved with continued litigation. If the Court grants this Motion, Settlement Class Counsel will provide the Court with a full accounting of any objections, comments, or requests for exclusion received from Settlement Class Members at the Final Approval Hearing

v. The Settlement Agreement is not the product of collusion.

When a proposed settlement was the result of arm's-length negotiations, there is an initial presumption it is fair and reasonable. NEWBERG § 11.42; *see also Fauley*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"); *Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (finding that there was no collusion where the settlement agreement was reached as a result of "an arm's-length negotiation").

Class Counsel's experience in similar data breach cases allowed them to efficiently seek essential information and documents through informal discovery and evaluate the strengths and weaknesses of the claims. By engaging in months of settlement discussions and informal discovery, the Parties had a thorough understanding of the facts and merits of this case. Miller Prelim. App. Decl. ¶ 2-9. Following extensive arm's length settlement talks, with the assistance of experienced mediator, Hon. Ronald B. Leighton (Ret.), the Parties were able to reach a settlement in principle. The Parties then continued negotiating the final terms of the Settlement Agreement. *Id*. ¶ 9. Such an extensive process, and the involvement of a well-regarded third-party neutral, indicates the settlement process was free of collusion. *See, e.g., Abrams v. Van Kampen Funds, Inc.*, No. 01 C 7538, 2006 U.S. Dist. LEXIS 2129, at *7 (N.D. Ill. Jan. 18, 2006) (Where the settlement amount was based on extensive negotiations and "on the recommendation of a neutral third party," "the circumstances of the settlement support that there was no collusion between the

parties."); *Gilbert v. First Alert*, Case No. 94 C 6760, 1998 U.S. Dist. LEXIS 3640, at *3-4 (N.D. Ill. Mar. 19, 1998) ("There is little possibility of any collusion by the parties since the settlement was reached only after" neutral mediation of settlement discussions). *See also Binissia v. ABM Indus.*, No. 13 cv 1230, 2017 U.S. Dist. LEXIS 153686, at *20 (N.D. Ill. Sep. 21, 2017) ("The fact that it was reached with the assistance of [an experienced] mediator … lends further weight to that conclusion, for [t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."); *Slaughter v. Wells Fargo Advisors, LLC*, No. 13-cv-06368, 2017 U.S. Dist. LEXIS 123535, at *4 (N.D. Ill. Aug. 4, 2017). In short, the settlement process here was neither collusive nor fraudulent, but was a good faith arm's-length negotiation between competent, experienced counsel for the Parties.

vi. The reactions of members of the class to the settlement cannot yet be ascertained.

As stated above, the Settlement Class has not been issued notice of the Settlement Agreement and will not be until and unless the Court approves this Motion. The only Settlement Class Members who are aware of the agreement are the Plaintiffs, who approve of the Settlement and have enthusiastically signed the Settlement Agreement. Miller Prelim. App. Decl. ¶ 13.

vii. Settlement Class Counsel has robust experience in this area of law and believes that the Settlement Agreement is in the best interests of the Settlement Class.

After careful consideration, arm's-length negotiations that spanned several months, and a formal mediation, Class Counsel concluded that the resulting Settlement, consisting of significant monetary benefits, represents a fair and reasonable resolution for Settlement Class Members' claims. This Settlement provides Settlement Class Members with immediate benefits that would not otherwise be available unless a settlement was reached. Thus, Class Counsel, who have considerable experience litigating these types of claims, believe that the Settlement represents a

fair "compromise [that] is preferable to the risk and uncertainty of trial." *Pesek v. Donahue*, No. 04 C 4525, 2006 U.S. Dist. LEXIS 26209, at *13 (N.D. Ill. Feb. 9, 2006).

viii. The Stage of the Proceedings and the Amount of Discovery Completed

As to the final factor, the Settlement was reached only after informal discovery efforts and substantial negotiations between the Parties. Plaintiffs and Class Counsel devoted substantial time, effort, and resources to this litigation, beginning with their initial investigation of Plaintiffs' allegations, continuing through informal discovery demands and ending with hard-fought settlement negotiations. Ultimately, Defendant disclosed evidence and information under privilege, and the extent of information obtained is more extensive than the stage of proceedings alone might suggest. Miller Prelim. App. Decl. ¶¶ 4-5.

Had the Parties not reached this Settlement, this case would have proceeded to formal discovery and dispositive motions and/or class certification, with the Parties being required to expend substantial time and resources going forward with their respective claims and defenses while facing a significant risk regarding any decision on the merits of the case—including whether a class should be certified.

Accordingly, the proposed Settlement is fair, reasonable, adequate, and in line with similar data breach settlements that have received final approval, including in Illinois state courts.

D. THE PROPOSED NOTICE IS APPROPRIATE AND SHOULD BE APPROVED.

Pursuant to 735 ILCS 5/2-803, the Court may provide Settlement Class members notice of any proposed settlement to protect the interest of the class and parties. *Cavoto v. Chicago National League Ball Club, Inc.*, No. 1-03-3749, 2006 Ill. App. LEXIS 3915, at *15 (1st Dist. July 28, 2006) (collecting authorities and noting that "Section 2-803 makes it clear that the statutory requirement

of notice is not mandatory; rather, whether notice is to be given at all, to whom and the kind of notice are separate determinations within the trial court's discretion."). The Court's discretion, however, is limited by the dictates of due process. *Id*.; *see also Fauley*, 2016 IL App (2d) 150236, ¶ 35; *Frank v. Teachers Insurance & Annuity Association of America*, 71 Ill. 2d 583, 593 (1978) (finding that the issue is the "constitutional rather than the statutory requirements"). Therefore, even though it is within the Court's discretion to provide notice to absent Settlement Class Members, due process may require individual notice.

Due process requires the notice be the "best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections'" as well as "'describe the action and the plaintiffs' rights in it.'" *Fauley*, 2016 IL App (2d) 150236, ¶ 36 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)).

The requirements of 735 ILCS 5/2-803 and due process are satisfied by the Notice Program established in the Settlement Agreement and discussed in Section II(C)(ii), *supra*. Direct notice will be sent to the Settlement Class Members by U.S. Mail. The Notice Program is designed to reach as many potential Settlement Class Members as possible and is the best notice practicable. Miller Prelim. App. Decl. ¶¶ 12-14. *See, e.g.*, *Roberts v. Graphic Packaging Int'l, LLC*, No. 3:21-cv-00750-DWD, 2024 U.S. Dist. LEXIS 122323, at *6 (S.D. Ill. July 11, 2024) (court determined direct mail and posting of notice on settlement website fairly and adequately advised class members and constituted the "best notice practicable" under the circumstances); *Kleen Prods. LLC v. Int'l Paper Co.*, No. 1:10-cv-05711, 2017 U.S. Dist. LEXIS 183015, at *14 (N.D. Ill. Oct. 17, 2017) (Direct mail and publication notice constituted the most effective and best notice practicable under the circumstances). As such, the proposed methods of notice herein comport

with 735 ILCS 5/2-803 and meet applicable due process requirements. *Id*. The proposed Notices and Claim Form are attached to the Settlement Agreement, and should be approved by the Court.

V. PROPOSED SCHEDULE

The Parties propose the following schedule leading to the final approval hearing:

Event	Date
Notice Deadline	30 Days after Preliminary Approval Order
Motion for Final Approval and Application for Attorney's Fees and Expenses	14 Days before Opt-Out and Objection Deadlines
Opt-Out and Objection Deadlines	60 Days after Commencement of Notice
Replies in Support of Final Approval, Service Awards, and Fee Requests	15 Days before Final Approval Hearing
Claim Form Deadline	90 Days after Commencement of Notice
Final Approval Hearing	Week of _____, 2025, or later.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant this unopposed Motion and enter an order substantially in the form attached as **Exhibit D** to the Settlement Agreement: (1) preliminarily approving the proposed Settlement; (2) approving the proposed administrative deadlines and procedures, including the proposed Final Approval Hearing date and procedures regarding objections, opt-outs and submitting Claim Forms; (3) appointing Class Representatives and Class Counsel; (4) appointing the Settlement Administrator; (5) approving the Postcard Notice, Long Form Notice, and Claim Form; and (6) ordering that notice of the proposed Settlement shall be sent to the Settlement Class.

Dated: June 24, 2025

Respectfully submitted,

By: */s/ Cassandra P. Miller*

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CERTIFICATE OF SERVICE

I, Cassandra P. Miller, hereby certify that on June 24, 2025, I electronically filed the foregoing with the Clerk of the Court using the Illinois Odyssey e-file system, which will send notification of such filing to counsel of record.

DATED this 24th day of June, 2025.

By: */s/ Cassandra P. Miller*

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