NO. 20-CI-005631

JEFFERSON CIRCUIT COURT
DIVISION THREE
HON. MITCH PERRY

ALISSA GOODLETT, individually,
and as the representative of a class
of similarly-situated persons,
123 Lakeview Drive
Lawrenceburg, Kentucky 40342

PLAINTIFF

v.

BROWN-FORMAN CORPORATION
850 Dixie Highway
Louisville, Kentucky 40210

DEFENDANT

Electronically Filed

MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION.

Plaintiff Alissa Goodlett (the "Plaintiff"), individually, and as the representative of a class of similarly situated persons (the "Class Members" or the "Class"), respectfully submits this memorandum of law in support of her motion for preliminary approval of a second class action settlement that will fully resolve claims against Defendant Brown-Forman Corporation ("Defendant" or "Brown Forman") arising out of Plaintiff's allegations with respect to a security incident that Brown-Forman disclosed in or about August 2020 (the "Data Breach").

On or around February 2021, this Court preliminarily approved the initial February 2020 settlement arising out of the Data Breach ("February Settlement"). After notice was issued to the class members of the February Settlement, Brown-Forman became aware of a group of approximately 21,000 individuals who had not been included in the earlier settlement despite their personal information ("PI") having been potentially compromised in the Data Breach. Immediately after such a discovery, the parties began discussing a resolution of this group of individuals that used the constructs of the February Settlement reached with arm's-length negotiations with the assistance of an experienced mediator, the Honorable Ann O'Malley Shake (Ret.). Following the second round of arm's length negotiations, the parties drafted a second settlement agreement (the "Settlement Agreement"). *See* Class Action Settlement Agreement and Release, Exhibit A to the Declaration of Jessica Lukasiewicz ("Lukasiewicz Decl.").

The Settlement provides an extraordinary result for the approximately 21,000 Class Members, consisting of current and former employees (as well as their beneficiaries and dependents), whose personal information, including social security numbers, was potentially compromised as a result of the Data Breach. These individuals were (i) either not notified by Brown-Forman before August 12, 2021 that their PI was or may have been compromised in the

Data Breach or (ii) were previously notified by Brown-Forman of the Data Breach, but the Settlement Administrator inadvertently did not send notice of the February Settlement to them. In particular, the Settlement states that Defendant will offer Class Members (i) up to three (3) years of identity theft protection; (ii) reimbursement for out-of-pocket losses up to $5,000 per individual that have not been reimbursed by insurance; (iii) reimbursement of up to eight (8) hours at $20 per hour expended remedying issues related to identity theft caused by the Data Breach; and (iv) $250 cash payment for inconvenience for those Class Members who have submitted and received an insurance payment. Settlement Agreement ¶ 29. In addition, Defendant will adopt and implement certain business practice commitments and remedial measure for a period of three (3) years. *Id.* at ¶ 30. Plaintiff estimates the identity protection services available to the Class Members alone is valued at more than $14 million. *See* Declaration of D. Greg Blankinship, executed on February 9, 2021 ("February Blankinship Decl.") ¶ 6.[1] This Settlement, which is the result of arm's length negotiations and is modeled on the February Settlement (which this Court has already approved), provides substantial benefit to the Class, and compares favorably with other recent data breach settlements.

Accordingly, and as explained in greater detail below and for the reasons this Court preliminarily approved the February Settlement, Plaintiff respectfully requests that the Court grant preliminary approval of this Settlement; certify the proposed Class for purposes of notice and settlement; appoint Plaintiff as the class representative; appoint Thomas & Solomon LLP ("TS") and Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG") as Class Counsel; approve the form and method of notice of the proposed Settlement to the Class; set deadlines for Class Members to object to or exclude themselves from the Settlement; schedule a final approval hearing

[1] The February Settlement covered approximately 20,000 class members, and this Settlement Agreement covers 21,000. Therefore, the value of both settlements is approximately the same.

at which the Court can consider whether to give final approval to the Settlement no earlier than 125 days, but no later than 150 days following the granting of preliminary approval; and grant such further relief the Court deems just and proper.

II. FACTUAL AND PROCEDURAL BACKGROUND.

This litigation arises out of a cyber-attack. On or about July 28, 2020, Brown-Forman discovered it was the victim of a cyber-attack by Sodinokibi ("REvil"). Before Brown-Forman was able to stop the attack, REvil stole certain records containing information about current and former employees, as well as certain beneficiaries and dependents of those employees. *See* Complaint, ("Compl.") at ¶ 18. REvil claimed to have taken one terabyte of corporate data from which it shared screenshots of file names as proof, with some files dating back ten years. Compl. at ¶ 21. Defendant confirmed that the Data Breach occurred, and acknowledged that certain PI of individuals may have been impacted. *Id.* at ¶ 22. Initially, Defendant sent notice to approximately 20,000 individuals informing them of the Data Breach and that as a result their PI (which could include Social Security number, work contact information, home address, position, business title and salary-related information) was compromised. *Id.* at ¶ 23.

The February Settlement class was ultimately comprised of this initial group of 20,000 individuals. Following this Court's granting of preliminary approval of the February Settlement, notice was issued by the Settlement Administrator to approximately 15,000 of the 20,000 individuals (as noted, the Settlement Administrator inadvertently did not send notice to approximately 5,000 individuals). At this time, class members were informed of their options, including the ability to obtain relief under the February Settlement, as well as the right to object or opt out of the February Settlement. Following the notice period, Plaintiffs submitted a motion for final approval of the Settlement which was granted at the final fairness hearing. *See* Final

Approval Order, dated August 12, 2021, attached to the Lukasiewicz Decl. as Exhibit B.

As the parties were preparing their final approval papers, Defendant was made aware that there was an additional group of approximately 21,000 who were not in the February Settlement and not provided notice.

III. SETTLEMENT DISCUSSIONS.

In regard to the February Settlement, the parties selected a respected mediator, Honorable Ann O'Malley Shake (Ret.), to assist them in resolving this dispute. Lukasiewicz Decl. ¶ 3. The parties engaged in informal discovery and Defense counsel provided Plaintiff's Counsel information regarding the Data Breach. *Id.* at ¶ 4. After a full-day mediation session on December 11, 2020, the parties reached an agreement in principle codified in the form of a Term Sheet. *Id.* at ¶ 5. After agreeing to the Term Sheet, the parties negotiated the Settlement Agreement, which involved the exchange of multiple drafts, conference calls, and resolution of various issues in dispute. *Id.*

After Brown-Forman notified Plaintiff of the second group of approximately 21,000 individuals that were inadvertently excluded from the February Settlement, the parties once again entered into arm's-length negotiations. *Id.* at ¶ 6. Using the constructs of the February Settlement reached with the assistance of an experienced mediator, the parties were able to reach an agreement as set forth in the Settlement Agreement. *Id.* at ¶ 7. *See* Exhibit A, attached to the Lukasiewicz Decl. The benefits to Class Members under both settlements are the same. Lukasiewicz Decl. at ¶ 8.

The settling parties recognize and acknowledge the benefits of settling this case. Absent settlement, Plaintiff is confident that she will prevail in certifying the Class of approximately 21,000 individuals. Nonetheless, Plaintiff recognizes that all litigation has risks, and that

discovery, class certification proceedings, and trial will be time consuming and expensive for both parties. Plaintiff also recognizes the potential benefits of early resolution, not the least being that Class Members will receive proper identity theft protections and compensation far sooner.

IV. TERMS OF SETTLEMENT.

A. Identity Theft Protection Services

The Settlement Agreement[2] provides identity theft protection through Experian IdentityWorks℠ for a total period of three (3) years for all Class Members who submit a Claim Form (Identity Protection) within seventy-five (75) days after the Notice Deadline. Settlement Agreement ¶ 29(a). If Class Members previously signed up for one year of credit monitoring and identity theft protection coverage through Brown-Forman before suit was filed, they are eligible to receive two additional years of Experian IdentityWorks℠ for a total of three years. Settlement Agreement ¶ 29(a). Experian IdentityWorks℠ includes credit monitoring from all three bureaus, access to Experian credit report, $1 million in identity theft insurance, and identity restoration services. *Id.* Plaintiff's Counsel values the identity theft protection component of the Settlement consideration at approximately $14.4 million to the Class. February Blankinship Decl. ¶ 6.

B. Reimbursement for Out-of-Pocket Losses

The Settlement Agreement allows for reimbursement to Class Members for Out-of-Pocket Losses up to $5,000 per individual that have not been reimbursed by related insurance provided by Experian IdentityWorks℠. Settlement Agreement ¶ 29(b). Out-of-Pocket Losses may include, without limitation: (1) unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of the Class Member's personal information; (2) costs incurred on or after August 25, 2020, associated with accessing or

[2] The relief provided under this Settlement largely mirrors the relief under the February Settlement.

freezing/unfreezing credit reports with any credit reporting agency; and (3) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges. *Id.* at ¶ 29(b)(i). To receive reimbursement for Out-of-Pocket Losses, Class Members must submit a Claim Form (Other Benefits). *Id.* at ¶ 29(b). The Claim Form (Other Benefits) must be submitted no later than the expiration date of the Settlement Class Member's Experian IdentityWorks℠ identity protection services provided under the Settlement. *Id.*

C. Reimbursement for Attested Time

In addition, the Settlement Agreement provides for Reimbursement for Attested Time. Class Members who have expended time remedying issues related to identity theft directly caused by the Data Breach are eligible for reimbursement. *Id.* at ¶ 29(c). Class Members are eligible to receive reimbursement for up to eight (8) hours of time spent at $20 an hour. *Id.* In order to receive Reimbursement for Attested Time, a Class Member must submit a Claim Form (Other Benefits) no later than the expiration date of the Settlement Class Member's Experian IdentityWorks℠ identity protection services provided under the Settlement. *Id.*

D. Cash Payment for Inconvenience

Settlement Class Members who have submitted and received an insurance payment through Experian IdentityWorks℠ may submit the Claim Form (Other Benefits) for a cash payment of $250. Settlement Agreement ¶ 29(d). A claim for Cash Payment for Inconvenience must be submitted under the Claim Form (Other Benefits) by no later than the expiration date of the Settlement Class Member's Experian IdentityWorks℠ identity protection services provided under the Agreement. *Id.*

E. Non-Monetary Relief

The Settlement Agreement requires Defendant to adopt and implement the following Business Practice Commitments for at least three (3) years following the Effective Date: (1) Enhanced Cybersecurity Training and Awareness Program; (2) Enhanced Data Security Policies; (3) Enhanced Security Measures; (4) Further Restricting Access to Personal Information; and (5) Enhanced Monitoring and Response Capability. *Id.* at ¶ 30.

F. Release

In exchange for the relief described above, Class Members who do not opt-out of the Settlement will fully release Brown-Forman and its related and affiliated entities (the "Released Parties" defined in the Settlement Agreement) of liability for all claims arising out of or related to the Data Breach. *Id.* at ¶ 48.

G. Notice and Settlement Administration

The parties agreed to the appointment of Kroll Settlement Administration, as Settlement Administrator (the "Settlement Administrator"). Settlement Agreement ¶ 23. The Settlement Administrator will, subject to Court Approval, provide notice to the class in the manner set forth below. The cost of notice and settlement administration will be paid by Brown-Forman, without reduction in any benefits to Class Members. *Id.* at ¶ 36.

H. Attorneys' Fees and Costs

Plaintiff's Counsel intends to seek the Court's approval of attorneys' fees and costs in the total aggregate amount of up to $195,000 subject to this Court's approval. *Id.* at ¶ 31. Brown-Forman does not intend to challenge or object to Plaintiff's Counsel's request for attorneys' fees and costs. *Id.* Should the Court grant preliminary approval, in advance of the Final Approval Hearing, Plaintiff intends to submit more detailed information to support her request for $195,000

in attorneys' fees and costs. Lukasiewicz Decl. ¶ 9.

V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED.

"Conditional 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 notification of all class members of the terms of the proposed settlement agreement, and setting the date and time of the final approval hearing." *Almonte v. Marina Ice Cream Corp.*, No. 16-00660, 2016 WL 7217258, at *2 (S.D.N.Y. Dec. 8, 2016). Where a class is proposed in connection with a motion for preliminary approval, similar to under the Federal Rules of Civil Procedure, the Kentucky Rules of Civil Procedure ("CR") provide that a court must ensure that the requirements of 23.01 and 23.02 are satisfied. *See Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430, 435 (Ky. 2018). Courts generally employ a more liberal, rather than restrictive construction, when deciding certification. *See May v. Blackhawk Mining, LLC*, 319 F.R.D. 233, 237 (E.D. Ky. 2017) (in granting a motion for class certification, the court noted that the court "may not turn the class certification proceedings into a dress rehearsal for the trial on the merits."). *See generally Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997).

However, when, as here, certification is sought of a settlement class, because the case will never go to trial, the court need not consider the manageability of the proceedings should the case or cases proceed to trial. *See In re Initial Pub. Offering Sec. Litig*., 260 F.R.D. 81, 88 (S.D.N.Y. 2009). Courts routinely certify settlement classes in data breach cases, and there is no reason why this case should be different. *See, e.g.*, *In re Zappos Sec. Breach Litig.*, No. 12-00325, ECF No. 335 (D. Nev. Sept. 19, 2019)[3]; *Hapka v. CareCentrix, Inc.*, No. 16-02372, ECF No. 91 (D. Kan. Sept. 29, 2017); *Sackin v. Transperfect Global, Inc.*, No. 17-1469, ECF No. 55 (S.D.N.Y. Mar. 13,

[3] Motions and decisions accessed only through Pacer are attached as Exhibit D to the Lukasiewicz Decl.

2018); *In re Yahoo! Inc. Customer Data Breach Sec. Litig.*, Case No. 16-02752, ECF No. 390 (N.D. Cal. July 20, 2019); *Castillo v. Seagate Tech., LLC*, No. 16-cv-01958, ECF No. 76 (N.D. Cal. Oct. 19, 2017). Here, the proposed Settlement Class meets each of the elements of certification under CR 23.01 and satisfies the requirements of CR 23.02.

VI. THE COURT SHOULD CERTIFY THE CLASS FOR PURPOSES OF SETTLEMENT.

The first step in approving a class action settlement is to certify a class for settlement purposes. Pursuant to the Kentucky Rules of Civil Procedure, the Court must find that all of the requirements of CR 23.01 are satisfied. In particular, a litigant seeking to certify a class must first show:

(a) the class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the class;

(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(d) the representative parties will fairly and adequately protect the interest of the class.

CR 23.01.

Further, a litigant must also show that any one of the subsections of CR 23.02 is also satisfied. CR 23.02 provides that a class action can be maintained where:

(a) the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class; or

(b) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(c) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

C.R. 23.02.

Here, as set forth in more detail below and for all the reasons this Court found in certifying the settlement class in the February Settlement, the prerequisites of CR 23.01 and 23.02 are satisfied and the Court should certify the following Class:

> All individuals (i) who were notified by Brown-Forman after August 12, 2021 that their personal information was or may have been compromised in the Data Breach; or (ii) who previously were notified by Brown-Forman of the Data Breach, but to whom the Settlement Administrator inadvertently did not send notice of the February Settlement.

Settlement Agreement ¶ 7. *See also* Order Granting Preliminary Approval of the Class Action Settlement and Approving Notice Program ("Order Granting Preliminary Approval"), ¶¶ 3-8. Although Defendant reserves its right to oppose class certification should this Court not approve the Settlement, the parties have also agreed that the Class should be certified to effectuate this Settlement so that notice of the proposed Settlement can be delivered to the Class and the options available can be explained, including their ability to participate, opt-out, or object.

A. The Class Satisfies the Requirements of CR 23.01

1. The Class Satisfies the Numerosity Requirement

First, CR 23.01 requires a proposed class be "so numerous that joinder of all members is impracticable." There is no specific minimum number of proposed class members required to satisfy the numerosity requirement, but rather "requires examination of the specific facts of each case and imposes no absolute limitations. When class size reaches substantial proportions, however, the impracticability requirement is usually satisfied by the numbers alone." *Rosiles-Perez v. Superior Forestry Serv., Inc.,* 250 F.R.D. 332, 338 (M.D. Tenn. 2008) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996) (internal quotations and citations omitted)). "Whether a number is so large that it would be impracticable to join all parties in a class action

depends not upon any magic number or formula, but rather upon the circumstances surrounding the case." *Hensley*, 549 S.W.3d at 430. "The facts of the case guide a court's determination that the class is sufficiently large to make joinder impractical." *Bacon v. Honda of Am. Mfg., Inc*., 370 F.3d 565, 570 (6th Cir. 2004). "A class of 2,500 is sufficiently numerous to make joinder impracticable." *Manning v. Liberty Tire Servs. of Ohio*, *LLC*, 577 S.W.3d 102, 113 (Ky. Ct. App. 2019).

Here, the putative class is comprised of more than 21,000 individuals throughout the Commonwealth of Kentucky and elsewhere. Under these circumstances, and similar to this Court's findings in this Court's Order Granting Preliminary Approval, joinder is both impracticable and undesirable, and the numerosity requirement of CR 23.01(a) is plainly satisfied.

2. The Class Satisfies the Commonality Requirement

Additionally, the same rule requires the existence of "questions of law or fact common to the class." CR 23.01. A proposed class satisfies the "commonality" requirement when "it is unlikely that differences in the factual background of each claim will affect the outcome of the legal issue." *Bacon*, 370 F.3d at 570. It is not mandatory for plaintiffs to show that all questions of law or fact are common, instead there just must be questions of law or fact common to the class. *Hensley*, 549 S.W.3d at 443 (citing *Wiley v. Adkins*, 48 S.W.3d 20, 23 (Ky. 2001)). The common contention must be of such a nature that it is capable of class-wide resolution and that the "determination of its truth or falsity will resolve an issue." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 338 (2011).

Commonality, like typicality, "serve[s] as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will

be fairly and adequately protected in their absence." *Wal-Mart*, 564 U.S. at 349, n.5.

Here, consistent with this Court's findings in granting preliminary approval of the February Settlement, Plaintiff's claims are common to, and typical of, those of the Class - - indeed, they are identical for all material purposes. *See* Order Granting Preliminary Approval, at ¶ 7. Class Members allege identical claims of negligence, breach of express contract, breach of implied contract, unjust enrichment, and violation of Kentucky's Personal Information Security Law. Compl. ¶¶ 17-102. Plaintiff alleges that Defendant failed to adequately protect the Class Members' PI and that, as a result, each Class Member's PI may have been disclosed in the Data Breach. The common questions of law and fact exist as against the Defendant in this action. These common legal and factual questions include, but are not limited to, whether the Defendant owed all the Class Members a duty to safeguard their information; whether the Defendant breached that duty; whether the Defendant has invaded the privacy of the Class Members; whether the Class Members have sustained monetary loss, and the proper measure of that loss; whether Class Members are entitled to punitive and/or exemplary damages; and whether Class Members are entitled to declaratory and injunctive relief.

Answering these questions, regardless of the outcome, will resolve the allegations for the whole class "in one stroke," thereby effectuating "class-wide resolution." *Wal-Mart*, 564 U.S. at 338. In fact, courts have held that privacy litigation as a result of defendant's insufficient security measures to safeguard consumers' personal information is appropriate for class certification because the class members' claims are all based on the same action (or inaction) of the defendant. *See Smith v. Triad of Ala.*, *LLC*, No. 14-324, 2017 WL 1044692, at *15-16 (M.D. Ala. Mar. 17, 2017); *St. Joseph Health Sys. Med. Info. Cases*, JCCP No. 4716, ECF No. 418 (Cal. Sup. Ct. Feb. 3, 2016) (certifying a class in a data breach case); *Tabata v. Charleston Area Med. Ctr., Inc.*, 759

S.E.2d 459, 466-67 (W. Va. 2014) (ordering certification in a data breach case and holding that the lower court abused its discretion in originally declining to certify). For these reasons, the commonality requirement of CR 23.01(b) is plainly met.

3. The Class Satisfies the Typicality Requirement

CR 23.01 requires that the class representative's claims be typical of those of the putative class they seek to represent. A claim is considered typical if "it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Rosiles-Perez*, 250 F.R.D. at 341 (quoting *In re Am. Med. Sys., Inc.,* 75 F.3d at 1082); *see Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007). The typicality requirement has been defined by the Sixth Circuit "as goes the claim of the named plaintiff, so go the claims of the class." *Sprague v. Gen. Motors Corp.,* 133 F.3d 388, 389 (6th Cir. 1998).

"Regarding the *typicality* requirement, 'The claims and defenses are considered typical if they arise from the same event, practice, or course of conduct that gives rise to the claims of other class members and if the claims of the representative are based on the same legal theory.'" *Id*. (citing Kurt A. Philipps, Jr., et al., 6 Ky. Prac. R. Civ. Proc. Ann. Rule 23.01, Comment 5 (Aug. 2017 updated)) (emphasis in original).

Here, like this Court found in granting preliminary approval of the February Settlement, Plaintiff's claims are typical of the claims of the Class Members she seeks to represent. Order Granting Preliminary Approval, at ¶ 7. Plaintiff, like other Class Members, entrusted Defendant with her sensitive PI as a condition of employment and their PI may have also been compromised as a result of the same Data Breach. Similarly, Plaintiff and Class Members' claims are based upon the same legal theories and same violations of law.

For these reasons, the typicality requirement of CR 23.01(b) is plainly met.

4. The Class Satisfies the Adequacy Requirement

Finally, in considering the adequacy requirement of CR 23.01, "[a] court will normally look at two criteria: (1) the representative must have common interest with the unnamed members of the class; and (2) it must appear that the representative will vigorously prosecute the interests of the class through qualified counsel. [T]he representative must not have any significant interests antagonistic to or conflicting with those of the unnamed members of the class." *Hensley*, 549 S.W.3d at 443 (internal citation omitted).

Here, like this Court held in granting preliminary approval of the February Settlement, the class representative's interests in this litigation are entirely aligned to those of all other members of the Class with no conflicting interests. Plaintiff shares the same interest in securing relief for the claims in this case as every other member of the proposed Class, and there is no evidence of any conflict of interest. Lukasiewicz Decl. ¶ 10. Next, Plaintiff has demonstrated her continued willingness to vigorously prosecute this case and has regularly consulted with her counsel, reviewed documents and the proposed settlement, indicated her willingness to sit for depositions in this case, and has indicated a desire to continue protecting the interests of the class through settlement or continued litigation. *Id.* at ¶ 11. Furthermore, Plaintiff is familiar with the lawsuit and is fully aware of her claims, as well as the claims of the Class Members she seeks to represent. *Id.* at ¶ 12.

Additionally, Plaintiff's chosen counsel (Thomas & Solomon LLP and Finkelstein, Blankinship, Frei-Pearson & Garber, LLP) are firms with extensive experience litigating major class actions in state and federal courts throughout the United States, and they are familiar and knowledgeable on the subject matter of this lawsuit. Plaintiff's Counsel had done substantial work

identifying, investigating, prosecuting, and settling the claims as lead counsel in many complex class actions - - including multiple data breach cases in which they secured favorable judgments in favor of its clients. *See* Exhibit C to Lukasiewicz Decl. and Exhibit A to the Declaration of D. Greg Blankinship ("Blankinship Decl.").

Plaintiff's Counsel will similarly continue to adequately protect the interest of the proposed Class. FBFG regularly engages in major complex litigation and has extensive experience in consumer privacy class action lawsuits, including cases of first impression related to data breaches and consumer privacy. Blankinship Decl. ¶ 3. *See* FBFG Firm Resume, Exhibit A to Blankinship Decl. Similarly, courts throughout the country have appointed FBFG as class counsel. *Id.* at ¶ 4. *See, e.g.*, *Castillo v. Seagate Tech.*, *LLC*, No. 16-01958, 2017 WL 4798611, at *2 (appointing Jeremiah Frei-Pearson of FBFG as interim co-lead class counsel in a W-2 data breach); *St. Joseph Health Sys. Med. Info. Cases*, JCCP No. 4716, ECF No. 418 (Cal. Sup. Ct. Feb. 3, 2016) (granting contested class certification motion in a data breach case and appointing Jeremiah Frei-Pearson of FBFG as co-lead class counsel); *In re Zappos*, Case No. 12-00325, ECF No. 335 (D. Nev. Sept. 19, 2019) (granting preliminary approval and appoint FBFG as co-lead class counsel); *Sackin*, No. 17-1469, ECF No. 55 (S.D.N.Y. Mar. 13, 2018). Moreover, Plaintiff's Counsel have diligently investigated, prosecuted, and dedicated substantial resources to the claims in this action and will continue to do so throughout its pendency. Blankinship Decl. ¶ 5.

The lawyers at TS are seasoned litigators who are experienced in employment issues with considerable experience in prosecuting class actions and other complex litigation and therefore competent and capable of conducting this litigation. Lukasiewicz Decl. ¶ 13. TS has devoted the majority of its practice to representing and protecting the rights of individuals against large institutions through complex and class litigation within a variety of substantive contexts. *Id.* at ¶

14.

For example, founding partner, J. Nelson Thomas currently sits on the American Bar Association's editorial board for the Fair Labor Standards Act treatise. *Id.* at ¶ 15. Mr. Thomas is a nationally recognized speaker on class and collective actions. *Id.* at ¶ 16. Further, partner Jessica Lukasiewicz has litigated class and collective action lawsuits for over thirteen years at Thomas & Solomon LLP. *Id.* at ¶ 17. Associate Jonathan Ferris has litigated class and collective actions for over nine years at Thomas & Solomon LLP. *Id.* at ¶ 18. During their time with Thomas & Solomon LLP, Mr. Thomas, Ms. Lukasiewicz, and Mr. Ferris have represented classes of thousands upon thousands of class members, in both class and collective actions. A few examples of these successes include the following:

- *Davis v. JPMorgan Chase & Co.*, No. 01-6492 (W.D.N.Y.). Nationwide class and collective action of mortgage underwriters seeking unpaid overtime. After ten years of litigation, including an appeal to the Second Circuit which reversed the district' court's order granting summary judgment in favor of the defendants, the parties reached a $42 million settlement that received final approval in 2011.

- *Malcolm & Luciano v. Eastman Kodak Co.*, Nos. 03-6589, 04-6194 (W.D.N.Y.). Class and collective actions on behalf of certain technical writers and customer support service specialists alleging such employees had been improperly misclassified as exempt from overtime. The parties agreed to a settlement fund of $11 million to resolve the claims. The court granted final approval of the settlement in 2007.

- *George v. TD Bank, N.A*., No. 12-1695 (D. Conn.). Class and collective action filed on behalf of employees who performed underwriting functions for the financial institution for wage and hour violations. In 2013, the parties reached an $8 million settlement.

- *Gregg v. Trustees of the Univ. of Penn*., No. 09-5547 (W.D. Pa.). Class and collective action lawsuit on behalf of hospital workers for unpaid wages, including during meal breaks. The parties reached a $7.75 million settlement in 2011.

- *Stenclik v. JPMorgan Chase & Co*., No. 06-6237 (W.D.N.Y.). Represented plaintiffs who worked as personal and consumer bankers in a class and collective action claiming they were misclassified as exempt from overtime. A $7.75 million settlement was reached in 2007.

Lukasiewicz Decl. ¶ 19.

Many courts have acknowledged Thomas & Solomon LLP's class action leadership and

ethical standards. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 182 (W.D.N.Y. 2005) (Thomas & Solomon "has demonstrated that it is well-qualified to conduct the litigation."); *Camesi v. Univ. of Pittsburgh Med. Ctr*., No. 09-85J, 2009 WL 3032590, at *1 (W.D. Pa. Sept. 17, 2009) (granting appointment as class counsel because Thomas & Solomon LLP were "qualified and could appropriately represent the plaintiffs"); *Masters v. F.W. Webb Co.*, No. 03-CV-6280L, 2006 WL 2604833, at *3 (W.D.N.Y. Sept. 11, 2006) (Thomas & Solomon LLP "is abundantly experienced in employment litigation, a substantial portion of which has been conducted before this Court."); *Hamelin v. Faxton-St. Luke's Healthcare*, 274 F.R.D. 385, 396 (N.D.N.Y. 2011) (Thomas & Solomon has "established they are qualified and able to conduct this litigation."). Lukasiewicz Decl. ¶ 20.

TS is both experienced in class action litigation in general and also highly knowledgeable regarding data breach litigation. *Id.* at ¶ 21. TS is currently pursuing numerous data breach cases and has devoted significant resources to extensively researching and analyzing the relevant claims and case law. *See id.* at ¶ 23; TS Firm Resume, Exhibit C to the Lukasiewicz Decl.

Thus, Plaintiff and Plaintiff's Counsel will adequately represent the members of the Class and their interests.[4] Plaintiff accordingly request that the Court appoint Plaintiff as class representatives and appoint TS and FBFG as Class Counsel.

B. The Class Satisfies the Requirements of CR 23.02

1. Common Questions of Law and Fact Predominate

CR 23.02 provides that a class action can be maintained in part where "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members." The predominance requirement focuses on whether the

[4] Both TS and FBFG have the resources available to adequately represent this Class. Blankinship Decl. ¶ 7; Lukasiewicz Decl. ¶ 24.

proposed Class is sufficiently cohesive to warrant adjudication by representation. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "Class-wide issues predominate if resolution of some of the legal or factual questions for class-wide resolution can be achieved using generalized proof, and if these particular issues are more substantial than those requiring individualized proof." *Manning*, 577 S.W.3d at 116 (citing *Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D. 268, 270 (E.D. Ky. 2009)).

Here, as noted above, the common factual and legal questions presented are whether Defendant: (1) disclosed the Class Members' PI; (2) was on notice of the risk that Brown-Forman was a target of a hacking scheme; (3) failed to protect the Class Members' PI with industry-standard protocols and technologies; (4) caused the Class Members' PI to be compromised by its actions and/or inactions; (5) promised Class Members that Brown-Forman would protect their PI that they provided as a condition of their employment; (6) had a duty to protect Class Members' PI; and (7) breached its duty to protect Class Members' PI. As many courts have held, including this Court in approving the February Settlement, these common issues predominate over individual ones. *See* Order Granting Preliminary Approval, at ¶ 7; *see generally Sackin*, No. 17-1469, ECF No. 55 (S.D.N.Y. Mar. 13, 2018); *Castillo*, 2017 WL 4798611, at *1 (preliminarily certifying a similar settlement class of employees whose employer disclosed their PI in response to a phishing scam).

Accordingly, the predominance requirement is satisfied.

2. This Class Action is the Superior Method of Adjudication

Finally, CR 23.02 provides that not only must common questions of law or fact of the class predominate over any questions affecting only individuals, but the "class action [must be] superior to other available methods for the fair and efficient adjudication of the controversy." To address

the superiority requirement, courts may look to whether the consolidation of claims as a class action benefits both sides. *See Hensley*, 549 S.W.3d at 448 (superiority requirement may be satisfied where class members benefit from not having to bring separate claims for same relief and defendants benefit from ability to organize defense in one litigation).

Class treatment presents a superior channel for fairly resolving similar issues and claims without repetitious and wasteful litigation. The proposed class action is the surest way to fairly and expeditiously compensate approximately 21,000 Class Members while preventing the inundation of courts with repetitive cases and reducing transaction costs which in turn ensures the maximization of Class Members' potential compensation.

Here, consistent with this Court's finding that the February Settlement "is a superior means of resolving the Class Members' claims rather than individual suits", a class-wide resolution can clearly be achieved using generalized rather than individualized proof because the PI of all Class Members may have been exposed as a result of the same data breach and all Class Members' claims will rise and fall through the application of law to the same facts. *See* Order Granting Preliminary Approval, at ¶ 7. Thus, the core issue that entirely governs the outcome of this case is common to each and every Class Member. Hence, a class action is the superior method of adjudicating the present claims for all parties. Consequently, Class Members need not bring individual actions to obtain relief and Defendant can resolve all Class Members' claims through the Settlement. "It is not necessary that there be a complete identification of facts relating to all members of the class as long as there is a common nucleus of operative facts." *Id.* For these reasons, the superiority requirement of CR 23.02(c) is satisfied.

C. Plaintiff's Counsel Should Be Appointed As Class Counsel

Under CR 23.07, "a court that certifies a class must appoint class counsel. . . [who] must fairly and adequately represent the interests of the class." CR 23.07(1) and 23.07(4). In making

this determination, the Court must consider the following attributes of counsel: (1) work in identifying or investigating potential claims; (2) experience in handling class actions or other complex litigation and the types of claims asserted in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the class. CR 23.07(1)(a)(i-iv). As discussed above, FBFG and TS have experience identifying or investigating potential claims, extensive experience in prosecuting class actions and other complex litigation, knowledge of the applicable law, and the resources available to represent the Class. Blankinship Decl. ¶¶ 3-7; Lukasiewicz Decl. ¶¶ 13-24. Specific to this case, Plaintiff's Counsel has diligently investigated this matter by dedicating substantial resources to the investigation of the claims at issue, which includes interviews of numerous Class Members. Blankinship Decl. ¶ 5; Lukasiewicz Decl. ¶ 23. Plaintiff's Counsel has also diligently developed the innovative and complex theories of this lawsuit, exchanged and reviewed informal discovery, and successfully negotiated the present Settlement to the benefit of the Settlement Class. Blankinship Decl. ¶ 6; Lukasiewicz Decl. ¶ 22. Further, Plaintiff's Counsel served as Class Counsel in the February Settlement. *See* February Settlement ¶ 8, attached to the February Blankinship Decl., Exhibit A. Accordingly, Plaintiff respectfully requests that the Court appoint FBFG and TS as Class Counsel for the Class.

VII. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT.

Public policy strongly encourages the settlement of disputes in lieu of litigation. *Robinson v. Shelby Cty. Bd. of Educ.*, 566 F.3d 642, 648 (6th Cir. 2009); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 778 (N.D. Ohio 2010). Accordingly, settlement agreements should be upheld whenever equitable and policy considerations so permit. *Robinson*, 566 F.3d at 648. This is especially true in class action litigation, in which there is a "particularly muscular" presumption in favor of class action settlements. *Whitlock v. FSL Mgmt., LLC*, 843 F.3d 1084, 1094 (6th Cir. 2016)

(quoting *Ehrhart v. Verizon Wireless,* 609 F.3d 590 (2d Cir. 2010)); *see also Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Gen. Motors Corp.,* 497 F.3d 615, 632 (6th Cir. 2007) (noting "the federal policy favoring settlement of class actions"); *Lonardo*, 706 F. Supp. 2d at 778 (same). "The central question raised by the proposed settlement of a class action is whether the compromise is fair, reasonable and adequate. There are significant justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation." *Weinberger v. Kendrick*, 698 F. 2d 61, 73 (2d Cir. 1982) (citation omitted). A class action "may be settled, voluntarily dismissed, or compromised only with the court's approval." CR 23.05.

"The procedure for approving a class action settlement includes three steps: (1) the court must preliminarily approve the settlement; (2) the class members must be given notice of the proposed settlement; and (3) the court must hold a hearing to determine whether the proposed settlement is fair, reasonable and adequate."[5] *Thacker* 259 F.R.D. at 270 (citing *Tenn. Ass'n of Health Maint. Orgs., Inc. v. Grier*, 262 F.3d 559, 565–66 (6th Cir. 2001)); *see also* Federal Judicial Center's Manual for Complex Litigation, Fourth §§ 21.622–23 (2006) (describing multi-step approval process); Manual For Complex Litigation, § 13.14, at 173 (4th ed. 2004).

At the preliminary approval stage, the Court's review is not exacting. It must determine whether the proposed settlement (1) appears to be the result of serious, informed, non-collusive

[5] Under CR 23.05(2), at the final approval stage, the Court ultimately must determine that the settlement is "fair, reasonable, and adequate." *Doe v. Roman Catholic Diocese of Covington*, No. 03-CI-00181, 2006 WL 250694, at *1 (Ky. Cir. Ct. Jan. 31, 2006). The Court has broad discretion in evaluating a class action settlement. *Int'l Union,* 497 F.3d at 636. In approving a settlement as fair, reasonable and adequate, at the final approval stage, Kentucky courts consider numerous factors, in no particular order, that may be considered in deciding whether a settlement should be approved, including: (1) reasonableness and amount of settlement; (2) future expense and likely duration of litigation; (3) whether settlement was reached after arm's length negotiations; and (4) experience of class counsel. *Doe*, 2006 WL 250694, at *1. Plaintiffs will submit a brief addressing how the Settlement satisfies each of these points following the notice period and in advance of any final fairness hearing.

negotiation, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval. *In re Sketchers Toning Shoe Prods. Liab. Litig*., No. 3:11-MD-2308-TBR, 2012 WL 3312668, at *8 (W.D. Ky. Aug. 13, 2012); *Hyland v. HomeServices of Am., Inc.*, No. 05-cv-612, 2012 WL 122608, at *2 (W.D. Ky. Jan. 17, 2012) (citing *Grier*, 262 F.3d at 565-66). If this is the case, Class Members will receive notification of the Settlement, and the Court will hold a final approval hearing at which time it can make a final determination as to whether the settlement is fair, reasonable, and adequate under all of the circumstances, based on a full record.

As set forth below, and for all the reasons this Court granted preliminary approval of the February Settlement, each of the factors considered at preliminary approval are easily satisfied.

A. Whether Settlement was Reached after Arm's Length Negotiations

The main procedural factor that courts consider in determining whether to preliminary approve a proposed class action settlement is whether the agreement arose out of arm's length, non-collusive negotiations. *Hillson v. Kelly Serv.*, No. 2:15-cv-10803, 2017 WL 279814, at *6 (E.D. Mich. Jan. 23, 2017) (citing *Newberg on Class Actions,* § 13:14 (5th ed.)). Hence, when a settlement is the result of extensive negotiations by experienced and knowledgeable counsel, that fact weighs in favor of approval. *See Williams v. Vukovich*, 720 F.2d 909, 923 (6th Cir.1983); *Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 68 (D. Mass. 1997) ("[I]n general, a settlement arrived at after arm's length bargaining may be presumed to be fair."). The use of a neutral, experienced mediator is an indication that the parties' agreement is non-collusive. *Hillson*, 2017 WL 279814, at *6 (preliminary approving settlement mediated in part by the Hon. Judge Wayne Anderson); *Amos v. PPG Indus.*, No. 2:05-cv-70, 2015 WL 4881459, at *5 (S.D. Ohio Aug. 13, 2015) (granting final approval to settlement, where settlement was "the product of arm's

length negotiations by experienced counsel facilitated by [a] national recognized mediator'); *Crawford v Lexington-Fayette Urban Cty. Gov't*, No. 06-299-JBC, 2008 WL 4724499, at *6 (E.D. Ky. Oct. 23, 2008) (finding no risk of fraud or collusion relative to final approval, where settlement was "the product of arm's length, good faith settlement negotiations" led by "an experienced, third-party neutral mediator").

Here, when the parties initially explored settlement, they selected a respected mediator, Honorable Ann O'Malley Shake (Ret.), to assist them in resolving this dispute. Lukasiewicz Decl. ¶ 3. The parties engaged in informal discovery and participated in a full-day mediation session on December 11, 2020. Even after reaching an agreement in principle codified in the form of a Term Sheet, the parties negotiated the February Settlement Agreement, which involved the exchange of multiple drafts, conference calls, and resolution of various issues in dispute. *Id.* at 5. Thereafter, following the discovery of the additional 21,000 individuals and prior to the final fairness hearing of the February Settlement, the parties engaged in a second round of arm's length settlement negotiations using the constructs of the February Settlement (which was reached with the valuable assistance of the mediator).

As such, preliminary approval should be granted.

B. The Settlement Contains No Obvious Deficiencies

The proposed Settlement has no obvious deficiencies that would preclude approval, such that notifying the Settlement Class and proceeding to a formal fairness hearing would be a waste of time. As explained above, the proposed Settlement was reached after Defendant discovered that the February Settlement did not include all individuals potentially impacted by the August 2020 Data Breach and only after arm's length negotiations between the parties and their counsel, who considered the advantages and disadvantages of continued litigation. These negotiations produced a result that Plaintiff's Counsel believes to be in the best interests of the Class Members in light of

the costs and risks of continued litigation.

Therefore, preliminary approval is warranted.

C. The Settlement Favors No Class Representative or a Segment of the Class

Significantly, this Settlement treats all Class Members equally in terms of their ability to recover under the Settlement. As explained above, should preliminary approval of the Settlement be granted, Class Members will all receive a notice explaining their options they have available under the Settlement. Settlement Agreement ¶ 35. Indeed, depending on the harm suffered by the Class Member, they are eligible to recover all categories of relief, including credit monitoring; reimbursement of expenses; reimbursement for lost time; and cash reimbursement. Furthermore, under the Settlement, Defendant commits to implement certain business practices to safeguard against future data breaches. In addition to providing information as to how Class Members can participate or seek recovery, the notice will also provide information as to how they can opt-out or object to the Settlement.

Accordingly, this factor too favors preliminary approval of the Settlement.

D. Reasonableness of Settlement

When considering the reasonableness of the Settlement, preliminary approval should be granted.

Indeed, this Settlement is comparable to other data breach class action settlements. Data breach class action settlements often include relief to class members in the form of some of the following: (1) credit monitoring; (2) reimbursement of expenses; (3) reimbursement for lost time; (4) cash reimbursement; and/or (5) injunctive relief and/or a commitment from defendant to implement certain business practices. Data breach settlements often include only a couple of categories of relief. *See Hapka,* No. 16-02372, ECF No. 89 (D. Kan. Sept. 20, 2017) (the court approved a data breach settlement that provided class members with two years of credit

monitoring, reimbursement of out-of-pocket losses and prospective relief); *Castillo*, No. 16-cv-01958, ECF No. 72, (N.D. Cal. July 27, 2017) (court preliminarily approved a data breach class action settlement providing for two years of credit monitoring, reimbursement of economic losses and a commitment from defendant to implement and maintain data security practices); *In re Heartland Payment Sys*., 851 F. Supp. 2d 1040, 1049, 1079-80 (S.D. Tex. 2012) (approving settlement providing for reimbursement of (1) out-of-pocket expenses from card cancellations or replacements, (2) out-of-pocket expenses from unauthorized and unreimbursed account charges, (3) out-of-pocket expenses form identity theft, and (4) up to 5 hours at $10/hour in time spent for the incurred expenses).

Here, this Settlement provides for many forms of relief for Class Members, including (1) identity theft protection (credit monitoring) services for up to three (3) years total; (2) Reimbursement for Out-of-Pocket Losses up to $5,000 per individual that have not been reimbursed by insurance, Reimbursement for Attested Time for up to eight (8) hours of time spent at $20 per hour, and a Cash Payment for Inconvenience of $250. *See* Settlement Agreement ¶ 29. In addition, Defendant agrees to adopt and implement certain business practice commitments and remedial measures for a period of three (3) years, which include enhanced cybersecurity training and awareness program, enhanced data security policies, enhanced security measures, further restricting access to personal information, and enhanced monitoring and response capabilities. Settlement Agreement ¶ 30.

Accordingly, this factor weighs in favor of granting preliminary approval of the Settlement.

VIII. THE COURT SHOULD APPROVE THE FORM AND METHOD OF NOTICE OF THE SETTLEMENT TO THE CLASS.

The Settlement also sets forth a comprehensive method of providing notice of the Settlement to Class Members. The Settlement provides for direct e-mailed and/or mailed notice to

all Class Members. The notice forms, attached as exhibits to the Settlement Agreement, "clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion by a specified date; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment, whether favorable or not, on members under CR 23.03." CR 23.03(4)(b).

The proposed forms and method of notice provide "the best notice that is practicable under the circumstances" as they are likely to reach Class Members and inform them of their rights in a clear manner. *Id*. The Court should therefore approve the proposed forms and manner of notice and direct their issuance according to the terms of the Settlement. Courts have routinely found that mailing notices to Class Members when individual addresses are known to be appropriate. *See e.g., Eisen v. Carlisle and Jacquelin*, 417 U.S. 156 (1994) (court found that there was no reason to not mail individual notices to each of the two and a quarter million class members whose names and addresses were easily obtainable through reasonable effort); *Lily v. Jamba Juice Co.,* 308 F.R.D. 231, 239 (N.D. Cal. 2014) (accepting notice plan that provided notice by mail for class members whose addresses were obtainable and notice through internet and print media for class members whose addresses were not); *Grunin* v. *Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975) (mailing notice to last known address of class members constitutionally adequate even where one-third of class members were not reached by mailing).

In adherence to notice requirements, courts (including this Court) have preliminarily approved data breach settlement agreements which included mailing notices to class members. Those data breach settlements include Order Granting Preliminary Approval, *Hapka*, No. 16-

02372, ECF No. 91 (D. Kan. Sept. 29, 2017); *Sackin*, No. 17-1469, ECF No. 55 (S.D.N.Y. Mar. 13, 2018); *Castillo*, 16-cv-01958, ECF No. 76 (N.D. Cal. Oct. 19, 2017); and *In re Anthem, Inc. Data Breach Litig.*, No. 5:15-MD-02617, ECF No. 869-8 (N.D. Cal. June 23, 2017).

Accordingly, the Court should approve the form and method of the notice as set forth in the Settlement Agreement.

IX. THE COURT SHOULD APPROVE THE DEADLINES FOR CLASS MEMBERS TO OBJECT OR OPT-OUT OF THE SETTLEMENT, AS WELL AS DEADLINES TO SUBMIT CLAIM FORMS.

As part of the Settlement, Class Members have the right to (a) receive the benefits of the Settlement in exchange for a release of their claims, including three (3) years of credit monitoring services, Reimbursement for Out-of-Pocket Losses, Reimbursement for Attested Time, and Cash Payment for Inconvenience; (b) exclude themselves from the Settlement if they do not wish to obtain the benefits of the Settlement or release their claims; or (c) remain part of the Settlement Class but object to the Settlement. Pursuant to the Settlement Agreement, Class Members will have seventy-five (75) days from the Notice Deadline to submit a Claim Form (Identity Protection); until the date their Experian IdentityWorks℠ identity protection coverage expires to submit a Claim Form (Other Benefits); and seventy-five (75) days from the Notice Deadline to object or opt-out of the Settlement. This is a reasonable amount of time for Class Members to make an informed decision.

Therefore, the opt-out and objection deadline merits approval.

X. THE COURT SHOULD SET A DATE FOR THE FINAL APPROVAL HEARING.

A final approval hearing must be held after notice to Class Members. While Class Members generally do not appear at the final approval hearing, the notice to Class Members includes this date, and Class Counsel and counsel for Defendant will appear to further explain why the

Settlement should be granted final approval.[6] It is common for the final approval hearing to be set shortly after the deadline for Class Members to object or exclude themselves from the Settlement. Therefore, Plaintiff respectfully requests that the Court set a final approval hearing no earlier than 125 days and no later than 150 days following the granting of preliminary approval.

XI. CONCLUSION.

In light of the foregoing, Plaintiff respectfully requests that the Court enter an order, a proposed form of which is attached: (1) certifying the proposed Class; (2) naming Plaintiff as class representative; (3) appointing Thomas & Solomon LLP and Finkelstein, Blankinship, Frei-Pearson & Garber, LLP as Class Counsel; (4) granting preliminary approval to the Settlement Agreement; (5) approving the proposed notices (6) scheduling a Final Approval Hearing; and (7) granting such further relief the Court deems reasonable and just.

Defendant does not oppose the preliminary approval of the proposed Settlement.

[6] In the event no Class Members object to the Settlement, in the Court's discretion, the hearing can be adjourned and the Court may rule on the papers.

Dated: September 16, 2021

Respectfully submitted,

__/s/ Jessica L. Lukasiewicz_____

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2021, a true and correct copy of the foregoing was served via KCOJ eFiling System on the following:

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