

STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Case Type: Personal Injury

JASON ZIMMERMAN, on behalf of
himself and all others similarly situated,

Civil File No. 02-CV-19-6522
Honorable Jonathan N. Jasper

Plaintiff,

v.

CLASS ACTION

RIVERPLACE COUNSELING
CENTER, INC.

Defendant.

PLAINTIFF JASON ZIMMERMAN'S MEMORANDUM OF LAW
IN SUPPORT OF HIS UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiff Jason Zimmerman, by his undersigned counsel and pursuant to Rule 23.05 of the Minnesota Rules of Civil Procedure, hereby submits this Memorandum in support of his Unopposed Motion for Final Approval of Class Action Settlement.¹

The Settlement provides for the settlement of the claims of Plaintiff and the Settlement Class against Riverplace Counseling Center, Inc. (“Riverplace” or “Defendant”). Pursuant to the Settlement Agreement, Riverplace has agreed to establish a Settlement Fund of \$500,000 from which up to an aggregate cap of \$300,000 will be paid out to class members on a claims-made basis, with the caveat that if notice costs exceeded \$45,000, the claims-made settlement cap will be accordingly decreased to an amount not to be below \$275,000.

The Court preliminarily approved the Settlement as fair, reasonable and adequate on September 1, 2021, and directed notice to be provided to the Settlement Class. Since that time, the Parties successfully implemented the Notice Program approved by the Court and have received a positive response from the Settlement Class Members with no objections to the fairness, reasonableness, or adequacy of the settlement. Additionally, no Class Members opted out of the Settlement.

¹The full terms of the settlement reached by the parties are memorialized in the Parties’ Stipulation and Agreement of Settlement (the “Settlement”), a true and correct copy of which was attached as Exhibit 1 to the Affidavit of Kate M. Baxter-Kauf in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Class, and Approval of Notice (hereinafter “Baxter-Kauf Aff.”) and which is incorporated herein by reference. *See* Doc ID #90. Capitalized terms have the same meaning ascribed to them in the Settlement.

Final approval is warranted because the Settlement meets the “reasonableness under the totality of the circumstances” standard. *See Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975). Based on Class Counsel’s review and analysis of the extensive range of information produced, their consideration of the potential legal and factual risks and rewards, costs to the Class and delays from continued litigation, balanced against the immediate and certain benefits to the Class from the Settlement, Class Counsel believe the Settlement is fair, adequate, and reasonable and warrants the Court’s approval.

II. STATEMENT OF THE CASE

Defendant Riverplace Counseling Center, Inc. is a Minnesota corporation, principally located in Anoka, that operates men’s and women’s chemical dependency treatment programs. Compl. ¶ 13 (Doc. ID #2). On April 11, 2019, Riverplace notified Plaintiff as one of 11,639 Class Members that it had discovered in January 2019 that Plaintiff’s personally identifiable information and protected health information (collectively “PII”) was potentially the subject of a data breach involving malware installed on Riverplace’s data storing computer systems. Compl. ¶ 17; Motion to Dismiss Order at 2 (Doc. ID #66). On October 3, 2019, Plaintiff Zimmerman filed a putative class action in Minnesota federal court alleging claims of negligence, negligence per se, invasion of privacy, breach of implied contract, unjust enrichment, breach of fiduciary duty, breach of confidence, and violations of the Minnesota Consumer Fraud Act (“MCFA”), Minn. Stat. § 325F.68. *See Zimmerman v. Riverplace Counseling Center, Inc.*, Case No. 19-cv-02645-PJS-BRT, ECF No. 1 (D. Minn. Oct. 3, 2019). After Riverplace provided information indicating that nearly all of the Class was located in Minnesota, the federal case was

voluntarily dismissed. *See id.*, ECF No. 14 (Nov. 18, 2019). The next day, Plaintiff Zimmerman filed a substantively identical complaint in Minnesota state court. *See generally* Compl.

On January 10, 2020, Riverplace filed a motion to dismiss, asking the Court to dismiss in full Zimmerman's individual and class claims. Doc. ID #51. After a hearing on June 18, 2020, the Honorable Jonathan N. Jasper took the motion under advisement. Doc. ID #64. On September 16, 2020, the Court issued an Order granting Riverplace's motion in part and denying it in part. Doc. ID #66. Specifically, the Court denied Riverplace's motion to dismiss the Complaint based on a lack of standing, granted Riverplace's motion as to the negligence, negligence per se, invasion of privacy, unjust enrichment, breach of confidence and MCFA claims, and denied Riverplace's motion as to the breach of implied contract and breach of fiduciary duty claims. *See id.* at 22-23. Plaintiff's breach of implied contract and breach of fiduciary duty claims proceeded to discovery. Specifically, Plaintiff served written discovery and Riverplace filed and served an Answer on November 6, 2020. Doc. ID #81. The parties also held a pretrial status conferences with the Court on October 5, 2020. Doc. ID #71.

Simultaneously, in light of the direction from the Court and the expenses to be incurred in full scale discovery, the parties engaged in mediation. The parties engaged the Honorable John Borg, Minnesota District Court Judge (ret.) for mediation and submitted lengthy mediation statements to him in advance of the mediation. On November 17, 2020, the parties engaged in a full day mediation with Judge Borg. At the end of that day, the

parties left with a tentative way forward, but not a final agreement. After the mediation, the parties continued to negotiate a term sheet via email and telephone conferences over the course of several months. After engaging in extensive fair, honest, and aggressive arm's-length negotiations with Judge Borg, and after extensive post-mediation, on February 17, 2021, the parties entered into a Settlement Term Sheet (the "Term Sheet") that set forth the material terms of the Settlement. *See* Baxter-Kauf Aff. Ex. 2 (copy of Term Sheet), Doc ID #90.

A. The Terms of the Settlement

Pursuant to the Term Sheet, Riverplace will establish a Settlement Fund of \$500,000 from which up to an aggregate cap of \$300,000 will be paid out to Class Members on a claims-made basis, with the caveat that should notice costs exceed \$45,000, the claims-made settlement cap will be accordingly decreased to an amount not to be below \$275,000. From the claims-made funds of \$300,000, Riverplace will pay all timely and valid claims as follows:

- a. Claimants were able to submit a claim with a choice between 2 years' credit monitoring or a \$30 cash payment for reimbursement of credit monitoring coverage purchased from April 1, 2020 (one year after Riverplace began offering 12 months of credit monitoring coverage) through February 18, 2021, with documentation of purchase of such credit monitoring coverage;
- b. Claimants were able to submit a claim for reimbursement of up to 2 hours' time at a rate of \$20/hour for time spent as a result of the cybersecurity incident with no documentation but subject to signature under penalty of perjury;
- c. Claimants were able to submit a claim for reimbursement of out-of-pocket costs actually incurred as a result of the cybersecurity incident, including fraud costs and other losses, and including any out-of-pocket costs paid for credit monitoring individually over the \$30 allocated in part (a) above for

reimbursement of credit monitoring coverage purchased from April 1, 2020 through February 18, 2021 with documentation of purchase of such credit monitoring coverage, subject to a limit of \$950 per claimant and a requirement that documentation be provided; and

- d. Claimants were able to submit a claim for each of subparts (a)-(c) above. If the cost of claims exceeds \$300,000 (or between \$275,000-\$300,000 if notice costs exceed \$45,000) claims for (b) and (c) will be pro rata reduced.

Baxter-Kauf Aff. Ex. 2; *see also* Ex. 1 ¶ 3.

The parties also negotiated injunctive relief, and Riverplace agreed to implement improvements, and plan for future implementation to improve its cybersecurity practices, including implementation of multifactor authentication, and agreed to continue in its efforts to improve its cybersecurity. Baxter-Kauf Aff. Ex. 1 ¶ 6. Separately from agreeing to the remedy for Settlement Class, the parties negotiated attorneys' fees and a service award for Plaintiff. Baxter-Kauf Aff. Ex. 1 ¶ 4.

Plaintiff's counsel have conducted a thorough investigation into the facts and law relating to the Lawsuit, fully analyzing and evaluating the merits of all the Parties' claims and defenses and of the proposed Settlement as it impacts each of the Parties, including the members of the Class. *See* Final Approval Affidavit of Kate Baxter-Kauf ("Final App. Aff.") ¶ 8. Plaintiff's counsel represent that they have evaluated the risks, delay and difficulties in establishing liability, the potential relief that might be available, and the likely expense and time of further litigation. *Id.*

The Term Sheet and the later Settlement were only reached after arm's-length negotiations between the Parties, all of whom were represented by counsel with extensive experience and expertise in consumer and class action litigation. During these

negotiations, the Parties all had a clear view of the strengths and weaknesses of their respective claims and defenses. Plaintiff's counsel's investigation and the settlement-related proceedings confirmed that the Settlement meets the requirements for the Court's approval. Final App. Aff. ¶ 10.

Upon the Court's final approval of the Settlement, Settlement Class Members will release any claims against Riverplace that have been or could have been asserted in this action. Baxter-Kauf Aff. Ex. 1 ¶ 9. Pursuant to the Settlement Agreement, within thirty (30) days of the Effective Date of the Settlement, Riverplace will distribute payments to Settlement Class Members based upon the terms set forth in the Settlement Agreement and approved by this Court. Baxter-Kauf Aff. Ex. 1 ¶ 3.

B. Preliminary Approval

On September 1, 2021, this Court preliminarily approved the Settlement. Doc. ID #92. In its order, the Court conditionally certified, for settlement purposes only, a Settlement Class of:

All persons whose personally identifiable information and protected health information ("PII") was potentially compromised in a cybersecurity incident announced by Riverplace on or about April 11, 2019.

Doc. ID #92 at 3. The Court appointed Plaintiff Jason Zimmerman as Class Representative for the Settlement Class, and appointed Plaintiff's counsel as Class Counsel. *Id.* The Court also approved the direct mailing of Class Notice to the Settlement Class and scheduled a final approval hearing for March 11, 2022. *Id.* at 6.

C. Notice of the Proposed Settlement

Consistent with the Court's Order that Notice of the Proposed Settlement be provided to Class Members no later than forty-five (45) days after the entry of the Court's Preliminary Approval Order, Notice was mailed to 9,007 Settlement Class Members on October 15, 2021. *See* Declaration of American Legal Claim Services, LLC ("ALCS Decl.") ¶ 4. The list of Class Members was derived from internal Riverplace records and eliminated prior duplicative records. *Id.* A settlement website, www.riverplacedatabreachsettlement.com, was created and provided further information as stated in the Notice. *Id.* ¶ 7. The website contained sections for Important Court Documents, Key Dates and FAQs. *Id.* Class Members had an opportunity to update their mailing address and/or submit their Claim online. *Id.* Requests for exclusion from the settlement class and objections to the settlement were due December 14, 2021. *Id.* ¶¶ 10, 11. Claim Forms were due to American Legal Claim Services, LLC by January 13, 2022. *Id.* ¶ 9.

D. Attorneys' Fees and Expenses and Service Awards

Plaintiff has requested by separate motion a total for both attorneys' fees and expenses of \$150,000. Riverplace agreed to pay the fees and expenses of legal counsel for Plaintiff in an aggregate amount not to exceed \$150,000, subject to Court approval. Baxter-Kauf Aff. Ex. 1 ¶ 4. Plaintiff has also requested a service award in the amount of \$5,000, subject to approval by the Court. *Id.* Attorneys' fees, costs, expenses, and the service award

were only negotiated after all substantive terms of the Settlement were agreed upon by the Parties. Final App. Aff. ¶ 7.

III. ARGUMENT

A. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE FINALLY APPROVED.

Because notice to the Class and an opportunity for objections have been given, the Court may now consider final settlement approval. Minn. R. Civ. P. 23.05; *Wilson v. St. Joseph's Hosp.*, 366 N.W.2d 403, 406 (Minn. Ct. App. 1985); *see also* Fed. R. Civ. P. 23(e); *White v. Nat'l Football League*, 822 F. Supp. 1389, 1397 (D. Minn. 1993); *In re Employee Ben. Plans Sec. Litig.*, No. CIV. 3-92-708, 1993 WL 330595, at *3 (D. Minn. June 2, 1993); *Holden v. Burlington Northern Inc.*, 665 F. Supp. 1398, 1402-03 (D. Minn. 1987).²

1. The Law Favors Settlement

There is a “strong policy to encourage settlement of disputes.” *Rambaum v. Swisher*, 435 N.W.2d 19, 23 (Minn. 1989); *Pfizer v. Lord*, 456 F.2d 532, 543 (8th Cir. 1972) (“The policy of the law encourages compromise to avoid the uncertainties of the outcome of litigation as well as the avoidance of wasteful litigation and the expense incident thereto.”); *see also Holden*, 665 F. Supp. at 1405.

² “Minn. R. Civ. P. 23 is modeled after Fed. R. Civ. P. 23. Because the procedural rules are essentially parallel, federal precedent is instructive in interpreting the Minnesota rule.” *Glen Lewy 1990 Trust v. Investment Advisors, Inc.*, 650 N.W.2d 445, 452 (Minn. Ct. App. 2002).

This policy is especially applicable to class action litigation, which is notoriously complex. *See, e.g., Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources. *See Heller v. Schwan's Sales Enter., Inc.*, 548 N.W.2d 287, 290 (Minn. Ct. App. 1996).

2. Standards for Approval of a Settlement

Minnesota Rule of Civil Procedure 23.05 requires court approval of a class action settlement. *Wilson*, 366 N.W.2d at 406. The Supreme Court has cautioned, however, that a court evaluating a settlement should “not decide the merits of the case or resolve unsettled legal questions.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). To be approved under Minn. R. Civ. P. 23, a proposed class settlement must be “fair, adequate and reasonable, and not the product of collusion between parties.” *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231 (Minn. 1979); *accord Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999); *Van Horn v. Trickey*, 840 F.2d 604, 606 (8th Cir. 1988); *Grunin*, 513 F.2d at 123. The court must compare the settlement's terms with the results the plaintiff would have likely received after a full trial. *Id.*

3. Factors to be Considered

In determining whether a settlement is fair, reasonable and adequate, the most important factor for a court's consideration is the balance between the relief obtained and the likelihood of success on the merits. *Buchet v. ITT Consumer Fin. Corp.*, 845 F. Supp. 684, 691 (D. Minn. 1994), *amended by* 858 F. Supp. 944 (D. Minn. 1994); *accord Carson*,

450 U.S. at 88 n.14; *Van Horn*, 840 F.2d at 607. Other factors the court should consider include: the complexity, expense, and likely duration of further litigation; the experience of counsel; the negotiation process; the extent of discovery and stage of the proceedings; and the reaction of the Class. *Van Horn*, 840 F.2d at 607; *Holden*, 665 F. Supp. at 1407.

Each of these factors is discussed below and supports approval of the Settlement.

(a) The Relief Obtained Balanced by the Likelihood of Success on the Merits.

The Settlement is a claims-made settlement that will provide Class Members with significant and timely benefits which compare favorably to what Class Members could recover were they to secure a favorable judgment at trial. In the experience of Class Counsel, the relief provided by this Settlement is an outstanding result, and is fair and reasonable in light of reported average out-of-pocket expenses due to a data breach. *See e.g., Jackson et al. v. Wendy's International, LLC*, No. 6:16-cv-21-PGB-DCI (M.D. Fla.) (Doc. 157) (approving settlement that provided class members reimbursement of documented losses of up to \$5,000); *Hapka v. CareCentrix, Inc.*, No. 2:16-CV-02372-KGG, 2018 WL 1879845, at *3 (D. Kan. Feb. 15, 2018) (“The Settlement addresses past harms through reimbursement of Out-of-Pocket Losses or the alternative minimum \$200 payment for tax fraud and also helps Settlement Class Members protect against future harm through the Credit Monitoring Services.”).

The recovery in this case is an excellent result in a difficult and uncertain case. As one court has noted in the context of complex litigation, “no matter how confident one may be of the outcome of litigation, such confidence is often misplaced.” *W. Virginia v. Chas.*

Pfizer & Co., 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) (citing instances in which settlements were rejected by the court and Plaintiffs ultimately lost at trial or recovered less than the amount of the proposed settlement).

Class Counsel believe that Plaintiff could have gotten a class certified and then prevailed on his claims at trial and on any resulting appeals. However, they also recognize that any litigation is fraught with risk. Final App. Aff. ¶ 8. Data breach cases, such as this one, are especially risky, expensive, and complex. *See In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”). Although data breach law is continuously developing, data breach cases are still relatively new, and courts around the country are still grappling with what legal principles apply to the claims. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that “many of the legal issues presented in [] data-breach case[s] are novel”). Because the “legal issues involved in [in data breach litigation] are cutting-edge and unsettled ... many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015). Through the Settlement, Plaintiff and Class Members gain significant benefits without having to face further risk.

In view of the uncertainties, the result is an excellent one meriting the approval of the Court. *See In re Employee Ben. Plans Sec. Litig.*, 1993 WL 330595, at *4 (“It is proper

to take the bird in the hand instead of a prospective flock in the bush.”) (citation, quotation marks, and alterations omitted).

(b) The Complexity, Expense and Likely Duration of the Litigation Would Be Considerable Were the Action to Continue.

It is indisputable that continuation of this litigation would be complex, costly and of substantial duration. These practical considerations favor approval of the Settlement. *Heller*, 548 N.W.2d at 290 (“[T]he settlement provides relief faster and with fewer transaction costs than full litigation.”); *see also Petrovic*, 200 F.3d at 1149 (stating similar considerations).

Although the efforts of Class Counsel have advanced this litigation considerably since its inception, significant additional resources would be necessary to prosecute the case through the continuation and completion of discovery, class certification, dispositive motions, and pretrial and trial proceedings. Final App. Aff. ¶ 11; *see Schmidt v. Fuller Brush Co.*, 527 F.2d 532, 535 (8th Cir. 1975) (finding that class actions ‘place an enormous burden of costs and expenses [] upon parties.’). Further, a judgment favorable to Plaintiff would likely be the subject of post-trial motions and appeals. Those actions would substantially prolong the case, and delay the ultimate payment to members of the Class, in the event Plaintiffs were to prevail. Final App. Aff. ¶ 11. Instead, the Settlement provides for the cessation of litigation costs and immediate and certain payment to Class Members. Accordingly, the complexity, expense and likely duration of continued litigation supports approval of the Settlement.

(c) The Proposed Settlement Was the Product of Informed, Good Faith Negotiations by Parties Thoroughly Conversant with the Strengths and Weaknesses of the Case.

The Settlement was negotiated at arm's-length by Class Counsel and counsel for Defendant by the Honorable John Borg, Minnesota District Court Judge (ret.), acting as a mediator, in extended and intensive settlement negotiations. Final App. Aff. ¶ 10. The attorneys who conducted the negotiations for Plaintiff were thoroughly conversant with the strengths and weaknesses of the case and have many years of experience in conducting complex class action litigation. *See In re Employee Ben. Plans Sec. Litig.*, 1993 WL 330595, at *3 (“The Court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement.”); *Heller*, 548 N.W.2d at 291 (in approving class settlement, court recognized appointed class counsel to be competent litigators with extensive class action experience).

The participation of an independent settlement mediator is in itself indicative of the fairness of the proposed settlement. *See Khoday v. Symantec Corp.*, No. 11-CV-180, 2016 WL 1637039, at *7 (D. Minn. Apr. 5, 2016), *report and recommendation adopted*, 2016 WL 1626836 (D. Minn. Apr. 22, 2016); *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Thus, the Settlement is demonstrably the product of arm's-length negotiations.

Additionally, the progress of the case favors settlement. Class Counsel encountered and dealt with complex issues at various stages of this litigation. At the onset, Plaintiff filed this action in federal court and only voluntarily dismissed his lawsuit after he was provided information that nearly all of the class was located in Minnesota. Class Counsel continued

to navigate hurdles while briefing Plaintiff's opposition to Riverplace's motion to dismiss and throughout discovery, including overcoming Riverplace's argument regarding Plaintiff's standing. In addition, Plaintiff's claims were both complex and novel. Data breach litigation such as this is relatively new to Minnesota courts. Because caselaw generally favors defendants with respect to a number of the issues in this case, Class Counsel spent significant time developing strong, supported, and persuasive arguments. These efforts required extensive legal research. Final App. Aff. ¶ 9.

This factor favors approval of the settlement. *Accord In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000), *as amended* (June 19, 2000).

(d) The Favorable Reaction of the Class to the Settlement Supports its Approval.

Settlement Class Members have had an overwhelmingly positive response to the Settlement after receiving notice pursuant to the Notice Plan that conformed to due process and this Court's Order granting preliminary approval of the settlement. As the Supreme Court explained in *Mullane v. Central Hanover Bank & Trust Co.*, "an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. 306, 314 (1950). "[W]hat qualifies as a 'reasonable effort' is a case-specific question subject to the wide discretion of the trial judge." William B. Rubenstein, *Newberg on Class Actions* § 8:8 (5th ed. 2015). However, identifiable class

members are entitled to individual notice, i.e., direct-mailed notice. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

In this case, American Legal Claim Services, LLC flawlessly executed the Court-approved Notice Plan, which consisted of direct-mail Notice to Class Members. American Legal Claim Services, LLC estimates that Notice was delivered to 86.92% of Class Members. Both the Notice Plan and its execution went far beyond the requirements of the Due Process clause. *See* ALCS Decl. ¶ 6.

Requests for exclusion from the settlement class and objections to the settlement were due on December 14, 2021. ALCS Decl. ¶¶ 10-11; Baxter-Kauf Aff. Ex. 1 ¶¶ 11-12. Claim Forms were due on January 13, 2022. ALCS Decl. ¶ 9; Baxter-Kauf Aff. Ex. 1 ¶ 11. To date, no written objections to the settlement have been received. ALCS Decl. ¶ 11. There have been no requests to be excluded from the Settlement. *Id.* ¶ 10. These are powerful indicia that the Settlement is fair, reasonable, and adequate and deserves final approval. *See Hall v. Bank of America, N.A.*, No. 1:12-cv-22700, 2014 WL 7184039, at *5 (S.D. Fla. Dec. 17, 2014) (noting where objections from settlement class members “equates to less than .0016% of the class” and “not a single state attorney general or regulator submitted an objection,” “such facts are overwhelming support for the settlement and evidence of its reasonableness and fairness”); *Hamilton v. SunTrust Mortg. Inc.*, No. 13-60749, 2014 WL 5419507, at *4 (S.D. Fla. Oct. 24, 2014) (where “not a single state attorney general or regulator submitted an objection,” and there were few objections to the class settlement, “such facts are overwhelming support for the settlement”).

4. Notice to the Class Satisfied Requirements of Minn. R. Civ. P. 23 and Due Process

The requirements of both the Minnesota Rules of Civil Procedure and due process have been fulfilled. Notice was mailed to 9,007 Settlement Class Members following the Notice Plan the Court approved in its order granting preliminary approval of the Settlement. ALCS Decl. ¶ 4; Final App. Aff. ¶ 5; *see* Doc. ID #45 at 4. Given the response to date, as detailed above, Class Counsel believes that the Class has responded in an overwhelmingly positive fashion to the Settlement.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Settlement be approved and that final judgment be entered.

Dated: March 11, 2022

/s/Kate M. Baxter-Kauf

Karen Hanson Riebel (MN #0219770)

Kristen G. Marttila (MN #0346007)

Kate M. Baxter-Kauf (MN #0392037)

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

100 Washington Avenue South

Suite 2200

Minneapolis, MN 55401

Telephone: (612) 339-6900

Facsimile: (612) 339-0981

khriebel@locklaw.com

kgmarttila@locklaw.com

kmbaxter-kauf@locklaw.com

Jean Sutton Martin (admitted *pro hac vice*)

Ryan J. McGee (admitted *pro hac vice*)

MORGAN & MORGAN

COMPLEX LITIGATION GROUP

201 N. Franklin Street, 7th Floor

Tampa, Florida 33602

Telephone: (813) 223-5505

Facsimile: (813) 223-5402

jeanmartin@forthepeople.com

rmcgee@forthepeople.com

Counsel for Plaintiffs