

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

TIFFANY RAYBURN and MARQUITA)	
PATTERSON, individually, and on behalf)	
of all others similarly situated,)	
)	
Plaintiffs,)	
)	Case No.: 2522-CC00257
v.)	
)	
MERS MISSOURI GOODWILL)	
INDUSTRIES,)	
)	
Defendant.)	
)	

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

Plaintiffs Tiffany Rayburn and Marquita Patterson (“Plaintiffs” or “Settlement Class Representatives”), on behalf of themselves and all others similarly situated, pursuant to Rule 52.08(c) of the Missouri Rules of Civil Procedure, hereby move this Court for an order granting final approval of this class action settlement. In support of this Motion, Plaintiffs respectfully state as follows:

I. INTRODUCTION

On March 6, 2025 this Court preliminarily approved a Class Action Settlement between Plaintiffs and MERS Missouri Goodwill Industries. (“Defendant” or “MERS”) (together with Plaintiffs, the “Parties”) to address the repercussions of the Data Incident.

Settlement Class Counsel have zealously prosecuted Plaintiffs’ claims, achieving the Settlement Agreement only after extensive investigation and negotiations and months of work finalizing the Settlement Agreement and associated exhibits. After this Court granted preliminary approval, the Settlement Administrator—with the help of the Parties—disseminated Notice to the

Settlement Class. Notice was provided directly to Settlement Class Members via either email or first-class mail and the Settlement Administrator believes that 93% of the Settlement Class received direct notice, easily meeting the due process standard. *See* Declaration of Jessie T. Montague Regarding Settlement Administration (“Admin. Decl.”), attached hereto as **Exhibit 1**, ¶ 19. The Notice provided each Settlement Class Member with information regarding how to reach the Settlement Website, submit a Claim, and how to opt-out or object to the Settlement. Exhibit 1 (to Motion for Preliminary Approval), Settlement Agreement, (“S.A.”) at Ex. A-B. As of June 19, 2025, out of 70,390 Settlement Class Members, only one sought to be excluded from the Settlement, and none have objected. *Id.* ¶¶ 15-16.

II. CASE SUMMARY

A. The Security Incident

MERS is a non-profit organization that offers programs and services including career counseling, skills training, education and literacy programs, employment services. Class Action Petition (“Pet.”) ¶ 18. On or around March 10, 2023 to on or around March 15, 2023, Plaintiffs allege that MERS experienced a digital security incident where an unauthorized party accessed and removed certain files from MERS’ computer systems (the “Data Incident”) *Id.* ¶¶ 25-26, 39-45. Plaintiffs also allege that the files removed by the unauthorized party included the personally identifying information (“PII”) and protected health Information (“PHI”) (collectively “Private Information”) of approximately 70,390 individuals. Additionally, Plaintiffs allege that MERS sent them notice of the Data Incident, dated May 9, 2024, informing them that their Private Information was potentially accessed by cybercriminals. *Id.* ¶ 29.

B. Procedural History

Following MERS' notification to those affected by the Data Incident, Plaintiffs filed a putative class action complaint in the United States District Court for the Eastern District of Missouri styled *Tiffany Rayburn at al. v. MERS Missouri Goodwill Industries*, Case No. 4:24-cv-756 (the "Federal Action"). Plaintiffs alleged causes of action of: (i) negligence; (ii) negligence per se; (iii) breach of implied contract; (iv) unjust enrichment; and (v) breach of fiduciary duty.

MERS subsequently moved to dismiss Plaintiffs' complaint on August 26, 2024. Thereafter, in an attempt to avoid time consuming and expensive litigation, the Parties agreed to use experienced mediator, Honorable David E. Jones (Ret.) of Resolute Dispute Resolution Nationwide. Declaration of Raina C. Borrelli in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Borrelli Decl.") ¶ 5. Prior to the mediation, the Parties submitted briefs to Judge Jones which set forth their respective positions on the strengths of Plaintiffs' case and Defendant's defenses, and Defendant produced pre-mediation informal discovery documents. *Id.* The Parties then attended a full-day mediation with Judge Jones and reached an agreement in principle. *Id.* ¶ 6. Over the ensuing weeks, 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.* The Parties did not negotiate attorney's fees or a service award until after they had agreed on benefits for the Settlement class. *Id.* ¶ 9.

Pursuant to the Parties' settlement negotiations, and in light of information learned, on December 12, 2024, Plaintiffs dismissed the Federal Action and, on February 4, 2025, refiled their claims in this Court. Plaintiffs' counsel is confident that the Settlement terms are fair, reasonable, adequate, and provide significant relief to the Settlement Class. *Id.* ¶ 12.

III. SUMMARY OF SETTLEMENT

A. The Settlement Class and Benefits

The Settlement¹ provides for the certification of a Settlement Class defined as: all individuals residing in the United States whose Private Information was compromised in the Data Incident, including all those individuals who received notice of the breach. S.A. ¶ 1.37. MERS represents that the Settlement Class is comprised of approximately 70,390 individuals (each, a “Settlement Class Member”). MERS had records of 70,244 Settlement Class Members with email or mailing addresses, which it provided to the Settlement Administrator. Admin. Decl. ¶¶ 6-8.

Excluded from the Settlement Class are: (i) Defendant; (ii) the Related Entities; (iii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iv) any judges assigned to this case and their staff and family; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. S.A. ¶ 1.37.

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

B. Monetary and Other Compensation for Losses

1. Credit Monitoring

Settlement Class Members are eligible to receive two years of three-bureau credit monitoring with at least \$1,000,000 in identity theft protection insurance. *Id.* ¶ 3.4.

2. Compensation for Ordinary Losses

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

Settlement Class Members are eligible to receive compensation up to \$500 per person for expenses incurred because of the Data Incident. *Id.* ¶ 3.3(a). Examples of compensable losses for Ordinary Losses include professional fees such as attorneys' fees, accountants' fees, and fees for credit repair services. *Id.*

3. Compensation for Lost Time

Settlement Class Members can also claim compensation for up to four (4) hours of lost time at \$25 per hour for a maximum of up to \$100 per person. *Id.* ¶ 3.3(a)(i). Claims for Lost Time are subject to the \$500.00 cap for Ordinary Losses.

4. Compensation for Extraordinary Losses

Settlement Class Members who submit a valid and timely claim are additionally eligible to recover up to \$5,000 if they were victims of actual documented Extraordinary Losses, such as a losses associated with identity theft caused by the Data Incident. *Id.* ¶ 3.3(b). Such losses must be supported by documentation, more likely than not caused by the Data Incident, and not already reimbursed. *Id.*

5. Alternative Cash Payment

In the alternative to a claim for Ordinary Losses, Lost Time, Extraordinary Losses, and/or Credit Monitoring, Settlement Class Members can elect a to receive a \$50 Alternative Cash Payment. *Id.* ¶ 3.3(c)

C. Business Practice Commitments

Plaintiffs also negotiated for and received commitments from MERS that it will enhance the security of the Private Information in its possession going forward. *Id.* ¶ 3.5. The agreed-on security improvements are substantial: MERS has committed to spend at least \$100,000 per year for three years on information security, starting in 2025 and ending in 2028. *Id.* Defendant will

provide a confidential declaration to Class Counsel describing its information security improvements since the Data Incident. *Id.*

D. Release

The Parties tailored the release to affect only those claims related to the Data Incident—defined as “Released Claims” in the Settlement Agreement. *Id.* ¶¶ 1.28, 13.1-13.8. Thus, any Settlement Class Members, who do not exclude themselves, will release their claims against MERS related to the Data Incident. *Id.*

E. Notice And Claims

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

1. Direct Notice

The Parties agreed to, and the Court approved, RG/2 Claims as the Settlement Administrator in this case. *Id.* ¶ 1.33. Defendant will pay the cost of Notice and Settlement Administration Costs separate and apart from the Settlement Benefits available to Settlement Class Members. *Id.* ¶ 5.11.

RG/2 Claims received an electronic file containing the names and known contact information for the Settlement Class Members from MERS with a total of 70,244 unique records.

Admin. Decl. ¶ 6. RG/2 Claims subsequently coordinated the emailing and/or mailing of the Short Notice to Settlement Class Members. *See Id.* ¶¶ 6-9. Pursuant to Mo. Sup. Ct. R. 52.08(c)(3), the Short Notice informed Settlement Class Members of, among other things; (a) general information about this case, (b) their right to opt-out and not participate in the Settlement, (c) their right to object to the Settlement, (d) the dates by which to act on those options, (e) the date of the Final Approval Hearing, (f) the phone number to contact RG/2 Claims for general information or to request additional documents, and (g) the address of the Settlement Website, where Settlement Class Members could access the Long Notice and submit Claims. *Id.* at Ex. A-B.

To reach the Settlement Class Members with valid email addresses, RG/2 Claims emailed the Short Form Notice to those 6,376 Class Members. *Id.* ¶ 7. Of the Short Form Notices sent by email, 2,050 Notices could not be delivered. *Id.* RG/2 Claims promptly mailed a Short Form Notice to the Class Members with undeliverable email notices or invalid email addresses. *Id.* Next, Prior to mailing the Short Form Notices, and in order to provide the best notice practicable and locate the most recent addresses for Settlement Class Members, RG/2 Claims processed the Settlement Class List of 70,244 individuals with known mailing addresses received through the United States Postal Service's ("USPS") National Change of Address database ("NCOA") and updated the data with corrected information. *Id.* ¶ 9. RG/2 Claims then caused to be served by First Class U.S. Mail the Short Form Notice to 63,868 individuals identified as Settlement Class Members without a valid email address. *Id.* ¶ 8.

Of the Notices mailed, 18,833 were returned as undeliverable. *Id.* ¶ 10. Of those, 176 included a forwarding address provided by the USPS, and RG/2 Claims promptly mailed a new Notice to those Settlement Class Members. *Id.* For the remaining 18,657 Notices, RG/2 Claims performed extensive skip-trace procedures and was able to locate updated addresses for 13,975

Settlement Class Members. *Id.* As a result of these efforts, more than 93% of the Settlement Class received the Notice. *Id.*

2. *The Settlement Website*

Further, RG/2 Claims launched the Settlement Website, www.MERSMOGoodwillSettlement.com. *Id.* ¶ 11. There, on the “Homepage,” Settlement Class members could gain access to a brief summary of the Settlement and learn about their rights under the Settlement. *Id.* Settlement Class Members could also visit the “Court Documents” page, where they could access, *inter alia*, the Class Action Complaint, the Settlement Agreement and Release, the Order Granting Plaintiff’s Unopposed Motion for Preliminary Approval, and Plaintiff’s Memorandum in Law in Support of Unopposed Motion for Approval of Attorneys’ Fees, Litigation Expenses, and Service Award. *Id.* Settlement Class Members could also access the Long Notice and Claim Form and submit Claims online via a secure portal. *Id.* The Settlement Website also provides the contact information of RG/2 Claims and Settlement Class Counsel. *Id.* As of June 19, 2025, the settlement website was viewed a total of 45,419 times by 43,407 unique users. *Id.*

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

In addition to the Settlement Website, RG/2 made available and hosted a toll-free number to allow Settlement Class Members to learn more about the settlement and request to have a Long-Form Notice and Claim Form mailed directly to them. *Id.* ¶ 12. The toll-free number was displayed in the Long-Form Notice, Short Form Notice and on the Settlement Website. *Id.* As of June 19, 2025, RG/2 Claims has received 825 calls and 178 requests to have a Long-Form Notice and Claim Form mailed. *Id.* ¶ 13. Also, RG/2 made available and monitored a settlement mailbox where Settlement Class Members could – and may still – submit hard copy Claim Forms, requests for

Claim Forms, Opt-Out requests, objections, and other case correspondence. *Id.* ¶ 13. Finally, RG/2 established and monitored a settlement inbox, MERSMOGoodwill@rg2claims.com, where Settlement Class Member could – and may still – learn more about the settlement, ask questions about the Settlement and request to have a Long Form Notice and Claim Form mailed directly to them and submit a Claim Form. *Id.* ¶ 14. As of June 19, 2025, RG/2 has received 382 emails. *Id.*

4. *Claims.*

The timing of the Claims Process was structured to ensure that all Settlement Class Members have ninety days to review the terms of the Settlement Agreement, compile documents supporting their Claim, and decide whether they would like to opt-out or object. S.A. ¶ 1.1 The deadline to submit a Claim Form to receive settlement benefits is 90 days after the Notice Date or, July 7, 2024. Admin. Decl. ¶ 17. To date, RG/2 Claims has received 1,607 Claim Forms. *Id.* Because there is more than a week left in the Claims Period, the information provided regarding claims submission is likely to change and is not final. *Id.*

5. *Requests For Exclusion and Objections*

Similar to the timing of the Claims Process, the timing of objections and requests for exclusion was structured to give Settlement Class Members sufficient time to access and review the Settlement documents—including Plaintiffs’ Motion for Award of Attorneys’ Fees, Litigation Expenses, and Service Awards, which was filed fourteen (14) days prior to the deadline for Settlement Class Members to object or exclude themselves from the Settlement. *See* S.A. ¶¶ 6.1-6.7, 7.1-7.6, 8.1, Plaintiffs’ Motion for Attorneys’ Fees, Litigation Expenses, and Service Awards. The Opt-Out Period for this Settlement ended on June 6, 2025. Admin. Decl. ¶¶ 15, Ex. C. RG/2 Claims has received two (2) valid Requests for Exclusion. Settlement Class Members were also informed of their right to object to the Settlement provided the request was postmarked within

sixty (60) days from the mailing date of the Notice or by June 6, 2025. *Id.* ¶ 16; S.A. at Ex. A-B. To date, RG/2 Claims has not received or been advised of any objections to the Settlement. *Id.*

IV. ARGUMENT

A. The Court Should Grant Final Approval of the Settlement

Missouri Supreme Court Rule 52.08(e) provides that “[a] class action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” Mo. Sup. Ct. R. 52.08(e). “It is well established in Missouri that ‘federal interpretations of [Federal] Rule 23 are relevant in interpreting Rule 52.08.’” *Hope v. Nissan N. Am., Inc.*, 353 S.W.3d 68, 75 (Mo. Ct. App. 2011) (quoting *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 161 (Mo. Ct. App. 2006)). The Court’s Preliminary Approval Order considered many of the same factors at issue here and ruled that the Settlement was fair, reasonable, and adequate to provide notice to the Settlement Class. The settlement of a class action should be approved if it is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class members. *Alicia St. v. O’Toole*, No. 4:19 CV 2590 CDP, 2023 U.S. Dist. LEXIS 102566, at *4 (E.D. Mo. June 13, 2023).

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

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

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

Here, the Settlement Agreement meets this test. First, it is undeniable that it was the result of arm's-length negotiations conducted by experienced counsel for all Parties. As discussed above, the Settlement was negotiated after a full day mediation with Judge David E. Jones (Ret.) of Resolute Dispute Resolution Nationwide, who is an experienced mediator with a national reputation in the realm of class action settlement, and with extensive experience handling data breach class actions as a mediator. *See Borrelli Decl.* ¶ 5. While Plaintiffs believe in the merits of their case, they recognize that “[t]his is not only a complex case—it lies within an especially risky field of litigation: data breach.” *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275-RAR, 2023 U.S. Dist. LEXIS 117355, at *24 (S.D. Fla. July 8, 2023) (citations omitted); *see also In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 U.S. Dist. LEXIS 135573, at *14 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”); *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415, 2019 U.S. Dist. LEXIS 215430, at *3 (D. Colo. Dec. 16, 2019) (“Data breach cases such as the instant case are

particularly risky, expensive, and complex,...and they present significant challenges to plaintiffs at the class certification stage.”) (internal citations omitted; collecting cases).

Had this case not resolved, Plaintiffs would have had to overcome Defendant’s likely opposition to their motion to class certification, Defendant’s motion for summary judgment, appeals , and a potential trial. Such continued litigation would be long, complex and expensive, and a burden to court dockets. *Lake v. First Nat’l Bank*, 900 F. Supp. 726 (E.D. Pa. 1995) (expense and duration of litigation are factors to be considered in evaluating the reasonableness of a settlement); *Weiss v. Mercedes-Benz of N. Am. Inc.*, 899 F. Supp. 1297 (D.N.J. 1995) (burden on crowded court dockets to be considered). The Settlement, in contrast, “gives immediate compensation to Settlement Class members. Class interests are better served by settlement than continued litigation.” *In re Sonic*, 2019 U.S. Dist. LEXIS 135573, at *14. It is also noteworthy that the Settlement was negotiated by counsel who are well versed in consumer class actions generally, in data privacy and cybersecurity incident cases in particular. Borrelli Decl. ¶ 12. Moreover, Settlement Class Counsel endorse the Settlement (*id.*); this factor is entitled to great weight. *See In re Fed. Skywalk Cases*, 97 F.R.D. 380, 389 (W.D. Mo. 1983) (“While the Court cannot blindly accept the recommendation of class counsel, the Court is entitled to and does place considerable weight on their recommendations.”); *Rawlings v. BMW Fin. Servs. NA, LLC*, No. 2:20-cv-022892022 U.S. Dist. LEXIS 133970, at *10 (S.D. Ohio July 27, 2022) (approving recommendation of Class Counsel, skilled in collective and class actions, to approve the settlement and defer to Class Counsel's judgment).

Finally, under the circumstances herein, the fact that the settlement was reached before formal discovery commenced does not present an impediment to granting final approval. *See In re Wawa, Inc. Data Sec. Litig.*, No. 19-cv-6019, 2021 U.S. Dist. LEXIS 142025, at *36 (E.D. Pa.

July 30, 2021) (“Although the Consumer Plaintiffs and [the defendant] did not engage in ‘formal’ discovery, that is not necessarily an obstacle for [] approval of a class action settlement, especially where, as here, the parties have exchanged important informal discovery.”); *Trombley v. Nat’l City Bank*, 759 F. Supp. 2d 20, 26 (D.D.C. 2011) (“Although the Court will consider the timing of the settlement and the amount of discovery conducted at the final approval stage, the Court will not deny [] approval due to the absence of significant discovery at this point.”). As noted above, Settlement Class Counsel sought and obtained relevant information from MERS before finalizing the settlement to ensure that the Settlement is fair, reasonable and adequate.

C. The Court Should Certify the Settlement Class

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

All individuals residing in the United States whose Private Information was compromised in the Data Incident, including all those individuals who received notice of the breach.

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

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

The Settlement Class satisfies the numerosity requirement under Missouri Supreme Court Rule 52.08(a)(1). As stated above, there are approximately 70,390 Settlement Class Members. Accordingly, numerosity is satisfied. *See Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 167 (Mo. Ct. App. 2006) (“Rule 52.08(a) does not require that joinder of all the members of a class be impossible, only that it be impracticable. ... To support a finding of the numerosity prerequisite of Rule 52.08(a)(1), the trial court can accept “common sense assumptions.”) (cleaned up; citations omitted).

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

Missouri Supreme Court Rule 52.08(a)(2) does not require that all issues be common, but that common questions exist. “[T]he rule is written in the disjunctive, and hence, the common question may be one of fact or law and need not be one of each.” *Elsea v. U.S. Eng’g Co.*, 463 S.W.3d 409, 418 (Mo. Ct. App. 2015) (citing William B. Rubenstein, *Newberg on Class Actions*, § 3:21 (5th ed. 2011)). Courts have recognized that “commonality ‘requires only a single issue common to the class.’” *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1288 (10th Cir. 1999) (cleaned up; collecting cases); *see also Weiss v. York Hosp.*, 745 F.2d 786, 808-809 (3d Cir. 1984) (ruling a “single common question is sufficient, even if questions exist as to a representation made to an individual Plaintiff or proof of damages”). Common factual and legal questions in this case include whether or not MERS failed to take reasonable measures to safeguard the Private Information entrusted to it; whether it owed a common law and/or fiduciary duty to Plaintiffs and Class Members; whether it breached any such duty; and whether MERS was unjustly enriched. Pet. ¶ 111. Since these questions of law and fact are common to all Settlement Class Members, the commonality requirement is satisfied.

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

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

seek to hold MERS “liable for damages related to the breach and share common questions of law and fact with all other class members.” *Id.*

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

Plaintiffs and Settlement Class Counsel have fairly and adequately represented the Settlement Class under Missouri Supreme Court Rule 52.08. “Rule 52.08(a)(4) requires that as a prerequisite to class certification, the trial court must find that: “the representative parties will fairly and adequately protect the interests of the class.”” *Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 172 (Mo. Ct. App. 2006) (quoting Mo. Sup. Ct. R. 52.08(a)); *State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 734 (Mo. 2004). “This prerequisite applies both to the named class representatives and to class counsel.” *Id.* Here, both Plaintiffs are adequate representatives. Plaintiffs committed to participate actively in what they knew could have been a long and hard-fought lawsuit, and did so on behalf of a Class of thousands of other Settlement Class Members, with no guarantee of ever being compensated. Declaration of Raina C. Borrelli in Support of Plaintiffs’ Unopposed Motion for Attorneys’ Fees, Litigation Expenses, and Service Award (“Fee Decl.”) ¶ 19. Even though no award of any sort was promised to Plaintiffs, they contributed their time and effort by assisting in the litigation, aiding in the preparation of the Complaint, and aided in approving the Settlement. *Id.* ¶ 21.

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

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

1. *Predominance is satisfied*

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

2. *Superiority is satisfied*

The additional prerequisite for certification under Missouri Supreme Court Rule 52.08(b)(3) is that a class action be “superior to other available methods for the fair and efficient adjudication of the controversy.” “The superiority requirement requires the trial court to balance, in terms of fairness and efficiency, the merits of a class action in resolving the controversy against those of ‘alternative available methods’ of adjudication.” *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 181 (Mo. Ct. App. 2006) (quoting *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 632 (3rd Cir.1996)). Given the nature of this action and the fact that each claim is based on the Data Incident, a class action is also the superior method by which to adjudicate claims of individual class members. “The policy at the very core of the class action mechanism is to overcome the

problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Mack v. Suffolk County*, 191 F.R.D. 16, 25 (D. Mass. 2000) (internal citations omitted); *Yang v. Odum*, 392 F.3d 97, 106 (3d Cir. 2004). Considerations of judicial economy particularly underscore the superiority of the class action mechanism in this case. The prosecution of this case as a class action is superior to possibly dozens of individual cases being filed in the court, each of which would be repetitious and possibly yield inconsistent adjudications.

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

V. CONCLUSION

For the foregoing reasons, Plaintiffs have negotiated a fair, adequate, and reasonable settlement that assures Settlement Class Members of prompt and meaningful relief. The Settlement is well within the range of approval and complies with the dictates of Missouri Supreme Court Rule 52.08. For these reasons and the other reasons detailed herein, Plaintiffs respectfully request that the Court certify the Class for settlement purposes and grant their Motion for Final Approval of Class Action Settlement.

Dated: June 26, 2025

Respectfully submitted,

/s/John F. Garvey

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**Pro Hac Vice* application forthcoming