**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, CHANCERY DIVISION**

BARB LHOTA, JORGE P. NEWBERY, MONDUOUKPE SEYIVE BANI A MEDEGAN FAGLA, CRISTINA HEER, MORGAN STRUNSKY, QIXIN CHEN, BEICHEN SHI, and RICHARD DELANO CORNELL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

MICHIGAN AVENUE IMMEDIATE CARE, S.C.

Defendant.

Case No. 2022-CH-06616

Judge: Hon. Pamela McLean Meyerson

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

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Cases**

**Other Authorities**

Plaintiffs Barb Lhota, Qixin Chen, Beichen Shi, Jorge Newbery, Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, Morgan Strunsky and Richard Delano Cornell (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, by and through their undersigned counsel, respectfully submit their Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"). The terms of the class action settlement (the "Settlement") are set forth in a Settlement Agreement dated January 27, 2023 (the "Settlement Agreement" or "SA").[1]

## I. INTRODUCTION

Michigan Avenue Immediate Care, S.C. ("MAIC" or "Defendant" and, together with Plaintiffs, the "Parties"), is an urgent care facility in Chicago, Illinois. In connection with providing services to its patients, MAIC collects a host of personally identifying information ("PII") and personal health information ("PHI") from each of its patients. MAIC stores this information on its own servers and networks.

Plaintiffs, individually and on behalf of the Class (as defined below), filed suit against MAIC, alleging MAIC failed to adequately protect their personal and private information. Defendant has denied allegations of wrongdoing and liability and asserted defenses to the individual and representative claims throughout the pendency of the litigation.

Recognizing the risks of protracted litigation, the Parties engaged in settlement negotiations with the Honorable Stuart Palmer, Ret., of JAMS, who is widely respected and experienced in mediating class action and data breach cases. Through mediation and extensive

[1] Unless otherwise indicated, the defined terms herein shall have the same definitions as set forth in the Settlement Agreement, attached as **Exhibit 1** to the Declaration of Raina Borrelli in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Borrelli Decl."), filed herewith.

negotiations, the Parties reached an agreement that provides for significant monetary relief for the Settlement Class.

Pursuant to the Parties' agreement, Plaintiffs now respectfully request that this Court: (1) preliminarily approve the Parties' settlement as fair, adequate, reasonable, and within the range of possible final approval; (2) appoint Plaintiffs Barb Lhota, Qixin Chen, Beichen Shi, Jorge Newbery, Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, Morgan Strunsky and Richard Delano Cornell as Class Representatives; (3) appoint Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC; Raina Borrelli of Turke & Strauss LLP; Carl V. Malmstrom of Wolf Haldenstein Adler Freeman & Herz LLC; Thomas A. Zimmerman, Jr. of Zimmerman Law Offices, P.C.; and Gary Mason of Mason LLP as Settlement Class Counsel; (4) provisionally certify the Settlement Class for settlement purposes only; (5) approve the Parties' proposed notice program and confirm it is appropriate and satisfies due process; (6) set a date for a final approval hearing; and (7) set deadlines for members of the Settlement Class to submit claims for compensation and to object to or exclude themselves from the settlement.

## II. CASE SUMMARY

### A. The Data Incident

In or about May 2022, MAIC discovered a cybersecurity disruption on its computer network. *See* Amended Complaint ("Am. Compl."), ¶7. MAIC launched an investigation with the assistance of third-party cybersecurity specialists to determine the nature and scope of the event. *Id.* ¶43. On or about May 1, 2022, the investigation determined that an unauthorized third-party cybercriminal gained access to MAIC's systems, and that information contained in those systems may have been compromised by the third-party threat actor (the "Data Incident"). *Id.* ¶7. On or about May 12, 2022, MAIC determined the personal information of individuals impacted by the Data Incident included: name, address, telephone number, date of birth, Social Security number,

driver's license number, treatment information and/or health insurance information. *Id.* ¶¶8, 13. The Data Incident impacted 144,104 individuals. SA ¶39.

**B. Procedural Posture**

On July 8, 2022, Plaintiff Barb Lhota filed a lawsuit against MAIC captioned, *Lhota v. Michigan Avenue Immediate Care, S.C.*, Case No. No. 2022-CH-06616 (Ill. Cir. Ct. Cook Cnty.) (the "*Lhota* Action"). Plaintiff Lhota alleged five causes of action: (1) Negligence; (2) Negligence Per Se; (3) Breach of Implied Contract; (4) Unjust Enrichment; and (5) Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 Ill. Comp. Stat. 505/1, *et seq*. In addition to the *Lhota* Lawsuit, impacted individuals filed four other lawsuits related to the Data Incident in Cook County, which alleged similar and additional causes of action: (1) *Chen et al. v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022-CH-07101 (Ill. Cir. Ct. Cook Cnty.); (2) *Newbery v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022-07128 (Ill. Cir. Ct. Cook Cnty.); (3) *Seyive Bani A Medegan Fagla et al. v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022-CH-07692 (Ill. Cir. Ct. Cook Cnty.); and (4) *Cornell v. Michigan Avenue Immediate Care, S.C.*, Case No. 1:22-cv-03885 (N.D. Ill.) (together, the "Lawsuits"). In addition to the causes of action in the *Lhota* Lawsuit, the Lawsuits also included causes of action for: Bailment, Intrusion Upon Seclusion, Declaratory Judgment, and additional state data breach and consumer protection statutes beyond Illinois.[2]

Plaintiffs' counsel in the aforementioned lawsuits began communicating and working together on the Lawsuits soon after filing. After some coordination, Plaintiffs' counsel began to explore the possibility of an early resolution of the Lawsuits.

[2] The plaintiffs in the Lawsuits filed an Amended Complaint in the *Lhota* action on February 6, 2023, which adds the plaintiffs from each of the Lawsuits as named parties to the *Lhota* action and incorporates all causes of action alleged in the Lawsuits.

### C. History of Negotiations

Recognizing the risks of protracted litigation, the Parties engaged in settlement negotiations. Borrelli Decl, ¶4. To facilitate negotiations, the Parties agreed to use experienced mediator Honorable Stuart Palmer, Ret., of JAMS. *Id*. Judge Palmer has extensive experience in class action mediation generally and data breach mediation in particular. *Id.* Prior to the mediation, MAIC produced informal discovery to Plaintiffs' counsel, including information about the cause and scope of the Data Incident and information about the number of individuals affected. *Id.* This information allowed Plaintiffs' counsel to be well-informed prior to engaging in settlement discussions. *Id.*

On November 2, 2022, the Parties attended a full day mediation via Zoom with Judge Palmer. Although the parties did not come to an agreement at mediation, they continued their discussions after that date and, building on the work done at mediation, reached an agreement in principle on all central settlement terms and executed a term sheet on November 7, 2022. *Id.* ¶5. Over the ensuing months, the Parties continued negotiating the finer points of the Settlement Agreement, diligently drafting and finalizing the Settlement, Notice, and Claim Forms, and drafting the motion for preliminary approval for presentment to the Court. *Id.*

## III. SUMMARY OF THE SETTLEMENT

The Settlement Agreement specifies how to implement the Parties' settlement from start to finish, including how to define the Settlement Class, the benefits they will receive, how to handle claims, and how Plaintiffs may petition for fees and service awards.

### A. Class Definition

The Settlement Agreement defines the Settlement Class as the 144,104 individuals identified on Defendant's Settlement Class List whose certain personal information and certain health-related information was involved in the Data Incident. Excluded from the Settlement Class

are: (1) the judges presiding over these Actions, and members of their direct family; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parent companies have a controlling interest, and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline. SA ¶39.

**B. Benefits to the Settlement Class**

The Settlement establishes an $850,000 Settlement Fund from which all Settlement Class benefits, notice and administration fees, and attorneys' fees and Plaintiffs' service awards shall be paid. Settlement Class Members can file claims for two forms of monetary relief: (1) an Alternative Cash Payment of $50.00; or (2) a Lost Time Payment of $25.00 per hour, up to four (4) hours, for a maximum of $100.00, as well as Out-of-Pocket Losses of up to $2,500 for unreimbursed losses, including Out-of-Pocket Expenses, such as the purchase of credit monitoring. SA ¶52.

**1. Alternative Cash Payment**

Settlement Class Members may choose to make a claim for an Alternative Cash Payment of $50.00 upon submission of a valid Claim Form. Settlement Class Members who are eligible for and choose the Alternative Cash Payment will not be eligible to claim any other monetary benefits under the Settlement. SA ¶¶3, 52

**2. Lost Time and Out-of-Pocket Losses Payment**

In the alternative to the Alternative Cash Payment, Settlement Class Members may make a claim for compensation for unreimbursed Out-of-Pocket losses up to $2,500.00 upon submission of a valid Claim Form and supporting documentation. SA ¶29. Out-of-Pocket losses may include, but are not limited to, the purchase of identity-protection services, credit-monitoring services, or ID-theft insurance that were purchased after receipt of the Data Incident Notice but no later than September 24, 2022 (approximately 90-days after the issuance of the Data Incident Notice). *Id.*

Additionally, Settlement Class Members may make a claim for up to four (4) hours of lost time, calculated at $25/hour, for time spent responding to issues raised by the Data Incident (supporting documentation is not required for claims for lost time—an attestation shall suffice). *Id.* ¶21.

The Settlement Administrator will have the discretion to determine whether any claimed loss is reasonably related to the Data Incident and whether the requirements have been met to make a claim for Lost Time. SA, Addendum A at ¶¶4-5.

**3. Relevant Reductions or Increases**

MAIC's total payment obligation for monetary claims under the Settlement Agreement is $850,000.00, and payments to Settlement Class Members who make Valid Claims will be reduced on a *pro rata* basis according to the number of claims made if the total exceeds the Settlement Fund after payment of Court-approved attorneys' fees and litigation costs and expenses. SA ¶42. In the event the Settlement Fund is not exhausted by the Settlement Class Members who make Valid Claims, the payments to Settlement Class Members will be increased on a *pro rata* basis. SA, Addendum A, ¶14.

**C. Notice and Claims Process**

**1. Notice**

Subject to Court approval, the Parties have agreed to use RG/2 Claims Administration as the Settlement Administrator. Borrelli Decl., ¶6; SA ¶38. Notice will be paid from the Settlement Fund. Borrelli Decl., ¶14; SA ¶50. Within thirty (30) days after the entry of the Preliminary Approval Order ("Notice Commencement Date"), and subject to the requirements of the Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator will provide Notice to the Settlement Class via U.S. mail to the addresses in Defendant's possession. SA ¶53.

The Settlement Administrator will also be responsible for creating a Settlement Website and shall maintain and update the website throughout the claim period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as the Settlement Agreement, the operative Complaints in each Lawsuit, and any other materials agreed upon or directed by the Court. *Id.* ¶53. Settlement Class Members will be able to submit claim forms through the Settlement Website. *Id.* ¶13.

The Settlement Administrator will also create and maintain a toll-free help line to provide Settlement Class Members with additional information about the Settlement. The Settlement Administrator will provide copies of the Long Form Notice and paper Claim Form, as well as the Settlement Agreement, upon request. *Id.* ¶15(e).

**2. Claims, Objections, and Requests for Exclusion**

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, compile documents supporting their claim, and decide whether they would like to opt-out or object. Borrelli Decl., ¶16.

Class Members will have 90 days from the Notice Deadline to submit their Claim Form to the Settlement Administrator, either by mail or online. SA ¶6. The Settlement Administrator has authority to assess the validity of claims, and upon receipt of an incomplete or unsigned Claim Form, is required to request additional information and/or documentation and give the Settlement Class Member 21 days to cure the defect before rejecting the claim. *Id.* ¶6. Claims will be paid as soon as practicable after the Effective Date. *Id.* ¶7.

Any Settlement Class Member who wishes to opt out of the settlement will have until 45 days after the Notice Deadline to provide written notice that they would like to be excluded from the Settlement Class. SA ¶28. Each Person wishing to opt out of the Settlement Class shall

individually sign and timely submit written notice of such intent to the designated address established by the Settlement Administrator. *Id.* ¶55. The written notice must clearly manifest a Person's intent to opt out of the Settlement Class. *Id.*

Similarly, Settlement Class Members who wish to object to the terms of the Settlement Agreement must do so in writing and must file their objection with the Clerk of the Court in the *Lhota* lawsuit no later than 45 days from the Notice Deadline. *Id.* ¶56. The written objection must include: (i) the case name, *Lhota, et al. v. Michigan Avenue Immediate Care, S.C.*, No. 2022-CH-06616 (Cir. Ct. Cook Cty.); (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorney(s) representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous five years; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. *Id.*

**D. Attorneys' Fees, Costs, and Expenses and Service Awards**

As part of the Settlement, MAIC has agreed to not oppose an application by Settlement Class Counsel for an award of attorneys' fees in the amount of up to 35% of the Settlement Fund, or $297,500.00. SA ¶74. Settlement Class Counsel may also apply for litigation costs not to exceed $20,000.00. *Id.* The Settlement Agreement also provides for a reasonable service award to each named Plaintiff in the amount of $1,000. SA ¶72. The service award is meant to compensate Plaintiffs for their efforts in each Lawsuit, including maintaining contact with counsel, assisting in the investigation of the case, reviewing pleadings, remaining available for consultation throughout the mediations, answering counsel's many questions, and reviewing the Settlement Agreement. Borrelli Decl., ¶7. The Settling Parties did not discuss the payment of attorneys' fees, costs,

expenses and/or service award to Representative Plaintiffs until after the substantive terms of the Settlement had been agreed upon, other than that MAIC would pay reasonable attorneys' fees, costs, expenses, and a service award to Class Representatives from the Settlement Fund as may be agreed to by MAIC and Class Counsel and as ordered by the Court, or, in the event of no agreement, as ordered by the Court. *Id.* Plaintiffs will seek the Court's approval of the requested attorneys' fees, costs and service awards prior to the Final Fairness Hearing by way of a separate motion. *Id.* ¶8.

## IV. ARGUMENT

### A. The Settlement Class Should be Certified for Settlement Purposes

Plaintiffs respectfully ask this Court to grant class certification to a Settlement Class under 735 ILCS 5/2-801 and 735 ILCS 5/2-802 on behalf of all persons whose PII and/or PHI was potentially compromised in the cybersecurity incident involving MAIC's computer network in or about May 2022, and who were the subject of the Notice of Data Breach that MAIC published on June 30, 2022.

"An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds: (1) The class is so numerous that joinder of all members is impracticable. (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members. (3) The representative parties will fairly and adequately protect the interest of the class. (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801. Here, the Settlement Class meets the requirements of 735 ILCS 5/2-801 and warrants certification.

### 1. The Settlement Class Members are so Numerous That Joinder is Impracticable

The class must be so numerous that joinder of all members is impracticable. 735 ILCS 5/2-801(1). Courts have held that where a putative class contains forty or more members, numerosity is typically presumed. One court thus stated, "One leading scholar has offered the following guideline: 'If the class has more than forty people in it, numerosity is satisfied....' Our research has supported this guideline." *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Ass'n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990) (citing Arthur Miller, *An Overview of Federal Class Actions: Past, Present, and Future, Federal Judicial Center* 22 (1977)*; see also Barragan v. Evanger's Dog & Cat Food Co.*, 259 F.R.D. 330, 333 (N.D. Ill. 2009) ("Although there is no number requiring or barring a finding of numerosity, a class including more than 40 members is generally believed to be sufficient."). Here, there are approximately 144,104 Settlement Class Members. Thus, the Settlement Class easily satisfies the numerosity requirement.

### 2. Common Questions of Law and Fact are Common to the Claims of all Settlement Class members, including Plaintiffs

Commonality is met if "(1) there are questions of fact or law common to the class; and (2) the common questions predominate over any questions affecting only individual members." *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 674 (2nd Dist. 2006). The critical inquiry is whether "successful adjudication of the purported class representatives' individual claims will establish a [common] right of recovery in other class members." *Id.* at 674; *see also Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100 (2005), *cert. denied*, 547 U.S. 1003 (2006). "Where the predominance test is met, a judgment in favor of the class members should decisively settle the entire controversy, and all that should remain is for other members of the class to file proof of their claim." *Bemis v. Safeco Ins. Co. of Am.*, 407 Ill. App. 3d 1164, 1167 (5th Dist. 2011) (quoting *Smith v. Ill. Cent. R.R. Co.*, 223 Ill. 2d 441, 449 (2006)) (internal quotation marks omitted). "Where

a question of law involves 'standardized conduct of the defendants toward members of the proposed class, a common nucleus of operative facts is typically presented, and the commonality requirement . . . is usually met.'" *Primack v. State Farm Auto. Ins. Co*., No. 13-cv-6694, 2013 U.S. Dist. LEXIS 188160, at *7 (N.D. Ill. Sept. 18, 2013) (alteration in original) (quoting *Franklin v. City of Chic.*, 102 F.R.D. 944, 949 (N.D. Ill. 1984)).

Here, commonality is satisfied because the circumstances of each Settlement Class Member involves a common core of factual and legal issues with the rest of the class. Plaintiffs' claims center on whether MAIC failed to adequately safeguard the sensitive information of Plaintiffs and other Settlement Class Members. Issues common to all class members include:

- Whether MAIC owed and breached a duty to exercise reasonable care in collecting, storing, and/or safeguarding Plaintiffs' and Settlement Class Members' PII and PHI;
- Whether MAIC knew or should have known it did not employ reasonable measures to keep the PII and PHI of Plaintiffs and Settlement Class Members secure; and
- Whether MAIC violated the law by failing to promptly notify Plaintiffs and members of the Classes that their PII and PHI had been compromised.

These common questions, and others alleged by Plaintiffs are central to the causes of action brought here and can be addressed on a class-wide basis because they all tie back to the same common nucleus of operative facts—the Data Incident and MAIC's data protection measures. *See Parker v. Risk Mgmt. Alternatives, Inc.*, 206 F.R.D. 211, 213 (N.D. Ill. 2002) ("[A] common nucleus of operative fact is usually enough to satisfy the [commonality] requirement") Thus, Plaintiffs have met the commonality requirement.

**3. Plaintiffs' Claims are Typical of the Claims of the Members of the Class They Represent**

A claim is typical of the claims of the class members where a named plaintiff's claims are based on the same legal or remedial theory as each of the class members' claims. *See Rubino v. Circuit City Stores*, 324 Ill. App. 3d 931, 939 (1st Dist. 2001). Put another way, where the

defendant engages "in a standardized course of conduct vis-a-vis the class members, and plaintiffs' alleged injury arises out of that conduct," typicality is "generally met." *Hinman v. M & M Rental Center*, 545 F. Supp. 2d 802, 806–07 (N.D. Ill. 2008) (first citing *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998); and then citing *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)).

Here, the claims of Plaintiffs and all Settlement Class Members arise out of the same course of conduct—MAIC's alleged failure to reasonably protect the Settlement Class Members' PII and PHI—and assert the same theories of liability. As a result, the typicality requirement is satisfied.

**4. The Adequacy Requirement is Satisfied**

For a class to be certified, a putative class representative must "fairly and adequately protect the interests of the class." 735 ILCS 5/2-801(3). "The test of adequate representation is whether the interests of the named parties are the same as the interests of those who are not named" such that no conflict of interest exists between the plaintiffs and the other class members. *Cruz v. Unilock Chi., Inc.*, 383 Ill. App. 3d 752, 778–80 (2nd Dist. 2008) (citing *P.J.'s Concrete Pumping Serv. v. Nextel W. Corp*., 345 Ill. App. 3d 992, 1004 (2nd Dist. 2004)) (holding that even if a conflict exists, that plaintiff may be replaced with another plaintiff who does not have a conflict). Additionally, "[d]ue process requires that the plaintiff's attorney be qualified, experienced, and able to conduct the proposed litigation." *Clark v. TAP Pharm. Prods., Inc.*, 343 Ill. App. 3d 538, 551 (5th Dist. 2003). Therefore, plaintiffs may adequately represent the class if their interests "are the same as those who are not joined," "[t]he attorney for the representative party 'must be qualified, experienced[,] and generally able to conduct the proposed litigation,"' and "[the representative party's] interests must not appear collusive." *Hall v. Sprint Spectrum L.P.*, 376 Ill. App. 3d 822, 876 (5th Dist. 2007) (alterations in original) (quoting *Miner v. Gillette Co.,* 87 Ill. 2d 7, 14 (1981)).

Here, the Class Representatives and proposed Settlement Class Counsel meet the test of adequacy. First, there is no conflict between Plaintiffs and the Settlement Class Members. Plaintiffs allege they were harmed in the same way as all other Settlement Class Members, by Defendant's failure to adequately secure their PII and PHI, resulting in the Data Incident. Plaintiffs and all Settlement Class Members seek relief for similar injuries arising out of the same event, the Data Incident. In light of this common event and injury, the named Plaintiffs have every incentive to vigorously pursue the class claims, and no conflict exists.

Further, proposed Settlement Class Counsel are well-qualified to represent the class. Settlement Class Counsel have extensive experience in data privacy and consumer class actions and are leaders in the field. *See* Borrelli Decl., ¶9, Exhibit 2 (Settlement Class Counsel firm resumes). The excellent results obtained by this settlement confirm counsel's adequacy. Thus, the requirements of adequacy are satisfied.

**5. The Requirements of 735 ILCS 5/2-801(4) are Satisfied**

"While Federal Rule of Civil Procedure 23(b)(3) requires that a class action be superior to other available methods of adjudication, the Illinois statute requires that the trial court find that the class action is an appropriate method of litigating the controversy." *Avery v. State Farm*, 1997 Ill. Cir. LEXIS 1, *19 (Ill. Cir. Ct. Dec. 5, 1997) (citing 735 ILCS 5/2-801(4)). "To satisfy the 'appropriate method' requirement, the plaintiff must demonstrate that the class action (1) can best secure the economies of time, effort, and expense and promote a uniformity of decision or (2) can accomplish the other ends of equity and justice that class actions seek to obtain." *Clark*, 343 Ill. App. 3d at 552.

The key question in this case is whether MAIC had a duty to exercise reasonable care in safeguarding, securing, and protecting the PII and PHI of Plaintiffs and the Settlement Class, and whether MAIC breached that duty. Although the Illinois statute does not require a predominance

analysis, it is significant that the common questions that arise from MAIC's conduct do indeed predominate over any individualized issues, as other courts have recognized in the data breach context. *See, e.g.*, *In re Anthem, Inc. Data Breach Litig*., 327 F.R.D. 299, 312-15 (N.D. Cal. 2018) (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); *see also Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case because "[t]he many common questions of fact and law that arise from the E-mail Security Incident and [defendant's] alleged conduct predominate over any individualized issues"); *In re The Home Depot, Inc., Customer Data Sec. Breach Litig*., No. 1:14-md-02583-TWT, 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 Payment Sys.*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) (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). The fact that the core liability issues here predominate over individualized issues suggests that a class action will best secure the economies of time, effort, and expense and promote a uniformity of decision.

Additionally, because Plaintiffs seek to certify the claims here for purposes of settlement, there are no issues with manageability and resolution of thousands of claims in one action promotes judicial economy. Class certification—and class resolution—guarantee an increase in judicial

efficiency and conservation of resources over the alternative of individually litigating over 144,000 individual data breach cases arising out of the same Data Incident. Accordingly, the class should be certified for settlement purposes.

**B. The Court Should Preliminarily Approve the Settlement**

The law favors compromise and settlement of class action suits. *Langendorf v. Irving Tr. Co.*, 244 Ill. App. 3d 70, 78 (1st Dist. 1992); *Sec. Pac. Fin. Serv. v. Jefferson*, 259 Ill. App. 3d 914, 919 (1st Dist. 1994). The approval of a proposed class action settlement is a matter of discretion for the trial court. *See Fauley v. Metro. Life Ins. Co.*, 52 N.E.3d 427, 439 (Ill. App. Ct. 2016) ("In Illinois, a trial court's final approval of a class-action settlement will not be disturbed unless the trial court abused its discretion."); *Steinberg v. Sys. Software Assocs.,* 306 Ill. App. 3d 157, 169 (1st Dist. 1999); *City of Chic. v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990) ("A trial court's approval of a settlement should not be overturned on appeal unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval."); Newberg on Class Actions § 11.41 (4th ed. 2002) ("The compromise of complex litigation is encouraged by the courts and favored by public policy."). In exercising this discretion, courts should give deference to the private consensual decision of the parties. *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996) ("A settlement will not be rejected solely because it does not provide a complete victory to the plaintiffs.").

In reviewing proposed settlements, courts do not "judge the legal and factual questions by the same criteria applied in a trial on the merits." *GMAC Mortg. Corp. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). The standard for class settlement approval requires that a settlement be fair, reasonable, and adequate. *People ex rel. Wilcox v. Equity Funding Life Ins. Co*., 61 Ill. 2d 303, 317 (1975); *Korshak*, 206 Ill. App. 3d at 972. A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between

experienced, capable counsel after meaningful discovery. *Zolkos v. Scriptfleet, Inc*., No. 12 Civ. 8230, 2014 U.S. Dist. LEXIS 172519, at *4 (N.D. Ill. Dec. 12, 2014) (quoting *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07 Civ. 2898, 09 Civ. 2026, 2012 U.S. Dist. LEXIS 25265, at *10 (N.D. Ill. Feb. 28, 2012)); *see also Gowdey v. Commonwealth Edison Co.*, 37 Ill. App. 3d 140, 150 (1st Dist. 1976). Here, the settlement negotiations involved pre-mediation discovery, briefing submitted to the mediator, robust argument, and months of negotiations. Based on their experience in handling other class action matters, Settlement Class Counsel believe this Settlement provides fair, reasonable, and adequate relief for the Settlement Class. *See* Borrelli Decl., ¶10.

Preliminary approval by this Court requires an "initial evaluation" of the fairness of the proposed settlement. *Wyms v. Staffing Solutions, Inc.*, No. 15-cv-0634-MJR-PMF, 2016 U.S. Dist. LEXIS 149752, at *10 (S.D. Ill. Oct. 28, 2016); Newberg § 11.25. To grant preliminary approval, this Court determines whether there is probable cause to submit the settlement to class members and hold a full-scale hearing as to its fairness. *See Lambert v. Tellabs, Inc*., No. 13-cv-07945, 2015 U.S. Dist. LEXIS 156284, at *4-5 (N.D. Ill. Mar. 5, 2015). If the settlement is "within the range of possible approval," the court should grant preliminary approval. *Wyms*, 2016 U.S. Dist. LEXIS 149752, at *10.

In deciding whether to grant preliminary approval, the Court may consider the factors that will underlie the final analysis of whether the settlement is fair, reasonable, and adequate during the final approval phase of the class settlement. *Korshak*, 206 Ill. App. 3d at 972. These factors include: "(1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length, and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7)

the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *Id.* Here, all eight factors support granting preliminary approval.

**1. The Strength of Plaintiffs' Case on the Merits, Balanced Against the Relief Offered in Settlement**

By their very nature, class actions readily lend themselves to compromise because of the many uncertainties of outcome, difficulties of proof, and lengthy duration. Indeed, there is an "overriding public interest in favor of settlement," particularly in class actions that have the well-deserved reputation as being among the most complex types of litigation. *In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at *6 (N.D. Ill. Feb. 29, 2016). This matter is no exception.

Here, the Parties entered into the Settlement only after both sides were fully apprised of the facts, risks, and obstacles involved with protracted litigation. *See* Borrelli Decl., ¶¶4-5. At the outset of their investigation, Settlement Class Counsel conducted extensive research regarding the Plaintiffs' claims, Defendant, and the Data Incident. *Id.* ¶2. The culmination of that process led to an agreement by the Parties to mediate the case with respected mediator Hon. Stuart Palmer, Ret. of JAMS. *Id.* ¶4. Prior to the first mediation, the Parties fully briefed the relevant issues, and Defendant produced informal discovery to Settlement Class Counsel. *Id*. Even after reaching an agreement on the central terms at the mediation, the Parties spent weeks negotiating the Settlement Agreement. *Id.* As such, and considering Settlement Class Counsel's extensive experience in data breach litigation, the Parties were able to enter into settlement negotiations with a full understanding of the strengths and weaknesses of the case, as well as the potential value of the claims. *See, e.g.*, *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 793 (N.D. Ill. 2015) (granting preliminary approval to privacy class settlement where the parties exchanged discovery over several months and then mediated the case to reach a settlement).

The Settlement provides for substantial relief, especially considering the costs, risks, and delay of trial, the effectiveness of distributing relief, and the proposed attorneys' fees. "The most important factor relevant to the fairness of a class action settlement is the first one listed: the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement." *Synfuel Techs, Inc. v. DHL Express (USA), Inc*., 463 F.3d 646, 653 (7th Cir. 2006) (internal quotes and citations omitted). Nevertheless, "[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs." *In re AT&T Mobility Wireless Data Servs. Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010). "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Newberg § 11:50. This is in part because "the law should favor the settlement of controversies, and should not discourage settlement by subjecting a person who has compromised a claim to the hazard of having the settlement proved in a subsequent trial." *Grady v. de Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969). It is also in part because "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) ("The essential point here is that the court should not "reject[ ]" a settlement "solely because it does not provide a complete victory to plaintiffs," for "the essence of settlement is compromise.").

Here, as described in detail *supra*, the Settlement provides for several different types of monetary relief, including reimbursement for the purchase of credit monitoring to ensure that Settlement Class Members can monitor the security of their PII and PHI moving forward. *See*

Borrelli Decl., ¶13. The Settlement was uniquely designed to address the specific harms caused by the facts of the Data Incident and allows Settlement Class Members to tailor their recovery accordingly. As such, the Court should preliminarily approve the Settlement with an order directing that notice be provided to the Class.

**2. The Defendant's Ability to Pay**

A "defendant's ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair." *Viafara v. MCIZ Corp.*, No. 12-cv-7452-RLE, 2014 WL 1777438, at *7 (S.D.N.Y. Apr. 30, 2014) (citation omitted). Here, under the terms of the Settlement Agreement, MAIC will pay $850,000 into a non-reversionary Settlement Fund to settle all claims. Although MAIC may be able to withstand a greater judgment, the financial obligations the Settlement imposes on MAIC are substantial.

**3. The Complexity, Length and Expenses of Further Litigation**

The value achieved through the Settlement Agreement here is guaranteed, where chances of prevailing on the merits are uncertain. While Plaintiffs strongly believe in the merits of their case, they also understand Defendant will assert a number of defenses. Should litigation continue, Plaintiffs would likely immediately face a motion to dismiss, resulting in further costs, delays, and uncertainties. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach Plaintiffs generally face substantial hurdles. *See, e.g.*, *Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Plaintiffs would face another uncertain hurdle in class certification. *See, e.g.*, *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). Moreover, due to the evolving nature of case law pertaining to data protection, it is likely any outcome will result in appeals, further increasing costs and extending the time until Plaintiffs and Class members obtain relief.

Plaintiffs firmly believe in the merits of their claims, and dispute the defenses Defendant is likely to assert, but success at trial is not guaranteed. "In light of the potential difficulties at class certification and on the merits . . . the time and extent of protracted litigation, and the potential of recovering nothing, the relief provided to class members in the Settlement Agreement represents a reasonable compromise." *Wright v. Nationstar Mortg. LLC*, No. 14 C 10457, 2016 WL 4505169, at *10 (N.D. Ill. Aug. 29, 2016).

**4. The Amount of Opposition to the Settlement and the Reaction of Class Members to the Settlement**

The fourth and sixth factors, the amount of opposition to the Settlement and the reaction of members of the Class to the Settlement, are often considered together due to their similarity. *Korshak*, 206 Ill. App. at 973. At the preliminary approval stage, these factors are premature and are impossible to weigh prior to notice and a hearing. However, all of the Class Representatives approve of this Settlement. Borrelli Decl., ¶11. Settlement Class Counsel will further address these factors in the final approval papers.

**5. The Absence of Collusion in Reaching a Settlement**

"A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion." 2 McLaughlin on Class Actions, § 6:7 (8th ed. 2011); *see also Steele v. GE Money Bank*, No. 1:08-CIV-1880, 2011 WL 13266350, at *4 (N.D. Ill. May 17, 2011), *Report and Recommendation adopted*, No. 1:08-CIV-1880, 2011 WL 13266498 (N.D. Ill. June 1, 2011) ("the involvement of an experienced mediator is a further protection for the class, preventing potential collusion"); *Wright*, 2016 WL 4505169, at *11 (similar).

Here, the Settlement Agreement resulted from good faith, arm's-length settlement negotiations over many months, including a virtual mediation session with a respected JAMS mediator. Borrelli Decl., ¶4. Plaintiffs and MAIC put together detailed mediation submissions

setting forth their respective views as to the strengths of their case and MAIC's defenses, and Defendant produced pre-mediation documents. *Id.* At all times, the settlement negotiations were highly adversarial, non-collusive, and conducted at arm's length. *Id.* By the end of the full-day mediation, the Parties had not reached an agreement. The Parties reached an agreement in principle only after extensive continued negotiations on the central terms, and still spent months finalizing all settlement terms and documents. *Id.* ¶5.

Accordingly, it is clear the Parties negotiated this proposed Settlement at arm's length and absent any fraud or collusion. *See, e.g.*, *Aranda v. Caribbean Cruise Line, Inc*., No. 12 C 4069, 2017 WL 818854, at *1 (N.D. Ill. Mar. 2, 2017) (granting preliminary approval to privacy settlement resolved with the assistance of a mediator); *Wright*, 2016 WL 4505169, at *11 (finding no evidence of fraud or collusion where the parties participated in two prior mediations and engaged in lengthy discovery). Thus, this factor weighs in favor of preliminary approval.

**6. The Opinion of Competent Counsel**

In a case where experienced counsel represent the class, the Court "is entitled to rely upon the judgment of the parties' experienced counsel." *In re Capital One TCPA Litig.*, 80 F. Supp. 3d at 792; *Armstrong v. Bd. of Sch. Dirs. of City of Milw.*, 616 F.2d 305, 315 (7th Cir. 1980) ("Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel."). Here, Settlement Class Counsel believe the Parties' settlement is fair, reasonable, and adequate, and in the best interests of the members of the class. Borrelli Decl., ¶10. Settlement Class Counsel also believe the benefits of the Parties' settlement far outweigh the delay and considerable risk of attempting to proceed through a motion to dismiss, class certification, summary judgment, and to trial. *Id*.

This settlement proposes significant, effective Class member relief. Cash Awards will be distributed based upon the method provided by claimants on their respective claim forms. SA,

Addendum A. Settlement Class Members will have the opportunity to receive some compensation with a simple attestation, and greater compensation by providing documentary evidence. SA ¶¶3, 21, 29, 52. Class members will have 90 days from the Notice Deadline to make a claim for a portion of the settlement by submitting their claim form either online or via U.S. Mail. *Id.* ¶6. The Settlement Administrator will have the authority to assess the validity of the claims, and upon receipt of an incomplete or unsigned Claim Form, is required to request additional information and/or documentation and give the Class Member time to cure the defect before rejecting the claim. SA, Addendum A. Claims will be paid within as soon as practicable after the entry of a Final Approval Order. SA, Addendum A; SA ¶15. Accordingly, all Settlement Class Members who submit valid claims will receive their award within a reasonable amount of time. For these reasons, Settlement Class Counsel believe the Settlement is fair, efficient, and effective.

**7. The Stage of Proceedings and the Amount of Discovery Completed**

The "stage of the proceedings" concerns "whether Class Plaintiffs had sufficient information on the merits of the case to enter into a settlement agreement . . . and whether the Court has sufficient information to evaluate such a settlement." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 224 (E.D.N.Y. 2013) (citations omitted). Courts have found that to meet this requirement, "formal discovery need not have necessarily been undertaken yet by the parties." *In re Sony SXRD Rear Projection Television Class Action Litig.*, 2008 WL 1956267, at *9 (S.D.N.Y. May 1, 2008)). It is appropriate for Plaintiffs to enter into a settlement after "Class Counsel [has] conducted extensive investigation into the facts, circumstances, and legal issues associated with this case[,]" particularly when the case is not one "that [is] likely to turn on facts initially in Defendant's sole possession." *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-cv-1113-VAB, 2016 WL 6542707, at *8 (D. Conn. Nov. 3, 2016).

Prior to filing suit, Plaintiffs' counsel conducted extensive investigations into the Data Incident. Plaintiffs' counsel had to understand MAIC's business and its relationship with its patients. Borrelli Decl., ¶3. Plaintiffs' counsel determined that MAIC collected sensitive information about its patients in the course of providing medical services. *Id.* Plaintiffs' counsel next had to investigate MAIC's response to the Data Incident and whether it was sufficiently thorough and prompt. *Id.* Plaintiffs' counsel examined sample data breach notices and related information that MAIC submitted to the various governmental entities. *Id.* Plaintiffs' counsel analyzed these notices to determine the extent to which they complied with state-mandated notice requirements. *Id.* Plaintiffs' counsel began communicating with each other early on in this litigation and saw a significant benefit in working together. *Id*.

In addition, proposed Settlement Class Counsel requested, and MAIC voluntarily provided as part of settlement negotiations, confirmatory information regarding its investigation of the Data Incident, the scope of the Data Incident, and its response to the Data Incident. Proposed Settlement Class Counsel reviewed and analyzed this information to determine the scope of necessary injunctive relief and the appropriate measure of settlement benefits to Plaintiffs and the Class. *Id.*

### C. The Parties' Notice Plan Satisfies Due Process Requirements

According to 735 ILCS 5/2–803, "[u]pon a determination that an action may be maintained as a class action, or at any time during the conduct of the action, the court in its discretion may order such notice that it deems necessary to protect the interests of the class and the parties." However, the exercise of the court's discretion is limited by the dictates of due process. *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 429 (1983). The Illinois Supreme Court has indicated that "[t]he question of what notice must be given to absent class members to satisfy due process necessarily depends upon the circumstances of the individual action." *Miner v. Gillette Co.*, 87 Ill. 2d 7, 15 (1981) (citing *Frank v. Teachers Ins. & Annuity Ass'n of Am.*, 71 Ill.2d 583,

593 (1978)). The United States Supreme Court has explained that the best practicable notice is that which "is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, Notice will be provided directly to individual Settlement Class Members via the contact information they provided to Defendant when obtaining medical services from them. SA ¶53; Borrelli Decl., ¶14. Specifically, the Settlement Administrator will send Notice to the Settlement Class via U.S. mail using the addresses in Defendant's possession. *Id.* The Settlement Administrator will also create and maintain a Settlement Website where Settlement Class Members can view relevant documents, submit their claims, and get answers to frequently asked questions. SA ¶53. In addition to the direct Notice and a Settlement Website, the Settlement Administrator will also maintain a dedicated toll-free help line, to provide Settlement Class Members with additional information. SA, Addendum A.

The proposed Notice will include, in a manner that is understandable to potential class members, information regarding: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the 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. *See* Borrelli Decl., ¶17; SA Exs. 1-2.

Because the class notice and notice plan set forth in the Settlement Agreement satisfy the requirements of due process and provide the best notice practicable under the circumstances, the Court should direct the Parties and the Settlement Administrator to proceed with providing notice

to Settlement Class Members pursuant to the terms of the Settlement Agreement and its order granting preliminary approval.

## V. CONCLUSION

Plaintiffs respectfully request that this Court: (1) preliminarily approve the Parties' Settlement as fair, adequate, reasonable, and within the range of possible final approval, (2) appoint Plaintiffs as the Class Representatives, (3) appoint Plaintiffs' Counsel as Settlement Class Counsel, (4) provisionally certify the Settlement Class for settlement purposes only; (5) approve the Parties' proposed Notice program, and confirm that it is appropriate notice that satisfies due process, (6) set deadlines for Settlement Class Members to submit claims for compensation, objections and requests for exclusion, and (7) set a date for a Final Approval Hearing. A proposed Preliminary Approval Order is attached to the Settlement Agreement as Exbibit 5.

DATED: February 17, 2023

Respectfully Submitted,

By: /s/ *Raina Borrelli*

Raina Borrelli
**TURKE & STRAUSS LLP (Firm ID 99937)**
613 Williamson St., Suite 201
Madison, WI 53703
Telephone (608) 237-1775

Gary M. Klinger
**MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC**
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: 847-208-4585
Facsimile: 865-522-0049
gklinger@milberg.com

Gary E. Mason
**MASON LLP**
5101Wisconson Ave., NW, Suite 305
Washington, D.C. 20016

Telephone: (202) 429-2290
gmason@masonllp.com

Carl V. Malmstrom
**WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC**
111 W. Jackson Street, Suite 1700
Chicago, IL 60604
Telephone: (312) 984-0000
malmstrom@whafh.com

Thomas A. Zimmerman, Jr.
**ZIMMERMAN LAW OFFICES, P.C.**
77 W. Washington Street, Suite 1220
Chicago, IL 60606
Telephone: (312) 440-0020
tom@attorneyzim.com

***Counsel for Plaintiffs and Proposed Settlement Class Counsel***

Kenneth A. Wexler
Bethany R. Turke
Eaghan S. Davis
**WEXLER BOLEY & ELGERSMA LLP**
311 S. Wacker Drive, Suite 5450
Chicago, IL 60606
Telephone:(312) 346-2222
Facsimile:(312) 346-0022
kaw@wbe-llp.com
brt@wbe-llp.com
esd@wbe-llp.com
Firm ID:99616

Marc E. Dann
Brian D. Flick
Michael Smith
**DANNLAW**
15000 Madison Avenue
Lakewood, OH 44107
Phone: (216) 373-0539
Fax: (216) 373-0536
notices@dannlaw.com

Daniel O. Herrera
Nickolas J. Hagman

Olivia Lawless
**CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP**
135 S. LaSalle, Suite 3210
Chicago, Illinois 60603
Telephone: (312) 782-4880
Facsimile: (312) 782-4485
dherrera@caffertyclobes.com
nhagman@caffertyclobes.com
olawless@caffertyclobes.com

***Additional Counsel for Plaintiffs and the Proposed Settlement Class***

**CERTIFICATE OF SERVICE**

I, Raina C. Borrelli, hereby certify that I electronically filed the foregoing with the Clerk of the Court using the Odyssey eFileIL system, which will send notification of such filing to counsel of record via the Odyssey eFileIL system.

DATED this 17th day of February, 2023.

TURKE & STRAUSS LLP

By: */s/ Raina C. Borrelli*

Raina C. Borrelli
raina@turkestrauss.com
TURKE & STRAUSS LLP
613 Williamson St., Suite 201
Madison, WI 53703
Telephone: (608) 237-1775
Facsimile: (608) 509-4423