

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

**MARY JANE WHALEN and CHRISTINE
V. RONA**, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

**GUNSTER, YOAKLEY &
STEWART, PA**

Defendant.

Case No. 25-CA-000550

**PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to Florida Rule of Civil Procedure 1.220, Plaintiffs¹, individually, and on behalf of the Settlement Class, respectfully submit this Unopposed Motion for Preliminary Approval of Class Action Settlement, supported by the Declaration of Class Counsel (“JAY Declaration”), attached as ***Exhibit 2***. Gunster agrees with the relief afforded by this Motion and agrees that the Court should enter the Agreed Preliminary Approval Order.²

I. INTRODUCTION

Plaintiffs Mary Jane Whalen and Christine V. Rona (“Plaintiffs” or proposed “Settlement Class Representatives”) move for preliminary approval of the Settlement Agreement³ they reached with Defendant Gunster, Yoakley & Stewart, PA (“Gunster” or “Defendant”) (collectively, “the

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement. ***Exhibit 1***.

² Gunster agrees with the relief afforded by this Motion, but for the avoidance of doubt, Gunster does not concede the factual basis for any claim asserted in the complaint and denies liability. The language in this Motion, including the description of proceedings, as well as legal and factual arguments, is Plaintiffs’, and Gunster may disagree with certain of those characterizations and descriptions.

Parties”). The Parties have reached a proposed settlement that, if approved by the Court, will resolve the Plaintiffs’ and Settlement Class Members’ claims against Defendant arising from the Data Breach at issue in this Action.

This case arises from a Data Breach that Plaintiffs allege compromised the security of their and other Settlement Class Members’ Personal Information, including, but not limited to, data that Gunster acquired from current and former employees, clients, and other persons during the ordinary course of its practice, and which Plaintiffs allege Gunster was duty bound to protect from unauthorized persons, including cyber criminals. The Personal Information affected by the Data Breach included a wide variety of information, including name, address, date of birth, Social Security number, medical or health insurance information, and other sensitive information, which in the hands of cyber criminals can result in identity theft.

II. SUMMARY OF THE LITIGATION

On or around November 27, 2022, Gunster determined that third-party cybercriminals had gained access to Gunster’s systems (*i.e.*, the “Data Breach”). Defendant notified impacted individuals of the Data Breach beginning on or around August 2023. On May 13, 2024, Mary Jane Whalen (“Whalen”) filed a putative class action complaint against Gunster in the United States District Court for the Southern District of Florida, asserting claims arising out of the Data Breach (the “Federal Action”). On August 15, 2024, Gunster moved to dismiss Whalen’s complaint for failure to state a claim. On September 17, 2024, Plaintiff Whalen filed her amended complaint, which, among other changes, added an additional Plaintiff, Christine V. Rona (“Rona”). On October 1, 2024, the Parties engaged in a full-day, in-person mediation session before former United States Magistrate Judge, Diane M. Welsh (ret.), a nationally recognized and experienced mediator with expertise in data breach class actions. Over the course of the day, the Parties engaged

in arm's length, hard-fought negotiations, and with the assistance of Judge Welsh, the Parties reached an agreement in principle, the terms of which were later finalized by way of the Settlement Agreement and its attached exhibits, which were filed in the Federal Action. On January 24, 2025, the Parties filed a joint stipulation of dismissal without prejudice in the Federal Action, which terminated the Federal Action. Out of concern that the federal court lacked subject matter jurisdiction, the Parties decided that dismissal of the Federal Action was warranted, and that the case should be refiled in a Florida state court which would have jurisdiction, without question, over the Parties and the subject matter of the claims presented in this case. Accordingly, on January 24, 2025, Plaintiffs Whalen and Rona filed a putative class action complaint (i.e., the "Complaint") against Gunster in this Court, asserting claims arising out of the Data Breach. The Settlement Agreement was then re-executed, subject to preliminary and final approval by the Court.

As explained below, the Settlement meets all the requirements for Preliminary Approval. Therefore, Plaintiffs respectfully request that the Court enter an order: (i) granting Preliminary Approval of the Settlement; (ii) provisionally certifying the Settlement Class for settlement purposes; (iii) appointing the Plaintiffs as Settlement Class Representatives and Plaintiffs' counsel as Class Counsel for the Settlement Class; (iv) approving the proposed Notice Plan and authorizing its dissemination; (v) approving the Claim Form and the claim process; (vi) appointing Verita as the Settlement Administrator; (vii) approving the procedures and deadlines for Settlement Class members to opt-out and Settlement Class Members to object; and (viii) scheduling a Final Approval Hearing at which time the Court will consider Final Approval of the Settlement, Class certification, and Class Counsel's Application for Attorneys' Fees and Costs.

III. MATERIAL TERMS OF THE SETTLEMENT

The Settlement Agreement negotiated on behalf of the Settlement Class provides for the creation of a non-reversionary cash settlement fund in the amount of eight million five hundred thousand United States Dollars \$8,500,000.00 (Settlement Amount) (the “Settlement Fund”). SA ¶ 2.39. The Settlement Fund shall be used to pay for (i) Administration and Notice Costs; (ii) the Approved Claims; and (iii) the Attorneys’ Fees and Expenses. SA ¶ 3.2. The Settlement Agreement provides further that the Settlement Fund shall be paid to the Settlement Administrator as follows: (i) within ten (10) Business Days of the Preliminary Approval Order, Gunster will pay or cause to be paid \$495,000.00 into the Settlement Fund Account to pay for Administration and Notice Costs, which amount will be credited towards the \$8,500,000.00 total amount of the Settlement Fund (SA ¶ 3.1.1) and (ii) within ten (10) Business Days of the Effective Date, Gunster shall deposit or cause to be deposited the remaining balance of the Settlement Fund (eight million five thousand United States Dollars (\$8,005,000.00)) into the Settlement Fund Account. SA ¶ 3.1.2. In no event shall Gunster be obligated to pay more than eight million five hundred thousand United States Dollars (\$8,500,000.00) in connection with the Settlement. SA ¶ 3.2.

A. The Settlement Class

The Settlement Class is defined as “all persons residing in the United States whose Personal Information was compromised, accessed, exfiltrated, or otherwise impacted by the Data Breach.” The Settlement Class specifically excludes: (i) Gunster, any Entity in which Gunster has a controlling interest, and individuals who at any time since November 27, 2022 served as Gunster directors or officers; (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 who timely and validly opts out of the Settlement.” SA ¶ 2.36.

B. The Settlement Benefits

1. Reimbursement for “Ordinary” Out-of-Pocket Losses and Ordinary Attested Time

All Settlement Class Members may submit a claim for Ordinary Out-of-Pocket Losses and/or Ordinary Attested Time up to a total of two thousand five hundred dollars (\$2,500) per Settlement Class Member. SA ¶ 7.2. The Settlement Fund will be used to pay valid and timely submitted claims for each of the following categories: (1) costs associated with accessing or freezing/unfreezing credit reports with any credit-reporting agency; (2) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and (3) credit monitoring or other mitigative costs. SA ¶ 7.2.1. Such claims will be evaluated by the Settlement Administrator as per the process set out in the Settlement Agreement.

Whether or not they incurred Ordinary Out-of-Pocket Losses, Settlement Class Members may also submit a claim for up to seven (7) hours of time spent responding to receiving notice of the Data Breach at a rate of thirty dollars (\$30) per hour. SA ¶ 7.2.3.

2. Reimbursement for “Extraordinary” Losses and Extraordinary Attested Time

In addition to submitting a claim for Ordinary Out-of-Pocket Losses and/or Ordinary Attested Time, Settlement Class Members who believe they have suffered identity theft, fraud, or other extraordinary losses may submit a claim for Extraordinary Losses and/or Extraordinary Attested Time up to thirty-five thousand dollars (\$35,000) per individual, in the aggregate as set forth in the Settlement Agreement. SA ¶ 7.3. The total amount of compensation that can be claimed for Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses and

Extraordinary Attested Time cannot exceed \$35,000 per individual. *Id.* Such claims will be evaluated by the Settlement Administrator as per the process set out in the Settlement Agreement, which specifies that Claims for Ordinary Out-of-Pocket Losses and Extraordinary Losses shall require supporting third-party documentation. SA, ¶7.2.2 and ¶7.3.2. Whether or not they incurred Extraordinary Losses and whether or not they made a claim for Ordinary Out-of-Pocket Losses or Ordinary Attested Time, Settlement Class Members may submit a claim for up to ten (10) hours of time spent remedying identity theft, fraud, or other misuse of their information related to the Data Breach at a rate of thirty dollars (\$30) per hour. SA ¶ 7.3.4. The total Attested Time (“Ordinary” and “Extraordinary” Attested Time, combined) that can be claimed cannot exceed ten (10) hours. *Id.*

3. Credit Monitoring Services

Settlement Class Members, regardless of whether they make a claim for reimbursement, can elect to enroll in three (3) years of three bureau identity theft protection and credit monitoring services under the Settlement Agreement that will include the following features: (1) dark web scanning with user notification if potentially unauthorized use of a Settlement Class Member’s personal information is detected; (2) identity theft insurance; (3) real-time credit monitoring with Equifax, Experian, and TransUnion; and (4) access to fraud resolution agents. SA ¶ 7.4. The cost of providing the credit monitoring services described here shall be paid from the Settlement Fund.

4. Pro Rata Increase or Reduction of Approved Claims

If the total amount of Approved Claims submitted (as determined in the process set out in SA ¶ 7.5), when aggregated with Administration and Notice Costs and Attorneys’ Fees and Expenses as approved by the Court, is less than the amount of the Settlement Fund, then Approved Claims shall be increased on a pro rata basis such that the total aggregate amount of Approved

Claims, Administration and Notice Costs, and Attorneys' Fees and Expenses equals (as reasonably close as possible without exceeding) the amount of the Settlement Fund. SA ¶ 7.6. If the total amount of Approved Claims submitted, when aggregated with Administration and Notice Costs and Attorneys' Fees and Expenses as approved by the Court exceeds the amount of the Settlement Fund, then Approved Claims shall be reduced on a pro rata basis such that the total aggregate amount of Approved Claims, Administration and Notice Costs, and Attorneys' Fees and Expenses does not exceed the amount of the Settlement Fund. *Id.* The Settlement Administrator shall reasonably exercise its discretion for purposes of implementing any pro rata increase or reduction provided herein to account for estimated, but not yet incurred, Administration and Notice Costs. For the avoidance of doubt, in no event shall Gunster's liability or obligation under the Settlement Agreement exceed the Settlement Fund. SA ¶ 7.6.

5. Payment of Approved Claims

Approved Claims will be paid via an electronic payment, or a check mailed to the Settlement Class Member. SA ¶ 7.7. Settlement Class Members will have ninety (90) days to cash the checks or electronically receive the payment, after which any uncashed checks will be void and the ability to receive the electronic payment will expire. *Id.* If the aggregate value of void checks and lapsed electronic payments makes it economically feasible, such funds (after decreasing the total by the cost of any anticipated tax reporting requirements and other ancillary expenses) will be disbursed pro rata via a second round of payments issued to those who successfully received electronic payments or cashed checks issued during the first round of disbursement. *Id.* After ninety (90) days of the second disbursement, any uncashed checks will be void and the ability to receive electronic payment will also expire. *Id.* The aggregate value of void checks and unclaimed electronic payments after the second round (or, if there is no second round

of checks, after the first round of checks) and/or remaining funds following the preparation of any required tax documents will be paid to increase the length of credit monitoring for those who elect it if possible, or if not, to the Florida Bar Foundation if approved by the Court. *Id.* However, if the second round of payments is not economically feasible, funds remaining in the Settlement Fund will be directly given to the Florida Bar Foundation, if approved by the Court. *Id.*

6. Information Security Enhancements

In response to the Data Breach and the Action, Gunster has further enhanced its data security infrastructure by, among other things, engaging in a comprehensive SOC II Type II review and audit; deploying a best in class EDR tool; implementing a centralized logging and monitoring solution with 24/7 third-party monitoring for log aggregation, threat detection, and response capabilities; enhancing backup solutions and disaster recovery protocols; expanding and hardening cloud environments; implementing enhanced access controls, including but not limited to a Privileged Access Management solution; enhancing application security testing; and engaging in a comprehensive review and modification of firewall rules and configurations. SA ¶8.1.

7. Release

As set forth in more detail the Settlement Agreement, as of the Effective Date, all Releasing Parties, on behalf of themselves, their heirs, assigns, beneficiaries, executors, administrators, insurers, predecessors, and successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely, unconditionally, and forever release and discharge any and all Released Claims against the Released Parties, except for claims relating to the enforcement of the Settlement or Agreement. SA ¶ 13.1 The Parties expressly intend that all Released Parties, including Released Parties who are third-party beneficiaries (*e.g.*, current and former clients whose information was impacted in the Data Breach), shall have the right to directly enforce the Releases

herein. SA ¶ 13.2. The Parties understand that if the facts upon which the Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that the Agreement, including the releases, shall remain effective notwithstanding such difference in facts. SA ¶ 13.3. The Parties agree that in entering the Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein. *Id.* Notwithstanding any other provision of the Agreement, nothing in the Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of the Agreement, or any court order implementing the Agreement, in a manner consistent with the terms of the Agreement. *Id.*

Within ten (10) Business Days after the Effective Date, proposed Class Counsel and the proposed Settlement Class Representatives shall dismiss with prejudice all claims, Actions, or proceedings that are released pursuant to the Agreement. SA ¶ 13.4.

C. The Notice and Claims Process

1. Notice

The Settlement Administrator shall be responsible for implementing and executing the Notice Plan. Within fourteen (14) days after the Court's entry of a Preliminary Approval Order, Gunster shall provide the Settlement Administrator with available contact information for Settlement Class Members. SA ¶10.1.

Should the Settlement be terminated for any of the reasons identified in the Settlement Agreement, the Settlement Administrator shall immediately destroy all contact information received from Gunster for Settlement Class Members. SA ¶10.2. As specified in Paragraph 3.2 of the Settlement Agreement, all costs incurred by the Settlement Administrator or otherwise relating

to providing notice to Settlement Class Members shall be paid from the Settlement Fund. SA ¶10.3.

Subject to the Court's approval, the Parties propose a Notice Plan (Exhibit D) requiring a customary form of short notice to be mailed (and, where possible, emailed) to Settlement Class Members and a customary long form notice ("Long Notice"). Notice Plan, Exhibit D ¶ 9. The Settlement Class consists of approximately 746,000 Settlement Class Members, approximately 549,000 of which will be provided with direct notice to their last-known address. The remainder of the class will be provided with notice through a media campaign, as described in the Notice Plan. *Id.* Verita Global, LLC ("Settlement Administrator") will establish and maintain a dedicated settlement website that will be updated throughout the claims period with the Long Notice and Claim Form approved by the Court, as well as the Settlement Agreement. Notice Plan, Exhibit D ¶18. The Settlement Administrator will also maintain a toll-free help line, post office box, and e-mail address where Settlement Class Members may submit hard copy Claim Forms, exclusion requests and other case correspondence to allow Settlement Class Members to easily correspond with Verita. Exhibit D ¶¶18-20.

2. Requests for Opt-Outs

Any individual who wishes to exclude themselves from the Settlement must submit a written request for exclusion to the Settlement Administrator, which shall be postmarked or submitted electronically no later than the Opt-Out Deadline. SA ¶ 15.1.

The written request for exclusion must:

- (i) Identify the case name of the Action;
- (ii) Identify the name and address of the individual seeking exclusion from the Settlement;

- (iii) Be personally signed by the individual seeking exclusion;
- (iv) Include a statement clearly indicating the individual's intent to be excluded from the Settlement; and
- (v) Request exclusion only for that one individual whose personal signature appears on the request. SA ¶ 15.2.

Opt-out requests seeking exclusion on behalf of more than one individual shall be deemed invalid by the Settlement Administrator. SA ¶ 15.3. Any individual who submits a valid and timely request for exclusion in the manner described herein shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement. SA ¶ 15.4. Any individual who does not submit a valid and timely request for exclusion in the manner described herein shall be deemed to be a Settlement Class Member upon expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments applicable to the Settlement Class. SA ¶ 15.5.

3. Objections

Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Court on or before the Objection Deadline, as specified in the Preliminary Approval Order. SA ¶ 16.1.

The written objection must include:

- (i) The case name and number of the Action;
- (ii) The name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;

- (iii) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- (iv) A statement of the specific grounds for the objection; and
- (v) A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel. SA ¶ 16.2.

In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney), the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing. SA ¶ 16.3. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Agreement, the Preliminary Approval Order, and in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of the Agreement by appeal or any other means. SA ¶ 16.4.

4. Claims Process

The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim or decide whether they would like to opt-out or object. The Claim Form, attached to the Settlement Agreement as Exhibit A, is written in plain language to facilitate Settlement Class Members' ease in completing it.

D. Attorneys' Fees and Expenses

Proposed Class Counsel shall submit a request to the Court for payment of Attorneys' Fees, expressed as a percentage of the value conferred by the Settlement on the Settlement Class, and for reimbursement of Expenses incurred in prosecuting and settling the Action. SA ¶ 17.1. Any request for Attorneys' Fees and Expenses will be filed with the Court at least thirty-five (35) days before the Objection Deadline. *Id.* If approved by the Court, such Attorneys' Fees and Expenses will be paid by the Settlement Administrator from the Settlement Fund within twenty-one (21) Business Days after the Effective Date. *Id.* Gunster agrees not to oppose any request to the Court for Attorneys' Fees and Expenses, provided such request does not exceed thirty percent of the Settlement Fund. SA ¶ 17.2.

V. ARGUMENT

To certify a class action for settlement purposes, the Court must first determine that all the requirements for class certification set forth in Florida Rule of Civil Procedure 1.220(a) have been met. *See Canal Ins. Co. v. Gibraltar Budget Plan, Inc.*, 41 So.3d 375, 377 (Fla. 4th DCA 2010). In addition, at least one of the three requirements of rule 1.220(b) must be satisfied. *Sosa v. Safeway Premium Finance Co.*, 73 So. 3d 91, 106 (Fla. 2011). (a settlement class must satisfy the requirements of numerosity, commonality, typicality, and adequacy of representation, as well as predominance and superiority).

Once it is determined that the settlement class meets the requirements for class certification pursuant to Rule 1.220, the Court's analysis turns to the terms of the proposed settlement. *Grosso v. Fidelity National Title Ins. Co.*, 983 So. 2d 1165, 1170 (Fla. 3d DCA 2008). The approval of a class action settlement as fair, adequate, and reasonable is a two-step process. First, the Court must determine whether the proposed settlement terms fall within the range of reasonableness such that preliminary approval is warranted. Second, after notice is given to the class, the Court must

evaluate whether final approval is warranted. *See Manual for Complex Litigation*, Third, § 30.41, at 236-37 (1995)). In granting preliminary approval, courts typically first certify the class for settlement purposes, then consider the fairness of the settlement at the final hearing. *See, e.g., Grosso*, 983 So. 2d at 1170. And because Florida Rule of Civil Procedure 1.220 is patterned after Rule 23 of the Federal Rules of Civil Procedure, Florida courts consider case law interpreting Rule 23 as persuasive. *Broin v. Philip Morris Co.*, 641 So.2d 888, n.1 (Fla. 3d DCA 1994). For the reasons set forth below, preliminary approval should be granted here.

A. Certification of the Settlement Class for Settlement Purposes Is Warranted.

The threshold requirements for class certification are outlined in Florida Rule of Civil Procedure 1.220. A class action may only be certified after the Court determines that: (1) there is sufficient numerosity of class members; (2) there is commonality of the claims or defenses of the named class representative and each member of the class; (3) the claims or defenses of the class representative are typical of that of the class; and (4) the class representative can fairly and adequately represent the interests of each member of the class. *See* Fla. R. Civ. P. 1.220(a). Further, the court must conclude that one of the subdivisions of Rule 1.220(b) are satisfied, including (as is applicable here) whether

the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

Fla. R. Civ. P. 1.220(b)(3).

Here, certification of the Settlement Class is warranted because the requirements of Florida Rule of Civil Procedure 1.220 are easily satisfied.

- **Numerosity:** Numerosity requires “the members of the class are so numerous that separate joinder of each member is impracticable.” Fla. R. Civ. P. 1.220(a)(1). While there is “[n]o specific number and no precise count are needed to sustain the numerosity requirement,” the Florida Supreme Court has held that a class made up of hundreds or thousands of individuals “assuredly satisfies the numerosity requirement.” *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91, 114 (Fla. 2011). Here, there are approximately 746,000 Settlement Class Members. Thus, numerosity is easily satisfied.
- **Commonality:** The second prerequisite to certification is commonality, which means that “the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class.” Fla. R. Civ. P. 1.220(a)(2). “The threshold of the commonality requirement is not high.” *Sosa*, 73 So.3d at 107. “More specifically, the commonality prong only requires that resolution of a class action affect all or a substantial number of the class members, and that the subject of the class action presents a question of common or general interest.” *Id.*

Here, the commonality requirement is readily satisfied because Settlement Class Members are joined by the common questions of law and fact that arise from the same event—the Data Breach: Specifically, Plaintiff alleged, among others, the following common questions:

- a. Whether Defendant unlawfully used, maintained, lost, or disclosed Plaintiffs’ and Settlement Class Members’ Personal Information;

- b. Whether Defendant failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the Data Breach;
- c. Whether Defendant's data security systems prior to and during the Data Breach complied with applicable data security laws and regulations;
- d. Whether Defendant's data security systems prior to and during the Data Breach were consistent with industry standards;
- e. Whether Defendant owed a duty to Class Members to safeguard their Personal Information;
- f. Whether Defendant breached its duty to Class Members to safeguard their Personal Information;
- g. Whether Defendant failed to comply with the HIPAA Security Rule (45 CFR 160 and Subparts A and C of Part 164) by failing to implement reasonable security procedures and practices to protect the integrity and availability of PHI;
- h. Whether Defendant knew or should have known that its data security systems and monitoring processes were deficient;
- i. Whether Defendant should have discovered the Data Breach earlier;
- j. Whether Defendant took reasonable measures to determine the extent of the Data Breach after it was discovered;
- k. Whether Defendant failed to provide notice of the Data Breach in a timely manner;

- l. Whether Defendant's delay in informing Plaintiffs and Settlement Class Members of the Data Breach was unreasonable;
- m. Whether Defendant's method of informing Plaintiffs and Settlement Class Members of the Data Breach was unreasonable;
- n. Whether Defendant's conduct was negligent;
- o. Whether Plaintiffs and Settlement Class Members were injured as a proximate cause or result of the Data Breach;
- p. Whether Plaintiffs and Class Members suffered legally cognizable damages as a result of Defendant's misconduct;
- q. Whether Defendant breached implied contracts with Plaintiffs and Settlement Class Members;
- r. Whether Defendant was unjustly enriched as a result of the Data Breach; and
- s. Whether Plaintiffs and Settlement Class Members are entitled to damages, civil penalties, punitive damages, treble damages, and/or injunctive relief.

(Complaint ¶ 136). Such issues, focusing on Defendant's conduct, satisfy commonality. *See, e.g., In re Countrywide Fin Corp. Customer Data Sec. Breach Litig.*, 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) ("All class members had their private information stored in Countrywide's databases at the time of the data breach"); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig.*, 851 F.Supp.2d 1040, 1059 (S.D. Tex. 2012) ("Answering the factual and legal questions about Heartland's

conduct will assist in reaching class wide resolution.”).

- **Typicality:** The next prerequisite to certification, typicality, asks whether “the claim or defense of the representative party is typical of the claim or defense of each member of the class.” Fla. R. Civ. P. 1.220(a)(3). “The key inquiry for a trial court when it determines whether a proposed class satisfies the typicality requirement is whether the class representative possesses the same legal interest and has endured the same legal injury as the class members.” *Sosa*, 73 So.3d at 114.

Here, the typicality requirement is satisfied for the same reasons that Plaintiffs’ claims meet the commonality requirement. Specifically, Plaintiffs’ claims are typical of those of the putative class because they arise from the same Data Breach and from the same legal duty they allege Gunster had to secure the Personal Information of Plaintiffs and the Settlement Class Members, comprising a clear nexus between Plaintiffs’ claims and those of the Settlement Class Members.

- **Adequacy:** Rule 1.220(a)(4) requires that “the representative party can fairly and adequately protect and represent the interests of each member of the class.” “This inquiry serves to uncover conflicts of interest between the presumptive class representative and the class he or she seeks to represent.” *Sosa*, 73 So. 3d at 115. “A trial court’s inquiry concerning whether the adequacy requirement is satisfied contains two prongs.” *Id.* “The first prong concerns the qualifications, experience, and ability of class counsel to conduct the litigation.” *Id.* “The second prong pertains to whether the class representative’s interests are antagonistic to the interests of the class members.” *Id.*

As noted above, Plaintiffs are members of the Settlement Class and do not possess any interests antagonistic to the Settlement Class. They each allege they provided their Personal Information to Gunster and that they were harmed because of the Data Breach. Additionally, Plaintiffs have vigorously prosecuted this case for the benefit of all Settlement Class Members by filing the underlying action, reviewing pleadings, conferring with proposed Class Counsel, and providing input in crafting and approving the Settlement. In addition, proposed Class Counsel are qualified to represent the Settlement Class. They have extensive experience in prosecuting data breach cases, having represented data breach victims in numerous cases across the country. *See Jay Decl.*, ¶¶ 14-28. In this case, they have spent considerable time investigating Settlement Class Members' injuries and claims and negotiating a well-informed Settlement on behalf of the Settlement Class. Accordingly, the adequacy requirement is satisfied.

In addition to the 1.220(a) factors, Plaintiffs must also satisfy at least one of the 1.220(b) subdivisions. Here, questions of law or fact common to Plaintiffs and the claim or defense of each Settlement Class Member predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. Specifically:

- **Predominance:** “Florida courts have held that common questions of fact predominate when the defendant acts toward the class members in a similar or common way.” *Sosa*, 73 So.3d at 111. In this case, the key predominating questions are whether Gunster had a duty to exercise reasonable care in safeguarding, securing, and protecting the Personal Information of Plaintiffs and the Settlement Class Members and whether Gunster breached that duty. The many common

questions of fact and law that arise from Gunster's conduct predominate over any individualized issues. Other courts have recognized that these types of common issues arising from a data breach predominate over individualized issues. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 312-315 (finding predominance was satisfied because "plaintiffs' case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect plaintiffs' personal information," such that "the claims rise or fall on whether [the defendant] properly secured the stolen personal information," and that these issues predominated over "potential individual issues based on state-law variations"); *Hapka v. CareCentrix, Inc.*, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case, stating "[t]he many common questions of fact and law that arise from the E-mail Security Incident and CareCentrix's alleged conduct predominate over any individualized issues"); *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members' personal and financial information, whether it had a legal duty to do so, and whether it failed to timely notify class members of the data breach); *In re Heartland*, 851 F. Supp. 2d at 1059 (finding predominance satisfied in data breach case despite variations in state laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class). Additionally, because the claims are being certified for purposes of settlement, there are no issues with manageability, and resolution of thousands of claims in one action is far superior to individual

lawsuits. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial.”). Accordingly, the common questions of fact and law that arise from Defendant’s conduct predominate over any individualized issues.

- **Superiority:** The superiority requirement asks whether “a class action is the most manageable and efficient way to resolve the individual claims of each class member.” *Sosa*, 73 So.3d at 116. Proceeding as a class action in this case is superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. Indeed, absent class treatment, each Settlement Class Member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. There is no indication in this case that any Settlement Class Member wishes to litigate their claims on an individual basis. And with the high cost of litigating a case like this—requiring expert investigation and testimony to prove how and why the data breach occurred—almost certainly swamping individual damages, individualized litigation is impracticable. *See In re Checking*, 286 F.R.D. at 659 (“The class action fills an essential role when the [plaintiffs] would not have the incentive or resources to prosecute relatively small claims in individual suits, leaving the defendant free from legal accountability.”).

B. The Terms of the Settlement are Fair and Reasonable.

After determining that certification is appropriate, courts next consider whether the Settlement warrants preliminary approval. Preliminary approval of a class action settlement “is not binding, and it is granted unless a proposed settlement is obviously deficient.” *Smith v. Wm. Wrigley Jr. Co.*, 2010 U.S. Dist. LEXIS 67832, *6 (S.D. Fla. June 15, 2010). “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.” *Id.* at *7. These requirements are readily satisfied here, as demonstrated above in the Agreement and in the exhibits hereto. *City of L.A. v. Bankrate, Inc.*, 2016 U.S. Dist. LEXIS 115071, *14-15 (S.D. Fla. Aug. 24, 2016) (granting preliminary approval of proposed class action settlement where “the proposed settlement was made after mediation was conducted,” “[t]he negotiations appear to have been made in good faith and there do not appear to be any obvious deficiencies,” and the settlement amount “appears to be within the range of reasonableness”); *Almanzar v. Select Portfolio Servicing, Inc.*, 2015 U.S. Dist. LEXIS 178149, *5-6 (S.D. Fla. Oct. 15, 2015) (granting preliminary approval, finding that proposed class action settlement was based on “informed, good-faith, arms-length negotiations between the Parties and their capable and experienced counsel,” and settlement was “within the range of reasonableness and possible judicial approval”).

As will be set forth in greater detail in the motion for final approval – and as demonstrated by the terms of the Agreement – all nine factors suggested by the Second District Court of Appeals to evaluate the fairness, reasonableness and adequacy of a settlement favor approval here. *Griffith v. Quality Distribution*, 307 So. 3d 791 (Fla. 2d DCA 2018). The relevant factors include (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater

judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Id. Griffith* notes that Florida courts have also applied the six factors described by the First District in *Nelson*, which similarly favor preliminary approval of the Settlement at hand.⁴ 985 So. 2d at 570. The Eleventh Circuit has also identified factors used by Florida Courts to evaluate settlements, which again favor the Settlement here. *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 n. 6 (11th Cir. 1994).

Specifically, the Settlement is as comprehensive as nearly any other data breach settlement on record, and the specific benefits compare favorably to what has been previously approved, including:

- A sizeable, \$35,000 cap on Ordinary Out-of-Pocket Losses, Ordinary Attested Time, Extraordinary Losses and Extraordinary Attested Time.
- Compensation for up to 10 hours of Ordinary and Extraordinary Attested Time.
- Three years of three-bureau identity theft protection and credit monitoring services available to all Settlement Class Members regardless of whether they make a claim for reimbursement.
- Pro rata cash payments from the remainder of the Settlement Fund to all Settlement Class Members that file a claim, through two rounds of distributions, if economically feasible.

⁴ The six factors are: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point over or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of the litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved. *Griffith*, 307 So. 3d at 791 (citing *Nelson*, 985 So. 2d at 570).

- Information Security Practice commitments that are narrowly tailored to further enhance Defendant's cybersecurity posture.

The relief made available under the Settlement compares very favorably to the relief made available to victims of large data breaches in common fund cases that has previously received approval and provides for a significantly greater recovery on a per-person basis. *See, e.g., In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *2 (N.D. Ga. Mar. 17, 2020) (describing settlement benefits made available from \$380.5 million fund on behalf of 147 million class members); *In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 2019 WL 3410382, at *23-24 (D. Or. July 29, 2019) (describing settlement benefits made available from \$32 million fund on behalf of 11 million class members); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D. Cal. 2018) (approving \$115 million settlement on behalf of more than 79 million class members). The settlement fund also compares favorably to the relief offered in comparably sized cases. *See, e.g., In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, (S.D. Fla. Oct. 5, 2024) (approving \$6 million settlement on behalf of 2,712,790 class members).

Proposed Class Counsel, a group with extensive experience in leading many data breach class actions, including most of the largest ones litigated to date, believe that the relief is fair, reasonable, adequate, and superior to many comparable settlements on record. JAY Decl., ¶¶ 29-36. The Court may rely upon such experienced counsel's judgment in assessing the fairness of the Settlement. *See, e.g., Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012) ("Absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel."). Indeed, there was no fraud or collusion in the Settlement, which was entered into after arms-length negotiations and with the assistance of an experienced

and well-respected mediator with unique expertise in cybersecurity matters; this Action is complex and expensive and the likelihood of success is uncertain given the rapidly developing area of the law. The Settlement Fund made available to the Settlement Class here is reasonable, given the complexity of the Action and the risks that loomed in the absence of settlement including, but not limited to, a long drawn-out trial as well as appellate review following a final judgment. Plaintiffs and the proposed Class Counsel believe that the Settlement is an excellent and a reasonable result for the Settlement Class in light of factors stated above and anticipate that members of the Settlement Class will be satisfied with the result as well.

Finally, with regard to the merits and risks, and while Plaintiffs are confident in the merits of their claims, they also understand that Defendant will assert a number of potentially case-dispositive defenses and are pragmatic in their awareness of the various defenses available to Defendant, as well as the risks inherent to continued litigation. Defendant has consistently denied the allegations raised by the Plaintiffs and made clear at the outset that they would vigorously defend the case. The Settlement Agreement avoids these uncertainties and provides the Settlement Class with meaningful and certain relief.

Due at least in part to their cutting-edge nature and the rapidly evolving law, class actions can involve some level of risk, expense, and complexity, which is one reason that judicial policy so strongly favors resolving class actions through settlement. *See In re U.S. Oil & Gas Litig.*, 967 F.2d at 493. Should this litigation continue, class certification is a significant hurdle that introduces additional complexities, including the potential for denial of certification. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). A settlement today not only avoids the risks of continued litigation, but it also eliminates the risk that the Court would not certify the class or certification might not be upheld on appeal, and it also provides

benefits to Settlement Class Members of the type designed to address the common repercussions which arise following a data breach.

For all these reasons, Plaintiffs respectfully submit that there are no obvious deficiencies to the Settlement precluding Preliminary Approval and that this Motion should be granted.

C. The Proposed Class Notice Satisfies Rule 1.220(d)(2)

Rule 1.220(d)(2) provides as follows:

As soon as is practicable after the court determines that a claim or defense is maintainable on behalf of a class, notice of the pendency of the claim or defense shall be given by the party asserting the existence of the class to all the members of the class. The notice shall be given to each member of the class who can be identified and located through reasonable effort and shall be given to the other members of the class in the manner determined by the court to be most practicable under the circumstances. Unless otherwise ordered by the court, the party asserting the existence of the class shall initially pay for the cost of giving notice. The notice shall inform each member of the class that (A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class, (B) the judgment, whether favorable or not, will include all members who do not request exclusion, and (C) any member who does not request exclusion may make a separate appearance within the time specified in the notice.

The Notice Plan here satisfies all of these criteria and is designed to provide the best notice practicable. The notices are clear and straightforward. They define the Settlement Class; clearly describe the options available to Settlement Class Members and the deadlines for taking action; describe the essential terms of the settlement and apprise the Settlement Class of the pendency of the case, class certification (for settlement purposes); the terms of the Settlement; proposed Class Counsel's request for attorney's fees, costs, and expenses; Settlement Class Members' rights to opt-out of or object to the Settlement; describe the date, time, and place of the Final Fairness Hearing; and prominently display the address and phone number of proposed Class Counsel as

well as the other information required by Fla R. Civ. P. 1.220(d)(2). *See, generally*, Notice Plan, Exhibit D (and Notice exhibits attached thereto); *see also Nolan v. Integrated Real Estate Processing, LP*, 2009 U.S. Dist. LEXIS 136890, at *20-21 (M.D. Fla. Sep. 9, 2009) (setting forth what should be included in notice of settlement). The Notice Plan is comprised of: (1) direct Notice sent by direct mail as well as public notice through a media campaign for the remainder of the class; and (2) Notice posted to the settlement website. S.A. ¶¶ 9, 18. Individual, direct notice clearly comports with due process requirements. *See, e.g., Juris v. Inamed Corp.*, 685 F.3d 1294, 1320 (11th Cir. 2012). Additionally, Verita will establish and maintain a dedicated settlement website that will be updated throughout the claims period with the Long Notice and Claim Form approved by the Court, as well as the Settlement Agreement. Notice Plan, Exhibit D ¶ 18. A toll-free help line, post office box, and e-mail address will be maintained where Settlement Class Members may submit hard copy Claim Forms, exclusion requests and other case correspondence to allow Settlement Class Members to easily correspond with Verita. Exhibit D ¶¶ 19-20.

Thus, the notices satisfy the specific requirements of Rule 1.220(d), sufficiently informing Settlement Class Members of the terms of the proposed Settlement and their available options and are the best notices that are practicable under the circumstances.

D. Plaintiffs' Counsel Should Be Appointed as Class Counsel

As discussed above, and as fully explained in Mr. Yanchunis' Declaration, proposed Class Counsel have extensive experience prosecuting similar class actions, as well as other complex litigation, and have the experience to assess the risk of continued litigation and appeals. proposed Class Counsel have diligently investigated and prosecuted the claims here, have dedicated substantive resources to the litigation of those claims, and have successfully negotiated the Settlement to the benefit of Plaintiffs and the Settlement Class. Accordingly, the Court should

appoint John A. Yanchunis, Morgan & Morgan Complex Litigation Group and Brian Murray of Glancy Prongay & Murray LLP as Class Counsel.

E. Proposed Schedule of Post-Settlement Events

Plaintiffs respectfully propose the following schedule for the Court's review and approval. If the Court agrees with the proposed schedule, Plaintiffs request that the Court schedule the Final Approval Hearing at which the Court will hear evidence and argument necessary to make its final evaluation of the Settlement; whether to enter a Final Approval Order; and whether to approve proposed Class Counsels' request for the Fee Award and Costs. Plaintiffs request that the Court schedule the Final Approval Hearing at a date convenient for the Court.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and proposed Class Counsel respectfully request that the Court: (1) Preliminarily approve the Settlement; (2) Certify the Settlement Class for settlement purposes; (3) Approve the proposed Notice Plan and authorizing its dissemination; (4) Approve the Claim Form and Claims Process; (5) Appoint Plaintiffs as Settlement Class Representatives; (6) Appoint John A. Yanchunis and Brian Murray as Class Counsel; and (7) Appoint Verita as the Settlement Administrator; (8) Approve the procedures and deadlines for Settlement Class members to opt-out and Settlement Class Members to object; and (9) Set a schedule for the final approval process. A proposed Preliminary Approval Order is attached hereto as Exhibit E.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to paragraph 11(A) of Administrative Order S-2024-046, the undersigned certifies that Plaintiffs' counsel and Gunster's counsel have conferred via telephone and video conferencing regarding the relief sought in this motion and the Parties agree on the resolution of the motion.

Dated: February 14, 2025

Respectfully submitted,

/s/ John A. Yanchunis

/s/ Brian Murray

*Attorneys for Plaintiffs and the proposed Settlement
Class*

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2025 I electronically filed the foregoing with the Clerk of the Court using the Court's E-Filing Portal which will send notification of such filing to the e-mail addresses of all counsel of record.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 14, 2025

By: /s/ John A. Yanchunis