IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF LEE, STATE OF ILLINOIS

JOHN DOE, Plaintiff,	)	
v.	)	
	)	Case No. 2021L00026
KATHERINE SHAW BETHEA HOSPITAL, KSB MEDICAL GROUP, INC., Defendants.	)	

PLAINTIFF'S UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiff John Doe (the "Named Plaintiff") brought a class action on October 1, 2021, against Katherine Shaw Bethea Hospital and KSB Medical Group, Inc. ("Defendants"), alleging claims for breach of fiduciary duty and violation of 210 ILCS § 85/6.17. The parties have reached a proposed settlement that provides all Settlement Class Members with the ability to receive a share of the proposed Settlement Fund (the "Settlement"). *See* Settlement Agreement, attached hereto as Exhibit 1. The Settlement provides significant relief to 1,553 individuals and establishes a cash settlement fund in the amount of $380,000, from which Settlement Class Members who file claims will be compensated. If approved, the Settlement will bring certainty, closure, and significant and valuable relief for individuals to what otherwise would likely be contentious and costly litigation regarding Defendants' alleged unlawful disclosure of patient medical information.

Plaintiff now seeks preliminary approval of the Settlement, certification of a settlement class, appointment of class counsel, and approval of the proposed form and method of class notice. Preliminary approval is in the best interests of the class and is consistent with 735 ILCS 5/2-801. As discussed in more detail below, the most important consideration in evaluating the fairness of

a proposed class action settlement is the strength of Plaintiff's case on the merits balanced against the relief obtained in the settlement. *See Steinberg v. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Am. Int'l Grp., Inc. et al v. ACE INA Holdings, et al.*, Nos. 07-cv-2898, 09-cv-2026, 2012 WL 651727 (N.D. Ill. Feb. 28, 2012).[1] While Plaintiff believes he could secure class certification and prevail on the merits at trial, success is not guaranteed and Defendants are prepared to vigorously defend this case. The terms of the Settlement, which include a Settlement Fund providing Settlement Class Members the ability to receive meaningful cash compensation meet and exceed the applicable standards of fairness. Accordingly, the Court should preliminarily approve the Settlement so that Settlement Class Members can receive notice of their rights and the claims administration process may begin.

II. RELEVANT BACKGROUND

A. Factual and Procedural History

Plaintiff filed his Class Action Complaint in Lee County Circuit Court on October 1, 2021, alleging that Defendants disclosed certain patient medical information through the inadvertent dissemination of billing information to the improper recipients. In his Complaint, Plaintiff alleges that Defendants disclosed his, and the Class's, medical information to third parties without authorization. After filing of the Complaint and Defendants' receipt of same, the Parties, through Counsel, engaged in informal discovery and preliminary settlement discussions. Over the course of the next several months, the Parties continued to exchange information to aid in settlement discussions and continued working towards resolution of the matter. On June 9, 2022, the Parties

1. Section 2-801 is modeled after Rule 23 of the Federal Rules of Civil Procedure and, therefore, "federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery v. State Farm Mut. Ins. Co.*, 216 Ill. 2d 100, 125 (2005).

attended an all-day mediation session with retired Judge Hollis Webster. With the help of Judge Webster, the Parties successfully negotiated the settlement, and subsequently negotiated and executed a comprehensive Settlement Agreement, memorialized in Exhibit 1, for which they now seek approval.

III. THE PROPOSED SETTLEMENT

A. The Settlement Class

The proposed Settlement would establish a Settlement Class defined as follows:

> All individuals who were sent notification by Magnet[2] on behalf of KSB that their protected health information was or may have been compromised in the Data Breach. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) KSB and Magnet, and their respective subsidiaries, parent companies, successors, predecessors, and any entity in which KSB and/or Magnet or their respective parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

Exhibit 1, ¶ 32. The Parties have identified 1,553 class members.

B. The Settlement Fund

The proposed Settlement will establish a $380,000.00 Settlement Fund. Exhibit 1, ¶ 35. Each Settlement Class Member who files a claim will receive an equal, *pro rata* share of the Settlement Fund, up to $250, after first deducting approved amounts for notice and administration costs, attorneys' fees and costs, and an incentive award to Plaintiff. *Id*. ¶ 55. Any surplus funds and checks disbursed to Settlement Class Members from the Settlement fund that are uncashed for any reason within ninety (90) days after their date of issuance shall be deemed void and, after efforts to contact the Settlement Class Member and reissue a Settlement check have been made, shall be distributed as required by state law or to United Way of Lee County, the stipulated *cy pres*

[2] Magnet Solutions, Inc. is Defendants' third-party provider that manages its billing statements and collections. *See* Exhibit 1.

recipient. *Id.* ¶¶ 17, 51, 52. Likewise, any surplus funds remaining after the distribution will also be paid to United Way of Lee County. *Id.*

C. Notice and Settlement Administration

The claims at issue in this litigation primarily consist of Defendants' alleged disclosure of patient medical information through an errant billing event. Accordingly, the Parties know both (1) the identities of the class members, and (2) the contact information for these individuals. Therefore, notice will be provided via first class U.S. Mail to all Class Members, with a notice plan that includes forwarding undelivered mail where forwarding addresses are available, and skip tracing the Class Member if a notice is returned with no forwarding address. Exhibit 1, ¶ 57. Additionally, any Class Members that do not file claims within 30 days of the first notice will be sent a second direct notice via U.S. Mail. Exhibit 1, ¶ 58.

D. Exclusion and Objection Procedures

Settlement Class Members will have an opportunity to exclude themselves from the Settlement or object to its approval. The procedures and deadlines for filing exclusion requests and objections (*see* Exhibit 1, ¶¶ 59-60) will be identified in the Notice and the Reminder Notice directly sent to Class Members. *See* Settlement Agreement, Exhibit 1. The Notices inform Settlement Class Members that the Final Approval Hearing will be their opportunity to appear and have their objections heard. *See id.* The notices also inform Settlement Class Members that they will be bound by the Release contained in the Settlement Agreement unless they exercise their right to exclusion in a timely manner. *See id.*

E. Release

In exchange for the relief described above, Settlement Class Members who do not exclude themselves will provide Defendants, Magnet and the Releasees a full release of all "Released

Claims," generally including claims, arising out of, related to, or connected with the alleged disclosure of their medical information. Exhibit 1, ¶ 25. Importantly, the class retains all unrelated claims, including any potential claims for medical malpractice and personal injury.

IV. ARGUMENT

A. The Terms of the Settlement Are Fair and Reasonable and Warrant Preliminary Approval.

The Settlement represents a fair and reasonable resolution of this dispute and is worthy of notice to and consideration by the Settlement Class Members. It will provide significant financial relief to participating Settlement Class Members as compensation for their Released Claims and will relieve the Parties of the burden, uncertainty, and risk of continued litigation.

Courts review proposed class action settlements using a well-established two-step process. Conte & Newberg, 4 *Newberg on Class Actions*, § 11.25, at 38-39 (4th ed. 2002); *see, e.g., Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009); *GMAC Mortgage Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992); *Shaun Fauley, Sabon, Inc. v. Metro Life Ins. Co.*, 2016 IL App (2d) 150236, ¶¶ 4, 7, 15. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38-39; *Armstrong v. Board of Sch. Dirs. Of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*; *Sabon*, 2016 IL App. (2d) 150236, ¶4. The preliminary approval hearing is not a fairness hearing, but rather a hearing to ascertain whether there is any reason to notify the class members of the proposed settlement based on the written submissions and informal presentation from the settling parties. *Manual for Complex Litigation*, § 21.632 (4th ed. 2002). If the Court finds the settlement proposal "within the range of possible approval," the case proceeds to the second step in the review process: the final approval hearing. *Newberg*, § 11.25, at 38-39.

Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide complete victory, given that parties to a settlement "benefit by immediately resolving the litigation and receiving some measure of vindication for [their] position[s] while foregoing the opportunity to achieve an unmitigated victory." *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (internal quotations and citation omitted); *GMAC*, 236 Ill. App. 3d at 493 ("The court in approving [a class action settlement] should not judge the legal and factual questions by the same criteria applied in a trial on the merits"). There is a strong judicial and public policy favoring the settlement of class action litigation, and such a settlement should be approved by the Court after inquiry into whether the settlement is "fair, reasonable, and adequate." *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3d Dist. 2010); *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). "Although this standard and the factors used to measure it are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase." *Kessler v. Am. Resorts Int'l.*, No. 05-cv-5944, 2007 WL 4105204, at *5 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong*, 616 F.2d at 314).

The factors ultimately to be considered by a court are: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in the settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City of Chicago*, 206 Ill. App. 3d at 972; *see also Armstrong*, 616 F.2d at 314. Of these considerations, the first is the most important. *Steinberg*, 306 Ill. App. 3d at 170; *Synfuel Techs., Inc. v. DHL Express (USA),*

Inc., 463 F.3d 646, 653 (7th Cir. 2006).

Even a preliminary application of these factors to this case demonstrates that the proposed Settlement is fair, reasonable, and adequate. As to the first factor, the Settlement in this case provides substantial material benefits to the Settlement Class: every Settlement Class Member who submits a valid claim form will receive a *pro rata* monetary payment from the Settlement Fund of up to $250.

While Plaintiff believes he would likely prevail on his claims, he is also aware that Defendants have expressed a strong denial of his material allegations and the intent to pursue several legal and factual defenses. If successful, these potential defenses would result in Plaintiff and the proposed Settlement Class Members receiving no payment whatsoever. Taking these realities into account and recognizing the risks involved in any litigation, the monetary relief available to each Settlement Class Member in the Settlement represents a truly excellent result for the Settlement Class.

The amount of the Settlement Fund and the payments to Settlement Class Members are particularly significant in light of the risks of ongoing litigation. If Defendants were to succeed on any of their defenses to liability against Plaintiff's claims, Settlement Class Members would recover nothing. In addition to any defenses on the merits Defendants would raise, Plaintiff would also otherwise be required to prevail on a class certification motion, which would be highly contested and for which success is certainly not guaranteed. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation") (internal citations omitted). "If the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Id*. Approval would allow

Plaintiff and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now or never. *Id*. at 582.

In the absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits is even contemplated, but evidence and witnesses from across the country would have to be assembled for any trial. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits as well as on class certification. As such, the immediate and considerable relief provided to the Class under the Settlement Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn out litigation, trial, and appeals.

The second factor, Defendants' ability to pay, further supports the settlement. Any judgment finally entered against Defendants would likely be much higher than their exposure from the Settlement and could constitute a very significant financial and reputational loss to Defendants.

With respect to factors four and six, there is no opposition to the Settlement, and due to the strength of this Settlement and the amount of the award that Settlement Class Members will receive, Plaintiff expects little to no opposition to the Settlement by any Settlement Class Member in the future. Plaintiff ardently approves the Settlement and believes that it is a fair and reasonable settlement in light of the defenses raised by Defendants and the potential risks involved with continued litigation.

Regarding factor five, there is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arms-length negotiations. *Newberg*, § 11.42; *see also Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the

proposed settlement was not the product of 'good faith, arm's-length negotiations'"). Here, the Settlement was reached only through mediation with the aid of a respected local judge, Hon. Hollis Webster. Such an arms-length and adversarial negotiation process underscores the non-collusive nature of the proposed Settlement. Finally, given the excellent result for the Settlement Class in terms of the monetary relief made available, it is clear that this Settlement was reached as a result of good-faith negotiations rather than any collusion between the Parties.

As to factor seven, Plaintiff's counsel believe that the proposed Agreement is in the best interest of the Settlement Class Members because they will be provided an immediate payment instead of having to wait for the litigation and any subsequent appeals to run their course. Further, due to the defenses that Defendants have indicated that they would raise should the case proceed through litigation – and the resources that Defendants have committed to defend and litigate this matter through appeal, it is possible that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. Given Plaintiff's counsel's extensive experience litigating similar privacy cases in federal and state courts across the country, this factor also weighs in favor of granting preliminary approval. *See GMAC*, 236 Ill. App. 3d at 497 (finding that the court should give weight to the fact that class counsel supports the class settlement in light of its experience prosecuting similar cases).

Finally, with respect to factor eight, as stated above the Settlement was reached following mediation with a respected mediator. Had the Parties not reached an agreement, this case would proceed with the Parties being required to expend substantial resources to go forward with discovery, all while facing a significant risk.

The Court need not rule on a completely blank slate as to the fairness, reasonableness, and adequacy of the instant Settlement. For example, in *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-

CH-16694 (Cir. Ct. Cook Cnty., Ill. 2016), the class settlement resulted in each class member being eligible to receive a *pro rata* share of a settlement fund that would have amounted to approximately $40 per person if each class member had submitted a valid claim. In *Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cnty., Ill. 2018), the settlement resulted in each class member being eligible to enroll in credit and identity monitoring services free of charge without further monetary relief. In *Taylor v. Sunrise Senior Living Mgmt., Inc.*, 2017-CH-15152 (Cir. Ct. Cook Cnty., Ill. 2018), the settlement resulted in class members receiving a gross amount of $115 or $40 depending on whether the claim accrued within two years or five years to account for older claims potentially being time-barred. Here, Plaintiff's Counsel estimates that each Settlement Class Member will receive up to $250 *after* attorneys' fees, costs, administrative expenses, and a service awards to Plaintiff are deducted from the Settlement Fund. This result is fair, reasonable, and adequate and warrants Court approval.

B. The Proposed Class Notice Should Be Approved.

Under 735 ILCS 5/2-803, the Court may provide class members notice of any proposed settlement so as to protect the interests of the class and the parties. *See Cavoto v. Chicago Nat. League Ball Club, Inc.*, No. 1-03-3749, 2006 WL 2291181, at *15 (Ill. App. 1st Dist. 2006) (collecting authorities and noting that "section 2-803 makes it clear that the statutory requirement of notice is not mandatory"). Notice must be provided to absent class members to the extent necessary to satisfy requirements of due process. *Id*. at *15 (citing *Frank v. Teachers Ins. & Annuity Assoc. of America*, 71 Ill. 2d 583, 593 (1978)); *see also* Fed. R. Civ. P. 23(d)(2) (advisory committee note) ("mandatory notice…is designed to fulfill requirements of due process to which the class action procedure is of course subject"). As explained by the United States Supreme Court, due process requires that the notice be the "best practicable, 'reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections'" as well as "'describe the action and the plaintiffs' rights in it.'" *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 36 (citing *Phillips Petroleum Co. v. Shuts*, 472 U.S. 797, 812 (1985)).

The proposed Notices in this case satisfy both the requirements of 735 ILCS 5/2-803 and due process. The Settlement Agreement contemplates a notice plan that incorporates traditional, direct paper notice, which is designed to reach as many potential Settlement Class Members as possible. Direct notice of the Settlement will be sent via mail by U.S. Mail to all individuals whom Defendant has identified as having their information included in the breach. The direct notice is considered the gold standard for class notice and is effective at reaching the Class Members. Additionally, any Class Member that does not make a claim after the first notice will receive a second supplemental direct notice via U.S. Mail. The proposed Notices are attached as Exhibits 1 and 2 to the Settlement Agreement, respectively, and should be approved by the Court. As such, the proposed methods of notice comport with 735 ILCS 5/2-803 and the requirements of due process.

C. The Court Should Grant Class Certification for Settlement Purposes.

For settlement purposes only, the Parties have agreed that the Court should make preliminary findings and enter an Order granting provisional certification of the Settlement Class and appoint Named Plaintiff and his counsel to represent the Class. "The validity of use of a temporary settlement class is not usually questioned." *Newberg*, §11.22. The *Manual for Complex Litigation* explains the benefits of settlement classes:

> Settlement classes – cases certified as class actions solely for settlement – can provide significant benefits to class members and enable the defendants to achieve final resolution of multiple suits. Settlement classes also permit defendants to settle while preserving the right to contest the propriety and scope of the class allegations

> if the settlement is not approved[.]…An early settlement produces certainty for the plaintiffs and defendants and greatly reduces litigation expenses.

Manual for Complex Litigation (Fourth) § 21.612.

Before granting preliminary approval of a class action settlement, a court should determine that the proposed settlement class is a proper class for settlement purposes. *Id*. § 21.632; *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A class may be certified under Section 2-801 of the Illinois Code of Civil Procedure if the following "prerequisites" are satisfied: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interest of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801; *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶10, *rehearing denied* (June 4, 2015), *appeal denied*, 39 N.E. 3d 1001 (Ill. 2015); *Travel 100 Grp., Inc. v. Empire Cooler Serv. Inc.*, No. 03-CH-14510, 2004 WL 3105679, at *2 (Ill. Cir. Ct. Cook Cty. Oct. 19, 2004). In this case, the Settlement Class, defined in the Settlement Agreement and above, meets all of the applicable certification requirements.

1. *The Class is Sufficiently Numerous and Joinder is Impracticable.*

Numerosity is met where "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). "Although there is no bright-line test for numerosity, a class of forty is generally sufficient." *Hinman v. M & M Rental Center, Inc.*, 545 F. Supp. 2d 802, 805-06 (N.D. Ill. 2008); *Kulins v. Malco, A Microdot Co., Inc.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (finding 47 class members was sufficient to satisfy numerosity); *Travel 100 Grp.*, 2004 WL 3105679, at *2 ("The potential class exceeds 3,000 members. The numerosity requirement is met") (citing *Wood River Area Development Corp. v. Germania Federal Svgs. And Loan*, 198 Ill. App.

3d 445 (5th Dist. 1990)). Here, the proposed Class encompasses approximately 1,553 individuals in Illinois. This Class is sufficiently numerous such that joinder would be impracticable given the number of individuals, and that absent a class action, few members could afford to bring an individual lawsuit over the amounts at issue since each individual member's claim is relatively small. *See Gordon v. Boden*, 224 Ill. App. 3d 195, 200 (1st Dist. 1991) ("In cases where there is a substantial number of potential claimants and the individual amounts of their claims are relatively small, Illinois courts have tended to permit the claims to proceed as a class action").

2. *Common Questions of Law and Fact Predominate.*

Commonality, the second requirement for class certification, is met where there are "questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Such common questions of law or fact exist when the members of the proposed class have been aggrieved by the same or similar misconduct. *See Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673-74 (2nd Dist. 2006); *Steinberg v. Chicago Med. Sch.*, 69 Ill. 2d 320, 340-42 (1977); *Ellerbrake v. Campbell-Hausfield*, No. 01-L-540, 2003 WL 23409813, at *3 (Ill. Cir. Ct. July 2, 2003); *see also Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). Further, where "the defendant allegedly acted wrongfully in the same basic manner as to an entire class…the common class questions predominate the case[.]" *Walczak*, 365 Ill. App. 3d at 674 (citing *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 548 (2003)).

In this case, all members of the proposed Class share identical claims arising out of standardized conduct: the alleged disclosure of their medical information to third parties. Proving these claims would require the resolution of some of the same factual and legal issues, including: (1) whether the information taken from Settlement Class Members constituted medical

information; (2) whether such information was disclosed to third parties without authorization; and (3) whether such conduct constitutes a violation of Defendants' common law and statutory duties. Predominance is satisfied "when there exists generalized evidence that proves or disproves an element on a simultaneous, class-wide basis…Such proof obviates the need to examine each class member's individual position." *Golon v. Ohio Savs. Bank*, No. 98-cv-7430, 1999 WL 965593, at *4 (N.D. Ill. Oct. 15, 1999). Here, the common questions resulting from Defendants' alleged conduct predominate over any individual issues that may exist and can be answered on a class-wide basis based on common evidence maintained by Defendants. Accordingly, this factor is satisfied.

3. *Adequate Representation*

The third element of Section 2-801 requires that "[t]he representative parties will fairly and adequately protect the interests of the class." 735 ILCS 5/2-801(3). The class representative's interests must be generally aligned with those of the class members, and class counsel must be "qualified, experienced and generally able to conduct the proposed litigation." *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). "The purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Walczak*, 365 Ill. App. 3d at 678 (citing *P.J.'s Concrete Pumping Service, Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 1004 (2d Dist. 2004)); *Purcell & Wardrope Chtd. V. Hertz Corp.*, 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988). The adequacy requirement is satisfied where "the interests of those who are parties are the same as those who are not joined" such that the "litigating parties fairly represent [them]" and where the "attorney for the representative party '[is] qualified, experienced and generally able to conduct the proposed litigation.'" *CE Design Ltd.*, 2015 IL App (1st) 131465, ¶ 16 (citing *Miner*, 87 Ill. 2d at 56)).

Here, Named Plaintiff's interests are identical to, representative of, and consistent with the interests of the proposed Settlement Class: all have allegedly had their medical information disclosed in a manner inconsistent with the legal protections provided by Illinois law. Named Plaintiff's pursuit of this matter has demonstrated that he has been, and will remain, a zealous advocate for the Settlement Class. He has already been intimately involved in all aspects of the case's progression to date, including participating in a full day mediation with Judge Webster. Thus, Named Plaintiff has the same interests as the Settlement Class.

Similarly, proposed Class Counsel have regularly engaged in major complex litigation, have extensive experience in class action lawsuits, and indeed, have been among the forerunners in pursuing consumer privacy class actions on behalf of aggrieved individuals. *See* Exhibit A to Declaration of Eric S. Johnson ("Johnson Dec."), Exhibit 2. Accordingly, Plaintiff's counsel will adequately represent the Settlement Class.

4. *Fair and Efficient Method of Adjudication of the Controversy.*

The final prerequisite to class certification is met where "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). "In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon*, 224 Ill. App. 3d at 203. In practice, a "holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled." *Id*. at 204; *Purcell & Wardrope Chtd.*, 175 Ill. App. 3d at 1079 (the predominance of common issues [may] make a class action…a fair and efficient method to resolve the dispute"). Thus, the fact that numerosity, commonality and predominance, and adequacy of representation have all been demonstrated in the instant case makes it "evident" that

the appropriateness requirement is satisfied as well.

Other considerations further support certification in this case. A "controlling factor in many cases is that the class action is the only practical means for class members to receive redress – particularly where the claims are small." *Gordon*, 224 Ill. App. 3d at 203-04; *Eshaghi v. Hanley Dawson Cadillac Co.*, 214 Ill. App. 3d 995, 1004 (1st Dist. 1991) ("In a large and impersonal society, class actions are often the last barricade of consumer protection"). A class action is superior to multiple individual actions "because litigation costs are high, the likely recovery is limited" and the individuals are unlikely to prosecute individual claims absent the cost-sharing efficiencies of a class action. *Maxwell v. Arrow Fin. Servs., LLC*, No. 03-cv-1995, 2004 WL 719278, at *6 (N.D. Ill. Mar. 31, 2004). This is especially true in cases involving the disclosure of private information, which would otherwise result in many individual claims of relatively modest value in comparison to the cost of prosecuting and defending them. *See CE Design Ltd.*, 2015 IL App (1st) 131465, ¶¶ 27-28 (finding that a class action is a superior vehicle for resolving the class members' TCPA claims and that "[t]here is no doubt that certifying the class in this case, where there are potentially thousands of claimants, is an efficient and economical way to proceed and will prevent multiple suits and inconsistent judgments").

This case is particularly well-suited for class treatment because the claims of Plaintiff and the proposed Settlement Class Members involve identical alleged violations of a state law for the alleged unauthorized dissemination of Class Members' personal and medical information. It is thus unlikely that individuals would invest the time and expense necessary to seek relief through individual litigation. Moreover, because the action will now settle, the Court need not be concerned with issues of manageability relating to trial. When "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." *Amchem*, 521 U.S. at 620. Nor should the Court "judge the legal and factual questions" regarding certification of the proposed Settlement Class by the same criteria as a proposed class being adversely certified. *See GMAC*, 236 Ill. App. 3d at 493.

A class action is the superior method of resolving large-scale claims if it will "achieve economies of time, effort, and expense, and promote…uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615. Accordingly, a class action is the superior method of adjudicating this action and the proposed Settlement Class should be certified.

D. Proposed Schedule.

The Parties propose the following schedule leading to the hearing on final approval of the settlement:

1. **Notice Dates:** Within fourteen (14) days of entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the Class List including, where known, the last known address for Settlement Class Members. Within thirty (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall distribute notice by U.S. Mail to all Settlement Class Members. Reminder notice shall be issued to all Class Members which have not made claims within ninety (30) days of the Initial Notice.

2. **Objection/Exclusion Deadline:** Objections and Exclusions must be submitted or post-marked within thirty (30) days after the Notice Deadline.

3. **Claims Deadline:** Must be submitted no later than sixty (60) days after the Notice Deadline.

4. **Submission of Papers in Support of Attorneys' Fees and Expenses:** Must be filed no later than thirty (30) days prior to the Final Approval Hearing.

5. **Submission of Papers in Support of Final Approval of Settlement:** Must be filed no later than thirty (30) days prior to the Final Approval Hearing.

6. **Final Approval Hearing:** March 8, 2023 at 11:30 am.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order: (1) appointing John Doe as the Settlement Class Representative; (2) appointing G. Michael Stewart, Jason "Jay" Barnes, and Eric S. Johnson of Simmons Hanly Conroy as Class Counsel; (3) preliminarily approving the proposed Settlement Agreement; (4) approving the form and methods of the proposed Notice; (5) ordering the issuance of Notice; and (6) granting such further relief as the Court deems reasonable and just.

Date: December 6, 2022

Respectfully Submitted,

/s/ G. Michael Stewart

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ATTORNEYS FOR PLAINTIFF AND THE PUTATIVE CLASS

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document with the clerk of the Court using the Illinois E-Filing System, which should further distribute a true and accurate copy of the foregoing to all counsel of record.

/s/G. Michael Stewart