IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JENNIE CORONA-CANTU, individually and on behalf of all others similarly situated, Plaintiff, v. INGO MONEY INC., Defendant.	Case No. 1:24-cv-03023 Judge Mark H. Cohen

PLAINTIFF'S AMENDED UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

Pursuant to Federal Rule of Civil Procedure Rule 23(e), and subject to Court approval, Plaintiff Jennie Corona-Cantu ("Plaintiff"), individually and on behalf of all others similarly situated, respectfully moves the Court for preliminary approval of the proposed settlement of this class action under Rule 23 of the Federal Rules of Civil Procedure. Unless otherwise indicated, all capitalized terms in Plaintiff's Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement have the same meaning as those in the Settlement Agreement, which is attached as **Exhibit 1** to the *Joint Declaration in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement* (the "Joint Decl.") being submitted in support of Plaintiff's Unopposed Motion. Plaintiff hereby moves this Court for an order pursuant to Rule 23(e) of the Federal Rules of Civil Procedure:

(1) Preliminarily approving the proposed class action settlement with Defendant Ingo Money, Inc.,

(2) Certifying the Settlement Class;

(3) Appointing Settlement Class Representative and Settlement Class Counsel;

(4) Approving Class Notice;

(5) Scheduling a date for the Final Approval Hearing; and

(6) for such other and further relief as the Court deems just and proper.

In support of this motion, Plaintiff concurrently submits her Memorandum of Law In Support of Plaintiff's Unopposed Motion, the Joint Declaration of Settlement Class Counsel and its exhibits, and a Proposed Order for Preliminary Approval of the Proposed Settlement. For the reasons set forth in the supporting Memorandum of Law, Plaintiff respectfully requests this Court grant her Motion for Preliminary Approval of Class Action Settlement.

Respectfully submitted this 17th day of December, 2024.

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Proposed Settlement Class Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE AND
LOCAL RULE 7.1(D) CERTIFICATION

I hereby certify that on December 17, 2024, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing and effectuate service to all counsel of record in this matter, pursuant to Local Rule 5.1.

I further certify that this Motion has been prepared with one of the fonts and point selections approved by the Court in Local Rule 5.1(C).

/s/ *MaryBeth V. Gibson*
MaryBeth V. Gibson

Settlement Class Counsel

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

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I. BACKGROUND

A. History of Litigation

This case arises from a data security incident announced by Ingo Money in June 2024 to have impacted approximately 29,472 individuals in the United States (the "Data Incident"), including Plaintiff and putative Class Members. *See* Doc. 1, Class Action Complaint (the "Complaint") at ¶1. The Data Incident ultimately culminated in Plaintiff filing a class action lawsuit on July 8, 2024 in which she asserted claims for negligence, negligence *per se*, breach of implied contract, violation of the California Consumer Protection Act, unjust enrichment, breach of third-party beneficiary contract, declaratory judgment and attorneys' fees, costs, and expenses pursuant to O.C.G.A. Section 13-6-11. Doc. 1.

Following several extensive discussions regarding the potential merits of the claims asserted in the Complaint and the Parties' interest in exploring an early resolution, Plaintiff filed a *Notice of Mediation* on October 1, 2024 (Doc. 11) informing the Court of a November 5, 2024, mediation with experienced data breach mediator, Steven Jaffe.

Prior to the mediation session, Plaintiff and Defendant Ingo Money (herein the "Parties") exchanged informal discovery and mediation statements, allowing them to fully understand the strengths of each other's claims and defenses, as well as the full impact of the Data Incident and circumstances surrounding it.

B. Negotiations and Settlement

The settlement is the result of back-and-forth, often adversarial arm's-length negotiations and hard bargaining. *See* Joint Declaration of Tyler J. Bean and MaryBeth V. Gibson submitted herewith ("Joint Decl."), ¶ 12. The Parties exchanged written informal discovery, including, but not limited to, information about the allegations in the Complaint, the class size, the types of data impacted in the Data Incident, certain remedial measures implemented by Defendant following the Data Incident, and information supporting Plaintiff's damages allegations. *Id.* ¶ 9. Through the informal discovery process, Plaintiff and Settlement Class Counsel were able to properly evaluate damages on a class-wide basis. *Id.* The Parties engaged in extensive settlement discussions that included a full-day mediation session with Steven Jaffe, Esq. *Id.*, ¶ 10. After extensive negotiations during the mediation session, the Parties agreed to the terms of the settlement, which were then negotiated and culminated in the Settlement Agreement. *Id.* Plaintiff and Settlement Class Counsel strongly believe that the settlement is fair, reasonable, and adequate, and represents an excellent result for the Settlement Class.

C. Summary of Settlement Terms

The settlement creates numerous benefits for the Settlement Class, which benefits are designed to address the repercussions to consumers following a data

security incident of the type that occurred here. The Settlement defines the Settlement Class as follows:

> All individuals in the United States who received notice of the Data Incident from Ingo Money, either through letter or email, in or around late June, early July, and early August of 2024. The Settlement Class specifically excludes: (i) Ingo Money and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads nolo contendere to any such charge.

S.A. ¶ 1.32. The Settlement Class is comprised of approximately twenty-nine thousand four hundred and seventy-two (29,472) individuals nationwide. Joint Decl., ¶ 5; S.A. § I. Under the proposed Settlement, Ingo Money's and/or its insurers agree to pay a total of $1,178,880 into a non-reversionary Settlement Fund, which will be used to fund the costs and expenses of Settlement Administration, make payments to Settlement Class Members, and pay the Fee Award and Expenses and Service Award to Class Representative, if such requests are granted. S.A. ¶ 2.1(e).

1. Settlement Benefits

a. Documented Loss Payment

Settlement Class Members may submit a claim for reimbursement of up to $5,000 in the form of a Documented Loss Payment. To receive a Documented Loss

Payment, a Settlement Class Member must choose to do so on their given Claim Form and submit the following to the Settlement Administrator: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss; and (iii) reasonable documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the settlement. S.A. ¶ 2.2(b).

b. Credit Monitoring and Insurance Services

Each Settlement Class Member who submits a valid and timely Claim Form may elect to receive three (3) years of Credit Monitoring and Insurance Services ("CMIS") regardless of whether they also make a claim for another Settlement Payment. The CMIS will have an enrollment period of twelve (12) months after the enrollment codes are sent to Class Members claiming this benefit. The CMIS will include the following services: (i) up to $1 million dollars of identity theft insurance coverage; (ii) three bureau credit monitoring providing notice of changes to the Settlement Class Members' credit profile; (iii) alerts for activity including new inquiries, new accounts created, change of address requests, changes to public records, postings of potentially negative information, and other leading indicators of identity theft; (iv) customer care and dedicated fraud resolution agent; (v) comprehensive educational resources; and (vi) extended fraud resolution. S.A. ¶ 2.3.

c. *Pro rata* Cash Payment

Each Settlement Class Member will also be able to elect to receive a *pro rata* cash payment from the Settlement Fund, which will be funded based on the number of Valid Claims and the amount left in the Settlement Fund after the payment of Documented Losses, the costs and expenses of Settlement Administration, and the Fee Award and Expenses and Plaintiff Service Award, if approved by the Court. S.A. ¶¶ 2.2(a), 2.4(b) (the "Post Loss Payment Net Settlement Fund"). The amount of each Cash Award payment shall be calculated by dividing the Post Loss Payment Net Settlement Fund by the total number of valid and timely Claim Forms submitted by Settlement Class Members who elected a Cash Award. ¶2.4(b). Settlement Class Members may elect to receive a cash payment by submitting a Claim Form emailed or mailed to them or available on the Settlement Website. *Id.*

d. Service Award

Plaintiff will move separately for a Service Award not to exceed $2,500.00 to be paid from the Settlement Fund. S.A. ¶ 7.4.

e. Business Practices Commitments

Plaintiff has received assurances that Ingo Money has implemented and will implement exceptional steps to adequately secure its systems and environments presently and in the future, with such steps costing Ingo Money a total of $350,000.00. None of these past or future costs associated with the development and implementation of these enhanced security procedures has been or will be paid by

Plaintiff and no portion of the $1,178,880 Settlement Fund is to be used for this purpose. S.A. ¶ 2.5. With the addition of the cost of these enhanced security measures to the dollar amount of the Settlement Fund, the overall Settlement Value is $1,528,880.00.

2. Scope of the Release

In exchange for the consideration above, Settlement Class Members who do not timely, and validly, exclude themselves from the settlement will be deemed to have released Defendant and certain related entities from claims arising from or related to the Data Incident at issue in this Litigation. S.A. ¶ 6. The scope of the release is defined as follows:

> Upon the Effective Date, and in consideration of the settlement benefits described herein, each Settlement Class Member, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

S.A. ¶ 6.1. The Released Claims also include the release of Unknown Claims. S.A. ¶ 1.44.

3. The Notice and Settlement Administration Plans

Under the Settlement Agreement, Settlement Class Counsel, with Defendant's

approval, has selected Angeion Group, LLC ("Angeion") to be the Settlement Administrator, who will provide the Settlement Class with notice and administer the claims. The Settlement Administrator shall create a "class list" of all available names and email addresses and home addresses of potential Settlement Class Members as set forth in the Settlement Agreement. S.A. ¶ 3.3(a); *see also* Declaration of Angeion Group, LLC ("Angeion Decl."), ¶21 (**Exhibit 4 to the Joint Declaration**). Settlement Class Counsel's decision to select Angeion was based on the scope of settlement administration services Angeion proposed balanced against the cost for such services. Joint Decl., ¶¶ 23-24. Class Counsel understands that any settlement administration costs and expenses will be deducted from the Settlement Fund agreed to in the settlement and endeavored to select the Settlement Administrator for this case offering the best service for the best price. S.A. ¶ 3.3.

Angeion will first provide a written notice that will be emailed to each Settlement Class Member for whom valid emailing addresses are known. S.A. ¶ 3.3(c). The Short Form Notice will clearly and concisely inform Settlement Class Members of the amount of the Settlement Fund, that they may do nothing and be bound by the settlement, object to the settlement, exclude themselves and not be bound by the settlement, or make a claim by completing and submitting a claim form and be bound by the settlement. *Id*. Angeion will publish a Long Notice and Claim Form on the Settlement Website, which shall contain information about the

settlement, including copies of the Short Notice, Settlement Agreement, and all court documents related to the settlement, and allow Settlement Class Members to make claims online via the Settlement Website. *Id.* ¶ 3.3(b). The notice plan shall commence within thirty (30) days after entry of the Preliminary Approval Order and shall be substantially completed within forty-five (45) days after entry of the Preliminary Approval Order. *Id.* ¶ 3.4. Angeion will also be responsible for accounting for all the claims made and exclusions requested, determining eligibility, and disbursing funds from the Settlement Fund directly to Settlement Class Members. *Id.* ¶ 8.

4. Attorneys' Fees and Expenses

The Fee Award and Expenses will be paid from the Settlement Fund. Settlement Class Counsel will separately seek an award of attorneys' fees, costs and expenses of up to 33% of the total value of the gross Settlement Fund ($509,117.04) (together, the aforementioned "Fee Award and Expenses"). S.A. ¶¶ 7.1 The Fee Award and Expenses application will be filed no later than fifteen days before Objection and Opt-Out Deadlines. *Id.*

II. LEGAL STANDARD

Under Fed. R. Civ. P. 23(e), a class action may be settled only with court approval, which requires the court to find the settlement "fair, reasonable, and adequate". *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247,

1273 (11th Cir. 2021). Fed. R. Civ. P. 23(e) provides three steps for the approval of a proposed class action settlement: (1) the Court must preliminarily approve the proposed settlement; (2) members of the class must be given notice of the proposed settlement; and (3) a fairness hearing must be held, after which the court must determine whether the proposed settlement is fair, reasonable, and adequate. *See generally* Fed. R. Civ. P. 23(e). Courts in this Circuit have held that first the Court must conduct a preliminary review to determine whether the proposed class settlement "is within the range of possible approval." *Fresco v. Auto Data Direct, Inc.*, No. 03–61063–CIV, 2007 U.S. Dist. LEXIS 37863, at *12 (S.D. Fla. May 11, 2007) (internal citations omitted); *see also* MANUAL FOR COMPLEX LITIGATION (Third) § 30.41 (1995). This involves both preliminary certification of the class and an initial assessment of the proposed settlement. *Id.* Plaintiff requests that the Court preliminarily approve the proposed Settlement, which is the first step in approving a class action settlement in accordance with Fed. R. Civ. P. 23(e).

During the preliminary approval proceedings, "the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval." ANNOTATED MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.662 (2012). There is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir.

1992). Generally, a large amount of discretion is afforded to courts in approving class action settlements, and the Eleventh Circuit has held the "degree of deference to a decision approving a class action settlement makes sense . . . [s]ettlements resolve differences and bring parties together for a common resolution." *In re Equifax*, 999 F.3d at 1273 (internal citations omitted).

III. ARGUMENT

A. Certification of the Settlement Class is Appropriate.

The Supreme Court has recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). For a court to certify a class, a plaintiff must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). The four requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23(a). Here, Plaintiff seeks certification of the Settlement Class under Rule 23(b)(3), which provides that certification is appropriate when common question of law or fact for her claims predominate over any individual issues, as well as a showing that the class action mechanism is the superior method efficiently handling the case. Fed. R. Civ. P. 23(b)(3). As discussed below, these requirements are met here for settlement purposes.

1. Numerosity

The numerosity requirement under Rule 23(a)(1) is satisfied where the class is so numerous that joinder of all class members is impracticable. Fed. R. Civ. P. 23(a)(1). "There is no specific number below which class action relief is automatically precluded . . . [t]o demonstrate numerosity, "plaintiffs need not prove that joinder is impossible; rather, plaintiffs 'need only show that it would be extremely difficult or inconvenient to join all members of the class.'" *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 557 (N.D. Ga. July 20, 2007), quoting *Anderson v. Garner*, 22 F. Supp. 2d 1379, 1384 (N.D. Ga. 1997). Here, the joinder of 29,472 Settlement Class Members would certainly be impracticable, and thus, the numerosity element is satisfied.

2. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The Supreme Court has stated that Rule 23(a)(2)'s commonality requirement is satisfied where the plaintiff asserts claims that "depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

The claims turn on whether Ingo Money's data security environment was adequate to protect Settlement Class Members' personal information. Resolution of that inquiry revolves around evidence that does not vary from Settlement Class Member to Settlement Class Member, and for purposes of settlement can be fairly resolved for all Settlement Class Members at once. Courts in this District have previously addressed this requirement in the context of cybersecurity incident class actions and found it satisfied. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 U.S. Dist. LEXIS 118209 at *175 (N.D. Ga. Mar. 17, 2020), citing *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 U.S. Dist. LEXIS 2000113, at *4 (N.D. Ga. Aug. 23, 2016) (finding that multiple common issues center on the defendant's conduct, satisfying the commonality requirement).

3. Typicality

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. In the *Equifax* MDL, Judge Thrash found that the typicality requirement had been met as "[t]he claims are also based on the same overarching legal theory that [Defendant] failed in its common-law duty to protect their personal information." *In re Equifax Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT, 2020 U.S. Dist. LEXIS 118209, at *181 (N.D. Ga. March 17, 2020).

Here, the claims and defenses at issue all involve Ingo Money's conduct related to its collection, storage, and eventual unauthorized disclosure, through the Data Incident, of the Settlement Class Members' PII; thus, Plaintiff's and Class Members' claims are based on the same legal theories and, for purposes of settlement, Plaintiff's claims are typical of the claims (and defenses) applicable to the Settlement Class. Indeed, for purposes of settlement, Plaintiff is an appropriate Settlement Class Representative.

4. Adequacy of Representation

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). For this analysis, courts consider: "(1) whether [the class representatives] have interests antagonistic to the interests of other class members; and (2) whether the proposed class counsel has the necessary qualifications and experience to lead the litigation." *Columbus Drywall*, 258 F.R.D. at 555. Rule 23(a)(4) "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem*, 521 U.S. at 594.

For purpose of settlement, Plaintiff has no conflicts with the Settlement Class and has participated actively in the case, including assisting in investigation, reviewing pleadings, answering all of Settlement Class Counsel's questions, and reviewed and agreed to the terms of the Settlement Agreement. Joint Decl., ¶ 33.

Moreover, Class Counsel have significant experience in handling data privacy class actions like this one, as set forth in the firm resumes attached as Exhibits 2 and 3 in the Joint Decl. being submitted herewith. *Id.*, at ¶ ¶ 40,42.

5. Certification under Rule 23(b)(3) is appropriate.

Plaintiff seeks to certify a Class under Rule 23(b)(3), which has two components: predominance and superiority. Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *In re Equifax*, 999 F.3d at 1275. When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Pro. 23(b)(3)(D), for the proposal is that there be no trial.").

a. Common Questions of Law and Fact Predominate.

For purpose of settlement, the common factual and legal questions all cut to the issues at the heart of this Litigation. *See Klay v. Humana, Inc*., 382 F.2d 1241, 1264 (2004) ("When there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to

examine each class member's individual position, the predominance test will be met."). The issues raised in this Litigation include, but are not limited to: (i) whether Ingo Money engaged in the conduct alleged in the complaint; (ii) whether Ingo Money's conduct violated state law; (iii) when Ingo Money learned of the Data Incident; (iv) whether Ingo Money's response to the Data Incident was adequate; (v) whether Ingo Money unlawfully lost or disclosed Plaintiff's and Class Members' information; (vi) whether Ingo Money failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the Data Incident; and (vii) whether Ingo Money had a duty to protect the information of Plaintiff and class members. Because the class-wide determination of these issues will be the same for everyone and will determine whether any class member has a right of recovery, the predominance requirement is readily satisfied for purposes of this settlement.

b. A Class is the Superior Method of Adjudicating this Case.

The second prong of Rule 23(b)(3)—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy—is also readily satisfied for the purpose of this settlement. *See* Fed. R. Civ. P. 23(b)(3). A superiority analysis pursuant to Rule 23(b)(3) involves an examination of "the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Sacred Heart Health Sys., Inc. v.*

Humana Military Healthcare Servs., Inc., 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). The focus is on the efficiency of the class method. *In re Equifax*, 2020 U.S. Dist. LEXIS 118209 at *225. The Agreement provides Settlement Class Members with certain relief and contains well-defined administrative procedures to ensure due process. This includes the right of any Settlement Class Member to object to, or to request exclusion from, the settlement. Moreover, there is no indication that Settlement Class Members have an interest in individual litigation or an incentive to pursue their claims individually, especially given the amount of damages likely to be recovered relative to the resources required to prosecute such an action. *See Dickens v. GC Servs. Ltd. P'ship*, 706 F. App'x 529, 538 (11th Cir. 2017) (describing "the ways in which the high likelihood of a low per-class-member recovery militates in favor of class adjudication").

Adjudicating individual actions here is impracticable: the amount in dispute for individual class members is too small, the technical issues involved are too complex, and the required expert testimony and document review too costly. In no case are the individual amounts at issue sufficient to allow anyone to file and prosecute an individual lawsuit—at least not with the aid of competent counsel. Instead, the individual prosecution of Settlement Class Members' claims would be prohibitively expensive, and, if filed, would needlessly delay resolution and lead to inconsistent rulings. Because this Litigation is being settled on a class-wide basis,

such theoretical inefficiencies are resolved, and the Court need not consider further issues of manageability relating to trial. *See Amchem*, 521 U.S. at 620 ("[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there will be no trial").

Thus, the Court may certify the Settlement Class for settlement under Rule 23(b)(3).

B. The Proposed Settlement Satisfies the Standard for Preliminary Approval.

After it has been determined that certification of the Settlement Class is appropriate, the Court must then determine whether the Settlement Agreement is worthy of preliminary approval of providing notice to the class. Courts in this Circuit have held that preliminary approval is appropriate "where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason." *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. 654, 661 (S.D. Fla. 2011) (internal quotations omitted). Other courts have looked to the *Bennett* factors to determine whether preliminary approval is appropriate. The *Bennett* factors include,

> (1) the likelihood of success at trial; (2) the range of possible recoveries; (3) the point on or below the range of possible recoveries at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and degree of opposition to

the settlement; and (6) the stage of the proceedings at which the settlement was achieved.

Columbus Drywall, 258 F.R.D. at 557, quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The settlement warrants preliminary approval under each approach.

1. The proposed Settlement was reached after serious, informed, and arm's-length negotiations.

First, arm's-length negotiations conducted by competent counsel with the assistance of a third-party mediator support finding that the settlement is fair. *See Cole v. Stateserv Med. of Fla., LLC*, No. 8:17-cv-829, 2018 U.S. Dist. LEXIS 217074 at *5 (M.D. Fla. June 19, 2018). Here, the settlement was the result of intensive, arm's-length negotiations between attorneys with vast experience handling data breach class action cases under the guidance of an experienced mediator through a full day mediation and numerous additional discussions culminating in the Settlement Agreement. Joint Decl., ¶ 10. There is no evidence that any collusion or illegality existed during settlement negotiations. *Id.*, ¶ 10. Settlement Class Counsel support the settlement as fair and reasonable and certify that it was reached at arm's-length. *Id.* ¶ 37.

2. The proposed Settlement falls within the range of reasonableness and has no obvious deficiencies, and thus, warrants issuance of notice and a hearing on final approval of

settlement.

Although Plaintiff believes that the claims asserted in the Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the Settlement Class uncertain. The settlement's fairness is underscored by consideration of the obstacles that the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. Despite the risks involved with further litigation, the Settlement Agreement provides outstanding benefits for Settlement Class Members. Moreover, there are no grounds to doubt the fairness of the settlement or other obvious deficiencies, such as unduly preferred treatment of Plaintiff or excessive attorney compensation. Plaintiff, like all other Settlement Class Members, will receive her settlement benefits consistent with the Settlement Agreement.

3. The *Bennett* factors support preliminary approval.

Although typically a consideration at the final approval stage, here, the *Bennett* factors still point in favor of preliminary approval. *First*, the benefits of settlement outweigh the risk of trial. Here, Settlement Class Members can elect a *pro rata* cash payment or alternatively receive a payment of up to $5,000 for documented losses, as well as credit monitoring and insurance services. Settlement Class Members will also receive the benefit of business remedial measures

implemented by Ingo Money, currently valued at $350,000. As Judge Thrash noted when approving the *Equifax* settlement, "[Defendant] would likely renew its arguments under Georgia law that it has no legal duty to safeguard personal information, arguments that were strengthened following the Supreme Court of Georgia's decisions in *Georgia Dep't of Labor v. McConnell*, 305 Ga. 812, 828 S.E.2d 352 (Ga. 2019)." *In re Equifax*, 2020 WL 256132, at *7. Here, Defendant would likely assert the same argument and, although Plaintiff believes she has strong arguments to counter these potential arguments, the settlement's benefits outweigh the risk of trial.

Second and *third*, the settlement is within the range of possible recoveries and is fair, adequate, and reasonable. The second and third *Bennett* factors are often considered together. *See Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 LEXIS U.S. Dist. 189397, at *15 (S.D. Fla. Oct. 7, 2013) (citing *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534 (S.D. Fla. 1988)). In determining whether a settlement is fair and reasonable, the court must also examine the range of possible damages that Plaintiff could recover at trial and combine this with an analysis of Plaintiff's likely success at trial to determine if the settlement falls within the range of fair recoveries. *Columbus Drywall*, 258 F.R.D. at 559. Here, Settlement Class Members have the ability to claim a *pro rata* cash payment, or, in the alternative,

documented loss payments of up to $5,000, along with credit monitoring and insurance services.

Fourth, continued litigation would be lengthy and expensive. As discussed in the first prong of the *Bennett* factors, data breach litigation is often difficult and complex, particularly in Georgia. A settlement here is beneficial to all parties, including the Court. *Woodward v. NOR–AM Chem. Co.*, No. Civ-94-0870, 1996 U.S. Dist. LEXIS 7372, at *62 (S.D. Ala. May 23, 1996) ("Complex litigation . . . 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'"), quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d at 493.

Fifth, whether there has been opposition to the settlement is, for obvious reasons, better considered after notice has been provided to Settlement Class Members and they are given the opportunity to object. *See Columbus Drywall*, 258 F.R.D. at 561. Thus, at this point, this factor is neutral in the analysis.

Sixth, despite resolving at an early stage, Plaintiff has sufficient information to evaluate the merits and negotiate a fair, adequate and reasonable settlement. Courts have approved settlements at early stages of the litigation. *See, e.g., Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977) (affirming approval of settlement with little discovery); *see also Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (holding that early settlements are to be encouraged, and

accordingly, only some reasonable amount of discovery is required to determine the fairness of the settlement). This Action has been thoroughly investigated by Settlement Class Counsel experienced in data breach litigation. Joint Decl.., ¶¶ 6-7, 38-41. Moreover, Settlement Class Counsel's exchange of informal discovery with Ingo Money has ensured a fair, reasonable, and adequate settlement worthy of preliminary approval. *Id.* ¶¶ 9, 37.

Accordingly, the Court should find that the proposed settlement is fair, reasonable, and adequately protects the interests of the proposed Class.

C. The Court Should Appoint the Proposed Class Representative, Settlement Class Counsel, and Settlement Administrator.

Plaintiff seeks to be appointed as Class Representative for the Class. As discussed above, Plaintiff has cooperated with Settlement Class Counsel, assisted in the preparation of the Complaint and other documents related to the Litigation, provided informal discovery, and was available for discussion regarding resolution of the case. Moreover, Plaintiff is committed to continuing to vigorously prosecute this case, including overseeing the notice plan, and defending the Settlement Agreement against any objectors, all the way through eventual final approval. Because she is an adequate representative, the Court should appoint her as Class Representative. Second, for the reasons previously discussed with respect to adequacy of representation, the Court should designate Tyler Bean of Siri & Glimstad LLP and MaryBeth V. Gibson of Gibson Consumer Law Group, LLC as

Settlement Class Counsel.Finally, the Parties have agreed that Angeion Group shall act as Settlement Administrator. Angeion and its principals have a long history of successful settlement administrations in class actions. Angeion Decl., ¶¶ 9-12.

D. The Proposed Form and Manner of Notice to the Class is Reasonable and Should be Approved.

Under Rule 23(e), the Court must "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the "best notice practicable." Fed. R. Civ. P. 23(c)(2)(B). "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The best practicable notice is that which "is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The notice plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Parties negotiated the form of the notice with the aid of a professional notice provider, Angeion. The notice will be disseminated to all persons who fall within the definition of the Settlement Class. Ingo Money shall provide the Settlement Administrator with the names and last known email addresses and home addresses, where applicable, for the Settlement

Class Members. The Settlement Administrator shall provide email notice, and first-class mail notice for those who a valid email is not provided, which will ensure a maximum reach to all Class Members. In addition, Angeion will administer the Settlement Website and toll-free number providing important and up-to-date information about the settlement. Angeion Decl., at ¶¶ 29-31.

Moreover, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." The proposed notice plan satisfies the requirements of Rule 23(h)(1), as it notifies Settlement Class Members that Settlement Class Counsel will apply to the Court for an attorneys' fees, costs and expenses of up to 33% of the total value of the gross Settlement Fund ($509,117.04) (together, the aforementioned "Fee Award and Expenses"). The notice plan complies with Fed. R. Civ. P. 23 and due process because, among other things, it informs Settlement Class Members of: (1) the nature of the Litigation; (2) the essential terms of the settlement, including the definition of the Settlement Class, the claims asserted, and the benefits offered; (3) the binding effect of a judgment if the Settlement Class Member does not request exclusion; (4) the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that Settlement Class Members may make an appearance through counsel; (5) information regarding the payment of proposed Settlement

Class Counsel Fee Award and Expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Accordingly, the notice plan and notices are designed to be the best practicable under the circumstances, apprise Settlement Class Members of the pendency of the Litigation, and give them an opportunity to object or exclude themselves from the settlement. *See Agnone v. Camden Cnty.*, No. 2:14-cv-00024-LGW-BKE, 2019 LEXIS U.S. Dist. 50662, at *28 (S.D. Ga. Mar. 26, 2019) (finding class notice mailed directly to settlement class members was the best practicable and satisfied concerns of due process). Thus, the notice plan should be approved. Fed. R. Civ. P. 23(c)(2)(A).

E. The Court Should Approve a Settlement Schedule

Plaintiff requests that the Court set a settlement schedule that would include, *inter alia*, deadlines for (a) notice to Settlement Class Members; (b) Settlement Class Members to object to the settlement, to opt out of the settlement, and to make claims under the settlement; and (c) the filing of papers in support of final approval and in support of attorneys' fees and expenses and a service award. A proposed schedule is included in the proposed Preliminary Approval Order being submitted herewith and attached as Exhibit C to the Settlement Agreement. The Court will determine through the Final Approval Hearing whether the Settlement should be approved.

IV. CONCLUSION

For these reasons, Plaintiff and Settlement Class Counsel respectfully ask the Court to enter an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

Respectfully submitted this 17th day of December, 2024.

<u>/s/ MaryBeth V. Gibson</u>
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Proposed Settlement Class Counsel

CERTIFICATE OF SERVICE AND LOCAL RULE 7.1(D) CERTIFICATION

I hereby certify that on December 17, 2024, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing and effectuate service to all counsel of record in this matter, pursuant to Local Rule 5.1.

I further certify that this Motion has been prepared with one of the fonts and point selections approved by the Court in Local Rule 5.1(C).

/s/ *MaryBeth V. Gibson*
MaryBeth V. Gibson

Settlement Class Counsel