



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

TAMMY BROWN, VANESSA BROOKS,)
and EMILY SMITH SANDERS, individually)
and on behalf of all others similarly situated,)
)
Plaintiffs,)
) Case No. 01-CV-2024-903135
v.)
)
ALABAMA CARDIOLOGY GROUP, P.C.,)
d/b/a ALABAMA CARDIOVASCULAR)
GROUP,)
)
Defendant.)

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

Plaintiffs,¹ individually and on behalf of the proposed Settlement Class of similarly situated individuals, respectfully submit this Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law in support thereof. As set forth below and in the proposed Preliminary Approval Order, Plaintiffs respectfully request this Court enter an Order as follows:

- (1) granting preliminary approval of the proposed Settlement Agreement;
- (2) conditionally certifying the Settlement Class;
- (3) appointing Jonathan S. Mann of Pittman, Dutton, Hellums, Bradley, & Mann P.C., Raina C. Borrelli of Strauss Borrelli PLLC, and Tyler J. Bean of Siri & Glimstad LLP as Class Counsel;

¹ Capitalized terms not herein defined shall have the meaning ascribed to them in Settlement Agreement, which is attached hereto as Exhibit A.

- (4) approving the proposed Notice Plan and directing that it be implemented; and
- (5) appointing EisnerAmper to serve as the Settlement Administrator.

This Memorandum describes in detail the reasons why preliminary approval is in the best interests of the class and is consistent with Alabama Rule of Civil Procedure 23.

INTRODUCTION

The Parties in this putative class action have reached a proposed settlement. The Settlement provides for the creation of a \$ \$2,225,000.00 non-reversionary Settlement Fund, from which Class Members will be able to submit claims for Documented Loss Payments or *pro rata* Cash Fund Payments, plus two years of Credit Monitoring and Insurance Services (“CMIS”). SA § 2(d). If approved, the Settlement would bring certainty and closure—and significant and valuable relief for the Settlement Class—to what otherwise would likely be contentious and costly litigation over Defendant ACG’s liability, or lack thereof, for its allegedly unlawful practices. Defendant disputes liability and denies any wrongdoing.

As discussed in more detail below, the proposed Settlement meets all the requirements of Alabama Rule of Civil Procedure 23, as well as all standards for the evaluation of fairness of a proposed settlement. *See, e.g., In re Liberty Nat'l Ins. Cases*, No. 02-cv-2741, 2006 WL 8436814, at *9 (N.D. Ala. Mar. 31, 2006).² The terms of the Settlement, which include a Settlement Fund providing Class members the ability to receive Settlement Benefits including cash Settlement Payments and two years of free CMIS, meet and exceed the applicable standards of fairness and provide relief substantially similar to other settlements that have been approved throughout the

² Rule 23 of the Alabama Rules of Civil Procedure is modeled after Rule 23 of the Federal Rules of Civil Procedure and, therefore, federal decisions interpreting Rule 23 are authoritative. *Reynolds Metals Co. v. Hill*, 825 So. 2d 100, 104 n. 1 (Ala. 2002) (citing *Cutler v. Orkin Exterminating Co.*, 770 So. 2d 67 (Ala. 2000)).

country. Accordingly, the Court should preliminarily approve the Settlement so Class members can receive Notice of their rights, and the claims administration process may begin.

I. THE LITIGATION

A. The Data Breach

Defendant discovered that on or about July 2, 2024, an unauthorized third-party accessed its computer network. SA at 1. Defendant's investigation determined that the unauthorized third party may have accessed the PII and/or PHI of approximately 280,534 members of the Settlement Class in the Data Breach. *Id.* On or around August 2, 2024, Defendant began to notify the Settlement Class that their PII and/or PHI was potentially involved in the Data Breach. *Id.*

B. Procedural History

As a result of the Data Breach, eight consumer class action cases were filed against Defendant between August 12, 2024, and September 11, 2024. *See* Declaration of Jonathan Mann in Support of Plaintiffs' Unopposed Motion for Preliminary Approval, attached as **Exhibit B** hereto ("Mann Decl."), ¶ 12. On December 30, 2024, Plaintiffs filed a Consolidated Complaint consolidating the eight previously filed lawsuits arising from the Data Breach into this Action. *Id.* ¶ 13. The claims of each of the Plaintiffs all involve common questions of law or fact, arising from the same Data Breach. *Id.*

Following the Consolidated Complaint's filing, the Parties engaged in formal written discovery and produced documents. *Id.* ¶ 14. After considerable meet and confer efforts, the Parties agreed to mediate the Action. *Id.* In preparation for the scheduled mediation, the Parties exchanged additional information related to the Action, including the composition of the putative Class. *Id.* ¶ 15. The Parties also laid out their respective positions, including with respect to the merits, class certification, and settlement, in written mediation statements provided to the other Party and the

mediator. *Id.* Additionally, the Parties maintained an open dialogue concerning the contours of a potential agreement in the weeks leading up to the scheduled mediation. *Id.*

On July 10, 2025, the Parties engaged in the scheduled mediation session before respected class action mediator Jill R. Sperber, Esq. of Sperber Dispute Resolution. *Id.* ¶ 16. Although that mediation session did not result in a settlement, the Parties continued to negotiate in good faith over the following days. *Id.* ¶ 17. On July 14, 2025, Ms. Sperber made a mediator's proposal, which the Parties accepted. *Id.* ¶ 18. The negotiations were hard fought on each side, but through the mediation process that assisted the Parties in resolving their outstanding differences, they were able to come to an agreement in principle to settle this Action. *Id.* ¶ 19. The Parties then worked at arms' length over the course of numerous additional phone calls and emails to negotiate and finalize all terms of the proposed Settlement Agreement. *Id.* ¶ 18.

After the Parties reached an agreement in principle on all material terms of substantive relief for the Settlement Class, they began negotiating the amount of attorneys' fees and costs Defendant would agree to pay Class Counsel and the amount of Service Awards Defendant would agree to pay the Class Representatives (both subject to Court approval). *Id.* ¶ 21. At all times, the issues of attorneys' fees and costs and Class Representative Service Awards were negotiated separately from the Settlement relief to the Settlement Class. *Id.* Like the other negotiations, these negotiations were conducted at arm's length. *Id.*

The Parties then began drafting, exchanging, and editing the detailed Settlement Agreement, including its accompanying exhibits, forms of Notices, and Claim Form. *Id.* ¶ 22; SA Exs. A–C. The Parties sought bids from multiple claims administrators, and after an extensive bidding process ultimately selected a qualified and cost-effective company, EisnerAmper, to serve as Settlement Administrator. Mann Decl. ¶ 23.

The Settlement Agreement resulted from hard fought and adversarial negotiations over a months-long period. *Id.* ¶ 24. The time and effort spent by all Parties to this Action demonstrate the rigor, intensity, and thoroughness of the mediation efforts, as well as the Parties' commitment to working constructively toward a resolution. *Id.* The exchange of information through formal discovery and in connection with the mediation and Settlement process allowed the Parties to sufficiently understand the relative strengths and weaknesses of their respective positions when fashioning the proposed Settlement. *Id.* ¶ 19. The proposed Settlement addresses the reasonable objectives of this Action. *Id.* ¶ 23.

II. THE PROPOSED SETTLEMENT

A. The Settlement Class.

The proposed Settlement establishes a Settlement Class defined as follows:

all individuals residing in the United States whose PHI and/or PII was compromised in the Data Breach discovered by Alabama Cardiology Group in July 2024, including all those individuals who received notice of the breach.

SA at 7. The proposed Settlement Class specifically excludes (1) the Judges presiding over the Action and members of their immediate families and their staff; (2) ACG, its subsidiaries, parent companies, successors, predecessors, and any entity in which ACG 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. *Id.* The proposed Settlement Class includes approximately 280,534 individuals. *Id.* at 1.

B. Settlement Benefits to the Settlement Class

The Settlement provides for monetary relief to be paid by Defendant to eligible Claimants of the Settlement Class. Defendant will fund a \$2,225,000.00 non-reversionary Settlement Fund

to provide each Claimant with (a) either a Documented Loss Payment of up to \$5,000.00, or a flat, *pro rata* Cash Fund Payment calculated in accordance with § 2(i) of the Agreement; and (b) two years of CMIS. SA § 2(d). The Settlement Fund will also be used to pay Settlement Administrator expenses, Class Counsel's Fee Award and Costs, Service Awards, and taxes. *Id.* § 2(h)(i). Additionally, pursuant to the Agreement, Defendant has agreed to adopt, continue, and/or implement reasonable data and information security measures, the costs of which will be paid by Defendant separate and apart from the Settlement Fund. *Id.* § 1(a).

Specifically, the Agreement provides for the following Settlement Benefits to the Settlement Class:

1. Documented Loss Payment

Class Members may submit claims for a Documented Loss Payment of up to \$5,000.00 for reimbursement in the form of monetary losses incurred by the Settlement Class Member and supported by Reasonable Documentation for attempting to remedy or remedying issues that are reasonable traceable to the Data Breach. SA at 4 and § 2(d). To receive a Documented Loss Payment, a Class Member must select that option on their Claim Form and submit to the Settlement Administrator the following: (i) an attestation regarding any actual and unreimbursed Documented Loss made under penalty of perjury; and (ii) Reasonable Documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement. *Id.* § 2(d)(i). If a Settlement Class Member does not submit Reasonable Documentation supporting a Documented Loss Payment claim, or if a claim for a Documented Loss Payment is rejected by the Settlement Administrator for any reason, and the Class Member fails to cure his or her claim, the claim will be rejected and automatically converted into a claim for the Cash Fund Payment. *Id.*

2. Cash Fund Payment

In lieu of Documented Loss Payments, Class Members may elect to receive a *pro rata* Cash Fund Payment. Cash Fund Payments will be calculated after the end of the Claims Period by calculating the amount remaining in the Settlement Fund after payment of (1) costs of Notice and Administrative Expenses; (2) the court-approved Fee Award and Costs to Class Counsel and Service Awards to Class Representatives; (3) taxes; (4) all Approved Claims for Documented Loss Payments; and (5) all Approved Claims for CMIS. SA § 2(i). Remaining funds in the Net Settlement Fund will then be used to make all Cash Fund Payments, which shall be calculated by dividing the remaining amount by the number of Approved Claims submitted for Cash Fund Payments. *Id.* Based on typical claims rates and historical data available from similar cases, Plaintiffs estimate each Claimant will receive approximately \$50.00 for Cash Fund Payments. Mann Decl. ¶ 28. This amount will be increased or decreased based on the number of claims made. *Id.*

3. Credit Monitoring and Insurance Services

In addition to receiving Settlement Payments, all Class Members are eligible to submit claims for two years of CMIS, specifically CyEx Medical Shield Complete, which includes one credit bureau monitoring service and \$1 million in identity theft insurance. SA § 2(d)(iii). This Settlement Benefit will be available to Class Members irrespective of whether they took advantage of any previous offering of credit monitoring from Defendant. Class Members will be permitted to postpone activation of CMIS for up to at least 12 months. *Id.* The cost of CMIS will be paid from the Settlement Fund. *Id.* § 2(i).

4. Security Commitments and Prospective Relief

In addition to the foregoing Settlement Benefits, pursuant to the Agreement Defendant has agreed to adopt, continue, and/or implement reasonable data and information security measures,

as determined by Defendant and at its expense, which are designed to strengthen Defendant's data and information security from the date of the Data Breach. *Id.* § 1(a). The Parties have agreed these measures will be maintained by Defendant for at least five years from the Effective Date of the Agreement. *Id.* All costs associated with these data and information security measures shall be paid for by Defendant separate and apart from the Settlement Fund. *Id.* Defendant will provide Class Counsel with a confidential letter attesting to the security-related measures implemented and planned. *Id.* § 1(b).

C. Notice Plan

The Parties have selected EisnerAmper to be the Settlement Administrator, subject to Court approval. SA at 7. The Settlement Administrator is experienced in class notice and in administration of class action claims generally, and specifically those of the type provided for and made in data breach litigation. Mann Decl. ¶ 23.

To reach as many potential Class Members as possible, individual Notice shall be provided by direct mail to all Class Members for whom Defendant has a valid address. SA § 5(a)–(c). While only the Summary Notice will be mailed to Class Members, the Long Form Notice and Claim Form will be made available on the Settlement Website established by the Settlement Administrator pursuant to the Agreement. *See* SA Exs. A-C. The Settlement Website shall contain information regarding how to submit Claim Forms (including electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, the Settlement Agreement, the Preliminary Approval Order entered by the Court, and the operative complaint in the Action, and will (on its URL landing page) notify the Settlement Class of the date, time, and place of the Final Approval Hearing. SA § 5(f). The Settlement Website shall

also provide the toll-free telephone number and mailing address through which Class Members may contact the Settlement Administrator directly. *Id.*

The Notice Date is the date the Settlement Administrator initially disseminates Notice to the Settlement Class, which shall be no later than 30 days after entry of the Preliminary Approval Order. *Id.* at 5.

D. Claims

Class Members may make a claim for Settlement Benefits by submitting a Claim Form either by mail or through the Settlement Website. *Id.* § 6(a). The Claims Deadline for Class Members to submit claims is 90 days after the Notice Date. *Id.* at 4. All actual costs associated with or arising from claims administration and costs of providing Notice of the Settlement to the Class Members shall be paid from the Settlement Fund. *Id.* § 2(d).

The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for validity, timeliness, and completeness. *Id.* § 6(a)(1). Where the Settlement Administrator finds a Claim Form incomplete, the Class Member will be provided notice of the deficiencies and time to cure their claim. *Id.*

E. Opt-Out and Objection Procedure.

Class Members will have an opportunity to exclude themselves from the Settlement or object to its approval. *Id.* § 5(f), (g). The timeline for opting-out or objecting is designed to allow Class Members sufficient time to receive and review the Notice and all relevant materials before determining a course of action; Class Members will have 60 days after the Notice Date to object to or opt out of the Settlement. *Id.* The procedures and deadlines for filing opt-out requests and objections will be referenced in the Summary Notice and conspicuously listed in the Long Form Notice and on the Settlement Website. *See* SA Exs. A, B. The Notice will also inform Class

Members that the Final Approval Hearing will be their opportunity to appear and have their objections heard, and that Class Members will be bound by the Release unless they timely exercise their right to exclusion. *Id.*

To opt-out and exclude themselves from the Settlement Class, Class Members must notify the Settlement Administrator in writing, postmarked no later than 60 days after the Notice Date, which notification must identify the case name “*Tammy Brown, et al. v. Alabama Cardiology Group, P.C.*”; state the name, address, telephone number and unique identifier of the Settlement Class member seeking exclusion; identify any lawyer representing requestor seeking to opt out; be physically signed by the person(s) seeking exclusion; and contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Tammy Brown, et al. v. Alabama Cardiology Group, P.C.*” SA § 5(g). Any person who elects to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under the Agreement, (iii) gain any rights by virtue of the Agreement, or (iv) be entitled to object to any aspect of the Agreement. *Id.* Requests for Exclusion may only be done on an individual basis, and no person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs. *Id.*

Any Class Member who wishes to object to the Settlement, the Settlement Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Final Approval Hearing and show cause, if any, for why the Settlement should not be approved as fair, reasonable, and adequate, or why the Service Awards and/or the Fee Award and Costs should not be granted, may do so by submitting a written objection and supporting papers, which must clearly (a) identify the case name and number; (b) state the Class Member’s full name, current mailing address, and telephone number; (c) contain a statement by the Class Member that he or she believes himself to be a

member of the Settlement Class; (d) include proof that the is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Data Breach); (e) identify the specific factual and legal grounds for the objection; (f) identify whether the Objection is an objection to the Settlement in part or in whole; (g) state whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class; (h) identify all counsel representing the objector, if any; (i) include a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past five years; (j) include all documents or writings that the objector desires the Court to consider; (k) contain a statement regarding whether the objector (or counsel of his or her choosing) intends to appear at the Final Approval Hearing; and (l) contain the signature of the objector or his or her duly authorized attorney or representative. SA § 5(h). All objections must be submitted to the Settlement Administrator, Class Counsel identified below, and to the Court. Any Class Member who does not make an objection in the manner and by the date set forth in the Agreement shall be deemed to have waived any objection. *Id.*

F. Release

In exchange for the Settlement Benefits provided under the Agreement, Class Members who do not exclude themselves will provide Defendant and its affiliates a full release of all claims related to the Data Breach which includes a release of all claims brought by Plaintiffs, and any other statutory or common law claim that could have been asserted based upon the same conduct. SA § 3(a)–(c).

As explained in more detail below, the proposed Settlement should be preliminarily approved as it meets all the requirements for certification of a Settlement Class under Rule 23(b)(2)

and (3) of the Alabama Rules of Civil Procedure; the proposed Notice Plan satisfies the requirements of Alabama Rule 23(c)(2); and the Settlement is fair, reasonable, and adequate.

II. MEMORANDUM OF LAW

As Plaintiffs establish herein, the proposed Settlement should be preliminarily approved as it meets all the requirements for certification of a Settlement Class under Rule 23(b)(2) and (3) of the Alabama Rules of Civil Procedure; the proposed Notice Plan satisfies the requirements of Alabama Rule 23(c)(2); and the Settlement is fair, reasonable, and adequate.

A. The Proposed Settlement Class Meets the Requirements of Rule 23, and Should Be Preliminarily Certified.

For settlement purposes only, the Parties have agreed the Court should make preliminary findings and enter an order granting provisional certification of the Settlement Class, and appointing Plaintiffs and their counsel to represent the Class. “The validity of use of a temporary settlement class is not usually questioned.” Conte & Newberg, *4 Newberg on Class Actions*, §11.25 (4th Ed. 2002). The *Manual for Complex Litigation* (“Manual”) explains the benefits of settlement classes:

Settlement classes – cases certified as class actions solely for settlement – can provide significant benefits to 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 § 21.612. Prior to granting preliminary approval of a class action settlement, a court should determine that the proposed settlement class is a proper class for settlement purposes. *Id.* § 21.632; *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A class may be certified under Rule 23 if the following four prerequisites of Rule 23(a) are satisfied—(1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation—as well as at least one of the three subdivisions

of Rule 23(b). Here, the Settlement Class satisfies all the requirements of Rule 23(a) and (b)(3) and should be conditionally certified.

1. *Numerosity*

Numerosity is met where “the class is so numerous that joinder of all members is impracticable.” Ala. R. Civ. P. 23(a)(1); *Cheminova Am. Corp. v. Corker*, 779 So. 2d 1175, 1179 (Ala. 2000). “The numerosity requirement imposes no absolute minimum number,” and “[t]he court can accept commonsense assumptions in order to support a finding of numerosity.” *Cheminova*, 779 So. 2d at 1179. Where it is “clear” that the class numbers in the “thousands” and the defendant does not “actively contest the numerosity requirement,” the numerosity requirement is satisfied. *Id.*; *CVS Caremark Corp. v. Lauriello*, 175 So. 3d 596, 601 (Ala. 2014).

Here, it is undisputed that proposed Settlement Class encompasses approximately 280,000 individuals. This Settlement Class is sufficiently numerous such that joinder would be impracticable, given the number of individuals included and that absent a class action, few members of the Settlement Class could afford to bring an individual lawsuit over the relatively small claim amounts at issue. Thus, numerosity is satisfied. *Cheminova*, 779 So. 2d at 1179.

2. *Commonality*

Commonality, the second requirement for class certification under Rule 23(a), is met where there are “questions of law or fact common to the class.” Ala. R. Civ. P. 23(a)(2). The commonality requirement can be summarized as follows:

Rule 23(a)(2) requires that there are questions of law or fact common to the class. Yet not every question of law or fact must be common to every member of the class. The requirement is met if the questions linking the class members are substantially related to the resolution of the litigation even though the individuals are not identically situated. Identical questions are not necessary and factual discrepancies are not fatal to certification.

Coleman v. Cannon Oil Co., 141 F.R.D. 516, 521 (M.D. Ala. 1992) (internal citations omitted). “Commonality may exist where the party opposing the class has engaged in a course of conduct that affects all class members and gives rise to a plaintiff’s claim.” *Dujanovic v. Mortgage Am., Inc.*, 185 F.R.D. 660, 667 (N.D. Ala. 1999); *see also Braxton v. Farmer’s Ins. Group*, 209 F.R.D. 654, 658 (N.D. Ala. 2002).

3. Other class actions where class members’ claims focused on a similar course of conduct by the defendant have been found to have common legal and factual issues. *See, e.g., Family Medicine Pharmacy, LLC v. Trxade Group, LLC*, No. 15-0590-KD-B, 2016 WL 6573981 (S.D. Ala. Nov. 4, 2016); *Cotter v. Checkers Drive-In Restaurants, Inc.*, 2021 U.S. Dist. LEXIS 160592, *17, 2021 WL 3773414 (M.D. Fla. 2021); *In re Citrix Data Breach Litig.*, No. 19-61350-CIV-ALTMAN/Hunt, 2021 U.S. Dist. LEXIS 112272, *5, 2021 WL 2410651 (S.D. Fla. 2021). Similarly, here, all members of the proposed Settlement Class share common claims arising out of the same standardized conduct, i.e. exposure of PII/PHI due to Defendant’s alleged data security deficiencies and the Data Breach. Mann Decl. ¶¶ 26, 46. Proving liability for each Class Member’s claim would require the resolution of the same central factual and legal issues, including whether Defendant’s actions harmed its patients and exponentially increased their risk of future harm, and whether that conduct violated the law. *Id.* ¶ 46. Thus, the common questions resulting from Defendant’s alleged conduct can be answered on a class-wide basis based on common evidence maintained by Defendant. Accordingly, commonality is satisfied. *Coleman*, 141 F.R.D. at 521. Typicality

The third element of maintaining a class action is that the claims of the class representatives are typical of the claim of each member of the class. Ala. R. Civ. P. 23(a)(3). To meet Rule 23(a)’s typicality requirement the plaintiff’s must “have the same essential characteristics as the class at large.” *Cheminova*, 779 So. 2d at 1180 (citing *Coleman*, 141 F.R.D. at 527). However, the “class members’ claims need not be identical to satisfy the typicality requirement; rather, there need only exist ‘a sufficient nexus between the legal claims of the named class representatives and those of individual class members.’” *Manno v. Healthcare Revenue Recovery Group, LLC*, 289 F.R.D. 674, 686 (S.D. Fla. 2013); *see also Wright v. Circuit City Stores, Inc.*, 201 F.R.D. 526, 543 (N.D. Ala. 2001) (citations omitted) (“[P]articular factual differences, differences in the amount of damages

claimed or even the availability of certain defenses against a class representative may not render his or her claims atypical.”).

Here, Plaintiffs’ claims are typical to that of the other putative Class Members. All Class Members entrusted Defendant with their PII/PHI, had that PII/PHI accessed by third parties in the Data Breach, and lost time and/or incurred out-of-pocket losses as a result. Mann Decl. ¶ 46. Consequently, Plaintiffs’ claims satisfy the typicality requirement of Rule 23(a)(3).

4. Adequacy of Representation

Plaintiffs must also establish they can “fairly and adequately protect the interests of the class.” Ala. R. Civ. P. 23(a)(4). This requirement is satisfied where “the named Plaintiffs have [no] interests antagonistic to those of the rest of the class” and “Plaintiffs’ counsel are qualified, experienced and generally able to conduct the proposed litigation.” *Cheminova*, 779 So. 2d at 1181 (citing *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985)).

Courts have readily found that a proposed class representative was adequate where the same actions of defendant resulted in common law claims of the named plaintiffs and members of the class. See e.g., *Family Medicine Pharmacy*, 2016 WL 6573981; *Cotter*, 2021 U.S. Dist. LEXIS 160592, at *18; *In re Citrix Data Breach Litig.*, 2021 U.S. Dist. LEXIS 112272, at *5-6. Here, Plaintiffs’ interests are entirely representative of and consistent with the interests of the proposed Settlement Class—all have allegedly had their PII/PHI accessed without authorization, and their pursuit of this Action has demonstrated that they have been, and will remain, zealous advocates for the Settlement Class. Mann Decl. ¶¶ 46–47. Thus, Plaintiffs have the same interests as the Settlement Class, with the primary interest of obtaining relief from Defendant for claimed common law violations related to the Data Breach. *Id.* ¶ 47.

Similarly, proposed Class Counsel have regularly engaged in major complex litigation and have extensive experience in consumer class actions, including data privacy class actions like this

matter. *Id.* ¶¶ 2–7 & Comp. Ex. 1. Class Counsel and their firms have recently been appointed as Class Counsel in several complex consumer class actions, including class action settlements involving other data breaches. *See, e.g., Limbaugh, et al. v. Norwood Clinic, Inc.*, No. 01-CV-2022-900851 (Cir. Ct. of Jefferson Cnty, Ala.), *Kemp, et al. v. NorthStar Emergency Medical Services, Inc.*, No. 63-cv-2023-900249.00 (Cir. Ct. of Tuscaloosa Cnty, Ala.), *Dunn, et al. v. Brookwood Baptist Health 1 LLC, et al.*, No. 01-CV-2023-900732.00 (Cir. Ct. of Jefferson Cnty, Ala.); *see also* Mann Dec. ¶¶ 2–7 & Comp. Ex. 1. Accordingly, Class Counsel will adequately represent the Settlement Class, satisfying Rule 23(a)(4).

5. Predominance and Superiority

Plaintiffs must also show the proposed Settlement Class meets one of the requirements of Rule 23(b). Plaintiffs seek certification of the proposed Settlement Class pursuant to Section 23(b)(3), which requires that common questions of law or fact predominate over individual questions, and that a class action is superior to other available methods of adjudication. Ala. R. Civ. P. 23(b)(2) and (3); *Cheminova*, 779 So. 2d at 1181.

Here, as other courts have found when looking at similar cases brought under Alabama common and state law, the common issues identified above outweigh any individualized issues in the litigation. *See e.g., Family Medicine Pharmacy*, 2016 WL 6573981; *Cotter*, 2021 U.S. Dist. LEXIS 160592, at *18; *In re Citrix Data Breach Litig.*, 2021 U.S. Dist. LEXIS 112272, at *5-6; *Wyeth, Inc. v. Blue Cross & Blue Shield of Alabama*, 42 So. 3d 1216, 1221-22 (Ala. 2010). *Nat'l Sec. Fire & Cas. Co. v. DeWitt*, 85 So. 3d 355, 370, 2011 Ala. LEXIS 196, *37, 2011 WL 5607802 (Ala. 2011). Here, all the proposed Class Members had their PII/PHI potentially accessed without authorization. The duties owed by Defendant are common across the entire Settlement Class, and whether Defendant breached those duties is a common question across all Class Members. Accordingly, there are no individualized issues that may predominate.

Further, a class action is superior to class members bringing individual actions because otherwise, many members of the Settlement Class would remain unaware of their legal claims against Defendant, and most would find the cost of litigating their claims to be prohibitive. Mann Decl. ¶ 53. It is thus unlikely that individuals would invest the time and expense necessary to seek relief through individual litigation. *Id.* In addition, as stated by the United States Supreme Court, a class action is the superior method of resolving large scale claims if 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. Here, because all Class Members’ claims involve the same course of conduct by Defendant and are subject to resolution based on the determination of the same common legal and factual issues, it would also be most efficient for their claims to be adjudicated on a class basis. Nor is there any concern regarding the “difficulties in managing a class action” since “[t]he proposed settlement negates any potential problems for managing a class action.” *Family Medicine Pharmacy*, 2016 WL 6573981, at *7 (citing *Amchem*, 521 U.S. at 620) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems.”).

Because the proposed Settlement Class satisfies all of the requirements under Rule 23(a) and (b)(3), Plaintiffs respectfully request the Court grant preliminary class certification of the Settlement Class.

B. The Proposed Notice Plan Satisfies Rule 23(c)(2) and (e).

Under Rule 23(c)(2), where, as here, a class is certified pursuant to Rule 23(b)(3), the Court is directed to provide Class Members who “can be identified through reasonable effort” notice advising as follows:

(A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not require exclusion and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

Rule 23(e) further specifies, “notice of [any] proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” Ala. R. Civ. P. 23(e). In accordance with Rule 23(c)(2) and 23(e), the Parties request that this Court appoint EisnerAmper as the Settlement Administrator and direct that Notice be provided to Class Members in accordance with the Settlement Agreement’s Notice Plan. *See* SA § 5.

The proposed Notices in this case satisfy the requirements of Rule 23(c)(2) and 23(e). As set forth in detail, *supra*, the Settlement contemplates a multi-part Notice Plan designed to reach as many potential Class Members as possible. First, as noted above, direct Notice of the Settlement will be sent via U.S. Mail to all Class Members for whom an address is provided by Defendant. SA § 5(b). In addition, to the extent any Class Members do not receive direct Notice, the Settlement also provides that the Claims Administrator will establish a Settlement Website and update the Settlement Website throughout the Claims Period, with the forms of Summary Notice, Long Notice, and Claim Form, as well as the Settlement Agreement and other important documents and information for the Action. *Id.* § 5(f). The proposed Summary Notice, Long Notice, and Claim Form are attached as Exhibits A, B, and C to the Settlement Agreement. These Notices all provide Class Members information including a description of the Settlement Class; a description of the proposed Settlement; the procedures and deadlines for filing objections or seeking exclusion from the Settlement; the consequences of opting out or remaining in the Settlement Class; that Class Counsel will apply for an award of Attorneys’ Fees and Costs and Service Awards for Class Representatives; and how to obtain additional information about the Action. SA Exs. A–C.

The Notice Plan is adequate and satisfies Rule 23(c)(2) and (e), and should be approved by the Court. Accordingly, Plaintiffs request that pursuant to Rule 23(c)(2) and 23(e), the Court directs Notice to be provided in the manner set forth in the proposed Notice Plan.

C. The Proposed Settlement Is Fair, Reasonable, and Adequate.

In addition to evaluating whether a proposed settlement class meets the requirements for class certification, any settlement agreement purporting to resolve a class action must also obtain “approval of the court.” Ala. R. Civ. P. 23(e). At the preliminary approval stage, the “Court must first ‘make a preliminary evaluation of the fairness of the settlement before directing that notice be given to the settlement class.’” *Family Med. Pharm., LLC v. Trxade Grp., Inc.*, No. 15-0590-KD-B, 2016 U.S. Dist. LEXIS 153272 at *19 (S.D. Ala. Nov. 4, 2016) (citing *Smith v. William Wrigley Jr. Co.*, 2010 U.S. Dist. LEXIS 67832 (S.D. Fla. 2010)). Critically, preliminary approval should be “granted unless a proposed settlement is obviously deficient.” *Id.* In determining whether a settlement should be preliminary approved, courts evaluate whether the settlement is “fair, reasonable, and adequate.” See *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2011) (citing *Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1147 (11th Cir. 1983)). The factors used to determine whether a settlement is “fair, reasonable, and adequate” are as follows:

(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which the settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of the litigation; (5) the substance and amount of opposition to the settlement; (6) the stage of the proceedings at which the settlement was achieved; and (7) the financial ability of the defendant to withstand a greater judgment.

Adams v. Robertson, 676 So. 2d 1265, 1273 (Ala. 1995). Even a preliminary application of these factors demonstrates the proposed Settlement is fair, reasonable, and adequate here.

As to the first factor, while Plaintiffs believe they have a very good likelihood of prevailing on their claims, they are also aware that Defendant has denied their material allegations and

asserted several legal defenses, any of which, if successful, would result in the Plaintiffs and the proposed Settlement Class receiving no payment whatsoever. Mann Decl. ¶ 50. Specifically, Defendant is prepared to argue Plaintiffs have not suffered any actual injury, that no negligence or violation of other state law occurred, and that Plaintiffs would not be able to adversely certify any proposed class. *Id.* Accordingly, there is significant risk that either Plaintiffs' individual claims will not survive, or else that Plaintiffs will ultimately be unsuccessful in certifying a class of individuals who would be entitled to any award following trial. *Id.*

With respect to factors two and three, the proposed Agreement is fair, reasonable, and adequate and is in the best interest of Class Members because, upon submission of a valid Claim Form and approval of the claim, Class Members will each be provided a Settlement Payment that will compensate them in amounts tailored to reflect whether the Class Member has suffered monetary damages. This is especially the case in light of the defenses that have been raised, and likely would have been raised, by Defendant, and the possibility that the Class Members would receive no benefit whatsoever in the absence of this Settlement. Accordingly, the proposed Settlement, which creates a non-reversionary \$2,225,000.00 Settlement Fund where each Class Member can submit a claim for Settlement Benefits, is fair, reasonable, and adequate, warranting Court approval.

With respect to factor four, in the absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Mann Decl. ¶ 52. The Parties would have to undergo significant motion practice and discovery before any trial on the merits could even be contemplated. *Id.* Such motion practice would likely include a motion to dismiss, motions for summary judgment on Plaintiffs' individual claims, as well as briefing on any motion for class certification. *Id.* Further, given the complexity of the issues and

the amount in controversy, the defeated Party would likely appeal both any decision on the merits (at summary judgment and/or trial), as well as any decision on class certification. *Id.* The Parties would each be required to retain experts. *Id.* As such, the immediate and considerable relief provided to the Class under the Settlement Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of continued litigation, trial, and appeal. *Id.*

Addressing factor five, given the strength of this Settlement and the significant amount of Settlement Benefits made available for Class Members to claim, Plaintiffs expect little or no opposition to the Settlement by the Settlement Class. *Id.* ¶ 54. While it is difficult to ascertain the reaction of the Settlement Class to the Settlement prior to notice being disseminated, Plaintiffs themselves have 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. *Id.*

With respect to the sixth factor, while this case is still early on procedurally, this Settlement was reached only after significant confirmatory discovery efforts by the Parties, and weeks of negotiations before, during, and after an arms-length mediation before an experienced mediator. *Id.* ¶¶ 14–20. In addition, the Agreement was negotiated at arm's length in an adversarial setting between counsel who are experienced in all aspects of class action litigation. *Id.*

Finally, as to the seventh factor, Defendant's ability to pay if Plaintiffs were to succeed at trial is not guaranteed. With more than 280,000 people in the Settlement Class, even a small award to each by a jury could result in a verdict against Defendant amounting to tens of millions of dollars. *Id.* ¶ 51.

In conclusion, the Settlement is fair, reasonable, and adequate considering, among other things (1) the relief available to Plaintiffs and Class Members; (2) the attendant risks and

uncertainty of litigation, as well as the difficulties and delays inherent in litigation; and (3) the desirability of resolving the case promptly to provide effective relief to Plaintiffs and the Settlement Class.

III. CONCLUSION

For the foregoing reasons, and on terms set forth more fully in the proposed Preliminary Approval Order, Plaintiffs respectfully request that this Court issue an order as follows:

- (1) granting Preliminary Approval of the proposed Settlement Agreement;
- (2) conditionally certifying the Settlement Class;
- (3) appointing Jonathan S. Mann of Pittman, Dutton, Hellums, Bradley, & Mann P.C., Raina C. Borrelli of Strauss Borrelli PLLC, and Tyler J. Bean of Siri & Glimstad LLP as Class Counsel;
- (4) approving the proposed Notice Plan and directing that it be implemented; and
- (5) appointing EisnerAmperto serve as the Settlement Administrator;
- (6) appointing Plaintiffs as Settlement Class Representatives; and
- (7) granting such further relief as the Court deems reasonable and just.

The Parties propose the following schedule leading to the hearing on Final Approval of the Settlement:

1. **Website Notice Posted by Settlement Administrator:** created and launched within 10 days of the date of entry of the Order granting Preliminary Approval;
2. **Notice Date:** the Settlement Administrator shall begin Notice and shall complete all other forms of notice no later than 30 days after the date of entry of the Order granting Preliminary Approval;

3. **Claims Deadline:** Claim forms must be postmarked or electronically submitted to the Settlement Administrator within 90 days after the Notice Date;

4. **Deadline for Opt-Outs / Objections:** Class Members must submit their Requests for Exclusion, pursuant to the terms and conditions of the Agreement and Preliminary Approval Order, within 60 days after the Notice Date;

6. **Submission of Papers in Support of Attorneys' Fees and Expenses:** must be filed no later than 14 days prior to the objection/exclusion deadline;

7. **Submission of Papers in Support of Final Approval of Settlement and in Response to any Objections:** must be filed no later than 14 days prior to the date of the Final Approval Hearing; and,

8. **Final Approval Hearing:** will occur approximately 120 days after the date of entry of the Order granting Preliminary Approval, or such other date as ordered by the Court.

Dated: October 7, 2025

Respectfully submitted,

/s/ Jon Mann
 Jonathan S. Mann
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Proposed Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2025, I filed the foregoing with the Clerk of the Court using the Court's Alafile system, which will send notice to all counsel of record.

/s/ Jon Mann
Of Counsel