

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE DOXIM, INC. DATA SECURITY
INCIDENT LITIGATION

Case No: 2:24-cv-11550

Hon. Terrence G. Berg

CLASS ACTION

JURY TRIAL DEMANDED

MOTION

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

Plaintiffs,¹ individually and on behalf of all others similarly situated, move this Court, pursuant to Federal Rule of Civil Procedure 23, for an Order granting Preliminary Approval of the proposed class action Settlement Agreement agreed to by the Parties. Defendant does not oppose this Motion and agrees to settle all individual and class claims that were made, or that could have been made, in Plaintiffs' Consolidated Amended Class Action Complaint. [ECF No. 21].

In support of this Motion, Plaintiffs rely upon the accompanying Brief in Support, and the Joint Declaration of E. Powell Miller, Jeff Ostrow, Mariya Weekes, and Bryan L. Bleichner (presently, Interim Co-Lead Class Counsel, and proposed

¹ All capitalized terms herein shall have the same meanings as those defined in Section II of the Settlement Agreement attached hereto as ***Exhibit A***.

Settlement Class Counsel here), attached as *Exhibit B*.

Plaintiffs respectfully request that the Court enter an order: (i) granting Preliminary Approval of the Settlement; (ii) provisionally certifying the Settlement Class for settlement purposes; (iii) appointing the Plaintiffs as Class Representatives; (iv) appointing E. Powell Miller, Jeff Ostrow, Mariya Weekes, and Bryan L. Bleichner as Class Counsel for the Settlement Class; (v) approving the form of the Notices and the Notice Program; (vi) approving the Claim Form and the Claim Process; (vii) appointing Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator; (viii) establishing procedures and deadlines for the Settlement Class Members to opt-out of or object to the Settlement; and (ix) scheduling a Final Approval Hearing at which time the Court will consider whether to grant Final Approval of the Settlement and Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards.²

Pursuant to Local Rule 7.1(a)(1), on January 21, 2025, Plaintiffs' Counsel requested concurrence in the filing of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement from Defendants. Defendants' Counsel advised counsel for Plaintiffs that Defendants do not oppose the relief requested.

² A proposed Preliminary Approval Order to this effect is included as an exhibit to Plaintiffs' accompanying Supporting Brief.

Dated: January 26, 2026

Respectfully submitted,

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BRIEF

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

STATEMENT OF ISSUES PRESENTED

1. Does the proposed Settlement Class meets the Fed. R. Civ. P. 23(a) and (b)(3) class certification requirements for settlement purposes ?

Plaintiffs' Answer: Yes.

2. Should the Court provisionally appoint Plaintiffs as Class Representatives for the Settlement Class?

Plaintiffs' Answer: Yes.

3. Should the Court provisionally appoint E. Powell Miller, Jeff Ostrow, Mariya Weekes, and Bryan L. Bleichner as Class Counsel?

Plaintiffs' Answer: Yes.

4. Based on an initial evaluation, is the proposed Settlement fair, adequate, and reasonable, sufficient to warrant the dissemination of Notice to the proposed Settlement Class?

Plaintiffs' Answer: Yes.

5. Should the Court appoint Epiq Class Action & Claims Solutions, Inc. as Settlement Administrator?

Plaintiffs' Answer: Yes.

6. Does the Notice Program satisfy the requirements of Rule 23 and Due Process?

Plaintiffs' Answer: Yes.

CONTROLLING AND MOST APPROPRIATE AUTHORITIES

- Fed. R. Civ. P. 23
- *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997)
- *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am. (“UAW”) v. Gen. Motors Corp.*, 497 F.3d 615 (6th Cir. 2007)

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND AND PROCEDURAL HISTORY	2
III. SUMMARY OF THE SETTLEMENT	4
A. Settlement Class	4
B. Settlement Fund.....	5
C. Settlement Class Member Benefits	5
D. Notice Program.....	6
E. Claim Process and Disbursement of Cash Payments.....	8
F. Disposition of Residual Funds	9
G. Settlement Administrator	9
H. Opt-Out and Objection Procedures	11
I. Releases	12
J. Service Awards, Attorneys’ Fees, and Costs	12
IV. ARGUMENT	13
A. The Court Should Certify the Proposed Settlement Class	14
1. Rule 23(a) Requirements Are Met for Settlement Purposes	14
2. Rule 23(b) Requirements Are Met for Settlement Purposes	18
B. The Proposed Settlement Is Fundamentally Fair, Reasonable, and Adequate and Thus Warrants Preliminary Approval.....	20
C. The Court Should Appoint the Proposed Class Representatives, Class Counsel, and Settlement Administrator	31
D. The Proposed Notice Program Is The Best Practicable	33
V. PROPOSED SCHEDULE OF EVENTS	34
VI. CONCLUSION.....	35

TABLE OF AUTHORITIES

Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	14, 19, 20
<i>Ayers v. Thompson</i> , 358 F.3d 356 (5th Cir. 2004)	28
<i>Beattie v. CenturyTel, Inc.</i> , 511 F.3d 554 (6th Cir. 2007)	16, 19
<i>Bert v. AK Steel Corp.</i> , No. 1:02-CV-467, 2008 WL 4693747 (S.D. Ohio Oct. 23, 2008)	23
<i>Bittinger v. Tecumseh Prods. Co.</i> , 123 F.3d 877 (6th Cir. 1997)	16
<i>Calloway v. Caraco Pharm. Labs., Ltd.</i> , 287 F.R.D. 402 (E.D. Mich. 2012)	20
<i>Curry v. SBC Commc'ns, Inc.</i> , 250 F.R.D 301 (E.D. Mich. 2008)	14
<i>Doe v. Workit Health, Inc.</i> , No. 23-CV-11691, 2025 WL 732730 (E.D. Mich. Mar. 6, 2025).....	12
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	33
<i>Fox v. Iowa Health Sys.</i> , No. 3:18-CV-00327-JDP, 2021 WL 826741 (W.D. Wis. Mar. 4, 2021)	25
<i>Garner Props. & Mgmt., LLC v. City of Inkster</i> , 333 F.R.D. 614 (E.D. Mich. 2020)	13, 14, 16
<i>In re Blackbaud, Inc., Customer Data Breach Litig.</i> , No. 3:20-mn-02972-JFA, 2024 WL 2155221 (D.S.C. May 14, 2024)	27
<i>In re Chevrolet Bolt EV Battery Litig.</i> , No. 2:20-CV-13256-TCB-CI, 2025 WL 3708892 (E.D. Mich. Dec. 22, 2025)	passim
<i>In re Delphi Corp. Sec., Derivative & "ERISA" Litig.</i> , 248 F.R.D. 483 (E.D. Mich. 2008)	28
<i>In re Equifax Inc. Customer Data Sec. Breach Litig.</i> , 999 F.3d 1247 (11th Cir. 2021)	27
<i>In re Fortra File Transfer Software Data Sec. Breach Litig.</i> , 794 F. Supp. 3d 1203 (S.D. Fla. 2025)	30, 34
<i>In re Hannaford Bros. Co. Cust. Data Sec. Breach Litig.</i> , 293 F.R.D. 21 (D. Me. 2013).....	25

<i>In re Henry Ford Health Sys. Data Sec. Litig.</i> , No. 2:23-cv-11736-GAD-KGA, 2024 WL 4602705 (E.D. Mich. Oct. 29, 2024)	15, 20
<i>In re Lincare Holdings Inc. Data Breach Litig.</i> , No. 8:22-cv-04172-AAS, 2024 WL 3104286 (M.D. Fla. June 24, 2024)	26
<i>In re Mednax Services, Inc., Customer Data Sec. Breach Litig.</i> , No. 21-MD-02994-RAR, 2024 WL 1554329(S.D. Fla. Apr. 10, 2024)	26
<i>In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.</i> , No. 21-MD-02994-RAR, 2024 WL 1554329 (S.D. Fla. Apr. 10, 2024)	30
<i>In re Packaged Ice Antitrust Litig.</i> , No. 08-MD-01952, 2010 WL 3070161 (E.D. Mich. Aug. 2, 2010)	21
<i>In re Target Corp. Customer Data Sec. Breach Litig.</i> , MDL No. 14-2522 (PAM/JJK), 2015 WL 7253765 (D. Minn. Nov. 17, 2015)	25
<i>In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.</i> , 266 F. Supp. 3d 1 (D.D.C. 2017)	25
<i>In re Wawa, Inc. Data Sec. Litig.</i> , No. CV 19-6019, 2021 WL 3276148 (E.D. Pa. July 30, 2021)	28
<i>In re Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.</i> , 722 F.3d 838 (6th Cir. 2013)	14, 20
<i>In re Wright & Filippis, LLC Data Sec. Breach Litig.</i> , No. 2:22-cv-12908-SFC, 2024 WL 3083436 (E.D. Mich. June 20, 2024)	26, 30
<i>Kinder v. Nw. Bank</i> , 278 F.R.D. 176 (W.D. Mich. 2011)	15
<i>Kostka v. Dickey’s Barbeque Restaurants, Inc.</i> , No. 3:20-CV-03424-K, 2023 WL 3914266 (N.D. Tex. June 6, 2023)	26
<i>Kritzer v. Safelite Solutions, LLC</i> , No. 2:10-CV-0729, 2012 WL 1945144 (S.D. Ohio May 30, 2012)	28
<i>Logan v. Marker Group, Inc.</i> , No. 4:22-CV-00174, 2024 WL 3489208 (S.D. Tex. July 18, 2024)	24
<i>Machesney v. Lar-Bev of Howell, Inc.</i> , 317 F.R.D. 47 (E.D. Mich. 2016)	19
<i>Maldini v. Marriott Int’l, Inc.</i> , 140 F.4th 123 (4th Cir. 2025)	27
<i>Marriott Int’l, Inc. v. Accenture LLP</i> , 78 F.4th 677 (4th Cir. 2023)	27
<i>Merenda v. VHS of Michigan, Inc.</i> , 296 F.R.D. 528 (E.D. Mich. 2013)	18
<i>Moeller v. Wk. Publications, Inc.</i> , 649 F. Supp. 3d 530 (E.D. Mich. 2023)	13

<i>Mullane v. Cent. Hanover Bank & Tr. Co.</i> ,	
339 U.S. 306 (1950).....	33
<i>Owens v. U.S. Radiology Specialists, Inc., et al.</i> ,	
No. 22 CVS 17797 (Mecklenburg Cty., NC)	26
<i>Powers v. Hamilton Cty. Pub. Def. Comm’n</i> ,	
501 F.3d 592 (6th Cir. 2007)	19
<i>Raymo v. FCA US LLC</i> ,	
No. 2:17-CV-12168-TGB-SDD, 2025 WL 532834 (Feb. 18, 2025)	15, 16, 17
<i>Sprague v. General Motors Corp.</i> ,	
133 F.3d 388 (6th Cir. 1998)	16
<i>Summers v. Sea Mar 16 Comm. College</i> ,	
No. 22-2-0073-7 SEA (Super. Ct. Wash.).....	26
<i>Thacker v. Chesapeake Appalachia, L.L.C.</i> ,	
259 F.R.D. 262 (E.D. Ky. 2009).....	21, 23
<i>Theus v. Brinker Int’l, Inc.</i> ,	
No. 3:18-cv-686-TJC-MCR, 2025 WL 1786346 (M.D. Fla. June 27, 2025).....	27
<i>UAW v. Ford Motor Co.</i> ,	
No. 07-CV-14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008)	31
<i>UAW v. Gen. Motors Corp.</i> ,	
497 F.3d 615 (6th Cir. 2007)	17, 22, 29
<i>UAW v. v. Gen. Motors Corp.</i> ,	
No. 07-CV-14074-DT, 2008 WL 2968408 (E.D. Mich. July 31, 2008).....	28
<i>Wal-Mart Stores, Inc. v. Dukes</i> ,	
131 S. Ct. 2541 (2011).....	15

Rules

Fed. R. Civ. P. 12(b)(1).....	3
Fed. R. Civ. P. 12(b)(6).....	3
Fed. R. Civ. P. 23(a).....	14
Fed. R. Civ. P. 23(a)(1).....	14
Fed. R. Civ. P. 23(a)(2).....	15
Fed. R. Civ. P. 23(a)(3).....	16
Fed. R. Civ. P. 23(a)(4).....	17
Fed. R. Civ. P. 23(b)(3).....	14, 18, 20, 33
Fed. R. Civ. P. 23(c)(2)(B)	33
Fed. R. Civ. P. 23(e)(2).....	21, 22
Fed. R. Civ. P. 23(g)(1)(B)	32
Fed. R. Civ. P. 23(h)(1).....	33, 34

Other Authorities

<i>Manual for Complex Litigation</i> § 21.632 (4th ed. 2004).....	21
<i>Newberg on Class Actions</i> § 11.41 (4th ed. 2002)	20

I. INTRODUCTION

Defendant Doxim is a software-as-a-service company, offering loan origination, customer relationship management, business analytics, enterprise content, and wealth management. [ECF No. 21]. Doxim serves credit unions, wealth management service providers, and banking sectors in the United States and Canada. *Id.* In the course of operating its business, Doxim collects, maintains, and stores Private Information of individuals who do business with Doxim's Credit Union Customers, including Defendants CUO and Beacon. Agreement ¶ 2.

On or about December 30, 2023, an unauthorized actor gained access to Doxim's network and computer systems and obtained unauthorized access to its files. *Id.* ¶ 3. On May 31, 2024, Defendants began notifying affected individuals that their Private Information (such as names, financial account numbers, and/or Social Security numbers) may have been impacted in the Data Incident. *Id.* ¶¶ 4, 63.

To avoid the risk and expense of litigation, the Parties agreed to the Settlement to resolve Plaintiffs' claims on a classwide basis. *Id.* ¶ 17. As demonstrated below, the Settlement provides significant relief for the Settlement Class, including a non-reversionary all cash \$5,500,000.00 Settlement Fund. *Id.* ¶ 75.

The Court should find the Settlement is within the range of reasonableness necessary to grant Preliminary Approval under Rule 23(e) and enter the Preliminary Approval Order. Plaintiffs respectfully request that the Court enter an order: (i)

granting Preliminary Approval of the Settlement; (ii) provisionally certifying the Settlement Class for settlement purposes; (iii) appointing the Plaintiffs as Class Representatives; (iv) appointing E. Powell Miller, Jeff Ostrow, Mariya Weekes, and Bryan L. Bleichner as Class Counsel for the Settlement Class; (v) approving the form of the Notices and the Notice Program; (vi) approving the Claim Form and the Claim Process; (vii) appointing Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator; (viii) establishing procedures and deadlines for the Settlement Class Members to opt-out of or object to the Settlement; and (ix) scheduling a Final Approval Hearing at which time the Court will consider whether to grant Final Approval of the Settlement and Class Counsel's Application for Attorneys' Fees and Costs.

II. BACKGROUND AND PROCEDURAL HISTORY

As a result of the Data Incident, commencing on June 13, 2024, Doxim, as well as other defendants, was named in six materially and substantively identical putative class actions, with overlapping claims, seeking to represent the same putative class members, arising out of the same Data Incident. Agreement ¶ 5. One was a state court action that was dismissed. *Id.* Defendant CUO and Defendant Beacon are both credit unions and named in certain of the related actions. *Id.* ¶ 6.

Plaintiffs in the first three related actions conferred and agreed to move to consolidate them and to appoint Class Counsel as Interim Co-Lead Class Counsel.

Plaintiffs filed their motion on June 27, 2024. [ECF No. 5]. On October 24, 2024, the Court consolidated the related actions into this Action and appointed Jeff Ostrow, E. Powell Miller, Mariya Weekes, and Bryan L. Bleichner, as Interim Co-Lead Class Counsel for the putative classes. [ECF No. 14]. On November 1, 2024, Interim Co-Lead Class Counsel notified the Court of two additional related actions, which were also consolidated. [ECF Nos. 16, 17, 19].

On December 9, 2024, Plaintiffs filed a Consolidated Class Action Complaint, alleging negligence, negligence per se, unjust enrichment, breach of contract, breach of fiduciary duty, breach of third party beneficiary contract, and declaratory judgment and injunctive relief. [ECF No. 21]. On January 23, 2025, Doxim filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), to which Plaintiffs opposed and Doxim replied. [ECF Nos. 38, 48, 54]. On February 14 and 24, 2025, Defendants Beacon and CUO filed their Motions to Dismiss, respectively, pursuant to Rule 12(b)(1) and 12(b)(6), to which Plaintiffs responded and Defendants CUO and Beacon replied. [ECF Nos. 44, 49, 52, 53, 55, 57, 59].

Defendants' Motions to Dismiss were set for hearing, but, before that hearing, the Parties began discussing settlement and scheduled a mediation with Jill Sperber, Esq., an experienced data breach mediator. Joint Decl. ¶ 14. The Parties filed a Joint Motion to Continue Hearing on Defendant's Motions to Dismiss and Stay Pending Mediation, which the Court granted on September 16, 2025. [ECF Nos. 66, 67].

Before mediation, Plaintiffs propounded informal discovery requests to learn as much as possible to aid the negotiations, and Defendants provided certain information in response about the cause of and the Private Information impacted in the Data Incident to facilitate the mediation. Joint Decl. ¶ 15. Interim Co-Lead Class Counsel also prepared a mediation statement outlining Plaintiffs' positions with respect to liability, damages, and settlement-related issues. *Id.*

The Parties mediated on November 7, 2025, and after a full day of negotiations, agreed to the material terms of a settlement to settle all claims against the Defendants. *Id.* ¶ 17. On November 21, 2025, the Parties filed a Joint Status Report, notifying the Court of the Parties agreed in principle to settle the Action and requesting the Court continue the stay in this Action for 45 days to enter into this Agreement and file the Motion for Preliminary Approval. [ECF No. 69]. On January 5, 2026, the Parties requested 21 additional days to finalize the Agreement, and the Court extended the stay on January 6, 2026. [ECF No. 70; text-only order].

Over two months, the Parties have diligently drafted, negotiated, and finalized the Agreement, Notice Program, and Claim Process, and they selected the proposed Settlement Administrator. Joint Decl. ¶ 20. The Agreement was signed on January 26, 2026, and Plaintiffs now seek Preliminary Approval of the Settlement. *Id.* ¶ 21.

III. SUMMARY OF THE SETTLEMENT

A. Settlement Class – Plaintiffs seek Preliminary Approval of the

following Settlement Class:

[A]ll living individuals residing in the United States who were identified by Doxim and who were sent notice by Doxim or Doxim's Credit Union Clients that their Private Information was impacted in the Data Incident.

Excluded from the Settlement Class are all persons who are: (a) directors, officers, and employees of Defendants; (b) the Judge assigned to the Action, that Judge's immediate family, and Court staff; and (c) any Settlement Class Member who timely and validly opts-out of the Settlement. Agreement ¶ 72.

B. Settlement Fund – The Settlement provides for a non-reversionary \$5,500,000 all cash Settlement Fund. *Id.* ¶ 75. Defendant Doxim will fund the amount estimated to be necessary to pay for the Notice Program within 30 days of Preliminary Approval and will fully fund the balance of the Settlement Fund within 14 days of Final Approval. *Id.* ¶ 78. It will be used to pay: (1) Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims; (2) any attorneys' fees and costs awarded by the Court to Class Counsel; (3) Service Awards to the Class Representatives; and (4) all Settlement Administration Costs. *Id.* ¶ 79.

C. Settlement Class Member Benefits – When submitting a Valid Claim, Settlement Class Members must choose either Cash Payment A – Documented Losses or Cash Payment B – Alternate Cash. *Id.* ¶ 84. Settlement Class Members may also elect to receive Credit Monitoring. *Id.* ¶ 84.c. Settlement Class Member Cash Payments may be subject to a *pro rata* increase or decrease, depending on the

value of all Valid Claims. *Id.* ¶ 85. If a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims against Defendants without receiving a Cash Payment or Credit Monitoring. *Id.* ¶ 84.

Cash Payments – Settlement Class Members who elect Cash Payment A may receive up to \$5,000.00 for reasonable documented losses related to the Data Incident. *Id.* ¶ 84.a. Alternatively, a Settlement Class Member may elect to receive Cash Payment B, an alternative cash payment estimated to be \$100.00. *Id.* ¶ 84.b.

Credit Monitoring – Settlement Class Members may also elect one year, one bureau Credit Monitoring, which includes comprehensive dark web monitoring, high risk transaction monitoring, with real time alerts, security freeze, and \$1 million in insurance coverage. *Id.* ¶ 84.c. All costs associated with the provision of Credit Monitoring shall be paid exclusively out of the Settlement Fund. *Id.* ¶ 79.

D. Notice Program – The Parties have agreed on a comprehensive Notice Program, which includes Postcard Notice, Long Form Notice, Settlement Website, and Settlement telephone line for frequently asked questions. *Id.* § VIII and Exs. 1-2. No later than 30 days after Preliminary Approval, Defendant will provide the Settlement Administrator with the Class List containing Settlement Class Members' names and physical mailing addresses (if available). *Id.* ¶ 91.

No later than 45 days following Preliminary Approval, the Settlement Administrator shall commence the Notice Program, using the Court-approved

Postcard Notice and Long Form Notice. *Id.* ¶ 92. Postcard Notice will be sent to all Settlement Class Members for who mailing addresses were included on the Class List. The Settlement Administrator shall perform reasonable address traces for those Postcard Notices returned as undeliverable and then re-mail the Postcard Notices if updated addresses are identified. *Id.* The Notice Program shall be completed with the re-mailing of Postcard Notices no later than 45 days before the initial date set for the Final Approval Hearing. *Id.*

The Postcard Notice will include, inter alia: (a) a description of the material Settlement terms; (b) how to submit a Claim Form; (c) the Claim Form Deadline; (d) the Opt-out Deadline which is the last day for Settlement Class Members to opt-out of the Settlement Class; (e) the Objection Deadline which is the last day for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards; (f) the Final Approval Hearing date; and (g) the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. *Id.* ¶ 93. The Long Form Notice will also include procedures for Settlement Class Members to opt-out of the Settlement Class or to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards, and the Postcard Notice shall direct the Settlement Class to the Long Form Notice for instructions. *Id.* ¶¶ 95–96.

The Settlement Website will establish the way for Settlement Class Members

to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to the Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, Application for Attorneys' Fees, Costs, and Service Awards, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. *Id.* ¶ 76. The Settlement Administrator will also establish and maintain an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class Members who call with or otherwise communicate such inquiries. *Id.* ¶ 90.f.

E. Claim Process and Disbursement of Cash Payments – To receive Settlement Class Member Benefits, Settlement Class Members must accurately and timely submit a Claim either online through the Settlement Website or U.S. Mail to the Settlement Administrator at the address designated on the Claim Form by the Claim Form Deadline. *Id.* § IX and Ex. 3 (Claim Form). The Settlement Administrator will review the Claim Forms to determine their validity, eligibility, and the type and amount of the Cash Payment and/or Credit Monitoring to which the Settlement Class Member may be entitled. *Id.* ¶ 101. Procedures are included to identify and reject duplicates and prevent fraud and abuse in the Claim Process, as well as to send a Notice of Deficiency to correct missing or inaccurate information on Claim Forms. *Id.* ¶¶ 102–07. The Settlement Administrator will distribute the

Settlement Class Member Benefits to those who submitted Valid Claims no later than 45 days after the Settlement's Effective Date. *Id.* ¶ 109. Cash Payments will be made electronically or by paper check, and an email will be sent to Settlement Class Members electing Credit Monitoring with activation instructions. *Id.* ¶¶ 110–11.

F. Disposition of Residual Funds – Any funds remaining in the Settlement Fund from uncashed checks 20 days after the 120-days check negotiation period shall be distributed to a *cy pres* recipient approved by the Court. *Id.* ¶ 118. The Parties propose the Michigan State Bar Foundation (<https://www.msbf.org/>). *Id.*

G. Settlement Administrator – The proposed Settlement Administrator, Epiq, is a well-respected and reputable third-party administrator that has significant experience with data breach settlements. Joint Decl. ¶ 20. The Settlement Administrator shall fulfill the requirements of the Preliminary Approval Order and Agreement, including the Notice Program, Claim Process, Escrow Account for the Settlement Fund, and Settlement Class Member Benefits. Agreement § VII.

The Settlement Administrator's duties include, *inter alia*: (a) timely providing Class Action Fairness Act (CAFA) Notice for Defendants; (b) completing the Court-approved Notice Program; (c) establishing and maintaining the Settlement Fund and Escrow Account; (d) establishing and maintaining a post office box to receive opt-out requests, objections, and Claim Forms; (e) establishing and maintaining the Settlement Website; (f) establishing and maintaining an automated toll-free

telephone line for Settlement Class Members to call; (g) responding to any mailed Settlement Class Member inquiries; (h) processing all opt-out requests from the Settlement Class; (i) providing weekly reports to Class Counsel and Defendants' Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information; (j) in advance of the Final Approval Hearing, preparing a declaration confirming the Notice Program was completed in accordance with the terms of the Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received for Cash Payments and Credit Monitoring, providing the names of each Settlement Class Member who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval; (k) distributing, out of the Settlement Fund, Cash Payments electronically or by paper check; (l) sending emails to Settlement Class Members instructing how to activate the Credit Monitoring service; (m) paying Court-approved attorneys' fees and costs and Service Awards; (n) paying Settlement Administration Costs following approval by Class Counsel and Defendants' counsel; (o) paying any residual funds to the Court-approved *cy pres* recipient; and (p) any other Settlement Administration function at

the instruction of Class Counsel and Defendants' Counsel. *Id.* ¶ 90. Class Counsel and Defendants' Counsel shall oversee the Settlement Administrator. *Id.* ¶ 88.

H. Opt-Out and Objection Procedures – Consistent with the Settlement's opt-out procedures, the Long Form Notice details that Settlement Class Members who do not wish to participate in the Settlement may opt-out up to the Opt-Out Deadline (30 days prior to the initial scheduled Final Approval Hearing), as specified in the Notice. *Id.* ¶¶ 57, 95. By that Opt-Out Deadline, they must mail an opt-out request to the Settlement Administrator that is personally signed and contains their name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. *Id.* ¶ 95. Mass or class opt-outs, or other purported group opt-outs signed by an attorney, are not permitted and will not be accepted. *Id.* Any Settlement Class Member who does not timely request to opt-out shall be bound by the Agreement's terms even if that Settlement Class Member does not submit a Claim Form. *Id.* If a Settlement Class Member submits both an opt-out request and objection, the opt-out request shall control, and the Settlement Class Member has no standing to object. *Id.* ¶ 97.

The Agreement and Long Form Notice also specify how Settlement Class Members may object to the Settlement and/or the Application for Attorneys' Fees and Costs. *Id.* ¶ 96. Objections must be sent to the Clerk of the Court for filing, and mailed to Class Counsel, Defendants' Counsel, and the Settlement Administrator.

For an objection to be considered by the Court, the objection must be submitted no later than the Objection Deadline (30 days prior to the initial scheduled Final Approval Hearing), as specified in the Notice. *Id.* The objection requirements are set forth in the Agreement and in the Long Form Notice, and will also appear on the Settlement Website. *Id.* and Ex. 3. Class Counsel and/or Defendants' Counsel may conduct limited discovery on any objector or objector's counsel, including the taking of depositions and propounding document requests. *Id.* ¶ 97.

I. Releases – Plaintiffs and Settlement Class Members who do not timely and validly opt-out of the Settlement will be bound by the Settlement, including the Releases that discharge the Released Claims against the Released Parties. *Id.* § XIII. The Released Claims are narrowly tailored and are only claims arising out of or relating to the Data Incident. Joint Decl. ¶ 24.

J. Service Awards, Attorneys' Fees, and Costs – The Service Awards, attorneys' fees, and costs shall be determined by the Court. The Agreement calls for reasonable Service Awards for the Class Representatives of up to \$2,500.00 each.¹ Agreement ¶ 114. Those awards are meant to compensate Class Representatives for their efforts in this Action, including serving as named Plaintiffs, assisting in Class Counsel's investigation and answering questions, maintaining contact with Class

¹ The amounts requested are reasonable and common in settled class actions. *See, e.g., Doe v. Workit Health, Inc.*, No. 23-CV-11691, 2025 WL 732730, at *1, *2 (E.D. Mich. Mar. 6, 2025) (approving \$2,500 service award in data breach case).

Counsel, reviewing case documents, and being prepared to assist with discovery. Joint Decl. ¶ 34. Class Counsel shall apply to the Court for an award of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of reasonable litigation costs. Agreement ¶ 115. The Application for Attorneys' Fees, Costs, and Service Awards will be filed as part of the Motion for Final Approval no less than 45 days before the initial scheduled Final Approval Hearing. *Id.* ¶ 112. The Settlement is not contingent on approval of the requests for attorneys' fees and costs, and if the Court grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force. *Id.* ¶ 116. The Notices will advise the Settlement Class of the intended amounts for attorneys' fees and Service Awards.

IV. ARGUMENT

“The question at the preliminary-approval stage is ‘simply whether the settlement is fair enough’ to begin the class-notice process.” *Moeller v. Wk. Publications, Inc.*, 649 F. Supp. 3d 530, 537 (E.D. Mich. 2023) (citing *Garner Props. & Mgmt., LLC v. City of Inkster*, 333 F.R.D. 614, 626 (E.D. Mich. 2020)). And a settlement agreement itself should be preliminarily approved if it “does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys” and “appears to fall within the range of

possible approval.” *Garner*, 333 F.R.D. at 621.² And “it is clear the bar is lower for preliminary approval than it is for final approval.” *Id.*

A. The Court Should Certify the Proposed Settlement Class

Before granting preliminary approval of a proposed settlement, a court must determine that the proposed settlement class is appropriate for certification. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Class certification is proper if the proposed class satisfies the numerosity, commonality, typicality, and adequacy of representation requirements. Fed. R. Civ. P. 23(a). Because certification is sought under Rule 23(b)(3), Plaintiffs must demonstrate that common questions of law or fact predominate over individual issues and that a class action is the superior device to adjudicate the claims. *Amchem*, 521 U.S. at 615-16. District courts have broad discretion to determine whether certification is appropriate. *See In re Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.*, 722 F.3d 838, 850 (6th Cir. 2013). The Settlement Class satisfies Rule 23(a) and (b)(3) and should be certified.

1. Rule 23(a) Requirements Are Met for Settlement Purposes

Numerosity and Ascertainability. The first prerequisite is that the “class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “In most cases, a class in excess of forty members will do.” *Curry v. SBC Commc’ns, Inc.*, 250 F.R.D 301, 310 (E.D. Mich. 2008). *See also Raymo v. FCA US LLC*, No.

² Unless otherwise noted, all citations and internal quotations are omitted.

2:17-CV-12168-TGB-SDD, 2025 WL 532834, at *2 (Feb. 18, 2025) (“proposed class is sufficiently numerous such that joinder is unrealistic where the class includes thousands of individuals). The Settlement Class includes 1,100,911 individuals identified by Doxim’s records, thus satisfying numerosity. Joint Decl. ¶ 2. The Settlement Class is thus also ascertainable. *See Kinder v. Nw. Bank*, 278 F.R.D. 176, 182 (W.D. Mich. 2011) (class must be “sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member”).

Commonality. Commonality is satisfied when questions of law or fact are common to the class, the resolution of which will bring a classwide resolution. Fed. R. Civ. P. 23(a)(2). It may be shown when the claims all “depend upon a common contention,” with a single common question sufficing. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). The common contention must be capable of classwide resolution and the “determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* Courts in this Circuit have previously addressed this requirement in the context of data breach class actions and found it satisfied. *See, e.g., In re Henry Ford Health Sys. Data Sec. Litig.*, No. 2:23-cv-11736-GAD-KGA, 2024 WL 4602705, at *2 (E.D. Mich. Oct. 29, 2024). Here, Plaintiffs’ claims turn on the adequacy of Doxim’s data security in protecting Settlement Class Members’ Private Information. Joint Decl. ¶ 29.

Evidence to resolve that claim does not vary among Settlement Class Members, and so can be fairly resolved, for purposes of settlement, for all Settlement Class Members at once. *Id.*

Typicality. A class representative's claims must be typical of those of other class members. Fed. R. Civ. P. 23(a)(3). Plaintiffs satisfy typicality where their "claim arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007); *Raymo*, 2025 WL 532834, at *4. Typicality assesses "whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct." *Sprague v. General Motors Corp.*, 133 F.3d 388, 399 (6th Cir. 1998). The claims need not be identical; rather, they need only "arise from the same course of conduct." *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 884 (6th Cir. 1997). The "court must inquire whether the interests of the named plaintiff are aligned with those of the represented group, such that in pursuing his own claims, the named plaintiff will also advance the interests of the class members." *Garner*, 333 F.R.D. at 623. Plaintiffs' interests are aligned with the Settlement Class Members in that they were all sent a notice letter informing them their Private Information may have been compromised in the Data Incident and, therefore, impacted by the same allegedly

inadequate data security. Joint Decl. ¶ 29. Their claims are based on the same legal theories and underlying event, satisfying typicality. *Id.*

Adequacy of Representation. Class representatives must fairly and adequately protect a class's interests. Fed. R. Civ. P. 23(a)(4). "Class representatives are adequate when it appears that they will vigorously prosecute the interest of the class through qualified counsel . . . which usually will be the case if the representatives are part of the class and possess the same interest and suffer the same injury as the class members." *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 626 (6th Cir. 2007). *See also Raymo*, 2025 WL 532834, at *5. The proposed Class Representatives have no conflicts, have participated actively, and are represented by attorneys experienced in class actions. Joint Decl. ¶¶ 29-32.

Like all Settlement Class Members, Plaintiffs have claims against Defendants arising from the Data Incident that allegedly impacted their Private Information, and were similarly injured by Defendants' alleged wrongful acts. *Id.* ¶ 30. Proof of Plaintiffs' claims would necessarily involve adjudicating the same issues of law and fact as the claims of the Settlement Class as a whole. *Id.* Thus, Plaintiffs and the Settlement Class they seek to represent have the same interests in recovering damages. *Id.* Plaintiffs have also diligently and adequately prosecuted this action through Class Counsel by, among other things, reviewing filings, promptly providing documents and information to Class counsel, acting in the best interest of

the Settlement Class, and accepting the classwide Settlement. *Id.* ¶ 31.

As the Court observed when appointing them Interim Co-Lead Class Counsel, proposed Class Counsel are highly qualified and experienced consumer class actions litigators, including in the data privacy context, have the resources necessary to prosecute this Action, and have frequently been appointed class counsel in data security and other class actions. [ECF No. 14]. They have litigated this Action, including evaluating the claims, preparing comprehensive pleadings, serving informal discovery, consulting with data security and damages experts, responding to Defendants’ motions to dismiss, complying with Court orders and requirements, and participating in a successful mediation. Joint Decl. ¶ 36. They have vigorously prosecuted this case and will work diligently on behalf of the Settlement Class throughout the Settlement administration process. *Id.* ¶ 9. Accordingly, Plaintiffs and Class Counsel will adequately represent and protect the Settlement Class.

2. Rule 23(b) Requirements Are Met for Settlement Purposes

After satisfying Rule 23(a), a plaintiff must also satisfy one of the three Rule 23(b) requirements for class certification. *Merenda v. VHS of Michigan, Inc.*, 296 F.R.D. 528, 536 (E.D. Mich. 2013). Plaintiffs seek Rule 23(b)(3) certification, which requires that (i) common questions of law and fact predominate over individualized ones, and that (ii) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. “A plaintiff must establish that the

issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole . . . predominate over those issues that are subject only to individualized proof.” *Beattie*, 511 F.3d at 564. This requirement considers “the difficulties likely to be encountered in the management of a class action” and issues with individual litigation. *Id.* “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[.]” *Amchem*, 521 U.S. at 617. When assessing predominance and superiority, the court may consider the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *Id.* at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, . . . for the proposal is that there be no trial.”).

Predominance. Predominance focuses on whether the defendant’s alleged liability is common enough to warrant classwide adjudication. *Amchem*, 521 U.S. at 623. The proposed class must be “sufficiently cohesive to warrant adjudication by representation.” *Id.* Rule 23(b)(3) “require[s] that common issues predominate over individual issues.” *Machesney v. Lar-Bev of Howell, Inc.*, 317 F.R.D. 47, 61 (E.D. Mich. 2016). Predominance is met when a single factual or legal question is “at the heart of the litigation.” *See Powers v. Hamilton Cty. Pub. Def. Comm’n*, 501 F.3d 592, 619 (6th Cir. 2007). Data security cases present questions of law and fact central

to liability and predominate over any individual issue. *See, e.g., Henry Ford*, 2024 WL 4602705, at *2. Defendants’ alleged course of conduct was uniform across the Settlement Class, so the claims “will prevail or fail in unison.” *Whirlpool*, 722 F.3d at 859. Classwide determination of this will be the same, satisfying predominance.

Superiority. Certification of the Settlement Class is superior to other methods to fairly, adequately, and efficiently resolve the claims here. “The superiority requirement of Rule 23(b)(3) is met if the class action is a better way than individual litigation to adjudicate a claim.” *Calloway v. Caraco Pharm. Labs., Ltd.*, 287 F.R.D. 402, 407–08 (E.D. Mich. 2012). Such is especially true in situations which “vindicat[e] the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.” *Amchem*, 521 U.S. at 617. Adjudicating individual actions here is impracticable: the amount in dispute per person is too small given the complexity, including costs for document review, technical issues, and experts. Individual damages are insufficient to allow such actions—at least not with the aid of adequate counsel. Such prosecution would delay resolution, and may lead to inconsistent rulings.

Thus, the Court should certify the Settlement Class pursuant to Rule 23(b)(3).

B. The Proposed Settlement Is Fundamentally Fair, Reasonable, and Adequate and Thus Warrants Preliminary Approval

Settlement of class actions is favored. *Newberg on Class Actions* § 11.41 (4th ed. 2002) (“The compromise of complex litigation is encouraged by the courts and

avored by public policy.”). The first step is a “preliminary, pre-notification hearing to determine whether the proposed settlement is within the range of possible approval.” *In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2010 WL 3070161, at *4 (E.D. Mich. Aug. 2, 2010). A court makes an initial fairness evaluation of this settlement based on written submissions and informal presentations from the settling parties. *Manual for Complex Litigation* § 21.632 (4th ed. 2004). The Court must “ensur[e] that the proposed settlement is not illegal or collusive” based upon the “issues and evidence” and “the arms-length nature of the negotiations prior to the proposed settlement.” *Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D. 262, 270 (E.D. Ky. 2009).

Rule 23(e)(2) provides factors for the Court to consider to determine if a settlement is “fair, reasonable, and adequate,” examining whether:

- (A) the class representative and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). The Sixth Circuit provides its own “*UAW* Factors” to consider: (1) risk of fraud or collusion; (2) complexity, expense and likely duration

of the litigation; (3) amount of discovery engaged in by the parties; (4) likelihood of success on the merits; (5) opinions of class counsel and class representatives; (6) reaction of absent class members; and (7) public interest. *UAW*, 497 F.3d at 631. The Settlement warrants Preliminary Approval under the Rule 23(e)(2) and *UAW* factors, which are addressed together where there is overlap in those factors.

Adequacy of Representation (Rule 23(e)(2)(A)) – This first factor heavily weighs in favor of granting Preliminary Approval because both Class Counsel and the Class Representatives have adequately represented the Settlement Class. Class Counsel have adequately represented the Settlement Class by fully investigating the facts and legal claims. *In re Chevrolet Bolt EV Battery Litig.*, No. 2:20-CV-13256-TCB-CI, 2025 WL 3708892, at *5-6 (E.D. Mich. Dec. 22, 2025) (Berg, J.). While the Settlement was reached before a ruling on Defendants’ Motions to Dismiss, Class Counsel’s briefing in response to those motions and their efforts to use informal discovery to learn both what occurred to cause and the Private Information impacted in the Data Incident, before attending a full-day mediation session with Ms. Sperber, an experienced data breach mediator, allowed for arm’s length and good faith negotiations, without collusion or fraud. Joint Decl. ¶¶ 17-18. Class Counsel used their experience in complex class action litigation, including similar data breach actions, and devoted substantial time and resources to vigorous litigation. *Id.* ¶¶ 6-9; *In re Chevrolet Bolt*, 2025 WL 3708892, at *6. Also, the Class

Representatives have demonstrated their adequacy by (i) having a genuine personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii) producing information and documents to Class Counsel to permit investigation and development of the complaints; (iv) being available as needed throughout the litigation; and (v) monitoring the Action. Joint Decl. ¶ 32. Plaintiffs' respective interests are coextensive and do not conflict with the interests of the Settlement Class. *Id.* ¶ 29. Plaintiffs have the same interest in the Settlement relief, and the absent Settlement Class members have no diverging interests. *Id.*

The Settlement Was Negotiated at Arm's Length and there is no Risk of Fraud or Collusion (Rule 23(e)(2)(B) and UAW Factor 1) – The Settlement was reached without collusion and is the result of good faith, informed, and arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues at stake. *Id.* ¶ 18. “Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary.” *Thacker*, 695 F. Supp. 2d at 531. Negotiations overseen by a neutral mediator are given extra weight. *See Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) (“participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion between the parties”). Class Counsel thoroughly investigated and analyzed the claims, fully briefed Defendants'

motions to dismiss, engaged in informal discovery sufficient to assess the strengths and weaknesses of each Party's position, and consulted with data security and damages experts, enabling them to understand the evidence related to central questions in the Action and preparing them for well-informed settlement negotiations. *Id.* ¶ 36. The Settlement was reached with the assistance of a well-respected and experienced mediator. *See* Joint Decl. ¶¶ 14, 17; *In re Chevrolet Bolt*, 2025 WL 3708892, at *6. For these reasons and those discussed related to attorneys' fees below, there is no fraud or collusion in arriving at the Settlement.

The Adequacy of the Settlement Relief; Complexity, Expense, and Likely Duration of the Action; Amount of Discovery; and Likelihood of Success (Rule 23(e)(2)(C) and UAW Factors 2-4) – Although Plaintiffs and Class Counsel believe the claims asserted in the Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation poses significant risks that make any recovery for the Settlement Class uncertain. *See* Joint Decl. ¶ 22. “‘Most class actions are inherently complex, and settlement avoids the costs, delays and multitude of other problems associated with them.’” *In re Chevrolet Bolt*, 2025 WL 3708892, at *6 (citation omitted). At least in part due to their cutting-edge nature and rapidly evolving law, data breach cases generally face substantial hurdles—even just to make it past the pleading stage. *See, e.g., Logan v. Marker Group, Inc.*, No. 4:22-CV-00174, 2024 WL 3489208 (S.D. Tex. July 18, 2024) (dismissing all but one

claim). As another court observed in finally approving a settlement with similar class relief, “[d]ata breach litigation is evolving; there is no guarantee of the ultimate result . . . [they] are particularly risky, expensive, and complex”. *Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021). Given this risk, settlement is the more prudent course when a reasonable one can be reached. *See also In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015) (legal issues involved in data breach litigation “are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues”). And cases implicating data far more sensitive have been found lacking at the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (allegations found insufficient to establish standing), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing). And as in any data security case, establishing causation on a classwide basis is uncertain. *See, e.g., In re Hannaford Bros. Co. Cust. Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013).

The \$5,500,000.00 Settlement Fund for 1,100,911 Settlement Class Members (\$5.00 each) provides ample compensation for individual and the aggregate classwide claims, and exceeds that of other exemplary data security settlements. *See, e.g., In re Wright & Filippis, LLC Data Sec. Breach Litig.*, No. 2:22-cv-12908-SFC,

2024 WL 3083436 (E.D. Mich. June 20, 2024) (approving \$2,900,000 non-reversionary settlement fund for 877,584 class members, or roughly \$3.30 each); *In re Mednax Services, Inc., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, 2024 WL 1554329, at *6 (S.D. Fla. Apr. 10, 2024) (\$6,000,000 for 2.7 million class members); *Summers v. Sea Mar 16 Comm. College*, No. 22-2-0073-7 SEA (Super. Ct. Wash.) (\$4,400,000 for 1.2 million class members); *Owens v. U.S. Radiology Specialists, Inc., et al.*, No. 22 CVS 17797 (Mecklenburg Cty., NC) (\$5,050,000 for 1.3 million class members); *Kostka v. Dickey's Barbeque Restaurants, Inc.*, No. 3:20-CV-03424-K, 2023 WL 3914266 (N.D. Tex. June 6, 2023) (\$2,350,000 for 725,000 class members); *In re Lincare Holdings Inc. Data Breach Litig.*, No. 8:22-cv-04172-AAS, 2024 WL 3104286, at *4 (M.D. Fla. June 24, 2024) (\$7,250,000 for 2.9 million class members). This underscores the exemplary resolution here.

Plaintiffs anticipate substantial additional costs should litigation continue, including expert fees and discovery. *In re Chevrolet Bolt*, 2025 WL 3708892, at *6; Joint Decl. ¶ 37. Plaintiffs would need to defeat the motions to dismiss, counter a later motion for summary judgment, and both gain and maintain class certification, with a near inevitable interlocutory appeal attempt. *Id.*

Absent early resolution, this Action would likely continue for years. *Id.* ¶ 39. Pre-trial litigation would be extensive, with voluminous discovery needed from

Defendants and any relevant cybersecurity vendors. *Id.* Liability experts would be required regarding Doxim’s data security practices and industry standard practices, and damages experts would be needed too. *Id.* Factfinding would be required into what Private Information was taken, how, and what impact this had and will have on the Settlement Class. *Id.* Rather than pursuing protracted and uncertain litigation, Plaintiffs and Interim Co-Lead Class Counsel negotiated the Settlement, which provides immediate, certain, and meaningful relief.

Class certification is a hurdle in data breach cases. *See, e.g., Maldini v. Marriott Int’l, Inc.*, 140 F.4th 123 (4th Cir. 2025) (reversing reinstated class certification); *Marriott Int’l, Inc. v. Accenture LLP*, 78 F.4th 677, 688 (4th Cir. 2023) (vacating class certification in data breach case); *Theus v. Brinker Int’l, Inc.*, No. 3:18-cv-686-TJC-MCR, 2025 WL 1786346, at *4 (M.D. Fla. June 27, 2025) (denying class certification in a data breach case); *In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-mn-02972-JFA, 2024 WL 2155221 (D.S.C. May 14, 2024) (same). To date, to Class Counsel’s knowledge, no data breach class action has been tried. Joint Decl. ¶ 40. Despite these litigation risks, the Settlement provides excellent Settlement Class Member Benefits for all Settlement Class Members. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021) (“Settlements also save the bench and bar time, money, and headaches”).

The Settlement’s fairness is underscored by consideration of the obstacles that

the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. Joint Decl. ¶ 41. *See also In re Delphi Corp. Sec., Derivative & “ERISA” Litig.*, 248 F.R.D. 483, 497 (E.D. Mich. 2008) (“expense and possible duration of litigation are major factors to be considered in evaluating the reasonableness of a settlement”). “For class actions in particular, courts view settlement favorably because it avoids the costs, delays and multitudes of other problems associated.” *Id.*

The Parties engaged in sufficient discovery, and Plaintiffs and Class Counsel had enough information from the informal discovery to “adequately assess their case and the desirability of the proposed settlement[.]” *Kritzer v. Safelite Solutions, LLC*, No. 2:10-CV-0729, 2012 WL 1945144, at *7 (S.D. Ohio May 30, 2012); *see also In re Chevrolet Bolt*, 2025 WL 3708892, at *6 (“the ‘absence of formal discovery is not an obstacle to approving a settlement, so long as the parties have adequate information to evaluate their positions.’” (citation omitted)); *In re Wawa, Inc. Data Sec. Litig.*, No. CV 19-6019, 2021 WL 3276148, at *9 n.4 (E.D. Pa. July 30, 2021) (same); *UAW v. Gen. Motors Corp.*, No. 07-CV-14074-DT, 2008 WL 2968408, at *26 (E.D. Mich. July 31, 2008) (same); *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004) (same). Courts often “defer to the judgment of experienced trial counsel with regard to the evaluation of the strength of the case and the desirability of settlement at this stage of the proceeding.” *Kritzer*, 2012 WL 1945144, at *7. Class

Counsel made an informed decision regarding the timing of the negotiations and mediation, using discovery about the cause of the Data Incident, the individuals affected, and the Private Information impacted. Joint Decl. ¶ 42.

Also, the Claim Form submission process and distribution of Settlement Class Member Benefits is fair, convenient, and effective. Settlement Class Members will promptly receive Cash Payments by electronic means or paper check issued by the Settlement Administrator and Credit Monitoring, if elected. The Settlement Administrator is highly qualified to manage the entire process. Joint Decl. ¶ 20.

Weighed against the likelihood of success on the merits, the Settlement provides outstanding relief. *In re Chevrolet Bolt*, 2025 WL 3708892, at *7. To “judge fairness” of a proposed settlement, courts “weigh the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the settlement.” *UAW*, 497 F.3d at 631. While Plaintiffs are confident, there is risk, as is true in all complex class actions. Data security cases face substantial hurdles in advancing past the pleading and class certification stages and the Settlement Class Member Benefits offered are on par with other settlements. *See supra* at pp. 24–27.

The Equitable Treatment of Settlement Class Members (Rule 23(e)(2)(D)) -

All Settlement Class Members are given an equal opportunity to claim Settlement Class Member Benefits. Specifically, each Settlement Class Member has the option to be reimbursed for documented losses up to \$5,000.00, or they may elect to receive

an estimated \$100 flat cash payment, subject to pro rata increase or decrease depending on the total value of the Valid Claims. Agreement ¶ 84.a, 84.b. Additionally, all Settlement Class Members may elect valuable Credit Monitoring. This structure has received preliminary and final approval in other data security cases. *See, e.g., In re Wright*, 2024 WL 3083436, at *2. Thus, “[t]he method of distributing the settlement benefits will be equitable and effective.” *In re Fortra File Transfer Software Data Sec. Breach Litig.*, 794 F. Supp. 3d 1203, 1220 (S.D. Fla. 2025) (quoting *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, 2024 WL 1554329, at *7 (S.D. Fla. Apr. 10, 2024)). Furthermore, the attorneys’ fees do not impact the other terms of the Settlement, as Class Counsel and Defendants negotiated and reached agreement regarding attorneys’ fees and costs only after reaching agreement on all other material Settlement terms. Joint Decl. ¶ 35. The Settlement, including disbursement of the Settlement Class Member Benefits, is also not contingent on approval of the attorneys’ fee or costs award to Class Counsel or the Service Awards to the Class Representatives. Agreement ¶ 116. Finally, the Parties’ agreements are all in the Agreement. Joint Decl. ¶ 21.

The Remaining UAW Factors – Proposed Class Counsel and Class Representatives support the Settlement, which they believe is fair, reasonable, and adequate and in the Settlement Class’s best interests. Joint Decl. ¶ 25. “The endorsement of the parties’ counsel is entitled to significant weight, and supports the

fairness of the class settlement.” *UAW v. Ford Motor Co.*, No. 07-CV-14845, 2008 WL 4104329, at *26 (E.D. Mich. Aug. 29, 2008). *See also In re Chevrolet Bolt*, 2025 WL 3708892, at *7 (“[W]hen experienced counsel immersed in the legal and factual issues comprising a class action recommend approval of their class settlement, their recommendations are entitled to deference.” (citations omitted)). Thus, the fifth *UAW* Factor favors Preliminary Approval.

So too will the sixth *UAW* Factor. Although the reaction of absent Settlement Class Members is not yet known, Class Counsel’s experience with data breach class settlements is that the Settlement Class will react very favorably. Joint Decl. ¶ 27. This factor is best judged at the final approval stage, after Notice has been provided.

Finally, the Settlement is in the public interest. “There is a ‘strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously different and unpredictable and settlement conserves judicial resources.’” *In re Chevrolet Bolt*, 2025 WL 3708892, at *7. The Settlement of this Action, affecting 1,100,911 individuals, surely does the above, ensuring uniformity and “the efficient administration of justice.” *Id.*

Based on the above arguments, the Court should grant Preliminary Approval.

C. The Court Should Appoint the Proposed Class Representatives, Class Counsel, and Settlement Administrator

Plaintiffs seek appointment as Class Representatives. Plaintiffs have cooperated with Class Counsel and assisted in the preparation of the complaints and

in settlement of the Action. Joint Decl. ¶ 32. Moreover, Plaintiffs are committed to assisting Class Counsel through Final Approval. *Id.* Because Plaintiffs are adequate, the Court should appoint them as Class Representatives. *See* § IV(A)(1), *supra*.

For the same reasons discussed above for adequacy of representation under Rule 23(e), and when they were appointed Interim Co-Lead Class Counsel [ECF No. 14], the Court should appoint E. Powell Miller, Jeff Ostrow, Mariya Weekes, and Bryan L. Bleichner as Class Counsel. Fed. R. Civ. P. 23(g)(1)(A)’s four factors for appointing class counsel for a certified class are (1) “the work counsel has done in identifying or investigating potential claims in the action;” (2) “counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;” (3) “counsel’s knowledge of the applicable law;” and (4) “the resources that counsel will commit to representing the class.” The Court may also “consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class[.]” Fed. R. Civ. P. 23(g)(1)(B). Here, Plaintiffs and the Settlement Class are represented by qualified and competent Class Counsel who are leaders in the class action field with extensive experience prosecuting and resolving complex class actions. Before commencing litigation, they investigated the potential claims against Defendant, interviewed potential plaintiffs, and gathered information regarding the Data Incident. Joint Decl. ¶ 38. Class Counsel has devoted substantial time and resources to this Action and will continue to do so. *Id.* ¶¶ 7, 36.

D. The Proposed Notice Program Is The Best Practicable

“For any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances” who “can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “[B]est notice practicable” means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The best notice practicable 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). Moreover, Fed. R. Civ. P. 23(h)(1) requires that “[n]otice of the motion [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.”

The Notice Program satisfies the foregoing criteria. The Parties negotiated the form of the Notices with the Settlement Administrator’s help. Joint Decl. ¶ 20. Notice will be disseminated to all Settlement Class Members, whose names and addresses can be identified with reasonable effort from Doxim’s records, and through databases tracking nationwide addresses and address changes. In addition, Epiq will administer the Settlement Website containing relevant Settlement information. Further, the Postcard Notice and Long Form Notice includes, among other information: a description of the material Settlement terms; how to submit a

Claim Form; the Claim Form Deadline; the Opt-Out Deadline for Settlement Class Members to opt-out of the Settlement Class; the Objection Deadline for Settlement Class Members to object to the Settlement and/or Application for Attorneys' fees and Costs; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class Members may access this Agreement and other related documents and information. Agreement ¶ 93. Finally, the Notice Program satisfies Rule 23(h)(1), as it notifies the Settlement Class that Class Counsel may apply to the Court for an award of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of costs. *Id.* ¶ 115. Thus, the Court should approve the Notice Program, including the form and content of the Notices. Agreement Exs. 1-3. *See Fortra*, 794 F. Supp. 3d at 1222. (approving substantially similar notice program).

V. PROPOSED SCHEDULE OF EVENTS

Plaintiffs respectfully propose the schedule below for the Court's review and approval. If the Court agrees, Plaintiffs request that the Court schedule the Final Approval Hearing for the week of **June 1, 2026**, or such later date available on the Court's calendar.

Deadline to commence Notice Program	Within 45 days of the Preliminary Approval Order
Deadline to complete Notice Program	45 days before the initial scheduled Final Approval Hearing date
Deadline for filing Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards	45 days before the initial scheduled Final Approval Hearing date

Opt-out Deadline	30 days before the initial scheduled Final Approval Hearing date
Objection Deadline	30 days before the initial scheduled Final Approval Hearing date
Claim Form Deadline	15 days before the initial scheduled Final Approval Hearing date
Final Approval Hearing	The week of June 1, 2026 (or soon thereafter depending on the Court's availability)

VI. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request the Court: (1) preliminarily approve the Settlement; (2) certify the Settlement Class for settlement purposes only; (3) approve the Notices and Notice Program, including the opt-out and objection procedures; (4) approve the Claim Form and Claims Process; (5) appoint Plaintiffs as Class Representatives; (6) appoint E. Powell Miller, Jeff Ostrow, Mariya Weekes, and Bryan L. Bleichner as Class Counsel; (7) appoint Epiq as the Settlement Administrator; and (8) enter the proposed Preliminary Approval Order submitted through Utilities on the CM/ECF system.

Dated: January 26, 2026

Respectfully submitted,

/s/ Gregory A. Mitchell

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*Interim Lead Counsel for Plaintiffs
and the Proposed Settlement Class*

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2026, I electronically filed the foregoing documents using the Court's electronic filing system, which will notify all counsel of record authorized to receive such filings.

/s/ Gregory A. Mitchell

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