

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

ADAM SCHROEDER, on behalf of)
himself and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
M.I. INDUSTRIES, INC. d/b/a)
INSTINCT PET FOOD,)
)
Defendant.)
)
)

Case No.: 25SL-CC02259

**UNOPPOSED MOTION AND MEMORANDUM OF LAW FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Plaintiff Adam Schroeder (“Plaintiff” or “Settlement Class Representative”), by and through undersigned counsel, and on behalf of himself and all others similarly situated, pursuant to Rule 52.08(c) of the Missouri Rules of Civil Procedure, hereby moves this Court for an order granting final approval of this class action settlement. In support of this Motion, Plaintiff respectfully states as follows:

I. INTRODUCTION

On August 19, 2025, this Court preliminarily approved a Class Action Settlement between Plaintiff and M.I. Industries, Inc. d/b/a/ Instinct Pet Food (“Defendant” or “Instinct”) (together with Plaintiff, the “Parties”) to address the repercussions of the Data Incident.

Settlement Class Counsel have zealously prosecuted Plaintiff’s claims, achieving the Settlement Agreement only after extensive investigation and negotiations and months of work finalizing the Settlement Agreement and associated exhibits. After this Court granted preliminary approval, the Settlement Administrator, Analytics Consulting, LLC (“Analytics”), with the help of the Parties, disseminated Notice to the Settlement Class. Notice was provided directly to

Settlement Class Members via mail and Analytics estimates that at least 1,595 Class Members, 85.3%, of the total Settlement Class, received direct notice, easily meeting the due process standard. *See* Declaration of Settlement Administrator Regarding Notice (“Admin. Decl.”) ¶ 12, attached hereto as **Exhibit 1**. The Notice provided each Settlement Class Member with information regarding how to reach the Settlement Website, submit a Claim, and how to opt-out or object to the Settlement. Motion for Preliminary Approval, **Exhibit A**, Settlement Agreement, (“S.A.”) at **Ex. A-B**. As of December 15, 2025, out of 1,869 Settlement Class Members, Analytics has received zero (0) requests for exclusion, and zero (0) objections. *Id.* ¶ 13.

II. CASE SUMMARY

A. The Security Incident

Instinct is a “rapidly growing, family-owned marketer and manufacturer of natural pet foods for dogs and cats.” Class Action Complaint (“Compl.”) ¶ 13. On October 16, 2024, Plaintiff alleges that Instinct detected a digital security incident where an unauthorized party compromised personal data collected from Instinct employees (the “Data Incident”). *Id.* ¶¶ 18-20. Plaintiff also alleges that the files removed by the unauthorized party included personally identifying information (“PII” or “Private Information”) of approximately 1,909 individuals. Additionally, Plaintiff alleges that Instinct sent him notice of the Data Incident, dated November 19, 2024, informing him that his Private Information was potentially accessed by cybercriminals. *Id.* ¶ 22.

B. Procedural History

Following Instinct’s notification to those affected by the Data Incident, Plaintiff filed a putative class action complaint in the United States District Court for the Eastern District of Missouri styled *Adam Schroeder. v. M.I. Industries, INC. d/b/a Instinct Pet Food, Case No. 4:24-cv-1734* (the “Federal Action”). Plaintiff brought claims for: (i) negligence; (ii) negligence per se;

(iii) breach of implied contract; (iv) invasion of privacy; (v) unjust enrichment; and (vi) breach of fiduciary duty.

Instinct subsequently filed a motion to dismiss Plaintiff's complaint on February 21, 2025. Pursuant to the Parties' settlement negotiations, detailed below, and considering information learned, on March 3, 2025, Plaintiff voluntarily dismissed the Federal Action. On March 3, 2025, Plaintiff refiled his claims against Defendant in the Circuit Court of St. Louis County Missouri, related to the Data Incident, asserting the same six causes of action.

After Defendant filed its motion to dismiss, on or around February 2025, the Parties initiated settlement negotiations to explore a resolution rather than proceed with timely and expensive discovery. Declaration of Brittany Resch in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Resch MPA Decl.") ¶ 5. Over the course of the following four months, the Parties engaged in arms-length negotiations, exchanging numerous offers and counter offers. During these settlement communications, the Parties discussed the key legal issues in this litigation. *Id.* ¶ 6. Pursuant to these discussions, Plaintiff requested, and Defendant produced, informal discovery to Plaintiff's counsel, including individuals affected, which is approximately 1,909 individuals. This information allowed Plaintiff's counsel to be well-informed prior to engaging in settlement discussions. *Id.* ¶ 5.

On or around June 23, 2025, the Parties reached an agreement on the principal terms of the settlement – subject to final mutual agreement on all the necessary documentation. *Id.* ¶ 7. After reaching an agreement on the principal terms of their settlement, the Parties continued negotiating the finer points of the Settlement Agreement, diligently drafting and finalizing the Settlement Agreement, Notice, and Claim Forms, and drafting the motion for preliminary approval and final approval for presentation to the Court. *Id.* ¶ 8. The Parties did not negotiate attorney's fees or a

service award until after they had agreed on the substantive terms of the Settlement. *Id.* ¶ 7. Plaintiff’s counsel is confident that the Settlement terms are fair, reasonable, adequate, and provide significant relief to the Settlement Class. *Id.* ¶ 12.

III. SUMMARY OF SETTLEMENT

A. The Settlement Class and Benefits

The Settlement¹ provides for the certification of a Settlement Class defined as: all persons residing in the United States whose PII was or may have been compromised in the M.I. Industries, Inc. Data Breach that was detected on or around October 16, 2024, including all those who received notice of the Data Breach from M.I. Industries, Inc. S.A. ¶ 1.36. Instinct represents that the Settlement Class is comprised of approximately 1,909 individuals (each, a “Settlement Class Member”). Instinct provided Settlement Class Member data to Analytics on or about September 16, 2025. Admin. Decl. ¶ 5. Of these, 40 were identified as duplicate records and were removed from the population, leaving a total of 1,869 unique Settlement Class Member records. *Id.*

Excluded from the Settlement Class are: (i) Defendant; (ii) the Related Entities; (iii) all Settlement Class Members who timely and validly opt out of the Settlement Class; (iv) any judges assigned to this case and their staff and family; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. S.A. ¶ 1.36.

The Settlement provides Settlement Class Members with timely relief targeted at remediating the specific harms they have suffered because of the Data Incident. The benefits of the Settlement are available to all Settlement Class Members and are significant.

¹ Unless otherwise noted, capitalized terms have the meaning attributed to them in the Settlement Agreement filed with Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement.

B. Monetary and Other Compensation for Losses

1. *Credit Monitoring*

Settlement Class Members are eligible to receive two years of three-bureau credit monitoring with at least \$1,000,000 in identity theft protection insurance. *Id.* ¶ 2.3.

2. *Reimbursement for Ordinary Losses*

Settlement Class Members may make a claim for compensation for unreimbursed Ordinary Losses up to \$1,000 per person for expenses incurred because of the Data Incident. *Id.* ¶ 2.2(a). Documented Out-of-Pocket losses may include, but are not limited to, professional fees including attorneys' fees and accountants' fees; fees for credit repair services and/or credit monitoring costs that were incurred on or after mailing of notice of data breach; and miscellaneous expenses such as a fax, postage, copying, and milage. *Id.*

3. *Reimbursement for Lost Time*

Settlement Class Members may also make a claim for compensation for Lost Time up to four (4) hours at a rate of \$20.00 per hour, for a total of \$80.00 per claimant (subject to the \$1,000 cap for Ordinary Losses). *Id.* ¶ 2.2(a)(i).

4. *Reimbursement for Extraordinary Losses*

Defendant further will provide up to a maximum of \$3,500 per Settlement Class Member for Extraordinary Losses caused by the Data Incident, upon submission of a valid claim with third-party documentation. *Id.* ¶ 2.2(b).

5. *Alternative Cash Payment*

Furthermore, Settlement Class Members can make a Claim for an Alternative Cash Payment of sixty dollars and zero cents (\$60.00) in the alternative to Claims for Ordinary Losses, Lost Time, and Extraordinary Losses. *Id.* ¶ 3.3(c)

C. Business Practice Commitments

Finally, in addition to the monetary benefits offered, the Settlement confirms that, after the Data Incident, Defendant will provide a confidential declaration to Class Counsel describing its information security improvements since the Data Incident. *Id.* ¶ 2.4.

D. Release

The Parties tailored the release to affect only those claims related to the Data Incident—defined as “Released Claims” in the Settlement Agreement. *Id.* ¶¶ 1.28, 12.1-12.7. Thus, any Settlement Class Members, who do not exclude themselves, will release their claims against Instinct related to the Data Incident. *Id.*

E. Notice And Claims

As demonstrated below, the Notice Program here fully satisfies Rule 52.08(c)(2) of the Missouri Rules of Civil Procedure and the requirements of due process are met. Indeed, the Notice Program provides the best notice practicable under the circumstances, provides direct individual notice to all members of the Settlement Class who could be identified through reasonable effort, and such notice supports the Court’s exercise of jurisdiction over the Settlement Class as contemplated in the Settlement Agreement and the proposed Final Order and Judgment. *See Giancristofaro v. Ima Pizza, LLC*, 2024 Mo. Cir. LEXIS 330, at *3 (Cir. Ct. City of St. Louis) (finding notice program of email and direct mail to class members satisfied due process).

1. Direct Notice

The Parties agreed to request that the Court appoint Analytics Consulting LLC (“Analytics”) as the Settlement Administrator in this case. S.A. ¶ 3.2. Defendant shall pay the entirety of the Costs of Settlement Administration in accordance with the Preliminary Approval Order and the Settlement Agreement. *Id.* ¶ 4.11.

Analytics received an electronic file containing the names and known contact information for the Settlement Class Members from Instinct with a total of 1,909 unique records, resulting in a final total of 1,869 unique Settlement Class Member records after duplicate records were removed. Admin. Decl. ¶ 5. Analytics subsequently coordinated the mailing of the Court-approved Postcard Notice of Class Action Settlement (“Postcard Notice”) to 1,869 Settlement Class Members. *See Id.* ¶ 7. Pursuant to Mo. Sup. Ct. R. 52.08(c)(3), the Short Notice informed Settlement Class Members of, among other things; (a) general information about this case, (b) their right to opt-out and not participate in the Settlement, (c) their right to object to the Settlement, (d) the dates by which to act on those options, (e) the date of the Final Approval Hearing, (f) the phone number to contact Analytics for general information or to request additional documents, and (g) the address of the Settlement Website, where Settlement Class Members could access the Long Notice and submit Claims. S.A. at **Ex. A-B**.

As of December 15, 2025, 12 Postcard Notices were returned to Analytics by the U.S. Postal Service with a forwarding address. Admin. Decl. ¶ 10. Analytics updated the Class List with the forwarding addresses and processed a re-mail of the Notice to the updated addresses. *Id.* As of December 15, 2025, 454 Postcard Notices were returned to Analytics by the U.S. Postal Service without a forwarding address. *Id.* ¶ 11. In this case, Analytics conducted a skip trace in an attempt to ascertain a valid address for the affected Settlement Class Members. *Id.* As a result of these efforts, 180 new addresses were identified for Settlement Class Members. *Id.* Analytics subsequently updated the Class list with these new addresses and re-mailed the Notice to each of those addresses. *Id.* As a result of these efforts, Analytics estimates that at least 85.3% of the Settlement Class successfully received direct notice in this case. *Id.*

2. The Settlement Website

Further, Analytics launched the Settlement Website, www.InstinctPetFoodsDataSettlement.com. *Id.* ¶ 8. There, Settlement Class Members could obtain copies of the Settlement Agreement and Release, Long Form Notice, Postcard Notice, Claim Form, and the Court's Preliminary Approval Order. *Id.* The Settlement Website also permitted Settlement Class Members to submit a claim form. *Id.*

3. Toll Free Number, P.O. Box, and Email

In addition to the Settlement Website, Analytics also established a toll-free phone number of (1-877-647-8085) and a dedicated email box (info@InstinctPetFoodDataSettlement.com) to receive and respond to Settlement Class Member inquiries. *Id.* ¶ 9. The phone number and email address were included in the Class Notice. *Id.*

4. Claims.

The timing of the Claims Process was structured to ensure that all Settlement Class Members have ninety (90) days to review the terms of the Settlement Agreement, and compile documents supporting their Claim. S.A. ¶ 1.1 The deadline for Settlement Class Members to submit a claim for cash benefits is January 12, 2025. Admin. Decl. ¶ 14. To date, Analytics has received a total of 115 claims for at least one form of Settlement Benefit. *Id.* Of the 115 claim submissions, 47 were filed by Non-Class Members and were removed from the claimant pool. *Id.* The remaining 68 claims were timely submitted by Settlement Class Members. *Id.* So far, 63 claims have been deemed valid, in whole or in party, resulting in a valid claims rate of 3.37%. *Id.* ¶ 15. Eight (8) claims have been deemed deficient and are going through the deficiency process. *Id.* ¶ 16. As of December 15, 2025, there are 29 valid claims for lost time payments, and 22 valid claims for the credit monitoring benefit. *Id.* ¶ 17. There are currently 31 valid claims for the

alternative cash benefits. *Id.* Analytics continues to receive and review claims submitted by Settlement Class Members. The deadline for Settlement Class Members to submit a claim is January 12, 2025. *Id.* ¶ 18.

5. Requests For Exclusion and Objections

Similar to the timing of the Claims Process, the timing of objections and requests for exclusion was structured to give Settlement Class Members sufficient time to access and review the Settlement documents—including Plaintiff’s Unopposed Motion for Attorneys’ Fees, Litigation Expenses, and Service Award, which was filed prior to the deadline for Settlement Class Members to object or exclude themselves from the Settlement. *See* S.A. ¶¶ 5.1-5.8, 6.1-6.6, 7.1, Plaintiff’s Memorandum in Support of Unopposed Motion for Attorneys’ Fees, Litigation Expenses, and Service Awards. The Opt-Out Period for this Settlement ended on December 15, 2025. Admin. Decl. ¶ 13, **Ex. 1**. Analytics has received zero (0) valid Requests for Exclusion. Settlement Class Members were also informed of their right to object to the Settlement provided the request was made by December 15, 2025. *Id.*; S.A. at **Ex. A-B**. To date, Analytics has received zero (0) objections to the Settlement. *Id.*

IV. ARGUMENT

A. The Court Should Grant Final Approval of the Settlement

Missouri Supreme Court Rule 52.08(e) provides that “[a] class action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” Mo. Sup. Ct. R. 52.08(e). “It is well established in Missouri that ‘federal interpretations of [Federal] Rule 23 are relevant in interpreting Rule 52.08.’” *Hope v. Nissan N. Am., Inc.*, 353 S.W.3d 68, 75 (Mo. Ct. App. 2011) (quoting *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 161 (Mo. Ct. App.

2006)). The Court’s Preliminary Approval Order considered many of the same factors at issue here and ruled that the Settlement was fair, reasonable, and adequate to provide notice to the Settlement Class. The settlement of a class action should be approved if it is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class members. *Alicia St. v. O’Toole*, No. 4:19 CV 2590 CDP, 2023 U.S. Dist. LEXIS 102566, at *4 (E.D. Mo. June 13, 2023).

There is a strong presumption that a proposed class action settlement is fair and reasonable when, as was the case here, it was the result of arm’s length negotiations. *See, e.g., Toro v. Centene Mgmt. Co., LLC*, No. 4:19-cv-02635-JAR, 2021 U.S. Dist. LEXIS 86088, at *4 (E.D. Mo. May 5, 2021) (collecting cases, noting “[i]n making a fairness determination, courts should be mindful of the strong presumption in favor of finding a settlement fair” and the “strong public policy” favoring settlement agreements). The Parties’ Settlement here meets the standards for approval pursuant to Missouri Supreme Court Rule 52.08.

B. The Settlement is Fair, Reasonable, and Adequate, and Should be Approved

“When determining if a settlement is fair, reasonable, and adequate, the court must consider: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff’s success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members.” *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. Ct. App. 2011) (quoting *Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. Ct. App. 2000)). “Among these, the most important consideration in determining if a settlement is fair, reasonable, and adequate is the strength of the plaintiff’s case on the merits balanced against the offered settlement.” *Id.* (cleaned up).

Here, the Settlement Agreement meets this test. First, it is undeniable that it was the result of arm's-length negotiations conducted by experienced counsel for all Parties. As discussed above, over the course of four months, the parties engaged in arm's length negotiations, exchanging numerous offers and counter offers. *See* Resch MPA Decl. ¶ 4. While Plaintiff believes in the merits of his case, he recognizes that “[t]his is not only a complex case—it lies within an especially risky field of litigation: data breach.” *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275-RAR, 2023 U.S. Dist. LEXIS 117355, at *24 (S.D. Fla. July 8, 2023) (citations omitted); *see also In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 U.S. Dist. LEXIS 135573, at *14 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”); *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415, 2019 U.S. Dist. LEXIS 215430, at *3 (D. Colo. Dec. 16, 2019) (“Data breach cases such as the instant case are particularly risky, expensive, and complex,...and they present significant challenges to plaintiffs at the class certification stage.”) (internal citations omitted; collecting cases).

Had this case not been resolved, Plaintiff would have had to overcome Defendant's likely opposition to his motion to class certification, Defendant's motion for summary judgment, appeals, and a potential trial. Such continued litigation would be long, complex and expensive, and a burden to court dockets. *Lake v. First Nat'l Bank*, 900 F. Supp. 726 (E.D. Pa. 1995) (expense and duration of litigation are factors to be considered in evaluating the reasonableness of a settlement); *Weiss v. Mercedes-Benz of N. Am. Inc.*, 899 F. Supp. 1297 (D.N.J. 1995) (burden on crowded court dockets to be considered). The Settlement, in contrast, “gives immediate compensation to Settlement Class members. Class interests are better served by settlement than continued litigation.” *In re Sonic*, 2019 U.S. Dist. LEXIS 135573, at *14. It is also noteworthy that the

Settlement was negotiated by counsel who are well versed in consumer class actions generally, in data privacy and cybersecurity incident cases in particular. Resch MPA Decl. ¶ 6. Moreover, Settlement Class Counsel endorses the Settlement (*id.*); this factor is entitled to great weight. *See In re Fed. Skywalk Cases*, 97 F.R.D. 380, 389 (W.D. Mo. 1983) (“While the Court cannot blindly accept the recommendation of class counsel, the Court is entitled to and does place considerable weight on their recommendations.”); *Rawlings v. BMW Fin. Servs. NA, LLC*, No. 2:20-cv-022892022 U.S. Dist. LEXIS 133970, at *10 (S.D. Ohio July 27, 2022) (approving recommendation of Class Counsel, skilled in collective and class actions, to approve the settlement and defer to Class Counsel's judgment).

Finally, under the circumstances herein, the fact that the settlement was reached before formal discovery commenced does not present an impediment to granting final approval. *See In re Wawa, Inc. Data Sec. Litig.*, No. 19-cv-6019, 2021 U.S. Dist. LEXIS 142025, at *36 (E.D. Pa. July 30, 2021) (“Although the Consumer Plaintiffs and [the defendant] did not engage in ‘formal’ discovery, that is not necessarily an obstacle for [] approval of a class action settlement, especially where, as here, the parties have exchanged important informal discovery.”); *Trombley v. Nat'l City Bank*, 759 F. Supp. 2d 20, 26 (D.D.C. 2011) (“Although the Court will consider the timing of the settlement and the amount of discovery conducted at the final approval stage, the Court will not deny [] approval due to the absence of significant discovery at this point.”). As noted above, Settlement Class Counsel sought and obtained relevant information from Instinct before finalizing the settlement to ensure that the Settlement is fair, reasonable and adequate.

C. The Court Should Certify the Settlement Class

Pursuant to Rule 52.08(a) and 52.08(b)(3), Plaintiff seeks certification of a class consisting of:

All persons residing in the United States whose PII was or may have been compromised in the M.I. Industries, Inc. Data Breach that was detected on or around October 16, 2024, including all those who received notice of the Data Breach from M.I. Industries, Inc.

The proposed class meets all the requirements for certification under Missouri law.

1. Numerosity Under Rule Mo. R. Civ. P. 52.08(a)

The Settlement Class satisfies the numerosity requirement under Missouri Supreme Court Rule 52.08(a)(1). As stated above, there are approximately 1,909 Settlement Class Members. Accordingly, numerosity is satisfied. *See Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 167 (Mo. Ct. App. 2006) (“Rule 52.08(a) does not require that joinder of all the members of a class be impossible, only that it be impracticable. ... To support a finding of the numerosity prerequisite of Rule 52.08(a)(1), the trial court can accept “common sense assumptions.”) (cleaned up; citations omitted).

2. Commonality Under Missouri Supreme Court Rule 52.08(a)

Missouri Supreme Court Rule 52.08(a)(2) does not require that all issues be common, but that common questions exist. “[T]he rule is written in the disjunctive, and hence, the common question may be one of fact or law and need not be one of each.” *Elsa v. U.S. Eng’g Co.*, 463 S.W.3d 409, 418 (Mo. Ct. App. 2015) (citing William B. Rubenstein, *Newberg on Class Actions*, § 3:21 (5th ed. 2011)). Courts have recognized that “commonality ‘requires only a single-issue common to the class.’” *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1288 (10th Cir. 1999) (cleaned up; collecting cases); *see also Weiss v. York Hosp.*, 745 F.2d 786, 808-809 (3d Cir. 1984) (ruling a “single common question is sufficient, even if questions exist as to a representation made to an individual Plaintiff or proof of damages”). Common factual and legal questions in this case include whether or not Instinct failed to take reasonable measures to safeguard the Private Information entrusted to it; whether it owed a common law and/or fiduciary duty to Plaintiff and Class

Members; whether it breached any such duty; and whether Instinct was unjustly enriched. Compl. ¶ 96. Since these questions of law and fact are common to all Settlement Class Members, the commonality requirement is satisfied.

3. *Typicality Under Missouri Supreme Court Rule 52.08(a)*

The typicality inquiry asks whether “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Mo. Sup. Ct. R. 52.08(3). “This requirement is designed to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees’ interest will be fairly represented.” *In re Wawa, Inc. Data Sec. Litig*, 2021 U.S. Dist. LEXIS 142025, at *16 (citations omitted). Typicality is satisfied here because Plaintiff seeks to hold Instinct “liable for damages related to the breach and share common questions of law and fact with all other class members.” *Id.* ¶ 94.

4. *Adequacy Under Missouri Supreme Court Rule 52.08(a)*

Plaintiff and Settlement Class Counsel have fairly and adequately represented the Settlement Class under Missouri Supreme Court Rule 52.08. “Rule 52.08(a)(4) requires that as a prerequisite to class certification, the trial court must find that: “the representative parties will fairly and adequately protect the interests of the class.”” *Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 172 (Mo. Ct. App. 2006) (quoting Mo. Sup. Ct. R. 52.08(a)); *State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 734 (Mo. 2004). “This prerequisite applies both to the named class representatives and to class counsel.” *Id.* Here, Plaintiff is an adequate representative. Plaintiff committed to participate actively in what he knew could have been a long and hard-fought lawsuit and did so on behalf of a Class of thousands of other Settlement Class Members, with no guarantee of ever being compensated. Resch MPA Decl. ¶ 21. Even though no

award of any sort was promised to Plaintiff, he contributed his time and effort by assisting in the litigation, aiding in the preparation of the Complaint, and aiding in approving the Settlement. *Id.*

D. The Requirements of Missouri Supreme Court Rule 52.08(b)

The Settlement Class also meets the requirements of Missouri Supreme Court Rule 52.08(b)(3) in that; (i) common questions of law or fact predominate over individual issues; and (ii) the class action is the superior method to decide the issues in this case.

1. *Predominance is satisfied*

“To satisfy the common-question-predominance requirement, not every single issue in the case must be common to all class members.” *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 175 (Mo. Ct. App. 2006) (quoting *Am. Family Mut. Ins. Co.*, 106 S.W.3d at 488). “A single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions.” *Id.* Courts routinely find predominance to be met in data breach cases. *In re Wawa*, 2021 U.S. Dist. LEXIS 142025, at *19 (“In this case, there is a myriad of questions of law and fact that predominate.”). Such factors include: whether the defendant owed a duty to class members to safeguard their Private Information; whether the defendant breached that duty; whether the defendant or should have known that its computer network was susceptible to attack; whether the defendant complied with industry standards; whether the defendant’s conduct or failure to act was the proximate cause of the breach; and whether the defendant and the class members are entitled to recovery. *Id.* All these factors are met here.

2. *Superiority is satisfied*

The additional prerequisite for certification under Missouri Supreme Court Rule 52.08(b)(3) is that a class action be “superior to other available methods for the fair and efficient

adjudication of the controversy.” “The superiority requirement requires the trial court to balance, in terms of fairness and efficiency, the merits of a class action in resolving the controversy against those of ‘alternative available methods’ of adjudication.” *Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 181 (Mo. Ct. App. 2006) (quoting *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 632 (3rd Cir.1996)). Given the nature of this action and the fact that each claim is based on the Data Incident, a class action is the superior method by which to adjudicate claims of individual class members. “The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s) labor.” *Mack v. Suffolk County*, 191 F.R.D. 16, 25 (D. Mass. 2000) (internal citations omitted); *Yang v. Odum*, 392 F.3d 97, 106 (3d Cir. 2004). Considerations of judicial economy particularly underscore the superiority of the class action mechanism in this case. The prosecution of this case as a class action is superior to possibly dozens of individual cases being filed in the court, each of which would be repetitious and possibly yield inconsistent adjudications.

In sum, the requirements of Missouri Supreme Court Rule 52.08 are satisfied, and the Settlement Class should be certified.

V. CONCLUSION

For the foregoing reasons, Plaintiff has negotiated a fair, adequate, and reasonable settlement that assures Settlement Class Members of prompt and meaningful relief. The Settlement is well within the range of approval and complies with the dictates of Missouri Supreme Court Rule 52.08. For these reasons and the other reasons detailed herein, Plaintiff respectfully requests

that the Court certify the Class for settlement purposes and grant his Motion for Final Approval of Class Action Settlement.

Dated: January 2, 2026

Respectfully submitted,

/s/ Colleen Garvey

John F. Garvey, #35879

Colleen Garvey, #72809

Ellen Thomas, #73043

TRANCH, JENNINGS & GARVEY, PLLC

701 Market Street, Suite 1510

St. Louis, MO 63101

Tel: (314) 390-6750

jgarvey@stranchlaw.com

cgarvey@stranchlaw.com

ethomas@stranchlaw.com

Brittany Resch

STRAUSS BORRELLI PLLC

890 N Michigan Ave, Suite 1610

Chicago, IL 60611

T: (608) 237-1775

bresch@straussborrelli.com

Counsel for Plaintiff and the Putative Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 2, 2026, the foregoing document was filed using the Court's electronic filing system, thereby serving all counsel of record.

/s/ Colleen Garvey
Colleen Garvey