STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 18th JUDICIAL CIRCUIT
COUNTY OF DUPAGE

STEPHANIE HOOVER, RONALD BAILEY, DENA KIGER, JOSE KIGER, and JAMES HALL, *individually and on behalf of all others similarly situated*, Plaintiffs, v. CAMPING WORLD GROUP, LLC, GOOD SAM ENTERPRISES, LLC, CWI, INC., and CAMPING WORLD HOLDINGS, INC. Defendants.	Civil Action No. 2023LA000372 **JURY TRIAL DEMANDED**

THIRD AMENDED UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

Plaintiffs Stephanie Hoover, Ronald Bailey, Dena Kiger, Jose Kiger, and James Hall (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, hereby move this Court to:

1. Preliminarily approve the settlement described in the Settlement Agreement between Plaintiffs and Defendants and the attachments thereto, including the notice forms and [Proposed] Preliminary Approval Order, filed herewith, as fair, adequate, and reasonable, and within the range of possible final approval.

2. Appoint Plaintiffs as the Settlement Class Representatives;[1]

3. Appoint Plaintiffs' counsel as Class Counsel;

4. Provisionally certify the Settlement Class under 735 ILSC 5/2-801 for settlement purposes only;

[1] Unless otherwise indicated, the defined terms herein shall have the same definitions as set forth in the Settlement Agreement, attached as Exhibit A to counsel's declaration and the Third Amended Memorandum of Law in Support of the Unopposed Motion for Preliminary Approval.

5. Approve the Parties' proposed Notice program and confirm that it is appropriate notice and that it satisfies due process and 735 ILSC 5/2-803;

7. Direct Notice to be sent to the Settlement Class Members in the form and manner proposed as set forth in the Settlement Agreement;

8. Set a date for a Final Approval Hearing, and consideration of Class Counsel's motion for a Fee Award and Service Awards to the Settlement Class Representatives as set forth in the Settlement Agreement; and

9. Set dates for Settlement Class Members to object to or exclude themselves from the Settlement, as set forth in the Settlement Agreement.

This Motion is based upon: (1) this Motion; (2) the Second Amended Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval; (3) Class Counsel's Amended Declaration; (4) the Settlement Agreement; (5) the Parties' proposed Notice program; (6) the Amended [Proposed] Preliminary Approval Order; (7) the records, pleadings, and papers filed in this Action; and (8) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

Respectfully Submitted,

DATED: December 4, 2023 By: */s/ Gary M. Klinger*

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2023, a true and correct copy of the foregoing was electronically filed via the Court's approved electronic filing service provider, which will automatically serve and send notification of such filing to all parties who have appeared.

s/ Gary M. Klinger
Gary M. Klinger

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THIRD AMENDED MEMORANDUM SUPPORTING
MOTION FOR PRELIMINARY APPROVAL

INTRODUCTION

Plaintiffs move the Court to approve their settlement with Camping World[1] as "fair, adequate, and reasonable." This is a data breach class action alleging that Camping World failed to protect its employees and consumers' "personally identifiable information," allowing access to this PII during a data breach. The Data Security Incident[2] occurred in January and February 2022 and Plaintiffs contend that allowed access to class members' names, Social Security numbers, "financial account" information, addresses, and birth dates. With the parties' settlement, Plaintiffs have secured relief ensuring that Camping World compensates them for losses and that it has improved its security, verified by declaration. That declaration details how Camping World has enhanced its security to prevent another breach. Plaintiffs have also ensured that the parties will notify class members about the settlement using a world-class settlement administrator that over 30 state and federal courts have approved to notify breach victims about data breach settlements. Considering the relief achieved, these results *exceed* those secured in similar cases, and the class risks recovering nothing after years of risky litigation if the Court does not approve the settlement.

As background, Plaintiffs allege they have spent time and resources mitigating their chances of suffering harm as a result of the breach. Plaintiffs further contend that Camping World did not compensate them for their losses and failed to have in place reasonable measures to prevent data breaches from happening. As a result, Plaintiffs sued Camping World to recover alleged losses resulting from the Data Security incident and require Camping World to improve its data security.

[1] "Camping World" refers to all defendants named in this action.

[2] Capitalized terms herein have the same meaning as in the Settlement Agreement ("S.A.") unless otherwise indicated.

This Settlement achieves just that—securing those two benefits for the class. First, Defendants will fund a $650,000 Settlement Fund to compensate the 35,000 Settlement Class Members for their losses. This is an excellent result, which surpasses those achieved in other data breach settlements. Indeed, few data breach settlements guarantee *any* cash payments, as settlements typically compensate victims only for documented and proven losses, with no guarantee that the defendant will pay *anything* other than attorney fees and costs. This Settlement avoids that result and ensures Camping World will mail activation codes for the Credit Monitoring Benefit and checks to every class member. Indeed, in a class with just over 35,000 members, Plaintiffs have guaranteed greater payments per class member than members could claim in the *Equifax* (N.D. Ga., 147 million class members), *Capital One* (E.D. Va., 98 million members), and *Dickey's* (N.D. Tex., 725,000 members) breach settlements. In a case like *Capital One*, class members were guaranteed only $1.37 in benefits *if* they submitted a claim qualified after review. This Settlement saves the time and effort involved in that bureaucracy and delivers immediate benefits to the class.

And second, the Settlement affirms Camping World's efforts to enhance its IT infrastructure and systems, including the engagement of "leading outside forensics and cybersecurity experts" to improve its security, as Camping World as verified by declaration.[3] Class members thus know Camping World has taken reasonable steps to secure the PII in its possession.

For the reasons stated herein, the Court should preliminarily approve this settlement because it exceeds the standards set by 735 ILCS 5/2-801, appoint Plaintiffs as class representatives, Plaintiffs' counsel as Class Counsel, approve the Parties' notice program, stay the case pending approval, and schedule a final approval hearing.

[3] The parties have agreed to seal this declaration to avoid divulging the security methods Camping World has used to improve its systems.

CASE BACKGROUND

A. The Data Breach, Plaintiffs' Claims, and Procedural History

Camping World sells products and services to RV owners. Compl. ¶18. In the ordinary course of doing business, Camping World requires its employees and consumers to disclose their personally identifiable information "PII." *Id*. ¶¶19-20. That PII includes their names, addresses, Social Security and "financial account" numbers, and birth dates. *Id*. ¶28. In so doing, Plaintiffs allege Camping World promises to protect that information through its "Privacy Policy." *Id*. ¶¶22-23. However, Plaintiffs allege Camping World "failed to use encryption to protect sensitive information transmitted online" *Id*. ¶32. As a result, Plaintiffs allege that Camping World left vulnerabilities in its cybersecurity for criminals to exploit. *Id*. ¶39.

In January and February 2022, an unknown third party accessed Camping World's systems undetected, and accessed or acquired consumer and employee PII, including names, addresses, birth dates, Social Security numbers and "financial account" numbers. *Id*. ¶28, 31. Plaintiffs further allege the stolen PII was posted for sale on the "dark web." *Id*. ¶33. At the Court's request, Camping World has detailed how the breach happened by declaration, including the systems that hackers invaded, the information affected, and the steps taken to address any security vulnerabilities. Sealed Dec. To avoid disclosing what those vulnerabilities were in a publicly available brief, Plaintiffs refer the Court to Camping World's declaration for those details. *Id*.

In November 2022, Camping World notified Plaintiffs and Settlement Class Members of the Data Security Incident, explaining that upon discovering the breach, Camping World "engaged a forensic security firm to investigate and secure its complex systems". *Id*. ¶27. Those experts "determined that an unknown third party accessed Camping World's systems from January 14, 2022, to February 13, 2022." *Id*. ¶27.

After receiving Camping World's notice, Plaintiffs filed separate lawsuits and proceeded with their own actions in three lawsuits targeting Camping World's misconduct related to the Data Security Incident. *See* Settlement Agreement ("Agreement") Recitals; Counsel's Joint Dec. attached as **Exhibit B** ("Dec") ¶2. In response, Camping World denied Plaintiffs' claims on grounds that they had not suffered harm following the breach and that they could not maintain a class action even if they did, raising dispositive issues that threatened to dispose of Plaintiffs' claims. *Id*. Given these risks, including that Plaintiffs have yet to suffer identity theft or fraud (although they allege that such injury is imminent) (*see* Compl., ¶¶131-177 Plaintiffs elected to consolidate their efforts and explore mediating an agreement with Camping World. *Id*. ¶4.

B. Mediation

In March 2023, the Parties mediated their cases with Hon. Wayne Anderson, a former Northern District of Illinois judge and a mediator experienced in settling data breach class actions. *Id*. ¶6. Under his guidance, the Parties exchanged information related to the Data Security Incident and its impact on the class, including how many consumers and employees it affected and what their damages were. *Id*. With the assistance of the mediator the Parties debated how to structure the settlement and whether class members would need to submit claim forms to recover benefits. *Id*. Plaintiffs negotiated for all Settlement Class Members who do not submit a valid Opt-Out from the Settlement to receive settlement benefits without the need to submit a claim form. *Id*. The Parties also addressed how Camping World has addressed its cybersecurity to protect the PII it still possesses. *Id*.

Only after the Parties negotiated these elements did they address Plaintiffs' attorney fee and service award request, thus avoiding any conflict between Plaintiffs and the class. *Id*. ¶7. Indeed, the Parties negotiated at "arm's length" under Judge Anderson's guidance, achieving a

result that compensates the class and ensures their relief. *Id*. After reaching their agreement, Plaintiffs consolidated their cases by joining their claims in a complaint in this Court. *Id*.

SETTLEMENT OUTLINE

A. Class Definition

The Settlement Class includes approximately 35,000 individuals and is defined to include all persons "who were notified by Defendants that their personal information was or may have been compromised in the Data Security Incident." Agreement ¶25. The Settlement Agreement provides that Camping World will produce a "Settlement Class List" identifying class members and their addresses from its files. *Id*. ¶26.

B. Settlement Benefits

The settlement secures two benefits for the class. First, Camping World will pay $650,000 to a Settlement Fund. Agreement § B.1. The fund is "Non-Reversionary," meaning the Parties intend to disburse all funds to Settlement Class Members. *Id.* B.2. To administer those funds and implement the Settlement's terms, the Parties will agree on a "Settlement Administrator." *Id*. ¶24.

Once funded, the Settlement Fund will be used by the Settlement Administrator to pay for: (i) two (2) years of one bureau (1B) credit monitoring (the "Credit Monitoring Benefit"); (ii) residual cash payments to class members; (iii) notice and administrative expenses; (iv) taxes and tax-related expenses; and (v) service awards, fees, and costs approved by the Court. *Id*. § B.5. Unless a member opts out of the Settlement, they will receive a "pro-rata" share of what remains in the Net Settlement Fund after all funds necessary to pay Notice and Administration Costs,Fee Award and Costs, and the Credit Monitoring Benefit. *Id*. § C.1. If no Class Members opt out of the Settlement, each individual will receive approximately $7.96 after all expenses and fees have been taken out, an excellent result. This number was reached by taking the Settlement Fund of

$650,000, and subtracting $28,600 for the Credit Monitoring Benefit, $12,500 in estimated service award payments, $230,000 in estimated attorneys' fees and costs, and the $100,000 estimated cost of settlement administration in this matter (See **Exhibit D**), leaving approximately $278,900 to be distributed to the Settlement Class. This term ensures ease for class members, as they need only activate the Credit Monitoring Benefit and/or cash a check to receive the settlement's benefits. If a class member does not cash their check within 90 days, the Administrator will use "reasonable efforts to locate an updated address" for the Class Member and resend the check. *Id*. § D.3. After exhausting those efforts, the Settlement Administrator will repay any "uncashed" proceeds to Camping World. *Id.*

Second, the Agreement ensures that Camping World has taken reasonable measures to improve its IT systems and security following the Data Security Incident. *Id*. § E.1. Specifically Camping World engaged "cybersecurity experts" to investigate the Data Security Incident and will continue to take measures to "enhance the security and integrity of their IT." *Id.* Those efforts reflect that Camping World intends to and is taking reasonable measures to secure Class Members' PII and prevent another breach. Camping World has verified what those security measures are by declaration—a document Plaintiffs file under seal, as neither party wants the public to know how Camping World has enhanced its systems to protect Plaintiffs' and the Settlement Class's information from future breaches. Sealed Dec. Plaintiffs refer to that declaration rather than detail the efforts in publicly available briefing.

C. Class Notice, Objections, and Opt-Outs

The Settlement Administrator, Epiq Class Action & Claims Solutions, Inc., will issue Notice of the Settlement to the class by U.S. Mail using the addresses on file with Camping World. *Id.* § F.1. Within twenty-eight (28) Days of the entry of the Preliminary Approval Order (the

"Notice Deadline") the Settlement Administrator shall send the Notice in Exhibit 1 to the Settlement Agreement to all Settlement Class Members whose addresses are known to the Defendants by U.S. mail, alerting all class members to the Settlement's terms and their rights to either opt out or object.

As Epiq details by declaration, it is a world class settlement administrator and has succeed in administering "more than a thousand successful class action notice and settlement administration matters." *See* Declaration of Cameron R. Azari, Esq. on Notice Plan and Notices ("Azari Dec.") attached hereto as **Exhibit C**, at ¶4. And, as data breach settlements have proliferated, Epiq has notified class members in over 30 data breach cases, with state and federal courts certifying its results. *Id*. ¶7. It will use the same methods that worked in those cases here, designing its notice plan "to reach the greatest practicable number of Settlement Class Members." *Id*. ¶13. With those efforts, Epiq expects "that the proposed Notice Plan individual notice efforts will reach a very high percentage of the identified Settlement Class." *Id*. In its mail, website, and settlement hotline, Epiq will use a "Plain Language Design," ensuring that its notices are understood by the class in "easy-to-read summaries of all key information about rights and options available to the Settlement Class Members." *Id*. ¶22. Plaintiffs attach Epiq's CV along with its declaration to detail its experience and qualifications for this notice program.

After receiving notice, class members will have 45 days from the Notice Deadline to opt out or object to the Settlement. *Id*. § G.1. To opt out, Settlement Class Members need only send the Settlement Administrator a signed notice identifying their name, the case name, address, state that they are opting out. *Id*. To object, Settlement Class Members must submit a written objection detailing their contact information, identify the case name and number, explain why they are

objecting, state whether their objection applies only to them or to all class members, sign the objection, and state whether an attorney represents them. *Id*. § G.2.

D. Release and Termination

To receive the Settlement's benefits, Plaintiffs and Settlement Class Members are required to release Camping World from their class action claims. *Id*. ¶21. The parties tailored the terms of the Release to apply to only those claims related to the Data Security Incident. *Id*. The release will take effect after the Court enters its "Final Order and Judgment" approving the settlement, though it will not prevent the parties or class members from moving to enforce the settlement's terms. *Id*. § K.

The Parties may terminate this Settlement Agreement only if the Court declines to approve the Settlement at this stage, rejects it after the parties notify the class, or modifies it "in any material respect." *Id*. § J.3. If the parties terminate the agreement, the case will revert to the "status quo ante," as if the parties had not agreed to settle the case. *Id*. § J.4. Indeed, "all of the Parties' respective pre-Settlement claims and defenses will be preserved" if the Parties terminate. *Id*.

E. Attorneys' Fees and Service Awards

The Parties did not negotiate Plaintiffs' attorneys' fees or service awards until after agreeing on the material terms of the Settlement, thus avoiding any conflict between Plaintiffs and the Settlement Class. Dec. ¶7. Settlement Class Members can object to those terms, including Plaintiffs' requests for 35% of the settlement fund for fees, costs not to exceed $50,000, and $2,500 service awards for each Plaintiff. Agreement §§ L.1., M.1. Ten days before the Opt-Out/Objection Deadline, Plaintiffs will file a Fee Application, giving Class Members the time and opportunity to review the request for fees, costs, and service awards prior to making their decision to opt-out or object to the Settlement. *Id*. The Court need not approve the fee and award request prior to granting

preliminary approval, the Parties and Court will address the issue of fees and costs at the Final Approval Hearing, and this Settlement is not conditioned on the approval of such fees.

ARGUMENT

A. Legal Standards

Illinois law requires court approval of class action settlements. 735 Ill. Comp. Stat. Ann. 5/2-806. In so doing, courts recognize "[t]here is strong public policy in favor of settling and the avoiding costly and time-consuming litigation." *McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶ 13; see also Herbert B. Newberg and Alba Conte, Newberg on Class Actions § 11.41 (3d ed. 1992) ("The compromise of complex litigation is encouraged by the courts and favored by public policy. By their very nature, because of the uncertainties of outcome, difficulties of proof, and length of litigation, class action suits lend themselves readily to compromise"). Under that policy, courts evaluate whether settlements are "fair, reasonable, and adequate." *People ex rel. Wilcox v. Equity Funding Life Ins. Co.*, 61 Ill. 2d 303, 317, 335 N.E.2d 448, 456 (1975). The analysis considers seven factors, including: (i) the "strength of the case for plaintiffs," balanced against the settlement's value; (ii) defendant's ability to pay; (iii) the case's complexity; (iv) whether class members oppose settlement; (v) any "collusion" between the parties; (vi) how class members have reacted to the settlement; (vii) whether counsel support the agreement; and (viii) the "stage of proceedings." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972, 565 N.E.2d 68, 70, 151 Ill. Dec. 797 (1990). Courts must apply these factors in context, comparing "the terms of the compromise with the likely rewards of litigation*." TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425, 20 L. Ed. 2d 1, 10, 88 S. Ct. 1157.

Although Illinois law does not detail how and when to apply these factors, federal law proscribes a two-step process wherein the Court preliminarily approves a settlement and orders

notice to the class, and subsequently reviews the settlement for final approval after the class has been notified. *Armstrong v. Bd. Of Sch. Dirs. Of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). A court should grant preliminary approval so long as the settlement is "within the range of possible approval." *Id*. If approved at the first step, courts will allow parties to notify the class about the settlement and its terms. *Id*. The Court then evaluates the settlement under the second step, conducting a fairness hearing to finally approve the agreement. MANUAL FOR COMPLEX LITIGATION (FOURTH) §21.632 (2002). In other words, a court need not approve the settlement as fair at the first step, it need only find that it is within the range of possible fairness.

B. The Settlement is "Fair, Adequate, and Reasonable"

i. The Court should presume the settlement is "fair, adequate, and reasonable"

The Court should presume the settlement is fair because the parties mediated it at "arm's length." *Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 20 (approving the trial court's finding that a "a presumption of fairness applied to the settlement" after arm's length negotiations); see also Newburg, §11.42. Judge Wayne Anderson, an experienced and independent mediator in data breach class actions, facilitated the Settlement brokering the core terms between the parties during a full-day mediation. Dec. ¶¶6-7. What's more, the Parties and Judge Anderson avoided any conflict between Plaintiffs and the Settlement Class by bifurcating negotiations; first addressing the terms affecting the benefits to the Settlement Class and then negotiating the terms affecting Plaintiffs' attorneys' fees and service award. *Id*. ¶7. Under these facts, the Settlement is entitled to a "presumption of fairness."

ii. The Settlement's benefits and this case's strength favor settlement

Plaintiffs establish the first factor because their settlement secures the relief they set out to achieve when they filed their lawsuits against Camping World. Their lawsuits sought two

remedies; first, that Camping World compensate Plaintiffs and others similarly situated for their losses; and second, that it improve its data security. The Settlement accomplishes both objectives for Plaintiffs and approximately 35,000 Settlement Class Members. Indeed, it stands apart from other settlements in the data breach context because it provides for the Credit Monitoring Benefit and cash payments without requiring that class members submit a claim form to claim benefits. In fact, breach victims often must fill out a claim form, attach evidence, and wait for the administrator to approve the claim before receiving relief. *Hadley v. Distilling*, 2022 Ill. Cir. LEXIS 1388, *16-17 (requiring that class members "submit a Claim electronically on-line at the Settlement Website, along with any supporting documentation" to receive benefits); *Smith v. ComplyRight, Inc.*, Civil Action No. 1:18-cv-4990, 2019 U.S. Dist. LEXIS 102307, at *7 (N.D. Ill. May 24, 2019) (same); *Perdue v. Hy-Vee, Inc.*, 550 F. Supp. 3d 572, 577 (C.D. Ill. 2021) (same). And some settlements do not even provide compensation to class members, affording them only credit monitoring. *Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cnty., Ill. 2018). In the instant matter, every Settlement Class Member who does not submit a valid and timely opt-out request will receive the Credit Monitoring Benefit and a cash payment without needing to do anything but activate the Credit Monitoring Benefit and/or cash a check, streamlining the process simplifying the class's recovery.

The Settlement also ensures Camping World will protect the PII it still possesses, as it implemented safeguards meant to prevent another breach. Courts across the country recognize this type of relief has value in data breach cases. *See, e.g., In re Equifax Customer Data Sec. Breach Litig.*, MDL No. 2800, 2020 U.S. Dist. LEXIS 118209, at *256 (N.D. Ga. Mar. 17, 2020) ("The Court specifically finds that the injunctive relief class counsel obtained here is a valuable benefit to the class because it reduces the risk that their personal data will be compromised in a future

breach."); *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 974 n.6 (8th Cir. 2018) (security measures implemented after a data breach have "value to all class members").

This result thus favors settlement when balanced against the risk that litigation posed. *G M A C Mortg. Corp. v. Stapleton*, 236 Ill. App. 3d 486, 494, 177 Ill. Dec. 697, 704, 603 N.E.2d 767, 774 (1992) (approving settlement under the first factor considering the "risks facing the class if the litigation continued"). Litigating data breach cases carries risk because of the "novel" nature of the claims. *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 U.S. Dist. LEXIS 135573, at *13 (N.D. Ohio Aug. 12, 2019) ("The realm of data breach litigation is complex and largely undeveloped. It would present the parties and the Court with novel questions of law.").

While Plaintiffs believe they would prevail on their claims if this case did not settle, they would face significant hurdles and would not be guaranteed the result they have accomplished through the Settlement. As a result, the Court should find the Settlement satisfies this factor.

iii. Defendants can fund the settlement

Neither party has reason to believe that Camping World cannot fund the Settlement, nor did that issue arise during mediation. As a result, the Court should find that Defendants ability to pay is not at issue here.

iv. The case's risks and complexity favor settlement

The risks in establishing Camping World's liability and the Settlement Class's losses favor settlement. As with all data breach cases, this is a "complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare." *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019). Rejecting

settlement now would not benefit the class, as litigating the case "would be a time consuming and expensive process that would delay relief for class members." *Id*.

Thus, the risks here favor settlement. As previewed by Camping World when opposing Plaintiffs' complaints, Camping World will attack Plaintiffs' case by arguing they cannot prove the breach harmed them or other class members. If litigation were to proceed, certifying the class and winning a jury verdict is far from certain. *See, e.g., In re TD Ameritrade Acct. Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, at *5 (N.D. Cal. Sept. 13, 2011); *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. at 397 (refusing to certify a data breach class on "causation" grounds); S*tollenwerk v. TriWest Healthcare All.*, No. CV–03–0185–PHX–SRB, Slip Op. at 5–6 (D. Ariz. June 10, 2008) ("individualized issues" on "causation" may stop a court from certifying a data breach class). In fact, litigating Plaintiffs' claims may shrink the class size, eliminate the benefits available to it, or reveal obstacles to certifying it.

To Class Counsel's knowledge, "no data breach case has gone to trial." Max Meglio, Note, *Embracing Insecurity: Harm Reduction Through a No-Fault Approach to Consumer Data Breach Litigation*, 61 B.C. L. REV. 1223, 1235 (2020). As a result, trying this case would raise the risk that Plaintiffs could lose all claims. In sum, the Settlement Class will not benefit if the Court declines to certify the Class, reduces its size, or finds they cannot prove their claims. The Settlement not only avoids those risks but affords the 35,000 Settlement Class Members relief now rather than years later. As a result, the Court should find this factor favors settlement.

v. <u>There was no collusion between the Parties</u>

As Plaintiffs describe above, Parties engaged in hard fought arm's length negotiations and mediated the Settlement with a third-party mediator. *Fauley*, 2016 Ill. App. (2d) 150236, ¶21 (finding no collusion when there was "no evidence that the proposed settlement was not the

product of 'good faith, arm's-length negotiations'"). There is otherwise no evidence that the parties colluded to deliver the class this settlement.

vi. Class members have not objected to the settlement

To date, no Settlement Class Members have objected to the Settlement. While this factor is better addressed after the Settlement Administrator notifies Settlement Class Members about the Settlement, Plaintiffs anticipate the class will welcome its benefits given the relief they offer.

vii. Counsel supports settlement

As Class Counsel describe in their declaration supporting this motion, they believe this settlement achieves the result they pursued when they sued Camping World, secured after "hard bargaining" with an accomplished mediator. *Korshak*, 206 Ill. App. 3d 968 (approving settlement considering "competent counsel's" recommendation after "hard bargaining" between the parties); *See generally* Dec. That bargaining resulted from Class Counsel's experience, as they knew what terms to emphasize and how to structure the Settlement. *See GMAC*, 236 Ill. App. 3d at 497 (courts should consider class counsel's experience when approving settlements). Indeed, the parties would not have achieved this result without class counsel insisting on a "common fund" settlement ensuring payment to all class members. As a result, the Court should find this factor favors approving the Settlement.

viii. The settlement's result favors settlement at this stage

Although the Parties have not litigated their cases past the pleading stage, the result favors settlement given the Settlement's strength. To meet this factor, settling parties need only enough information to "evaluate the merits of the case and assess the reasonableness of the settlement." *Korshak*, 206 Ill. App. 3d 968. Under that standard, parties can settle cases even without "formal" discovery: "[a]lthough the settlement was reached at an early stage of litigation, Class Counsel

conducted voluminous confirmatory discovery between the initial signing of the Settlement Agreement and Plaintiffs' motion for preliminary approval." *In re Tiktok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 938 (N.D. Ill. 2022). Here, the Parties exchanged information on how the breach impacted the class, who it impacted, and how the parties may identify them—thus satisfying this prong.

As a result, the Court should find Plaintiffs have met this factor.

C. The Court Should Approve the Class Notice

The Parties have simplified their process for notifying the Settlement Class because Settlement Class Members need not respond to receive the benefits from the Settlement. The Notice Program provided in this matter exceeds the standard under 735 ILCS 5/2-803, as it does not even require notice. *See, e.g., Cavoto v. Chi. Nat'l League Ball Club, Inc.*, No. 1–03–3749, 2006 WL 2291181, at *15 (1st Dist. July 28, 2006) ("section 2-803 makes it clear that the statutory requirement of notice is not mandatory"). Though the parties must notify any "absent" class members to satisfy due process concerns. *Frank v. Tchrs. Ins. & Annuity Assoc. of Am.*, 71 Ill.2d 583, 593 (1978)); see also Fed. R. Civ. P. 23(d)(2) (advisory committee note) ("mandatory notice . . . is designed to fulfill requirements of due process to which the class action procedure is of course subject"). As the United States Supreme Court explains, due process requires only that the notice be the "best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections'" as well as "'describe the action and the plaintiffs' rights in it.'" *Fauley*, 2016 Ill. App. (2d) 150236, ¶36 (citing *Phillips Petroleum Co. v. Shuts*, 472 U.S. 797, 812 (1985)).

The Notice Program in this matter is "reasonably calculated" to reach all Class Members because Defendants collected Class Members' contact information in the ordinary course of their

business. Camping World will provide that data to the Settlement Administrator, who will notify Settlement Class Members by mail using the form attached to the Settlement Agreement as Exhibit 1. After the entry of the Preliminary Approval Order the Settlement Administrator will mail activation codes for the Credit Monitoring Benefit and checks to those same addresses, using "reasonable" efforts to update the addresses if a class member does not cash their check. The Notice Program was designed to ensure class members have every opportunity to benefit from the settlement.

As a result, the Court should approve the Notice Program and the Proposed Notice attached as Exhibit 1 to the Settlement Agreement filed as **Exhibit A** to this brief and find they satisfy 735 ILCS 5/2-803.

D. The Court Should Certify the Class for Settlement Purposes

The Court should certify the class for settlement purposes for four reasons. Before the Court can preliminarily approve a settlement, it must certify the class. NEWBERG §11.22. ("The validity of use of a temporary settlement class is not usually questioned"); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); See also MANUAL FOR COMPLEX LITIGATION (FOURTH) §21.612 ("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").

The Court should certify this class, for settlement purposes only, for four reasons. First, the class is too "numerous" to litigate their claims through joinder. Second, the class's claims involve the same facts and legal theories. Third, Plaintiffs and Class Counsel have and will continue to "adequately" represent the class. And fourth, a class action "is an appropriate method for the fair and efficient adjudication of the controversy. *See* 735 ILCS 5/2-801; *see also CE Design Ltd. v. C & T Pizza, Inc.*, 2015 Ill. App. (1st Dist.) 131465, ¶10.

i. Numerosity

Numerosity is met where "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). Although "there is no bright-line test for numerosity, a class of forty is generally sufficient." *Hinman v. M & M Rental Ctr., Inc.*, 545 F. Supp. 2d 802, 805-6 (N.D. Ill. 2008); *Kulins v. Malco, A Microdot Co., Inc.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (finding 47 class members satisfied this factor). The class here consists of approximately 35,000 Settlement Class Members, a number that well exceeds the standards set by § 5/2-801(1). Compl. ¶65. Indeed, joining so many plaintiffs in one case would be "impracticable."

As a result, the Court should find the class satisfies this factor.

ii. Commonality

Next, Plaintiffs have established "commonality" among themselves because there are "questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). "Common" questions exist when class members allege a defendant's misconduct aggrieves them in the same way. *See, e.g., Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673-74 (2nd Dist. 2006); *Steinberg v. Chi. Med. Sch.*, 69 Ill. 2d 320, 340-42 (1977); *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). Indeed, when "the defendant allegedly acted wrongfully in the same basic manner as to an entire class . . . the common class questions predominate the case[.]" *Walczak*, 365 Ill. App. 3d at 674 (internal citations omitted).

That is the case here. Plaintiffs and Settlement Class Members' claims arose from the Data Security Incident, involved the same type of PII, and exposed them all to the same harm. Although the specific PII disclosed in the Data Security Incident may vary from one Settlement Class

Member to the next, "common" questions central to the success of any one Class Member's claims predominate. As a result, the Court should find "commonality" among the class.

iii. Adequacy

Plaintiffs meet this prong because they "will fairly and adequately protect the interests of the class." 735 ILCS 5/2-801(3). Plaintiffs align themselves with the Settlement Class because they seek the same benefits. Whether the Court approves Plaintiffs' "service award" will not impact the Class's recovery, and Plaintiffs did not pursue their claims on behalf of the Settlement Class contingent on the recovery of any Service Award. Agreement § L.1. ("[If] the Court declines to approve, in whole or in part, the Service Award Payment in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect."). Plaintiffs' counsel are "qualified, experienced and generally able to conduct the proposed litigation." *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). Indeed, the Court need only review Counsel's declaration and their history with data breach cases to recognize they have experience with cases like this. *See generally* Dec. Thus, Plaintiffs and their attorneys fulfill "[t]he purpose of the adequate representation requirement" because they will ensure class members receive "proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Walczak*, 365 Ill. App. 3d at 678.

As a result, the Court should find that Plaintiffs and their counsel are "adequate."

iv. Efficiency

Last, the Court should certify the Settlement Class because a class action is the "appropriate method for the fair and efficient adjudication of the controversy." ILCS 5/2-801(4). Courts consider two facts when applying this prong; whether a class action "can best secure the economies of time, effort and expense, and promote uniformity[,]" and whether it will "accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon v. Boden*, 224 Ill. App. 3d

195, 203 (1st Dist. 1991). In practice, a "holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled." *Id*. at 204; *Purcell & Wardrope Chtd.*, 175 Ill. App. 3d at 1079 (stating that the "predominance of common issues [may] make a class action . . . a fair and efficient method to resolve the dispute"). Thus, the fact that numerosity, commonality and predominance, and adequacy of representation have all been established makes it "evident" that Plaintiffs have established this prong.

Indeed, this class action is "superior" to any other method for resolving Plaintiffs' and Settlement Class Members' claims. Were the Court to decline to certify the class, those affected by the Data Security Incident would need to litigate their own claims, if they chose to at all given the uncertainty they would face and the recovery they may receive. Under the class device and the Settlement, the class will receive the Credit Monitoring Benefit and cash payments without needing to submit a claim—streamlining their recovery. If they have damages exceeding that recovery, they may opt out from the settlement and pursue their own claim. As a result, certifying the class is the "efficient" method for resolving this matter.

CONCLUSION

For the reasons above, Plaintiffs request that the Court enter the Amended proposed Preliminary Approval Order, thus (i) approving the Settlement as "within the range of possible final approval;" (ii) certifying the class for settlement purposes; (iii) appointing Plaintiffs as Class Representatives and their attorneys as class counsel; (iv) approving the proposed Notice program; and (v) scheduling a Final Approval Hearing.

Dated: December 4, 2023

Respectfully submitted,

s/ Gary M. Klinger

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2023, a true and correct copy of the foregoing was electronically filed via the Court's approved electronic filing service provider, which will automatically serve and send notification of such filing to all parties who have appeared.

s/ Gary M. Klinger
Gary M. Klinger