IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS COUNTY DEPARTMENT, CIVIL DIVISION

CARLA PLOWMAN, KAREN EVANS, REID COOPER, MICHAEL NAESSENS, AND DOUG SPINDLER, individually, on behalf of themselves and all others similarly situated, Plaintiffs, v. **SEAMLESS CONTACTS, INC.** Defendant.	Case No. 2025CH000163

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiffs Carla Plowman, Karen Evans, Reid Cooper, Michael Naessens, and Doug Spindler, individually and on behalf of all others similarly situated, respectfully submit their Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"). The Terms of the class action settlement (the "Settlement") are set forth in the Settlement Agreement. (the "Settlement Agreement" or "SA").[1]

I. INTRODUCTION[2]

A) A brief description of the occurrence giving rise to the cause of action, including the basis for jurisdiction and venue: Seamless Contacts, Inc. (the "Defendant") owns and operates a "people search" website that provides information about individuals. Plaintiffs filed a lawsuit asserting that Defendant used Plaintiffs' and the putative Class members' identifying information (such as their names, contact information, job titles, places of work, education histories, and business addresses) without their consent to advertise subscriptions to Defendant's website, in violation of right of publicity laws. Defendant denied any wrongdoing and denied liability. This Court has subject matter jurisdiction pursuant to Ill. Const. art. VI, § 9. Class Action Complaint for Violations of the Right of Publicity and Misappropriation of Name and Likeness ("Complaint"), ¶24. This Court has personal jurisdiction over Seamless because a significant portion of the events giving rise to this lawsuit occurred in this state. *Id.,* ¶25. Venue is proper in this Court under 735 ILCS § 5/2-101(2) because some part of the transactions out of which the cause of action arose occurred in DuPage County. Specifically, Plaintiff Plowman's injuries arising out of Defendant's conduct occurred in, and were felt in, DuPage County because she resides in this County. *Id.,* ¶26.

[1] Unless otherwise indicated, the defined terms in this brief shall have the same definitions as in the Settlement Agreement, attached as Exhibit 1 to the accompanying Declaration of Raina Borrelli in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Borrelli Decl.").
[2] As required by Local Rule 6.11 Approval of Class Actions.

B) The potential class size: The California Settlement Class has approximately 35,435 members. The Illinois Settlement Class has approximately 7,804 members. The Indiana Settlement Class has approximately 3,274 members. The Nevada Settlement Class has approximately 117 members. The Ohio Settlement Class has approximately 595 members. Seamless, to the extent available, shall provide the Settlement Administrator a list of all names, email addresses, and U.S. mail addresses in its possession of all persons known to be in the Settlement Classes (the "Settlement Class List") as soon as practicable, but no later than twenty-eight (28) days after the execution of the Settlement Agreement. SA ¶ 4.1.

C) Whether the settlement is a claims-made or an opt-out settlement for the Class: This is a non-reversionary common fund settlement from which Settlement Class Members can make claims for benefits. Settlement Class Members also have the opportunity to opt out.

D) The total settlement fund along with an cy pres recipient or reversion of the fund: The Settlement Agreement creates a $1,125,000.00 non-reversionary Settlement Fund. SA ¶¶ 1.5, 1.2, 1.23, 1.26, 1.29, 1.33. If there is any amount remaining in the Settlement Fund at the conclusion of the claims process, the parties shall move for distribution of those funds to a cy pres recipient, to be approved by the Court.

E) The amount each class member will receive from the settlement or the anticipated pro rata share: At this time, it is difficult to reasonably estimate the pro rata share as it will depend on the total number of claims submitted.

F) Any injunctive relief and brief analysis as to value or benefit of said injunctive relief to the class or potential future class members: Seamless will be required to ensure that the opt-out procedure on its website is effective and long-lasting by: (i) displaying the opt-out procedure more prominently on the Seamless website; (ii) making the opt-out procedure more user-friendly (e.g.,

no requirement to create an account to opt out); and (iii) ensuring opt-out requests are honored indefinitely. *See* SA, § 2.2.

G) Any specific details as to value of any coupons or vouchers: Proposed Settlement Class Counsel has secured a $1,125,000.00 non-reversionary Settlement Fund which does not include any coupons or vouchers.

H) Settlement administrator information, qualifications, and anticipated cost: Pending Court approval, the parties propose that EisnerAmper LLP, be named Settlement Administrator. In addition to its accounting, audit, tax, and advisory services EisnerAmper has extensive qualifications in the settlement administration field. *See Settlement Administration*, EISNERAMPER, https://www.eisneramper.com/services/advisory/settlement-administration/ (last visited August 5, 2025).

I) Exact specification for how notice will be disseminated to the class: As discussed in more detail in the Settlement Agreement (*See* SA, § 4.2 (a-d)), Notice will be sent directly via Email and U.S. Mail. A settlement website will also be created to effectuate notice. Finally, a reminder Email Notice to all Settlement class members will be sent Thirty (30) days prior to the Claims Deadline.

J) Proposed deadlines with at least fourteen (14) days between the date the motion for attorney's fees is filed and the deadline for objecting to the settlement:

Event	**Deadline**
Class Member Information Deadline	Within 15 days of Preliminary Approval Order, Defendants will provide Settlement Administrator with Class Member Information

Event	Deadline
Notice Commencement Deadline	Within 45 days of entry of Preliminary Approval Order, Settlement Administrator shall send Notice by mail to all Settlement Class Members
Motion for Attorneys' Fees, Costs, Expenses, and Service Awards	Within 45 after the Notice Commencement Deadline
Deadline to Opt-Out/Object From Settlement	Within 60 days after the Notice Commencement Deadline
Claims Deadline	90 days after the Notice Commencement Deadline
Motion for Final Approval of Class Action Settlement	To be set by this Court
Final Approval Hearing	To be set by this Court

II. FACTUAL BACKGROUND

Seamless Contacts, Inc. (the "Defendant") owns and operates a "people-search" website that provides professional information about individuals. Plaintiffs filed a lawsuit asserting that Defendant used Plaintiffs' and the putative Class members' identifying information (such as their names, contact information, job titles, places of work, education histories, and business addresses) without their consent to advertise subscriptions to Defendant's website, in violation of right of publicity laws. Defendant denied any wrongdoing and denied liability.

Recognizing the risks of protracted litigation, the Parties agreed to mediate this matter with Jill Sperber of Judicate West who is widely respected and experienced in mediating class action cases. Through mediation and extensive negotiations, the Parties reached an agreement that creates a $1,125,000.00 non-reversionary Settlement Fund, which will provide significant monetary relief to the Settlement Classes.

The Settlement would resolve claims under the right of publicity laws of Illinois, California, Ohio, Indiana, and Nevada. Defendant has agreed to establish a State-Specific Settlement Fund that corresponds to each state's Settlement Class. Each Settlement Class member who submits an Approved Claim will be entitled to a *pro rata* share of their respective State-Specific Settlement Fund. Against a backdrop where no-money statutory consumer protection settlements are regularly approved—*see, e.g.*, *In re Google LLC Street View Elec. Commc'ns Litig.*, 611 F. Supp. 3d 872, 891-94 (N.D. Cal. 2020) (approving, over objections of class members and state attorney general, a settlement providing only *cy pres* relief for violations of Electronic Communications Privacy Act)—the significant cash fund here stands out. And the cash recovery here compares favorably to other right of publicity settlements that have received final approval. *See*, *e.g.*, *Butler v. Whitepages, Inc.*, No. 19-cv-04871, dkt. 277 (N.D. Ill. Sept. 29, 2022) (approving final settlement providing $95 to each Illinois Right of Publicity Act claimant); *Ramos v. ZoomInfo*, 1:21-cv-02032, dkt. 135 (N.D. Ill. Nov. 21, 2024) (approving final right of publicity settlement where the sizes of state-specific funds were lower on a per-class member basis). The injunctive relief the Settlement provides also corrects the alleged wrongdoing. Defendant will be required to "ensure the opt-out procedure is effective and long-lasting by: (i) displaying the opt-out procedure more prominently on the Seamless website; (ii) making the opt-out procedure more user-friendly (e.g., no requirement to create an account to opt out); and (iii) ensuring opt-out requests are honored indefinitely." SA, § 2.2.

Pursuant to the Parties' agreement, Plaintiffs now respectfully request that this Court: (1) preliminarily approve the Parties' settlement as fair, adequate, reasonable, and within the range of possible final approval; (2) appoint Carla Plowman, Karen Evans, Reid Cooper, Michael Naessens, and Doug Spindler, as Settlement Class Representatives of the respective state-specific Classes;

(3) appoint Raina Borrelli of Strauss Borrelli PLLC and Michael F. Ram of Morgan & Morgan LLP as Settlement Class Counsel; (4) provisionally certify the Settlement Class for settlement purposes only; (5) approve the Parties' proposed notice program and confirm it is appropriate and satisfies due process; (6) set a date for a final approval hearing; and (7) set deadlines for members of the Settlement Class to submit claims for compensation and to object to or exclude themselves from the settlement.

III. CASE SUMMARY

A. The Relevant Right of Publicity Laws

Illinois, California, Ohio, Indiana, and Nevada have each passed a statute codifying the common law tort of misappropriation of name or likeness. These statutes protect a person's right of publicity, prohibiting the use of an individual's identity for a commercial purpose without his or her prior consent. *See* 765 ILCS 1075/1 *et seq.* (Illinois); Cal Civ. Code § 3344 (California); Oh. Rev. Code § 2741 (Ohio); Ind. Code § 32-36-1 *et seq.* (Indiana); Nev. Rev. Stat. § 597.790 (Nevada). A person's "identity" or "persona" is invoked by way of attributes that serve to identify an individual to a reasonable person, including their name, photograph, image, likeness, or other personal information. *See id.* An identity is used for a commercial purpose when it is used to promote a good or service. *Id.* Each statute includes a private right of action that allows individuals whose identities were used without their permission to recover statutory minimum damages, without the need to show out-of-pocket loss. 765 ILCS 1075/40 (providing for $1,000 in statutory minimum damages); Cal. Civ. Code § 3344(a) (providing for $750 in statutory minimum damages); Oh. Rev. Code § 2741.07 (providing for $2,500 in statutory minimum damages); Ind. Code Ann. § 32-36-1-10(1)(a) (providing for $1,000 in statutory minimum damages); Nev. Rev. Stat. Ann. § 597.810(1)(b)(1) (providing for $750 in statutory minimum damages).

B. Plaintiffs' Allegations

Plaintiffs allege that Defendant owned and operated the website seamless.ai. Dkt. 1 ("Complaint"), ¶1. Seamless marketed its subscription service primarily to salespeople, who used the information in Seamless's database to contact the individuals represented in the Seamless database with unsolicited promotions. *Id.*, ¶6. To market its subscription database, Seamless provided a free version of the site, on which users could perform a free search for an individual by typing that individual's name into a search bar. *Id.*, ¶8. Seamless then provided a profile of information about the searched-for individual, including unique identifying information such as name, city of residence, phone number, place of work, and job title. *Id.*, ¶5. In addition to specific identifying information about the searched-for individual, the profile included a solicitation to upgrade to a "Pro" subscription for $99 per day, in exchange for full access to Seamless's database and related services. *Id.*, ¶10. Plaintiffs allege that using individuals' identifying information to market the Seamless subscription database and service without first obtaining their consent violates the right of publicity laws of Illinois, California, Ohio, Indiana, and Nevada.

C. Litigation, Negotiation, and Settlement

This case began with parallel suits against Seamless in: (1) the U.S. District Court for the Northern District of California and (2) the U.S. District Court for the Northern District of Illinois. *Id.* Seamless filed a Rule 12 motion to dismiss the Illinois case on various grounds including Article III standing. Borrelli Decl., ¶4. That motion was denied, and the parties engaged in extensive discovery, including significant written discovery efforts, wherein the plaintiff requested, and Seamless provided, key information on the putative class's composition and the types of data that Seamless maintained related to its website and its visitors. *Id.* With this information in hand, the plaintiff took depositions of Seamless's corporate representatives. *Id.* The plaintiff likewise participated in the discovery process, responding to Seamless's written discovery.

Id. Thereafter, the plaintiff in the Illinois action filed a motion for class certification and Seamless filed a motion for summary judgment, both of which the parties fully briefed. *Id.* The Court granted Seamless's motion for summary judgment in its entirety based on facts specific to the plaintiff's individual claims and denied as moot the motion for class certification without making a substantive ruling on the merits of class certification. *Id.* Thereafter, the Illinois plaintiff's claims were individually resolved and her complaint against Seamless was dismissed without prejudice as to the class claims, which were subsequently refiled in this action on behalf of the Illinois Settlement Class. *Id.*

Plaintiff Spindler sued Seamless in a parallel putative class action case in the United States District Court for the Northern District of California. *Id.,* ¶5. Plaintiff Spindler's complaint alleged violations of the California Right of Publicity Act, Cal. Civ. Code § 3344, California common law prohibiting misappropriation of a name or likeness, and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq*. *Id.* Specifically, the complaint alleged that Seamless's use of Plaintiff Spindler's and other consumers' identities to encourage individuals to purchase subscriptions to Seamless's website violated Section 3344. *Id.* Seamless sought to dismiss Plaintiff Spindler's case on various grounds, including Article III standing. *Id.* That Rule 12 motion was denied, and the Parties engaged in extensive discovery. *Id.*

In the midst of this discovery, the parties agreed to explore resolution. *Id.,* ¶6. To that end, the parties attended an all-day mediation on May 15, 2024 with Jill Sperber of Judicate West. *Id.* The mediation was unsuccessful, and the parties returned to litigating the case. *Id.* After further litigation, the parties agreed to mediate a second time, attending an all-day mediation with Jill Sperber of Judicate West on October 2, 2024. *Id.* Through their arms' length negotiations, and with the assistance of Ms. Sperber, the parties reached a settlement in principle on behalf of all Plaintiffs

named in this Action. *Id.* Plaintiffs subsequently filed this Action, asserting claims on behalf of themselves and a putative California Class, Illinois Class, Indiana Class, Ohio Class, and Nevada Class, asserting claims for: (1) violations of the California Right of Publicity Act, Cal. Civ. Code § 3344, California common law prohibiting misappropriation of a name or likeness, and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq*.; (2) violations of the Illinois Right of Publicity Act, 765 ILCS 1075/1 *et seq.*; (3) violations of Indiana's Right of Publicity Statute, Ind. Code § 32-36-1 and Indiana common law prohibiting of misappropriation of a name or likeness; (4) Ohio's Right of Publicity Statute, Ohio Rev. Code § 2741 and Ohio common law prohibiting of misappropriation of a name or likeness; (5) Nevada's Right of Publicity Statute, Nev. Rev. Stat. §§ 597.770 *et seq.*; and (6) unjust enrichment. *Id.*

IV. SETTLEMENT TERMS

The terms of the Settlement are set forth in the Settlement Agreement and are briefly summarized here.

A. Settlement Class Definition

The Settlement defines the state-specific Settlement Classes as follows (*see* SA, ¶¶1.3, 1.21, 1.24 1.26, 1.30):

> **Ohio Settlement Class**: Karen Evans and all individuals with an Ohio contact address who: (1) are not customers of seamless.ai and (2) have been saved to the MyContacts list of a free customer of seamless.ai who subsequently became a paid customer of seamless.ai from April 1, 2021 to October 2, 2024. Excluded from the Ohio Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Seamless, Seamless's subsidiaries, successors, predecessors, and any entity in which Seamless has a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the class, and (4) the legal representatives, successors, or assigns of any such excluded persons.
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> **Nevada Settlement Class**: Michael Naessens and all individuals with a Nevada contact address who: (1) are not customers of seamless.ai and (2) have been saved to the MyContacts list of a free customer of seamless.ai who subsequently became a paid customer of seamless.ai from April 1, 2021 to October 2, 2024. Excluded

from the Nevada Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Seamless, Seamless's subsidiaries, successors, predecessors, and any entity in which Seamless has a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the class, and (4) the legal representatives, successors, or assigns of any such excluded persons.

California Settlement Class: Doug Spindler and all individuals with a California contact address who: (1) are not customers of seamless.ai and (2) have been saved to the MyContacts list of a free customer of seamless.ai who subsequently became a paid customer of seamless.ai from April 1, 2021 to October 2, 2024. Excluded from the California Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Seamless, Seamless's subsidiaries, successors, predecessors, and any entity in which Seamless has a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the class, and (4) the legal representatives, successors, or assigns of any such excluded persons.

Indiana Settlement Class: Reid Cooper and all individuals with an Indiana contact address who: (1) are not customers of seamless.ai and (2) have been saved to the MyContacts list of a free customer of seamless.ai who subsequently became a paid customer of seamless.ai from April 1, 2021 to October 2, 2024. Excluded from the Indiana Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Seamless, Seamless's subsidiaries, successors, predecessors, and any entity in which Seamless has a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the class, and (4) the legal representatives, successors, or assigns of any such excluded persons.

Illinois Settlement Class: Carla Plowman and all individuals with an Illinois contact address who: (1) are not customers of seamless.ai and (2) have been saved to the MyContacts list of a free customer of seamless.ai who subsequently became a paid customer of seamless.ai from April 1, 2021 to October 2, 2024. Excluded from the Illinois Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Seamless, Seamless's subsidiaries, successors, predecessors, and any entity in which Seamless has a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the class, and (4) the legal representatives, successors, or assigns of any such excluded persons.

B. Monetary Relief

Pursuant to the Settlement, Defendant will establish non-reversionary State-Specific Settlement Funds for each of the Settlement Classes. The amount of each Fund varies based on the size of the Settlement Class in that state. The Fund sizes are: Ohio, $41,650.00; Nevada, $2,457.00;

California, $770,709.00; Indiana, $91,672.00; and Illinois $218,512.00. SA, ¶¶1.5, 1.2, 1.23, 1.26, 1.29, 1.33. Settlement Clas Members will be entitled to submit claims to their respective State-Specific Settlement Funds. *Id.*, § 2.1. All Settlement Class Members who submit an Approved Claim will be entitled to a pro rata portion of their respective State-Specific Settlement Fund after payment of Settlement Administration Expenses, attorneys' fees and costs, and any incentive awards approved by the Court. *Id*.

Any uncashed checks or electronic payments unable to be processed within 180 days of issuance will revert to their respective State-Specific Settlement Funds. Such funds are to be distributed *pro rata* to the claiming Settlement Class Members from that State-Specific Settlement Fund, if practicable, or in a manner otherwise to be directed by the Court. *See* SA, § 2.1(e).

C. Prospective Relief

The Settlement Agreement also provides for injunctive relief to address the alleged violations of the right of publicity by requiring Seamless to: (i) display the opt-out procedure more prominently on its website, (ii) make the opt-out procedure more user-friendly, and (iii) indefinitely honor opt-out requests. SA, § 2.2.

D. Notice and Claims Process

1. Notice

Subject to Court approval, the Parties have agreed to use EisnerAmper LLP as the Settlement Administrator. Borrelli Decl., ¶7.

Within twenty-one (21) days after the entry of the Preliminary Approval Order ("Notice Deadline"), and subject to the requirements of the Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator will provide Notice to the Settlement Class via a combination of email and U.S. mail. *See* SA, §§ 1.28, 4.2 (description of how Notice will be accomplished).

The Settlement Administrator will also be responsible for creating a Settlement Website and shall maintain and update the website throughout the claim period. SA, § 1.39.

2. Claims, Objections, and Requests for Exclusion

The claims process is designed to ensure all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object. Borrelli Decl., ¶8.

Settlement Class Members will have 90 days from the Notice Deadline to submit their Claim Form to the Settlement Administrator, either by mail or online. SA, § 1.6. The Settlement Administrator has authority to assess the validity of claims. Upon receipt of an incomplete or unsigned Claim Form, the Administrator will request additional information, after which the Settlement Class Member will have twenty-one days to cure the defect. SA, § 5.3.

Settlement Class Members who wish to opt out may do so within sixty days after the Notice Date by providing written notice that they would like to be excluded from a Settlement Class. SA, § 1.29. Likewise, Settlement Class Members who wish to object to the Settlement Agreement may do so by filing their written objection with the Clerk of this Court within sixty days after the Notice Date. *Id.*, § 4.4. The written objection must include: (a) the person's full name and current address; (b) a statement that he or she believes himself or herself to be a member of the California Settlement Class, the Illinois Settlement Class, the Indiana Settlement Class, the Ohio Settlement Class, or the Nevada Settlement Class; (c) whether the objection applies only to the objector, to a specific subset of the objector's respective class, or to the entirety of the objector's class; (d) the specific grounds for the objection; (e) all documents or writings that the person desires the Court to consider; (f) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (g) a statement indicating

whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). *Id.*

E. Attorneys' Fees, Costs, and Service Awards

The Settlement Agreement provides for service awards to each named Plaintiff from their respective State-Specific Settlement Funds. *Id.*, § 8.3. The Settling Parties did not discuss the amount of attorneys' fees, costs, or service awards until after the substantive terms of the Settlement had been agreed upon. Borrelli Decl., ¶9.

V. THE PROPOSED SETTLEMENT SHOULD BE PRELIMINARILY APPROVED AND NOTICE DIRECTED TO THE PROPOSED SETTLEMENT CLASSES

A. The Settlement Classes Should be Certified for Settlement Purposes

Plaintiffs respectfully move the Court to grant class certification under 735 ILCS 5/2-801 and 735 ILCS 5/2-802 on behalf of the seven state-specific Settlement classes. "An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds: (1) The class is so numerous that joinder of all members is impracticable. (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members. (3) The representative parties will fairly and adequately protect the interest of the class. (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801. Here, the Settlement Class meets the requirements of 735 ILCS 5/2-801 and warrants certification for settlement purposes.[3]

[3] Defendant has agreed to the certification of a Settlement Class solely for purposes of Settlement.

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

The class must be so numerous that joinder of all members is impracticable. 735 ILCS 5/2-801(1). Courts have held that where a putative class contains forty or more members, numerosity is typically presumed. "One leading scholar has offered the following guideline: 'If the class has more than forty people in it, numerosity is satisfied . . . . ' Our research has supported this guideline." *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Ass'n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990) (citing Arthur Miller, *An Overview of Federal Class Actions: Past, Present, and Future, Federal Judicial Center* 22 (1977)); *see also Barragan v. Evanger's Dog & Cat Food Co.*, 259 F.R.D. 330, 333 (N.D. Ill. 2009) ("Although there is no number requiring or barring a finding of numerosity, a class including more than 40 members is generally believed to be sufficient."). Here, the Settlement Class sizes are as follows: Ohio, 14,804; Nevada, 3,415; California, 21,133; Indiana, 7,121; Illinois, 11,155. Thus, the Settlement Classes easily satisfy the numerosity requirement.

2. There are Predominating Common Questions of Law and Fact

The second prong of Illinois' class action statute is satisfied if "(1) there are questions of fact or law common to the class; and (2) the common questions predominate over any questions affecting only individual members." *Walczak v. Onyx Acceptance Corp*., 365 Ill. App. 3d 664, 674 (2nd Dist. 2006) (*quoting* 735 ILCS 5/2-801(2)). The critical inquiry is whether "successful adjudication of the purported class representatives' individual claims will establish a [common] right of recovery in other class members." *Id*. at 674; *see also Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100 (2005), *cert. denied*, 547 U.S. 1003 (2006). "Where the predominance test is met, a judgment in favor of the class members should decisively settle the entire controversy, and all that should remain is for other members of the class to file proof of their claim." *Bemis v. Safeco*

Ins. Co. of Am., 407 Ill. App. 3d 1164, 1167 (5th Dist. 2011) (*quoting Smith v. Ill. Cent. R.R. Co.*, 223 Ill. 2d 441, 449 (2006)) (internal quotation marks omitted). "Predominance is shown not by whether common issues outnumber individual issues, but by whether common issues or individual issues will be the focus of most of the efforts of the parties and the court." *Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 772–73 (Ill. App. Ct. 2008).

Here, common issues of law and fact exist and predominate. "That analysis, 'begins, of course, with the elements of the underlying cause of action."' *Fischer v. Instant Checkmate LLC*, No. 19 C 4892, 2022 WL 971479, at *7 (N.D. Ill. Mar. 31, 2022) (*quoting Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011)). The substantive elements of each relevant state's right of publicity statute are similar. *See Camacho v. Control Grp. Media Co., LLC*, No. 21-cv-1954-MMA (MDD), 2022 WL 3093306, at *30 (S.D. Cal. July 18, 2022) (noting in case involving Alabama and California claims that "it appears that the parties agree the statutes are not notably distinguishable at this stage of the case"); *In re Hearst Communications State Right of Publicity Statute Cases*, 632 F. Supp. 3d 616, 620 (S.D.N.Y. 2022) (conducting joint assessment of, among other states, California, Indiana, Nevada, and Ohio right of publicity claims); *Kellman v. Spokeo, Inc.*, 21-cv-8976-WHO, 2024 WL 2788418, at *9 (N.D. Cal. May 29, 2024) (certifying Ohio and California claims and noting the two statutes "requir[e] similar elements"). The Illinois statute provides a representative example of the requisite elements: "(1) the appropriation of one's identity, (2) without one's consent, (3) for another's commercial benefit." *Fischer*, 2022 WL 971479, at *7 (*quoting Dancel v. Groupon, Inc.*, 949 F.3d 999, 1008 (7th Cir. 2019)); *Kellman v. Spokeo, Inc.*, 599 F. Supp. 3d 877 (N.D. Cal. 2022) (discussing elements of California, Ohio, and Indiana claims). As a court recently found when granting class certification in a similar right of publicity case, "[a]t least the first and third elements present common questions," and "those

common questions predominate over any remaining individual questions." *Id.* Many additional courts have found the commonality and predominance elements satisfied under the Federal rules in parallel right of publicity cases. *See*, *e.g., Kellman v. Spokeo, Inc.*, 21-cv-8976-WHO, 2024 WL 2788418 (N.D. Cal. May 29, 2024) (granting contested certification motion); *Nolen v. PeopleConnect, Inc.*, No. 20-cv-9203-EMC, Dkts. 256 & 276 (N.D. Cal. May 20, 2024) (same); *Fischer, et al. v. Instant Checkmate LLC, et al.*, No. 19-cv-4892, Dkts. 272 & 286 (N.D. Ill.) (preliminarily and finally certifying classes asserting similar right of publicity claims); *Krause v. RocketReach, LLC*, No. 21-cv-01938, Dkts. 87 & 97 (N.D. Ill.) (same).

The Settlement Class Members make the same contention arising out of the same alleged course of conduct. Defendant allegedly violated each state's right of publicity law by using Settlement Class Members' names, identifying information, and identities on Defendant's website to advertise paid subscriptions, without the Settlement Class Members' consent. The form and content of the website is standardized, such that each Settlement Class Members' name and identifying information is displayed in the same way. "Whether [Defendant's] use and display of putative class members' attributes appropriates their identities for its own commercial benefit turns on how the company uses and displays its search results…, not any circumstances particular to a class member." *Fischer*, 2022 WL 971479, at *7. "Resolution of those elements will turn on common proof regarding [Defendant's] website and business practices." *Id.* Thus, "a reasonable jury could find, as a categorical matter, that a search result displaying a name [and other identifying characteristics] 'serves to identify that individual to an ordinary, reasonable viewer'" for purposes of the right of publicity statutes. *Id.* at *8 (*quoting* 765 ILCS 1075/5).

In addition to these common and predominating issues surrounding liability, the claims also implicate additional common issues pertaining to Defendant's potential defenses. These

include whether Defendant's use of names and identifying information constitutes use for a "commercial purpose" under the relevant state statutes; whether Defendant's use is protected by the First Amendment; whether Plaintiffs suffered injury of the nature the right of publicity statutes are designed to protect; and whether Defendant's use falls within the statutory exceptions for "public affairs" and/or "public interest." Resolving these defenses will turn on common proof of Defendant's conduct, and on the resolution of legal questions that apply equally to all members of a given Settlement Class – not on circumstances unique to any individual. Because Defendant used Plaintiffs' and Settlement Class Members' information in the same way, whether the Plaintiffs can prove their case or whether any of the Defendant's defenses apply will determine the validity of every Settlement Class Members' claim in a single stroke. *See Fischer*, 2022 WL 971479, at *8–9 (*citing Tyson Foods, Inc.*, 577 U.S. at 453). To the extent there are individualized issues, they cannot defeat this overwhelming commonality, and common issues therefore predominate. *See Muir v. Nature's Bounty (DE), Inc.*, No. 15 C 9835, 2018 WL 3647115, at *9 (N.D. Ill. Aug. 1, 2018) (predominance satisfied when "the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation defeating individual issues") (internal quotations omitted).

3. Plaintiffs' Claims are Typical of the Settlement Classes They Seek to Represent

A named plaintiff's claim is typical of the claims of the absent class members if it is based on the same legal theory and course of conduct as those of the absent class members. *See Rubino v. Circuit City Stores*, 324 Ill. App. 3d 931, 939 (1st Dist. 2001). Where the defendant engages "in a standardized course of conduct vis-a-vis the class members, and plaintiffs' alleged injury arises out of that conduct," typicality is "generally met." *Hinman v. M & M Rental Center*, 545 F. Supp. 2d 802, 806–07 (N.D. Ill. 2008) (*citing Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998); and De *La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)).

Here, nothing separates each Class Representative's claims from the respective Settlement Class they seek to represent. Plaintiffs assert that Defendant violated the relevant right of publicity laws by using their names and other identifying information on Defendant's website to solicit the purchase of paid subscriptions without their consent—precisely the conduct Defendant allegedly carried out with respect to every one of their fellow Settlement Class Members, and for which they are seeking the same statutory damages. Plaintiffs' claims arise from the same course of conduct and are based on the same legal theory as the claims of all other Settlement Class Members. Typicality is therefore satisfied.

4. The Adequacy Requirement is Satisfied

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

Here, the Class Representatives and proposed Settlement Class Counsel meet the test of adequacy. First, there is no conflict between Plaintiffs and the Settlement Class Members. Plaintiffs allege they were harmed in the same way as all other Settlement Class Members: by Defendant's non-consensual use of their names and identities to advertise paid website subscriptions. And Plaintiffs seek the same remedy on their own behalf that they seek on behalf of the absent Settlement Class Members: statutory minimum damages, and injunctive relief preventing future misappropriation. Because the harms and remedy sought are identical between all Settlement Class Members, the named Plaintiffs have every incentive to vigorously pursue the class claims, and no conflict exists.

Further, proposed Settlement Class Counsel are well-qualified to represent the class. Settlement Class Counsel have extensive experience in privacy and consumer class actions and are leaders in the field. *See* Borrelli Decl., Exs. 2-4 (Settlement Class Counsel firm resumes). Thus, the requirements of adequacy are satisfied.

5. The Class Action is an Appropriate Method of Litigating this Controversy

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

As discussed above, the core liability issues, as well as the issues arising from Defendant's potential defenses, are shared in common between the Settlement Class members. Resolving these

issues simultaneously via a class action secures precisely the economies of time, effort, and expense, and the uniformity of decision, that the Illinois rule contemplates. Further, resolving the case on a class-wide basis serves the "ends of equity." *See Clark*, at 552. The Settlement provides monetary recovery to Class members whose individual claims are too small to justify the expense of individualized litigation, and provides injunctive relief to all Class members, including those who do not file claims. Additionally, because Plaintiffs seek to certify the claims here for purposes of settlement, there are no issues with manageability and resolution of thousands of claims in one action promotes judicial economy. Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating hundreds of thousands of individual right of publicity cases arising out of the same conduct. Accordingly, the classes should be certified for settlement purposes.

B. The Court Should Preliminarily Approve the Settlement

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

settlement will not be rejected solely because it does not provide a complete victory to the plaintiffs.").

In reviewing proposed settlements, courts do not "judge the legal and factual questions by the same criteria applied in a trial on the merits." *GMAC Mortg. Corp. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). The standard for class settlement approval requires that a settlement be fair, reasonable, and adequate. *People ex rel. Wilcox v. Equity Funding Life Ins. Co.*, 61 Ill. 2d 303, 317 (1975); *Korshak*, 206 Ill. App. 3d at 972. A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery. *Zolkos v. Scriptfleet, Inc.*, No. 12 Civ. 8230, 2014 WL 7011819, at *1 (N.D. Ill. Dec. 12, 2014) (quoting *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07 Civ. 2898, 09 Civ. 2026, 2012 WL 651727, at *10 (N.D. Ill. Feb. 28, 2012)); *see also Gowdey v. Commonwealth Edison Co.*, 37 Ill. App. 3d 140, 150 (1st Dist. 1976). Here, the settlement negotiations involved pre-mediation discovery, briefing submitted to the mediator, robust argument, and months of negotiations. Based on their experience in handling other class action matters, the amount of monetary recovery secured for the Settlement Class Members, and a comparison to previously approved settlements in similar right of publicity class actions, Settlement Class Counsel believe this Settlement provides fair, reasonable, and adequate relief for the Settlement Class. *See* Borrelli Decl., ¶11.

Preliminary approval by this Court requires an "initial evaluation" of the fairness of the proposed settlement. *Wyms v. Staffing Solutions, Inc.*, No. 15-cv-0634-MJR-PMF, 2016 WL 6395740, at *4 (S.D. Ill. Oct. 28, 2016); Newberg § 11.25. To grant preliminary approval, this Court determines whether there is probable cause to submit the settlement to class members and hold a full-scale hearing as to its fairness. *See Lambert v. Tellabs, Inc.*, No. 13-cv-07945, 2015

U.S. Dist. LEXIS 156284, at *4-5 (N.D. Ill. Mar. 5, 2015). If the settlement is "within the range of possible approval," the court should grant preliminary approval. *Wyms*, 2016 WL 6395740, at *4.

In deciding whether to grant preliminary approval, the Court may consider the factors that will underlie the final analysis of whether the settlement is fair, reasonable, and adequate during the final approval phase of the class settlement. *Korshak*, 206 Ill. App. 3d at 972. These factors include: "(1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length, and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *Id.* Here, all eight factors support granting preliminary approval.

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

There is an "overriding public interest in favor of settlement" of class actions because of the complexity, length, and uncertainty inherent to class litigation. *See In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at *6 (N.D. Ill. Feb. 29, 2016).

Here, the Parties entered into the Settlement only after both sides were fully apprised of the facts, risks, and obstacles involved with protracted litigation. Borrelli Decl., ¶9. Prior to filing suit, Settlement Class Counsel conducted extensive research regarding the Plaintiffs' claims, Defendant, and the alleged use of Settlement Class Members' names and identifies. *Id*., ¶10. As such, and considering Settlement Class Counsel's prior experience in right of publicity litigation, the Parties entered settlement negotiations with a full understanding of the strengths and

weaknesses of the case, as well as the potential value of the claims. *Id.; see also*, *e.g., In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 793 (N.D. Ill. 2015) (granting preliminary approval to privacy class settlement where the parties exchanged discovery over several months and then mediated the case to reach a settlement).

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

Here, Plaintiffs would face many challenges were litigation to proceed, some of which are discussed in Part 3 below.

The estimated per-person settlement payments compare favorably to prior right of publicity settlements. Net of fees and costs, Settlement Class Members in every state can expect to receive payments ranging from tens to hundreds of dollars, depending on the claims rates in each state. These amounts are in line with take-home recoveries in similar right of publicity settlements. *See*, *e.g., Fischer*, 19-cv-04892, dkt. 283 at 2 (calculating final take-home payments as follows: California, $148.18; Illinois, $745.01; Indiana, $197.20; and Nevada, $180.23); *Butler*, dkt. 272 ($95 to each valid Illinois claimant); *Fraley v. Facebook, Inc.*, 966 F. Supp. 2d 939, 943–44 (N.D. Cal. 2013), *aff'd sub nom Fraley v. Batman*, 638 Fed. App'x 594, 597 (9th Cir. 2016) (approving California right of publicity settlement providing $15 to each claiming class member). And, of course, the monetary relief provided under the Settlement stands apart from other consumer privacy class actions that may provide no monetary relief. *See*, *e.g., Lane v. Facebook, Inc.*, 696 F.3d 811, 820–22 (9th Cir. 2012) (resolving tens of millions of claims under the Electronic Communications Privacy Act ["ECPA"] for a $9.5 million *cy pres*-only settlement—amounting to pennies per class member—where $10,000 in statutory damages were available per claim); *In re Google Buzz Priv. Litig.*, No. C 10-00672 JW, 2011 WL 7460099, at *3–5 (N.D. Cal. June 2, 2011) (resolving tens of millions of claims, again under the ECPA, for an $8.5 million *cy pres*-only settlement); *see also Frank v. Gaos*, 139 S. Ct. 1041, 1047–48 (2019) (Thomas, J., dissenting).

2. The Defendant's Ability to Pay

A "defendant's ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair." *Viafara v. MCIZ Corp.*, No. 12-cv-7452-RLE, 2014 WL 1777438, at *7 (S.D.N.Y. Apr. 30, 2014) (citation omitted). Here, under the terms of the Settlement Agreement, Defendant will pay a total of $1,125,000.00 into five non-reversionary State-Specific Settlement Funds. SA ¶¶ 1.5, 1.2, 1.23, 1.26, 1.29, 1.33. Although Seamless may be able to withstand a greater judgment, the financial obligations the Settlement imposes on the Defendant are substantial.

3. The Complexity, Length, and Expense of Further Litigation

The value achieved through the Settlement Agreement is guaranteed, whereas the chances of prevailing on the merits are uncertain. While Plaintiffs strongly believe in the merits of their case, they also understand that should this litigation continue, Defendant will assert defenses, continue to deny liability, and litigate this action vigorously. *See Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995) ("As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later."). Furthermore, the risk of obtaining no relief through continued litigation is significant. Should this litigation continue, Plaintiffs would need to prevail on a motion to dismiss; survive summary judgment; prevail at Class certification; and prevail at trial. An adverse decision at any of these potentially dispositive stages could singlehandedly doom this action and leave the Classes with nothing. *See*, *e.g., T.K. through Leshore v. Bytedance Tech. Co., Ltd.*, No. 19-cv-7915, 2022 WL 888943, at *13 (N.D. Ill. Mar. 25, 2022) (noting obstacle posed by adversarial class certification if litigation were to continue rather than settle). For example, the class certification decision in *Fischer v. Instant Checkmate, LLC*—an analogous right of publicity case—demonstrates the risk that class members face. No. 19-cv-04892, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022). There, the court certified two classes but declined to certify a third class of individuals appearing in search results. *Id.*, at *3, *15. While the court's decision turned on the facts of that case, *id*. at *15, it illustrates that class status in this action would by no means be guaranteed. *See also Dancel v. Groupon, Inc.*, No. 18-cv-2027, 2019 WL 1013562, at *1 (N.D. Ill. Mar. 4, 2019), *aff'd*, 949 F.3d 999 (7th Cir. 2019) (denying motion to certify class because whether any given username was sufficient to identify an individual presented individual inquiries that defeated predominance).

In short, "any relief to class members would still be far down the road and may ultimately be entirely denied." *Charvat v. Valente*, No. 12-cv-05746, 2019 WL 5576932, at *7 (N.D. Ill. Oct. 28, 2019). By contrast, "[a]pproving the proposed settlement agreement will end the case and cause benefits to flow in short order." *Id.*; *see also Young v. Rolling in the Dough, Inc.*, No. 1:17-CV-07825, 2020 WL 969616, at *5 (N.D. Ill. Feb. 27, 2020) ("If this case had been litigated to conclusion, all that is certain is that plaintiffs would have spent a large amount of money, time, and effort.").

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

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

The fourth and sixth factors – the amount of opposition to the Settlement and the reaction of members of the Class to the Settlement – are often considered together due to their similarity. *Korshak*, 206 Ill. App. at 973. At the preliminary approval stage, these factors are premature, although Plaintiffs note that all the Class Representatives approve of this Settlement. Borrelli Decl., ¶11. Plaintiffs will address these factors in the final approval papers.

5. The Absence of Collusion

"A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion." 2 *McLaughlin on Class Actions*, § 6:7 (8th ed. 2011); *see also Steele v. GE Money Bank*, No. 1:08-CIV-1880, 2011 WL 13266350, at *4 (N.D. Ill. May

17, 2011), *Report and Recommendation adopted*, No. 1:08-CIV-1880, 2011 WL 13266498 (N.D. Ill. June 1, 2011) ("the involvement of an experienced mediator is a further protection for the class, preventing potential collusion"); *Wright*, 2016 WL 4505169, at *11 (similar); *see also T.K.*, 2022 WL 888943, at *11 ("[t]he best evidence of a truly adversarial bargaining process is the presence of a neutral third-party mediator") (internal quotations omitted). Here, the Settlement was reached after months of arms-length settlement negotiations, culminating in a days-long in-person mediation session with Jill Sperber of Judicate West. *See* Borrelli Decl., ¶6. At all times, the settlement negotiations were adversarial, non-collusive, and conducted at arm's length. *Id*.. ¶9. By the end of the full-day mediation, the Parties reached an agreement in principle after extensive negotiations. *Id*. ¶6.

The arm's-length nature of these negotiations is further confirmed by the Settlement terms. Each State-Specific Settlement Fund is non-reversionary; provides meaningful cash payments to Settlement Class Members who submit a valid Claim Form; and contains no provisions that might suggest fraud or collusion. *See Snyder v. Ocwen Loan Servicing, LLC*, No. 14-cv-8461, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019) (finding settlement negotiated at arm's length where "there is no provision for reversion of unclaimed amounts, no clear sailing clause regarding attorneys' fees, and none of the other types of settlement terms that sometimes suggest something other than an arm's length negotiation"). Likewise, the scope of the release is not overbroad. Defendant is not getting any release that it is not paying for, and the release is tied to the factual underpinnings of the lawsuit. *See* SA, § 1.35.

6. The Opinion of Competent Counsel

In a case where experienced counsel represent the class, the Court "is entitled to rely upon the judgment of the parties' experienced counsel." *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 792 (N.D. Ill. 2015); *Armstrong v. Bd. of Sch. Dirs. of City of Milw.*, 616 F.2d 305, 315 (7th

Cir. 1980) ("Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel."). Here, Settlement Class Counsel believe the Parties' settlement is fair, reasonable, and adequate, and in the best interests of the members of the class. Borrelli Decl., ¶20. Settlement Class Counsel also believe the benefits of the Parties' settlement far outweigh the delay and considerable risk of attempting to proceed through a motion to dismiss, class certification, summary judgment, and to trial. *Id*.

This settlement proposes significant, effective Settlement Class Member relief. Cash awards will be distributed to claimants who submit valid claims forms. SA, § 2.1. Settlement Class Members will have ninety days from the Notice Date to make a claim for a portion of the settlement by submitting their claim form either online or via U.S. Mail. *Id.*, §§ 1.9–1.10. The Settlement Administrator will have the authority to assess the validity of the claims, and upon receipt of an incomplete or unsigned Claim Form, is required to request additional information and/or documentation and give the Settlement Class Member time to cure the defect before rejecting the claim. SA, § 5.3. Accordingly, all Settlement Class Members who submit valid claims will receive their award within a reasonable amount of time. For these reasons, Settlement Class Counsel believe the Settlement is fair, efficient, and effective.

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

The "stage of the proceedings" concerns "whether Class Plaintiffs had sufficient information on the merits of the case to enter into a settlement agreement . . . and whether the Court has sufficient information to evaluate such a settlement." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 224 (E.D.N.Y. 2013) (citations omitted). Courts have found that to meet this requirement, "formal discovery need not have necessarily been undertaken yet by the parties." *In re Sony SXRD Rear Projection Television Class Action Litig.*, 2008 WL 1956267, at *9 (S.D.N.Y. May 1, 2008). It is appropriate for Plaintiffs to enter into a

settlement after "Class Counsel [has] conducted extensive investigation into the facts, circumstances, and legal issues associated with this case[,]" particularly when the case is not one "that [is] likely to turn on facts initially in Defendant's sole possession." *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-cv-1113-VAB, 2016 WL 6542707, at *8 (D. Conn. Nov. 3, 2016).

Prior to filing suit, Plaintiffs' counsel conducted extensive investigations into facts of this case. Borrelli Decl., ¶10. Because this matter concerns the alleged mis-use of Class members' names and likenesses on a publicly available website, most of the relevant facts were available and collected pre-suit. *See id.,* ¶¶ 5, 10 Plaintiffs' counsel determined that Defendant used Class members' names and personal information as part of a free-trial offering designed to sell subscriptions to its commercial database. *Id.*, ¶5.

In addition, Defendant has provided, during discovery and settlement processes, confirmatory information regarding its use of individuals' names and personal information in the relevant states. *See id.,* ¶¶ 4-6. Proposed Settlement Class Counsel reviewed and analyzed this information to determine the scope of necessary injunctive relief and the appropriate measure of settlement benefits to Plaintiffs and the Class. *Id.* Further, the Parties engaged in years of adversarial litigation and discovery before reaching resolution. *See id.*

C. The Parties' Notice Plan Satisfies Due Process

According to 735 ILCS 5/2–803, "[u]pon a determination that an action may be maintained as a class action, or at any time during the conduct of the action, the court in its discretion may order such notice that it deems necessary to protect the interests of the class and the parties." However, the exercise of the court's discretion is limited by the dictates of due process. *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 429 (1983). The Illinois Supreme Court has indicated that "[t]he question of what notice must be given to absent class members to satisfy due

process necessarily depends upon the circumstances of the individual action." *Miner v. Gillette Co.*, 87 Ill. 2d 7, 15 (1981) (*citing Frank v. Teachers Ins. & Annuity Ass'n of Am.*, 71 Ill.2d 583, 593 (1978)). The United States Supreme Court has explained that the best practicable notice is that which "is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, notice is facilitated by the fact that the Defendant will provide the Settlement Administrator a list of all known names, email addresses, and city and state information for each Settlement Class. SA, § 4.1. The Administrator will send notice via email, along with an electronic link to the Claim Form, to all Settlement Class members for whom Defendant possesses a valid email address. *Id.*, § 4.2. The Administrator will also send notice via U.S. mail after taking reasonable steps to identify Class members' home addresses. *Id.* Thirty days prior to the Claims Deadline, the Administrator will send a reminder notice to Settlement Class members who have not yet submitted a claim and whose email addresses did not "bounce-back" on initial send. *Id.*

The proposed Notices will include, in a manner that is understandable to potential Settlement Class Members, information regarding: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members. *See* Borrelli Decl., ¶12; SA Exhibits C-P. The proposed Notices shall be tailored to the relevant State-Specific fund and the claims at issue in that state. *See* SA Exhibits C-P.

Because the class notice and notice plan set forth in the Settlement Agreement satisfy the requirements of due process and provide the best notice practicable under the circumstances, the Court should direct the Parties and the Settlement Administrator to proceed with providing notice to Settlement Class Members pursuant to the terms of the Settlement Agreement and its order granting preliminary approval.

VI. CONCLUSION

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

Dated: September 30, 2025

Respectfully submitted,

By: */s/ Samuel J. Strauss*

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CERTIFICATE OF SERVICE

I, Samuel J. Strauss, hereby certify that on September 30, 2025, I electronically filed the foregoing with the Clerk of the Court using the Odyssey eFileIL system, which will send notification of such filing to counsel of record.

DATED this 30th day of September, 2025.

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