UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE USAA DATA SECURITY LITIGATION	No. 7:21-cv-05813-VB

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF VINCENT DOLAN'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION[1]

Plaintiff Vincent Dolan ("Plaintiff") moves under Rule 23(e) of the Federal Rules of Civil Procedure for preliminary approval of a $3,250,000 common fund settlement (the "Settlement") with Defendant United States Automobile Association ("USAA" or "Defendant").[2] The Settlement provides significant cash benefits to Settlement Class Members whose information was potentially exposed as a result of a third-party attack involving USAA's online insurance quotation system on or around May 6, 2021 (the "Data Incident"). It was achieved after extensive, hard-fought litigation and negotiations between the Parties, including mediation sessions supervised by respected mediator the Honorable Diane Welsh, U.S.M.J. (Ret.) of JAMS (the "Mediator").

As discussed below, the Settlement fully satisfies the requirements for preliminary approval. Accordingly, Plaintiff respectfully moves the Court to enter the order filed herewith ("Preliminary Approval Order") that: (i) preliminarily approves the Settlement; (ii) conditionally certifies the Settlement Class; (iii) appoints Plaintiff as class representative; (iv) appoints Class Counsel; (v) appoints Angeion Group LLC ("Angeion") as the Settlement Administrator; (vi) approves the proposed Notice Plan (*see* accompanying Declaration of Steven Weisbrot) and the proposed Short Form and Long Form Notices (SA, Exs. C, D); (vii) sets a schedule leading to the

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[1] USAA does not oppose the relief sought by this Motion for Preliminary Approval and agrees that the Court should grant preliminary approval and allow issuance of notice to the Settlement Class. By not opposing this relief, USAA does not concede the factual basis for any claim and denies liability. The language in this motion and Plaintiff's accompanying Joint Declaration, including the description of proceedings, as well as legal and factual arguments, is Plaintiff's, and USAA may disagree with certain of those characterizations and descriptions.

[2] Unless otherwise defined, capitalized terms have the same meaning as in the Stipulation and Agreement of Class Action Settlement ("Settlement Agreement" or "SA"), attached as Exhibit 1 to Joint Declaration of Thomas J. McKenna, Christian Levis, and Nicholas A. Colella (the "Joint Decl."). Unless otherwise noted, ECF citations are to the docket in this Action and internal citations and quotation marks are omitted.

Court's evaluation of whether to finally approve the Settlement; and (viii) stays all proceedings in the Action except those relating to the Settlement. *See* [Proposed] Preliminary Approval Order.

SUMMARY OF RELEVANT FACTUAL BACKGROUND[3]

I. THE LITIGATION

On or around May 6, 2021, USAA detected a third-party attack involving its online insurance quotation system. Joint Decl. ¶ 7. Plaintiff and Class Members received a letter notifying them of the Data Incident approximately one month later, on or around June 2, 2021. *Id.* ¶ 8. According to this letter, USAA "identified that information about [Plaintiff] was used to open a USAA membership in [Plaintiff's] name. Fraudsters likely obtained these elements of [Plaintiff's] personal information elsewhere and used it to gain unauthorized access to [Plaintiff's] driver's license number through the auto insurance quote process on our website." *Id.* ¶ 9.

On July 7, 2021, Plaintiff filed the first class action complaint against USAA, asserting claims arising out of the Data Incident. *Id.* ¶ 10. On August 11, 2021, Christine Mapes ("Mapes") filed the second class action complaint against USAA in the U.S. District Court for the Eastern District of New York, case number 7:21-cv-7853. *Id.* ¶ 12.[4] On September 30, 2021, Plaintiff and Mapes moved to consolidate their actions, which this Court granted on November 17, 2021. *Id.* ¶ 14. On January 31, 2022, Plaintiff and Mapes filed an Amended Consolidated Class Action Complaint (the "Amended Complaint"), which, among other things, asserts claims against USAA for negligence, negligence *per se*, violation of the New York General Business Law § 349,

[3] A more complete description of the Action is provided in the Joint Decl. ¶¶ 6–29.

[4] On August 31, 2021, Plaintiff Dolan and USAA jointly wrote to this Court informing it of Plaintiff Mapes' action, the intention of Mapes to transfer her action to this Court, and the intention of Dolan and Mapes to consolidate their actions. Joint Decl. ¶ 13.

violation of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §§ 2721, *et seq.*, and for declaratory and injunctive relief. *Id.* ¶ 16.

USAA moved to dismiss the Amended Complaint on February 18, 2022. *Id.* ¶ 17. After the motion was fully briefed, the Court granted in part and denied in part the motion on August 12, 2022. *Id.* ¶ 18; *see also In re USAA Data Sec. Litig.*, 621 F. Supp. 3d 454 (S.D.N.Y. 2022).[5] Following this decision, the Parties commenced discovery and propounded discovery requests, noticed depositions, and served third-party subpoenas. *Id.* ¶¶ 19, 23, 25-26.

Concurrently, the Parties engaged in settlement negotiations. On June 5, 2023, the Parties engaged in a full day in-person mediation with the Mediator. *Id.* ¶ 21. While the initial mediation was unsuccessful, the Parties made significant progress and continued their settlement discussions while they also conducted substantial discovery. *Id.* ¶¶ 22-23, 25-26. The Parties later agreed to engage in a second mediation, overseen by the Mediator via Zoom on August 15, 2024. The second mediation ended without the Parties reaching a settlement, but the Parties continued their negotiations through the Mediator over the ensuing weeks and were able to ultimately reach an agreement in principle to settle the Action on a class-wide basis on September 9, 2024. *Id.* ¶¶ 28-29.

Over the following weeks, Plaintiff and USAA negotiated the terms of the Settlement Agreement and executed it on December 6, 2024. *Id.* Plaintiff now seeks preliminary approval of that Settlement Agreement.

II. THE SETTLEMENT TERMS

This Settlement provides for a non-reversionary common fund of $3,250,000. SA ¶¶ 2.38, 3.1; Joint Decl. ¶ 4. The Settlement Fund is intended to compensate Settlement Class Members for

[5] Mapes voluntarily dismissed her claims on October 25, 2023. ECF No. 66.

the potential exposure of their Personal Information in the Data Incident. As the Settlement Class is readily identifiable, this Settlement does not require the submission of claim forms; instead, *all* Settlement Class Members who do not opt out of the Settlement will receive an equal share of the Net Settlement Fund, with the Plaintiff also receiving a service award. SA ¶¶ 3.2, 7.1, 7.2; Joint Decl. ¶¶ 34, 36. The Parties agree to the certification of the following Settlement Class:

> All individuals of the United States whose Personal Information was accessed, stolen, or compromised as a result of the Data Incident, as reflected on the Class List. The Settlement Class specifically excludes: (i) USAA, any Person in which USAA has a controlling interest, and USAA's officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual that timely and validly opts out of the Settlement.

See SA ¶ 2.39; Joint Decl. *Id.* ¶ 33.

Settlement Class Members will be asked to fill out a Settlement Payment Election form to confirm their contact information and indicate their preferred method to receive their Settlement Payment. SA ¶ 7.3; Joint Decl. ¶ 37. Any undistributed funds from the Net Settlement Fund that remain in the Settlement Fund Account after the initial distribution period is completed will be reallocated to Settlement Class Members who accepted their Settlement Payment so long as the reallocated *pro rata* share to each eligible Authorized Claimant is at least $5.00. SA ¶ 7.4.3; Joint Decl. ¶ 37. Any funds that cannot be reallocated will be distributed as a *cy pres* award to a public interest organization with a mission germane to the subject matter of this lawsuit as agreed upon by the Parties and approved by the Court, as necessary. SA ¶ 7.4.4.

ARGUMENT

I. THE SETTLEMENT IS LIKELY TO BE APPROVED UNDER RULE 23(e)(2)

A. The Preliminary Approval Standard

The Court may preliminarily approve and direct notice of the Settlement if it is likely that the Court, after a hearing, will find the Settlement satisfies Rule 23(e)(2) and the proposed Settlement Class may be certified. Fed. R. Civ. P. 23(e)(1); *see In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) ("*Payment Card*") (analyzing the Rule 23(e)(2) standards at preliminary approval). "The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005) ("*Wal-Mart*").

In evaluating a proposed settlement, the court considers both the "negotiating process leading up to the settlement, *i.e.*, procedural fairness, as well as the settlement's substantive terms, *i.e.*, substantive fairness." *In re Platinum & Palladium Commodities Litig.*, 2014 WL 3500655, at *11 (S.D.N.Y. July 15, 2014). A "court's primary concern is with the substantive terms of the settlement; accordingly, the court must compare the terms of the compromise with the likely rewards of litigation." *In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 83 (S.D.N.Y. 2007). The Settlement negotiated here is fair and adequate; it is recommended by experienced counsel following arm's length negotiations (including the mediation), informed by a thorough investigation that involved, among other things, party and non-party discovery. *See Reyes v. Summit Health Mgmt., LLC*, 2024 U.S. Dist. LEXIS 21061, at *7 (S.D.N.Y. Feb. 6, 2024) ("The existence of arm's-length negotiations further counsels in favor of approving the settlement on a preliminary basis."). Further, the Settlement provides a significant benefit for the Settlement Class in the face of substantial costs and risks associated with continued litigation. "Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no

obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted." *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ II*").

B. The Settlement Is Procedurally Fair

To assess procedural fairness, Rule 23(e)(2) requires the Court to find that "the class representatives and class counsel have adequately represented the class [and] the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(A)-(B). Where a settlement is the product of "arm's length negotiations" following "extensive pre-negotiation discovery … and then … months of discovery" conducted by "experienced counsel," it "counsels in favor of approving the settlement." *Reyes*, 2024 U.S. Dist. LEXIS 21061, at *7-8.

1. The Class Has Been Adequately Represented

Adequate representation under Rule 23(e)(2)(A) (and 23(a)(4))[6] requires that the "interests … served by the Settlement [are] compatible with" those of settlement class members. *Wal-Mart*, 396 F.3d at 110. This is met when the class representatives' interests are not antagonistic to those of the class and their chosen counsel is qualified, experienced, and able to conduct the litigation. *See In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 111-12 (S.D.N.Y. 2010) ("*Currency Conversion III*"); *Wal-Mart*, 396 F.3d at 106-07 (adequate representation is established "by showing an alignment of interests between class members, not by proving vigorous pursuit of that claim.").

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[6] Courts analyze the adequacy of representation requirement of Rule 23(e)(2)(A) using the same considerations for representative adequacy under Fed. R. Civ. P. 23(a)(4). *See Payment Card*, 330 F.R.D. at 30 n.25 ("This adequate representation factor [under Rule 23(e)(2)(A)] is nearly identical to the Rule 23(a)(4) prerequisite of adequate representation in the class certification context. The Court looks to Rule 23(a)(4) case law to guide its assessment of this factor.").

Plaintiff's interests are aligned with those of the Settlement Class. Plaintiff's Personal Information was exposed[7] in the same Data Incident as other Settlement Class Members, subjecting all Settlement Class Members to the same risk of financial fraud and identity theft. USAA's alleged failure to implement reasonable data security measures impacted not just Plaintiff's privacy interests, but the privacy interests of all Class Members whose information was potentially exposed by the Data Incident. As a result, Plaintiff and the Class seek the same relief from the same injury. *See Wal-Mart*, 396 F.3d at 110-11 (class representatives are adequate if their injuries encompass those of the class they seek to represent). All Settlement Class Members, including Plaintiff, share interests in obtaining a monetary recovery from Defendant.

Courts evaluating adequacy of representation also consider the adequacy of plaintiff's counsel. *Payment Card*, 330 F.R.D. at 30 (considering whether "plaintiff's attorneys are qualified, experienced and able to conduct the litigation."); Fed. R. Civ. P. 23(g). Gainey McKenna & Egleston ("GM&E"), Lowey Dannenberg, P.C. ("Lowey"), and Lynch Carpenter LLP ("LCLLP") have led the prosecution of the Action from its inception.[8] Joint Decl. ¶ 14. Class Counsel each have decades of experience leading some of the most complex class actions, including data breach class actions, on behalf of consumers. *Id.* ¶ 30. Class Counsel's extensive class action experience is strong evidence that the Settlement is procedurally fair. *See id.* ¶ 30, Exs. 2-4 (firm résumés); *see also In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009) ("*Currency Conversion II*") (noting the "extensive" experience of counsel in granting final

[7] *See* Amended Complaint, ¶ 10.

[8] GM&E led the prosecution of the Dolan action and Lowey and LCLLP led the prosecution of the Mapes action separately from their respective inceptions. Since November 17, 2021, proposed Class Counsel have jointly prosecuted the consolidated Action.

approval of settlement). The combined expertise of Class Counsel was important in prosecuting the Action and achieving this fair, reasonable and adequate settlement.

Class Counsel were also well informed about the strengths and weaknesses of the claims against USAA in advance of negotiating the Settlement. Joint Decl. ¶ 30. Before and during negotiations with USAA, Class Counsel reviewed and considered, *inter alia*, documents and data produced during discovery, as well as other information developed during their legal and factual investigations. *Id.* In addition to the specific legal and factual investigation Class Counsel carried out for this Action, Class Counsel also developed their understanding of the legal issues in this Action from their investigations into similar claims in other actions, including those asserted in *Rand v. The Travelers Indem. Co.*, Case No. 7:21-cv-10744-VB-VR (S.D.N.Y.). *Id*. Class Counsel's investigation of the facts underlying the claims and their preparation in prosecuting this litigation reinforces the adequacy of counsel and their representation.

2. The Settlement Is the Product of Arm's Length Negotiations

As this Court has recognized, "[p]reviously, settlements negotiated at arm's length enjoyed a presumption of fairness. However, the Second Circuit has since clarified that Rule 23(e)(2) prohibits courts from applying a presumption of fairness to a settlement agreement based on its negotiation at arm's length." *Reyes*, 2024 U.S. Dist. LEXIS 21061, at *7, n.3 (quoting *Moses v. N.Y. Times Co.*, 79 F.4th 235, 243 (2d Cir. 2023)). Despite this, "Rule 23(e)(2)(b) requires a court to consider whether the proposed settlement was negotiated at arm's length" and "[t]he existence of arm's-length negotiations further counsels in favor of approving the settlement on a preliminary basis." *Id.*, at *7.

Here, knowledgeable and competent counsel for Plaintiff and USAA, each with a deep understanding of the Action's risks and the Settlement's benefits, negotiated the Settlement, assisted by the Mediator. *See* Joint Decl. ¶¶ 21, 28, 30. Class Counsel each have decades of

experience litigating complex class action cases, including data breach class actions. Joint Decl. ¶ 30. USAA, for its part, is represented by skilled counsel from a top law firm, Hunton Andrews Kurth LLP, with approximately 20 years in defending data breach class action cases. *Id*.

Settlement negotiations between Plaintiff and USAA initially began in October 2022 as the Parties explored whether settlement could be possible at that juncture. *Id*. ¶ 19; ECF No. 47. These initial exchanges of key information did not lead to a settlement. Thereafter, while the Parties were engaged in formal litigation discovery, they agreed to participate in a full day, in-person mediation, overseen by the Mediator, to assess whether a resolution could be reached. *Id.* ¶ 20. Before and during the mediation on June 5, 2023, the Parties exchanged confidential information and made a series of offers and counteroffers. *Id.* ¶ 21. However, at the conclusion of the mediation, the Parties were unable to resolve the Action and continued to litigate. After further discovery and investigation, the Parties agreed to attend a second mediation with the Mediator on August 15, 2024. *Id.* ¶ 28. The Parties prepared mediation statements for the Mediator, which focused on the key issues that had arisen from the Parties' discovery efforts. *Id.* While this second mediation also ended without an agreement, the Parties continued to engage in hard-fought negotiations over the ensuing weeks through the Mediator before reaching an agreement in principle on September 9, 2024. *Id.* ¶¶ 28-29.

Plaintiff's claims have substantial merit, but Class Counsel acknowledge the expense and uncertainty of continued litigation against USAA, which maintains that it has meritorious defenses. In recommending this Settlement, Class Counsel have accounted for the uncertain outcome and risks of further litigation and believe the Settlement confers significant benefits on Plaintiff and the Settlement Class. *See In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1977), *aff'd* 117 F.3d 721 (2d Cir. 1997) ("*PaineWebber*") (observing that "great weight" is given

to the advice of experienced counsel). Further, a neutral mediator facilitated the Settlement, which provides an additional indication of the settlement's procedural fairness. *Belton v. GE Cap. Consumer Lending, Inc.*, 2022 WL 407404, at *4 (S.D.N.Y. Feb. 10, 2022) (negotiations that "included a mediation session with an experienced and highly regarded mediator … were thorough and hard fought, and free from any undue pressure or collusion").

Given Class Counsel's considerable prior experience in complex class action litigation involving data breach claims (among others), their knowledge of the strengths and weaknesses of Plaintiff's claims asserted in this Action, their assessment of the Settlement Class's likelihood of recovery following trial and appeal, and their experience negotiating with USAA, the Settlement is clearly the result of good faith arm's-length negotiations and is fair and reasonable.

C. The Settlement Is Substantively Fair

If approved, this Settlement will provide a significant monetary benefit for the Settlement Class in the form of a $3,250,000 non-reversionary Settlement Fund. SA ¶¶ 2.38, 3.1. As this is the only pending case concerning the Data Incident, this Settlement is the only means of direct recovery for Settlement Class Members.

To assess substantive fairness, courts consider whether "the relief provided for the class is adequate," accounting for: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C). The courts also consider whether a settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Second Circuit courts additionally apply the factors provided in *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir. 1974)

("*Grinnell*"),[9] which overlap with Rule 23(e)(2)(C)-(D). *See Payment Card*, 330 F.R.D. at 29. As demonstrated below, the Rule 23(e)(2)(C)-(D) and *Grinnell* factors both support preliminary approval of the Settlement.[10]

1. The Substantial Relief Provided by the Settlement and the Complexity, Costs, Risks, and Delay of Trial and Appeal Favor the Settlement

To determine whether a settlement provides adequate relief to the class, the Court must evaluate "the costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), "to forecast the likely range of possible class wide recoveries and the likelihood of success in obtaining such results." *Payment Card*, 330 F.R.D. at 36. Satisfying this factor necessarily "implicates several *Grinnell* factors, including: (i) the complexity, expense, and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *Id*. Relatedly, to assess whether the recovery is within the range of reasonableness, courts weigh the settlement relief against the strength of the plaintiffs' case, including the likelihood of a recovery at trial. *See Grinnell*, 495 F.2d at 463. This approach "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion…." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). As a result, "[d]ollar amounts [in class settlement agreements] are judged

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[9] The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *See Grinnell*, 495 F.2d at 463.

[10] For preliminary approval, the only appropriate considerations are *Grinnell* Factors 1, 4-6 and 8-9, which Plaintiff addresses below. *See In re Warner Chilcott Ltd. Secs. Litig.*, 2008 WL 5110904, at *2 (S.D.N.Y. Nov. 20, 2008) ("Although a complete analysis of [the *Grinnell*] factors is required for final approval, at the preliminary approval stage, the [c]ourt need only find that the proposed settlement fits within the range of possible approval to proceed."); *see also* Fed. R. Civ. P. 23(e)(2).

not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd* 818 F.2d 145 (2d Cir. 1987).

The consideration that the Settlement provides falls well within the range of what the Court may consider reasonable at final approval. *NASDAQ II*, 176 F.R.D. at 102. The factual and legal issues in this Action are complex and expensive to litigate. *See In re Wawa, Inc. Data Sec. Litig.*, 2023 WL 6690705, at *7 (E.D. Pa. Oct. 12, 2023) ("This is a complex class action lawsuit regarding damages from a data breach, an area of law that has not yet been fully developed"). This case involves complex legal and technical issues involving USAA's online quotation system. Establishing liability would involve obtaining and proving the meaning and significance of evidence, including significant third-party discovery,[11] deposition testimony, and other facts collected in discovery. As is always true in cases involving large document productions, the duration of the case would depend on the time Defendant required to produce documents, and the time the Parties require to review Defendant and non-party documents. Defendant made an initial production of documents, and it was expected that, based on the prior negotiations with Defendant's Counsel as to the scope of discovery, Defendant would produce an additional tens of thousands of documents had litigation continued. *See* Joint Decl. ¶ 27.

USAA conducted its own discovery and used the information it developed to build on its defenses to Plaintiff's claims. Had discovery continued, USAA would have taken the deposition of Plaintiff (which was noticed at the time of settlement) and would likely have served additional discovery demands and subpoenas, including on any third parties. Using the evidence collected

[11] Plaintiff served two (2) subpoenas on third party LexisNexis Risk Solutions. Continued litigation would have had Plaintiff serve further subpoenas on third parties identified during the course of Plaintiff's investigation.

through its discovery efforts, USAA likely would have argued, among other things, that the Personal Information potentially compromised in the Data Incident did not qualify for protection under the DPPA and attempted to downplay the significance of the Data Incident.

Had this case continued, the cost of litigation would have been significant for both sides due to the need for technical experts to opine on technical and data security issues and conduct forensic computer analysis. Had this case progressed towards class certification and summary judgment, the Parties' experts would have added to the cost and duration of the case and likely would have triggered a "battle of the experts" in this Action.[12] Expert discovery would likely have led to *Daubert* motion practice by both sides, further increasing the cost and risks of the litigation, and delaying any resolution. Given the complexities of this litigation and its focus on technical data security issues that would likely be unfamiliar to the average juror, this case presents a significant level of risk and uncertainty. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 663 (S.D.N.Y. 2015) ("greater the complexity, expense, and likely duration of the litigation, … the stronger the basis for approving the settlement.").

While Plaintiff believes he would have prevailed, there are risks involved in data breach litigation—a developing area of law—including proving standing and causation, and such risks would remain even after the motion to dismiss phase. *See Fulton-Green v. Accolade, Inc.*, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 23, 2019) ("This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare."); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 260 (D.N.H. 2007) (noting that, because the case

[12] *See, e.g., In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (experts "tend[] to increase both the cost and duration of litigation"); *Balestra v. ATBCOIN LLC*, 2022 WL 950953, at *3 (S.D.N.Y. Mar. 29, 2022) (granting preliminary approval of class settlement and finding the settlement amount within the range of approval considering the risks, including a costly and confusing "battle of the experts").

"involved a greater risk of non-recovery" due to "still-developing law," this factor weighed in favor of approval). Given that the case law is still emerging, there is uncertainty whether Plaintiff would prevail on the merits had the case continued.

The risk of maintaining a class through trial is another important consideration in evaluating the Settlement. Though present in every class action, this risk is significant where defendants are likely to challenge class certification, including by petitioning for an interlocutory appeal under Rule 23(f). *In re GSE Bonds Antitrust Litig*., 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019) (the risk of maintaining a class through trial "weighs in favor of settlement where it is likely that defendants would oppose class certification if the case were to be litigated"). Certifying a litigation class may raise complex legal and factual issues given that only a handful of data breach actions have certified a litigation class. *See, e.g., In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, 341 F.R.D. 128, 172 (D. Md. 2022), *vac. remand. sub nom. In re Marriott Int'l, Inc.*, 78 F.4th 677 (4th Cir. 2023) (certifying Rule 23(b)(3) class); *In re Sonic Corp. Customer Data Breach Litig*., 2020 WL 6701992, at *3-6 (N.D. Ohio Nov. 13, 2020) (certifying financial institution data breach class); *Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883, 894 (11th Cir. 2023) (affirming, in part, decision to certify nationwide class of consumers in data breach action). While Plaintiff is confident the Court would certify a class, such a motion would be vigorously opposed by USAA.

In light of these risks, this $3,250,000 Settlement represents an excellent recovery for the Class and a reasonable hedge against the risks of pursuing the claims against USAA. *PaineWebber*, 171 F.R.D. at 125 ("'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation"). The proposed Settlement provides "the immediacy and certainty of a recovery, against the continuing risks of litigation." *In re Marsh*

ERISA Litig., 265 F.R.D. 128, 139 (S.D.N.Y. 2010). It exchanges extensive prosecution costs and a lengthy litigation timeline with a real recovery. While the class-wide damages could be substantial if Plaintiff successfully proved his DPPA claim after trial and appeal (potentially up to $2,500 per class member based on the statutory damages), achieving that level of recovery would be a significant challenge, given the facts of this case, significant risks associated with certifying a litigation class, and the evolving jurisprudence involving data privacy and DPPA laws. For this reason, many DPPA cases settle for injunctive relief alone with *no* monetary recovery. *See, e.g.*, *Gaston v. LexisNexis Risk Solutions*, 2021 WL 2077812, at *6 (W.D.N.C. May 24, 2021) (settled for injunctive relief only after court granted plaintiffs' summary judgment motion for declaratory and injunctive relief, but denied liquidated damages under DPPA); *Roberts v. Source for Pub. Data LP*, 2010 WL 4008347 (W.D. Mo. Oct. 12, 2010) (settled for injunctive relief and attorneys' fees only); *Fresco v. Auto. Directions Inc.*, 2009 U.S. Dist. LEXIS 125233 (S.D. Fla. Jan. 16, 2009) (same); *Fresco v. R.L. Polk & Co.*, 2009 U.S. Dist. LEXIS 154273 (S.D. Fla. Jun. 15, 2009) (same).

This Settlement will provide Class Members a gross recovery of approximately $143.51 (5.74% of the maximum statutory damages), well within, or above, the range of what may later be found to be fair, reasonable, and adequate at final approval. *See In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, 2022 WL 2063864, at *9 (S.D.N.Y. June 8, 2022) (approving tiered settlement payment structure that included $30 payment and noting that some "data-breach cases have provided lower settlement payments to class members, with relief that includes a payment of $10 or merchant coupons"); *see also Grinnell*, 495 F.2d at 455 (a "satisfactory settlement" could be "a thousandth part of a single percent of the potential recovery."); *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 270 (S.D.N.Y. 2012) ("It is well-settled that a cash settlement amounting to only

a fraction of the potential recovery will not *per se* render the settlement inadequate or unfair."); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004) ("[T]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); *In re PaineWebber Litig.*, 171 F.R.D. at 130 (fairness determination turns not on a "mathematical equation yielding a particularized sum … but rather … [on] the strengths and weaknesses of the plaintiff's case").[13]

2. The Distribution Plan Provides an Effective Method for Distributing Relief, Satisfying Rule 23(e)(2)(c)(ii)

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized—namely, it must be fair and adequate." *Payment Card*, 330 F.R.D. at 40. In addition, "[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Id*.

The Settlement Fund will be distributed first by subtracting any Court-approved disbursements, including: (i) Taxes; (ii) Administration and Notice Costs; (iii) Attorneys' Fees and Expenses awarded by the Court; and (iv) any Service Award approved by the Court. SA ¶¶ 3.2. After that, Settlement Payments will be distributed to Authorized Claimants from the Net Settlement Fund on a *pro rata* basis. *Id.* ¶¶ 7.1, 7.2[14] Allocating settlement proceeds on a *pro rata* basis has been approved as a fair, reasonable, and adequate method of allocating settlement funds

[13] A similar settlement was also recently preliminarily approved by this Court, further supporting the terms of this Settlement. *See Rand v. The Travelers Indem. Co.*, Case No. 7:21-cv-10744-VB-VR, ECF No. 158 (S.D.N.Y. Aug. 26, 2024) (preliminarily approving DPPA class action settlement for $6,000,000 where gross recovery was approximately $67.52, or 2.7% of the maximum statutory damages).

[14] The final amount per Authorized Claimant will be determined after the permitted disbursements are paid and the Settlement Administrator has processed Settlement Election Forms or otherwise located Class Members.

by this Court and by courts in other class action settlements. *See, e.g.*, *In re Payment Card*, 330 F.R.D. at 47 (on preliminary approval, finding that a "*pro rata* distribution scheme is sufficiently equitable"); *Jenkins v. Nat'l Grid USA Serv. Co., Inc.*, 2022 WL 2301668, at *3 (E.D.N.Y. June 24, 2022) (approving a *pro rata* distribution of the settlement proceeds after reduction of the Settlement Costs); *Reyes*, 2024 U.S. Dist. LEXIS 21061, at *14 (approving the "*pro rata* distribution scheme" as equitable where the "[d]istribution of funds will thus be automatic, with no need for additional effort on the part of Class members."). The Court should approve the Distribution Plan for use in allocating proceeds from this Settlement.

3. The Requested Attorneys' Fees and Other Awards Are Limited to Ensure That the Settlement Class Receives Adequate Relief

Class Counsel will seek no more than one-third of the Settlement Fund in attorneys' fees, which may be paid from the Settlement Fund following the Effective Date. SA ¶¶ 17.1, 17.2. The proposed attorneys' fee "is reasonable and consistent with fees upheld by courts in this District." *Navarrete v. Milano Mkt. Place, Inc.*, 2019 WL 4303347, at *2 (S.D.N.Y. Sept. 11, 2019); *see also, e.g.*, *In re Ability Inc. Sec. Litig.*, 2018 WL 11300489, at *2 (S.D.N.Y. Sept. 17, 2018) (awarding "33 1/3% of the Settlement Fund"). Class Counsel will also seek their reasonably incurred litigation expenses in an amount not to exceed $35,000. SA ¶ 17.1; Joint Decl. ¶ 38. Finally, Plaintiff will also seek a Service Award totaling no more than $10,000. SA ¶ 16.1; Joint Decl. ¶ 38. Class Counsel will separately file their Fee and Expense Application seeking approval of the requested awards.

4. There Are No Unidentified Agreements That Impact the Adequacy of the Relief for the Settlement Class

Rule 23(e)(3) requires "[t]he parties seeking approval [to] file a statement identifying any agreement made in connection with the proposal." Here, the Settlement Agreement identifies the *In Camera* Supplement, which provides USAA a qualified right to terminate the Settlement

Agreement under certain conditions before final approval. SA ¶ 6.2. This type of agreement is standard in complex class action settlements and does not impact the fairness of the Settlement.[15]

5. The Settlement Treats the Settlement Class Equitably

The Settlement also "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). The Distribution Plan provides for a *pro rata* distribution of the Net Settlement Fund, a method this Court has already found equitable in other cases. *See Rand*, Case No. 7:21-cv-10744-VB-VR, ECF No. 158; *Payment Card*, 330 F.R.D. at 47; *Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC*, 2023 WL 3749996 at *4 (S.D.N.Y. June 1, 2023) (finding that "the *pro rata* distribution of the Settlement Fund … [is] sufficient to show that the Settlement Class is treated equitably."). The Settlement does not favor or disfavor Plaintiff or any Class Member; nor does it discriminate against, create any limitations, or exclude from payments any persons or groups within the Class. *See NASDAQ II*, 176 F.R.D. at 102. All Class Members would release USAA with respect to claims based on the same factual predicate of this Action. SA ¶¶ 12.1, 12.2. The proposed Class Notice provides information on how to opt out of the Settlement; absent opting out, each Class Member will be bound by the release. SA ¶ 14.6.

6. The Remaining *Grinnell* Factors Also Support Approval of the Settlement

a. The reaction of the Settlement Class to the Settlement

Consideration of this *Grinnell* factor is premature prior to Class Notice and will be addressed in later pleadings. *See GSE Bonds*, 414 F. Supp. 3d at 699 n.1. However, Plaintiff, whose interests are aligned with the Settlement Class, supports the Settlement. Joint Decl. ¶ 5.

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[15] *See, e.g., In re Carrier IQ, Inc., Consumer Priv. Litig.*, 2016 WL 4474366, at *5, 7 (N.D. Cal. Aug. 25, 2016), *amended in part sub nom. In re Carrier IQ, Inc.*, No. 12-MD-02330-EMC, 2016 WL 6091521 (N.D. Cal. Oct. 19, 2016) (observing that such "deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest").

b. The stage of the proceedings

This factor considers "whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc*., 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006). This factor does not require extensive discovery, or indeed any discovery at all, "as long as '[counsel] have engaged in sufficient investigation … to enable the Court to 'intelligently make … an appraisal' of the settlement.'" *Id.* at *10. Since July 2021, Class Counsel have conducted extensive research to assess the merits of Plaintiff's claims. Joint Decl. ¶ 30. Class Counsel have reviewed, *inter alia*, documents produced by USAA and LexisNexis Risk Solutions in response to document demands and subpoenas (including documents regarding USAA's online quotation system and sourcing of data), interrogatory responses, and responses to requests for admissions. *See id.* ¶¶ 19, 23, 25-26. The substantial information and discovery gathered allowed Class Counsel to be well informed about the strengths and weaknesses of the claims and the advantages of the Settlement, and to recommend the Settlement to Plaintiff. Accordingly, Class Counsel's well-informed views of the strength of claims and likely defenses weigh in favor of preliminary approval.

c. The ability of Defendant to withstand greater judgment

USAA can likely withstand a judgment greater than the Settlement Amount, but this factor alone does not affect the Settlement's reasonableness. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. at 460 (a defendant's ability to "pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate").

II. THE COURT SHOULD CONDITIONALLY CERTIFY THE PROPOSED CLASS

For a settlement class to be certified, it must satisfy Rule 23(a), as well as at least one of the separate divisions of Rule 23(b). As explained below, the Settlement Class meets the

requirements of Rule 23(a) and Rule 23(b)(3) for preliminary and final approval. Accordingly, for purposes of settlement only, the Court should conditionally certify the Settlement Class.

A. The Settlement Class Meets the Rule 23(a) Requirements

1. Numerosity

Rule 23(a) requires that the class be "so numerous that joinder of all class members is impracticable." Fed. R. Civ. P. 23(a). "Sufficient numerosity can be presumed at a level of forty members or more." *In re Initial Pub. Offering Sec. Litig*. ("*IPO*"), 260 F.R.D. 81, 90 (S.D.N.Y. 2009). Here, there are approximately 22,646 persons that fall within the Settlement Class definition. *See* Joint Decl. ¶ 32.

2. Commonality

Commonality only requires the presence of a single common question of law or fact capable of class-wide proof. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011); Fed. R. Civ. P. 23(a)(2). This case presents scores of common questions including: (i) whether USAA violated common law duties, the DPPA, or other legal obligations and industry standards; (ii) whether USAA failed to properly secure and safeguard Settlement Class Members' Personal Information; (iii) whether Settlement Class Members are entitled to damages or other equitable relief; and (iv) the appropriate measure of any such damages and relief. ECF No. 34, ¶ 126. These common questions of law and fact are also common to all Class Members.

3. Typicality

Typicality under Rule 23(a)(3) requires that "each class member's claim arises from the same course of events[,] and each class member makes similar legal arguments to prove the defendant's liability." *In re Flag Telecom Holdings, Ltd. Sec. Litig*., 574 F.3d 29, 35 (2d Cir. 2009). Courts generally find typicality in cases alleging a theory of misconduct in data breach cases that affects all class members in the same fashion. *See In re Wawa, Inc. Data Security Litig.*, 2023 WL

6690705, at *4 ("each institution's claim stems from Wawa's data security measures and whether they were adequate to protect payment card data. Such conduct allegedly caused the same injury typical to all class members"). Here, Plaintiff's and Class Members' claims arise from the same course of conduct involving USAA's alleged data security failures in the design of its online quotation system. Plaintiff's claims are typical of the Class Members' claims for purposes of the Settlement. *See, e.g., Marisol A. v. Giuliani*, 126 F.3d 372, 376-77 (2d Cir. 1997) (typicality present where the legal and factual issues alleged by the plaintiffs (*i.e.*, whether defendants violated "constitutional, regulatory, and statutory provisions") were typical of the class members' claims); *In re Onix Grp., LLC Data Breach Litig.*, 2024 U.S. Dist. LEXIS 105849, at *9 (E.D. Pa. Jun. 14, 2024) ("Plaintiffs' claims here are virtually identical to those of the class because their claims arise from the same conduct—each Plaintiff's claim stems from Defendant's security measures and whether they were adequate to protect the Plaintiff's sensitive data.").

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 61 (2d Cir. 2000). As discussed above, there are no conflicts between Plaintiff and Class Members. Plaintiff's interest in proving liability and damages wholly aligns with the Settlement Class's interest. Further, Class Counsel are highly experienced in data breach and other complex class actions and are adequate class counsel.

B. The Class May Be Certified Under Rule 23(b)(3)

Rule 23(b)(3) certification is proper where the action "would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Brown v. Kelly*, 609 F.3d 467, 483 (2d Cir. 2010). To satisfy Rule 23(b)(3), Plaintiff must conditionally establish: (1)

"that the questions of law or fact common to class members predominate over any questions affecting only individual members;" and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

1. Predominance

"If the most substantial issues in controversy will be resolved by reliance primarily upon common proof, class certification will generally achieve the economies of litigation that Rule 23(b)(3) envisions." *In re Air Cargo Shipping Servs. Antitrust Litig*., 2014 WL 7882100, at *35 (E.D.N.Y. Oct. 15, 2014). To satisfy the predominance requirement, a plaintiff must show "that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, … predominate over those issues that are subject only to individualized proof." *Brown*, 609 F.3d at 483 (ellipses in original).

Here, if the claims against USAA were not settled, common questions would have predominated over individual ones. Several courts have found that common issues, such as whether a defendant maintained reasonable security measures, predominate over individualized issues in data breach cases. *See, e.g., In re Wawa, Inc. Data Sec. Litig.*, 2023 WL 6690705, at *5; *Fulton-Green v. Accolade, Inc.*, 2019 WL 316722, at *4 (E.D. Pa. Jan. 23, 2019); *In re Yahoo! Customer Data Sec. Breach Litig.*, 2020 WL 4212811, at *6-7 (N.D. Cal. Jul. 22, 2020); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *13 (N.D. Ga. Mar. 17, 2020). Plaintiff and all Class Members must answer the same questions regarding whether USAA failed to adopt and maintain reasonable security measures to protect Personal Information, remedy and mitigate the effects of the Data Incident, and provide timely notification to affected persons. Class Members would need to establish the same facts for liability using similar proof and develop a common damages methodology to quantify the impact of the same harm. As these common questions are central and determine the liability and damages for all Settlement Class Members,

such issues predominate over individualized issues. Therefore, the Settlement Class satisfies Rule 23(b)(3).

2. Superiority

Plaintiff must also show that a class action is superior to individual actions.[16] Here, a class action is the superior method for the fair and efficient adjudication of this Action. *First*, Settlement Class Members are numerous and geographically disbursed, making a "class action the superior method for the fair and efficient adjudication of the controversy." *See In re Currency Conversion Fee Antitrust Litig.*, 224 F.R.D. 555, 566 (S.D.N.Y. 2004) ("*Currency Conversion I*").

Second, many Class Members have neither the incentive nor the means to litigate these claims individually. No Class Member "has displayed any interest in bringing an individual lawsuit." *See Meredith Corp.*, 87 F. Supp. 3d at 661. The damages most Class Members suffered are likely small compared to the considerable expense and burden of individual litigation. This makes it uneconomic for an individual to protect his/her rights through an individual suit. A class action allows claimants to "pool claims which would be uneconomical to litigate individually," as "no individual may have recoverable damages in an amount that would induce him to commence litigation on his own behalf." *Currency Conversion I*, 224 F.R.D. at 566.

Third, the prosecution of separate actions by hundreds (or thousands) of individual Settlement Class Members would impose heavy burdens upon the Court. It would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Settlement Class. Thus, both prongs of Rule 23(b)(3) are satisfied for purposes of the Settlement.

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[16] Superiority considers: "(A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3).

III. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE PLAN AND ANGEION AS SETTLEMENT ADMINISTRATOR AND ESCROW AGENT

Due process and Rule 23 require that the Settlement Class receive adequate notice of the Settlement. *Wal-Mart*, 396 F.3d at 114. To be adequate, the method(s) used to issue notice must be reasonable. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983). The Notice Plan will inform Settlement Class Members of the substantive terms of the Settlement as well as: (i) the nature of the Action; (ii) the definition of the Settlement Class certified; (iii) the Settlement Class's claims, issues, or defenses; (iv) that a Settlement Class Member may enter an appearance through an attorney; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

The proposed Notice Plan and forms of notice (*see* SA, Exs. C-D) are "reasonably calculated … 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 includes mailing the Short Form Notice along with the Settlement Payment Election form via U.S.P.S. first-class mail to Settlement Class Members. SA, Ex. C; Joint Decl. ¶ 42. The Short Form Notice will include the address of the Settlement Website and direct Class Members to review the Settlement and the Long Form Notice (SA, Ex. D) on the Settlement Website. Given the size of this Settlement Class and that USAA already has mailing addresses for the class of persons notified of the Data Incident, mailing the Short Form Notice is an efficient and effective means to directly inform Settlement Class Members of the Settlement. Joint Decl. ¶ 42.

The Settlement Website will serve as a one-stop resource by which Class Members can access relevant documents relating to the proposed Settlement. Joint Decl. ¶ 44. On the website, Class Members can review and obtain: (i) the Settlement Agreement; (ii) the Long Form Notice,

which provides details of the key facts of this case and this Settlement in plain, easily understood language; (iii) the Short Form Notice; (iv) the Settlement Payment Election form; (v) key Court filings, and (vi) updates and developments about the case. *Id.* The Settlement Administrator will also operate a toll-free number with automated answers to Class Members' questions. *Id.*

Class Counsel recommends that Angeion be appointed as the Settlement Administrator. Angeion developed the Notice Plan here in conjunction with Class Counsel and will be administering the claims in this Action. Angeion has significant experience in administering class action settlements, including data breach settlements. *See* Decl. of Steven Weisbrot, ¶¶ 9-12; Joint Decl. ¶ 40. The Administration and Notice Costs incurred by Angeion will be paid out of the Settlement Fund. Joint Decl. ¶ 45. Angeion will also administer the Settlement Fund Account. SA ¶¶ 3.1; 4.1-4.6; Joint Decl. ¶ 45.[17]

IV. PROPOSED SCHEDULE OF EVENTS

In Appendix A, Plaintiff proposes a schedule of events. If the Court agrees, Plaintiff requests that the Court schedule the Final Approval Hearing for a date no earlier than one hundred forty (140) days after the entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter. The remaining dates will be determined by the date the Preliminary Approval Order is entered and the scheduled date for the Final Approval Hearing.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Preliminary Approval and enter the accompanying Preliminary Approval Order.

[17] Angeion and the Notice Plan were approved by this Court for the similar settlement in *Rand*, Case No. 7:21-cv-10744-VB-VR, ECF No. 158, further supporting approval of the proposed Notice Plan and appointment of Angeion here.

Dated: December 11, 2024
White Plains, New York

Respectfully submitted,

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APPENDIX A

PROPOSED SCHEDULE OF EVENTS	
Event	**Timing**
Notice to the Class commences Date ("Notice Date")	No later than forty-five (45) days after the Court enters the Preliminary Approval Order
Deadline to file Settlement Administrator's Declaration regarding implementation of Notice Plan	No later forty-five (45) days after the Notice Date
Deadline to file Motion for Final Approval of the Settlement	No later than forty-five (45) days after the Notice Date.
Deadline to File Class Counsel's Motion for Attorneys' Fees and Expenses and Plaintiff's Request for Service Awards	No later than forty-five (45) days after the Notice Date.
Postmark Deadline for Requests for Exclusion (Opt-Outs)	No later than sixty (60) days after the Notice Date ("Opt-Out Deadline").
Filing and Service Deadline for Objections	No later than sixty (60) days after the Notice Date.
Settlement Payment Election Filing Deadline	No later than sixty (60) days after the Notice Date.
Deadline to File Opt-Out List and Settlement Administrator Declaration	No later than five (5) Business Days after Opt-Out Deadline
Deadline to File Settlement Administrator Declaration to Distribute the Claims Payments	No later than fifteen (15) days after the Settlement Payment Elections Deadline.
Deadline to Complete Discovery Concerning Objections	No later than thirty (30) days after the Deadline for Objections.
Deadline to File Oppositions to Objections/Reply Memorandum in Support of Motions	No later than thirty (30) days after the Deadline for Objections.
Final Approval Hearing	At least one hundred forty (140) days after entry of the Preliminary Approval Order.