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APPENDIX A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10249

D.C. Docket No. 1:17-md-02800-TWT

[Filed June 3, 2021]

In re Equifax Inc. Customer Data Security Breach Litigation	)
SHIYANG HUANG, et al.,	)
Movants-Appellants,	)
BRIAN F. SPECTOR, et al.,	)
Plaintiffs-Appellees,	)
versus	)
EQUIFAX INC., et al.,	)
Defendants-Appellees.	)

App. 2

Appeals from the United States District Court
for the Northern District of Georgia

(June 3, 2021)

Before MARTIN, GRANT, and BRASHER, Circuit Judges.

MARTIN, Circuit Judge:

This appeal arises from the 2017 data privacy breach of Equifax Inc. and its affiliates (collectively "Equifax"). After the breach came to light, scores of class actions against Equifax flooded the courts. The cases were consolidated in the Northern District of Georgia, where Plaintiffs and Equifax eventually settled their dispute, resulting in "the largest and most comprehensive recovery in a data breach case in U.S. history by several orders of magnitude." But try as they might, the parties could not please everyone. Of the approximately 147 million class members, 388 people objected to the settlement. Even so, the District Court approved the settlement, certified the settlement class, awarded attorney's fees and expenses, and approved incentive awards for the class representatives. Several of the objectors appealed, challenging the District Court's approval order as well as some related rulings.

This case highlights the role objectors play in the settlement of class actions. We begin with the knowledge that settlements are "highly favored in the law" because "they are a means of amicably resolving doubts and uncertainties and preventing lawsuits." In

re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1105 (5th Cir. 1977) (quotation marks omitted).[1] The settlement here is a prime example. Absent the settlement, the class action could have faced serious hurdles to recovery, and now the class is entitled to significant settlement benefits that may not have even been achieved at trial. And you need not take our word for this. The Federal Trade Commission, the Consumer Financial Protection Bureau, and the Attorneys General for 48 states, the District of Columbia, and Puerto Rico all support the settlement.

Yet as we mentioned, not everyone bound by this class action settlement agrees with it, and class members who oppose the settlement have the right to object. See Fed. R. Civ. P. 23(e)(5)(A). Often times objectors play a "beneficial role in opening a proposed settlement to scrutiny and identifying areas that need improvement." David F. Herr, Annotated Manual for Complex Litigation § 21.643 (4th ed. 2021) [hereinafter "Manual for Complex Litigation"]. And because objectors have the right to object, it is our obligation to closely review the issues they present. Consistent with our obligation, we have studied the hundreds of pages of briefing, sifted through the flurry of Rule 28(j) letters, and familiarized ourselves with the enormous record in this case. After this careful consideration, and with the benefit of oral argument, we affirm the District Court's rulings in full, subject to one small asterisk. Specifically, after the District Court approved

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[1] In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981. Id. at 1209.

incentive awards for the class representatives, a panel of this Court held that such awards are prohibited. See Johnson v. NPAS Sols., LLC, 975 F.3d 1244, 1260 (11th Cir. 2020). As in NPAS Solutions, we must reverse the District Court's ruling on the incentive awards alone and remand this case to the District Court solely for the limited purpose of vacating those awards. See id.

I. BACKGROUND

In 2017, Equifax, a consumer reporting agency, announced it had been subject to a data privacy breach affecting the personal information of almost 150 million Americans. The breach involved some of the most sensitive personal information possible: all nine digits of Americans' Social Security numbers, coupled with their names, dates of birth, and addresses, among other things. Over 300 class actions against Equifax were filed across the nation, all of which came to be consolidated and transferred by the Judicial Panel on Multidistrict Litigation to then-Chief Judge Thomas W. Thrash in the Northern District of Georgia.[2] The District Court established separate tracks for the consumer claims and the financial institution claims. This appeal relates to the consumer claims.

In 2018, Plaintiffs filed a 559-page consolidated class action complaint against Equifax. The complaint included 96 named plaintiffs who brought a host of statutory and common law claims under federal and state law. These claims included violations of the Fair

[2] Chief Judge Thrash ended his service as Chief Judge for the Northern District of Georgia earlier this year. For consistency, we refer to him by his former title.

Credit Reporting Act, the Georgia Fair Business Practices Act, and various state consumer protection and data breach statutes. Plaintiffs also brought claims for negligence, negligence per se, unjust enrichment, and breach of contract. Plaintiffs alleged that, due to the data breach, they are "subject to a pervasive, substantial and imminent risk of identity theft and fraud." They also alleged that they have spent time, money, and effort attempting to mitigate the risk of identity theft and that many have already been victims of identity theft.

Equifax filed a motion to dismiss the complaint in its entirety, which the District Court granted in part and denied in part. The District Court dismissed the Fair Credit Reporting Act claims, the Georgia Fair Business Practices Act claims, as well as some state statutory claims. However, it allowed the negligence and negligence per se claims under Georgia law, as well as other state statutory claims, to go forward. All the while, the parties engaged in robust settlement negotiations. Layn Phillips, a retired federal district court judge with experience in data breach cases, served as the mediator. The parties' efforts paid off. After 18 months of negotiations, they reached a settlement agreement. The parties then consulted and negotiated with various federal and state regulators and revised their agreement as a result of those consultations. Ultimately, the Federal Trade Commission, the Consumer Financial Protection Bureau, and the Attorneys General for 48 states, the District of Columbia, and Puerto Rico settled with Equifax, agreeing that the settlement fund in this case provides redress to consumers. In July 2019, the

parties presented their final settlement agreement to the District Court.

The District Court described the parties' settlement as "the largest and most comprehensive recovery in a data breach case in U.S. history by several orders of magnitude." Under the terms of the settlement, Equifax agreed to pay an initial $380.5 million into a fund to benefit the class members and to pay attorney's fees and expenses, incentive awards, as well as notice and administration costs. The settlement includes the following benefits for each class member:[3]

- Reimbursement for up to $20,000 of documented, out-of-pocket losses fairly traceable to the data breach (e.g., the cost of freezing a credit file, professional fees due to identity theft);
- Compensation of $25 per hour for up to 20 hours (subject to a $38 million cap) for time spent taking preventative measures or dealing with identity theft, with no documentation needed for the first 10 hours;
- Four years of three-bureau credit monitoring and identity protection services through Experian;
- An additional six years of one-bureau credit monitoring and identity protection services

[3] The settlement class includes the "approximately 147 million U.S. consumers identified by Equifax whose personal information was compromised as a result of the cyberattack and data breach announced by Equifax Inc. on September 7, 2017."

through Equifax, which will be provided separately by Equifax and not paid for from the settlement fund;

- Alternative cash compensation (subject to a $31 million cap) for class members who already have credit monitoring and who do not wish to enroll in the settlement's programs;[4] and

- Seven years of identity restoration services through Experian to help class members who believe they may have been victims of identity theft.

Beyond these class benefits, Equifax will pay an additional $125 million if needed to satisfy claims for out-of-pocket losses and potentially $2 billion more if all 147 million class members sign up for credit monitoring. In no circumstance does money in the settlement fund revert back to Equifax. Instead, if money remains in the settlement fund after the claim periods, the settlement provides ways in which the

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[4] When the settlement was first announced to the public, media reports said consumers could get $125 in alternative cash compensation under the settlement. The original short-form notice was ambiguous—it simply stated class members "can request" and "may be eligible" for $125 if they already had credit monitoring. However, the long-form notice, which was posted the same day that class members could start making claims, stated in no uncertain terms that consumers who already had credit monitoring could get up to $125, which would be reduced on a proportional basis if the $31 million cap was exceeded. After the media reports, class counsel cleared up this confusion, and those who had already submitted a claim for the alternative cash compensation were given the opportunity to instead choose credit monitoring.

above class benefits are increased. Equifax is also required to spend a minimum of $1 billion on data security over five years and to comply with certain data security requirements. Its compliance will be audited by an independent assessor and subject to the District Court's enforcement powers if it fails to comply.

The District Court ordered that notice of the settlement agreement be provided to the class, such that class members had the opportunity to opt-out of the class or object to the settlement. The District Court required those who wished to object to provide certain information about their objections in order to prevent a "chaotic" objection process. To provide notice of the settlement to the class, class counsel adopted "an innovative and comprehensive program," including multiple emails, a social media campaign, newspaper and radio advertising, a settlement website, and a call center to answer questions. The response from the class was "unprecedented," as the claims rate exceeded 10 percent of the class. By contrast, in another recent data breach case, the claims rate was only about 1.7 percent. As we've mentioned, out of the approximately 147 million class members, 388 people objected.

In December 2019, the District Court held a hearing to consider the motions for final approval of the proposed class settlement, attorney's fees and expenses, and incentive awards for the class representatives. After hearing arguments from Plaintiffs, Equifax, and the objectors who wished to speak, the District Court issued its rulings from the bench. The District Court approved the settlement as fair, reasonable, and adequate under the factors set

forth in Federal Rule of Civil Procedure 23(e) and Bennett v. Behring Corp., 737 F.2d 982 (11th Cir. 1984). The District Court then approved the requested attorney's fees and expenses as well as incentive awards for the class representatives.

After issuing its oral rulings, the District Court directed Plaintiffs' counsel to prepare a written order "summariz[ing] [its] rulings on the motions and [its] adoption basically of the arguments that have been made by the Plaintiffs and by Equifax in the hearing today." The District Court instructed Plaintiffs to obtain Equifax's approval before submitting the proposed order to the court, which it would then "consider signing." The District Court later issued a written order memorializing its rulings. The order approved the settlement; certified the settlement class, finding that the class satisfied the requirements of Rule 23(a) and (b)(3); and approved the requested attorney's fees and expenses and incentive awards for the class representatives. Finally, the order overruled the objections to the settlement and made findings that some of the objectors were serial objectors.[5]

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[5] Serial objectors are those who bring objections that are merely "boilerplate and immaterial, while their true goal is to get paid some fee to go away." 4 William B. Rubenstein, Newberg on Class Actions § 13:20 (5th ed. 2021) [hereinafter "Newberg"]. The District Court's findings on this topic are largely unrelated to the merits of this appeal and may be dicta in any event. We do not review those findings here. See Keating v. City of Miami, 598 F.3d 753, 761 (11th Cir. 2010) ("[A]n appellate court 'reviews judgments, not statements in opinions.'").

Several objectors appealed, and the District Court granted Plaintiffs' motion to require the objectors to post appeal bonds in order to ensure payment of costs on appeal.

With the dust now settled,[6] this consolidated case presents five appeals filed by six objectors: George Cochran, John Davis, Theodore Frank and David Watkins (who filed a single appeal and are collectively referred to as "Mr. Frank"), Shiyang Huang, and Mikell West. Collectively, we refer to the six objectors as the "Objectors." This is their appeal.

II. DISCUSSION

The Objectors raise a wide array of issues for our consideration. We start by addressing the jurisdictional questions. From there, and in hopes of maintaining some semblance of organization, we proceed in as close to chronological order as this record permits. We begin our discussion of the merits by addressing the Objectors' challenge to the requirements the District Court imposed on them in its order directing notice of the settlement to the class. We next consider the Objectors' various challenges to the District Court's approval order: the process used in adopting the order and the court's decisions approving the class action

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[6] A total of nine objectors appealed the District Court's orders. Two of those nine objectors filed a single appeal, so eight appeals were filed in this Court. This Court sua sponte dismissed two of the eight appeals for lack of jurisdiction. And in an order issued together with this opinion, we now dismiss the appeal filed by Christopher Andrews, leaving us with five appeals filed by six objectors.

settlement, certifying the settlement class, awarding attorney's fees and expenses, and approving incentive awards for the class representatives. Finally, we address the Objectors' challenge to the appeal bonds imposed by the District Court.

A. Jurisdiction

We start now with two jurisdictional questions, which we consider de novo. See Jacobson v. Fla. Sec'y of State, 974 F.3d 1236, 1245 (11th Cir. 2020).[7] First, we address whether Plaintiffs had Article III standing to bring their claims. Second, we consider whether Article III's case-or-controversy requirement ceased to be met once the parties agreed to settle their dispute.

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[7] The parties do not dispute that we have jurisdiction over the Objectors' appeals. This is for good reason. In Devlin v. Scardelletti, 536 U.S. 1, 122 S. Ct. 2005 (2002), the Supreme Court held that nonnamed class members "who have objected in a timely manner to approval of the settlement at the fairness hearing have the power to bring an appeal without first intervening." Id. at 14, 122 S. Ct. at 2013. Otherwise, class members would be deprived of "the power to preserve their own interests in a settlement that will ultimately bind them, despite their expressed objections before the trial court." Id. at 10, 122 S. Ct. at 2011. Although Devlin involved objectors to a Rule 23(b)(1) settlement, which did not permit objectors to opt out of the settlement, its logic also applies to objectors to a Rule 23(b)(3) settlement who did not opt out (like those here) because they are bound by the settlement. See, e.g., Fidel v. Farley, 534 F.3d 508, 512–13 (6th Cir. 2008).

1. Article III Standing[8]

In order for a federal court to have jurisdiction under Article III of the Constitution, a plaintiff must have standing to bring the lawsuit. See Lujan v. Defs. of Wildlife, 504 U.S. 555, 559–60, 112 S. Ct. 2130, 2135–36 (1992). And for the plaintiff to have standing, he must "show that the defendant harmed him, and that a court decision can either eliminate the harm or compensate for it." Muransky v. Godiva Chocolatier, Inc., 979 F.3d 917, 924 (11th Cir. 2020) (en banc). More to the point, the "irreducible constitutional minimum" of standing contains three requirements. Lujan, 504 U.S. at 560, 112 S. Ct. at 2136. First, the plaintiff must have suffered an "injury in fact," which means the injury is "concrete and particularized" and "actual or imminent," as opposed to "conjectural or hypothetical." Id. (quotation marks omitted). Second, the plaintiff's injury must be "fairly traceable" to the challenged conduct of the defendant and not the result of some action by a third party not before the court. Id. (quotation marks omitted and alterations adopted). Finally, it must be likely that the plaintiff's injury will be redressed by a favorable court decision. Id. at 561, 112 S. Ct. at 2136. These requirements apply with full force in a class action, Muransky, 979 F.3d at 924, and even at the settlement approval stage, as a "court is

[8] Mr. Huang says Plaintiffs were required to prove they had Article III standing with evidentiary support at the final approval stage, yet he says Plaintiffs failed to do so. However, Mr. Huang's cited cases do not actually support his proposition. In any event, he does not raise any factual doubt about Plaintiffs' standing, so we need not decide this issue here.

powerless to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing," Frank v. Gaos, 586 U.S. __, 139 S. Ct. 1041, 1046 (2019) (per curiam). On the other hand, only one named plaintiff must have standing as to any particular claim in order for it to advance. Wilding v. DNC Servs. Corp., 941 F.3d 1116, 1124–25 (11th Cir. 2019).

Mr. Huang argues Plaintiffs lacked Article III standing to bring their claims for two reasons. First, he says those Plaintiffs who have not had their identities stolen have not suffered an injury in fact. Second, he says those Plaintiffs who have not had their identities stolen cannot have their injuries redressed by the settlement, as the settlement does not stop third parties from committing identity theft. We address each issue in turn.

i. Injury in Fact

We now turn to the question of whether Plaintiffs who have not had their identities stolen suffered an injury in fact. We hold that they have. Again, to establish standing, a plaintiff's injury must be (1) concrete, (2) particularized, and (3) either actual or imminent. Lujan, 504 U.S. at 560, 112 S. Ct. at 2136. Only the first and third elements are at issue here, so we focus on them in more detail.

An injury is concrete if the harm is "real." Muransky, 979 F.3d at 926 (quotation marks omitted). Economic injuries are "[c]ertainly" concrete. Debernardis v. IQ Formulations, LLC, 942 F.3d 1076, 1084 (11th Cir. 2019). So are identity theft and

damages resulting from such theft, see Resnick v. AvMed, Inc., 693 F.3d 1317, 1323 (11th Cir. 2012), as well as wasted time, Salcedo v. Hanna, 936 F.3d 1162, 1173 (11th Cir. 2019). A plaintiff can also satisfy the concreteness element by showing a "material" risk of harm. Muransky, 979 F.3d at 927 (quotation marks omitted). This Court has said this is a "high standard" that requires courts to consider the "magnitude of the risk." Id. This Court has also addressed injuries incurred while mitigating a risk of harm, such as purchasing a credit freeze or spending time or effort to minimize a risk of identity theft. "[A]ny assertion of wasted time and effort necessarily rises or falls along with this Court's determination of whether" a risk of injury is a concrete harm. Id. at 931. For that reason, when a plaintiff faces a sufficient risk of harm, the time, money, and effort spent mitigating that risk are also concrete injuries.

We now turn to the actual-or-imminent element. When there is no actual injury, an imminent injury must be "certainly impending," as allegations of "possible future injury are not sufficient." Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409, 133 S. Ct. 1138, 1147 (2013) (emphases and quotation marks omitted). It need not be "literally certain" that the injury will come about, but there must be a "substantial" risk. Id. at 414 n.5, 133 S. Ct. at 1150 n.5 (quotation marks omitted).

Applying these principles to the case before us, Plaintiffs have plausibly alleged an injury in fact.[9] Plaintiffs alleged that "hackers obtained at least 146.6 million names, 146.6 million dates of birth, 145.5 million Social Security numbers, 99 million addresses, 17.6 million driver's license numbers, 209,000 credit card numbers, and 97,500 tax identification numbers." With this information, Plaintiffs alleged that "identity thieves can create fake identities, fraudulently obtain loans and tax refunds, and destroy a consumer's credit-worthiness." Plaintiffs also alleged they "remain subject to a pervasive, substantial and imminent risk of identity theft and fraud" due to the "highly-sensitive nature of the information stolen," and that they spent time, money, or effort dealing with the breach. Given the colossal amount of sensitive data stolen, including Social Security numbers, names, and dates of birth, and the unequivocal damage that can be done with this type of data, we have no hesitation in holding that Plaintiffs adequately alleged that they face a "material" and "substantial" risk of identity theft that satisfies the concreteness and actual-or-imminent elements. See Muransky, 979 F.3d at 927; Clapper, 568 U.S. at 414 n.5, 133 S. Ct. at 1150 n.5.

The actual identity theft already suffered by some Plaintiffs further demonstrates the risk of identity theft all Plaintiffs face—though actual identity theft is by no means required when there is a sufficient risk of

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[9] Mr. Huang says Plaintiffs forfeited any arguments in support of standing by not raising them in the District Court. But Plaintiffs pled countless allegations of injury in their complaint. We therefore reject Mr. Huang's argument.

identity theft. Here, dozens of Plaintiffs allege they have already had their identities stolen and thus suffered injuries in many different ways. Specifically, those who suffered identity theft had numerous unauthorized charges and accounts made in their name; incurred specific numerical drops in their credit scores; had their ability to obtain loans affected; purchased credit monitoring; and spent time, money, and effort trying to mitigate their injuries, including disputing fraudulent activity, filing police reports, and otherwise dealing with identity theft. There is no dispute that these Plaintiffs' allegations of identity theft and resulting damages "constitute[] an injury in fact under the law."[10] Resnick, 693 F.3d at 1323. As such, the allegations of some Plaintiffs that they have suffered injuries resulting from actual identity theft support the sufficiency of all Plaintiffs' allegations that they face a risk of identity theft. Indeed, in Tsao v. Captiva MVP Restaurant Partners, LLC, 986 F.3d 1332 (11th Cir. 2021), our Court recently recognized that "some allegations of actual misuse or actual access to personal data" support Article III standing for "a data breach based on an increased risk of theft or misuse." Id. at 1340 (collecting cases); see also, e.g., McMorris v. Carlos Lopez & Assocs., LLC, 995 F.3d

[10] These Plaintiffs' allegations of this sort of "injury in fact" provide them with Article III standing. And as noted, only one named plaintiff must have standing for any particular claim to advance. Wilding, 941 F.3d at 1124–25. This means we could also undertake a claim-by-claim analysis of the many claims in this case to determine if there is at least one named plaintiff with the sort of injury required to bring each claim. But because we conclude that all Plaintiffs have adequately alleged a sufficient risk of identity theft, we need not undertake this additional task.

295, 301–02 (2d Cir. 2021) ("[C]ourts have been more likely to conclude that plaintiffs have established a substantial risk of future injury where they can show that at least some part of the compromised dataset has been misused.") (collecting cases).

Beyond the sufficient risk of identity theft and resulting injuries, a vast number of Plaintiffs who have not yet suffered identity theft also allege they have spent time, money, and effort mitigating the risk of identity theft. Their efforts include purchasing credit freezes, monitoring their financial accounts, and purchasing credit monitoring, among other things. As explained above, because the risk of harm here is a sufficient injury, the allegations of mitigation injuries made by these Plaintiffs are also sufficient. See Muransky, 979 F.3d at 931 ("[A]ny assertion of wasted time and effort necessarily rises or falls along with this Court's determination of whether the risk posed . . . is itself a concrete harm.").

Plaintiffs have easily shown an injury in fact.

ii. Redressability

With the issue of injury now resolved, we move on to address whether Plaintiffs' injuries are redressed by the settlement. Mr. Huang says those Plaintiffs who have not had their identities stolen cannot have their injuries redressed by the settlement because the settlement does not stop third parties from committing identity theft. We need not linger on this issue, as Mr. Huang's argument misunderstands the allegations of the complaint as well as the nature of the settlement. The Plaintiffs who have not suffered identity theft did

not sue Equifax in order to stop third parties from committing identity theft. Instead, they sued Equifax because of their injuries associated with the risk of identity theft. As discussed, these injuries include the time, money, and effort spent mitigating the risk of identity theft, including purchasing credit freezes, monitoring their financial accounts, and purchasing credit monitoring, among other things.

The settlement redresses the injuries resulting from these mitigation efforts. Specifically, for each class member, the settlement includes reimbursement for up to $20,000 of documented, out-of-pocket losses fairly traceable to the data breach (e.g., the cost of purchasing credit freezes and credit monitoring), and compensation of $25 per hour for up to 20 hours for time spent taking preventative measures against identity theft. And while the additional settlement benefits of 10 years of credit monitoring and seven years of identity restoration services might not stop a third party from committing identity theft, these benefits will help limit Plaintiffs' injuries. Credit monitoring can quickly alert Plaintiffs to an identity theft, and identity restoration services will help minimize the time and money spent by Plaintiffs to combat an identity theft. The settlement thus redresses Plaintiffs' injuries. See Lujan, 504 U.S. at 561, 112 S. Ct. at 2136.

2. Case-or-Controversy Requirement

With the issue of standing resolved, we now consider Mr. Huang's other argument concerning Article III jurisdiction. In his view, the District Court lacked jurisdiction to approve the settlement because

once the parties agreed to settle their dispute, there was not a case or controversy between the parties. Of course, Article III permits federal courts to address only "cases and controversies," which limits their jurisdiction to "questions presented in an adversarial context." Graham v. Butterworth, 5 F.3d 496, 498–99 (11th Cir. 1993) (citing Flast v. Cohen, 392 U.S. 83, 94–95, 88 S. Ct. 1942, 1949–50 (1968)). The controversy must exist at all stages of the litigation. Preiser v. Newkirk, 422 U.S. 395, 401, 95 S. Ct. 2330, 2334 (1975).

We are aware of no court that has adopted Mr. Huang's idea that a district court is somehow divested of jurisdiction (and thus lacks authority to approve the settlement) once parties agree to settle a class action. As we understand Mr. Huang's position, no class action could ever be approved, because as soon as the parties decide to settle, the case or controversy would vanish, and the court would therefore lack jurisdiction to approve the settlement.

To the contrary, we hold that Article III's case-or-controversy requirement is satisfied throughout the settlement process because the litigation remains in an adversarial posture during that process. First, the parties themselves remain in adversarial positions until the district court approves the settlement. Rule 23(e) states a class action "may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). This means the parties' decision to settle a class action is not consummated until the district court actually approves it. Cf. Haven Realty Corp. v. Coleman, 455 U.S. 363, 371 n.10, 102 S. Ct. 1114, 1120 n.10 (1982) (holding

that a settlement agreement did not moot certain claims because the agreement was "still subject to the approval of the District Court"). Indeed, the parties remain adversaries all throughout the settlement approval process because until approval, the settlement is not final, and if the district court rejects the settlement, the parties would continue their litigation. See In re Asbestos Litig., 90 F.3d 963, 988 (5th Cir. 1996) (holding Article III's case-or-controversy requirement was satisfied, notwithstanding a settlement, in light of the "the adversarial positions which the parties occupied before settlement negotiations and the positions to which they will return if the settlement is not approved"), vacated on other grounds, Ortiz v. Fibreboard Corp., 521 U.S. 1114, 117 S. Ct. 2503 (1997) (mem.).

Second, because the district court acts as a fiduciary for the class, there remains adversity between the class and the defendant. Rule 23(e) requires the district court to ensure the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The district court thus takes on a type of fiduciary role for the class, NPAS Sols., 975 F.3d at 1253, and works to ensure the settlement is "noncollusive in nature," 4 Newberg § 13:40; see also Manual for Complex Litigation § 21.61 ("[T]he judge must adopt the role of a skeptical client and critically examine . . . the proposed settlement terms[.]"). Our Court directs district judges to exercise "careful scrutiny" in order to "guard against settlements that may benefit the class representatives or their attorneys at the expense of absent class members." Holmes v. Cont'l Can Co., 706 F.2d 1144, 1147 (11th Cir. 1983) (quotation marks omitted). Third

and finally (and as this case demonstrates), objectors cause the settlement process to be more adversarial. While the settling parties may agree about the prospect of settlement, class action settlements are routinely subjected to objections that "provide the court an adversarial presentation of the issues under review, bringing the decision-making process closer to a familiar judicial decision." 4 Newberg § 13:40.

B. Requirements Imposed on the Objectors

Having established jurisdiction, we now turn to the Objectors' various challenges to the District Court's decisions in this case. After Plaintiffs and Equifax presented their final settlement agreement to the District Court, that court ordered notice of the settlement agreement to be provided to the class, such that members of the class had the opportunity to opt-out of the class or object to the settlement. In the order directing notice to the class, the District Court imposed a number of administrative requirements on those class members who wished to object. The District Court explained that it imposed these requirements because in a class action case it previously handled, an objector came in "out of the blue" and created a "really chaotic process." It also found that such requirements can help "expose objections that are lawyer-driven and filed with ulterior motives."

Among other things, the District Court required that each objection include: the objector's name and address; the objector's personal signature; the grounds for the objection; previous objections in recent class actions; and dates on which the objector was available to be deposed. In addition, if the objector had counsel

who intended to speak at the fairness hearing, the objection needed to include the legal and factual basis for the objection and the evidence to be offered at the hearing. Finally, if the objector had counsel who sought compensation from anyone other than the objector, the objection needed to include counsel's previous objections in recent class actions, counsel's experience in class action litigation, and information on the fees sought. Mr. Davis says these administrative requirements infringed on the objectors' right to be heard and to be represented by counsel in their objections. More to the point, he says that by imposing these requirements on objectors, including those with counsel, the District Court limited their right to object and deterred objections.[11]

We review a district court's management of a class action for abuse of discretion. See Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 342, 98 S. Ct. 2380, 2385 (1978) (applying abuse of discretion standard to a district court's order "concern[ing] the conduct of class actions" under Rule 23). Rule 23 grants district courts broad discretion to manage class actions. See Nissan Motor Corp., 552 F.2d at 1096 ("In the management of class actions, [Rule] 23 necessarily vests the district courts with a broad discretion to enable efficacious administration of the course of proceedings before it."); Gulf Oil Co. v. Bernard, 452 U.S. 89, 100, 101 S. Ct. 2193, 2200 (1981) ("Because of the potential for abuse,

[11] Mr. Davis also says the requirements allowed the District Court to reject objections on technical grounds. However, the District Court considered and rejected all objections on their merits "whether or not the objections [were] procedurally valid."

a district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties."). For instance, Rule 23 authorizes district courts to "prescribe measures to prevent undue repetition or complication in presenting evidence or argument," to "impose conditions on the representative parties or on intervenors," and to "deal with similar procedural matters." Fed. R. Civ. P. 23(d)(1)(A), (C), (E). At the same time, district courts' discretion is "not unlimited." Gulf Oil, 452 U.S. at 100, 101 S. Ct. at 2200.

Mr. Davis has failed to show the District Court abused its discretion here. The District Court explicitly imposed the requirements outlined here, not to deter objections or for some arbitrary purpose, but for the express purpose of avoiding a "chaotic process" in evaluating the objections. The District Court said it found these requirements help "expose objections that are lawyer-driven and filed with ulterior motives." The District Court was well within its broad discretion to impose the requirements for these stated purposes. See id.; see also, e.g., In re Deepwater Horizon, 739 F.3d 790, 809 (5th Cir. 2014) (requirement imposed on objector a "legitimate exercise" of court's discretion to minimize abuse); Manual for Complex Litigation § 21.662 (courts may be "inclined to find [discovery from objectors] useful to assess the validity of the objections"); 4 Newberg § 13:33 ("[C]lass counsel may seek discovery from objectors on issues such as the

objectors' . . . relationships with the professional objector counsel.").[12]

Beyond that, the requirements the District Court imposed were not particularly burdensome. Most requirements were clerical in nature, such as simply providing information. The most potentially burdensome requirement was being deposed, yet in many instances that was no more than a possibility. And of course, depositions are a normal part of litigation, see Fed. R. Civ. P. 30, including for objectors to class settlements, see In re Cathode Ray Tube (CRT) Antitrust Litig., 281 F.R.D. 531, 532, 534 (N.D. Cal. 2012) (ordering objector to sit for deposition regarding the "bases for his objection" and his "relationship with 'professional' or 'serial' objector counsel"); see also Granillo v. FCA US LLC, 2018 WL 4676057, at *7 (D.N.J. Sept. 28, 2018) ("[C]ourts across the country have approved . . . depositions of objectors who have voluntarily inserted themselves into [an] action[.]" (quotation mark omitted)); In re Netflix Privacy Litig.,

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[12] Mr. Davis notes that a recent amendment to Rule 23 requires district courts to approve any agreement between an objector and class counsel in which payment is "provided in connection with" a decision to forgo or withdraw an objection. See Fed. R. Civ. P. 23(e)(5)(B). In his view, this means objectors no longer bring meritless objections with the hope of being paid off, and thus the District Court's requirements were unnecessary. But Mr. Davis's argument assumes the amendment completely eliminated this type of extortion, which may not be a settled question. See, e.g., In re Foreign Exch. Benchmark Rates Antitrust Litig., 334 F.R.D. 62, 64 (S.D.N.Y. 2019) ("Approving agreements in these circumstances would serve only to encourage objectors or their attorneys to extract this type of payment[.]"). And even if the question is settled, this District Court did not abuse its discretion when it imposed the requirements for the other reasons discussed.

2013 WL 6173772, at *5 (N.D. Cal. Nov. 25, 2013) ("[W]hile absent class members are not normally included in discovery, Objectors have voluntarily inserted themselves into this action, and as such, depositions of the Objectors are relevant and proper.").[13]

To be sure, discovery requirements may in some cases "dissuade class members from exercising their right to object." 4 Newberg § 13:33. But here, the District Court found that any concerns about requirements deterring objections were "at odds with the number of objections received" and the fact that "few objectors had difficulty meeting these criteria." Mr. Davis has not shown the District Court erred in making this finding, especially given that the requirements were not particularly burdensome.

Of course, district courts must remain mindful that burdensome requirements could deter objectors from exercising their right to object while also fulfilling their obligation to manage class actions. This can be a difficult task. Whether a district court abuses its discretion in striking the right balance will invariably depend on the facts of each case, and the breadth of a court's discretion in this regard will tend to ebb and flow with the size and administrative difficulties of the class action. With this class of approximately 147

[13] There seems to be a dispute about whether all objectors were subject to depositions or just those that were represented by counsel. But Mr. Davis, who was not represented by counsel in his objection, admits that Plaintiffs sought to depose him. Thus, it appears both represented and non-represented objectors were subject to depositions.

million members, the District Court acted well within its discretion to impose the requirements it did.

C. Order Certifying Class and Approving Settlement

At the final hearing, after hearing arguments from Plaintiffs, Equifax, and various objectors, and after giving its oral rulings, the District Court directed Plaintiffs' counsel to draft a proposed order "summariz[ing] [the District Court's] rulings on the motions and [its] adoption basically of the arguments that have been made by the Plaintiffs and by Equifax in the hearing today." The District Court instructed Plaintiffs' counsel to obtain Equifax's approval before submitting the proposed order to the court, which it would then "consider signing." The District Court acted pursuant to its local rule, which states, "[u]nless the Court directs otherwise, all orders . . . orally announced by the district judge in Court shall be prepared in writing by the attorney for the prevailing party." N.D. Ga. R. 7.3. There is no indication in the record that the proposed order was ever disclosed to the class or filed on the docket. In fact, Plaintiffs acknowledge they emailed the proposed order directly to the District Court.

Some Objectors challenge this procedure on various grounds. These challenges include the assertions that: the District Court erred in adopting a proposed order "ghostwritten" by Plaintiffs' counsel; engaged in impermissible ex parte communications and violated various rules by failing to disclose the proposed order to the class; and erred by not including the proposed order in the appellate record. The Objectors also

request that this case be reassigned to a different judge on remand.[14] We consider each of these issues in turn after addressing one preliminary matter. Specifically, it is unclear how much of the proposed order—none at all, only some, or even verbatim—the District Court adopted. The Objectors ask us to assume that the District Court adopted the proposed order in full, and Plaintiffs and Equifax don't ask us to do otherwise. For the purposes of our review, we therefore assume the District Court adopted the proposed order verbatim.

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[14] Independently, Mr. Frank also argues that the District Court improperly relied on a declaration filed by Professor Robert Klonoff, who writes on class actions. Mr. Frank says the declaration was inadmissible under Federal Rule of Evidence 702 because Professor Klonoff provided a legal opinion. This issue is ultimately unrelated to the District Court's decision to adopt a proposed order, but Mr. Frank raises this issue in passing when discussing the proposed order issue, so we address it briefly here. Courts have held that Rule 702 is flexible at the final approval stage. See, e.g., Int'l Union, United Auto., Aerospace, and Agric. Implement Workers of Am. v. Gen. Motors Corp., 497 F.3d 615, 636–37 (6th Cir. 2007); see also 4 Newberg § 13:42 ("[T]raditional rules of evidence do not necessarily apply to the fairness hearing."). However, we need not decide whether Rule 702 applies at the final approval stage because even if Rule 702 applies—and even if Professor Klonoff's declaration violated Rule 702—Mr. Frank fails to show the error was anything other than harmless. See Furcron v. Mail Ctrs. Plus, LLC, 843 F.3d 1295, 1304 (11th Cir. 2016) ("[E]ven a clearly erroneous evidentiary ruling will be affirmed if harmless."). Although the District Court said Professor Klonoff's declaration was "particularly helpful," it expressly stated its rulings were "not dependent upon his declaration."

1. Ghostwritten Order

Mr. Frank and Mr. West say the District Court erred in adopting a proposed order "ghostwritten" by Plaintiffs' counsel. This Court has "repeatedly condemned the ghostwriting of judicial orders by litigants," and cases admonishing courts for the verbatim adoption of such orders are "legion." In re Colony Square Co., 819 F.2d 272, 274–75 (11th Cir. 1987). When such a practice is permitted, the drafting party has an "overwhelming" "temptation to overreach and exaggerate." Id. at 275. Beyond that, the "quality of judicial decisionmaking suffers when a judge delegates the drafting of orders to a party," as "the writing process requires a judge to wrestle with the difficult issues before him and thereby leads to stronger, sounder judicial rulings." Id.[15]

Even so, as the parties acknowledge, our Court has not enforced a per se rule prohibiting this practice. Even though this Court has sharply critiqued the practice of having the prevailing party author court orders, we have continued to approve courts' adoption of proposed orders, some even verbatim. See, e.g., In re Dixie Broad., Inc., 871 F.2d 1023, 1029–30 (11th Cir. 1989) (refusing to vacate "ghostwritten" order when judge told all counsel "in open court" that he asked a party's counsel to draft the order, the other parties did not request the opportunity to review the draft order or make objections to it, and the parties had ample

[15] We note that Northern District of Georgia Rule 7.3 does not appear to be in keeping with the admonitions of our Court about this practice.

opportunity to argue their case); Colony Square, 819 F.2d at 276–77 (practice "not fundamentally unfair" because the judge "reached a firm decision" before asking counsel to draft the proposed order, which the judge said must reach a particular result and discuss specific points, and because the losing party "had ample opportunity to present its arguments"); Fields v. City of Tarpon Springs, 721 F.2d 318, 320–21 (11th Cir. 1983) (per curiam) (district judge "did not abdicate his adjudicative role" in the "wholesale adoption of plaintiff's proposed order" because the judge "had command of the legal issues and the evidentiary proceedings," "ruled on the scope and manner of the evidence presented," and was "an active arbiter of the dispute"); see also Anderson v. City of Bessemer City, 470 U.S. 564, 572, 105 S. Ct. 1504, 1510–11 (1985) (noting criticism of "courts for their verbatim adoption of findings of fact prepared by prevailing parties" yet stating "that even when the trial judge adopts proposed findings verbatim, the findings are those of the court").

Our guiding principle in determining whether to vacate the adoption of a proposed order is whether "the process by which the judge arrived at [the order] was fundamentally unfair." Colony Square, 819 F.2d at 276. If a process was fundamentally fair, then the concerns ordinarily associated with a ghostwritten order are greatly tempered. Without a per se rule, we determine whether a process was fundamentally unfair by evaluating the facts of each case. Also, we glean some relevant considerations from our precedent, including: whether the losing party had "ample opportunity" to present its arguments, id. at 277; see also Dixie Broad., 871 F.2d at 1030; whether the court independently

"reached a firm decision" before requesting a proposed order, Colony Square, 819 F.2d at 276; see also Fields, 721 F.2d at 320–21; whether the court, in directing a party to draft the proposed order, instructed that the order "reach[] a particular result and discuss[] specific points," Colony Square, 819 F.2d at 276; whether the court directed a party to draft the proposed order in open court or otherwise publicly, Dixie Broad., 871 F.2d at 1030; whether other parties requested the opportunity to review the proposed order or make objections to it, id.; and whether the court "had command" of the issues and proceedings and was an "active arbiter" throughout the litigation, Fields, 721 F.2d at 320–21.

Applying these considerations, we conclude the process by which the District Court adopted the proposed order was not fundamentally unfair. Mr. Frank and Mr. West both had ample opportunity to present their arguments. Both lodged detailed written objections to the settlement agreement. Both appeared through counsel at the final hearing and presented arguments. And contrary to their assertions, they did have an opportunity to respond to the order. After the District Court adopted the proposed order, Mr. West moved to amend it. And it's not as if these opportunities to present their arguments were hollow procedures; the District Court heard from Mr. Frank and Mr. West at the fairness hearing, considered their written objections, and rejected their objections on the merits. Ultimately, the District Court granted Mr. West's motion to amend the order over Plaintiffs' objections and issued a revised order based on West's arguments.

The District Court reached a firm decision before ever directing Plaintiffs' counsel to draft a proposed order. And the District Court instructed that the order reach a particular result and discuss specific points: the court told Plaintiffs' counsel that the order should "summarize[] [its] rulings on the motions and [its] adoption basically of the arguments that have been made by the Plaintiffs and by Equifax in the hearing today."[16] It even informed Plaintiffs' counsel that it would only "consider signing" the proposed order, meaning its instruction to prepare a proposed order was not a blank check. The District Court did all this in open court for everyone to hear, including the Objectors, and not one of them objected to the process nor requested the opportunity to review the proposed order or make objections to it. There is also no question the District Court was an active arbiter of this litigation and had great command of the proceedings. For instance, the District Court issued a detailed ruling

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[16] We don't find it significant that the District Court's written order was more detailed than its oral ruling. District courts often provide a summary ruling from the bench, which is later memorialized in a longer written order. And in any event, it is ultimately the District Court's written order that controls in civil cases. See, e.g., Billingsley v. Jefferson County, 953 F.2d 1351, 1354 (11th Cir. 1992) ("[T]he district court's memorandum opinion constitutes its findings of facts and conclusions of law," as the district court was not bound by its "findings of fact, rulings, or conclusions of law made during the course of [the] trial."); Mercantel v. Michael & Sonja Saltman Family Tr., 993 F.3d 1212, 1239 & n.23 (10th Cir. 2021) (approving ghostwritten summary judgment order, even though "the final written decision cover[ed] additional issues not explicitly addressed at the hearing," because "at least in civil cases, a court's written decision generally controls over . . . an earlier oral ruling").

on Equifax's motion to dismiss and engaged with the issues at the fairness hearing. Finally, the fact that the District Court granted the motion to dismiss in part and denied it in part, and that it granted Mr. West's motion to amend the approval order over Plaintiffs' objections, shows us the court was not beholden to any party. Because the process by which the District Court adopted its order was not fundamentally unfair, we will not vacate the order.

We caution that courts should not view this decision as condoning the District Court's practice. Judicial ghostwriting remains most unwelcome in this Circuit. For this reason, and pursuant to our supervisory power, we strongly urge the District Court to reconsider the local rule, see N.D. Ga. R. 7.3, that brought about this problem in the first place. See Piambino v. Bailey, 757 F.2d 1112, 1145–46 (11th Cir. 1985) (stating this Court has the "power to supervise the district courts" in a "wide variety of situations," including in formulating rules of civil litigation, in order to "ensure that the judicial process remains a fair one").

2. Ex Parte Communications

Mr. Frank and Mr. West next argue there were impermissible ex parte communications in the District Court because Plaintiffs' counsel failed to disclose the proposed order to the class. They say the ex parte communications violated Canon 3(A)(4) of the Code of Conduct for United States Judges and various local rules.

Any ex parte communications were harmless error.[17] See Colony Square, 819 F.2d at 276 (citing Rushen v. Spain, 464 U.S. 114, 104 S. Ct. 453 (1983)) (noting that ex parte communications can be upheld when the error is harmless). We reach this conclusion for four reasons. First, at the Objectors' request, we assume the District Court adopted the proposed order verbatim, so for the purposes of our review the Objectors are privy to the exact communications they claim were made ex parte. Second, as discussed above, the District Court's process was not fundamentally unfair, and thus we can affirm its decision notwithstanding any ex parte communications. See id. at 276–77. Indeed, it appears that the District Court in Colony Square engaged in more obvious ex parte communications than what the Objectors assert here, and yet this Court held there was no fundamental unfairness and thus upheld the order at issue there. In Colony Square, the judge called the prevailing party's lawyer after the hearing and asked him to draft the order. Id. at 274. The lawyer's firm delivered the draft order to the judge, and the losing party was not notified of any ex parte communications. Id. Here, by contrast, the District Court requested that Plaintiffs' counsel draft a proposed order in open court, and no one objected to the process or requested to see a copy of the proposed order.

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[17] Because we hold that any ex parte communications were harmless error, we need not address whether the communications violated Canon 3(A)(4) or any local rules.

Third, as discussed throughout this opinion, we identify no errors made by the District Court, so we cannot say any ex parte communications caused the court to err in a way that prejudiced the Objectors.[18] See United States v. Adams, 785 F.2d 917, 921 (11th Cir. 1986) (holding ex parte communications were harmless error when there was no prejudice). Finally, the record demonstrates that the Objectors had the opportunity to take up with the judge any problems they identified. After the District Court issued the approval order, about which these Objectors complain, Mr. West moved to amend it. The District Court granted Mr. West's motion and issued a revised order based on his arguments. This too shows a lack of prejudice and thus, at most, harmless error. See id.

3. Record on Appeal

In the District Court, some of the Objectors moved for the appellate record to be supplemented with the proposed order under Federal Rule of Appellate Procedure 10(e). Relevant here, Rule 10(e) says "[i]f any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly." Fed. R. App. P. 10(e)(1). In other words, the appellate record need not be supplemented when the record "truly

[18] As addressed later, we must remand this case to the District Court for it to vacate the incentive awards for the class representatives based on this Court's decision in NPAS Solutions, which postdated the District Court's order. This of course is not an error that resulted from any ex parte communications, and thus it does not amount to prejudice.

discloses what occurred in the district court." Hoover v. Blue Cross & Blue Shield of Ala., 855 F.2d 1538, 1543 n.5 (11th Cir. 1988) (quotation marks omitted). The District Court ultimately denied the Objectors' motion, finding Rule 10(e) did not apply because "the record truly discloses what occurred in the district court."

Mr. Frank and Mr. West challenge this ruling and take issue with the fact that the proposed order is not in the record on appeal. They wish to supplement the record in order to show that the final order was a verbatim copy of the proposed order. Mr. Davis likewise says the public has a right to view the proposed order, primarily to determine whether the District Court adopted it in full. But in light of our decision to accede to the Objectors' request that we assume a verbatim adoption of the proposed order by the District Court, there is no need to supplement the record with this material on appeal. Id. Because we assume the proposed order (which is not in the record) is identical to the approval order under review here (which is in the record), the record on appeal reflects what occurred in the District Court, at least for purposes of our review.

4. Reassignment on Remand

In light of the foregoing supposed errors, as well as some other late-breaking allegations of bias, Mr. Frank and Mr. West ask us to reassign this case to a different judge on remand. As discussed below, we must remand this case to the District Court solely for it to vacate the incentive awards. We therefore must briefly discuss the issue of reassignment on remand.

To begin, it's not obvious to us that we have the authority to reassign this case. This case was assigned to Chief Judge Thrash by the United States Judicial Panel on Multidistrict Litigation (the "Panel"). Under the Panel's rules, "[i]f for any reason the transferee judge is unable to continue [its] responsibilities, the Panel shall make the reassignment of a new transferee judge." Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, Rule 2.1(e) (emphasis added); see In re IKO Roofing Shingle Prods. Liab. Litig., 757 F.3d 599, 600 (7th Cir. 2014) (explaining that 28 U.S.C. § 1407(b) "gives the Panel exclusive power to select the judge").

But we need not decide that question because reassignment is not justified here. Reassignment is a "severe remedy," which is "only appropriate where the trial judge has engaged in conduct that gives rise to the appearance of impropriety or a lack of impartiality in the mind of a reasonable member of the public." Comparelli v. Republica Bolivariana de Venezuela, 891 F.3d 1311, 1328 (11th Cir. 2018) (quotation marks omitted). The Objectors have not shown any actual bias from Chief Judge Thrash. While they certainly disagree with his decisions, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994).

Without any indication of actual bias, this Court considers three factors when deciding whether to reassign a case: "(1) whether the original judge would have difficulty putting [his] previous views and findings aside; (2) whether reassignment is appropriate

to preserve the appearance of justice; [and] (3) whether reassignment would entail waste and duplication out of proportion to gains realized from reassignment." Comparelli, 891 F.3d at 1328 (quotation marks omitted) (quoting United States v. Torkington, 874 F.2d 1441, 1447 (11th Cir. 1989) (per curiam)). No factor supports reassignment here. As to the first factor, Chief Judge Thrash would not have difficulty putting his views aside, as the record indicates he corrects his mistake and amends his orders when he thinks he reached the wrong result. For instance, he revised the approval order after Mr. West moved to amend. For the second factor, Mr. Frank and Mr. West have not shown how reassignment is appropriate to preserve the appearance of justice. Finally, the third factor clearly weighs against reassignment. This is a colossal multidistrict litigation case with over 1200 docket entries in the District Court over the course of just a few years. Reassignment would create enormous waste and duplication.

In support of reassignment, Mr. Frank and Mr. West rely heavily on Chudasama v. Mazda Motor Corp., 123 F.3d 1353 (11th Cir. 1997), in which this Court reassigned a case on remand in part because of "the court's practice of uncritically adopting counsel's proposed orders." Id. at 1373 n.46. Chudasama is far from on point. For one, as discussed above, the District Court's decision to adopt the proposed order at issue here was not fundamentally unfair. Beyond that, the Objectors have not established a "practice" by the District Court of "uncritically adopting" proposed orders. Id. Finally, this case involves none of the four

other considerations that contributed to this Court's decision to reassign the case in Chudasama. See id.

D. Settlement Approval

We now turn to the substance of the approval order, beginning with the District Court's approval of the settlement agreement. A class action may be settled only with court approval, which requires the court to find the settlement "fair, reasonable, and adequate" based on a number of factors. Fed. R. Civ. P. 23(e)(2).[19] This Court has also instructed district courts to

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[19] The Rule 23(e)(2) factors include whether:

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

Fed. R. Civ. P. 23(e)(2). The Objectors do not challenge the District Court's application of the Rule 23(e)(2) factors, so we do not address them in depth. Although Mr. Frank says in passing that Rule 23(e)(2)(D) was not satisfied, he does not press it with any argument or authority. We therefore treat his argument abandoned. See Access Now, Inc. v. Sw. Airlines Co., 385 F.3d 1324, 1330 (11th Cir. 2004).

consider several additional factors called the Bennett factors. See Bennett, 737 F.2d at 986. The factors include (1) "the likelihood of success at trial"; (2) "the range of possible recovery"; (3) "the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable"; (4) "the complexity, expense and duration of litigation"; (5) "the substance and amount of opposition to the settlement"; and (6) "the stage of proceedings at which the settlement was achieved." Id. The District Court here considered the Rule 23(e)(2) factors and the Bennett factors and found the settlement was "fair, reasonable, and adequate" and that the settlement's relief "exceeds the relief provided in other data breach settlements and . . . is in the high range of possible recoveries if the case had successfully been prosecuted through trial."

We review an order approving a class action settlement for abuse of discretion. Ault v. Walt Disney World Co., 692 F.3d 1212, 1216 (11th Cir. 2012). And because "[d]etermining the fairness of the settlement is left to the sound discretion of the trial court," we will not overturn its decision "absent a clear showing of abuse of that discretion." Bennett, 737 F.2d at 986 (emphasis added); see also 4 Newberg § 13:47 ("[A]ppellate courts review the approval decision under a highly deferential abuse of discretion standard.").

This degree of deference to a decision approving a class action settlement makes sense. Settlements resolve differences and bring parties together for a common resolution. See Nissan Motor Corp., 552 F.2d at 1105 ("Settlement agreements are highly favored in the law and will be upheld whenever possible because

they are a means of amicably resolving doubts and uncertainties and preventing lawsuits." (quotation marks omitted)). Settlements also save the bench and bar time, money, and headaches. See 4 Newberg § 13:44 ("The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals."). As such, there is a "strong judicial policy favoring settlement." Bennett, 737 F.2d at 986.

Mr. Cochran challenges this settlement approval because he says the District Court's approval order failed to recognize the "unique risks associated with stolen Social Security numbers," which means the settlement includes inadequate relief to remedy those risks. From this vantage point, he thinks the District Court misapplied two of the Bennett factors: "the range of possible recovery" and "the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable." Id.

Mr. Cochran has failed to show an abuse of discretion, as the record clearly demonstrates the District Court was aware of the unique risks associated with stolen Social Security numbers. The complaint alleged, among other things, that "all of the 147.9 million Americans whose information was stolen in the breach remain subject to a pervasive, substantial and imminent risk of identity theft and fraud, a risk that will continue so long as Social Security numbers have such a critical role in consumers' financial lives." In its order on Equifax's motion to dismiss, the District Court acknowledged the data breach involved Social Security

numbers and that "[u]sing this information, identity thieves can create fake identities, fraudulently obtain loans and tax refunds, and destroy a consumer's credit-worthiness." And at the fairness hearing for approval of the settlement, both Plaintiffs' counsel and an objector discussed the risks associated with stolen Social Security numbers. Finally, the District Court's approval order expressly highlighted that the settlement includes a "lengthy period" of credit monitoring and "identity theft insurance and identity restoration services—features designed to address identity theft." In this way, the approval order recognized that the settlement includes measures to redress the very risks Mr. Cochran says the District Court ignored.

We also reject Mr. Cochran's view that the District Court misapplied two of the Bennett factors: "the range of possible recovery" and "the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable." Bennett, 737 F.2d at 986. When considering these factors, the Court found the settlement was "fair, reasonable, and adequate because the settlement reflects relief the Court finds is in the high range of what could have been obtained had the parties continued to litigate." Because the District Court was aware of the risks associated with stolen Social Security numbers and found that the settlement includes benefits to redress those risks, there is no "clear showing" that the District Court abused its discretion in applying these factors. See id. And while Mr. Cochran might wish for longer credit monitoring and identity theft restoration services, such quibbling with a settlement's terms is not a part of an abuse of

discretion review. See Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977) (trial judge "should be hesitant to substitute its own judgment for that of counsel"); Manual for Complex Litigation § 21.61 ("The judge cannot rewrite the agreement."); see also Bennett, 737 F.2d at 986 ("[C]ompromise is the essence of settlement.").

E. Class Certification

In addition to approving the settlement, the District Court's order also certified the class action for settlement purposes. Rule 23 sets forth a number of requirements that a class action must meet in order for a district court to certify the class. First, all four requirements in Rule 23(a) must be satisfied: (1) the class must be "so numerous that joinder of all members is impracticable"; (2) there must be "questions of law or fact common to the class"; (3) the class representatives' claims or defenses must be "typical" of the class's claims or defenses; and (4) the class representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a); see Vega v. T-Mobile USA, Inc., 564 F.3d 1256, 1265 (11th Cir. 2009). These four requirements are often referred to as the numerosity, commonality, typicality, and adequacy requirements, respectively. See Vega, 564 F.3d at 1265.

In addition to meeting these four requirements, a class action must also satisfy one of the three parts of Rule 23(b). Fed. R. Civ. P. 23(b); see Vega, 564 F.3d at 1265. The District Court here found that the class action satisfied Rule 23(b)(3). Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only

individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). We review a class certification ruling for abuse of discretion. See Ault, 692 F.3d at 1216.

Only Mr. Frank challenges the District Court's class certification ruling, and he does so only as to the adequacy requirement.[20] We thus focus solely on the adequacy requirement in Rule 23(a)(4). The adequacy requirement is that a class representative "must adequately protect the interests of those he purports to represent." Valley Drug Co. v. Geneva Pharms., LLC, 350 F.3d 1181, 1189 (11th Cir. 2003) (quotation marks omitted). To determine whether the adequacy requirement is met, we ask: "(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." Id. (quotation marks omitted). Mr. Frank's challenge concerns only the first question, further narrowing our focus. According to Mr. Frank, there is a fundamental conflict of interest between the class representatives and the class because some class members had state statutory damages claims while others did not. He says there should have been subclasses and separate counsel to address these different types of claims.

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[20] When discussing Article III standing, Mr. Huang briefly says Rule 23(b)(3)'s predominance requirement is not met. He does not press this assertion with any argument, so we consider it abandoned. See Access Now, 385 F.3d at 1330.

Minor differences in the interests of the class representatives and the class are not enough to defeat class certification under the adequacy requirement. Id. Instead, only a "fundamental" conflict "going to the specific issues in controversy" can defeat class certification. Id. (quotation marks omitted); see 1 Newberg § 3:58 ("[N]ot every potential distinction . . . will render the representative inadequate. Only conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the Rule 23(a)(4) adequacy requirement." (footnote omitted)). A conflict is fundamental "where some party members claim to have been harmed by the same conduct that benefitted other members of the class." Valley Drug, 350 F.3d at 1189. This Court has also recognized that a class action "cannot be certified when its members have opposing interests" or "where the economic interests and objectives of the named representatives differ significantly from the economic interests and objectives of unnamed class members." Id. at 1189–90 (quotation marks omitted).

Mr. Frank has failed to show the District Court abused its discretion in certifying the settlement class. There is no dispute that all these Plaintiffs' claims arise out of the same unifying event, Equifax's data privacy breach. Likewise, all Plaintiffs seek redress for the same injury. They all seek compensation for injuries associated with the risk of identity theft. There is also no dispute that the data breach harmed all class members and made none better off. See id. at 1189. Indeed, the class is expressly limited to the "U.S. consumers identified by Equifax whose personal information was compromised."

It is true that some class members had state law statutory damages claims while others did not, but we don't view that difference as a "fundamental" conflict "going to the specific issues in controversy." Id. As Mr. Frank acknowledged at oral argument, only the District of Columbia and Utah statutory damages claims are before us on appeal. For one thing, Mr. Frank's singular devotion to the D.C. and Utah claims ignores the fact that all class members had negligence and negligence per se claims under Georgia law that united the class. What's more, Mr. Frank fails to show that the two statutory damages claims were valuable, as he demonstrates nothing about how the claims were a sure bet. In fact, he doesn't cite a single case in which a plaintiff recovered statutory damages under either statute in a data breach case.

Even a brief review of the D.C. and Utah claims reveals significant barriers to Plaintiffs' success. While the D.C. Code authorizes certain damages for a data breach, this provision wasn't enacted until 2020, well after the data breach here occurred in 2017. See Security Breach Protection Amendment Act of 2020, D.C. Laws 23-98 (2020). Perhaps Plaintiffs could have tried to frame the data breach as a violation of D.C.'s prohibition against certain unfair or deceptive trade practices, see D.C. Code § 28-3904, but that presents its own set of issues about proving that a breach by a third party was an unfair or deceptive trade practice by Equifax. The Utah claim, in turn, required Plaintiffs to show Equifax engaged in a "[c]onsumer transaction" and "knowingly or intentionally" violated an enumerated prohibition. Utah Code §§ 13-11-3(2), -4(2). Given that Equifax might not have been in privity with

Plaintiffs and that this case arose out of a breach by a third party, these requirements may well have been difficult to show. Therefore, to the extent some class members had D.C. or Utah statutory damages claims while others did not, there were no opposing or economic interests that were at odds.

The District Court's decision aligns with the reasoned approach adopted by courts in other data breach cases. For instance, in In re Anthem, Inc. Data Breach Litigation, 327 F.R.D. 299 (N.D. Cal. 2018), the District Court found the adequacy requirement satisfied because all class members had their personal information compromised in the same data breach and generally sought the same relief. Id. at 309–11. Beyond that, the District Court found that even though there might have been variations in state law, the named representatives included "individuals from each state" and the differences in state remedies were not "sufficiently substantial so as to warrant the creation of subclasses." Id. at 310 (quotation marks omitted). The same reasoning applies here. The class members all had their personal information compromised in the same data breach; they seek redress for similar injuries; and, to the extent some members have statutory damages under state law and others do not, there are class representatives from every single state and, due to litigation risks, the differences in remedies are not "sufficiently substantial so as to warrant the creation of subclasses." Id. (quotation marks omitted); see also In re Target Corp. Customer Data Sec. Breach Litig., 2017 WL 2178306, at *6 (D. Minn. May 17, 2017) (noting the "availability of potential statutory damages . . . does not, by itself, mean that the interests

of these class members are antagonistic to the interests of class members from other jurisdictions," particularly in light of the "substantial barriers to any individual class member actually recovering statutory damages").

By contrast, the decisions Mr. Frank relies on, in which courts held that class actions failed to satisfy the adequacy requirement, are inapposite. For instance, Ortiz v. Fibreboard Corp., 527 U.S. 815, 119 S. Ct. 2295 (1999) and Amchem Products, Inc. v. Windsor, 521 U.S. 591, 117 S. Ct. 2231 (1997), addressed two class actions against asbestos manufacturers, neither of which involved statutory damages claims. Ortiz, 527 U.S. at 821–22, 119 S. Ct. at 2302–03; Amchem, 521 U.S. at 597, 117 S. Ct. at 2237. The plaintiffs had diametrically different injuries within each class action. Some plaintiffs in the classes had already suffered physical injury as a result of exposure to asbestos, while others might have been at risk of injury in the future. Ortiz, 527 U.S. at 856, 119 S. Ct. at 2319; Amchem, 521 U.S. at 602–03, 117 S. Ct. at 2240. This meant some plaintiffs wanted compensation immediately while others wanted it in the future. Ortiz, 527 U.S. at 856, 119 S. Ct. at 2320; Amchem, 521 U.S. at 626, 117 S. Ct. at 2251. Here, by contrast, Plaintiffs alleged that they face the same risk of identity theft and, among other things, sought the same compensatory damages for that injury. Plaintiffs likewise all receive the same benefits to redress that shared injury. And while Ortiz was also based on the fact that some plaintiffs had more valuable claims than others, see Ortiz, 527 U.S. at 857, 119 S. Ct. at 2320, that's not the case here. For the reasons set out above, Mr. Frank has failed to show

how the D.C. and Utah statutory damages claims increased the value of certain Plaintiffs' cases.

Mr. Frank's reliance on In re Literary Works in Electronic Databases Copyright Litigation, 654 F.3d 242 (2d Cir. 2011), even if it was binding on this Court, is even further off the mark. In Literary Works, there were three groups of claims (Categories A, B, and C, which had claims that decreased in value respectively) involving three different provisions of the Copyright Act. Id. at 246. The proposed settlement said that if all claims exceeded a set cap, Category C claims would be reduced pro rata first, such that those with just Category C claims might end up with nothing. Id. The Second Circuit reasoned the adequacy requirement of Rule 23(a)(4) was not met because Category A and Category B claims were "more lucrative" than Category C claims and because the reduction of Category C claims could "deplete the recovery of Category C-only plaintiffs in their entirety before the Category A or B recovery would be affected." Id. at 252, 254. But here (putting aside the already addressed issue of the value of the statutory damages claims), there is no risk that any members of the class will have their ability to get settlement benefits reduced to zero because some other members got more relief from the settlement. Instead, all class members are entitled to the same class benefits.

At bottom, this record reflects no fundamental conflict between the class representatives and the rest of the class, and thus the adequacy requirement under Rule 23(a)(4) was satisfied. The District Court

therefore did not abuse its discretion in certifying the class action.[21]

F. Attorney's Fee Award

In addition to approving the settlement as fair, reasonable, and adequate and certifying the class action for settlement purposes, the District Court also approved Plaintiffs' counsel's request for $77.5 million in attorney's fees. See Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."). Relying on our precedent in Camden I Condominium Association, Inc. v. Dunkle, 946 F.2d 768 (11th Cir. 1991), the District Court applied what's called the percentage method. In Camden I, this Court held that in common fund settlements like this one, an attorney's fee award "shall be based upon a reasonable percentage of the fund established for the benefit of the class." Id. at 774. The percentage method requires a district court

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[21] Mr. Frank also says the District Court erred in finding that separate subclasses and representation would not benefit the class as a whole. Related to our conclusion that the District Court did not abuse its discretion in certifying the settlement class is our conclusion that the District Court did not err in its separate finding that subclasses would not benefit the class as a whole. See, e.g., In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mex., on Apr. 20, 2010, 910 F. Supp. 2d 891, 918–19 (E.D. La. 2012) ("In the absence of conflicts between members of the Settlement Class, subclasses are neither necessary, useful, nor appropriate here. . . . Such rigid formalism, which would produce enormous obstacles to negotiating a class settlement with no apparent benefit, is not required and could even reduce the negotiating leverage of the class.").

to consider a number of relevant factors called the Johnson factors in order to determine if the requested percentage is reasonable. See id. at 772 & n.3, 775 (citing Johnson v. Ga. Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974)).[22] The District Court found the request for $77.5 million in fees was 20.36 percent of the $380.5 million common settlement fund and found this percentage was reasonable based on the Johnson factors. And while noting it was not required to do so, the District Court also used the "lodestar method" as a "cross-check on the reasonableness of a percentage-based fee" and found that "the requested fee easily passes muster if a cross-check is done."

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[22] The Johnson factors include 12 factors from the opinion itself:

> (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; (12) awards in similar cases.

Camden I, 946 F.2d at 772 & n.3. The Johnson factors also include a handful of additional factors this Court added in Camden I: "the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." Id. at 775. The Objectors challenging the District Court's decision to award attorney's fees do not directly challenge its application of the factors, so we do not undertake a complete review of the factors.

Two Objectors, Mr. Davis and Mr. West, challenge the District Court's decision. We address their concerns in turn, reviewing de novo the proper standard for attorney's fee awards and reviewing the District Court's decision to award attorney's fees for abuse of discretion. Loggerhead Turtle v. Cmty. Council of Volusia Cnty., 307 F.3d 1318, 1322 (11th Cir. 2002).

Mr. Davis makes two arguments. First, he says the District Court applied the wrong standard and should have applied the lodestar method,[23] not the percentage method, in determining how much to award in attorney's fees. In his view, Camden I's percentage method is no longer good law, as he argues the Supreme Court's decision in Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 130 S. Ct. 1662 (2010), abrogated Camden I. Perdue is different, however, because it is a case in which the Supreme Court applied the lodestar method to claims made under a fee-shifting statute. Id. at 546, 130 S. Ct. at 1669. Second, Mr. Davis argues Camden I and the percentage method are "at odds" with a handful of other Supreme Court cases that "essentially" applied the lodestar method.

Mr. Davis's first argument is foreclosed by our precedent. It is undisputed that this case involves a common settlement fund and in NPAS Solutions this Court expressly held that Camden I is "good law" in common fund cases and that "Perdue didn't abrogate

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[23] Under the lodestar method, a district court determines the number of hours worked by plaintiffs' counsel, multiplies those hours by a reasonable hourly rate, and then adjusts the final amount upward or downward based on various factors. Camden I, 946 F.2d at 772.

Camden I." 975 F.3d at 1262 n.14; see also In re Home Depot Inc., 931 F.3d 1065, 1084–85 (11th Cir. 2019) ("There is no question that the Supreme Court precedents stretching from Hensley to Perdue are specific to fee-shifting statutes. . . . Thus, these precedents are not binding outside of the statutory context. For this reason, we have held that the Supreme Court precedent requiring the use of the lodestar method in statutory fee-shifting cases does not apply to common-fund cases."). Indeed, although Perdue applied the lodestar method, it involved "the calculation of an attorney's fee[] under federal fee-shifting statutes" and was based on the Supreme Court's "prior decisions concerning the federal fee-shifting statutes." 559 U.S. at 546, 552, 130 S. Ct. at 1669, 1672.[24] Nothing in Perdue considered the appropriate method for calculating attorney's fees in a common fund case. The percentage method therefore remains the proper method to apply when awarding attorney's fees in common fund settlement cases.

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[24] That this case at one point included a claim under a fee-shifting statute (the Fair Credit Reporting Act) is of no consequence. For one thing, the District Court dismissed that claim before the parties settled this litigation. Beyond that, the parties' settlement involved a common fund settlement, and "[w]here there has been a settlement, the basis for the statutory fee award has been discharged, and it is only the fund that remains." Home Depot, 931 F.3d at 1082 (quotation marks omitted) (quoting Brytus v. Spang & Co., 203 F.3d 238, 246 (3d Cir. 2000)); see also, e.g., Florin v. Nationsbank of Ga., N.A., 34 F.3d 560, 563 (7th Cir. 1994) (holding a fee-shifting statute "do[es] not purport to control fee awards in cases settled with the creation of a common fund").

Neither are we persuaded by Mr. Davis's argument that Camden I and the percentage method are "at odds" with a handful of Supreme Court cases that "essentially" applied the lodestar method. The Supreme Court has never categorically prohibited the percentage method in common fund cases. See Blum v. Stenson, 465 U.S. 886, 900 n.16, 104 S. Ct. 1541, 1550 n.16 (1984) (noting that for "the calculation of attorney's fees under the 'common fund doctrine'" the "reasonable fee is based on a percentage of the fund bestowed on the class"); Goldberger v. Integrated Res., Inc., 209 F.3d 43, 49 (2d Cir. 2000) (noting that Blum "provided all the impetus needed for a rejuvenation of the percentage method," as "Blum indicates that the percentage-of-the-fund method is a viable" approach to calculating attorney's fees in common fund cases (quotation marks omitted)). To the contrary, and as Mr. Davis acknowledges, the Supreme Court has applied the percentage method in common fund cases. Without a categorical prohibition on the percentage method in common fund settlement cases, Camden I and the percentage method remain the law in this Circuit.[25]

[25] Likewise, to the extent Mr. Davis challenges the percentage awarded here based on percentages awarded in some Supreme Court cases, he fails to cite a single case in which the Supreme Court set a categorical ceiling for a reasonable percentage.

Mr. West's arguments also fail.[26] According to Mr. West, the District Court should have considered the "economies of scale" in this case, which involves a settlement fund of hundreds of millions of dollars (what West calls a "megafund" case). As we understand Mr. West's position, he thinks a settlement that is ten times larger than another settlement is often not ten times harder for the lawyers to work on, such that the percentage awarded as attorney's fees should diminish as the settlement amount gets larger.

As Mr. West admits, our precedent did not require the District Court to expressly consider the economies of scale in a megafund case in deciding how much to award in attorney's fees. This Court required the District Court to consider the Johnson factors, and none of the factors explicitly address the economies of scale in a megafund case. See Camden I, 946 F.2d at 772 & n.3, 775. That being the case, we cannot say the District Court erred as a matter of law or abused its discretion. In any event, the District Court considered

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[26] One argument we can reject out of hand. Mr. West says the District Court should have provided Plaintiffs' counsel's "lodestar material" to the class members. Mr. West faults the District Court for only providing "total hours and lodestar accumulated by the firms." While the District Court did conduct a lodestar "cross-check on the reasonableness of a percentage-based fee," our precedent did not require it to do so. See Camden I, 946 F.2d at 774 ("[A]ttorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class. The lodestar analysis shall continue to be the applicable method used for determining statutory fee-shifting awards."). And because the District Court was not required to do a lodestar cross-check, we cannot say it erred in not providing the "lodestar material" to the class members.

the time, labor, and amount involved and the results obtained when deciding whether the attorney's fees were reasonable. We observe that these factors fairly capture many considerations related to the economies of scale in a megafund case.

We decline to add an additional factor requiring the District Court to expressly consider the economies of scale in a megafund case. See id. at 775 (observing that the "factors which will impact upon the appropriate percentage to be awarded as a fee in any particular case will undoubtedly vary"). For starters, we question the value of this consideration. Such a factor may "lack[] rigor because it provides no direction to courts about when to start decreasing the percentage award, nor by how much." 5 Newberg § 15:80. Requiring consideration of the economies of scale could also create "perverse incentives," as it may encourage class counsel to pursue "quick settlements at sub-optimal levels." Id.; see also 5 Newberg § 15:81 (detailing the "rough justice" of limiting attorney's fees in megafund cases). But we need not (and do not) ultimately decide the virtues (or vices) of such a factor because the District Court ultimately considered factors that reasonably capture many considerations related to the economies of scale in a megafund case.

Finally, to the extent Mr. West challenges the amount of attorney's fees awarded in this case, he has failed to show an abuse of discretion. The District Court awarded $77.5 million in attorney's fees, which it found is 20.36 percent of the $380.5 million settlement fund. (We note that the $380.5 million figure does not even account for the additional funds

Equifax may be required to pay into the settlement fund.) 20.36 percent is well within the percentages permitted in other common fund cases, and even in other megafund cases.[27] See Camden I, 946 F.2d 57 at 774–75 ("The majority of common fund fee awards fall between 20% to 30% of the fund," with 25 percent as "a 'bench mark' percentage fee award."); In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) ("[C]ourts nationwide have repeatedly awarded fees of 30 percent or higher in so-called 'megafund' settlements."); Manual for Complex Litigation § 14.121 ("Attorney fees awarded under the percentage method are often between 25% and 30% of the fund."); see also Wolff v. Cash 4 Titles, 2012 WL 5290155, at *5 (S.D. Fla. Sept. 26, 2012) (average percentage award in the Eleventh Circuit is "roughly one-third"); In re Anthem, Inc. Data Breach Litig., 2018 WL 3960068, at *2, *15 (N.D. Cal. Aug. 17, 2018) (data breach case involving 27 percent award, which "appears to be in line with the vast majority of megafund settlements").[28]

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[27] Also, we continue to note that our Circuit does not limit attorney's fees in megafund cases as a matter of law.

[28] Mr. West says we should view the $77.5 million in attorney's fees as 25 percent of a $310 million settlement fund (not $380.5 million) because that is what Plaintiffs' counsel initially secured and agreed to in the original term sheet with Equifax. The additional $70.5 million of the $380.5 million fund was added after further negotiations with regulators. But even assuming Plaintiffs' counsel did not play a role in securing the additional funds, such that 25 percent really is the operative figure, 25 percent is also well within percentages approved in other common fund cases. Camden I, 946 F.2d at 775 (25 percent is the "bench mark"). And again, the $310

The District Court thus properly applied the percentage method in this common fund settlement case, considered the appropriate factors, and did not abuse its discretion in the amount it awarded in attorney's fees.

G. Incentive Awards

After awarding attorney's fees and expenses to Plaintiffs' counsel, the District Court approved incentive awards (sometimes called service awards) for the class representatives in order to compensate them for their services and the risks they incurred on behalf of the class. The District Court recognized that courts "routinely approve" such awards, and it found the awards "deserved" in this case because the class representatives "devoted substantial time and effort to this litigation working with their lawyers to prosecute the claims, assembling the evidence supporting their claims, and responding to discovery requests." "But for their efforts," the District Court found, "other class members would be receiving nothing."

While the parties were briefing this case, a panel of this Court recognized that incentive awards are "commonplace in modern class-action litigation," yet held that two Supreme Court cases from the 1880s "prohibit the type of incentive award that the district court approved here—one that compensates a class representative for his time and rewards him for bringing a lawsuit." NPAS Sols., 975 F.3d at 1260. In light of NPAS Solutions, Plaintiffs acknowledge that

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million figure does not account for the additional funds Equifax may be called upon to pay into the settlement fund in the future.

"service awards are prohibited as a matter of law" in this Circuit. It is true that NPAS Solutions binds us here. So the question is how to proceed. Mr. Davis says the "incentive awards likely compromised Named Plaintiffs' representation of the Settlement Class's interests" because the class representatives might have been "tempted to accept [a] suboptimal settlement[]" in order to obtain the incentive awards.

We reject Mr. Davis's view that the prospect of incentive awards infected the entire settlement, so we decline his invitation to vacate the settlement as a whole. The record indicates the class representatives' representation of the class was not affected by the possibility of receiving incentive awards. The settlement agreement expressly stated that it remained in effect even if the District Court declined to approve the incentive awards. Plaintiffs likewise filed two separate motions in the District Court: one for approval of the settlement and certification of the class, and one for attorney's fees and expenses and incentive awards for class representatives. The motion for approval of the settlement was not contingent on the District Court approving the incentive awards. Given these facts, the class representatives' decision to agree to the settlement and to seek its approval was not influenced by the possibility of receiving incentive awards. Cf. Radcliffe v. Experian Info. Sols. Inc., 715 F.3d 1157, 1164–67 (9th Cir. 2013) (invalidating settlement that "explicitly condition[ed] the incentive awards on the class representatives' support for the settlement").

Plaintiffs argue that the best approach is to simply reverse the District Court's decision approving the

incentive awards and remand solely for the limited purpose of vacating the awards, and we agree. This approach is administratively feasible, as the settlement agreement expressly provides that the agreement does not terminate due to "modification or reversal or appeal of any decision by the Court[] concerning the amount of Service Awards." And this approach makes the most sense as a matter of judicial economy. Specifically, as set out above in great detail, the District Court, before ever approving incentive awards, independently assessed the proposed settlement and the class and did not abuse its discretion in finding that the settlement was fair, reasonable, and adequate and that the class representatives adequately represented the class. No purpose would be served by forcing the District Court to repeat the entire process anew.

To be clear, this is the only issue on which we reverse the District Court's decision. On remand, the District Court is instructed to vacate the incentive awards and to otherwise leave the settlement agreement intact. We expect the District Court will be wary of any attempts to expand this mandate or to otherwise delay or prevent the settlement from taking effect, and we encourage that approach.

H. Appeal Bonds

At last, we arrive at the final issue in this case. After the Objectors appealed the District Court's approval order, the court granted Plaintiffs' motion for appeal bonds and imposed appeal bonds of $2,000 on each Objector. The District Court noted that "[c]ourts routinely require objectors who appeal final approval of a class action settlement to post a bond to ensure

payment of costs on appeal." The District Court considered a number of factors and found an appeal bond of $2,000 was "appropriate." Mr. Cochran and Mr. Frank challenge the District Court's decision to impose the appeal bonds for a variety of reasons.

Federal Rule of Appellate Procedure 7 states, "[i]n a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal." Fed. R. App. P. 7.[29] Mr. Cochran, Mr. Frank, and Plaintiffs do not cite any cases from this Court concerning when an appeal bond is permitted under Rule 7, nor have we found any ourselves. Although our Court has addressed when attorney's fees under a fee-shifting statute can be included in an appeal bond as "costs" under Rule 7, those cases don't deal with the issue presented here: when a run-of-the-mill appeal bond is permitted. See Young v. New Process Steel, LP, 419 F.3d 1201, 1207–08 (11th Cir. 2005); Pedraza v. United Guar. Corp., 313 F.3d 1323, 1333 (11th Cir. 2002). Although we review a district court's decision to impose appeal bonds for abuse of discretion, we review de novo the proper interpretation of federal rules of procedure, including Rule 7. Young, 419 F.3d at 1203; see also SEB S.A. v. Sunbeam Corp., 476 F.3d 1317, 1319 (11th Cir. 2007). In interpreting a federal rule, we examine its text and give effect to its plain meaning. See Sargeant v. Hall, 951 F.3d 1280, 1283 (11th Cir.

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[29] Although Plaintiffs moved for appeal bonds under Rules 7 and 8, it appears the District Court imposed them only pursuant to Rule 7. As such, our discussion of this issue is limited to appeal bonds imposed under Rule 7.

2020) (interpreting the Federal Rules of Civil Procedure). The plain text of Rule 7 is clear. Again, Rule 7 says a district court may impose an appeal bond "in any form and amount necessary to ensure payment of costs on appeal." Fed. R. App. P. 7 (emphasis added). The word "ensure" means "to make sure, certain, or safe." Ensure, Merriam-Webster's Unabridged Dictionary, https://unabridged.merriam-webster.com/unabridged/ensure (last visited June 2, 2021). Therefore, a Rule 7 appeal bond is appropriate when the bond is imposed to make sure costs on appeal are paid. See also, e.g., 4 Newberg § 14:15 (risk of nonpayment is "arguably the only pertinent factor" and thus "ought to be the primary focus" for appeal bonds); 16A Catherine T. Struve, Federal Practice and Procedure § 3953 (5th ed. 2021) ("The court should require a bond only if 'necessary to ensure payment of costs on appeal.'").

The District Court in this case considered several factors when deciding to impose the appeal bonds: "(1) the appellant's financial ability to post a bond; (2) the merits of the appeal; (3) whether the appellant has shown any bad faith or vexatious conduct; and (4) the risk that the appellant will not pay the costs if the appeal is unsuccessful." Other courts in this Circuit have applied similar factors. See, e.g., Aboltin v. Jeunesse LLC, 2019 WL 1092789, at *3 (M.D. Fla. Feb. 15, 2019). While most of these factors do not appear to be relevant based on our reading of Rule 7, the last factor certainly is. Specifically, the District Court considered "the risk that the appellant will not pay the costs if the appeal is unsuccessful" and found there was a "substantial risk that the costs of appeal will not be

paid unless a bond is required." This consideration squares with Rule 7: if there a risk the appellant will not pay the costs on appeal, then an appeal bond helps make sure the costs are paid.

Although the District Court considered other factors that may not be relevant, we need not ultimately decide this issue of relevance under Rule 7 because the record indicates the District Court independently imposed the appeal bonds based on a proper factor. Specifically, the District Court found that the "substantial risk" of nonpayment "warrant[ed] an appeal bond." The District Court did not therefore abuse its discretion when it imposed the appeal bonds based on its finding that there was a "substantial risk that the costs of appeal will not be paid unless a bond is required." And because we hold that the District Court did not abuse its discretion in imposing the appeal bonds on this independent basis, we need not consider Mr. Cochran's and Mr. Frank's arguments, which challenge the District Court's ruling to the extent it was also based on other grounds.[30]

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[30] Mr. Cochran appears to briefly challenge the amount of the appeal bond. Rule 7 simply states that an appeal bond should be in an "amount necessary to ensure payment of costs on appeal." Fed. R. App. P. 7. This means courts should look to 28 U.S.C. § 1920 and Federal Rule of Appellate Procedure 39(e), which provide for taxable costs on appeal, when determining an appropriate amount to cover "costs on appeal." See, e.g., Tennille v. W. Union Co., 774 F.3d 1249, 1257 (10th Cir. 2014) (looking to section 1920 and Rule 39(e)); see also Federal Practice and Procedure § 3953 ("Costs on appeal for which a Rule 7 bond can be required include the costs authorized in [section] 1920 to the extent those costs relate to the appeal."); 4 Newberg § 14:16 ("Given that an appeal bond is meant to ensure the availability of

III. CONCLUSION

We affirm the District Court's rulings in their entirety, except as to the narrow issue of incentive awards. As discussed, because NPAS Solutions now prohibits the incentive awards approved for the class representatives, we must reverse the District Court's decision to approve the incentive awards. We remand this case to the District Court solely for the limited purpose of vacating those awards. On remand, we instruct the District Court to leave the rest of the settlement agreement intact.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

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funds for cost-shifting on appeal, the amount of the bond should have some relationship to the costs that a losing appellant would have to shoulder." (footnote omitted)). The costs under section 1920 and Rule 39(e) include fees of the clerk, fees for printed or electronically recorded transcripts, fees for printing, costs of making copies, docket fees, costs of preparing and transmitting the record, and costs for the reporter's transcript. See 28 U.S.C. § 1920; Fed. R. App. P. 39(e). Here, the District Court found that $2,000 was "appropriate" to cover the taxable costs listed in section 1920 and Rule 39(e). Mr. Cochran has not shown that this amount was an abuse of discretion.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MDL Docket No. 2800 No. 1:17-md-2800-TWT

CONSUMER ACTIONS

Chief Judge Thomas W. Thrash, Jr.

[Filed January 13, 2020]

In re: Equifax Inc. Customer Data Security Breach Litigation	)

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT, CERTIFYING SETTLEMENT CLASS, AND AWARDING ATTORNEY'S FEES, EXPENSES AND SERVICE AWARDS

Consumer Plaintiffs and Defendants Equifax Inc., Equifax Information Services, LLC, and Equifax Consumer Services LLC (collectively, "Equifax"), reached a proposed class action settlement resolving claims arising from the data breach Equifax Inc. announced on September 7, 2017. On July 22, 2019, this Court directed that notice issue to the settlement class. [Doc. 742]. This matter is now before the Court on the Consumer Plaintiffs' Motion for Final Approval of Proposed Settlement [Doc. 903] and Motion for

Attorneys' Fees, Expenses, and Service Awards to the Class Representatives. [Doc. 858]. For the reasons set forth below and on the record of the hearing of December 19, 2019, the Court grants both motions, issues its ruling on the pending objections and motions from various objectors that have been filed, and will separately enter a Consent Order relating to the business practice changes to which Equifax has agreed and a Final Order and Judgment.

I. INTRODUCTION.

A. Factual Background and Procedural History.

On September 7, 2017, Equifax Inc. announced a data breach that it determined had impacted the personal information of about 147 million Americans. More than 300 class actions filed against Equifax were consolidated and transferred to this Court, which established separate tracks for the consumer and financial institution claims and appointed separate legal teams to lead each track. In the consumer track, on May 14, 2018, plaintiffs filed a 559-page consolidated complaint, which named 96 class representatives and asserted common law and statutory claims under both state and federal law. [Doc. 374]. The complaint alleged claims including negligence, negligence per se, unjust enrichment, declaratory judgment, breach of contract (for those individuals who had provided personal information to Equifax subject to its privacy policy), and violation of the Fair Credit Reporting Act ("FCRA"), the Georgia Fair Business Practices Act ("GFBPA"), and various state consumer laws and state data breach statutes.

Equifax moved to dismiss the complaint in its entirety, arguing *inter alia* that Georgia law does not impose a legal duty to safeguard personal information, plaintiffs' alleged injuries were not legally cognizable, and no one could plausibly prove that their injuries were caused by this data breach as opposed to another breach. The parties exhaustively briefed the motion during the summer and early fall of 2018.

After the benefit of oral argument on December 14, 2018, the Court issued an order on January 28, 2019, granting in part and denying in part the motion to dismiss. [Doc. 540]. The Court allowed the negligence and negligence per se claims to proceed under Georgia law, finding among other things that the plaintiffs alleged actual injuries sufficient to support a claim for relief (*id.* at 15-21). The Court dismissed the FCRA claim, the GFBPA claim, the contract claims, and the unjust enrichment claims of those plaintiffs who had no contract with Equifax. The Court dismissed some state statutory claims, but allowed many others to proceed. Following the Court's order on dismissal, Equifax answered on February 25, 2019 [Doc. 571]. Before and after Equifax filed its answer, the parties engaged in significant discovery efforts and raised numerous discovery-related disputes with the Court in late 2018.

On April 2, 2019, after more than 18 months of negotiations, the parties informed the Court they had reached a binding settlement that was reflected in a term sheet dated March 30, 2019, and that had been approved the following day by Equifax's board of directors. After consulting and negotiating with federal and state regulators regarding revisions to the term

sheet, the parties entered into the final settlement agreement on July 19, 2019, and presented the final settlement agreement to the Court on July 22, 2019. (App. 1, ¶¶ 17-24).[1] After a hearing on July 22, 2019, the Court entered an order directing notice of the proposed settlement ("Order Directing Notice") [Doc. 742]. In the Order Directing Notice, the Court found that it would likely approve the settlement as fair, reasonable, and adequate, and certify the settlement class.

B. Terms of the Settlement.

The following are the material terms of the settlement:

1. The Settlement Class.

The settlement class is defined as follows:

> The approximately 147 million U.S. consumers identified by Equifax whose personal information was compromised as a result of the cyberattack and data breach announced by Equifax Inc. on September 7, 2017.

Excluded are (i) Equifax, any entity in which Equifax has a controlling interest, and Equifax's officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff;

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[1] References in this Order to "App." refer to the declarations comprising the Appendix [Doc. 900] accompanying the pending motions.

and (iii) any individual who timely and validly opts out of the settlement class. [Settlement Agreement, Doc. 739-2, ¶ 2.43].

2. <u>The Settlement Fund.</u>

Equifax will pay $380,500,000 into a fund for class benefits, attorneys' fees, expenses, service awards, and notice and administration costs; up to an additional $125,000,000 if needed to satisfy claims for certain out-of-pocket losses; and potentially $2 billion more if all 147 million class members sign up for credit monitoring. [Doc. 739-2, ¶ 7.8; Doc. 739-4, ¶ 37]. No settlement funds will revert to Equifax. [Doc. 739-2, ¶ 5.5]. The specific benefits available to class members include:

- Reimbursement of up to $20,000 for documented, out-of-pocket losses fairly traceable to the breach, such as the cost of freezing or unfreezing a credit file; buying credit monitoring services; out-of-pocket losses from identity theft or fraud, including professional fees and other remedial expenses; and 25 percent of any money paid to Equifax for credit monitoring or identity theft protection subscription products in the year before the breach. If the $380.5 million fund proves to be insufficient, Equifax will add another $125 million to pay claims for out-of-pocket losses.

- Compensation of up to 20 hours at $25 per hour (subject to a $38 million cap) for time spent taking preventative measures or dealing with

identity theft. Ten hours can be self-certified, requiring no documentation.

- Four years of specially negotiated, three-bureau credit monitoring and identity protection services through Experian and an additional six years of one-bureau credit monitoring and identity protection services through Equifax. The Experian monitoring has a comparable retail value of $24.99 per month and has a number of features that are typically not available in "free" credit monitoring services offered to the public. (App. 6, ¶¶ 33-43). The one-bureau credit monitoring shall be provided separately by Equifax and not paid for from the settlement fund.

- Alternative cash compensation (subject to a $31 million cap) for class members who already have credit monitoring or protection services in place and who choose not to enroll in the enhanced credit monitoring and identity protection services offered in the settlement.

- Identity restoration services through Experian to help class members who believe they may have been victims of identity theft for seven years, including access to a U.S. based call center, assignment of a certified identity theft restoration specialist, and step by step assistance in dealing with credit bureaus, companies and government agencies.

Class members have six months to claim benefits (through January 22, 2020), but need not file a claim to

access identity restoration services. (*Id.*, ¶¶ 7.2 and 8.1.1). If money remains in the fund after the initial claims period, there will be a four-year extended claims period during which class members may recover for certain out-of-pocket losses and time spent rectifying identity theft that occurs after the end of the initial claims period. (*Id.*, ¶ 8.1.2). If money remains in the fund after the extended claims period, it will be used as follows: (a) the caps for time and alternative compensation will be lifted and payments will be increased *pro rata* up to the full amount of the approved claims; (b) up to three years of additional identity restoration services will be purchased; and (c) the Experian credit monitoring services claimed by class members will be extended. (*Id.*, ¶ 5.4). Equifax will not receive any monetary or other financial consideration for any of the benefits provided by the settlement. (*Id.*, ¶ 7.3).

3. <u>Injunctive Relief.</u>

Equifax has agreed to entry of a consent order requiring the company to spend a minimum of $1 billion for data security and related technology over five years and to comply with comprehensive data security requirements. Equifax's compliance will be audited by an experienced, independent assessor and subject to this Court's enforcement powers. [*See generally* Doc. 739-2, pp. 76-84; Doc. 739-4, ¶ 44]. According to cybersecurity expert Mary Frantz:

> [I]mplementation of the proposed business practice changes should substantially reduce the likelihood that Equifax will suffer another data breach in the future. These changes address

> serious deficiencies in Equifax's information security environment. Had they been in place on or before 2017 per industry standards, it is unlikely the Equifax data breach would ever have been successful. These measures provide a substantial benefit to the Class Members that far exceeds what has been achieved in any similar settlements.

[739-7, ¶ 66]. Equifax's binding financial commitment to spend $1 billion on data security and related technology substantially benefits the class because it ensures adequate funding for securing plaintiffs' information long after the case is resolved. (*See id.*, ¶ 56).

4. <u>Notice And Claims Program.</u>

The notice plan [*see* Doc. 739-2, p. 125], was developed by class counsel and the Court-appointed notice provider (Signal Interactive Media), with input from the claims administrator (JND Legal Administration) and the regulators. (App. 1, ¶ 25). The notice plan is not designed merely to satisfy minimal constitutional requirements, but an innovative and comprehensive program that takes advantage of contemporary commercial and political advertising techniques—such as focus groups, a public opinion survey, and micro-targeting—to inform, reach, and engage the class and motivate class members to file claims. According to the plaintiffs and Signal, the notice program is a first-of-its kind effort and is unprecedented in scope and impact. The Court finds that the notice program is a significant benefit to the class.

The notice program consists of: (1) multiple emails sent to those whose email addresses can be found with reasonable effort; (2) a digital and social media campaign using messaging continually tested and targeted for effectiveness; (3) a full-page ad in *USA Today* using plain text designed with input from experts on consumer communications at the Federal Trade Commission as well as a national radio advertising campaign to reach those who have limited online presence; (4) a settlement website on which the long-form notice and other important documents, including various pleadings and other filings from the litigation, are posted; and (5) the ability for class members to ask questions about the settlement via email and a toll-free number staffed with live operators. (App. 4, ¶¶ 43-57, 85-90; App. 5, ¶¶ 22- 30). Signal will continue digital advertising during the extended claims period and until identity restoration services are no longer available, a period that will last for seven years. [Doc. 739-2, pp. 127, 138].

JND transmitted the initial email notice to 104,815,404 million class members beginning on August 7, 2019. (App. 4, ¶¶ 53-54). JND later sent a supplemental email notice to the 91,167,239 class members who had not yet opted out, filed a claim, or unsubscribed from the initial email notice. (*Id.*, ¶¶ 55-56). The notice plan also provides for JND to perform two additional supplemental email notice campaigns. (*Id.*, ¶ 57).

The digital component of the notice plan, according to Signal, reached 90 percent of the class an average of eight times before the notice date of September 20,

2019, approximately 60 days before the deadline for objecting and opting out. Signal's digital campaign achieved 1.12 billion impressions on social media, paid search, and advertising before the notice date, far surpassing the original target of 892 million impressions. (App. 5, ¶ 24). Signal is expected to deliver an additional 332 million impressions during the remainder of the initial claims period (*id.*, ¶ 25), many more digital impressions than initially anticipated. Signal also placed a full-page notice that appeared in the September 6, 2019 issue of *USA Today*. (*Id.*, ¶ 26). The radio campaign, which ran from August 19 through September 8, 2019 in 210 markets across the country, resulted in 194,797,100 impressions overall and 63,636,800 impressions for the target age group least likely to be reached online. (*Id.*, ¶¶ 27-28).

Finally, the settlement received a great deal of media coverage in virtually every U.S. market, increasing exposure and reach to class members. The settlement was featured prominently by CNN, in the *New York Times*, and on the Today Show, among other national media outlets. (*Id.*). From July 22, 2019 through December 1, 2019, there were approximately 30,000 mentions related to the data breach or the settlement in the media. (*Id.*, ¶ 90).

As a result of the notice program and extensive media coverage, the response from the class has been unprecedented. The settlement website received 46 million visits during the first 48 hours following preliminary approval and, as of December 1, 2019, the total number of visits to the website exceeded 130 million, with nearly 40 million discrete visitors. Most

significantly, with several weeks left in the initial claims period, the claims administrator has received in excess of 15 million claims from verified class members, including over 3.3 million claims for credit monitoring. (*Id.*, ¶¶ 5, 64-69). The claims rate, to date, thus exceeds 10% of the class.

These claims and others that continue to be filed are governed by a detailed claims administration protocol, which employs a variety of techniques to facilitate access, participation, and claims adjudication and resolution. (App. 4, ¶¶ 4, 71). JND has also developed specialized tools to assist in processing claims, calculating payments, and assisting class members in curing any deficient claims. (*Id.*, ¶¶ 4, 21). As a result, class members have the opportunity to file a claim easily and have that claim adjudicated fairly and efficiently.

5. Attorneys' Fees And Expenses And Service Awards.

Class counsel have applied for a percentage-based fee of $77.5 million, reimbursement of $1,404,855.35 in litigation expenses, and service awards of $2,500 for each settlement class representative totaling no more than $250,000 in the aggregate. [Doc. 858]. These amounts are in accordance with the terms of the settlement agreement and were not negotiated by the parties until after the negotiations regarding the relief to be afforded to the class had concluded. Under prevailing precedent and the circumstances of this case, these requests are reasonable, and for the reasons set forth in more detail below, the requests will be approved.

6. Releases.

In pertinent part, the class will release Equifax from claims that were or could have been asserted in this case. The releases are set forth in more detail in the settlement agreement. [Doc. 739-2, ¶¶ 2.38, 2.50, 16].

II. FINAL APPROVAL OF PROPOSED SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS.

The Court, having considered the Settlement Agreement and Release including all of its exhibits [Doc. 739-2]; all objections and comments received regarding the settlement; all motions and other court filings by objectors and *amici curiae*; the arguments and authorities presented by the parties and their counsel in their briefing; the arguments at the final approval hearing on December 19, 2019; and the record in this action, and good cause appearing, hereby reaffirms its findings in the Order Directing Notice, finds the settlement is fair reasonable and adequate, and certifies the settlement class.

A. The Proposed Settlement Is Fair, Reasonable, And Adequate.

Before the Court may finally approve a proposed settlement, it must consider the factors listed in Rule 23(e)(2) including whether "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any

proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). As explained below, consideration of each of these factors supports a finding that the settlement is fair, reasonable, and adequate and should be approved.

1. <u>The Class Was Adequately Represented.</u>

The first prong of Rule 23(e)(2) directs the Court to consider whether the class representatives and class counsel have adequately represented the class. Fed. R. Civ. P. 23(e)(2)(A). Traditionally, adequacy of representation has been considered in connection with class certification. For this analysis, courts consider: "(1) whether [the class representatives] have interests antagonistic to the interests of other class members; and (2) whether the proposed class' counsel has the necessary qualifications and experience to lead the litigation." *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 555 (N.D. Ga. 2007).

The Court finds that the class representatives are adequate. They share the same interests as absent class members, assert claims stemming from the same event that are the same or substantially similar to the rest of the class, and share the same types of alleged injuries as the rest of the class. Like the rest of the class, the class representatives' personal information at issue was stolen and they all allege the same risk—that

their information may be misused by criminals in the future. And, no class member has benefitted from the breach. For all these reasons, the Court finds that the interests of class members are not antagonistic and there is no intra-class conflict here.

Further, the Court finds that class counsel have adequately represented the class. The Court appointed class counsel after a comprehensive and competitive appointment process. Their experience in complex litigation generally and data breach litigation specifically has been brought to bear here, as they effectively worked to bring this case to a successful resolution. The Court has observed class counsel's diligence, ability, and experience in pleadings and motion practice; in regularly-conducted status conferences; in their presentation of the settlement to this Court; and in their attention to matters of notice and administration after the announcement of the settlement. The excellent job class counsel have done for the class is also demonstrated in the benefits afforded by the settlement.

2. <u>The Proposed Settlement Was Negotiated At Arm's Length.</u>

With respect to the second factor under Rule 23(e)(2), the Court readily concludes that this settlement was negotiated at arm's length, and that there was no fraud or collusion in reaching the settlement. Fed. R. Civ. P. 23(e)(2)(B). This Court has observed the zeal with which counsel for the parties have advanced their clients' interests in this case, their written work, and their oral advocacy at status conferences and the numerous other hearings that have

been conducted. Further, Layn Phillips, a retired federal judge with a wealth of experience in major complex litigation and large-scale data breach cases who served as the settlement mediator, has attested to the history of the contentious negotiations, the process of reaching agreement on a binding term sheet, the level of advocacy on both sides of the case, and his opinion that the settlement represents a reasonable and fair outcome. [Doc. 739-9]. *See generally Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (presence of "highly experienced mediator" pointed to "absence of collusion"). Moreover, any possibility of collusion—already remote—is undercut by the fact that the settlement enjoys the support of the Federal Trade Commission, the Consumer Financial Protection Bureau, and Attorneys General of 48 states, Puerto Rico, and the District of Columbia. These regulators entered into their own separate settlements with Equifax after the parties entered into the term sheet in this case and agreed that the settlement fund in this case can serve as the vehicle for consumer redress related to the breach.

3. <u>The Relief Provided To The Class Is Adequate.</u>

The third factor the Court considers under Rule 23(e)(2) is the relief provided for the class taking into account "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be

identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C).

In examining the adequacy of the relief provided to the class, the Court starts with the observation that this settlement is the largest and most comprehensive recovery in a data breach case in U.S. history by several orders of magnitude. [Doc. 739-4, pp. 40-45]. Not only does the size of the settlement fund exceed all previous data breach settlements, but the specific benefits provided to class members (both monetary and nonmonetary) that were enumerated above meet or substantially exceed those that have been obtained in other data breach cases. (*Id.*; *see also* Doc. 739-7, ¶ 66). It is also particularly significant that all valid claims for out-of-pocket losses likely will be paid in full; that 3.3 million class members have already submitted claims for credit monitoring with a collective retail value of roughly $6 billion; that all class members, whether or not they file a claim, will have access to identity restoration services to help deal with the aftermath of any identity theft for seven years; that the notice program will continue for the full seven years to remind class members of the existence of those extended services; that Equifax must spend at least $1 billion on data security and related technology; and that Equifax's compliance with comprehensive data security measures will be subject to independent verification and judicial enforcement.

The minimum cost to Equifax of the settlement is $1.38 billion and could be more, depending on the cost of complying with the injunctive relief, the number and amount of valid claims filed for out-of-pocket losses,

and the number of class members who sign up for credit monitoring (as Equifax, not the settlement fund, will bear the cost if more than seven million class members sign up for three-bureau credit monitoring and Equifax, not the settlement fund, will bear the cost of providing the extended one-bureau credit monitoring under the settlement). The benefit to the class—even when only considering the value of the $380.5 million minimum settlement fund, the minimum $1 billion Equifax is required to spend on data security and related technology, and the retail value of the credit monitoring already claimed by class members—exceeds $7 billion.

These benefits have added value by being available now, rather than after years of continued litigation, because class members can immediately take advantage of settlement benefits designed to mitigate and prevent future harm, including credit monitoring and injunctive relief. *See Anthem*, 327 F.R.D. at 318 (discussing the importance of timely providing credit monitoring to the class and implementing security enhancements in wake of a data breach). Additionally, the Court finds that much of the relief afforded by the settlement likely exceeds what could be achieved at trial (*see* Doc. 903 at 13-16), and, taken as a whole the settlement represents a result that is at the high end of the range of what could be achieved through continued litigation.

The adequacy of the relief is likewise supported by consideration of the four subparts enumerated in Rule 23(e)(2)(C)(i-iv), all of which support a finding that the

relief provided by the settlement is fair, reasonable, and adequate.

a) The Risks, Costs, and Delay of Continued Litigation.

In considering the adequacy of the settlement in light of the risks of continued litigation under Rule 23(e)(2)(C)(i), the Court finds the cost and delay of continued litigation would have been substantial. But for the settlement, the parties would likely incur tens of millions of dollars in legal fees and expenses in discovery and motion practice. Trial likely would not occur earlier than 2021 and appeals would almost certainly delay a final resolution for a year or more after that. Moreover, had the case not settled, the plaintiffs would have faced a high level of risk. *See Anthem*, 327 F.R.D. at 322 (finding that the "significant risks" and the "delay in any potential recovery from proceeding with litigation," weighed in favor of approval). Equifax would likely renew its arguments under Georgia law that it has no legal duty to safeguard personal information, arguments that were strengthened following the Supreme Court of Georgia's decisions in *Georgia Dep't of Labor v. McConnell*, 828 S.E.2d 352 (Ga. 2019). Class certification outside of the settlement context also poses a significant challenge. *See, e.g.*, *Adkins v. Facebook, Inc.*, 2019 WL 7212315, at *9 (N.D. Cal. Nov. 26, 2019) (denying motion to certify data breach damages class under Rule 23(b)(3)); *Anthem*, 327 F.R.D. at 318 ("While there is no obvious reason to treat certification in a data-breach case differently than certification in other types of cases, the dearth of precedent makes continued litigation more

risky."). And, even if plaintiffs prevail on all those legal issues, they face the risk that causation cannot be proved, discovery will not support their claims, a jury might find for Equifax, and an appellate court might reverse a plaintiffs' judgment.

Class counsel, appointed to act in the best interests of the class, cannot afford to ignore or downplay these significant risks in deciding whether to settle or continue litigating plaintiffs' claims. Similarly, the Court must take those risks into account in determining whether the proposed settlement is fair, reasonable, and adequate. In considering these risks, the Court finds that the guaranteed and immediate recovery for the class made available by this settlement far outweighs the mere possibility of future relief after lengthy and expensive litigation. The reality is that, if the Court does not approve the settlement in this case, there is a serious risk that many if not all class members will receive nothing. That the plaintiffs achieved all the relief in the settlement in the face of the risk they face strongly weighs in favor of approving the settlement as fair, reasonable, and adequate.

b) The Method of Distributing Relief is Effective.

Rule 23(e)(2)(C)(ii) requires the Court to next consider the effectiveness of the proposed method to distribute relief to the class, including the method for processing claims. Upon review of the declarations submitted in support of the motion to direct notice and for final approval [*see generally* Docs. 739-6 and 900-4], the Court finds that the method of distributing relief is effective. Class members can file claims

through a straightforward claims process, and claims are not required for identity restoration services or to benefit from the injunctive relief agreed to by Equifax. Those claiming out-of-pocket losses must supply documentation of their losses, but such requirements are routine and likely less stringent than a plaintiff would have to present during discovery or trial. Some documentation requirements are necessary to ensure that the settlement fund is used to pay legitimate claims. Similarly, the requirement that losses be "fairly traceable" to the breach is not onerous (and is arguably a less stringent standard than would apply at trial), and its enforcement is subject to a claims administration protocol developed with input from state and federal regulators. [Doc. 739-2, pp. 286-87, ¶ III].

The Court concludes that the requirements to make claims for other relief are also reasonable. For example, any class member is eligible to enroll in credit monitoring services without any documentation. Class members seeking alternative compensation in lieu of credit monitoring do not need to provide any documentation, but only identify and attest to their existing credit monitoring service. This is not an onerous requirement, and even those who already submitted claims and failed to provide the name of their credit monitoring service will be given another chance to do so through the deficient claims process set forth in the claims administration protocol. And, those seeking reimbursement for time spent dealing with the breach can claim up to 10 hours without any documentation.

The claims administrator, JND, is highly experienced in administering large class action settlements and judgments, and it has detailed the efforts it has made in administering the settlement, facilitating claims, and ensuring those claims are properly and efficiently handled. (App. 4, ¶¶ 4, 21; *see also* Doc. 739-6, ¶¶ 2-10). Among other things, JND has developed protocols and a database to assist in processing claims, calculating payments, and assisting class members in curing any deficient claims. (*Id.*, ¶¶ 4, 21). Additionally, JND has the capacity to handle class member inquiries and claims of this magnitude. (App. 4, ¶¶ 5, 42). This factor, therefore, supports approving the relief provided by this settlement.

c) The Terms Relating To Attorneys' Fees Are Reasonable.

The third consideration of evaluating relief under Rule 23(e)(2)(C) is whether the attorneys' fees requested under the settlement are reasonable. Fed. R. Civ. P. 23(e)(2)(C)(iii). Here, class counsel are requesting a fee based on a percentage of the benefits available to the class. As addressed in detail below, the Court finds that the request is reasonable under prevailing precedent and the facts of this case. Further, the timing of the payment of fees does not impact the adequacy of the relief, as no fee will be paid until after Equifax fully funds the settlement fund and under no circumstance will any of the settlement funds revert to Equifax. *See* Fed. R. Civ. P. 23(e)(2)(B)(iii). As such, this factor weighs in favor of approving the settlement.

d) Agreements Required To Be Identified By Fed. R. Civ. P. 23(e)(3).

Finally, Rule 23(e)(2)(C)(iv) directs the Court to consider the relief afforded to the class in light of any agreements required to be identified by Rule 23(e)(3). The parties previously submitted to the Court, *in camera*, the specific terms of the provision allowing Equifax to terminate the settlement if more than a certain number of class members opted out and the cap on notice spending that would create a mutual termination right. These provisions have not been triggered, and thus do not affect the adequacy of the relief obtained here. The parties have not identified, and the Court is unaware of, any other agreements required to be identified by the Rule. Therefore, this element of Rule 23(e)(2)(C) also weighs in favor of approval.

4. Class Members Are Treated Equitably Relative To Each Other.

The fourth and final factor under Rule 23(e)(2), directs the Court to consider whether class members are treated equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(D). According to the advisory committee notes, this factor is closely related to the adequacy requirement of Rule 23(a). The Court expressly considers whether the settlement provides equitable "treatment of some class members vis-à-vis others," and an issue that has been raised by some objectors is whether the settlement apportions "relief among class members [that] takes appropriate account of differences among their claims, and whether the scope

of the release may affect class members in different ways." Adv. Comm. Notes 23(e)(2) (2018).

As an initial matter, the class members all have similar claims arising from the same event: the Equifax data breach. And as all class members are eligible to claim the various benefits provided by the settlement if they meet the requirements, they all are treated equitably under the settlement.

While class members who have incurred out-of-pocket losses will be able to recover more relative to class members who have not, this allocation is fair and equitable because these class members would have had the ability to seek greater damages at trial. Additionally, the settlement provides for an extended claims period of four years after the initial claims period, through January 2024. This provides the opportunity for all class members to make claims for future out-of-pocket losses resulting from the breach.

All class members, regardless of whether they incurred out-of-pocket losses, are eligible to claim credit monitoring. This also treats class members fairly. "The emphasis on this form of relief is logical because it is directly responsive to the ongoing injury resulting from the breach." *Anthem*, 327 F.R.D. at 332; *see also* App. 6, ¶ 41 (stating that "[t]he features included in the Experian services are particularly helpful for consumers concerned about identity theft, because they are designed to quickly help identify fraudulent misuse of a consumer's personal information").

Moreover, all class members—even those who do not submit claims—benefit from the various non-monetary aspects of the settlement, including access to identity restoration services and the business practice changes that Equifax will implement at a cost of at least $1 billion. (*See* App. 2, ¶ 21). By addressing the alleged injuries class members suffered and by helping to mitigate future harm—through the extended claims period, availability of credit monitoring and identity restoration services, and mandated business practice changes—the settlement is equitable to all class members.

Finally, class members have been treated equitably despite the fact that they reside in different states and may have been able to assert different statutory claims depending on the state in which they reside. All class members share at least one common claim for negligence under Georgia law, and as to the statutory remedies that survived the motion to dismiss, the Court does not find that those remedies are materially different such that they render the plan of apportionment inequitable. Although some statutory claims may permit a plaintiff to seek statutory damages, Georgia law permits all class members to seek nominal damages and there are additional risks associated with those statutory claims that persuade the Court they are not materially more beneficial so as to render the settlement unfair.

This final factor of Rule 23(e)(2) thus supports this Court's finding that the settlement is fair, reasonable, and adequate and should be approved.

5. The *Bennett* Factors Support Approving The Settlement As Fair, Reasonable, And Adequate.

In addition to the rule-based factors set forth in Rule 23, in considering whether to approve the settlement the Court is further guided by the factors set forth in *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). These factors include: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2011). Many of these considerations overlap those found in Rule 23(e)(2); all of them support final approval.

As explained above with respect to consideration of Rule 23(e)(2), the first and fourth *Bennett* factors strongly support approving the settlement. The likelihood of success at trial is uncertain at best. Equifax would have no doubt renewed its defenses at the summary judgment stage and the settlement provides relief that may not have been available had the case been tried. The case would have been extraordinarily expensive to litigate going forward and would have certainly taken years to conclude. Likewise, consideration of the second and third *Bennett* factors support the settlement as fair, reasonable, and adequate because the settlement reflects relief the

Court finds is in the high range of what could have been obtained had the parties continued to litigate.

The fifth *Bennett* factor, which examines opposition to the settlement, likewise supports approval. In the Court's view, the class has reacted positively to the settlement. In contrast to the 15 million claims, including over 3.3 million claims for credit monitoring that already have been filed by verified class members, only 2,770 settlement class members asked to be excluded from the settlement and only 388 class members directly objected to the settlement—many in the wake of incomplete or misleading media coverage, or at the behest of serial class action objectors, and often demonstrating a flawed understanding of the settlement terms. This miniscule number of objectors in comparison to the class size is entitled to significant weight in the final approval analysis. *See, e.g.*, *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) ("[A] low percentage of objections points to the reasonableness of a proposed settlement and supports its approval"); *In re Home Depot, Inc. Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *4 (N.D. Ga. Aug. 23, 2016) (same).

With respect to the sixth *Bennett* factor, the Court finds that the case settled at a stage of the proceedings where class counsel had sufficient knowledge of the law and facts to fairly weigh the benefits of the settlement against the potential risk of continued litigation. (*See, e.g.*, App. 1, ¶¶ 4-15; Doc. 739-4, ¶ 36). In particular, class counsel conducted a thorough factual and legal investigation in order to prepare their comprehensive consolidated amended complaint; exhaustively

researched and analyzed the applicable law; reviewed more than 500,000 pages of documents and voluminous electronic spreadsheets from Equifax [*see generally*, Doc. 900-1, ¶¶ 6- 14; Doc. 739-4, ¶ 17]; consulted with various experts; had the benefit of substantial informal discovery, including meetings with Equifax and its senior employees responsible for data security [Doc. 900-1, ¶ 14; Doc. 739-4, ¶ 23]; and engaged in confirmatory discovery after the term sheet was finalized. [Doc. 739-4, ¶ 36]. Thus, the *Bennett* factors, like the Rule 23 factors, strongly support approval of the settlement.

Finally, in evaluating whether the settlement is fair, reasonable, and adequate, the Court also gives due weight to the judgment of class counsel. *See, e.g.*, *Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012) ("Absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel."); *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). Class counsel are highly experienced in significant complex litigation including large and complex data breach class actions [Doc. 187, pp. 6-7], and they strongly believe that both the economic and injunctive relief secured for the class here is extraordinary. [Doc. 739-4, ¶ 60; *see also* App. 1, ¶ 16]. Also significant is Judge Phillips's endorsement of the settlement, particularly given his experience in mediating large-scale data breach cases. [Doc. 739-9, ¶ 13]. Finally, the fact that nearly all of the applicable state and federal regulators agreed to the provision of consumer redress through the settlement fund in this action strongly demonstrates the fairness of the settlement.

In conclusion, the settlement reflects an outstanding result for the class in a case with a high level of risk. The relief provided by this settlement—both monetary and non-monetary—exceeds the relief provided in other data breach settlements and the Court finds is in the high range of possible recoveries if the case had successfully been prosecuted through trial. Moreover, the settlement resulted from hard fought, arm's-length negotiations, not collusion. The settlement is therefore fair, reasonable, and adequate under Rule 23 and Eleventh Circuit precedent.

B. The Court Certifies The Settlement Class.

The Court must examine whether this proposed settlement class may be certified under Rule 23(a)'s prerequisites and under Rule 23(b)(3). *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997). The Court previously concluded it was likely to certify the following settlement class:

> The approximately 147 million U.S. consumers identified by Equifax whose personal information was compromised as a result of the cyberattack and data breach announced by Equifax Inc. on September 7, 2017.

Excluded are (i) Equifax, any entity in which Equifax has a controlling interest, and Equifax's officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff;

and (iii) any individual who timely and validly opts out of the settlement class. As the Court ruled on Equifax's motion to dismiss, all of these class members state claims for negligence and negligence per se under Georgia law. [Doc. 540, at 9, 29-43]. For the reasons set forth below, the Court hereby finally certifies, for settlement purposes only, the settlement class pursuant to Fed. R. Civ. P. 23.

1. <u>Fed. R. Civ. P. 23(a) Requirements Are Satisfied.</u>

a) Numerosity:

Rule 23(a)(1) requires that a proposed settlement class be so numerous that joinder of all class members is impracticable. Fed. R. Civ. P. 23(a)(1). The settlement class consists of more than 147 million U.S. consumers, indisputably rendering individual joinder impracticable.

b) Commonality:

"Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury," such that "all their claims can productively be litigated at once.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350 (2011); *see also Sellers v. Rushmore Loan Mgmt. Servs., LLC*, 941 F.3d 1031, 1039 (11th Cir. 2019) (noting inquiry is far less demanding than Rule 23(b)(3)'s predominance requirement). All members of the class suffered the same alleged injury, exposure of their data in the Equifax data breach, stemming from the same conduct and the same event. The class members are asserting the same or substantially similar legal claims. And "[t]he extensiveness and

adequacy of [defendants'] security measures lie at the heart of every claim." *Anthem*, 327 F.R.D. at 308. As the central question in all class members' claims is whether Equifax breached its duty of care through its conduct with regard to their personal information, common questions are apt to drive the resolution of the legal issues in the case. *Id.*

Courts, including this one, have previously addressed this requirement in the context of data breach class actions and found it readily satisfied. *See, e.g.*, *Home Depot*, 2016 WL 6902351, at *2 (finding that multiple common issues "all center on [the defendant's] conduct, satisfying the commonality requirement."); *Anthem*, 327 F.R.D. at 308 (noting that "the complaint contains a common contention capable of class-wide resolution—'one type of injury allegedly inflicted by one actor in violation of one legal norm.'"). The same sorts of common issues are present here, including whether Equifax had a legal duty to adequately protect class members' personal information; whether Equifax breached that legal duty; and whether Equifax knew or should have known that class members' personal information was vulnerable to attack. *See Home Depot*, 2016 WL 6902351, at *2. Commonality is satisfied.

c) Typicality:

Rule 23(a)(3) requires that the claims or defenses of the representative parties be typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). This prong too is readily met in settlements of nationwide data breach class actions. *See Anthem*, 327 F.R.D. at 309 ("[I]t is sufficient for typicality if the plaintiff endured a course of conduct directed against the

class."). Plaintiffs' claims here arise from the same data breach and Equifax's conduct in connection with the data breach. The claims are also based on the same overarching legal theory that Equifax failed in its common-law duty to protect their personal information. The typicality requirement has been met.

d) Adequacy of Representation:

As noted above, the adequacy requirement is satisfied here, as the class representatives do not have any interests antagonistic to other class members, and the class has been well represented by the appointed class counsel. The Court finds that the class representatives have fulfilled their responsibilities on behalf of the class. There is at least one class representative from each state, and therefore the potential interests of class members with various state law claims have been represented. The Court further finds no material differences that would render these class representatives inadequate. Likewise, the Court further finds that class counsel have prosecuted the case vigorously and in the best interests of the class, and they adequately represented each class member.

Again, the Court notes that this prong too has been readily met in nationwide data breach class action settlements. *See Home Depot*, 2016 WL 6902351, at *2. And multiple courts have found the adequacy requirement satisfied in nationwide data breach class action settlements in the face of objections to the contrary. *See Anthem*, 327 F.R.D. at 310 ("To the extent that there are slight distinctions between Settlement Class Members, the named Plaintiffs are a representative cross-section of the entire Class."); *see*

generally In re Target Corp. Customer Data Sec. Breach Litig., 892 F.3d 968, 974 (8th Cir. 2018) (rejecting challenge to adequacy due to lack of "future-damages subclass"). The Court has identified no conflicts among class members here. And significantly, even the existence of minor conflicts does not defeat certification: "the conflict must be a fundamental one going to the specific issues in controversy." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) (internal quotations and citations omitted). If any conflict exists among class members or groups of class members, that conflict certainly is not fundamental. The Court has no doubt that the class representatives and class counsel have performed their duties in the best interests of the class.

2. The Settlement Class Meets the Requirements of Fed. R. Civ. P. 23(b)(3).

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members," and that class treatment is "superior to other available methods for fairly and efficiently adjudicating the controversy." *Id.* The matters pertinent to these findings include:

- the class members' interests in individually controlling the prosecution or defense of separate actions;
- the extent and nature of any litigation concerning the controversy already begun by or against class members;

- the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b); *see also Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1278 (11th Cir. 2009) ("In determining superiority, courts must consider the four factors of Rule 23(b)(3)."). One part of the superiority analysis—manageability—is irrelevant for purposes of certifying a settlement class. *Amchem*, 521 U.S. at 620.

a) Predominance:

The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Id*. at 623. "Common issues of fact and law predominate if they have a direct impact on every class member's effort to establish liability and on every class member's entitlement to … relief." *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 985 (11th Cir. 2016).

Here, as set forth above, there are numerous common questions. These common questions predominate because all claims arise out of a common course of conduct by Equifax. The focus on a defendant's security measures in a data breach class action "is the precise type of predominant question that makes class-wide adjudication worthwhile." *Anthem*, 327 F.R.D. at 312.

Even though this is a nationwide class action, variations in state law will not predominate over the common questions. The Court previously found that

Georgia law applies to the negligence claims of the entire class. [Doc. 540 at 8-9].[2] Further, in the context of this litigation, the Court is persuaded that the presence of multiple state consumer protection laws does not defeat predominance, because "the idiosyncratic differences between state consumer protection laws are not sufficiently substantive to predominate over the shared claims" for purposes of Rule 23(b)(3). *Anthem*, 327 F.R.D. at 315. In *Anthem*, the court found it noteworthy that "Plaintiffs' theories across these consumer-protection statutes are essentially the same" thereby avoiding any pitfalls of state law variation. *Id.* (quoting *In re Mex. Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001)). Here too, the core allegations are that Equifax failed to implement and maintain reasonable security and privacy measures and failed to identify foreseeable security and privacy risks.

Perhaps the only significant individual issues here involve damages, but these issues do not predominate over the common issues in this case. *See, e.g.*, *Home Depot*, 2016 WL 6902351, at *2; *Anthem*, 327 F.R.D. at 311-16; *see also Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1239 (11th Cir. 2016) (individualized damages generally do not defeat predominance). Further minimizing any risk of individual damages

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[2] Even if Georgia law did not apply to the negligence claims of the entire class, "Plaintiffs' negligence claims would not get bogged down in the individualized causation issues that sometimes plague products-defect cases. … [because] the same actions by a single actor wrought the same injury on all Settlement Class Members together." *Anthem*, 327 F.R.D. at 314.

predominating over common issues, the consolidated amended complaint seeks nominal damages on behalf of all class members, which may be available under Georgia law even where no evidence is given of any particular amount of loss. *See, e.g.*, *Georgia Power Co. v. Womble*, 150 Ga. App. 28, 32 (1979); *Land v. Boone*, 265 Ga. App. 551, 554 (2004).

b) Superiority:

"The inquiry into whether the class action is the superior method for a particular case focuses on increased efficiency." *Agan v. Katzman & Korr, P.A.*, 222 F.R.D. 692, 700 (S.D. Fla. 2004) (internal quotation omitted). "The focus of this analysis is on the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). That a class member may not receive a large award in a settlement does not scuttle superiority; the opposite tends to be true. *See Dickens v. GC Servs. Ltd. P'ship*, 706 F. App'x 529, 538 (11th Cir. 2017) (describing "the ways in which the high likelihood of a low per-class-member recovery militates in favor of class adjudication").

Here, it is inconceivable that the vast majority of class members would be interested in controlling the prosecution of their own actions. The cost of doing so, especially for class members who do not claim out-of-pocket losses, would dwarf even a full recovery at trial. A major thrust of Equifax's motion to dismiss was that the plaintiffs did not suffer any damages, let alone the

"relatively paltry potential recoveries" that class actions serve to vindicate. *See Sacred Heart*, 601 F.3d at 1184. Given the technical nature of the facts, the volume of data and documents at issue, and the unsettled area of the law, it would not take long for an individual plaintiff's case to be hopelessly submerged financially. On the other hand, the presence of such pertinent predominant questions makes certification here appropriate. *Compare Anthem*, 327 F.R.D. at 312 (data breach dealt with "the precise type of predominant question that makes class-wide adjudication worthwhile") with *Sacred Heart*, 601 F.3d at 1184 ("T]he predominance analysis has a tremendous impact on the superiority analysis[.]") (internal quotation marks omitted).

As to the extent and nature of litigation already commenced, the settlement agreement identifies 390 consumer cases related to this multidistrict litigation, and there are more than 147 million class members. As the Judicial Panel on Multidistrict Litigation stated, "[c]entralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings on class certification and other issues, and conserve the resources of the parties, their counsel, and the judiciary." *In re: Equifax, Inc., Customer Data Sec. Breach Litig.*, 289 F. Supp. 3d 1322, 1325 (JPML 2017). The settlement furthers those goals. Similarly, it is desirable to concentrate the litigation of the claims here, which was selected as the transferee district because, among other reasons, Equifax is headquartered in this district, the vast majority of the plaintiffs supported this district, and "far more actions

[were] pending in this district than in any other court in the nation." *Id.* at 1326.

Because the requirements of Rule 23(a) and (b)(3) have been satisfied, the Court certifies the settlement class.

III. THE COURT OVERRULES ALL OBJECTIONS TO THE SETTLEMENT.

The Court now addresses objections to the settlement. The objections fail to establish the settlement is anything other than fair, reasonable, and adequate.

Out of the approximately 147 million class members, only 388 directly objected—or just 0.0002 percent of the class—despite organized efforts to solicit objections using inflammatory language and based on false and misleading statements about the settlement, such as that only $31 million is available to pay claims and that if all 147 million class members filed claims everyone would get 21 cents.[3] Many objections repeat these false and misleading assertions as fact and challenge the settlement on that basis. Further, on the eve of the objection deadline, an additional 718 form "objections," which allegedly had been filled out online by class members, were submitted *en masse* by Class Action Inc., a class action claims aggregator that created a website (www.NoThanksEquifax.com) with a

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[3] Charlie Warzel, *Equifax Doesn't Want You to Get Your $125. Here's What You Can Do*, THE NEW YORK TIMES (Sept. 16, 2019), https://www.nytimes.com/2019/09/16/opinion/equifax-settlement.html.

"chat-bot" that encouraged individuals to object based on that same erroneous information.[4] (App. 1, ¶¶ 49-59). These form "objections" are procedurally invalid for the reasons set forth later in this Order.

The Court has considered and hereby rejects all of the objections on their merits, whether or not the objections are procedurally valid or whatever may have motivated their filing. All of the objections are in the record, having been filed publicly on the Court's docket with the declaration of the claims administrator. [Doc. 899]. By way of example only, this Order references some of the objectors by name. The Court groups the objections as follows: (1) objections to the value of the settlement and benefits conferred on the class; (2) objections relating to the alternative compensation benefit; (3) objections relating to class certification; (4) objections relating to the process for objecting; (5) objections relating to the process for opting-out; (6) objections to the notice plan; and (7) objections to the claims process.[5]

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[4] Reuben Metcalfe, *You have the right to object to the Equifax settlement. Here's how.*, MEDIUM (Nov. 8, 2019), https://medium.com/@reubenmetcalfe/you-have-the-right-to-object-to-the-equifax-settlement-heres-how-4dfdb6cca663. As demonstrated in the record, Mr. Metcalfe represented to class counsel that he had not even read the settlement agreement or notice materials. [Doc. 939-1, ¶ 36].

[5] For the sake of organization, objections to attorneys' fees, expenses, and service awards are addressed separately below. The Court's consideration of attorneys' fees, and relating objections, are an integral part of the determination to finally approve the settlement under the criteria of Rule 23.

In addition to the briefing from class counsel and Equifax's counsel, and the Court's own independent review and analysis, the Court reviewed and found helpful to this process the supplemental declaration of Professor Robert Klonoff (App. 2). Professor Klonoff's declaration was particularly helpful to the Court in the organization and consideration of the objections, but the Court's decisions regarding the objections are not dependent upon his declaration or the declarations plaintiffs submitted from two other lawyers, Professor Geoffrey Miller and Harold Daniel. To the contrary, the Court has exercised its own independent judgment in deciding to reject all of the objections that have been filed.

A. Objections To The Value Of The Settlement And Benefits Conferred On The Class.

A majority of the objectors express frustration with Equifax's business practices and want Equifax and its senior management to be punished. The Court is well aware of the intense public anger about the breach, which, in the Court's view, reflects the sentiment that consumers generally do not voluntarily give their personal information directly to Equifax, yet Equifax collects and profits from this information and allegedly failed to take reasonable measures to protect it.

While understandable, the public anger does not alter the Court's role, which is not to change Equifax's business model or administer punishment. Under the law, the Court is only charged with the task of determining whether the proposed settlement is fair,

reasonable, and adequate.[6] And, with regard to that task, no one can credibly deny that this is a historically significant data breach settlement that provides substantial relief to class members now and for years into the future. Or, that if the Court does not approve the settlement, the plaintiffs' claims may ultimately be unsuccessful and class members may be left with nothing at all.

Objections that the settlement fund is too small for the class size, or that Equifax should be required to pay more, do not take into account the risks and realities of litigation, and are not a basis for rejecting the settlement. "Data-breach litigation is in its infancy with threshold issues still playing out in the courts." *Anthem*, 327 F.R.D. at 317. In light of the material risks involved and the possibility that any of several adverse legal rulings would have left the class with nothing, class counsel would have been justified in settling for much less. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1998), *aff'd*, 899 F.2d 21 (11th Cir. 1990); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("[T]he very

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[6] *See Ressler v. Jacobson*, 822 F. Supp. 1551, 1552-53 (M.D. Fla. 1992) (judicial evaluation of a proposed settlement "involves a limited inquiry into whether the possible rewards of continued litigation with its risks and costs are outweighed by the benefits of the settlement"); *Figueroa v. Sharper Image Corp.*, 517 F. Supp. 2d 1292, 1326 (S.D. Fla. 2007) (a court's role is not to "engage in a claim-by-claim, dollar-by-dollar evaluation, but rather, to evaluate the proposed settlement in its totality."); *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 766 (11th Cir. 2017) ("settlements are compromises, providing the class members with benefits but not full compensation.").

essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.") (internal quotation omitted). As it stands, in many respects the settlement provides relief beyond what the class members could have obtained at trial.

Many objectors also ask the Court to rewrite the settlement, but that is beyond the Court's power.[7] For example, objectors demand that the settlement should include: a long-term fund for "significant inflation-adjusted cash compensation from Equifax should they leak my data again any time within the next 20 years"[8]; "lifetime" credit and identity protection[9]; a minimum cash payment for every class member (proposed amounts include $10,000, $5,000, or $1,200)[10]; and a separate cash option for class members who freeze their credit.[11] In most cases, these objectors do not contend that the monetary relief is inadequate to compensate class members for any harm caused by

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[7] *Cotton*, 559 F.2d at 1331; *Howard v. McLucas*, 597 F. Supp. 1504, 1506 (M.D. Ga. 1984) ("[T]he court's responsibility to approve or disapprove does *not* give this court the power to force the parties to agree to terms they oppose." (emphasis in original)), *rev'd in part on other grounds*, 782 F.2d 956 (11th Cir. 1986).

[8] Objection of Tristan Wagner.

[9] *E.g.*, Objections of Francis J. Dixon III and Linda J. Moore.

[10] *E.g.*, Objections of Emma Britton, Norma Kline, and Vijay Srikrishna Bhat.

[11] *E.g.*, Objections of Gary Brainin and Sybille Hamilton. These objections ignore, however, that class members could request out-of-pocket losses if they paid to freeze their credit.

Equifax's alleged wrongs, making it hard to see how they are aggrieved. *See Brown v. Hain Celestial Grp., Inc.*, 2016 WL 631880, at *10 (N.D. Cal. Feb. 17, 2016) (citing *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, 33 F.3d 29 (9th Cir. 1994)).[12] Regardless, the Court readily concludes that the settlement provides fair and adequate relief under all of the circumstances.

Other settlement terms proposed by objectors are of a regulatory or legislative nature, well beyond the power of the civil justice system. For example, according to some objectors, "[a]ny settlement is inadequate if it allows Equifax to continue using my personal data without my express written consent"[13]; the board and officers should disgorge their salaries and serve prison time[14]; or Equifax should be forced out of business.[15] These "suggestions constitute little more than a 'wish list' which would be impossible to grant and [are] hardly in the best interests of the class." *In re*

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[12] Those class members who were unsatisfied with the relief made available had the opportunity to opt out, weighing in favor of finding the settlement fair, reasonable, and adequate. *See, e.g.*, *In re Oil Spill By Oil Rig Deepwater Horizon on April 20, 2010*, 295 F.R.D. 112, 156 (E.D. La. 2013) ("Those objectors who are unhappy with their anticipated settlement compensation could have opted out and pursued additional remedies through individual litigation.").

[13] Objection of Susan S. Hanis.

[14] *E.g.*, Objections of Christie Biehl, Jeffrey Biehl, George Bruno, and Patrick Frank.

[15] *E.g.*, Objections of David Goering, Christie Biehl, and Jeffrey Biehl.

Domestic Air Trans. Antitrust Litig., 148 F.R.D. 297, 305 (N.D. Ga. 1993). No objector explains how this type of relief could be achieved at trial.

A number of objectors take issue with the credit monitoring services made available under the settlement. Some object that credit monitoring is very valuable, and thus the settlement should pay for more monitoring extended beyond ten years. Others object that credit monitoring is not valuable at all, that free credit monitoring and credit freezes are already available to everyone, that the value of the offered monitoring is inflated to justify an inadequate settlement, and that the actual cost to provide credit monitoring services is *de minimis*.

This Court, like others before it, finds that credit monitoring is a valuable settlement benefit, particularly so the credit monitoring offered to class members in this case for such a lengthy period of time.[16] The credit monitoring provider has explained how the product offered in the settlement is better than the "free" monitoring products typically available to the public, and how the services seek to both prevent and address identity theft concerns. *See* App. 6, ¶¶ 33-43 (summarizing the advantages of the Experian credit monitoring and identity protection service negotiated as part of this settlement over other services available).

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[16] *See Target* and *Anthem*, *supra*; *see also Home Depot*, 2016 WL 6902351, at *4 (overruling objections and finding that 18 months of credit monitoring and injunctive components of settlement are valuable class benefits); *Hillis v. Equifax Consumer Servs. Inc.*, 2007 WL 1953464, at *5 (N.D. Ga. June 12, 2007) (credit monitoring as part of settlement has substantial value).

Its comparable retail value is $24.99 per month. *Id.* It provides for $1 million in identity theft insurance and identity restoration services—features designed to address identity theft. And as reported by the claims administrator, millions of class members have chosen to make a claim for the services, further demonstrating their value.

This Court has repeatedly lauded high-quality credit monitoring services as providing valuable class-member relief that would likely not otherwise be recoverable at trial, as have other courts in connection with other data breach settlements.[17] Finally, if class members do not wish to claim the credit monitoring option, they can elect alternative cash compensation—which is a form of relief that would not even be recoverable at trial—or opt out of the settlement.[18] After careful consideration of the objections, the size and scope of relief secured by this settlement remains unprecedented and strongly supports final approval.

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[17] At the fairness hearing, class counsel summarized the benefits available in the credit monitoring and identity protection plan that was specifically negotiated as part of the settlement. The Court has had the opportunity to review the benefits provided, as well as the estimation of the value of those benefits, and this information has informed the Court of its decision to approve the settlement.

[18] *See, e.g.*, *Greco v. Ginn Dev. Co., LLC*, 635 F. App'x 628, 635-36 (11th Cir. 2015) ("If [objector] was displeased with the consideration provided to him under the settlement . . . he was free . . . to opt out of the settlement."); *Faught*, 668 F.3d at 1242 (to the same effect); *Lee v. Ocwen Loan Servicing, LLC*, No. 14-cv-60649, 2015 WL 5449813, at *13 (S.D. Fla. Sept. 14, 2015) (to the same effect).

B. Objections Relating To The Alternative Compensation Benefit.

Many objectors challenge the adequacy of the alternative compensation benefit, complaining that they will not receive a $125 payment that they believe they were promised. Objectors also suggest that the parties and, implicitly by approving the notice plan, the Court, misled the public by stating that all class members were entitled to $125 simply by filing a claim or that the parties engaged in some sort of "bait and switch" to keep class members from getting $125. While the Court appreciates the vehemence with which some of these objections are expressed, the reality is that the objections are misguided, ignore the limits of litigation, and are based upon a misunderstanding of the settlement.

Class counsel have explained that among their primary goals in the settlement negotiations were to ensure that consumers with out-of-pocket losses from dealing with identity theft that had already occurred or by taking precautionary measures would be reimbursed, that all 147 million class members would have the opportunity to get high quality credit monitoring to detect and defend against future identity theft, and that all class members would have access to identity restoration services if they learn they have been victimized by identity theft. The structure of the settlement reflects those goals, which the Court finds were appropriate and reasonable.

Contrary to the impression held by many objectors who are critical of the settlement, the purpose of the alternative compensation remedy was not to provide

every class member with the opportunity to claim $125 simply because their data was impacted by the breach (and those who object provide no statutory support that they would be entitled to such an automatic payment at trial). Rather, its purpose was to provide a modest cash payment as an "alternative" benefit for those who, for whatever reason, have existing credit monitoring services and do not wish to make a claim for the credit monitoring offered under the settlement. Thus, under the settlement, alternative compensation is expressly limited to those who already have credit monitoring services, do not want the credit monitoring services available under the settlement, attest they will maintain their own service for at least six months, and provide the name of their current credit monitoring service. Moreover, those individuals who paid for their own credit monitoring service after the breach are able to file a claim to recoup what they paid for those credit monitoring services as out-of-pocket losses in addition to making a claim for the alternative reimbursement compensation available under the settlement.

The Court finds that the parties' decision to settle on terms that did not provide a cash payment to every class member was reasonable; indeed, settlement likely would not have been possible otherwise. The Court is skeptical that, even if it had the financial ability to do so, Equifax would ever willingly pay (or even expose itself to the risk of paying) the billions of dollars that providing a substantial cash payment to all class members would cost. The Court also finds that limiting the availability of the alternative compensation benefit in the way that is done under the settlement was reasonable, and the settlement would have easily been

approved had there been no alternative compensation benefit at all.

The alternative compensation remedy was capped at $31 million as a result of arm's length negotiations. As compared to the settlement fund amounts earmarked for out-of-pocket losses, the Court finds this apportionment to be entirely equitable. Class members who incurred out-of-pocket losses—*including* paying for credit monitoring or credit freezes after announcement of the breach—have stronger claims for damages, and those who do not are also entitled to claim credit monitoring and identity restoration services going forward, which provides protection and assistance to class members who are subject to identity theft during the term of the settlement. It appears that the distribution plan will successfully achieve its goals. According to the settlement administrator, even after paying the costs of credit monitoring and identity restoration services, the settlement fund (as supplemented with an additional $125 million if needed) likely will have sufficient money to pay class members with demonstrable out-of-pocket losses the entire amount of their approved claims. And, any money remaining in the fund after the extended claims period will be used to lift the cap on alternative compensation, allowing alternative compensation claimants to receive an additional, pro rata payment—which many objectors ignore.[19]

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[19] Objections have also been made to the $38 million cap on claims for time. For the same reasons, the Court rejects these objections.

The notice plan the Court approved in its Order Directing Notice explained that the amount available to pay alternative compensation claims was capped and that individual class members might receive less than $125. The long form notice (which was posted on the settlement website as of July 24, 2019—the same date that class members could start making claims), for example, told class members that they could get "up to" $125 in alternative compensation and further stated: "If there are more than $31 million in claims for Alternative Reimbursement Compensation, all payments for Alternative Reimbursement Compensation will be lowered and distributed on a proportional basis." [Doc. 739-2 at 266].

On the same day that the proposed settlement was first presented to this Court and well before the Court-approved email notices were sent to class members, regulators announced their own settlements with Equifax that incorporated the proposed settlement's consumer restitution terms in this case, including the alternative compensation benefit. In covering the regulators' announcements, media outlets began reporting that consumers could get $125 under the settlement without describing the limited purpose of and the eligibility requirements for the alternative compensation benefit. The ability to receive $125 under the settlement was also touted on social media, adding to the public misperception. (App. 1, ¶¶ 30-37).

The settlement website began accepting claims on July 24, 2019, shortly after the settlement was preliminarily approved. In the ensuing days, millions of claims for alternative compensation were filed.

Because of the claims volume and the $31 million cap, it quickly became apparent to class counsel that alternative compensation claimants likely would receive a small fraction of what they may have expected based upon media reports, although the specific amount they would receive was unknown. (The specific amount alternative compensation claimants will be paid is unknowable until after the total number of valid alternative compensation claims is determined following the end of the initial claims period and, even then, their payments may be supplemented following the extended claims period if additional money remains after claims for out-of-pocket losses have been satisfied.) (App.1, ¶¶ 43-44).

Class counsel acted immediately to ensure that class members were not disadvantaged by the misleading media reports and the widespread public misperception about the alternative compensation benefit. They proposed a plan to Equifax and, after receiving input from regulators, presented the plan to the Court at a hearing held on July 30, 2019. The essence of the plan entailed notifying class members that, because of the claims volume, alternative compensation claimants likely would receive much less than $125 so that, going forward, class members would have that information in making a choice between credit monitoring and alternative compensation. The plan also afforded those who had already filed a claim a renewed opportunity to choose credit monitoring rather than alternative compensation. The Court approved the plan at the hearing and directed the parties to implement its terms. They did so. (App.1, ¶¶ 43-44).

On August 1, 2019, class counsel distributed a statement to the media explaining the limitations of the alternative compensation benefit and urging class members to rely only on the official court notice, not what they heard or read in the media. On August 2, 2019, a statement was placed in a prominent position on the home page of the settlement website that read:

> If you request or have requested a cash benefit, the amount you receive may be significantly reduced depending on how many valid claims are ultimately submitted by other class members. Based on the number of potentially valid claims that have been submitted to date, payments for time spent and alternative compensation of up to $125 likely will be substantially lowered and will be distributed on a proportional basis if the settlement becomes final. Depending on the number of additional valid claims filed, the amount you receive may be a small percentage of your initial claim.

On August 7, 2019, the direct email notice campaign that the Court approved in its July 22, 2019 Order Directing Notice commenced. The first email notice, which was sent to more than 100 million class members, prominently featured the same statement that had been added to the settlement website.[20] The same statement also was featured in a follow up email to the class. Moreover, a separate email was sent to all

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[20] This statement was also included in the publication notice, which appeared as a full-page advertisement in *USA Today* on September 6, 2019.

class members who had filed a claim for alternative compensation before August 2, 2019, repeating the same message and giving them the opportunity to choose credit monitoring if they wanted to switch their claim from alternative reimbursement. Also around this time, the FTC publicly announced that the alternative compensation claim would be less than $125, recommended that class members select credit monitoring, and included the statement that any class member who already made a claim for alternative compensation could switch to claim credit monitoring.[21]

So, beginning August 2, 2019, all class members who went to the website to file a claim were put on notice that alternative compensation claimants in all likelihood would only receive a small percentage of $125.[22] Beginning August 7, 2019, class members were given the same information as part of the Court-approved direct email notice program. And, all class members who filed an alternative compensation claim before August 2, 2019, were separately told of the situation and given an opportunity to amend their claim to choose credit monitoring instead of the cash payment if they wanted to do so. The Court thus finds that the notice plan approved by the Court on July 22,

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[21] FTC Encourages Consumers to Opt for Free Credit Monitoring, as part of Equifax Settlement, FTC (July 31, 2019), *available at* https://www.ftc.gov/newsevents/ press-releases/2019/07/ftc-encourages-consumers-opt-free-creditmonitoring- part-equifax.

[22] The online claim form was also amended as of August 2, 2019 to advise that payments for the alternative compensation benefit may be less than $125 depending on the number and amount of claims filed.

2019, coupled with the supplemental plan approved at the July 30, 2019 hearing, provided reasonable and adequate notice to the class about the limits of the alternative compensation benefit and that class members had sufficient information and opportunity to make an informed choice between that benefit and credit monitoring.

The likelihood that alternative compensation claimants will receive substantially less than $125 does not mean that the relief afforded by the settlement is inadequate. To the contrary, as described above, the relief offered by the settlement is unprecedented in scope. The Court must evaluate the adequacy of the settlement in terms of the entirety of the relief afforded to the class. The other substantial benefits—including payment of out-of-pocket losses, credit monitoring, identity restoration services, and the reduction in the risk of another breach—would justify approval of the settlement as fair, reasonable, and adequate even if the settlement did not provide an alternative compensation benefit at all. Indeed, this Court has previously approved settlements that provided no alternative compensation benefit in the *Home Depot* and *Arby's* data breach cases.

Moreover, the likelihood that alternative compensation claimants will receive substantially less than $125 is not unfair, and does not render the alternative compensation benefit itself inadequate. All of the alternative compensation claimants are eligible for the same relief made available to other class members, they received the same Court-approved communications as other class members disclosing that

payments for alternative compensation claims would be a small percentage of $125, and those who filed their claims before the above enhancements to the settlement website were implemented were given the opportunity to change their minds. That class members, armed with this information, chose alternative compensation rather than the more valuable credit monitoring services offered by the settlement reflects their own personal decision, not a failing of the settlement or inadequate representation by class counsel. Moreover, the alternative compensation claimants retain the right to take advantage of all the other settlement benefits except credit monitoring.

It is unfortunate that inaccurate media reports and social media posts created a widespread belief that all class members, simply by filing a claim, would receive $125. But the parties are not responsible for those reports and class counsel acted appropriately, diligently, and in the best interests of the class by taking corrective action when they learned of the erroneous reporting. Moreover, any class member who chose alternative compensation rather than credit monitoring has had ample opportunity to make a new choice. Accordingly, objections to the adequacy of the settlement based on the fact that alternative compensation claimants will not receive $125; the manner in which class members were informed about the alternative compensation benefit; or the notion that class members were misled into choosing alternative compensation are overruled.

C. Objections Relating To Class Certification.

Objectors to class certification assert that the class representatives and counsel are not "adequate" for purposes of Rule 23(a)(4) because: (1) the interests of class members who have already incurred out-of-pocket losses conflict with those who have incurred only a risk of future losses,[23] or (2) some state consumer protection laws implicate statutory penalties while others do not.[24] Thus, according to the objections, "fundamental" intra-class conflicts between subgroups exist, requiring numerous subclasses with separate counsel for each. *See, e.g.*, *Amchem*, 521 U.S. at 591; *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999). These objections are wholly without merit as there simply are no fatal intra-class conflicts, fundamental or otherwise.

For the reasons set forth below, subclasses were not required here and, much more likely, would have been detrimental to the interests of the entire class. The practical effect of creating numerous subclasses represented by competing teams of lawyers would have decreased the overall leverage of the class in settlement discussions and rendered productive negotiations difficult if not impossible.[25] Further, if the case had not

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[23] Objection of Shiyang Huang [Doc. 813 at 5-7].

[24] Objection of Frank and Watkins [Doc. 876 at 1].

[25] *See In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on April 20, 2010*, 910 F. Supp. 2d 891, 919 (E.D. La. 2012), *aff'd sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014) (district court wary of "[s]uch rigid formalism" of

settled, the additional subclasses and lawyers likely would have made the litigation process, particularly discovery and trial, much harder to manage and caused needless duplication of effort, inefficiency, and jury confusion.[26]

The Eleventh Circuit has provided the contours necessary for an objector to establish a fundamental conflict that may necessitate subclasses: "A fundamental conflict exists where some party members claim to have been harmed by the same conduct that benefitted other members of the class." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d at 1189. "[T]he existence of minor conflicts alone will not defeat a party's claim to class certification: the conflict must be a 'fundamental' one going to the specific issues in controversy." *Id.* There is simply is no evidence of a

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requiring subclasses, "which would produce enormous obstacles to negotiating a class settlement with no apparent benefit[.]").

[26] Frank and Watkins contend that residents of each jurisdiction with statutory claims that survived the motion to dismiss should be served by separate counsel. (*See* Final Approval Hearing Tr., at 78-79). They also acknowledge that claims under consumer protection statutes from 33 jurisdictions survived. [Doc. 876, at 6]. The objectors' approach thus would require at least 34 separate teams of lawyers (appointed class counsel plus lawyers for each jurisdiction), which would needlessly cause the scope of these proceedings to explode. The selection and appointment process alone would be incredibly time consuming and the duplication of effort involved in ensuring each legal team was adequately versed in the law and facts to assess the relative worth of their clients' claims would be staggering. Ironically, the same objectors criticize the requested attorneys' fees in this case on the basis that class counsel's hours are inflated because too many lawyers worked on it. [Doc. 876, at 24].

fundamental intra-class conflict in this case. No class members were made better off by the data breach such that their interests in the outcome of the litigation are adverse to other class members. Similarly, all class members benefit from the proposed settlement, while none are harmed by it. In arguing otherwise, the objectors focus on minor differences within the class that are immaterial in the context of this case and, in any event, do not defeat class certification.

Shiyang Huang's objection—that this fact pattern is akin to *Amchem* and *Ortiz* because some class members have presently incurred out-of-pocket costs while others have not—was thoroughly analyzed and rejected in *Target*:

> The *Amchem* and *Ortiz* global classes failed the adequacy test because the settlements in those cases disadvantaged one group of plaintiffs to the benefit of another. There is no evidence that the settlement here is similarly weighted in favor of one group to the detriment of another. Rather, the settlement accounts for all injuries suffered. Plaintiffs who can demonstrate damages, whether through unreimbursed charges on their payment cards, time spent resolving issues with their payment cards, or the purchase of credit-monitoring or identity-theft protection, are reimbursed for their actual losses, up to $10,000. Plaintiffs who have no demonstrable injury receive the benefit of Target's institutional reforms that will better protect consumers' information in the future, and will also receive a pro-rata share of any

> remaining settlement fund. It is a red herring to insist, as [Objector] does, that the no-injury Plaintiffs' interests are contrary to those of the demonstrable-injury Plaintiffs. All Plaintiffs are fully compensated for their injuries.

Target, 2017 WL 2178306, at *5, *aff'd*, 892 F.3d at 973-76; *see generally id.* at *2- 9. Further, "the interests of the various plaintiffs do not have to be identical to the interests of every class member; it is enough that they share common objectives and legal or factual positions." *Id.* at *6 (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999)). As in *Target*, the class representatives are adequate here because they seek essentially the same things as all class members: compensation for whatever monetary damages they suffered and reassurance that their information will be safer in Equifax's hands in the future. *Id.*[27]

Unlike here, *Amchem* and *Ortiz* were massive personal injury "class action[s] prompted by the elephantine mass of asbestos cases" that "defie[d] customary judicial administration." *Prof'l Firefighters Ass'n of Omaha, Local 385 v. Zalewski*, 678 F.3d 640, 646 (8th Cir. 2012). In those cases adequacy was not sufficiently protected within a single class because claimants who suffered diverse medical conditions as a

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[27] *See also Anthem*, 327 F.R.D. at 309-11 (analyzing and overruling same objection). This Court rejected a similar objection in the *Home Depot* consumer track. *See* 2016 WL 6902351 (rejecting all objections asserted by Sam Miorelli, including an objection that separate counsel was necessary to represent allegedly conflicting subclasses (No. 14-md-2583-TWT, Doc. 237 at 39-40) (objection); Doc. 245 at 21- 23 (reply in support of final approval)).

result of asbestos exposure wanted to maximize the immediate payout, whereas healthy claimants had a strong countervailing interest in preserving funds in case they became ill in the future. These vast differences between groups of claimants in *Amchem* required "caution [because] individual stakes are high and disparities among class members great." *Amchem*, 521 U.S. at 625. Those concerns are simply not present in this consumer case where all class members allege the same injury from the compromise of their personal information. *See Anthem*, 327 F.R.D. at 314 (dispelling analogies to *Amchem* in the data beach context because "the same actions by a single actor wrought the same injury on all Settlement Class Members together").

Further, Mr. Huang's argument is particularly weak given the structure of the settlement in this case and the nature of the alleged harm to the class. While those who have already incurred out-of-pocket losses are being reimbursed now, those who incur out-of-pocket losses in the future are not left without a monetary remedy. Class members will have an opportunity to be reimbursed for out-of-pocket losses relating to future identity theft during the extended claims period. Moreover, there is no conflict because of the nature of the harm caused by the breach. Those who have already suffered losses stand just as likely to suffer future losses as those who have not suffered any losses to date and thus all class members have an incentive to protect against future harm. *See Target*, 892 F.3d at 976 (future injury "is just as likely to happen to a member of the subclass with documented losses").

Accordingly, the interests of the proposed subclasses here "are more congruent than disparate, and there is no fundamental conflict requiring separate representation." *Target*, 892 F.3d at 976; *see also Anthem*, 327 F.R.D. at 309-10. The settlement benefits all class members equally by compensating both current and future losses as well as protecting against and providing assistance in dealing with any future losses or misuse of their information. The Court therefore rejects Shiyang Huang's objection to class certification.

Objectors Frank and Watkins insist that the adequacy of representation requirement can only be satisfied with subclasses, with separate counsel, to account for differences in the damages potentially available under different state consumer statutes. The Court is not persuaded, as this case seems well-suited to resolution via a nationwide class settlement. Frank and Watkins have not demonstrated how separate representation for state-specific subclasses would benefit anyone, let alone the class as a whole, or that the state statutes as a practical matter provide any class members with a substantial remedy under the facts presented. To the contrary, the Court finds that it is unlikely that any individual class members would have benefitted in any material way from state statutory remedies under the circumstances of this case or from separate representation for the purpose of advocating the alleged value of those remedies.

To begin with, the court in *Target* rejected this specific objection explaining:[28]

> The availability of potential statutory damages for members of the class from California, Rhode Island, and the District of Columbia does not, by itself, mean that the interests of these class members are antagonistic to the interests of class members from other jurisdictions. Class actions nearly always involve class members with non-identical damages. . . .
>
> [Objector's] argument in this regard ignores the substantial barriers to any individual class member actually recovering statutory damages. Class members from these three jurisdictions willingly gave up their uncertain potential recovery of statutory damages for the certain and complete recovery, whether monetary or equitable, the class settlement offered. Contrary to [Objector's] belief, this demonstrates the cohesiveness of the class and the excellent result named Plaintiffs and class counsel negotiated, not any intraclass conflict.

2017 WL 2178306, at *6. Similarly, the trial court in *Anthem* found that, as in this case, "there is no structural conflict of interest based on variations in

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[28] Frank, the objector here, is a lawyer who represented the unsuccessful objector in *Target*. His co-counsel in *Target*, Melissa Holyoak, represents Frank and Watkins (her brother) in this case. While their roles may be different, Frank and Holyoak are making the same argument that failed in *Target*.

state law, for the named representatives include individuals from each state, and the differences in state remedies are not sufficiently substantial so as to warrant the creation of subclasses." *Anthem*, 327 F.R.D. at 310 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1021 (9th Cir. 1998)); *cf. Columbus Drywall*, 258 F.R.D. at 555 ("The fact that the named plaintiffs may have suffered greater damages does not indicate that named plaintiffs possess interests antagonistic to other plaintiffs.").[29]

Those cases are more analogous here than the authority objectors cite. In *W. Morgan-E. Lawrence Water & Sewer Auth. v. 3M Co.*, 737 F. App'x 457 (11th Cir. 2018), consumers of allegedly contaminated water *and* the water authority that supplied the water were lumped into the same settlement class in an action against the alleged polluters, even though many class members had actually filed injury claims *against* the water authority. *Id.* at 464. Because the water

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[29] *See also Hanlon*, 150 F.3d at 1022 ("although some class members may possess slightly differing remedies based on state statute or common law, the actions asserted by the class representatives are not sufficiently anomalous to deny class certification. On the contrary, to the extent distinct remedies exist, they are local variants of a generally homogenous collection of causes which include products liability, breaches of express and implied warranties, and 'lemon laws.'"); *Dickens v. GC Servs. Ltd. P'ship*, 706 F. App'x 529, 536 (11th Cir. 2017) (class representative may be adequate even where seeking only statutory damages when other class members also suffered actual damages; at most this is a "minor conflict" under *Valley Drug*); *Navelski v. Int'l Paper Co.*, 244 F. Supp. 3d 1275, 1307 (N.D. Fla.), *reconsideration denied*, 261 F. Supp. 3d 1212 (N.D. Fla. 2017) ("The class members' damages will differ in degree, perhaps, but not in nature.").

authority had an interest in maximizing the injunctive relief obtained from the alleged polluters while *minimizing* the value of (if not undermining entirely) consumers' claims for compensatory damages, a fundamental intra-class conflict plainly existed, precluding dual representation of consumers and the water authority. *Id.* No such fundamental conflict exists here.

Frank and Watkins also rely on the Second Circuit's opinion in *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242 (2d Cir. 2011). They claim the case is "directly on point," but it is not. [Doc. 876 at 7]. *Literary Works* was a copyright case in which the proposed settlement divided the class into three claimant groups, called Categories A, B, and C. Unlike here, no single transaction or claim united the Category A, B, and C plaintiffs. The settlement capped the defendants' total liability and provided that, if the claims exceeded that cap, the Category C claims would be reduced *pro rata*. *Id.* at 246. In other words, the settlement protected the Category A and B claims at the sole expense of the Category C claims and could have resulted in Category C claimants receiving nothing. So, unlike here, the *Literary Works* settlement "sold out" one category of claims. *See id.* at 252.

The three claims categories in *Literary Works* were different in kind given the statutory scheme under which they arose. Category A claimants (whose claims were uniquely valuable under federal copyright law because they were registered in time to be eligible for statutory penalties) had stronger claims than Category C claimants (who had never registered their copyrights

and thus were not eligible to claim even actual damages). But, according to the court, that did not mean Category A claimants could take all the settlement's benefits, at least not without independent representation for the Category C claimants. In contrast, the proposed settlement in this case provides all class members with benefits and, unlike in the proposed settlement in *Literary Works*, is "carefully calibrated" to do so. *Anthem*, 327 F.R.D. at 310-11.[30]

Further, unlike in *Literary Works*, the entire class in this case brings the same common law claim for negligence stemming from the same event and arising under one state's law. This shared claim—involving the uniform applicability of Georgia law to a single set of facts—binds the interests of all class members, no matter where they reside, and overcomes any theoretical differences that arise from potential state statutory remedies. That is particularly true in this case because there is substantial doubt as to whether the plaintiffs can satisfy conditions the state statutes require to prove liability on an individual or class wide

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[30] For the same reason, the Court overrules the Frank and Watkins objection that the settlement treats class members inequitably. The Court finds that due to the calibration of benefits, the settlement satisfies Rule 23(e)(2)(D). Further, the Court does not agree that Frank and Watkins's approach would lead to a more equitable result and finds instead that it could disadvantage the entire class. Due to the large number of class members, at best, the approach might allow residents of a handful of states to receive potentially larger (but still quite small) statutory damages. But predicting such a result is mere speculation, particularly because the two objectors have not demonstrated that the statutory claims to which they point are even viable. More likely, their approach would lead to no settlement (and possibly no recovery at all).

basis, (Utah's statute for example, requires each plaintiff to establish a "loss" and may not even be available in a class action),[31] and the complaint seeks nominal damages under Georgia law on behalf of all class members, which could yield more than the statutory damages for which Frank and Watkins argue. *See, e.g.*, *Wright v. Wilcox*, 262 Ga. App. 659, 662 (2003) (noting that damages are not "restricted to a very small amount"). Thus, Frank and Watkins's claim that no one "press[ed] their most compelling case" is without merit. [Doc. 876, at 11].

So too is the objectors' implication that their recovery is inadequate in relation to a possible award at trial. The Court has already noted that the settlement is at the high end of the range of likely recoveries and that many of the specific benefits of the settlement likely would not be attainable at trial, such as the fact that all class members are eligible for credit monitoring. Over a four-year period, the retail value of the credit monitoring approximates or exceeds the purported value of Frank and Watkins's statutory damages claims. Accordingly, Frank and Watkins likely are economically better off under the settlement than they would be even in the unlikely event that their state statutory claims were successfully litigated through trial. In short, the reality is that any conflicts between class members based upon their states of

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[31] *See* U.C.A. § 13-11-19 ("A consumer who suffers loss as a result of a violation of this chapter may recover, *but not in a class action*, actual damages or $2,000, whichever is greater, plus court costs.") (emphasis added).

residence are doubtful and speculative, and even if any such conflicts exist, they are minimal.

Finally, Frank and Watkins do not identify any authority holding that a class settlement cannot release individual claims arising from the same transaction or occurrence that are not held by all class members. That happens all the time, in all manner of class judgments, and the Court has considered and found equitable under Rule 23(e) the scope of the release here. Under Frank and Watkins's theory, every multi-state class action settlement involving state law claims would risk invalidity without subclasses (with separate representatives and counsel) for each state. Many class settlements that have been approved and upheld on appeal would be invalid as a matter of law under such a rule, including *NFL Concussion*,[32] *Chrysler-Dodge-Jeep Ecodiesel*,[33] and *Volkswagen* "*Clean Diesel*."[34]

The facts asserted by the objectors thus do not establish a conflict. And even if the objectors had

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[32] *In re Nat'l Football League Players Concussion Injury Litig.*, 307 F.R.D. 351 (E.D. Pa. 2015), *aff'd*, 821 F.3d 410 (3d Cir. 2016).

[33] *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, 2019 WL 2554232 (N.D. Cal. May 3, 2019).

[34] *In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2016 WL 6248426 (N.D. Cal. Oct. 25, 2016), *aff'd*, 895 F.3d 597 (9th Cir. 2018), *and aff'd*, 741 F. App'x 367 (9th Cir. 2018) (2.0-liter settlement); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2212783 (N.D. Cal. May 17, 2017) (3.0-liter settlement).

identified a non-speculative conflict, which they have not, the conflict is minor and does not go to the heart of the claims asserted in the litigation. Moreover, the involvement of a cross-section of class representatives across all states, use of a respected and experienced mediator, and extensive input from state and federal regulators all safeguarded the process leading to the settlement. Indeed, the Attorneys General of both jurisdictions in which Frank and Watkins reside—Utah and the District of Columbia—incorporated this settlement as the mechanism for providing relief to their citizens in their own settlements with Equifax.

For all these reasons, the objections related to other consumer protection statutes do not present a problem with adequacy. In that regard, the Court also finds it relevant that Rule 23(e) was recently amended to require consideration of how settlement benefits are apportioned among class members as part of the fairness, reasonableness, and adequacy requirement. That, in and of itself, suggests that the adequacy requirement does not require that every class member share identical and overlapping claims. The Court has found here that the benefits are being equitably apportioned, and that the class is adequately represented without fundamental conflicts. There is therefore no basis to deny class certification under Rule 23(a)(4).

Another objector claims that class members who have an existing credit monitoring service are treated inequitably. [Doc. 880 at 11]. But claimants who purchased credit monitoring on or after September 7, 2017, in response to the breach may make a claim for

full reimbursement of the costs, up through the date they submit a claim. [Doc. 739-2, ¶¶ 2.37, 6.2.4, 8.3.2]. These class members also have the opportunity to cancel their existing credit monitoring service and sign up for the (likely superior) comprehensive credit monitoring offered under the settlement, obtaining the same benefits available to every other class member. Or, they are eligible for alternative cash compensation, albeit smaller than the maximum $125, and remain eligible for all of the other settlement benefits. Accordingly, the Court finds that those class members with existing credit monitoring are treated equitably under the settlement.

D. Objections Relating To The Process For Objecting.

The Court finds that the process for objecting is reasonable. Some objectors argue that the procedure for objecting is overly burdensome, asserting that objectors should not be required to show they are members of the settlement class, or provide their personal contact information, signature, or dates for a potential deposition. This argument is at odds with the number of objections received, and few objectors had difficulty meeting these criteria. Nevertheless, the requirements imposed on objectors are consistent with Rule 23, are common features of class action settlements,[35] and were informed by the Court's

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[35] *See Champs Sports Bar & Grill Co. v. Mercury Payment Sys., LLC*, 275 F. Supp. 3d 1350, 1353 (N.D. Ga. 2017) (striking objection for failing to comply with similar criteria); *Home Depot*, Doc. 185 at ¶ 12 (N.D. Ga. March 8, 2016) (requiring objectors to provide personal contact information and signature); *Jones v.*

previous experience dealing with objectors in connection with the *Home Depot* data breach settlement.

Some objectors protest the possibility of being subjected to a deposition, but objectors who voluntarily appear in an action place their standing and basis for objecting at issue for discovery. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 281 F.R.D. 531, 533 (N.D. Cal. 2012) (holding that when an objector voluntarily appears in litigation by objecting to a class settlement, he or she is properly subject to discovery). Courts in this Circuit have found it advisable to discover the objector's knowledge of the settlement terms, to ferret out frivolous objections, and to expose objections that are lawyer-driven and filed with ulterior motives.[36]

United Healthcare Servs., Inc., 2016 WL 8738256, at *4 (S.D. Fla. Sept. 22, 2016); *Chimeno-Buzzi v. Hollister Co.*, 2015 WL 9269266, at *5 (S.D. Fla. Dec. 18, 2015) (same); *see also In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 2019 WL 3410382, at *27 (D. Or. July 29, 2019) (requiring objectors to provide personal contact information and provide signed statement that he or she is member of settlement class); *In re Anthem, Inc. Data Breach Litig.*, 2017 WL 3730912, at *3 (N.D. Cal. Aug. 25, 2017) (requiring written objection to contain personal contact information and signature).

[36] *See Montoya v. PNC Bank, N.A.*, 2016 WL 1529902, at *19 (S.D. Fla. April 13, 2016); *see also Champs Sports*, 275 F. Supp. 3d at 1359 (overruling the objection in a case where the objector was deposed, admitted he had no evidence or knowledge supporting objection, and could not explain how the settlement was inadequate); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1259 (S.D. Fla. 2016) ("An objector's knowledge of the objection matters in crediting (or not) the objection and determining the objector's motives."); c*f. Greco v. Ginn Dev. Co.*, 635 F. App'x 628, 633 (11th

Moreover, Rule 23 has recently been amended to address these sorts of concerns. *See generally* Fed. R. Civ. P. 23(e)(5).[37] The objection requirements serve to further appropriate lines of inquiry, and are not meant to discourage objections. "Such depositions not only serve to inform the Court as to the true grounds and motivation for the objection, but they also help develop a full record should the objector file an appeal." *Montoya*, 2016 WL 1529902, at *19.

Finally, the personal signature requirement is not burdensome, and is of particular importance in this case, to ensure that the objection is made in the objector's personal capacity, and not at the behest of others. And, the personal signature requirement decreases the likelihood that services encouraging mass objections or opt-outs file unauthorized or fictitious objections. These objections are overruled.

E. Objections Relating To How To Opt Out.

The Court overrules all objections related to the procedures for how to opt out. The exclusion procedure is simple, affords class members a reasonable time in

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Cir. 2015) (district court may properly consider whether those voicing opposition to settlement have ulterior motives).

[37] The accompanying 2018 Advisory Committee Notes explain that the Rule has been amended because "some objectors may be seeking only personal gain, and using objections to obtain benefits for themselves rather than assisting in the settlement-review process. At least in some instances, it seems that objectors—or their counsel—have sought to obtain consideration for withdrawing their objections or dismissing appeals from judgments approving class settlements."

which to exercise their option, and is conventional.[38] The individual signature requirement on opt-out requests is not burdensome at all. Moreover, it ensures that each individual has carefully considered his options and understands that he is giving up his right to relief under the settlement. While technology provides an avenue for filing claim forms more easily, it also makes it easier for third parties and their counsel to file unauthorized "mass opt-outs," which are sometimes "highly indicative of a conclusion that such counsel did not spend much time evaluating the merits of whether or not to opt-out in light of the individual circumstances of each of their clients and in consultation with them."[39] The Court's Order Directing Notice clearly did not present insurmountable hurdles to opting out of the settlement class.

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[38] *See, e.g.*, *Harrison v. Consol. Gov't. of Columbus, Georgia*, 2017 WL 6210318, at *2 (M.D. Ga. April 26, 2017) (requiring exclusion form to be mailed via regular mail); *Flaum v. Doctor's Assoc., Inc.*, 2017 WL 3635118, at *3 (S.D. Fla. March 23, 2017) (same); *Home Depot*, Doc. 185 at ¶ 11 (N.D. Ga. March 8, 2016) (same); *Jones*, 2016 WL 8738256, at *3 (same); Manual for Complex Litigation (Fourth) § 21.321 (2004) (hereinafter, "*Manual*") ("Typically, opt-out forms are filed with the clerk, although in large class actions the court can arrange for a special mailing address and designate an administrator retained by counsel and accountable to the court to assume responsibility for receiving, time-stamping, tabulating, and entering into a database the information from responses.").

[39] *In re Oil Spill by Oil Rig Deepwater Horizon*, 910 F. Supp. 2d at 939. Here, where the technology allowing class members to object or opt out is coupled with misinformation about what the settlement actually provides, the dangers of accepting mass, unsigned objections or opt-out requests are even more acute.

Several class members object that there should be a renewed opportunity to opt out of the settlement after the final approval hearing. But class members already had at least 60 days from the notice date [Doc. 742 at 15] and 120 days after the order directing notice to evaluate the settlement and request exclusion. The length of the opt-out period provided class members a reasonable opportunity to exclude themselves.[40] And, because the Court is approving the settlement without any changes, the final approval hearing did not create any new grounds for a class member to opt out.

F. Objections To The Notice Plan.

Objections to the notice plan include that: (1) the content of the notice is inadequate; (2) the supplemental e-mail notice to early claimants was inadequate or improper; (3) the notice plan is too reliant on email and social media; (4) the notice plan is inadequate for those without computers or access to news; and (5) the notice plan is unclear as to the amount of fees requested. The Court rejects and overrules each of these objections. The parties implemented the Court-approved notice plan that was developed in conjunction with federal and state regulators, which constitutes the best notice practicable under the circumstances, and provides class

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[40] "Courts have consistently held that 30 to 60 days between the mailing (or other dissemination) of class notice and the last date to object or opt out, coupled with a few more weeks between the close of objections and the settlement hearing, affords class members an adequate opportunity to evaluate and, if desired, take action concerning a proposed settlement." *Greco*, 635 F. App'x at 634.

members with information reasonably necessary to evaluate their options. *See* Fed. R. Civ. P. 23(e)(1)(B); *see also Greco*, 635 F. App'x at 633.

The notice plan here clearly and concisely explains the nature of the action and the rights of class members, thereby satisfying the requirements of Rule 23 and due process. The short form notice, developed with both federal and state regulators, and approved by this Court, sets forth a clear and concise summary of the case and the proposed settlement and, in large, bold typeface, directs class members to visit the settlement website[41] or call the toll-free phone number for more information. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1342-44 (S.D. Fla. 2011) (approving notice where information was referenced in short form notice and more information was readily available in full on settlement website). And the long form notice on the settlement website contains a comprehensive explanation of the settlement

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[41] The long-form notice and the "Frequently Asked Questions" ("FAQ") page of the settlement website contain a section entitled "Legal Rights Resolved Through The Settlement" and provide an answer to the question: "What am I giving up to stay in the settlement class?" The answer clearly provides that, by staying in the settlement class, class members are releasing their "legal claims relating to the Data Breach against Equifax when the settlement becomes final." *See* Doc. 739-2 at 269 & Settlement Website FAQ 20. Additionally, these notice materials contain a section titled "The Lawyers Representing You" and provide an answer to the question: "How will these lawyers be paid?" The answer clearly states that class counsel are seeking attorneys' fees of up to $77,500,000 and reimbursement for costs and expenses up to $3,000,000 to be paid from the Consumer Restitution Fund. *See* Doc. 739-2 at 270-71 & Settlement Website FAQ 22.

and related matters. While the long form notice does not contain every fact or piece of information a class member might find to be material, that is legally unnecessary, potentially confusing, and off-putting to class members.[42]

Some objectors complain the notice plan failed to adequately explain that the alternative compensation benefit could be reduced depending on how many valid claims were submitted. But, as discussed above, the misconception that each class member would automatically receive alternative reimbursement compensation of $125 arose not from the notice plan (nor could it, since direct email notice to the class had not yet been sent when the misconception arose), but from misleading media coverage that began even before the proposed settlement was presented to the Court. *See* App. 1, ¶¶ 27-37. Further, as discussed above, the notice plan, particularly when coupled with the additional steps the Court approved on July 30, 2019, ensured that class members had adequate information about the alternative compensation benefit—including information that alternative compensation claimants likely would receive a "small percentage" of $125—before making a choice between that benefit and credit monitoring.[43] And, for those who made the choice

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[42] *See Faught*, 668 F.3d at 1239 (an overly-detailed notice has the potential to confuse class members and impermissibly encumber their right to benefit from the action).

[43] Some objectors also erroneously assert that the Court approved a change to the claims form (requiring alternative claimants to provide the name of their existing credit monitoring service) to deter class members from claiming $125. This requirement was a

before the enhancements to the settlement website were implemented, they were sent an email giving them an opportunity to change their minds and amend their claim.[44]

Some objectors argue that the notice plan was too reliant upon newer technologies to deliver notice of the settlement to the class. But courts have increasingly approved utilizing email to notify class members of proposed class settlements, and such notice was appropriate in this case. *See, e.g.*, *Home Depot*, 2016 WL 6902351, at *5 (holding notice reaching 75 percent of class through email and internet advertising satisfied Rule 23 and due process); *Morgan*, 301 F. Supp. 3d at 1262 ("Courts consistently approve notice programs where notice is provided primarily through email because email is an inexpensive and appropriate means of delivering notice to class members."). The ultimate focus is on whether the notice methods reach

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component of the settlement from the outset. Changing the form helped ensure that only those eligible for alternative compensation would file a claim and saved the claims administrator from the necessity of having to go back to claimants and ask for that information in the claims vetting process from the millions of people who were filing claims.

[44] Other objectors argue that all early claimants should have been notified by notarized letter, rather than email. But each claimant provided his email address as part of the claims filing process, and was informed that subsequent correspondence would be received via email. *See* App. 4, ¶¶ 60-62. Moreover, the objectors present no evidence that a substantial number of class members did not receive the supplemental email notice. *See Nelson*, 484 F. App'x at 434-35 (affirming district court's decision overruling conclusory objections).

a high percentage of the class. *See* Federal Judicial Center, "*Judge's Class Action Notice and Claims Process Checklist and Plain Language Guide*" (2010) (available at www.fjc.gov); R. Klonoff, *Class Actions in the Year 2026: A Prognosis*, 65 Emory L.J. 1569, 1650 & n. 479 (2016) ("Courts have increasingly utilized social media . . . to notify class members of certification, settlement, or other developments.").

The Court-approved notice plan, which as noted above was designed by experienced counsel for the parties, JND (an expert in providing class action notice), Signal (an expert in mass media and data analytics), and experts on consumer communications at the Federal Trade Commission and the Consumer Financial Protection Bureau, effectively reached and engaged the class. *See Carter v. Forjas Taurus S.A.*, 2016 WL 3982489, at *5 (S.D. Fla. Jul. 22, 2016) (notice plan that "used peer-accepted national research methods to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members" was sufficient). Direct email notice was sent to the more than 104 million class members whose email addresses could be found with reasonable effort. The digital aspects of the notice plan, alone, reached 90 percent or more of the class an average of eight times. App. 5, ¶¶ 22-24. *See* Federal Judicial Center, "Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide" (2010)[45] (recognizing the effectiveness of notice that reaches between 70 and 95 percent of the class). And,

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[45] *Available at* https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf.

the unprecedented claims rate in a case of this magnitude not only further demonstrates that the notice plan's use of email and social media satisfied minimum standards, but also has been more effective than other notice methods.

The Court also overrules objections that the notice program is inadequate for those without ready access to computers or the internet. The Constitution does not require that each individual member receive actual notice of a proposed settlement. *See Juris v. Inamed Corp.*, 685 F.3d 1294, 1318 (11th Cir. 2012). Publication and media notice are appropriate where direct notice is not reasonable or practicable, such as when a class consists of millions of residents from different states. *See Edwards v. Nat'l Milk Producers Fed'n*, 2017 WL 3623734, at * 4 (N.D. Cal. June 26, 2017) ("In view of the millions of members of the class, notice to class members by individual postal mail, email or radio or television advertisements, is neither necessary nor appropriate.") (quoting *In re MetLife Demutualization Litig.*, 262 F.R.D. 205, 208 (E.D.N.Y. 2009)). It was particularly appropriate here, where so much effort was spent in quantitative and qualitative research (including the use of focus groups and a public opinion survey) to specifically identify and target those who lack ready access to the internet and to design a national radio advertising campaign to reach them.[46]

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[46] *See, e.g.*, *Kumar v. Salov N. Am. Corp.*, 2017 WL 2902898, at *3 (N.D. Cal. July 7, 2017) (approving of notice campaign consisting of media notice, publication notice, and advertisements on various websites); *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 602-03 (N.D. Ill. 2016)

In the Court's estimation, it would have been extremely wasteful to spend a significant portion of the settlement fund sending direct mail notice to 147 million class members across the United States and its territories or even to a substantial subset of the class. That would have needlessly reduced the money available to pay for the benefits to the class. The plan developed by the parties, notice experts, and federal and state regulators, and approved by the Court, was sufficient, particularly in light of the pervasive media coverage and the efforts of state and federal regulators to inform consumers about the potential relief available to the class under the settlement. Indeed, few, if any, other class actions of which the Court is aware have received the widespread public attention that the settlement in this case has received or, as noted above, triggered such a substantial number of claims.

Some objectors argue that the notice plan does not identify the exact amount of fees sought by class counsel and thus precisely how much money will be left in the settlement fund after the fees have been paid.

(approving indirect notice for class members who could not be given direct notice including print publication, settlement class website, press release, and social media); *In re Optical Disk Drive Prods. Antitrust Litig.*, 2016 WL 7364803, at *3 (N.D. Cal. Dec. 19, 2016) (approving notice consisting of email, settlement website, toll-free number, publication notice, press release, text link advertising, banner advertising, and advertising on Facebook and Twitter); *Manual* § 21.312 ("Posting notices and other information, on the Internet, publishing short, attention-getting notices in newspapers and magazines, and issuing public service announcements may be viable substitutes for . . . individual notice if that is not reasonably practicable.").

But because this Court has broad discretion over the amount of fees to be awarded, *see Piambino v. Bailey*, 757 F.2d 1112, 1139-42 (11th Cir. 1985); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1329 (S.D. Fla. 2001), the class notice could not with certainty disclose the amount of fees that would ultimately be awarded or the amount that would remain in the fund after those fees are paid. Identifying a maximum amount of fees to be requested is sufficient, and that is what happened here. *See* Doc. 739-2 at 270 & Settlement Website FAQ 22; *see also Carter*, 2016 WL 3982489, at *7 (approving notice where it informed class members that class counsel would be seeking "up to $9 million in fees"). Moreover, class counsel's motion for fees was posted on the settlement website when it was filed on October 29, 2019, giving class members the ability to learn exactly what class counsel requested well before the deadline to opt out or object.

G. Objections To The Claims Procedures.

The Court overrules the objections regarding claims procedures, specifically those objections stating that: (1) the procedure for claiming the alternative reimbursement compensation is confusing and unfair; (2) the requirement that time spent and actual out-of-pocket losses be "fairly traceable" to the data breach will disallow valid claims; (3) the call center was unhelpful and inadequately staffed early in the claims period; and (4) the claims procedure presents "too many hoops to jump through" to submit a claim.

Some objectors argue that the claims process improperly "channels" class members toward electing credit monitoring as the only form of relief because too

many class members have elected alternative compensation. Perhaps because of the inaccurate public reporting suggesting that only $31 million is available to pay claims, these objectors misunderstand the settlement. Credit monitoring or alternative reimbursement compensation is not the only available relief. Further, class members are not told the form of relief that they must choose, but are given adequate and appropriate information so they can make up their own minds. That class members were told alternative compensation claimants likely would receive a small percentage of $125 is accurate. To keep that information from class members would not have been appropriate.

Some objectors argue that they did not receive the supplemental email providing enhanced information about the alternative compensation benefit, but that is no reason to upend the settlement—especially where those class members will have an opportunity to address any claims deficiencies as part of the agreed-upon claims review process.[47] *See, e.g.*, *Home Depot*, 2016 WL 6902351, at *5 (rejecting objections from class members who claimed they did not receive subsequent email notice). Further, this information was on the settlement website, which was available to all class members.

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[47] According to class counsel and the claims administrator, any claimants who did not respond to the supplemental email notice or otherwise take action will be routed through the regular deficiency process for claims validation, which provides them an opportunity to address any deficiencies with their claims. *See* Settlement Agreement § 8.5.

Other objectors argue that requiring class members to provide the name of their current credit monitoring provider to claim alternative compensation is unfair. But the settlement agreement clearly and unambiguously requires class members claiming that benefit to "identify the monitoring service" that they have in place to ensure they are eligible for that benefit. *See* Settlement Agreement § 7.5. And, there is nothing unfair about requiring a claimant to meet the eligibility requirements for a particular benefit. *See Manual* § 21.66 ("Class members must usually file claims forms providing details about their claims and other information needed to administer the settlement."). Other objectors argue that the settlement's "fairly traceable" requirement for reimbursement of out-of-pocket losses and time spent on the data breach will work to disallow valid claims. But to pursue a claim in court, a plaintiff must demonstrate that his or her injuries are "fairly traceable" to the challenged conduct of the defendant. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Settlement is no different; thus courts in other data breach cases have upheld similar requirements. *See, e.g.*, *Premera*, 2019 WL 3410382, at *22 (providing reimbursement for "proven out-of-pocket damages that can plausibly be traced to the Data Breach"); *Home Depot*, 2016 WL 6902351, at *4 (requiring "Documented Claims" to claim monetary relief).

Some objectors argue that the call center was unhelpful early in the claims period. But the settlement provides reasonable procedures and allocates sufficient funds to ensure that the call center was adequately staffed (indeed, more than one hundred

operators were on call at times early in the claims period) and the staff is trained to help class members with questions relating to the proposed settlement. *See* App. 4, ¶¶ 37-41. Beyond that, class counsel were available to respond to class member inquiries and routinely responded to class member emails and phone calls. *See* App. 1, ¶ 69. While frustration with a call center is familiar to most people who exist in the modern world, the Court sees no indication of a pervasive problem here that in any way affects the fairness of the settlement or the claims procedure. That so few class members made this objection despite the massive number of calls that the call center has handled is further testament that any problems were not material.

Several objectors also claim that there are "too many hoops to jump through" in order to submit a claim. But completion and documentation of the claim form are no more burdensome than necessary and similar claims procedures are routinely required in other settlements. *See, e.g.*, *Jackson's Rocky Ridge Pharmacy, Inc. v. Argus Health Sys., Inc.*, 2007 WL 9711416, at *2 (N.D. Ala. June 14, 2007) ("[E]ach class member who seeks damages from the settlement fund must file and substantiate its claim. This requirement is no more onerous than that to which each of the class members would have been subjected had they filed a separate lawsuit against the defendant and prevailed on the substantive claim."); *Manual* § 21.66 ("Class members must usually file claims forms providing details about their claims and other information needed to administer the settlement. . . . Verification of claims forms by oath or affirmation . . . may be

required, and it may be appropriate to require substantiation of the claims. . . ."). The robust number of claims is further evidence that the process was not unduly burdensome.

Some objectors are dissatisfied with the claims period and argue that it is too short to provide relief for potential future harms. The Court concludes that the length of the claims period is reasonable and comparable to, if not longer than, claims periods in other data breach cases. *See, e.g.*, *Home Depot*, 2016 WL 6902351 (approving settlement with initial claims period of 150 days); *Premera*, 2019 WL 3410382, at *26 (ordering initial claims period of 150 days); *Anthem*, 327 F.R.D. at 325 (overruling objections that a one-year claims period was too short because there is a risk of proving harm that has not yet occurred at trial and because settlement provided protections against future identity fraud). The proposed settlement provides class members with six months to claim benefits for losses already sustained and does not require claims to be filed to access identity restoration services. If money remains in the fund after the initial claims period, class members can file claims in the extended claims period, which provides an additional four years to recover for losses that have not yet occurred. Beyond that, credit monitoring and identity restoration services will allow class members to monitor and help safeguard their information for several more years. The Court views these periods as entirely fair and reasonable and calculated to equitably deliver relief to members of the settlement class.

IV. PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES.

Plaintiffs request that the Court award a $77.5 million fee as provided in the settlement agreement. The Court finds that the requested fee is reasonable under the percentage approach, which is the exclusive method in this Circuit for calculating fees in a common fund case such as this one. A lodestar crosscheck, though not required, also supports the requested fee.

A. The Requested Fee Is Reasonable Under The Percentage Method.

The controlling authority in the Eleventh Circuit is *Camden I Condominium Association, Inc. v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991), which holds that fees in common fund cases must be calculated using the percentage approach. *Camden I* does not require any particular percentage. *See id.* ("There is no hard and fast rule … because the amount of any fee must be determined upon the facts of each case."); *see also, e.g.*, *Waters v. Int'l. Precious Metals Corp.*, 190 F.3d 1291, 1294 (1999). Typically, awards range from 20% to 30%, and 25% is considered the "benchmark" percentage. *Camden I*, 946 F.2d at 775. The Eleventh Circuit has instructed that, to determine the appropriate percentage to apply in a particular case, a district court should analyze the *Johnson* factors derived from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), as well any other pertinent considerations. *Camden I*, 946 F.2d at 775.

The $77.5 million requested fee is 20.36% of the $380.5 million *minimum* settlement fund. Under the controlling authority cited above, the requested fee is reasonable as a percentage of the non-reversionary fund alone. However, the minimum amount of the settlement fund is not the true measure of all the benefits, monetary and non-monetary, available to the class under the settlement. The class benefit also includes: (1) an additional $125 million that Equifax will pay if needed to satisfy claims for out-of-pocket losses; (2) the consent order requiring Equifax to pay at least $1 billion for cybersecurity and related technology and comply with comprehensive standards to mitigate the risk of another data breach involving class members' personal data; (3) the value of the opportunity to receive ten years of free credit monitoring for all class members (which would cost each class member $1,920 to buy at its retail price); (4) the value of seven years of identity restoration services available to all class members; and (5) the value of a ban on the use by Equifax of arbitration clauses in some circumstances.[48] In assessing a fee request, the Court may also consider all of these benefits. *See, e.g., Camden*, 946 F.2d at 775; *Poertner v. Gillette Co.*, 618 F. App'x 624, 629 (11th Cir. 2015), *cert. denied sub nom. Frank v. Poertner*, 136 S. Ct. 1453 (2016) (district court did not abuse its discretion by

[48] In addition to these benefits provided under the settlement, certain settlement class members also benefited from an additional year of credit monitoring services, known as IDnotify, provided to class members who previously enrolled in the TrustedID Premier services offered by Equifax following the data breach. *See* Settlement Agreement § 4.3.

"including the value of the nonmonetary relief … as part of the settlement pie").

When these other benefits are considered, the percentage of the class benefit the requested fee represents is much less than 20.36%.[49] For example, the requested fee is 15.3% of the $380.5 million fund plus the additional $125 million available to pay out-of-pocket claims. The requested fee is only 5% of those amounts plus the $1 billion that Equifax is required to spend for cybersecurity and related technology and it is less than 1% when the retail value of the credit monitoring services already claimed by class members is included. These figures demonstrate that using 20.36% in the calculation of a percentage-based fee is conservative as it does not account for all of the settlement's benefits, but that percentage nonetheless will be the focus of the Court's analysis because if a 20.36% award is reasonable, as it is, then there can be no question that a smaller percentage is also reasonable.

The percentage of the class benefit represented by the requested fee is supported by the factors that the Eleventh Circuit has directed be used in assessing the reasonableness of a fee request, including the *Johnson* factors. There are twelve *Johnson* factors:

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[49] For the same reasons, even if the Court calculated the percentage of the fund based upon the size of the fund specified in the term sheet rather than the ultimate settlement (25% of $310 million), that percentage would be reasonable, and the presence of all the other ingredients in the "settlement pie" drive the requested fee well below the benchmark.

> (1) the time and labor required; (2) the novelty and difficulty of the relevant questions; (3) the skill required to properly carry out the legal services; (4) the preclusion of other employment by the attorney as a result of his acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the clients or the circumstances; (8) the results obtained, including the amount recovered for the clients; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the clients; and (12) fee awards in similar cases.

George v. Academy Mortgage Corp. (UT), 369 F. Supp. 3d 1356, 1376 (N.D. Ga. 2019). Other relevant factors include the number of objections from class members, the risks undertaken by class counsel, and the economics of handling class actions. *Champs Sports*, 275 F. Supp. 3d at 1356; *Camden I*, 946 F.2d at 775. The Court does not analyze two of the *Johnson* factors, the undesirability of the case and the nature of the attorney-client relationship, due to their limited applicability here. The Court addresses the other factors below.

(1) *The Time and Labor Involved*

The Court has observed the intensive amount of time and labor required to prosecute the claims in this case. Class counsel and those under their direction have spent over 33,000 hours prosecuting this action. The vast majority of the work was done by class counsel and other firms the Court appointed to the

plaintiffs' steering committee. The work was allocated to those able to do the work most efficiently. Class counsel also estimate they will spend at least another 10,000 hours over the next seven years in connection with final approval, managing the claims process, and administering the settlement. The Court finds that the work that class counsel have done and estimate they will do is reasonable and justified in view of the issues, the complexity and importance of the case, the manner in which the case was defended, the quality and sophistication of Equifax's counsel, the result, the magnitude of the settlement and the number of claims. Moreover, the amount of work devoted to this case by class counsel likely was a principal reason that they were able to obtain such a favorable settlement at a relatively early stage. This factor weighs in favor of approval of the requested fee.

(2) *The Novelty and Difficulty of the Questions*

Although many of the plaintiffs' claims were able to survive a motion to dismiss, their path forward remained difficult. The law in data breach litigation remains uncertain and the applicable legal principles have continued to evolve, particularly in the State of Georgia, where protracted appellate litigation in two other data breach cases while this case has been pending demonstrate the unsettled state of the law. *See McConnell*, 828 S.E.2d at 352; *Collins v. Athens Orthopedic Clinic*, 815 S.E.2d 639 (Ga. Ct. App. 2018), *rev'd* ___ Ga. ___ (Dec. 23, 2019). As a result, this case involved many novel and difficult legal questions, such as the threshold issue of whether Equifax had a duty to

protect plaintiffs' personal data, whether plaintiffs' alleged injuries are legally cognizable and were proximately caused by the Equifax breach, the applicability of the FCRA to a data breach at a major credit reporting agency, the meaning of various state consumer protection statues, and other issues briefed by the parties in connection with Equifax's motion to dismiss. These would be recurring issues throughout the litigation if the settlement is not approved.

Other novel and difficult questions in this case resulted from the sheer size of the litigation, the number of Americans impacted by the breach, and the highly technical nature of the facts. Determining and proving the cause of the breach and developing cybersecurity measures to prevent a recurrence were particularly challenging. The plaintiffs' lawyers also confronted unusual circumstances and a dearth of legal guidance or governing precedent when they engaged in extensive negotiations with federal and state regulators after reaching a binding term sheet with Equifax. This factor strongly weighs in favor of the requested fee request.

(3) *The Skill Requisite to Perform the Legal Services Properly and the Experience, Reputation, and Ability of the Lawyers*

This case required the highest level of experience and skill. Plaintiffs' legal team includes lawyers from some of the most experienced and skilled class action law firms in the country who have collectively handled more than 50 data breach cases, including all of the most significant ones. Their experience and skill was

needed given the scope of the case and the quality of the opposition. The lawyers who represented Equifax are highly skilled and come from several of the nation's largest corporate defense firms. Moreover, Judge Phillips has noted that "the settlement is the direct result of all counsel's experience, reputation, and ability in complex class actions including the evolving field of privacy and data breach class actions." [Doc. 739-9, ¶ 15]. The Court can also attest to the high level of zealous, diligent advocacy demonstrated throughout this case. These factors weigh in favor of the requested fee.

(4) *The Preclusion of Other Employment*

Given the demand for their services attributable to their high level of skill and expertise, but for the time and effort they spent on this case the plaintiffs' lawyers would have spent significant time on other matters. Further, by necessity given its nature, the bulk of the work was done by a relatively small number of senior lawyers, and demanded their full attention. As described above, their focus on this case likely served as the principal reason that the case was able to settle favorably, further weighing in support of the requested fee.

(5) *The Customary Fee*

The percentage used to calculate the requested fee is substantially below the percentages that are typically charged by lawyers who handle complex civil litigation on a contingent fee basis, which customarily range from 33.3% to 40% of the recovery.

(6) *Whether the Fee is Fixed or Contingent*

"A contingency fee arrangement often justifies an increase in the award of attorneys' fees." *Behrens*, 118 F.R.D. at 548. A larger award is justified because if the case is lost a lawyer realizes no return for investing time and money in the case. *See In re Friedman's, Inc. Sec. Litig.*, 2009 WL 1456698, at *3 (N.D. Ga. May 22, 2009). As discussed above, the novel and difficult questions present in this case heightened this concern here. This action was prosecuted on a contingent basis and thus a larger fee is justified.

(7) *Time Limitations Imposed by the Client or the Circumstances*

Priority work done under significant time pressure is entitled to additional compensation and justifies a larger percentage of the recovery. *See, e.g.*, *Johnson*, 488 F.2d at 718; *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1215 (S.D. Fla. 2006). At various times during this litigation, class counsel were forced to work under significant time pressure, such as when they had to vet thousands of potential class representatives in a short period to meet the Court's deadline for filing a consolidated amended complaint and during the several months they spent negotiating with Equifax and federal and state regulators leading up to finalizing the settlement. During critical periods, class counsel spent as much as 2,000 hours a month or more. This factor thus supports an increased award.

(8) *The Amount Involved and the Results Obtained*

This is the largest data breach settlement in history. The $380.5 million fund alone is more than the total recovered in all consumer data breach settlements in the last ten years.[50] Further, class members are eligible for an unprecedented package of benefits, including but not limited to cash compensation for out-of-pocket losses fairly traceable to the breach of up to $20,000 per class member, reimbursement for time spent as a result of the breach, and 25% of the amount paid to Equifax by class members for identity protection services in the year prior to the breach; ten years of high quality credit monitoring services having a retail value of $1,920 per class member; and seven years of identity restoration services without the need to file a claim.

In addition, Equifax has agreed to a consent order requiring it to comply with comprehensive cybersecurity standards, spend at least $1 billion on data security and related technology, and have its compliance audited by independent experts. Violations of the consent order are subject to this Court's enforcement power. This injunctive relief provides a substantial benefit to all class members, and exceeds what has been achieved in other data breach settlements.

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[50] Contrary to the arguments of some objectors, the size of the settlement fund is not just a matter of scale. For instance, the settlement is larger on a per capita basis than the *Anthem* settlement, which resulted in a $115 million fund for a class of 80 million individuals.

Finally, as noted, class counsel negotiated an innovative notice program to effectively inform and engage class members, and a robust claims process to facilitate and increase class member participation. The notice program and claims process are both a direct benefit to the class.

In short, the results obtained—which are in the high range of potential recoveries and in some instances may exceed what could be achieved at trial—weigh strongly in favor of the requested fee.

(9) *Awards in Similar Cases*

The requested fee is in line with—if not substantially lower than—awards in other class actions that have resulted in similarly impressive settlements. Even if the fee is based only on the cash fund, ignoring all other monetary and non-monetary benefits, the 20.36% that the requested fee represents is below the 25% benchmark recognized in *Camden I* and substantially less than has been awarded in similar cases, including specifically other data breach cases. *See, e.g.*, *In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, 2019 WL 2720818, at *4 (N.D. Ga. June 6, 2019) (awarding a fee of approximately 30% and noting that "[a]wards of up to 33% of the common fund are not uncommon in the Eleventh Circuit, and especially in cases where Class Counsel assumed substantial risk by taking complex cases on a contingency basis."); *Home Depot*, 2016 WL 11299474, at *2 (awarding a fee in the consumer track of "about 28% of the monetary benefit conferred on the Class."); *Home Depot*, No. 1:14-MD-02583-TWT (Doc. 345 at 4) (using one-third of the benefit in percentage-based calculation in the financial

institution track); *Target*, 2015 WL 7253765, at *3, *rev'd and remanded on other grounds*, 847 F.3d 608 (awarding 29% of the monetary payout).

Empirical studies also show that fees in other class action settlements are substantially higher than the requested fee. *See, e.g.*, Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. Rev. 937, 947, 951 (2017) (finding that in the Eleventh Circuit the average fee was 30% and median fee was 33% from 2009 through 2013); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 836 (2010) (finding, in the Eleventh Circuit for 2006– 2007 period of the study, the average fee was 28.1% and the median fee was 30%).

(10) *The Number of Objections*

Only 38 of the 147 million class members objected to the requested fee. This number represents 0.000026 percent of the class or just 1 of every 3.9 million class members. The extremely small number of objectors is further evidence of the reasonableness of the requested fee. *See, e.g.*, *Home Depot*, 2016 WL 6902351, at *4 (objections from an "infinitesimal percentage" of the class "indicates strong support" for the settlement).

(11) *The Risk Undertaken by Class Counsel*

The plaintiffs' lawyers undertook extraordinary litigation risk in pursuing this case and investing as much time and effort as they did. The Court is familiar with data breach litigation and appreciates that this

was undeniably a risky case when it was filed. It is even riskier today, as demonstrated by recent authority. *See, e.g.*, *McConnell*, 828 S.E.2d at 352 (Ga. 2019); *Adkins v. Facebook*, 2019 WL 7212315, at *9 (N.D. Cal. Nov. 26, 2019) (granting motion to certify injunctive-only class but denying motion to certify damages class and issues class in data breach case).

Based on these factors, the Court finds the award of attorneys' fees in the amount of $77.5 million is appropriate under the percentage of the fund approach. The Court has considered and hereby overrules all of the objections to the requested fees as described below.

First, most of the objections to the motion for fees are conclusory, do not provide any legal support for why a lower fee should be awarded, or are based on a misunderstanding about the terms of the settlement. These objections can be summarily rejected. *See, e.g.*, *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 264 n.3 (S.D.N.Y. 2012).

Second, one objector, John Davis, argues that the fee must be calculated using the lodestar method because he disagrees with *Camden I* and claims that the case is no longer good law in light of *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010). (Doc. 879-1 at 8-10). This argument is frivolous. *Camden I* is binding precedent. And, *Perdue*, which construes a fee-shifting statute, does not apply in a common fund case such as this one. *See In re Home Depot, Inc. Customer Data Sec. Breach Litig.*, 931 F.3d 1065, 1084-85 (11th Cir. 2019).

Third, several class members do not object to the fee amount, but to its payment from the settlement fund. According to these objectors, the Court should punish Equifax by ordering the company to pay the fees separately. But this Court cannot order Equifax to pay more. *See, e.g.*, *Howard v. McLucas*, 597 F. Supp. 1504, 1506 (M.D. Ga. 1984) ("[T]he court's responsibility to approve or disapprove does *not* give this court the power to force the parties to agree to terms they oppose") (emphasis in original). And, having created a common fund, class counsel are entitled to be paid from the fund.

Fourth, two other objections—one by Mikell West and the other by Frank and Watkins—contend that the fee should be no more than 10% of the class benefit because class counsel allegedly faced little risk, the case settled within two years, and awards in cases involving "megafund" settlements do not justify a higher percentage. As stated above, the Court disagrees with the assertion that plaintiffs had little risk. To the contrary, class counsel faced extraordinary risk, which the objectors unreasonably and erroneously discount. Further, penalizing class counsel for achieving a settlement within two years would work against the interests of the class and undercut the judicial policy favoring early settlement. *See, e.g.*, *Markos v. Wells Fargo Bank, N.A.*, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017); *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d at 1362.

Their argument that the requested fee is too large because this case involves a megafund settlement—often defined as a settlement in excess of

$100 million—also is unpersuasive. When all of the settlement benefits are properly included the value of the settlement is in the several billions of dollars, meaning the requested fee *is* less than the 10% that the two objectors contend is appropriate. In arguing otherwise, the objectors improperly discount all of the settlement benefits except the $380.5 million fund, including specifically all of the settlement's non-monetary benefits.[51] *See Poertner*, 618 F. App'x at 630 (rejecting an objection by Frank that the requested fee was too large because he improperly limited the monetary value of the settlement and disregarded the settlement's substantial non-monetary benefits, which he wrongly claimed were illusory).

Even if calculated only as a percentage of the $380.5 million fund, the requested fee of 20.36% is justified notwithstanding the size of the settlement. Likewise, even if the Court considered only the $310 million fund created under the parties' term sheet, a 25% fee would be justified. The Court is unaware of any *per se* rule that a reduced percentage must be used in a

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[51] Under the percentage approach, "courts compensate class counsel for their work in extracting non-cash relief from the defendant in a variety of ways." *In re Checking*, 2013 WL 11319244, at *12. If the non-monetary relief can be reliably valued, courts can include such relief in the fund and award counsel a percentage of the total. *Id.*; *George*, 369 F. Supp. 3d at 1379-80; *see also Poertner*, 618 F. App'x at 628-29. If it cannot be reliably valued, such relief is a factor in selecting the right percentage. *See, e.g.*, *Camden I*, 946 F.2d at 774-775. Accordingly, in this case, even if the non-monetary benefits to the class could not be valued with precision, those benefits—which are undeniably substantial—would certainly justify awarding class counsel 20.36% of the cash fund.

"megafund" case and declines to create one now. Additionally, other courts have criticized the use of a reduced percentage in such a case because, among other things, the practice undercuts a major purpose of the percentage approach in aligning the interests of the class and its lawyers in maximizing the recovery. Such a rule might also discourage early settlements, and it fails to appreciate the immense risk presented by large, complex cases. *See, e.g.*, *In re Cendant Corp. Litig.*, 264 F.3d 201, 284 n.55 (3d Cir. 2001); *Allapattah*, 454 F. Supp. 2d at 1213; *In re Checking*, 830 F. Supp. 2d at 1367; *Syngenta*, 357 F. Supp. 3d at 1114.

Regardless, the objectors overemphasize the importance of the settlement's size. Under *Camden I*, this Court must base its award on an evaluation of all of the *Johnson* factors, not just the factor involving awards in other cases. The Court's evaluation of those factors in light of the particular facts and circumstances of this case, as discussed above, would support using a percentage higher than the 25% benchmark and certainly higher than the 20.36% requested here. Indeed, the lowest fee awarded in the other data breach cases cited above was 27%. That class counsel are not requesting a much higher fee here akin to that awarded in other cases suggests that they have already accounted for the settlement's size by agreeing to accept a reduced percentage.

The objectors, furthermore, are simply wrong in asserting that no more than 10% is typically awarded

in megafund cases.[52] In *Anthem*, which involved a $115 million settlement fund, the court surveyed awards in other large settlements and concluded: "a percentage of 27% appears to be in line with the vast majority of megafund settlements." *Anthem*, 2018 WL 3960068, at *15. Further, none of the three authorities relied upon by the objectors justify the conclusion that no more than a 10% fee is appropriate here. The empirical study the objectors cite does not support that conclusion, according to Professor Geoffrey Miller, one of its co-authors.[53] To the contrary, the study's data set shows that, in cases with settlements between $325 million and $425 million (the range in which the cash portion of this case falls), the mean percentage was 19.7%—remarkably close to the percentage requested here. (Doc. 900-3, ¶¶ 16-17). In *Carpenters Health & Welfare Fund v. The Coca-Cola Co.*, 587 F. Supp. 2d. 1266 (N.D. Ga. 2008), the court awarded a 21% fee. And, in *In re Domestic Air*, 148 F.R.D. at 350-51, the court relied upon pre-1991 research, which conflicts with the findings of more recent studies.

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[52] Class counsel have cited at least 40 cases involving settlements in excess of $100 million in which a fee of more than 25% has been awarded, including several such cases in this Circuit. *See, e.g.*, *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (31.33% of a $1.06 billion fund); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011) (30% of a $410 million fund); *In re Sunbeam*, 176 F. Supp. 2d 1323 (25% of a $110 million fund).

[53] Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 Journal of Empirical Legal Studies 248 (2010).

Fifth, objectors West, Frank and Watkins argue that the $70.5 million added to the settlement fund at the request of federal and state regulators did not result from class counsel's efforts and thus class counsel are not entitled to receive a percentage of the additional amount. This argument fails as a factual matter because it assigns no credit to class counsel's efforts and their agreement to integrate the additional money into the settlement they negotiated. While regulators may have been the initial catalyst for the extra funds, the money would not have been added to the settlement fund but for class counsel's efforts. Class counsel spent months negotiating with Equifax on the proposed changes so that the additional funds could be incorporated without having any potential adverse impact to the class.

Thus, without minimizing the role played by the regulators, class counsel were ultimately responsible for integrating the increased funds into the settlement they negotiated and are entitled to compensation for their efforts. The Court also notes that class counsel have not sought any increased fees relative to what they agreed to request in the term sheet, so they are not attempting to use the extra money as a basis for an additional fee request. Basing the percentage off the $380.5 million rather than $310 million simply recognizes the reality of the size of the non-reversionary fund to which the parties ultimately agreed. Treating the calculation differently would penalize class counsel after they spent thousands of hours in the negotiations with Equifax and regulators to integrate the $70.5 million into the settlement without adverse consequences for the class.

Sixth, objectors Frank and Watkins argue that the notice and administration costs to be paid out of the settlement fund should be excluded from the class benefit for fee purposes. The Court disagrees. It has long been the practice in this Court to use the gross amount of a common fund in calculating a percentage-based fee award without deducting the costs of notice or administration. *See, e.g.*, *George*, 369 F. Supp. 3d at 1375; *Champs Sports*, 275 F. Supp. 3d at 1356; *In re Domestic Air*, 148 F.R.D. at 354; *see also Arby's*, 2019 WL 2720818, at *2 (including notice and administration claims in the class benefit even though paid separately by the defendant). That is because notice and administration costs inure to the benefit of the class. *Id*. Similar arguments have been rejected before. *See, e.g.*, *In re Domestic Air*, 148 F.R.D. at 354; *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015); *Caliguiri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017); *Anthem*, 2018 WL 3960068, at *8-9.[54] And, there is a particularly good

[54] The main case on which Frank and Watkins rely, *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014), is readily distinguishable. *Redman* involved a coupon settlement, the proposed fee could be justified only by including notice and administration in the class benefit, and the court was concerned that class counsel thus would have a "perverse" incentive to increase those costs to justify a larger fee. This settlement does not include coupons, costs will be paid from a non-reversionary fund, there is an additional $125 million to pay out-of-pocket claims if the fund is exhausted, and class counsel selected the providers after a competitive bidding process. Moreover, adopting the *Redman* approach on these facts would incentivize counsel to cut corners on notice and administration, hurting the class by lowering its awareness and participation and hindering the claims process. Unsurprisingly, other courts have declined to follow *Redman*. *See,*

reason for rejecting the argument here. Because an additional $125 million is available to pay out-of-pocket claims, notice and administration costs will not diminish the fund except in the unlikely event that both the fund and the extra $125 million are exhausted.

Seventh, objectors West, Frank and Watkins improperly discount the value of the credit monitoring offered under the settlement for purposes of calculating a fee. West does not recognize it has any value beyond the cost to be paid from the fund for the first seven million claims. Frank and Watkins argue it is not even worth that, asserting its true value is only $15 million ($5 per class member multiplied by the roughly three million claims they assert have been made to date) because free credit monitoring is widely available and class members allegedly prefer alternative compensation. The objectors also discount the value of the injunctive relief class counsel obtained. The Court disagrees.

As discussed earlier, the record shows that the high-quality credit monitoring offered here is more valuable than the free or low-cost services typically available. Moreover, courts have often recognized the benefit of credit monitoring, use its retail cost as evidence of value, and consider that value in awarding fees. *See, e.g.*, *Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 218 (E.D. Pa. 2011) (overruling an objection that the settlement offered "worthless credit monitoring

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e.g., *Keil v. Lopez*, 862 F.3d 685, 704 (8th Cir. 2017); *McDonough v. ToysRUs, Inc.*, 80 F. Supp. 3d 626, 654 n.27 (E.D Pa. 2015).

services that no one wants" and valuing the services at their retail price in awarding a fee); *In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395, 409 (D. Mass. 2008) (the class-wide, $177 million retail value of the credit monitoring was "a benchmark against which to measure the award of attorneys' fees"); *Home Depot*, 2016 WL 6902351, at *4; *Hutton v. Nat'l. Bd. of Exam'rs in Optometry, Inc.*, 2019 WL 3183651, at *7 (D. Md. Jul. 15, 2019); *Hillis v. Equifax Consumer Servs., Inc.*, 2007 WL 1953464, at *4 (N.D. Ga. June 12, 2007); *Anthem*, 2018 WL 3960068, at *11.[55]

The Court also disagrees with the objectors' contention that there is no value for fee purposes in the comprehensive injunctive relief provided under the settlement, including the requirement that Equifax spend a minimum of $1 billion on data security and related technology. Courts routinely consider the presence of similar business practice changes to be a factor in the fee analysis. *See, e.g.*, *Anthem*, 2018 WL 3960068, at *28 (mandatory minimum expenditure for

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[55] Even assuming that the credit monitoring offered is worth less to class members than its retail price, the credit monitoring is certainly worth more than its discounted, wholesale cost to Equifax. *See Anthem*, 2018 WL 3960068, at *7. And even valued at that cost, the credit monitoring available to the entire class under the settlement would far exceed what the objectors claim it is worth. Indeed, that cost alone (several billion dollars at a minimum) would more than justify the requested fee. *See generally Waters*, 190 F.3d at 1297 (class counsel are entitled to a reasonable fee based on the funds potentially available to be claimed, regardless of the amount actually claimed); *see also Poertner*, 618 F. App'x at 629-30, n.2.

cybersecurity was "properly considered in determining an appropriate attorneys' fees award"); *Ingram*, 200 F.R.D. at 689-90 (programmatic changes to reduce racial discrimination supported an upward adjustment from the benchmark); *see generally Home Depot*, 2016 WL 6902351, at *4 (two years of enhanced cybersecurity measures was a valuable class benefit).

The Court specifically finds that the injunctive relief class counsel obtained here is a valuable benefit to the class because it reduces the risk that their personal data will be compromised in a future breach. That Equifax may also benefit makes no difference. Similarly, that Equifax agreed to the injunctive relief to avoid litigation risk does not mean class counsel have no entitlement to a fee; rather, Equifax's motivation is what triggers class counsel's entitlement. *See Poertner*, 618 F. App'x at 629 (rejecting a similar objection by Frank and holding that the defendant's business practice changes were a settlement benefit because the changes were "motivated by the present litigation").

In short, the requested fee is well-justified under the percentage method, and the objections to the fee are overruled.

B. A Lodestar Cross-Check, If Done, Supports The Requested Fee.

The Eleventh Circuit has authorized courts to use the lodestar method as a cross-check on the reasonableness of a percentage-based fee, but such a cross-check is not required. *See, e.g.*, *Waters*, 190 F. 3d at 1298. In fact, a cross-check can reintroduce the same

undesirable incentives the percentage method is meant to avoid and for that reason courts regularly award fees without discussing lodestar at all. *In re Checking*, 830 F. Supp. 2d at 1362; *Champs Sports*, 275 F. Supp. 3d at 1350.

In this case, the Court does not believe that a lodestar cross-check is necessary or even beneficial. Nonetheless, the requested fee easily passes muster if a cross-check is done.

As of December 17, 2019, plaintiffs' counsel spent 33,590.7 hours on this litigation. Class counsel documented the time expended in detailed records filed *in camera* with the Court, and they personally reviewed more than 21,000 time entries and excluded 3,272.9 hours as duplicative, unauthorized, of insufficient benefit, or inconsistent with the billing protocol that they established at the outset of the litigation. Plaintiffs' counsel's lodestar up to the final approval hearing, including the reviewed time, amounts to $22,816,935. In addition to time spent through final approval, class counsel estimate they will spend 10,000 hours over the next seven years to implement and administer the settlement. This time has an expected value of $6,767,200. The Court finds that this estimate is reasonable. Class counsel's current and future lodestar thus totals $29,584,135.

When the lodestar approach is used in common fund cases, courts typically apply a multiplier to reward counsel for their risk, the contingent nature of the fee, and the result obtained. Here, the requested fee represents class counsel's lodestar (including future time) plus a multiplier of roughly 2.62, which is

consistent with multipliers approved in other cases. *See, e.g.*, *Columbus Drywall*, *2*012 WL 12540344, at *5 & n.4 (noting a multiplier of 4 times the lodestar is "well within" the accepted range and citing examples); *Ingram*, 200 F.R.D. at 696 (noting courts apply multipliers ranging from less than two to more than five); *Pinto v. Princess Cruise Lines Ltd.*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007) (multipliers "'in large and complicated class actions' range from 2.26 to 4.5, while three appears to be the average") (internal quotations omitted).

No objector argues that a lodestar cross-check is mandated, or even explains why this case warrants a cross-check given the reasonableness of the percentage fee being sought. Several objectors, however, dispute various aspects of the cross-check analysis. None of these objections have any merit.

One objector contends hourly rates should be capped at $500 because most ordinary people earn minimum wage or less than $20 an hour. The proper comparison, though, is to the prevailing rates in the legal community. By that standard, class counsel's rates are reasonable. Class counsel supplied substantial evidence that the prevailing rates for complex litigation in Atlanta and around the country are commensurate with or even in excess of the rates applied here and none of the objectors have presented any evidence to the contrary. The Court therefore finds class counsel's rates are reasonable and well supported, including specifically the hourly rates charged by Mr. Barnes ($1050); Mr. Canfield ($1000); Ms. Keller ($750), and Mr. Siegel ($935).

Several objectors challenge class counsel's time, claiming it is inflated and duplicative, and demand that the Court closely examine the time records and order them to be produced for review by the class. A lodestar cross-check, however, does not require that time records be scrutinized or even reviewed. *See, e.g.*, *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) ("[U]sed as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court. Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case.") (internal citations omitted); *In re Checking*, 2013 WL 11319244, at *14 (declining to review billing records). Nevertheless, based on its *in camera* review of a sampling of class counsel's records, its familiarity with the litigation, class counsel's declarations regarding their line-by-line review of all entries to remove duplicative and unnecessary time, and other factors, the Court finds that class counsel's time was reasonable and appropriately spent. The Court also finds that ordering the records be made public would needlessly require the voluminous records to be reviewed and redacted for privileged and confidential material and serve no useful purpose, particularly given the fact that a lodestar cross-check is not required and litigation over specific time entries would be a waste of resources for both the Court and the parties.

One objector claims that estimated future time cannot be considered. Yet, other courts have included future time in lodestar calculations, including this Court in the financial institutions track of the *Home*

Depot data breach case. *See Home Depot*, 2017 WL 9605207, *1 (N.D. Ga. Oct. 11, 2017), *aff'd in part and rev'd in part on other grounds*, 931 F.3d 1065, 1082 (11th Cir. 2019). Using a reasonable estimate also is appropriate. A cross-check is not intended to involve "mathematical precision." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005). And, if the fee was lodestar-based, class counsel would be entitled to file supplemental applications for future time. *See Cassese v. Washington Mut., Inc.*, 27 F. Supp. 3d 335, 339 (E.D.N.Y. 2014). Excluding such time thus would misapply the lodestar methodology and needlessly penalize class counsel.

Finally, several objectors argue the proposed multiplier is too high and one claims *Perdue* bars the use of any multiplier. But class counsel have demonstrated that the multiplier is reasonable and within the typical range, and *Perdue* is irrelevant in a common fund fee analysis. *See Home Depot*, 931 F.3d at 1084-85.

In sum, a lodestar analysis is not required, but a consideration of the lodestar here only confirms that the requested fee is reasonable.

C. Reimbursement Of Class Counsel's Expenses.

The settlement agreement authorizes reimbursement of up to $3 million in expenses that class counsel reasonably incurred on behalf of the class. Class counsel have incurred $1,404,855.35 in expenses through December 17, 2019, for such items as court reporter fees; document and database reproduction and

analysis; e-discovery costs; expert witness fees; travel for meetings and hearings; paying the mediator; and other customary expenditures. The Court finds that these expenses are reasonable and were necessarily incurred on behalf of the class. Class counsel are thus entitled to be reimbursed for these expenses. *See, e.g.*, *Columbus Drywall*, 2012 WL 12540344, at *7-8.

Two objectors challenge class counsel's expenses. One says the total is simply "too much." The other speculates that some computerized research charges might be overbilled and complains that the "miscellaneous" expense category is not further itemized. Such vague assertions and speculation do not overcome the substantial evidence in the record that all of the expenses were reasonable. Moreover, the expenses are detailed in class counsel's *in camera* submissions to the Court.

D. <u>The Service Awards Are Appropriate.</u>

Courts routinely approve service awards to compensate class representatives for the services they provide and the risks they incur on behalf of the class. *See, e.g.*, *Ingram*, 200 F.R.D. at 695-96; *Allapattah Servs.*, 454 F. Supp. 2d at 1218; *In re Checking*, 2014 WL 11370115, at *12-13. The settlement agreement provides for a modest service award of $2,500 to each class representative, who devoted substantial time and effort to this litigation working with their lawyers to prosecute the claims, assembling the evidence supporting their claims, and responding to discovery requests. Simply put, the class representatives were instrumental in achieving a settlement benefitting the entire class. But for their efforts, other class members

would be receiving nothing. The Court therefore finds that the service awards are deserved and approves them for payment.

Objector Davis contends the longstanding practice of compensating class representatives for their service is prohibited by two Supreme Court cases from the 1800s. The argument previously has been rejected out of hand because the cases were decided before Rule 23 and involve different facts and circumstances. *See, e.g.*, *Merlito v. Experian Mktg. Sols., Inc.*, 923 F.3d 85, 96 (2d Cir. 2019). Davis also suggests that each class member be required to document the specific amount of time spent on the litigation, but he provides no basis to believe the class representatives did not perform the services described and the amount of time needed for such tasks is necessarily substantial. Further evidence of the class representatives' service thus is unnecessary, particularly given the modest sums involved. *See, e.g.*, *Home Depot*, 2016 WL 11299474, at *1 (N.D. Ga. Aug. 23, 2016) (awarding modest service awards to 88 class representatives based on a similar description of their service by their counsel).

V. FINDINGS REGARDING SERIAL OBJECTORS.

"Objectors can play a useful role in the court's evaluation of the proposed settlement terms. They might, however, have interests and motivations vastly different from other attorneys and parties." *Manual* § 21.643. The *Manual* goes on to explain:

> Some objections, however, are made for improper purposes, and benefit only the

> objectors and their attorneys (*e.g.*, by seeking additional compensation to withdraw even ill-founded objections). An objection, even of little merit, can be costly and significantly delay implementation of a class settlement. Even a weak objection may have more influence than its merits justify in light of the inherent difficulties that surround review and approval of a class settlement. Objections may be motivated by self-interest rather than a desire to win significant improvements in the class settlement. A challenge for the judge is to distinguish between meritorious objections and those advanced for improper purposes.

Manual § 21.643.

The *Manual*'s guidance has been instructive in evaluating the objections received in this case. To be clear, the Court has considered in full the merits of all objections, regardless of whether the objector is a repeat player, and found them to be without merit. "The fact that the objections are asserted by a serial or 'professional' objector, however, may be relevant in determining the weight to accord the objection, as an objection carries more credibility if asserted to benefit the class and not merely to enrich the objector or her attorney." *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1104 (D. Kan. 2018) (referring, in part, to objectors and objectors' counsel here George Cochran and Christopher Bandas). There is sufficient evidence to conclude that certain objectors here are of the "serial" variety.

This Court therefore finds, based on information in the record and otherwise publicly available, that the individuals identified below are serial objectors, that they have unsuccessfully asserted many of the same or similar objections in other class action settlements, that their objections are not in the best interests of the class, that there is no substantial likelihood their objections will be successful on appeal, and that the class would be best served by final resolution of their objections as soon as practicable so that class members can begin to benefit from the settlement:

- Objector George Cochran, an attorney who objects on his own behalf, "is a serial objector to class action settlements, with a history of attempting to extract payment for the withdrawal of objections." *Syngenta*, 357 F. Supp. 3d at 1104.

- Christopher Bandas, an attorney who represents objector Mikell West, is recognized by federal courts across the country as a "serial objector" who "routinely represents objectors purporting to challenge class action settlements, and does not do so to effectuate changes to settlements, but does so for his own personal financial gain; he has been excoriated by Courts for this conduct." *CRT*, 281 F.R.D. at 533; *see also, e.g.*, *Clark v. Gannett Co.*, 122 N.E. 3d 376, 380 (Ill. Ct. App. 2018) (Bandas has "earn[ed] condemnation for [his] antics from courts around the country. Yet, [his] obstructionism continues."). Moreover, Bandas and his law firm are subject to a permanent injunction issued by

a federal judge governing their ability to object in class actions. *Edelson P.C. v. The Bandas Law Firm*, 2019 WL 272812 (N.D. Ill. Jan. 17, 2019). And, because of their history of inappropriate conduct, another federal court recently denied applications for *pro hac vice* admission by Bandas and Robert Clore, his colleague and co-counsel here, which they filed so they could represent an objector. *Cole v. NIBCO, Inc.*, No. 3-13-cv-07871 (D.N.J. Apr. 5, 2019) (Doc. 223) at 2.

- Objector Christopher Andrews, although not an attorney, by his own admission at the final approval hearing has filed objections in about ten class actions. In *Shane v. Blue Cross*, No. 10-cv-14360 (E.D. Mich.), the court found that "many of [Mr. Andrews'] submissions are not warranted by the law and facts of the case, were not filed in good faith and were filed to harass Class Counsel." App. 1, ¶ 65 & Ex. 7. That court also noted that Mr. Andrews "is known to be a 'professional objector who has extorted additional fees from counsel in other cases[.]'" *Id.* Additionally, class counsel have submitted an email from Mr. Andrews that calls into question his motivation for objecting in this case. [Doc. 900-1, Ex. 8].

- Objector Troy Scheffler has previously objected to a number of class actions and at least one court has previously found that similar objections to the ones he makes here "have no factual or legal merit." *Carter*, 2016 WL

3982489, at *13. He also has been paid to withdraw an objection in a similar case. *In re Experian Data Breach Litig.*, No. 15-cv-01592, Doc. 335 (C.D. Cal. July 3, 2019) (approving payment of $10,000 to Mr. Scheffler and his counsel to drop objection).

- John Davis has a history of objecting in class actions and his involvement as an objector and class representative has been criticized by other courts. In *Muransky v. Godiva Chocalatier*, 2016 WL 11601079, at *3 (S.D. Fla. Sept. 16, 2016), a federal magistrate judge denied an objection similar to the one filed here by Mr. Davis and, in so doing, labeled Davis and others as "professional objectors who threaten to delay resolution of class action cases unless they receive extra compensation." *See also Davis v. Apple Computer, Inc.*, 2005 WL 1926621, at *2 (Cal. Ct. App. Aug. 12, 2005) (noting that Davis and Steven Helfand, another serial objector who objected here, previously had "confidentially settled or attempted to confidentially settle putative class actions in return for payment of fees and other consideration directly to them" in apparent violation of court rules.)

- Steven Helfand has a history of improper conduct in class action litigation. *Id.* In 2018, he was accused by the State Bar of California of, among other things, filing an objection in the name of a class member without being authorized by the class member to do so, misleading a court and opposing counsel,

settling an objection on appeal without the client's authorization, misappropriating the settlement proceeds, and other acts of moral turpitude. Notice of Disciplinary Charges, *In the Matter of Steven Franklyn Helfand*, Case No. 17-O-00411 and 17-O-00412 (State Bar Court of California; filed Sept. 24, 2018). Helfand did not contest the charges and a default was entered against him. *Id.*, Order Entering Default (Jan. 15, 2019).

- Theodore Frank, a lawyer and director of the Hamilton Lincoln Law Institute, is in the business of objecting to class action settlements and has previously and unsuccessfully made some of the same or similar objections that he has made here. *See Target*, 2017 WL 2178306, at *6 (rejecting objection that an allegedly fundamental intra-class conflict existed in a data breach case because class members could assert claims under various state statutes); *Poertner*, 618 F. Appx at 628-29 (rejecting objection that the proposed fee was unfair, finding Frank had improperly limited the monetary benefits to the class and excluded the substantial non-monetary benefits of the settlement). The Court also finds that Frank disseminated false and misleading information about this settlement in an effort to encourage others to object in this case and directed class members to object using the "chat-bot" created by Class Action Inc., notwithstanding that it contained false and misleading information about the settlement. These actions are

> improper and further support a finding that Frank's objection is not motivated to serve the interests of the class. *See Manual* § 21.33 ("Objectors to a class settlement or their attorneys may not communicate misleading or inaccurate statements to class members about the terms of a settlement to induce them to file objections or to opt out.").

Finally, the Court addresses the 718 "chat-bot" generated forms submitted by Class Action Inc. on which class members simply checked one or more of several boxes indicating that the settlement was "unfair," "inadequate," "unreasonable," or "unduly burdensome" and had the opportunity to add a "personal note" to the Court. The Court has considered the substance of these objections (which are repeats of objections addressed above) and rejects them in their entirety. Separately, the Court rejects these objections as procedurally defective. The objections were not submitted through the process ordered by the Court and do not comply with the requirement under Rule 23 that an objection "state whether it applies only to the objector, to a specific subset of the class, or to the entire class and also state with specificity the grounds for the objection." *See* Fed. R. Civ. P. 23(e)(5)(A).

Moreover, class counsel submitted information that Class Action Inc. failed to accurately describe the settlement both on its website and in promotions of the chat-bot elsewhere, which may have prompted users of the site to object based on inaccurate and incomplete information about the benefits available under the settlement. The Court notes that class counsel

subpoenaed Reuben Metcalfe, the CEO of Class Action Inc., for a deposition, but Mr. Metcalfe failed to appear. The Court also notes that Mr. Metcalfe represented to class counsel that he had not even read the settlement agreement or notice materials before falsely telling class members that the settlement provided only $31 million to pay claims. [Doc. 939-1, ¶ 36]. Therefore, based on the uncontested record, the Court accepts the facts as presented by class counsel on this point, and finds that Class Action Inc. and Mr. Metcalfe promoted false and misleading information regarding the terms of the settlement in an effort to deceptively generate objections to the settlement.

VI. THE COURT'S TREATMENT OF OTHER PENDING MATTERS.

A. Motions To Strike Declarations Of Robert Klonoff, Geoffrey Miller And Harold Daniel.

Several objectors moved to "strike" [Docs. 872, 890, 909, 918] the Declarations of Robert Klonoff [Docs. 858-2, 900-2], Geoffrey Miller [Doc. 900-3], and Harold Daniel [858-3] submitted by class counsel. Plaintiffs oppose these motions [Docs. 887, 932, 946]. While the Court has found the declarations helpful, as noted above, the Court has exercised its own independent judgment in resolving the matters addressed in the declarations, rendering the challenges to the declarations moot. Regardless, the motions lack merit. All three of the proposed experts are well-qualified, *Daubert* does not govern at the final approval stage,

and, even if it did, each of the declarations passes muster under *Daubert*.[56]

Professor Klonoff is a prominent law professor and teacher of civil procedure; former Assistant to the U.S. Solicitor General; the author of relevant academic publications and the leading casebooks on class actions and multi-district litigation; was the Associate Reporter for the American Law Institute's class action project; and was appointed by Chief Justice Roberts for two three-year terms as the sole academic member to the Advisory Committee on the Rules of Civil Procedure, a position in which he took the lead on the proposed amendments to Rule 23 that became effective on December 1, 2018. [Doc. 858-2, ¶¶ 4-12]. Because of his expertise, other courts have specifically accepted and relied extensively upon Professor Klonoff's opinions regarding proposed attorneys' fee awards and other class action issues. *See, e.g.*, *Syngenta*, 357 F. Supp. 3d at 1115; *In re AT&T Mobility Wireless Data Services Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1032 n.3, 1034-35, 1037-38, 1040, 1042 (N.D. Ill. 2011); the *National Football League Players Concussion Injury* MDL; the *Chinese-Manufactured Drywall* MDL; and

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[56] Similar motions to strike at the final approval stage filed by Frank's organization have also been rejected in other pending class actions. *See Briseño v. Conagra Foods, Inc.*, No. 11-cv-05379-CJC-AGR, Doc. 695 (C.D. Cal. Oct. 8, 2019); *In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Prods. Liab. Litig.*, No. 17-ml-2792-D, Doc. 208 (W.D. Okla. Nov. 18, 2019). *See also Target*, 2015 WL 7253765, at *4 ("even if the affidavit contained impermissible legal conclusions, the Court is capable of separating those conclusions from Magistrate Judge Boylan's helpful and insightful factual descriptions of the settlement process in this case.").

the *Deepwater Horizon* MDL. (*See* Doc. 858-2, ¶ 10) (listing cases).

Professor Miller is the co-author of several leading empirical studies of attorneys' fees in class action litigation and a frequent expert witness on issues relating to class actions and attorneys' fees. [Doc. 900-3, ¶ 1]. One objector cites to a study that he authored. [Doc. 880 at 12-15, Doc. 876 at 18-19]. Professor Miller is the Stuyvesant Comfort Professor of Law at NYU Law School, and a member of the advisory committee for the American Law Institute's Principles of the Law project on Aggregate Litigation, which, among other topics, addressed questions of attorneys' fees in class actions and related types of cases. [Doc. 900-3 ¶¶ 2-3]. His research articles on class action cases, especially in the area of attorneys' fees, have been cited as authority by many state and federal courts. [Doc. 900-3 ¶¶ 4-6].

Harold Daniel served as the President of the State Bar of Georgia and the Lawyers Club of Atlanta. [Doc. 858-3, ¶ 2]. He was a member Standing Committee of the Federal Judiciary of the American Bar Association. [*Id.*]. He also has been qualified and has served as an expert witness on the issue of attorneys' fees in numerous courts, including this Court. [*Id.*, ¶ 10].

At the final approval stage, the weight of authority from the circuits makes clear that district courts have discretion to use "whatever is necessary . . . in reaching an informed, just and reasoned decision." *Mars Steel Corp. v. Cont'l Bank N.A.*, 880 F.2d 928, 938 (7th Cir. 1989). Final approval is not a trial on the merits, and the Court need not be a gatekeeper of evidence for itself. Further, the issues on which the experts opine

are both relevant and inherently factual in nature, not disputed legal principles, and the declarations are helpful as to these matters. Moreover, the methodology the experts used—applying their expertise gained through years of experience to questions of fairness and reasonableness—is more than sufficient to satisfy Rule 702 and *Daubert*. *See, e.g.*, *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999) (recognizing that a district court has "broad latitude" to allow an expert whose testimony is based on "professional studies or personal experience"); *Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 561-63 (5th Cir. 2004) (affirming admission of testimony from a fee expert, stating the "fair and reasonable compensation for the professional services of a lawyer can certainly be ascertained by the opinion of members of the bar who have become familiar through experience and practice with the character of such services"); *Freed by Freed v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2005 WL 8156040, at *2-3 (S.D. Fla. Aug. 2, 2005) (rejecting *Daubert* challenge to an expert who testified as to the reasonableness of an attorneys' fee based on his experience as a litigator, finding the methodology was reliable); *Yowell v. Seneca Specialty Ins. Co.*, 117 F. Supp. 3d 904, 910-11 (E.D. Tex. 2015) (declining to strike affidavit from fee expert because it satisfied *Daubert* requirements).

Finally, the Court again emphasizes that, with regard to all of the matters addressed in this Order it has performed its own independent legal research and analysis and made up its own mind. The pending motions to strike [Docs. 890, 909, 918] are therefore

denied. The Court previously denied [Doc. 951] objector Shiyang Huang's motion to strike [Doc. 872].

B. Oppositions To The Scope Of The Release By Proposed Amicus Curiae The State Of Indiana And The Commonwealth Of Massachusetts.

The State of Indiana, through the Indiana Attorney General, submitted a self-styled *amicus curiae* brief, requesting that the Court modify the release in the settlement in several respects, purportedly to "safeguard its sovereign and exclusive authorities to enforce Indiana law." [Doc. 898]. The Commonwealth of Massachusetts makes a similar request. [Doc. 923]. The gist of these requests is that the two states believe the release cannot be used as a bar to claims they are pursuing in separate enforcement actions against Equifax in Indiana and Massachusetts state courts. Indiana cites several cases in apparent support for its position that a class action "cannot impede a separate action by government actors acting in an enforcement capacity." [Doc. 898, at 5]. Massachusetts says its claims were not and could not have been asserted by any class plaintiffs in this case. The states' requests are denied for the following reasons.

First, the Court concludes that Indiana and Massachusetts lack standing to object to the settlement because they are not members of the settlement class. Second, nothing in the settlement prevents Indiana or Massachusetts from pursuing enforcement actions in state court, which they both already are doing. Third, the Court does not have the power to grant the primary relief the states seek, which is a modification of the

settlement, *see Cotton*, 559 F.2d at 1331, and any suggestion by Indiana or Massachusetts that the Court reject the settlement altogether is not in the best interests of the 147 million class members. It would make no sense for this Court to reject this historic settlement—one that provides substantial relief to a nationwide class and is supported by the Federal Trade Commission, Consumer Financial Protection Bureau, and 50 other Attorneys General—and subject all class members to the risks of further litigation simply because two states seek the opportunity to obtain additional relief for their own residents.

To the extent they move for specific relief from this Court, request that the Court issue an advisory opinion, or request that the Court refuse to approve the settlement, the requests by Indiana [Doc. 898] and Massachusetts [Doc. 923] are hereby denied.

C. Miscellaneous Pending Motions.

The Court has carefully considered all timely filed objections. As a housekeeping matter, and for clarity of the record, the Court addresses several motions filed by objectors. The Court previously denied [Doc. 851] the Motion to Reject Settlement by Susan Judkins [Doc. 824], and the Motion to Reject Settlement by John Judkins [Doc. 825]. The Court also denied [Doc. 853] the Motion to Enforce Settlement by Lawrence Jacobson [Doc. 837], and Motion to Deny the Settlement by Beth Moscato [Doc. 841]. And the Court denied [Doc. 873] the Motion to Telephonically Appear at Fairness Hearing by Shiyang Huang [Doc. 852]. These motions were primarily further objections to the settlement couched as "motions" and, again, the Court

has considered all timely filed objections. For similar reasons, the Court hereby denies the Motion for Court Order Setting Deadline to Pay Settlement Fee to Petitioning Parties by Peter J. LaBreck, Elizabeth M. Simons, Gregory A. Simons, Joshua D. Simons [Doc. 789]; the Motion to Remove Class Counsel, the Steering Committee, and Legal Administration, the Named Plaintiffs and Defense Counsel by Christopher Andrews [Doc. 916]; the Motion to Remove Class Counsel, the Steering Committee, and Legal Administration, the Named Plaintiffs and Defense Counsel for Misconduct by Christopher Andrews [Doc. 917]; the Motion to Strike Response to Doc. 903 [Doc. 935]; the Motion to Strike Equifax's Response to Doc. 903 [Doc. 936]; and the Motion to Strike Plaintiffs' Untimely Filings [Doc. 949]. Any other motions and requests for specific relief asserted by objectors are also denied.

For the reasons set forth herein, the Court hereby (1) **GRANTS** final approval of the settlement; (2) **CERTIFIES** the settlement class pursuant to Federal Rules of Civil Procedure 23(a), (b)(3) and (e); (3) **GRANTS** in full Plaintiffs' request for attorneys' fees of $77.5 million, reimbursement of expenses of $1,404,855.35, and service awards of $2,500 each to the class representatives; and (4) otherwise rules as specified herein.

SO ORDERED, this 13 day of January, 2020.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MDL Docket No. 2800
No. 1:17-md-2800-TWT

CONSUMER ACTIONS

Chief Judge Thomas W. Thrash, Jr.

[Filed January 13, 2020]

In re: Equifax Inc. Customer Data Security Breach Litigation	)

FINAL ORDER AND JUDGMENT

On July 22, 2019, the Court granted, pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs' motion for an order directing notice of a proposed class action settlement of consumer claims arising from the data breach announced by Equifax on September 7, 2017. [Doc. 742]. The Settlement Agreement, dated July 22, 2019 [Doc. 739-2], was entered into between the 96 Settlement Class Representatives named in the consolidated complaint [Doc. 374], through Class Counsel, and on behalf of the proposed Settlement Class, and Defendants Equifax Inc., Equifax Information Services, LLC, and Equifax Consumer

Services LLC (collectively, "Equifax" or "Defendants"). Plaintiffs and Equifax are collectively referred to herein as the Settling Parties.

In a declaration filed with the Court [Doc. 900-5], the Notice Provider has advised that as of the Notice Date (September 20, 2019), the activities of the Notice Provider were executed in accordance with the Settlement Agreement, the approved Notice Plan, and the Order Directing Notice. The Notice Provider declares that the Court-approved approach to notice reflects contemporary best practices in the field of consumer outreach, notice, and advertising across contemporary digital and traditional media and constituted the best practicable notice under the circumstances. The Notice Plan encompassed (a) individual direct notice via email to all Settlement Class Members whose email addresses can be identified with reasonable effort, as well as follow-up emails during the Initial and Extended Claims Period; (b) a sophisticated digital notice campaign that reached at least 90 percent of all Settlement Class Members multiple times before the Notice Date and with additional impressions during the remainder of the Initial Claims Period; (c) continuation of the digital campaign during the Extended Claims Period and thereafter for approximately three years, which among other things will target Settlement Class Members who search online for help remedying identity theft; and (d) radio advertising and a paid advertisement in a national newspaper to reach Settlement Class Members who are less likely to use email or the internet. The Claims Administrator also declares that it has fulfilled its duties to date with respect to the

notice process. [Doc. 900-4]. As declared by the Notice Provider and the Settlement Administrator, the Court finds that the Notice Plan effectively reached the Settlement Class, increased prospective class members' awareness of the Settlement, their options, and the benefits available to them; delivered the best notice practicable under the circumstances; and thus satisfied due process and the requirements of Rule 23.

Out of the approximately 147 million class members, only 388 directly objected—or just 0.0002 percent of the class. An additional 718 form "objections," which allegedly had been filled out online by class members, were submitted *en masse* by a class action claims aggregator that created a website with a "chat-bot" that encouraged individuals to object. These form "objections" are procedurally invalid for the reasons set forth in the final approval order separately entered by the Court. In addition, according to the Claims Administrator, a total of 2,770 requests for exclusion from the Settlement Class were received.

In accordance with the schedule set by the Court in its Order Directing Notice, Plaintiffs filed a motion for attorneys' fees, expenses, and service awards on October 29, 2019 [Doc. 858], which was posted on the Settlement Website, and on December 5, 2019 filed a motion for final approval of the Settlement [Doc. 903] and other supporting papers [Docs. 899, 900, 901, 902; *see also* Doc. 939]. Also in accordance with that schedule, the Court held a Fairness Hearing pursuant to Rule 23(e)(2) on December 19, 2019, at which it heard from counsel for the Settling Parties and those objectors (or their counsel) who had, in their objections,

requested the opportunity to appear and present argument.

The Court having reviewed Plaintiffs' motion for final approval, response to objections and motions, response to briefs *amicus curiae*, motion for attorneys' fees and reply in support, and the related declarations and exhibits, and having considered all of the written objections to the Settlement (as are detailed in the Court's Final Approval Order) and the argument presented at the Fairness Hearing, both in favor and in opposition to the Settlement's final approval, in accordance with the reasons set forth on the record of the Fairness Hearing and in the Court's detailed Order dated January 13, 2020, it is now hereby

ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(a) and 28 U.S.C. § 1331, and personal jurisdiction over the Class Representatives, members of the Settlement Class, and Defendants. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) & (2).

2. The Court finds that notice of the Settlement that was disseminated to prospective members of the Settlement Class through direct email, digital media, and other means outlined above fully comported with the requirements of both Rules 23(c)(2)(B) and (e)(1) and constitutional due process. The notice furnished to the Settlement Class constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to

apprise Settlement Class Members of (a) the nature of the action, the nature of the Settlement Class and its claims, and the material terms of the Settlement, including the benefits provided, the procedure for making a claim, the release provided to Defendants, the consequences of participating or not participating in the Settlement, and their options; (b) all applicable deadlines; (c) their right to opt out or object to any aspect of the Settlement and how to do so; (d) the attorneys' fee that Class Counsel would seek; (e) the date, place, and time of the Rule 23(e)(2) Fairness Hearing and their right to appear at the hearing; and (f) where they could obtain further information.

3. In addition, the notice given by Defendants to state and federal officials pursuant to 28 U.S.C. § 1715 fully and timely satisfied the requirements of that statute.

4. For the reasons stated in the Court's detailed Order dated January 13, 2020, although the Court need not consider the objections that did not follow the Court's Order Directing Notice, and although those objections are invalid, the Court overrules *all* objections to the Settlement.

5. Plaintiffs' motion for final approval of the Settlement is **GRANTED**. The Court finds that the Class Representatives and Class Counsel have adequately represented the Class, and finds that the Settlement, including its equitable method of allocation and distribution of the Consumer Restitution Fund, is the product of extensive arm's-length negotiation by seasoned counsel and that it is fair, reasonable, and adequate.

6. Pursuant to Rule 23, the Court certifies the following Settlement Class for settlement purposes only:

> The approximately 147 million U.S. consumers identified by Equifax whose personal information was compromised as a result of the cyberattack and data breach announced by Equifax Inc. on September 7, 2017.

7. Excluded from the Settlement Class are: (1) Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, legal representatives, successors, subsidiaries, and assigns; (2) any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff; and (3) the individuals who timely and validly opted out of the Settlement Class, who are identified in Exhibit D to Doc. 900-4, a copy of which is appended hereto as Exhibit A and is part of this Final Order and Judgment.

8. For settlement purposes, the Court determines the Settlement Class meets all the requirements of Rules 23(a) and (b)(3). Specifically, for the reasons outlined in Plaintiffs' motion for final approval and the Court's detailed Order dated January 13, 2020: the Settlement Class is so numerous that joinder of all members is impractical; there are common issues of law and fact; the claims of the Settlement Class Representatives are typical of absent class members; the Settlement Class Representatives have and will fairly and adequately protect the interests of the Settlement Class, as they have no

interests antagonistic to or in conflict with the class and have retained experienced and competent counsel to prosecute this matter; common issues predominate over any individual issues; and a class action is the superior means of adjudicating the controversy.

9. Pursuant to Rule 23(c)(3)(B), the Court finds that all those members who did not timely and validly request exclusion from the Settlement Class are Settlement Class Members who are bound by the Settlement Agreement and this Final Order and Judgment. Given the vast size of the Settlement Class, the Court finds it impracticable to identity each Settlement Class Member by name in this Final Order and Judgment.

10. Pursuant to Rule 23(g), the Court confirms the appointment of Kenneth C. Canfield, Amy E. Keller, Norman E. Siegel, and Roy E. Barnes as Class Counsel.

11. The Court confirms the appointment of the individual plaintiffs identified in Exhibit B as Settlement Class Representatives.

12. The Court confirms its earlier appointment of JND Legal Administration as the Settlement Administrator, and directs it to continue to carry out its duties pursuant to the Settlement Agreement, subject to the jurisdiction and oversight of this Court.

13. The Court confirms its earlier appointment of Signal Interactive Media LLC as the Notice Provider, and directs it to continue to carry out its duties pursuant to the Settlement Agreement, subject to the jurisdiction and oversight of this Court.

14. The Court confirms its earlier appointment of Experian as the provider of credit monitoring and restoration services to eligible Settlement Class Members as set forth in the Settlement Agreement. The Court directs that Experian continue to effectuate the Settlement Agreement in coordination with Class Counsel, Equifax, and the Settlement Administrator, subject to the jurisdiction and oversight of this Court.

15. The Court finally approves the Distribution and Allocation Plan as a fair and reasonable method to allocate the settlement benefits among Settlement Class Members. The Court directs that the Settlement Administrator continue to effectuate the Distribution and Allocation Plan according to the terms of the Settlement Agreement. The Court reaffirms that all Settlement Class Members (excluding those who opted out as reflected in Exhibit A to this Order) who fail to submit a claim in accordance with the requirements and procedures specified in the Notice shall be forever barred from making a claim, but will in all other respects be subject to, bound by, and enjoy the rights provided for pursuant to the provisions in the Settlement Agreement, the releases included in that Agreement, and this Final Order and Judgment.

16. The Court expressly incorporates into this Final Order and Judgment the Settlement Agreement and all exhibits thereto, which were filed on July 22, 2019 [Doc. 739-2].

17. The Court also expressly incorporates into this Final Order and Judgment its Order dated January 13, 2020, in which it granted final approval to the Settlement and granted in full Plaintiffs' motion for

attorneys' fees, expenses, and service awards to the Settlement Class Representatives pursuant to Fed. R. Civ. P. 23(h).

18. By operation of this Final Order and Judgment, as of the Effective Date, the Releases set forth in Section 16 of the Settlement Agreement shall be given full effect.

19. The Court hereby dismisses this Action with prejudice, save for individual cases brought by putative class members who expressly opted-out of the Settlement. The Settlement Class Representatives, Settlement Class Members, and Defendants are hereby permanently barred and enjoined (including during the pendency of any appeal taken from this Final Order and Judgment) from commencing, pursuing, maintaining, enforcing, or prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, arbitral or other forum. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Order and Judgment, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments. Nothing in this Final Order and Judgment shall preclude any action to enforce the terms of the Settlement Agreement.

20. Pursuant to Paragraph 4.1.2 of the Settlement Agreement, Equifax's Business Practices Commitments are memorialized in the Consent Order entered in connection with this Final Order and Judgment, and thereby will be subject to independent supervision and judicial enforcement. The Court

expressly incorporates into this Final Order and Judgment that Consent Order.

21. The Settling Parties are ordered to implement each and every obligation set forth in the Settlement Agreement in accordance with the terms and provisions of the Settlement Agreement. The Court retains jurisdiction over this action and the Settling Parties, Settlement Class Members, attorneys, and other appointed entities, for all matters relating to this action, including (without limitation) the administration, interpretation, effectuation or enforcement of the Settlement Agreement and this Final Order and Judgment.

22. There is no just reason to delay entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SO ORDERED, this 13 day of January, 2020.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 20-10249-RR

[Filed July 29, 2021]

In re Equifax Inc., Customer Data Security Breach Litigation	)
----------	)
SHIYANG HUANG,	)
THEODORE H. FRANK,	)
DAVID R. WATKINS,	)
MIKELL WEST,	)
GEORGE W. COCHRAN,	)
JOHN WILLIAM DAVIS,	)
Movants - Appellants,	)
	)
ALICE-MARIE FLOWERS,	)
HARALD SCHMIDT,	)
CHRISTOPHER ANDREWS,	)
Movants,	)
	)
BRIAN F. SPECTOR,	)
JAMES MCGONNIGAL,	)
RANDOLPH JEFFERSON	)
CARY, III,	)
ROBIN D. PORTER,	)

WILLIAM R. PORTER, et al.,
Plaintiffs - Appellees,

versus

EQUIFAX INC.,
DOES 1 THROUGH 50, INCLUSIVE,
EQUIFAX INFORMATION SERVICES LLC,
a foreign limited liability company,
EQUIFAX INFORMATION SOLUTIONS, LLC,
DOES 1 THROUGH 10, et al.,
Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITIONS FOR REHEARING AND
PETITIONS FOR REHEARING EN BANC

BEFORE: MARTIN, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

The Petitions for Rehearing En Banc filed by Appellants Shiyang Huang, David R. Watkins, Theodore H. Frank, and John W. Davis are DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en

banc. (FRAP 35) The Petitions for Panel Rehearing are also denied. (FRAP 40)

APPENDIX E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Case Number 1:17-md-2800-TWT

CONSUMER ACTIONS

IN RE: EQUIFAX, INC., CUSTOMER DATA SECURITY BREACH LITIGATION

Transcript of the final settlement approval hearing
before
The Honorable Thomas W. Thrash, Jr., Chief Judge
December 19, 2019; 10:02 a.m.
Atlanta, Georgia

(Appearances on page two.)

Proceedings recorded by mechanical stenography, transcript produced by computer.

Diane Peede, RMR, CRR, CRC
Federal Official Court Reporter
75 Ted Turner Drive, SW, Suite 2194
Atlanta, Georgia 30303-3309

[p.2]

Appearances:

Counsel for Plaintiffs:	Kenneth S. Canfield Amy E. Keller Norman E. Siegel Governor Roy E. Barnes David J. Worley J. Cameron Tribble Barrett J. Vahle
Counsel for Defendant:	David L. Balser Phyllis B. Sumner S. Stewart Haskins II Elizabeth D. Adler Robert D. Griest Michelle A. Kisloff (by phone) Adam Cooke (by phone)
Counsel for the United States:	Akash R. Desai
Counsel for the Consumer Finance Protection Bureau:	Jenelle Dennis (by phone) Richa Dasgupta (by phone)
Counsel for the Attorney General's Office of Indiana:	Corinne Gilchrist (by phone) Douglas Swetnam (by phone)

Counsel for the Attorney General's Office of Massachusetts:	Sara Cable (by phone)
Counsel for Objectors Frank and Watkins:	Melissa Holyoak
Counsel for Objector Mikell West:	Jerome Froelich, Jr. Robert Clore

[p.3]

P R O C E E D I N G S

(Call to the order of the Court.)

THE COURT: All right. This is the case of In re: Equifax Customer Data Security Breach Litigation, Case Number 17-md-2800.

First, let me ask counsel for the parties who expect to participate in today's hearing for the Plaintiffs and for the Defendant to identify yourself by name and the parties you represent.

MR. CANFIELD: Good morning, Your Honor. Ken Canfield, co-lead counsel for the Plaintiffs.

THE COURT: Good morning, Mr. Canfield.

MS. KELLER: Good morning, Your Honor. Amy Keller, also co-lead counsel on behalf of the Plaintiffs.

THE COURT: Good morning, Ms. Keller.

MR. SIEGEL: And good morning, Your Honor. Norm Siegel, co-lead counsel for the Plaintiffs as well this morning.

THE COURT: Good morning, Mr. Siegel.

MR. SIEGEL: Good morning, Your Honor.

GOVERNOR BARNES: Roy Barnes, Your Honor, for the Plaintiffs.

THE COURT: Good morning.

MR. DESAI: Good morning, Your Honor. Akash Desai for the United States, I think as local counsel.

[p.4]

For the Bureau of Consumer Financial Protection, also participating on the conference line are Jenelle Dennis and Richa Dasgupta.

THE COURT: Good morning.

MR. BALSER: Good morning, Your Honor. David Balser on behalf of the Equifax.

THE COURT: Good morning, Mr. Balser.

MS. SUMNER: Good morning, Your Honor. Phyllis Sumner on behalf of Equifax.

THE COURT: Good morning, Ms. Sumner.

MR. HASKINS: Good morning, Your Honor. Stewart Haskins, also on behalf of Equifax.

THE COURT: Good morning, Mr. Haskins.

MS. KISLOFF: Your Honor, this is Michelle Kisloff and Adam Cooke on the line from Hogan Lovells, also on behalf of Equifax. Thank you.

THE COURT: Good morning.

Any other governmental officials who are on the line, you can identify yourself now or you can wait until you speak later in the proceedings.

Anyone from the Consumer Finance Protection Bureau on the line?

MS. DENNIS: Good morning, Your Honor. This is Jenelle Dennis and Richa Dasgupta.

THE COURT: Good morning. The Attorney General's

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Office of Indiana?

MS. GILCHRIST: Good morning, Your Honor. Corinne Gilchrist and Douglas Swetnam.

THE COURT: The Attorney General's Office of Massachusetts?

MS. CABLE: Good morning, Your Honor. Sara Cable for Massachusetts.

THE COURT: And the City of Chicago?

(No response.)

THE COURT: All right. It's not necessary for the objectors or their attorneys to identify yourselves now. We'll do that later, after I've heard from counsel for the parties.

So my intention, Mr. Canfield, Mr. Balser, is to hear from the Plaintiffs first on the two pending motions, the Plaintiffs' motion for attorneys' fees, expenses and

service awards, and the Plaintiffs' motion for final approval of the proposed settlement.

So I'll hear from the Plaintiffs' first, then counsel for Equifax, then any of the governmental entities, and then I'll hear from the objectors, and then give the Plaintiffs and Equifax an opportunity to respond to the objectors, if you wish to do so.

How does that sound?

MR. CANFIELD: We were envisioning a slightly

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different order of show, but the Court's preference is fine with us.

THE COURT: Mr. Balser.

MR. BALSER: No objections, Your Honor.

THE COURT: All right. All right, Mr. Canfield.

MR. CANFIELD: Your Honor, the parties were last here on July 22nd of this year. On that day, we presented the Court with the proposed settlement, and in accordance with the front-loading requirements of amended Rule 23, we provided the Court with extensive briefing and sworn declarations explaining why the settlement is fair, adequate and reasonable and in the best interest of the Class.

After hearing from the parties, the Court preliminarily approved the proposed settlement, preliminarily certified the proposed Class, and approved our plan for notifying the Class.

The Class has now been notified in accordance with the Court's order, as attested by the declarations from both JND, the claims administrator, and Signal Interactive, the notice provider.

So we're here today asking that the Court finally approve the settlement and certify the Settlement Class, and we're also asking that the Court grant our motion for attorneys' fees, expenses and service awards as provided

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under the settlement.

The Court has before it hundreds of pages of briefing and sworn declarations on this issue. The last two months have been -- or have seen a flurry of activity.

Since the preliminary approval hearing, we filed substantial additional declarations, most recently late last night.

Our papers demonstrate that all of the requirements for final approval and Class certification have been met, and that our motion for fees is well justified and reasonable and appropriate under the law.

We don't plan to cover today all the issues that are addressed in our papers. It would take us more than today, and we don't think it's necessary in light of the extensive filings that will be made.

However, I want to be brief, but given the scope of the issues, it may take me a little while to get through

the legal requirements that govern financial approval, Class certification, and our fee application. And I'll address the objections briefly at a high level.

When it comes time for rebuttal, Mr. Siegel will take the lead. And then if the Court has any questions about particular aspects of the settlement, I will try to address them, but it may be more appropriate for Mr. Siegel or Ms. Keller to respond since we've divided up areas of

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responsibility in the case, and depending on how detailed the Court's questions are, it may require somebody else to answer.

Let me begin with the case for why this settlement should be finally approved.

By any measure, this settlement is historic, provides better and much more significant relief than any data breach settlement in history.

The $380.5 million cash settlement fund alone is larger than the relief obtained in all previous data breach settlements combined.

The settlement reimburses Class members for all of their out-of-pocket expenses relating to the breach, up to $20,000. So that involves things like hiring an accountant or a lawyer to help clean up with the aftermath of fraud, buying credit monitoring as a precaution against future fraud, or paying one of the credit-reporting agencies to freeze your credit.

Based on the results of the claims process so far, we're confident that all of those claims are going to be paid in full. And one of the reasons we're confident of that is that we've got an insurance fund out there that's part of the settlement. So that if the $380.5 million isn't enough to pay the out-of-pocket claims, Equifax is going to pay up to another $125 million into the fund.

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The settlement also provides compensation for time that people spend dealing with the breach, up to 20 hours at $25 per hour, subject to a $38 million cap.

And dealing with the -- spending your time on the phone and with unresponsive or difficult-to-reach folks is worth some compensation, and we've tried to provide that.

The settlement offers all 147 million Class members four years of very high-quality credit monitoring but through Experian, and an additional six years of credit monitoring through Equifax that will help Class members detect if they're a victim of identity theft in the future or, alternatively, for those who, for whatever reason, don't want to take advantage of the credit-monitoring service, they have the opportunity to make a claim for modest alternative cash compensation.

The settlement also provides access to identity restoration services for people who are actually victimized by fraud or identity theft. They can have a person assigned to their case and they can talk to that person. They can get assistance from that person in

navigating the minefield that exists when somebody has stolen your identity, and that lasts for seven years.

Another significant part of the settlement is Equifax is required to improve its cybersecurity practices. And the way in which we do that is we are going to ask the

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Court to enter a consent order that contains comprehensive security standards that we negotiated with some of the finest cybersecurity experts in the country to ensure that, to the extent that it can be done, Equifax is going to not have another breach.

And these standards are not just out there in the ether. They're subject to the Court's enforcement powers. There will be an independent monitor who will look, examine what Equifax is doing to make sure that there is compliance with the consent order; and if they're not in compliance, the issues can be brought to the Court. So this is really an extraordinary piece of the relief that's offered by this settlement.

And on top of those commitments, Equifax is required to spend at least $1 billion on data security and related technology.

The minimum cost to Equifax of this settlement is $1.38 billion, and it could be a lot more, depending on how many people sign up for credit monitoring.

The benefit to the Class, when considering the value of all of the benefits, monetary and non-monetary, exceeds $7 billion or more.

As the Court is aware, the parties' negotiations, settlement negotiations in this case lasted over 18 months. They were overseen by retired federal Judge Layn Phillips,

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who is probably the country's preeminent mediator in major complex civil litigation, and he has mediated a number of data breach cases, including the Anthem case, which until this one was the largest settlement.

He's filed a declaration in the case and he says that, based on his experience and everything that he has seen and lived through with us for the last almost two years, that he fully supports final approval of the settlement, and that it is fair, reasonable and adequate for all of the Class.

The settlement has also been embraced by federal and state regulators, including the Federal Trade Commission, the Consumer Finance Protection Bureau, and Attorneys General from 48 states, the District of Columbia, and Puerto Rico. And they've incorporated the terms of this settlement into their own consent orders with Equifax for purposes of offering consumer restitution. So that restitution to consumers from all these government agencies is depending upon how this Court deals with this settlement.

We've also heard from the Class about what they think about the settlement, and the response has been unprecedented and overwhelmingly positive.

The Court is aware we have a settlement website. It's had over 130 million visits.

Over 15 million verified Class members, more than ten percent of the Class, have already filed claims and more

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do so every day.

The claims administrator, JND, is one of the largest and most experienced claims administrators in the country, and it says, and has filed a declaration to this effect, that it's unaware of any Class action that has had this kind of response or has had 15 million claims.

And the claims rate is unusually high. In Anthem, by way of example, there were only 1.4 million claims from a Class of 80 million people. That's a claims rate of 1.7 percent. The claims rate here is roughly six times higher.

In contrast to the robust number of claims, only 388 people, Class members, have directly objected or just 0.0002 percent of the Class, and only 2,770 have opted out. This truly is an extraordinary situation.

The large number of claims undoubtedly reflects the enormous media interest and the first-of-its-kind Notice Plan that we presented to the Court at the preliminary approval hearing. And as the Court is aware, that Notice Plan uses modern techniques from the world of political and commercial advertising, such as focus groups and public opinion research to craft, test and target the messaging to the Class and encourage their participation.

The digital component of the Notice Plan alone reached 90 percent of the Class an average of eight times in the first 60 days, and the digital outreach is continuing.

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And the tiny percentage of objectors and optouts shows that the Class as a whole strongly supports the settlement.

Rule 23(e) sets out the standards the Court should consider in deciding whether the proposed settlement is fair, reasonable and adequate.

The proposed settlement meets each one of them. I'm not going to talk about them in great detail. That's done in our papers. But I do want to mention each one.

First, the Class was adequately represented. There's no fundamental inter-Class conflict, as courts in other data breach cases have repeatedly held. And the team of attorneys the Court appointed to represent the Class includes the leaders of every significant data breach case that's ever been litigated.

And the Court has seen how we have conducted ourselves during this litigation and can form its own opinion in addition to relying on the record that we've assembled for the Court.

The next factor is whether the proposed settlement was negotiated at arm's length. Judge Phillips attested to that. In fact, despite 18 months of negotiation, the parties reached an impasse. There wasn't going to be a settlement.

And late on a Saturday night, Judge Phillips decided that what he would do to try to bridge the gap was to make a mediator's proposal, and he said, "If both sides

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accept it, you've got a settlement. If neither one of them does, we're done."

He made his proposal and both sides accepted. That's why we're here.

The next factor under Rule 23(e) is whether the relief provided to the Class is adequate, particularly in light of the risks, cost and delay of continued litigation.

I've already talked about the historic relief provided by the settlement. In many respects, that relief exceeds what could be achieved at trial.

When the risks, costs and delay of continued litigation are considered, the result's even more impressive.

The Court is well familiar with the McConnell case that was decided after this case settled. It creates considerable doubt whether Equifax under Georgia law even had a legal duty to protect anyone's personal information.

The Court is also familiar with the Collins case, which held that the only people who can recover damages under Georgia law if their personal information is stolen in a data breach are those who can prove that the stolen information was actually used to commit identity theft, and that the risk that they

might be exposed to in the future is not compensable under Georgia law.

The reality is that if this case does not settle, there is a serious risk that can't be disregarded that most

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Class members will never receive anything, and we might all spend years and millions of dollars in expenses getting to that point.

The last factor under the Rule 23 analysis is whether Class members are treated equally. They are. All Class members have similar claims arising out of the same breach and are entitled to the same benefit.

Those who suffered out-of-pocket losses or spent time can recover them. All have the opportunity to get the same credit monitoring. All can take advantage of ID restoration services, and all benefit from the reduced risk of another data breach.

So we've met the standards for final approval, and final approval thus is appropriate.

Let me talk a bit about the objections that we've heard to final approval. Most of the 388 direct objections are from Class members who are frustrated by the size of the recovery based on a misunderstanding of the settlement terms or because they don't appreciate the risks and limits of Class action litigation.

A much smaller number of objections are filed by serial objectors, lawyers who have either objected pro se or on behalf of a relative, a close friend or colleague,

and that they have a history of doing this in many other cases, and many of whom are motivated by hope of personal gain, not

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a desire to benefit the Class.

This is an incredibly small number of objectors relative to the size of the Class, not by the number of serial objectors -- they show up all the time and make the same arguments -- but by the small number of non-serial objectors, regular Class members who've objected.

It's particularly surprising, given that there were several organized efforts to gin up objections by using inflammatory language, accusing the lawyers involved of selling out the Class, and flat out misrepresenting the settlement.

The typical message that was used in these efforts was that this is a $700 million settlement -- I'm not sure where that number came from -- but that only 31 million would be used to pay benefits to Class members; and that if everybody were to file a claim, each Class member would only get 21 cents.

Some of these misrepresentations even made it into an op-ed piece in the New York Times.

Now, we know those misrepresentations caused many Class members to object. The objections themselves repeat the false statements and they express outrage. I'd be outraged, too, if there were only

$31 million of benefit to the Class in this settlement. These same misrepresentations were used by a

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company called Class Action, Inc., and its C.E.O., a man named Reuben Metcalfe, who tried to solicit objections online.

Right around the objection deadline, Mr. Metcalfe sent 718 forms that allegedly had been filled out by Class members on a website he called NoThanksEquifax.com.

I got a little bit of an introduction into the electronic media world in having to deal with this case. But his website had what's called a chat box -- a chat bot, b-o-t, named Clarence, who answered --

THE COURT: What is a bot?

MR. CANFIELD: Ms. Keller may be the best person on our side to explain that, Your Honor.

THE COURT: We'll hold that --

MS. KELLER: We'll get to that, Your Honor.

THE COURT: I'm not familiar with that term.

MS. KELLER: It's an automated response generator, Your Honor.

THE COURT: Okay.

MR. CANFIELD: That's helpful. The Clarence falsely told people that the settlement only had $31

million to pay claims, and asked people if they wanted to object or to file a claim.

If they said they wanted to object, visitors to the website were given a number of boxes to check. You could --

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I'm not sure exactly how the process worked, but the forms that were generated came up with one or more of the following boxes checked: That the settlement was unfair, quote, "Unfair," quote, "Inadequate," quote, "Unreasonable," quote, "Unduly burdensome."

And the people who went on this website with Clarence's assistance had the opportunity to add what was called a Personal Note to the Court.

We've been through all of these forms, including the Personal Notes. None of them raise any new objections. There's nothing new in any of that. The same objections were made by other people.

But on their faces, the forms are invalid because they weren't submitted through the process ordered by the Court, and the forms don't comply with the requirements of Rule 23.

To investigate further, we decided to depose Class Action, Inc., through its C.E.O., Mr. Metcalfe. He was subpoenaed to appear for a deposition, but he didn't show. He was subpoenaed to produce documents, which he several times promised he would produce before the deposition, but he never produced any documents.

However, in talking with Mr. Metcalfe, one of the lawyers on our team learned that Mr. Metcalfe admitted that he thought the settlement only provided $31 million to pay

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claims. He admitted he never read the Settlement Agreement, and that he had not even bothered to read the official court-approved notice before advising people online about what was in the settlement and what they should do about it.

Under these facts, we believe it's appropriate that the Court find that all of the chat box objections are invalid and strike them from the record.

We also ask that the Court find that Class Action, Inc., and Mr. Metcalfe, its C.E.O., promoted false and misleading information regarding the terms of the settlement in an effort to deceptively generate objections to the settlement.

Now, as to the merit of the objections that have been filed with regard to final approval, we've exhaustedly dealt with them in our briefing. I'm only going to be talking about a few today.

Let me start with the issue of alternative compensation. That's the money that -- up to $125 that some people in the settlement were eligible to claim and has generated a fair amount of publicity and, I think, is responsible at its core for a number of the objections from non-serial objectors.

These objectors challenge the adequacy of the alternative compensation remedy. They complain that they will not receive the $125 that they believe they were

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promised by the F.T.C. or that they read about in the newspaper or that they read about online because they're going to receive less than $125 as a result of the fact that the alternative compensation benefits are initially capped at $31 million.

I want to express -- or I want to respond directly to the notion that the parties and, implicitly by approval the Notice Plan, the Court misled the public by promising that all Class members were entitled to $125 in damages simply by filing a claim, or that we engaged in some sort of bait and switch to keep Class members from getting their $125.

That never happened. And I think, unfortunately, it's going to take a little bit of explanation to walk through how we got to this point.

Among Class counsel's primary goals in the settlement negotiations were to ensure that people who had actual out-of-pocket losses, who had spent money as a result of the breach were reimbursed, and we wanted to provide the opportunity for all 147 million Class members to get high-quality credit monitoring to protect themselves if they were a victim of identity theft in the future as well as high-quality ID restoration services to help people who actually were victimized in the future and needed to clean up their personal situations.

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The purpose of the alternative compensation remedy was not to give everybody in the Class $125. That was not -- it's not realistic and it never would have happened.

Its purpose was to provide a modest cash payment to a limited number of people as an alternative -- that's why it's called "Alternative Compensation" -- to signing up for the much more valuable benefit of credit monitoring. To qualify, the alternative compensation benefit was limited to those who already had credit-monitoring services, do not want the services available under the settlement, attest that they will maintain their own service for at least six months, and provide the name of their current credit-monitoring provider. That's what the settlement provided.

The alternative compensation was capped at $31 million so that there would be enough money to pay all of the other benefits the settlement provides, including, as I've mentioned, out-of-pocket claims, credit monitoring, and ID restoration services.

As a result of this cap, claims are reduced pro rata through alternative compensation, and if there's money left over after all of those other benefits have been paid, the cap will be lifted and claimants will get more money.

The cap made sense, given our litigation goals. It also gave -- made sense, given our knowledge of Class

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litigation over data breach cases.

The 31 million number was not just pulled out of the air. We had the benefit of knowing what happened in the Anthem settlement relatively recently.

In Anthem, Class members were offered a similar choice. They could have two years, only two years of credit monitoring or they were eligible for an alternative cash payment if they didn't want the credit monitoring.

More of that in the Anthem case. More than 1.2 million Class members took the credit monitoring. Only 144,000 preferred cash. So nine times more Class members in Anthem preferred credit monitoring to cash.

And if the same percentage that had made that choice in Anthem had made the choice in this case, we would have hit the $125 figure almost on the button. That's what people would have gotten.

Now, the Notice Plan that we presented to the Court and that the Court approved explained all that. It explained that the alternative compensation was limited and could be reduced.

The long-form notice told Class members that they could get up to $125, and further stated, quote, "If there are more than 31 million in claims for alternative reimbursement compensation, all payments for alternative reimbursement compensation will be lowered and distributed on

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a proportional basis."

Now, unfortunately, before we had even presented the settlement to the Court and long before the official Notice Plan had even started, the media began reporting that everyone could get $125 under the settlement. And when the website went live late on the evening of the day after final approval or preliminary approval, lots of people started to file claims.

As soon as Class counsel realized what was happening, we acted to make sure that the Class members were not disadvantaged by the misinformation about the settlement that was out there.

It was apparent to us, given the number of claims that were being made, that the $31 million cap likely would be exceeded and payments would have to be reduced.

There was no way to know and there is no way to know today how much will be paid to the alternative compensation claimants. That depends on lots of things that we just don't know yet.

But we wanted to let the Class know that about this information, that the cap was likely to be breached, and they were going to -- they could end up getting a lot less if they chose the $125 benefit, and we wanted to give Class members who had already made their choice a chance to change their mind after they had received more information.

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The parties worked over the weekend to develop a plan and we solicited input from the regulators in that process. And on July 30, less than a week after the website had gone live, we presented our plan to the Court, as the Court recalls.

The Court approved the plan that we proposed, and we implemented the plan as it was approved.

On August 1st, 2019, Class counsel distributed a statement to the media setting the record straight and urging Class members to rely only on the official court notice, not what they had heard or read in the media.

On August 2nd, a statement was added to the home page of the settlement website in a very prominent position. It read, quote, "If you request or have requested a cash benefit, the amount you receive may be significantly reduced depending on how many valid claims are ultimately submitted by other Class members.

"Based on the number of potentially valid claims that have been submitted to date, payments for time spent and alternative compensation of up to $125 likely will be substantially lowered and will be distributed on a proportional basis if the settlement becomes final.

"Depending on the number of additional claims -- valid claims filed, the amount you receive may be a small percentage of your initial claim."

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On August 7th, 2019, the first e-mail notice started going out to Class members. Ultimately it went to over 100 million Class members.

That same statement that I just read was prominently featured in the e-mail. That same statement was also prominently featured in the follow-up e-mail that has been sent to Class members since.

Moreover, an e-mail was sent to all Class members who had filed a claim, repeating the same message, telling them about the fact that they might only receive a small percentage of what they had been caused to believe they would get, and that the e-mail gave them the opportunity to switch their choice. If they thought that the alternative compensation wasn't enough, they could switch to credit monitoring.

So where does that leave us? Except for all Class members who filed a claim in the week before August 2nd, the Class was notified that the alternative compensation claimants would likely receive only a small percentage of the $125, and the ones who filed before August 2nd were given the same information in a special notice and given a chance to change their mind.

Shortly after the hearing we had with the Court, the F.T.C. also posted a notice on its website telling the public about the situation and urging consumers to choose

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credit monitoring because it was a much more valuable benefit. That was widely reported in the media. Anyone who was paying attention knew if they filed an alternative compensation claim, they likely would not receive anywhere near $125.

And all of these people who have come in and objected and said that there was a scam or a bait and switch, they're not deceived. They know. Anybody who has paid any attention knows that the alternative compensation claims are not going to be paid at $125.

The likelihood that alternative compensation claimants will receive substantially less than $125, however, does not mean that the relief afforded by the settlement is inadequate. To the contrary, the relief afforded by the settlement is unprecedented in scope.

The Court must evaluate the adequacy of the settlement in terms of the entirety of the relief that's afforded to the Class as a whole.

The other substantial benefits that I've gone over would justify approval of the settlement as fair, reasonable and adequate, even if the settlement did not provide any alternative cash compensation.

Let me repeat that again because it is so important.

This settlement is fair, reasonable and adequate

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for every Class member, even if there had been no alternative Class -- or alternative cash compensation

offered to the people who already had credit monitoring and didn't want to choose what was being offered to them under the settlement.

This Court has already approved a data breach settlement in which there was no alternative cash compensation. That was in the Home Depot data breach. You have to look at it all in the -- from the standpoint of the Class as a whole.

Next, the likelihood that alternative compensation claimants will obtain substantially less than $125 is not unfair, nor does it render the alternative compensation benefit itself inadequate.

All the alternative claimants are eligible for the same relief afforded to other Class members. They received the same court-approved communication as the other Class members, disclosing that they wouldn't get $125; and those who filed their claims before receiving the Court-approved communication were given the opportunity to change their mind.

That some Class members chose alternative cash compensation rather than the much more valuable credit-monitoring services offered under the settlement reflects their own personal choice. I'm not saying that's a bad choice or it's a good choice, but it is their choice and it

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was an informed choice, and it is not unfair to all the other Class members that that's the choice they made.

The other objection I want to address relates to the value of credit monitoring. There's a split in the Class. Many Class members say the credit monitoring is a really valuable benefit, and they object because it's only limited to ten years. A lot of people want it for life.

Others, mostly the serial objectors, say it's essentially worthless because free credit monitoring is widely available.

We've submitted declarations attesting to the value of the credit monitoring. If a Class member wanted to buy it on the open market for themselves, it would cost nearly $2,000, as we've described.

We've cited in our briefs to the many other court decisions, including decisions by this Court, that have recognized the value of credit monitoring and used its retail price to quantify that value.

To date, more than 3.3 verified Class members have signed up for credit monitoring and obviously see the benefit of it, and more are signing up every day. And we expect a spike in signups for credit monitoring as the claims deadline approaches at the end of next month.

And that credit monitoring that Class members have already signed up to receive valued at its retail cost is

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collectively worth more than $6 billion.

The Court can read all that in our papers.

I'd like to share with the Court a personal experience that made it clear to me just a week or so ago that anyone who says credit monitoring is worthless hasn't ever been the victim of identity theft.

While we were furiously trying to prepare our briefs around the Thanksgiving holiday, I learned I was the victim of identity theft. And I was so busy, I sort of just ignored it, but then I started getting calls from banks that credit applications were being opened in my name and they didn't seem right.

I realized at that point I had a problem and I needed to pull myself away from the case, and I tried on the websites to do something about it. I was incredibly frustrated.

Fortunately, I had signed up for credit monitoring as a victim of the Anthem data breach case, and I had received an e-mail from the credit monitor. And the biggest frustration I had in this process is I couldn't talk to anybody. You had to go online and your answers just weren't there. It was incredibly frustrating and time-consuming.

But when I looked at that e-mail from the credit-monitoring service, it had a telephone number I could call. So I called that number and the person said, "Here's what

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we're going to do," and walked me through the process. And I learned what had happened, and I was -- by going onto the credit-monitoring website, I was able to

get a list of all of the fraudulent applications that had been entered in my name.

And that service put me in touch with all the people I needed to set things right, and I can't tell you how much time and frustration that service saved me.

One of the serial objectors who I expect you'll hear from today has claimed that the credit monitoring -- ten years of credit monitoring that's being provided under the settlement is worth no more than $5. That's not $5 a month. That's $5 for ten years.

And I'm not sure the Court is aware of all that goes into the type of credit monitoring that's being provided under the settlement. Because it's important, I think I'll just take a moment to go through it.

And this is the very high-quality credit monitoring that will be provided by Experian to Class members who want it. It provides daily consumer report monitoring from all three consumer-reporting agencies. That's Equifax, Experian and TransUnion.

It shows key changes to one or more of the Settlement Class members' consumer reports, including automated alerts when the following occur: new accounts are opened, inquiries or requests for a consumer report for the

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purpose of obtaining credit, changes to the person's address, or any negative information, including delinquency or bankruptcies.

People get a free consumer report online that is updated monthly.

They get updated alerts when the credit monitor finds on the dark web that their Social Security number, e-mail address or credit card number has shown up. The dark web is where the thieves go to get this kind of information.

People are given an alert when names or aliases or addresses associated with the Class members' Social Security number are used, when a loan or certain other unsecured credit has been taken or opened using the Settlement Class members' Social Security number, when a Class member's information matches information and arrest records or criminal court filings, when it's used for identity identification, when a Class member's mail has been redirected through the postal service, when banking activity is detected relating to new deposit account applications, opening of new deposit accounts, changes to a personal identification on an account or new signers are added to an account, and when a balance is reported on a credit line that has been inactive for at least six months.

The service provides $1 million in identity theft insurance to cover a loss related to stolen identity.

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There's a consumer -- or a customer service center to provide assistance with enrollment, website navigation, monitoring alert questions, dispute assistance, fraud resolution assistance, and other assistance. That's what I took advantage of, but that's not even the identification restoration service that's

being provided. That's part of the credit-monitoring service.

With regard to the restoration services, if somebody has been victimized by identity theft, they can call a number and they are assigned a dedicated specialist who's familiar with this sort of thing, and the specialist provides assistance in addressing the theft, including a step-by-step process with form letters to contact companies, government agencies, the other consumer-reporting agencies, participating in conference calls with the affected financial institution so that if your identity has been used to open up a bank account at SunTrust, you can get one of these people on the phone with you.

And for a person that's not particularly sophisticated in banking matters, having an advocate on their side is -- if it happens just once, it's certainly worth a lot more than $5.

That's all I'm going to say about the objections to the fairness, reasonable and adequacy of the settlement.

Let me just turn briefly to Class certification.

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In preliminarily certifying the Class, the Court found that the requirements of Rule 23(a) and (b)(3) had been met. Nothing has changed.

Settlement Classes in other data breach cases are routinely certified, as this Court did in Home Depot, as Judge Ray did in Arby's, as was done in Anthem and

Target. The Court should do the same thing here that it did in Home Depot for the same reasons. That's all I'm going to say on Class certification.

Let me turn to our motion for fees, expenses and service awards.

We have provided the Court with extensive declarations and other evidentiary support that show that our requested fee, expenses and service awards are reasonable and well justified.

As the Court is aware, under Eleventh Circuit precedent, the fee must be calculated using the percentage approach because this is a common fund case.

And under Eleventh Circuit precedent in Camden I, the typical range is 20 percent to 30 percent with a benchmark of 25 percent.

The fee we've requested is 20.36 percent of the minimum $380.5 million cash fund. That percentage is at the very low end of the approved range, but that percentage is not a true measure of the fee. That's because the settlement

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fund of 380.5 million is not the only settlement benefit.

There are other valuable benefits, both non-monetary and monetary, and the Eleventh Circuit has instructed that those other benefits also need to be considered in the fee calculation. And when those other benefits are considered, the requested fee is much less than 20.36 percent.

The requested fee is 15.3 percent of the $380.5 million cash fund and the additional 125 million that's available to pay out-of-pocket claims if needed.

The requested fee is only five percent of those amounts plus the $1 billion that Equifax is required to spend for data security and other related technology.

And the requested fee is far less than one percent of the benefit when the retail value of the credit-monitoring services available to the Class under the settlement are included, including specifically the $6 billion of credit monitoring that's already been claimed by Class members.

Now, I'm going to be talking today and using the 20.36 percent figure, not because we concede that's the appropriate percentage that we're asking for, but because if that percentage is justified, as it is under the applicable precedent, there can be no question about the reasonableness of what we're requesting.

Again, as the Court is well aware, the Eleventh

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Circuit has instructed trial courts to use the Johnson factors in evaluating the reasonableness of a proposed percentage.

All of those Johnson factors, the ones that are relevant, support a fee of at least the 25 percent benchmark, and more appropriately a fee at the top end of the approved range.

I'm not going to talk about all of them. I only want to talk briefly about two.

One is risk. That is a substantial factor in the fee analysis. The more risky the case, the higher the percentage.

This case was enormously risky, and our willingness to invest over 30,000 hours of our time, more than a million dollars of our expenses in the face of this risk would support a fee much higher than what we are asking for.

The only other factor I'm going to mention is the factor for awards in other cases. If you look at other major data breach cases and the percentages that have been used in calculating the fees in those cases, our percentage is well below any other case.

In Arby's, it was just under 30 percent.

In Home Depot, this Court's case, it was 28 percent.

In Target, it was 29 percent.

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And in Anthem, that was awarded, I believe, last year, it was 27 percent.

In contrast, we're asking for essentially 20 percent.

THE COURT: Well, Mr. Canfield, it struck me as odd that you would be requesting a figure of 20.36 percent until I understood that the $77.5 million requested fee was 25 percent of the original Term Sheet cash fund of $310 million.

MR. CANFIELD: That's correct.

THE COURT: That was 25 percent, right?

MR. CANFIELD: When we negotiated the Term Sheet, we agreed that we would only seek 25 percent of the $310 million.

When the -- as we've described in our papers, there was an additional $70.5 million that ultimately was added to the settlement fund. That did not result exclusively from our efforts. It was -- the catalyst, the suggestion for it were federal regulators.

And when Equifax and the federal regulators and state regulators, after our Term Sheet was executed, took the terms of the Term Sheet and were afforded an opportunity to make suggestions that were not -- we were not required to take, but if they wanted to suggest that we improve the settlement in some way, we were fine with that.

We were presented with a package of proposed

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changes that Equifax and the regulators had negotiated on our own. We didn't have anything to do with that.

When we saw the package of changes, one of the changes involved increasing the amount of the fund by $70.5 million. We supported that wholeheartedly.

The problem was, as part of this package, there were a lot of things in there that we did not believe were in the interest of the Class and that were likely to draw objections that might trigger approval problems, and under certain claims scenarios, would result in a number of Class members getting less with the

additional money than they would have received under our original terms.

Once we got those changes, it turned into one of the more difficult negotiations I've ever been through in my life. It went on for months, and we spent thousands of hours trying to redo the proposal that Equifax had negotiated with the regulators to ensure that it would not make any of our Class members worse off under any circumstances.

And when that happened, we agreed that -- once it was cleared, nobody would be made worse off, we agreed with Equifax that we would modify the Term Sheet that we had negotiated to include these provisions.

As part of that process, we agreed that we would not seek any additional fees for all of that work, at least by putting -- you know, we wouldn't seek more than the

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$77.5 million.

Even after we negotiated the terms of our settlement, Equifax wouldn't sign it, and the reason was that Equifax wanted to be able to announce as part of a global deal settlements with us and settlements with all the regulators, and the regulators and Equifax were far apart.

We strongly believe that the only reason that all of this came together is that we were facing a deadline under the Term Sheet to file our preliminary approval papers with this Court, and we agreed to extend it once

to allow Equifax and the regulators to reach their own agreements, but we said we're not extending it any more, and we set a deadline.

And we said we're either going to have a signed Settlement Agreement by Equifax that reflects all of these additional changes or we are going to move to enforce the original deal, the Term Sheet deal that we had negotiated.

On the literal eve, I mean late at night on that deadline, Equifax and the regulators reached an agreement, and that cleared the way for Equifax to sign our Settlement Agreement and file it with the Court a few days later.

So the notion that some of the objectors have put forward that, you know, the government told Equifax to pay $70.5 million extra and Class counsel are trying to get their hands on some of that, that's not what happened.

And it's a very unusual situation, but we've cited

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to the Court one case in which there were some similar kind of things. And the -- I don't remember which circuit, but one of the circuits said that under these circumstances, Class counsel should not be penalized by the involvement of the regulators.

So that's the history of that, how it came about.

The other point to be made is that even if you decide, you know, the thousands -- that we shouldn't be compensated for these thousands of hours that we've

spent or ensuring that the extra money could be included in the settlement without hurting Class members or ensuring that the $77.5 million could be added by forcing the government and Equifax to reach their own agreements, if you set all that aside, 25 percent -- a 25 percent fee is reasonable and it's less than what's been awarded in these various other cases.

So that's all I've got to say on that, Your Honor, unless you have some questions.

I've talked about the percentage analysis. The Court -- the fee is also justified under a lodestar crosscheck. It's not necessary for the Court to do a lodestar cross-check. Even the objectors agree that that's the case.

There are good reasons not to do it. As one of the judges in the Southern District of Florida wrote, The lodestar cross-check shouldn't be used to bring in through the back door all the bad things about the lodestar approach

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that caused the Eleventh Circuit to reject it in favor of basing fees on a percentage.

Nevertheless, if the Court does a lodestar cross-check, that cross-check supports the reasonableness of our request.

Last night we filed a declaration that updated our lodestar through Tuesday, December 17th, and all of that time was submitted last night to the Court for an

in camera review as part of the case management protocol that's governed this case from the beginning.

Our most recent lodestar figures show that we have spent 33,590.7 hours on the litigation. That represents a lodestar, including our estimated future time, of 29,584,135 calculated or reported hourly rates. And there's substantial evidence in the record that those rates are reasonable, and that evidence is uncontroverted.

This Court is aware in a lodestar cross-check, a multiplier is used to reflect risk and other factors. Applying a -- if you do the calculation, the multiplier we're requesting is 2.62. That's well within the range that other courts, including this one, have used.

Let me turn to the objections to the fee. There are only 38 objections to the fee. The objectors are all over the board about what they believe is appropriate. Some say Class counsel should get nothing. Others believe that

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40 million or more is appropriate.

Most of the objections aren't substantive. They just express frustration that the lawyers are getting so much while individual Class members are not, although the Court -- as the Court is aware, the proper comparison is not between what the lawyers get and what any individual Class member gets. The purpose of a Class action is to aggregate people's claims, making it economically viable to bring the litigation.

So the appropriate comparison is between what the Class as a whole gets in terms of determining whether a fee is reasonable.

A lot of other non-serial Class members object because they say the lawyers should get no more than the $31 million that should be -- that is going to be used to pay claims. As we've talked about, that $31 million is just wrong.

The more substantial objections are the ones made by the serial objectors. They make them all the time and they're routinely rejected.

I understand this is the third Class action in the last four years in which Mr. Bandas and Mr. Froelich have teamed up to take on a fee in a Class action in the Northern District of Georgia. Their objections were unsuccessful in the first two cases, and they've made some of the same

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objections here.

Mr. Bandas and Mr. Frank and Mr. Watkins say we're not entitled to much of a fee because we faced little risk, we didn't do much work, and the settlement provides little benefit to the Class.

They're just wrong about the facts. We faced substantial risk. We face substantial risk if this settlement isn't approved.

Some of the people who are objecting face the risk that they would get nothing if there's no -- if the settlement is not approved and Equifax decides to test

whether the McConnell case and the Collins case have a direct impact on this case.

THE COURT: Well, anyone that says there was no litigation risk ought to talk to the lawyers for the financial institutions.

MR. CANFIELD: These objectors also materially misstate what the monetary relief that the settlement offers and they discount almost entirely the non-monetary benefits.

Mr. Frank has a history in this circuit of distorting the monetary benefit offered by a settlement and disregarding its monetary relief. He made a similar objection in the Portner case that was roundly rejected.

And in affirming the lower court's decision, the Eleventh Circuit explained its reasoning as follows, and I

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quote, "Frank claims the settlement is unfair because Class counsel's slice of the settlement pie is too large, i.e., the fees and cost award is unreasonable. But this objection is based on Frank's flawed valuation of the settlement pie, limiting the monetary value to the amount of Gillette," which was the defendant's, "actual payments to the Class, along with excluding the substantial non-monetary benefits."

The Court could use the exact same language in rejecting Mr. Frank's objection in this case.

The serial objectors also claim that the Court should award no more than a ten percent fee because this case

involves a mega fund settlement of more than $100 million.

When all of the settlement benefits are properly included, as we've discussed, the value of the settlement is in the billions of dollars, meaning the requested fee is less than ten percent that these objectors contend is appropriate in a mega fund case.

In arguing otherwise, they just -- they discount all the settlement benefits except the $380.5 million fund, including specifically all the settlement's non-monetary benefits.

And even if the fee is calculated using only the $380.5 million fund, the requested fee is still justified, notwithstanding the settlement size.

There is no per se rule that a reduced fee must be

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used when the settlement exceeds ten percent or exceeds more than $100 million.

Plaintiffs have cited more than 40 mega fund settlements where fees of 25 percent or more have been awarded, including many in this circuit.

And courts are increasingly critical of the practice of awarding a reduced fee in mega fund settlements on the theory that it defeats the purpose of the percentage method, which is to align the interests of the Class and the lawyers.

The objectors also focus -- overly focus, overemphasize the importance of a settlement size in the fee calculation.

Under Camden I, this Court has to base its fee on an analysis of all the Johnson factors, not just the factors involving awards in other cases.

And the Court's evaluation of those factors would support using a percentage higher than the 25 percent benchmark and certainly higher than the 20.36 percent requested here.

As I said, in the other data breach cases cited -- that we've cited, the lowest fee was 27 percent, and that more than balances out any reduction that might be appropriate because of the settlement size.

They're also wrong about the impact of the size of

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this settlement.

The amount of the fees that we are requesting already reflects the settlement size. If this were not a $380.5 million common fund, if this were a lot smaller settlement, we'd be asking for 30 or 33 percent, certainly what's typical of what's been awarded in other data breach cases. And it would unfairly penalize Class counsel to cut the percentage even further to account for a factor that's already been taken into account in the amount of our request.

The objectors are also simply wrong that ten percent is typically awarded in mega fund cases.

In Anthem, which involved a $115 million settlement fund, the Court surveyed awards in other large settlements and concluded -- and this was last year -- the following, and I quote, "A percentage of 27 percent appears to be in line with the vast majority of mega fund settlements."

We're not even asking for 27 percent. Whether it's 20.36 percent or 25 percent, it's less than what Judge Koh determined is appropriate in a mega fund case.

These objectors cite Anthem for other reasons, but they ignore Judge Koh's analysis of what is appropriate in a mega fund case. Instead, they rely on three authorities that they cite. They're of little help to their argument.

The first thing they do is rely on an empirical study of Class action fee awards that was co-authored by

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Professor Jeffrey Miller of NYU Law School.

After we got that objection, we asked Professor Miller to look at it and give us his analysis, and we've submitted a declaration from Professor Miller. And based on his analysis, he reached a number of conclusions:

First, he believes the requested fee is reasonable, based on his experience and expertise as a fee expert and based on other empirical studies, including one he authored in 2017, which is the -- has the most recent data on Class action settlement fees in federal courts.

Second, he said that the ten percent figure cited by the objectors is distorted and shouldn't be used in the way they used it because the data set included a lot of much, much larger settlements, billion dollar-plus settlements in which the percentages are much less, and that brought down the average range considerably.

To account for that distortion, he reran the data, focusing only on the settlements that were in a range comparable to our case. We looked at settlements between 325 and $425 million, and he found that the average award in those cases was 19.7 percent, a percentage that is remarkably close to the percentage that we're requesting here.

They also rely on Judge Shoob's opinion in In re: Domestic Air, from more than 25 years ago, and Judge Shoob explained in that opinion that he relied on pre-1991 research

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of fees in other cases. We don't need to rely on that data. We have much more recent data.

And, finally, they rely upon Judge Hunt's decision in the Carpenter Health and Welfare case. But I don't quite see how that case is helpful to them, because after reviewing the cases -- mega fund cases he was able to find, Judge Hunt awarded 21 percent of a $137.5 million fund, and that 21 percent is more than what we're asking here.

So I've taken a while, Your Honor, but let me conclude by saying that all of the legal requirements have been met. We ask the Court to finally approve the

settlement, certify the Settlement Class, enter the consent order provided by the settlement to govern the injunctive relief to which Equifax will be subjected, and grant our request for fees, expenses and service awards in full.

Thank you.

THE COURT: All right, Mr. Canfield. Let's take a ten-minute break and then I'll hear from you, Mr. Balser.

MR. BALSER: Thank you, Your Honor.

(Recess taken from 11:19 a.m. until 11:32 a.m.)

THE COURT: Mr. Balser.

MR. BALSER: Good morning, Your Honor. David Balser of King and Spalding, on behalf of Equifax.

In order to put this matter to rest, Equifax has

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agreed to and supports this settlement.

As Mr. Canfield mentioned, Equifax is providing unprecedented relief to the Class here. Under this settlement, Equifax will pay $380.5 million into a non-reversionary fund and up to an additional $125 million for out-of-pocket claims.

Equifax is offering ten years of credit monitoring for every Class member on top of the two years of such services that Equifax has already provided to anyone who signed up.

Equifax has agreed to spend $1 billion for improved data security and technology. Equifax has agreed to provide seven years of identity restoration services for any Class member who suffers identity theft as a result of the data breach.

The scope and breadth of the relief offered by Equifax far exceeds any settlement in any data breach case in history.

The settlement was the product of intensive, difficult settlement negotiations over an 18-month period, with many fits and starts. And the settlement is carefully integrated with the settlements that Equifax has reached with the C.F.P.B., the F.T.C., 48 states, the District of Columbia, and Puerto Rico. That point bears emphasis.

This settlement is unprecedented in that it

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provides for a single fund to be administered under this Court's supervision to be available to provide redress sought by the Plaintiffs, the C.F.P.B. and the F.T.C. and every state in the union except for two.

This structure, this one-fund structure is of substantial benefit to consumers who can avail themselves of a single process to obtain relief.

I want to touch very briefly, Your Honor, at a high level on the objections that have been filed. There is a false premise in each objection to the settlement.

The objectors to the settlement incorrectly assume that there's no risk to the Plaintiffs' claim if the Court

were to reject this settlement and the parties were to return to litigation.

First, let me say that this settlement reflects the maximum that Equifax is willing to do to resolve these claims. It took 18 months of negotiations to get to an agreement; and if this Court were to reject the settlement, the parties would be back to litigation.

The assumption that there is no risk to the Plaintiffs' claim is simply wrong. There's substantial risk, and we need to look no further than the McConnell case to substantiate that point.

The central claim in this case upon which Plaintiffs rely is the claim that Equifax was negligent in

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failing to safeguard the Plaintiffs' personally identifiable information.

In order for there to be a negligence claim, there must be a duty owed by a defendant to the Plaintiffs. After this Court denied Equifax's motion to dismiss and after the Term Sheet was signed in this case, the Georgia Supreme Court ruled in the McConnell case that Georgia law does not recognize a common law duty to safeguard personal information.

Were we to return to litigation, this ruling would create a substantial risk for the Plaintiffs on their key claim in the case.

THE COURT: I'm not sure I agree with you that they went that far, Mr. Balser. But there is no doubt that the Plaintiffs' job to defend their case would have

been harder after the Supreme Court's ruling in McConnell, because my recollection is that I expressly relied upon the Bradley Center case in reaching the conclusion that there was a duty, and they did expressly overrule the Bradley Center case.

Now, they didn't say where they would go after that or whether they would go as far as you say they did. But no doubt about it, it would have been a significant issue.

MR. BALSER: Well, you and I spent a lot of time discussing that case on the motion to dismiss argument. And the point here really is -- I think Your Honor has put your

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finger right on it -- the point is that the assumption that if the Court rejects the settlement, that the Plaintiffs could just simply get a better result than this settlement offers ignores the roadblocks and hurdles and obstacles that subsequent decisions, including McConnell, may raise. And I think we're all in agreement on that point.

That's really the point of my discussion of McConnell, is that there is a risk now that did not -- wasn't as manifest as when the motion to dismiss was argued and resolved.

And in addition, since the Settlement Agreement was reached, the Georgia Supreme Court granted certiorari in the Collins versus Athens Orthopaedic Clinic case. And in that case, the court is going to decide whether time spent mitigating effects of a data

breach and whether an increased risk of future identity theft constitute legally cognizable injuries under Georgia law.

These are the very injuries that Plaintiffs have alleged here, and those are the very injuries that Equifax has agreed in the settlement to compensate the Plaintiffs for.

Based on the Supreme Court's decision in McConnell, there's a very real risk to the Plaintiffs that the Georgia Supreme Court will hold that time and increased risk of identity theft are not cognizable injuries in a data breach

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case under Georgia law. And if the Court were to reject this historic settlement and send the parties back to litigate, the Plaintiffs face a substantial risk that the Georgia Supreme Court will issue another decision that would gut the Plaintiffs' damages claims in this case.

As I mentioned before, Your Honor, only two states have elected not to participate in the historic M.S.A.G. settlement -- Massachusetts and Indiana -- both of which are currently in litigation with Equifax.

Each of those states has filed what they have termed an amicus brief, asking the Court to alter the release language in the Settlement Agreement that Plaintiffs and Equifax agreed to, and failing that, to reject the settlement that's before the Court.

As an initial matter, Indiana and Massachusetts are not Class members and do not have standing to object

to the settlement. That presumably is why they have styled their filings as amicus briefs rather than objections. Because they lack standing, the Court should not entertain their complaints about the release language. But even if the Court were to entertain their arguments, the Court should reject them.

First, their arguments do not go to the issue that the Court is tasked with deciding today, which is whether the settlement that's before the Court is fair, adequate and

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reasonable. In fact, they don't even attempt to make that showing.

Furthermore, their argument that the Court should reject the settlement to further their own litigation positions is not in the best interest of the Class members, including the best interest of the citizens of Indiana and Massachusetts, who will receive the substantial benefits from this settlement if it's proved.

Essentially what Indiana and Massachusetts are asking this Court to do is to redraft the release language, which the Court cannot do, or failing that, to blow up the entire settlement so that they can seek recovery from Equifax on behalf of their state's Class members, which is the exact relief that Equifax is compensating the citizens of Indiana and Massachusetts for under this Settlement Agreement.

The Court should reject the efforts of Indiana and Massachusetts to blow this settlement up so that they can pursue their own litigation.

In conclusion, Your Honor, this has been a hard-fought case with highly skilled and tenacious counsel on the other side. After five full-day mediation sessions with the leading mediator in the country, Layn Phillips, and countless hours of negotiations with Class counsel, many hours of which I think my colleagues on the other side would agree were excruciating, a compromise has been reached that provides

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unprecedented relief and takes into account the risk and delays attendant to protracted litigation in this matter.

The settlement is historic. It provides meaningful benefits to the Class, and easily meets the fair, adequate and reasonable standard.

Accordingly, Equifax joins the Plaintiffs' request that the settlement be approved.

THE COURT: Thank you, Mr. Balser.

So is there anyone from the F.T.C. that wishes to be heard on this?

(No response.)

THE COURT: Is there anyone from the Consumer Financial Protection Bureau that wishes to be heard?

MS. DENNIS: Thank you, Your Honor. This is Jenelle Dennis on behalf of the Consumer Financial Protection Bureau.

On the motion for final approval, the C.F.P.B. does not object to the provisions in the proposed settlement

in the Class action litigation that are consistent with the provisions contained in the stipulated order signed by Your Honor on July 23rd in the Bureau's action against Equifax filed in this court.

The Bureau takes no position with respect to any provisions contained in the Class action settlement that are not contemplated by the Bureau's stipulated order with

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Equifax.

To be clear, we don't view any of the provisions in the contemplated final order in the Class action as inconsistent with our order, just some things are a little bit different.

And as Mr. Canfield stated earlier as well as Mr. Balser, the regulators engaged in lengthy, protracted and extremely difficult negotiations to endeavor to craft each of our orders so as not to conflict with one another.

Thank you.

THE COURT: Does anyone wish to be heard from the Attorney General's Office of Indiana?

MS. GILCHRIST: Thank you, Your Honor. This is Corinne Gilchrist from the Indiana Attorney General's Office. And we appreciate the opportunity to participate by phone today.

Indiana has filed its Amicus Curiae brief to present information to the Court regarding the question of

whether the settlement as proposed is fair, reasonable and adequate.

And Indiana's position is that the settlement as proposed is not fair, reasonable and adequate for Indiana citizens because of the relief language, as mentioned in our brief, that purports to release claims by any other person on Class members' behalf.

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Because the State of Indiana has a pathway to pursue restitution for money unlawfully received on behalf of consumers under Indiana's Deceptive Consumer Sales Act, the release language as drafted inappropriately seeks to act as a restraint on Indiana's action.

And Indiana and Massachusetts did reach out to the parties and requested modification of the relief, but the parties refused to modify the relief.

I'd like to highlight the types of claims that Indiana has brought in our Defective Consumer Sales Act counts against the Defendant in our pending case.

Our claims are not only premised on Deceptive Consumer Sales Acts related to the failure to secure data in the 2017 briefs, but also misrepresentation to Indiana consumers related to Equifax's information, security and transactions conducted with consumers in Indiana, and as a third category, misrepresentations about Equifax's payment card industry standard compliance.

So the relief for restitution for unlawful -- money unlawfully received on behalf of the consumers in Indiana, in the Indiana state court action is broader in category than what was sought in the Class Plaintiffs' Complaint here.

Defendants note the rest that they see in the Class Plaintiffs' continued claims, as I've mentioned, going back to litigation, but this highlights the distinction between

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the negotiated relief in this case and the unresolved claims that are held by the State of Indiana on behalf of Indiana citizens. And that question is relevant to this Court because Indiana citizens are members of the Class and their claims are being treated unequally.

We -- Indiana does not seek to double recover for impact to consumers. It seeks the ability to separately pursue the full remedies as determined in our state court action. Again, as I mentioned, our claims are premised on three different categories of deceptive acts that are actionable under Indiana law.

And the parties made it clear in their filings of yesterday evening that Equifax does intend to use this settlement's approval in an effort to bar Indiana's ability to pursue those claims, and it is that action that is clearly prohibited in the Eleventh Circuit under Herman versus South Carolina National Bank, as we cited in our brief.

Your Honor, I -- we've reviewed the parties' submissions of yesterday evening, and we would like to

provide a supplemental response in writing if the Court would permit it. And I can answer any other questions that you have about Indiana's position.

THE COURT: Thank you, Ms. Gilchrist.

Is anyone on the phone that wants to speak on behalf of the Massachusetts Attorney General's Office?

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MS. CABLE: Yes. Thank you, Your Honor. This is Sara Cable for the Massachusetts Attorney General's Office.

And, again, thank you for the opportunity to appear today by phone.

And really I'll just briefly mirror a lot of what my -- of what Ms. Gilchrist just stated. And as we put forth in our amicus brief, Massachusetts had a pending case against Equifax that we filed, I think, just under two weeks after learning of the breach in September of 2017.

And just a bit of quick context, this breach had an unprecedented impact on the Commonwealth, affecting three million of our residents, and that's nearly half of our adult population.

We took action here through a civil enforcement action under our Consumer Protection Act and our Data Protection Act to protect consumers and to enforce our laws in the public interest.

And what we have alleged in our Complaint, briefly, is that Defendant violated in numerous ways core

requirements of Massachusetts law that, unlike what I understand is now the current state of play in Georgia, imposes a clear duty on Equifax to protect consumers' personal information.

And we're seeking through our case to pursue all of the remedies that we're entitled by statute to pursue and which are exclusively reserved by statute to the Attorney

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General. And this includes civil penalties; restitution, equitable or otherwise; and injunctive relief. And this is part of an effort to vindicate our laws, penalize Equifax's non-compliance, and deter future conduct by Equifax or others.

Just to know, our case has withstood in all respects a motion to dismiss by Equifax and a motion to stay pending formation of this M.D.L. and resolution of the other regulatory actions. And so we are now in the midst of fact discovery and deposition practice.

We, like Indiana, filed an amicus brief before this Court on really a narrow issue, but we think it's a very important issue that goes directly to the question of whether the settlement is fair, reasonable and adequate as to all Class members, and that is the scope of the relief.

We similarly believe that it is overly broad, and as made clear by Equifax's filing late last night, it appears to be an intentional effort to infringe or restrict Massachusetts' ability to seek the full panoply of relief

that we're entitled to seek in our own state court enforcement action.

And as Ms. Gilchrist noted, applied in the fashion that Equifax appears to intend to apply it, it would conflict with Eleventh Circuit precedent, which makes it clear that a government law enforcement agency is not bound by a release

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negotiated by private litigants.

And it would also conflict with this Court's recent decision in F.D.C. v. Hornbeam, where the Northern District of Georgia directly considered and rejected the argument that Equifax appears to be making, which is a private settlement could bar the F.T.C. from obtaining consumer restitution in its enforcement action.

In terms of the question of how Massachusetts residents would be treated differently, we heard today of the importance of the -- or the prominence of the multistate settlement that Equifax reached with 48 other states and D.C. and Puerto Rico. And we heard -- I believe it was Class counsel today who discussed how those negotiations and the substance of those negotiations really materially impacted the negotiations in this Class action settlement.

In those settlements, Equifax separately resolved the claims of the states, which, like Massachusetts, my understanding, they had claims under their own Consumer Protection Acts relating to Equifax's failure to safeguard consumers' information from breach, and

they negotiated through a separate resolution with separate consideration a separate relief for those claims.

And here, Massachusetts is not a part of this Class action. Massachusetts was not part of the multistate settlement, and yet what Equifax has now admitted it intends

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to do is to take the relief here and seek to apply it against Massachusetts, going down the road in our enforcement action. And we think treating us differently than Equifax has treated other states is manifestly unfair to our citizens.

And I just want to finish to just -- contrary to what I take to be Mr. Balser's view, we are not seeking to blow up the settlement here. We're simply looking to protect our own sovereign interests and avoid unnecessary future litigation.

And we think we've offered the Court a simple, narrow fix that should not negatively impact the interests of the Class, and that is to order the parties to make the modification to the relief that we set out in our brief so that it conforms with Eleventh Circuit precedent.

And with that, unless the Court has other questions, I'll rest on our brief.

THE COURT: All right, Ms. Cable.

All right. I have a list of individuals who I was told might be here and who would want to speak or raise objections to the settlement.

So let me just ask, is Christopher Andrews here?

MR. ANDREWS: Here (hand raised).

THE COURT: Mr. Andrews, do you wish to be heard on the approval of the settlement?

MR. ANDREWS: Yes.

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THE COURT: If you will, come up to the podium, please.

Mr. Andrews, if you will, start by telling me your name and where you live, not your street address, but the place where you live.

MR. ANDREWS: My name is Christopher Andrews. I live in Michigan. And this is one of the issues I wanted to raise in my presentation.

Before I begin the presentation, the Court provisionally granted my request that my street address be sealed, which I appreciate.

The Plaintiffs' counsel intentionally has placed it on the docket in the filing they made. I saw it on the docket yesterday.

So my motion to seal is on there along with the sealed document.

I request the Court take it off and sanction them. They did it on purpose because they don't like what I wrote about them.

So I can tell you I live in -- I live in Michigan, if that's good enough.

I don't think I should be subjected -- no one in here had to give their home address.

THE COURT: I didn't ask for your home address.

MR. ANDREWS: I understand. So I am a resident of

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the state of Michigan.

THE COURT: All right.

MR. ANDREWS: I thank the Court for allowing me to speak today.

In my objection, I requested ten minutes of time. I'm requesting ten minutes and 45 seconds, if possible. The 45 seconds is to address the presentation made by the first lawyer and also the second lawyer, from Equifax.

I have a copy of the remarks for the Court, if it would like a copy. If not, I can just do the verbal presentation if that would be okay.

THE COURT: That's fine.

MR. ANDREWS: Okay. Good morning, Judge Thrash, Jr. My name is Christopher Andrews.

I'm a pro se objector. I'm not an attorney. My remarks will take ten minutes and 30 seconds.

Before I begin, there's a couple of issues which I've already raised relating to the sealing of my record. So if that could be taken care of before we leave or after I leave, I would appreciate it.

I had some exhibits to give out today, but I'm not going to give them out, unless the Court needs to see them. They're already on the docket.

My first thought after reading, going through all the documents of the JND website after you gave approval, I

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read through all of them along with a lot of other documents that I had to purchase on PACER.

My initial response, having filed about ten objections and four or five appeals in various parts of the country, the thought was, Hold up. Wait a minute. Something's not right.

The lawyers here are claiming there's nothing wrong with this settlement.

It is horrid. It is a disservice to the Class. I wrote about it in my brief. I've never seen a worse one in 250 settlements in a decade. It is that bad. Okay.

Maybe this is the first time a well-documented objection has been filed, and many times the lawyers never see one until someone like myself or other

attorneys who are more qualified than me put them together.

What the lawyers have not done at this point, they have claimed in their response that my objection was filed on November 20th. That's a day late and a dollar short.

That document, when it was sent to JND, was e-mailed over to Class counsel and Equifax's counsel. They had two weeks or three weeks to verify that it was on the 19th. I sent information in on a duplicate submission. It's on the docket. And they're still trying to get my objection rejected or not considered by the Court.

I request that they be ordered to correct their

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error, which was intentional. It was November 19th. The documents are all there.

They didn't address the cookiegate issue. JND legal administration put six to seven cookies on each section of that website. Everybody who went to that website, tens of millions of people, were or are currently being tracked. There was no reason to have Facebook's cookie on there, two of them, I believe, and two of Twitter.

We get -- Equifax has caused us major issues in the future. There's nothing on the dark net that any of this information got out.

Somebody's got it. The Russians, the Chinese, somebody's got it. They're going to use it against

somebody somewhere, probably in a blackmail scheme. Okay.

I'm extremely angry. I think JND should be held accountable for the placing of the cookies on the website.

Next, there's a huge due process issue here that no one is addressing.

According to the filings, there's been 104 e-mails sent out to the Class. Out of 147.9 million, I'll round it to 148 million, that leaves 43 million people who have not been noticed directly.

The lawyers are claiming that the couple of radio ads and one print ad in U.S.A. Today noticed the balance of 43 million people. Absolutely impossible. Can never happen.

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The impressions number that was quoted in their filings does not mean a set of eyeballs or ears or a set of ears heard the messages. They're all botcher of them, which they can respond what botcher is.

Something pops up on a screen for half a second, that's counted as someone viewing it.

Had I had more than 25 pages, I could have added on another 75 and addressed all of these issues, including the overinflated lodestar.

The 43 million people who were not noticed knew nothing of the litigation, they cannot file a claim, and, more importantly, they cannot opt out. It violates due

process. Eleventh Circuit, Supreme Court precedent, I can give you five pages of cases.

Those 43 million absent Class members must be noticed by mail, either first class or postage.

The parties intentionally chose not to mail out to those people because of the cost. The cost to send out a postage, let's assume it's 70 cents per postcard. Seventy times 40 million, we'll figure it's going to run $28 million.

The Class technically should pay for that, but because of what they've done in this case, which is not do their job, they should be forced to pay for the notice out of their funds, not the Class. It's not our fault they've intentionally tried to rush this thing through to get

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$77 million. It's totally rushed through. It's been 18 months. It's not a lot of time.

Next, the 14 million claims that were submitted out of 147.9 million shows an epic failure of the notice program. It's ten percent. Who in this country out of 140 -- 137 million people would want to be the victim of identity theft? Nobody.

Why wouldn't someone file? Because no one has explained to them the ramifications of what can occur.

I can pick out and go through 20 examples of different types of identity theft.

The credit monitoring doesn't protect against a lot of which I wrote about in my objection. One of them, for example, you give somebody who's up to Social Security benefits age. Someone could steal their identity, put together a new address, file for Social Security benefits, receive those benefits monthly for years electronically, and then when the person actually decides to get Social Security when they're 67 instead of 62 or '3 or '4, now they're not getting anything because now they have to go back, and like the lawyer from the Plaintiffs said, you're not getting your money and it could take years to resolve it.

That's not covered by credit monitoring. You need identity theft monitoring realtime, and I went through that in my objection.

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Next -- I'm going to skip that part.

Next, I and 147.9 million other Class members did not give Experian permission to give an outside party, JND Legal Administration, our e-mail addresses for their use to e-mail us, unless the Court gave them permission. We're sharing confidential information like it's no big deal.

The 147.9 million members did not give Equifax permission to give JND Legal Administration the last six digits of our Social Security numbers for their use.

In this country, a business can be successfully sued for printing the last six digits of a 16-digit credit card number. Equifax gave JND Legal 66 percent of our Social Security number, which is -- the Social Security

Number Notice Program was not needed because direct mail was always available. It was done to make JND Legal a fortune at our expense. They could have simply put together 147 million postcards and mailed them out.

Next, it looks like there was no value assigned to the theft of the individual data itself and an aggregate that was stolen.

The $31 million restitution fund component appears to be for those who purchase credit monitoring, any time up to and including today, which means no amount was set aside for the theft of the data itself.

Today, here's an example of how the fund can be

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scammed as of today. And I'm sure I'm not the only one who's figured it out. Maybe the lawyers have figured it out too late and no one is saying anything.

Today, what I could have done in my claim is I could have signed up for credit monitoring for free. AAA, Credit Karma, a lot of credit card companies offer it for free.

So I have credit monitoring. Now what I basically do is I fill out the form on the claim website and I can get cash for nothing. That's not the way -- that's not what this fund is designed for is to give people something for nothing.

I would have gotten credit monitoring for nothing and then at this point gotten $2.50. Not 125 but $2.50.

They need to rework that because they messed up. No one should be able to get money for nothing.

Without knowing the total damages compared to the amount settled for, it's impossible for anyone on this planet to determine if the settlement is fair, reasonable and adequate. You have to have both numbers.

Next, the up to $20,000 per person for reimbursement for those who suffered identity theft is based on proving a link to the information stolen from Equifax, which we all know can't be proven. So that part of the deal, Equifax is within their rights to deny every single claim legally per the Settlement Agreement. I don't know if

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they're going to, but they can.

Paying unjustified claims takes money out of everyone's pockets because the separate $125 million component could have been put into the measly $31 million component.

Paying claims for those who can't prove a link between Equifax and the identity theft loss is fraud on the entire Class and is really fraud on the Class and the fund.

Next, the lawyers have talked about this $1 billion in computer improvements. That does not help 148 million victims, because our data was stolen and it can't be replaced. We can't replace the Social Security number. We can't replace the driver's license, the date of birth. We're all stuck.

Now, I guess if they could come in and change it, the government comes in and gives everyone an ID number different than Social Security, then we can say, yeah, if they steal it again, so what?

There's like thousands of data breaches that have occurred in the last ten years. Our data has been stolen 15, 20 different times. So I don't think that should be counted as far as the value of the settlement.

Next, I would like to know on rebuttal does Equifax have any business relationship with Experian? Why did all of the credit monitoring go to them instead of TransUnion, and

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why wasn't it split evenly?

Next, the following clauses in the Settlement Agreement void the entire document based on the misconduct engaged by the parties, which I've written about extensively and filed a couple of motions on.

14.2, the parties' Class counsel and defense counsel shall not have any liability whatsoever with respect to any act, omission or determination of the settlement administrator, et cetera.

14.3, the settlement administrator shall indemnify and hold harmless the parties, Class counsel and defense counsel for any act, omission or determination of the settlement administrator or any of the settlement administrator's designees.

If any of the Class wants to sue JND Legal, along with the lawyers because the lawyers made JND their

agent, they should have that right to do so. We can't do that if this Settlement Agreement gets approved because everyone is washing their hands and saying, We're not responsible.

That's not good enough.

They are attempting to limit their liability for errors that they both intentionally and unintentionally have committed to try and rush through this scheme of an approval. Those two clauses should be ruled invalid due to the shenanigans that have taken place.

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I'm almost done.

With response to the presentation made by the Plaintiffs' lawyer and also Equifax, they mention there was 130 million visits to the website. That seems like a lot, but it's really not 100 percent accurate. We're leaving out a lot of detail.

I've been on the website probably 30 times, putting together my presentation, et cetera, et cetera. So they haven't said how many unique visits. A hundred and thirty could mean 30 million people visited multiple times. So it's misleading.

They bring up the fact that 0.002 percent have filed objections. It's not about the total. It's not about quantity. It's about the quality.

If we take out Plaintiffs' lawyers and defense lawyers out of the equation, there's no more than twelve people in this country that can put together an objection that can make a difference, myself included

and I'm not a lawyer. So I don't think that has any weight whatsoever.

Most people are too busy in their lives to learn everything they need to know. It's taken me eight years to get to this point. I couldn't have put this together even three years ago. So I'm getting really good at it.

As far as alleging that I'm a serial objector, not a chance. The lawyers behind me, they've filed and settled

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dozens of them. That would make them serial Class action filers.

When they start throwing mud, they know they're in trouble. I knew it immediately as soon as I saw it. Okay. Plus, the e-mail they sent over, that was done intentionally also to try to get it on the docket here, for a reason I'm not going to go into.

So I request when they talk about non-serial objectors, when you look that information up on Google, it talks about an attorney who files two- and three-page objections with the sole intent of holding up an appeal and getting paid off.

If the lawyers are good, they would simply file a motion for summary affirmance up in the appeals court. The appeals court would simply say, yep, they've got nothing on it, and they dismiss it, but they don't. They pay objectors because they know they're going to lose. It's just a cost of doing business.

The statement was made that there was no way to know the amount of the alternative compensation out of a $31 million fund. That's totally false. There's been, like -- I don't know -- twelve million people who have filed for cash and three million for credit monitoring.

Well, take the twelve million into the 30 million or 31. You've got $2.50. So all of my information was

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stolen for $2.50.

Facebook paid five billion. That information was not the type of serious sensitive information that got stolen here. It worked out to about $25 a person for just the aggregate -- for just aggregating the information off the Internet, because they all had files on us. Everything we've ever written, typed or talked about, it's in a database some place.

We have -- I have a solution to some of the -- to many of the issues that I've raised today in my objection and also in my remarks to you, Judge. Okay.

The first, we don't have to nuke the settlement today. According to the Settlement Agreement, you can give them 60 days to go back and try and address and fix the issues I, along with any other objectors, have raised. Okay. At the end of 60 days, they can post any revisions and we can go from there.

So it's not like this is like do or die today. They are trying to make this do or die. It's not. Everyone's trying to rush, rush, rush. Mistakes are made when people rush things.

Summary. I request that Equifax admit liability for this action only, that Class counsel and the steering committee and the named Plaintiffs be removed for what's taken place.

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I volunteer to be a named Plaintiff, kick the 93 or '6 of them off because they haven't done a good job.

At this point, I will challenge standing for the named Plaintiffs. The burden is on them to prove they've got standing. I haven't seen anything in the record that they've got standing to represent the Class.

I'm challenging it now. It's in the record.

I also have a solution. There's $260 million that was given to the 48 state Attorney Generals and the C.F.- -- Consumer Protection Bureau, whatever it is. It's not clear from my research where that money is or has it been given out yet.

If it's not been given out, I would request the $260 million be put into the $31 million restitution fund. That would raise the check from $2.50 right now to about $75. I don't know if that's fair or not, but it's better than what we've got now, after they fix the issue of being able to get cash out of that fund for nothing.

Last, if the Court approves this deal, I will appeal it in forma pauperis. I was given that designation last week in the Eastern District of Michigan. I have it at the Ninth Circuit in California in four different cases. I have one and a half now. I'm waiting for three more to -- two more to come down any day.

I'm not going to allow the people behind me to

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throw up a six-figure bond to the Court and the Court approves it, they bury all the issues that I've raised that they can't and won't respond to, and we'll go away. Not going to happen. Okay.

I sincerely -- I believe that I am correct. If I was wrong, I wouldn't be here, with all the time and money I've invested, for $2.50 or four years' worth of monitoring.

If the Court doesn't have any questions, my presentation is complete.

THE COURT: All right, Mr. Andrews.

James Burnes, is he here?

(No response.)

THE COURT:

Raymond Koscue?

(No response.)

THE COURT: Theodore Frank or his attorney, Melissa Holyoak?

MS. HOLYOAK: I'm here, Your Honor.

THE COURT: All right. Ms. Holyoak, if you will, come up to the podium.

Are you representing Mr. Frank and Mr. Watkins?

MS. HOLYOAK: Correct.

THE COURT: All right.

MS. HOLYOAK: Thank you, Your Honor. I just have a few points I'd like to make today.

My name is Melissa Holyoak. I represent Ted Frank

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and David Watkins.

I'd like to start by just saying that the Court has an independent and continuing obligation to ensure that the Class should be certified. This includes Rule 23(a)(4), adequacy of representation.

Here, we have a problem with adequacy of representation because there are inter-Class conflicts. And in Class counsel's response to objections, they've argued that there are no inter-Class conflicts or they're minor, relying on the Target case and some other cases.

The Target case, the district court case, the question on inter-Class conflicts based on statutory claims never reached the Eighth Circuit. So the Eighth Circuit never determined that because of issues of standing which are not at issue here.

So the case that really is on point here is the Second Circuit case of Literary Works. And in that case, there were three subgroups. All had different statutory claims. And there, the court decided that those three groups, because they had different statutory claims, required separate representation. And they based it on the Supreme Court's decision in Ortiz, where the court found that when you have these categories of different claims with different settlement values, then

independent representation is required to satisfy Rule 23(a)(4).

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In the response to the objections, Plaintiffs tried to distinguish Literary Works, and they argue that in Literary Works, those three groups were not united in a claim. But that's just not correct, Your Honor.

In that claim -- in that case, the Class representatives were each part of those three categories. So they were united to get -- to maximize their collective recovery. But the Second Circuit said that wasn't enough, because even though they were united to maximize their collective recovery, when it came to distributing that recovery to those different subgroups, that's where the conflict exists.

And they were following the Supreme Court's decision in Ortiz, who also said that the common interest in maximizing that recovery is not sufficient, and that's at 527 U.S. at 857.

Here, the fact that there are more statutory claims that are involved in the Second Circuit makes no difference, Your Honor, and it's not a reason to ignore Rule 23(a)(4) and the protections that it provides.

And this Court dismissed several dozen of the consumer protection statutes in your order on the motion to dismiss, but many more -- but several also survived; and those statutory claims that survived the motion to dismiss here, they deserve independent counsel to represent them at

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the negotiating table.

Class counsel, in their response to objections, further argued that independent counsel is not required under the Eleventh Circuit decision in Juris, which is at 685 F.3d at 1324. But that's the opposite of what that case holds. That case found that there was no formal subclass required because -- only because the court had appointed separate qualified and independent counsel to those subgroups and rejected the idea that an experienced mediator could solve that problem.

So, too, here an experienced mediator is not going to solve the problem with subgroups with conflicting claims because he cannot sit at the negotiating table and argue for those subgroups who don't have a voice at the negotiating table.

Just two more points, Your Honor.

Last night at 11:00 p.m., Class counsel filed an additional declaration and attached to that was an exhibit, Exhibit I, which included a chart of deficient objections.

Under this Court's order, their response to objections was due on December 5th, and they filed a response but they did not include this chart.

This chart should be stricken, but in addition, my clients, Mr. Frank and Mr. Watkins, are included on that chart, and at a minimum, to the extent that this Court takes

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any action based on that chart, we would request an ability to respond.

And then just finally, Your Honor, to end, my clients have filed motions to strike the declarations of Professor Klonoff. Class counsel has responded to our motions to strike and in that, they argue that my clients' motion to strike was late and should have been included in the objection.

But the motion to strike was an affirmative request for relief and under local rule, required a motion and accompanying memorandum of law in support.

I will rest on the papers on the motion -- on our motions and anything else, unless the Court has any further questions.

THE COURT: All right, Ms. Holyoak.

All right. Let me try to figure out who we have left.

Michael Steel?

(No response.)

THE COURT: Mikell West.

MR. CLORE: Robert Clore, Your Honor, for Mikell West.

MR. FROELICH: And Jerry Froelich, Your Honor.

THE COURT: All right. How long do you think your presentation is going to take, Mr. Clore?

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MR. CLORE: I would say five minutes.

THE COURT: All right. Does anyone else wish to be heard in objection to the settlement?

(No response.)

THE COURT: What's your pleasure, Mr. Canfield, Mr. Balser? I'll hear from Mr. Clore. Do we take a lunch break? Do we try to plow on through?

MR. SIEGEL: Your Honor, if it pleases the Court and the court reporter, we'd just as soon plow through.

I think my responses to what I've heard so far will be brief.

I know Ms. Keller will respond to anything related to the Klonoff issue.

A brief response to -- we haven't spoken on the states, Massachusetts and Indiana. But I would hope we would condense that all in a 20- to 30-minute block and be done.

MR. CANFIELD: Governor Barnes plans to speak as well, Your Honor.

MR. SIEGEL: I did not account for the Governor, Your Honor.

THE COURT: If he says five, he's going to talk for 15, at least.

(Courtroom laughter.)

MR. SIEGEL: We're here. We're happy to plow

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through or break, at the Court's pleasure.

THE COURT: What do you think, Mr. Balser?

MR. BALSER: We would prefer to continue if the Court and the Court's staff is amenable to that.

THE COURT: Well, let me hear from Mr. Clore, and then we're going to have to take a short break, and then we'll just keep going.

MR. SIEGEL: Thank you, Your Honor.

MS. KELLER: Thank you, Your Honor.

MR. CLORE: Thank you, Judge. Robert Clore for Mr. West.

I want to get to the last hour of supplemental declaration that was filed at midnight -- around midnight last night.

But if I can, let me start briefly with fees, which under Rule 23(e) now impacts the consideration of adequacy of Class relief.

Class counsel are conflating -- considering non-monetary relief with including it in calculating fees. It's not to be included in the sum. The number should be 25 percent of 310 million.

In fact, as you noted, Section 11.1 of the settlement expressly promises that that's the calculation from which they take their fees.

They didn't amend the settlement, so they should be

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held to that promise under the agreement.

I heard the words "simply wrong" and "serial objector" a lot, but not a lot of analysis on the cases that touch on fees.

The Anthem data breach case did award a 27 percent fee, but with virtually no lodestar multiplier. And in the Ninth Circuit, they placed particular emphasis on lodestar for mega fund settlements. So that percentage would not have been allowed if there were a comparable 3.7 multiplier that we have here.

The other cases, like Home Depot, that were before this Court were not mega fund settlements.

And so Carpenters and Domestic Air indicate that 25 percent of 310 million is unreasonable. Carpenters did award 21 percent of 130 million, but a sliding scale would never allow that same 21 percent for 310 million, especially with a 3.7 multiplier.

The economies of scale recognize that this is the largest data breach settlement, at least in part, because it's an unprecedented data breach, which involves 147 million Americans.

Let me briefly address the second supplemental declaration, which I only had a chance to review this morning. So, unfortunately, I couldn't compare the representations about Mr. West's deposition with the

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transcript. I know, just from looking at it briefly, I could see multiple inaccuracies.

First of all, there's an intimation that Mr. West was solicited. He was not solicited. He's a colleague of mine, a friend and a colleague of mine. He reached out to me and not vice versa. That's very clear in the transcript. I can't give you a page number, but I promise you it's in there, and they know that.

He did not say that the only reason he was objecting to fees is the case settled early. That's a gross misstatement of his testimony.

He did discuss the fact that it was an early settlement and that that was relevant to both settlement approval and fees; but he also discussed the mega fund issue, which is a central theme of the objection and the reply in support of it.

Class counsel cite a District of New Jersey opinion involving a company called NIBCO. That case required objectors to list every objection ever filed by their counsel. And, unfortunately, we did miss one case and, obviously, the judge didn't like it. But, respectfully, that omission shouldn't impact Mr. West's objection here.

There's nothing that would show ill motive here, and amended Rule 23(e) specifically weeds it out by requiring Court approval of any objector settlements.

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And like Ms. Holyoak, I also request the opportunity to respond to the chart attached as an exhibit last night, to the extent it addresses Mr. West.

Otherwise, I'm happy to answer any questions by the Court.

THE COURT: All right, Mr. Clore. Thank you.

MR. CLORE: Thank you.

THE COURT: All right. Let's take a ten-minute break and then we will continue.

(Recess taken from 12:28 p.m. until 12:40 p.m.)

THE COURT: All right. Let me ask again, does anyone else wish to be heard objecting to the proposed settlement?

(No response.)

THE COURT: All right. Mr. Siegel, Ms. Keller.

MR. SIEGEL: Thank you, Your Honor. Norman Siegel, co-lead counsel for the Plaintiffs.

And I think I would just like to start from a 10,000-foot level on objections in general response to what we heard today, but also what was in the papers.

Obviously, Your Honor has a substantial amount of paper before it, and I will effort not to repeat what's there, but I do think some matters of importance should be raised in this final approval hearing.

Part of what the manual for complex litigation

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imposes on the Court and the parties at final approval is to evaluate the nature of these objections, of course.

Some can be helpful. Objections from everyday folks, like we've seen in this case, that are angry with Equifax because they didn't even know Equifax had their data, they want legislative change, they believe that there should be substantially more money, all are appropriate, legitimate objections that I think Rule 23 encourages to allow both the parties and the Court to test the settlement.

And we certainly have those here and believe that through that rigorous process, the settlement looks great. As Mr. Canfield explained, the largest of its kind in history that delivers exactly the kind of relief that we set out to accomplish when we started the case.

But the manual also cautions against a different type of objector. In Section 21.643, the manual says that objections may be motivated by self-interest rather than a desire to win significant improvements in the Class settlement. A challenge for the judge is to distinguish between meritorious objections and those advanced for improper purposes.

And we are imposing on the Court a bit here to try to make that determination with respect to some objectors, and the reason that -- the reason that's important is because we think it's important both for this Court to come to some

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conclusion about the folks we've identified in our papers, but also for any appeal.

You've heard today that some of the folks we've identified as serial objectors that are present with improper motives are intending to appeal if we are successful and the Court orders that this settlement be approved.

And so we have tried to build a record that allows the Court to make that determination, and if the Court pleases, include it in its order approving the settlement.

THE COURT: Well, let me interrupt you for just a second, Mr. Siegel.

MR. SIEGEL: Please.

THE COURT: I know there were some objections to the requirements that were imposed in the Settlement Agreement and in the order of preliminary approval about information that objectors had to provide before the objections would be considered.

And you correct me if I get any of the facts wrong, but my reason for approving those procedures was -- I believe it happened in Home Depot, where we had an objector just come in out of the blue and file hundreds of pages worth of objections and replies and responses, and the lawyers were scrambling as late as the day of the final approval hearing to find out some of the information that you thought and eventually I thought was relevant to consideration of the

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objector, and it was a really chaotic process.

So I said never again. And that was my reason for approving those requirements in that process in this settlement.

Am I wrong? Did I get that basically right?

MR. SIEGEL: You did get it basically right. It allows for the Court to have an orderly process for objections.

THE COURT: To have the information before the day of the hearing?

MR. SIEGEL: Exactly. And it also provides a basis to allow the parties and ultimately the Court to consider, okay, what is going on outside of the narrow objection that's put before me that may inform what I just read out of the manual, which is, Are the intent of these folks to help the Class or are they motivated by something else?

And so that process is entirely consistent with Rule 23. It's consistent with this question the manual poses to courts, which is not easy, in terms of the divining the intent of some of these objectors.

But the process has allowed us to identify some objectors that we believe presented objections for improper purposes and make that record, which is why we filed our supplemental declaration, why we filed the declaration last night, because we do think it helps inform that.

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And I don't want to go through all of that in granular detail, but I do think it helps to point out the folks we identified -- Mr. Clore, Mr. Bandas -- who represent Mr. West. We've obviously provided an in depth record regarding their use of the objection process to try to hold up settlements and seek fees on appeal.

We identified Mr. Helfand, the subject of a disciplinary action for misleading a judge about an objection. When we deposed Mr. Helfand, he indicated now having read the settlement, he's a fan of it and hopes that the Court, in fact, approves it.

Mr. Cochran, an attorney, he typically objects to Class action settlements, seeks out friends and families to act as the client. He was unable to do that, so he's representing himself.

He was uninformed about key issues of the settlement in his deposition, and, again, we think that's the kind of thing that informs whether those objections are for the benefit of the Class or for another purpose.

We have John Davis we included because he is a serial objector who just failed to appear for his deposition.

Mr. Andrews you've heard from today. He, too, has a record of holding up settlements for financial gain. We've made our record on that. As the Shane versus Blue Cross Court found, he is known as a professional objector who has

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extorted additional fees from counsel in other cases.

And his objections here we just think are factually wrong. We are happy to work with him if there is something on the docket personally that he thinks shouldn't be there. But I think his objection came after what we filed. But in any event, we will reach out to him to make sure we've addressed that issue.

And so these objectors, I think, have a -- do have this documented history that now the Court has that helps inform this. And, again, it is our view that the Court should consider identifying and making findings regarding those handful of folks in considering their objections.

And obviously consider the substance of the objections, but I think in considering the substance of the objections, it's appropriate to consider whether these folks are professionals as well.

And then the other individual we identified was Mr. Frank, who is the partner in the non-profit with Ms. Holyoak. The other objector Ms. Holyoak is representing is her brother.

They have a fig leaf of legitimacy in their objection, which I'll go through in a minute, but that's sort of an entirely different thing where they may not necessarily be looking to extract fees to hold up an appeal but very much made clear from their conduct that they are not acting in the

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best interest of the Class. And, again, that is, as the manual says, an important consideration.

And so how did we explore that and what do we put in the record with respect to Mr. Frank?

First is the continued public statements that there was only $31 million in the settlement.

As the Court is aware and Mr. Canfield explained, those misstatements, which got off the ground before we even appeared in July, we sought to correct immediately. But there were others out there, including Mr. Frank, who were perpetuating this idea that there was only $31 million available in the settlement, and that was compounded by the fact that we had Mr. Metcalfe. And Mr. Canfield talked briefly about Mr. Metcalfe and Class Action, Inc., and then I think there was a communication breakdown on what a chat bot is.

But the chat bot that Mr. Metcalfe created on Class Action, Inc., was essentially -- and this is included in the record as an attachment to our declaration at Document 900. I'm looking at page 66, for example. It is just simply an automated process by which people go to a web page and they click through boxes, and the information that's being provided to them are simple statements that we say are highly misleading about the settlement.

For example, there are two kinds of claims. You

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can apply for free credit monitoring or a cash settlement.

The cash settlement is then referred to as between $1.30 and $25 per person. There's no mention of up to $20,000 that we expect to be fully reimbursed. There's no mention of all the other economic and non-economic benefits of the settlement.

And so the way this is set up, it is, we believe, intentionally misleading people to ultimately select Tell Me About Other Options.

Well, you can object, and you can object by clicking another box.

I want to object because I don't like the settlement. There should be more money.

We have in the record every screen that would pop up.

And so that is what Class Action, Inc., did. And we believe both through Mr. Metcalfe's public statements about the settlement, including newspaper articles that suggested there was only $31 million available, and then his admission that we've included in our supplemental declaration, that that's what he believed. He believed the settlement only included $31 million and that the -- he never read the Settlement Agreement to have any understanding about any of the other benefits, significant benefits, valuable benefits to Class members, and yet was hosting this automated

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process to object to this settlement. And that's why we've asked that these objections be denied and struck, because we believe they were secured by improper means.

But turning back to Mr. Frank, Mr. Frank was promoting Class Action, Inc., after knowing good and well -- he's a smart guy -- that there was more than $31 million.

He has one Tweet. We've put in the record where he says -- late, that he says, "Not legal advice. Go object here," linking to Mr. Metcalfe's Class Action, Inc., chat bot.

Well, it's not legal advice. It's bad legal advice to direct people to a site that at that point he knows is providing misleading information about the settlement.

So that, we believe, is a significant piece of information in how the Court considers making any finding goes with respect to, again, whether these objections are made in the best interest of the Class.

One other quick example on Mr. Frank and Ms. Holyoak referenced in passing is the Target case, another data breach case that I was involved in, Your Honor, a settlement that was nowhere near what we have here, of course. But they appealed that case as well. They were objecting in Target. They appealed to the Eighth Circuit.

In that case, the same claim was made, that there were conflicts among Class members and therefore the Court

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shouldn't approve it.

The Eighth Circuit did send it back down to the trial court for a more in-depth opinion, which was written. They appealed that, and it was affirmed.

And what did that accomplish? That accomplished a two-year delay in the final payments from the Target settlement. The Settlement Agreement was never changed. The fees were never modified.

And if you look at what Mr. Frank and Ms. Holyoak submitted in their prior cases and whether they've had success or not, they count that as a win. I looked it up this morning on their website to make sure I didn't have it wrong. They count it as a win, the Target appeal.

And so that is another point of reference for the Court that we would like the Court to consider, that an objection by a serial objector in a very similar case in which they make the same objections they're making here that results in nothing more than a two-year delay is considered a win, and how that squares with being in the best interest of the Class.

And we think that record is, again, sufficient for the Court to readily conclude here that those objections, including that of Ms. Holyoak's clients, in the words of

the manual, are not acting in the best interest of the Class.

Let me turn quickly to the specific objections that

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we heard from today. I think we responded to all of them in our papers.

Mr. Andrews raised several, most of which were just factually incorrect.

JND never got Social Security numbers. That was a system approved by the Court. Equifax always had the data. It was simply a mechanism to confirm Class membership.

The use of Social Security numbers was used to define the Class, of course.

The fact that there's an erroneous claim that Equifax is the entity deciding what is fairly traceable to the breach, that's not true. That is the claims administrator, JND.

As Exhibit 9 to our Settlement Agreement lays out, there's a rather extensive process by which the claims administrator must consider claims as to whether they are fairly traceable, including the time of the alleged loss being after the breach is presumptively fairly traceable to the breach.

The -- there is no business relationship between Equifax and Experian, of course.

There's an express term in the settlement that Equifax can get no financial benefit from anything related to the monitoring services provided here.

We also provided in our response to the declaration

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-- our supplemental declaration last night a response to this claim that somehow JND is capturing information that it shouldn't.

Finally, the $5 billion in Facebook, of course, was a fine that went to the government, not to members of the public.

I think with respect to Mr. Clore's statements today, I will rely on the papers, and I actually think Mr. Canfield addressed all of those preemptively.

And then Ms. Holyoak. And I think the core objection there is the objection that there is some sort of conflict; and there's a related objection from Mr. Huang at Document 813, at five through seven. The Frank and Watkins objection is 876.

This is the idea that Amchem and Ortiz creates some sort of -- or mandate that there needs to be massive subclass go here.

We think, again, briefed extensively, but those obviously were complicated personal injury cases, asbestos cases, where you had people who had no injuries, people who were concerned about manifesting injuries in the future.

And in the Eleventh Circuit, a fundamental conflict exists only where someone in the Class claims to have been harmed by the same conduct that benefited other members of the Class. That is a fundamental conflict, and we don't have

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that here, obviously. There are no conflicts, let alone any that should be considered fundamental.

I'll rely on our papers with respect to Mr. Huang's objections with respect to current and future injuries.

And just quickly to respond to Ms. Holyoak's comments, this was rejected in Target, expressly considered by the trial court and affirmed, where the court held that the availability of potential statutory damages for members of the Class from, in that case, California, Rhode Island and the District of Columbia does not mean that the interests of these Class members are antagonistic to the interest of Class members from other jurisdictions.

Class actions nearly always involve Class members with non-identical damages. Objectors' argument in this regard -- and this is, again, Ms. Holyoak and Mr. Frank -- ignores the substantial barriers to any individual Class member actually recovering statutory damages.

Here, Utah, for example, requires establishment of a loss. The presumption that there's an automatic payment is just simply wrong.

The Court went on to say Class members from there, California, Rhode Island, and D.C. willingly gave up their uncertain potential recovery of statutory damages for certain and complete recovery, whether monetary or equitable the Class settlement offered.

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Contrary to objectors' belief, this demonstrates the cohesiveness of the Class and the excellent result named Plaintiffs and Class counsel negotiated, not any inter-Class conflict. That was Judge Magnuson in St. Paul, in considering the same objection made today.

Anthem had a similar conclusion. Judge Koh addressed this very issue and found that there was no conflict based on variations in state law.

The named representatives include individuals from each state, as Your Honor knows is the case here, and differences in state remedies are not sufficiently substantial as to warrant the creation of subclasses.

Literary Works is completely different. We briefed it extensively.

Suffice it to say for now, every member of the Class here shares the same or similar claims and has suffered the same injury resulting from the same event, the theft of their personal information.

And touching on Mr. Huang's claim just a bit, the concept of harmed now, potentially harmed later is exactly what we addressed in the settlement. People can make cash claims now. There's an extended claims period for four years to make out-of-pocket claims if

somebody has a fraud or other injury where they would be reimbursed for out of pocket. Again, you can tap into that extra 125 million.

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We've provided for extended credit monitoring that can last up to ten years for those who select it. And, of course, restoration services if somebody does have a fraud without ever making a claim for at least seven years.

And then, of course, what we hope will have the most long-term effect is the very, very difficult process that generated the business practice changes. And those, as we've explained in our front-loaded efforts at preliminary approval, are substantial, backed by this billion dollar commitment to spend.

So there's no conflict, and I think it also at least should help the Court that given the fact we have a cross-section of representatives from across all states, we had the use of a respected mediator here in Judge Phillips, we had Utah and D.C. signing off on this settlement, which is not insubstantial, given the claims by Ms. Holyoak and her clients, and extensive input from those states, the Court should have little trouble rejecting any claim that there's a conflict under Rule 23(a)(4).

That does it for the objections. Just a couple of other points to hopefully close this out.

We don't have additional remarks on the Klonoff motion that was mentioned by Ms. Holyoak. Unless the Court has questions, we would rely on our papers.

I did want to respond very quickly, since we

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haven't had the opportunity, to the comments from the State of Indiana and the Commonwealth of Massachusetts.

To be clear, we do not claim, have never claimed to represent those states here. And, of course, that would be beyond our appointment to represent individuals victimized by the breach.

We negotiated a release that we think is appropriate, given the tremendous relief afforded under the settlement, again, with the benefit, input and signoff of state and federal regulators.

But procedurally, we think this issue should be litigated in those states. It sounded like from the arguments being made today on the phone, those states are essentially saying that release, if you sign it as part of a final approval order, will not be enforceable in Indiana and Massachusetts. And that may or may not be true, but that should be litigated in Indiana and Massachusetts.

We think that's the appropriate place to litigate those issues, and would leave the argument there on that, unless the Court has further questions.

Finally, Your Honor, I'd like to close with this. I think the Court is aware that my firm and I have been involved in probably the most data breach cases that have been brought to date. I don't know if that's a good thing or a bad thing at this point.

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But cases large and small we've litigated on behalf of Class members from around the country involving all matter of data breaches: The National Board of Examiners in Optometry; Anthem; Target; Home Depot, of course; the Office of Personnel Management, a government agency.

And we talked to all these clients, and in the wake of a data breach what people repeatedly say that they want after a data breach is they want to make sure that they're reimbursed if they come out of pocket. They want to know that there's some monitoring available to them to -- so they can make sure if the data does get out or has gotten out, there's a way of easy detection and protection.

They want to make sure that if something happens -- and I think I mentioned this at preliminary approval -- they want to be able to pick up the phone and talk to somebody that knows what they're talking about about how to help them fix it. And those credit restoration services are always near the top of the list.

And, finally, they want the confidence that everything is going to be done to bring changes to the entity so it does not happen again.

And all of that experience in those other cases inform the settlement here, along with my colleagues, who are also incredibly experienced in this field, informed how we approached this case, and we accomplished our goal. We

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accomplished our goal with this settlement that delivered that relief.

It's also a relief that most likely is unavailable at trial. And we know we would have had a long road legally getting to trial, as Mr. Balser summarized. But even at trial, what we've achieved in this settlement was likely unavailable.

And so my firm and I have been litigating these cases but also trying other Class action cases. We've handled scores of Class actions and have tried three of them in the last six or seven years, and so we're not afraid of a trial. We're not afraid to take a case from Class certification and stand in front of a jury and ask for relief.

But, again, that informs why we thought that this settlement at this time with these elements, given the historic nature of the relief we were able to obtain, is appropriate; and we believe the Court should have little trouble finding it fair, reasonable and adequate for the benefit of the Class.

If the Court has no other questions, I'll leave it there.

THE COURT: All right, Mr. Siegel. Ms. Keller.

MS. KELLER: Thank you, Your Honor. Thankfully,

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you don't need to hear from me today as the issues that I was going to cover were not brought up.

But I just want to reiterate what my colleagues have said and thank you for the opportunity.

THE COURT: All right.

GOVERNOR BARNES: She's yielded her time, Your Honor.

(Courtroom laughter.)

MS. KELLER: Your Honor, I object to that.

THE COURT: Governor Barnes.

GOVERNOR BARNES: I just have a few remarks I want to make, kindly, in summary.

When Ken Canfield and I started talking about this case early, one of the things that we recognized is that it could be an absolute disaster to manage with as many lawyers and we knew there was going to be a lot of dissension that occurred during the case as happens when both sides vigorously represent their clients.

And I think I speak on behalf of all of us. Regardless of what you do, you have done a remarkable job in keeping a very complex case manageable.

And I think one of the reasons that we haven't had this hearing at the civic auditorium with objectors is that you have managed it well. And I wanted to say that, and I'm sure that's on behalf of all of us.

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Now, let me talk to you just a little bit about the objection. Now that's what I'm going to talk about most.

Where were all of these folks when we were baking this cake, when we had to put in $1,400,000 out of our own pocket to see if we could have the recipe of a broad settlement that would take care of the most people without putting the folks out of business? Where were they? Were they saying, "Here, here's $100,000. We know that you're going to have to hire experts. Here's another $50,000"?

No. They wait until the end and then they come up here and say, "We don't like the ingredients you put in that cake. And, in fact, we don't like it so much, we want to either be paid or we want the case not to be approved for settlement."

Now, I've been trying cases a long time and I was very concerned, as Mr. Balser has talked about and Mr. Canfield has talked about, about two cases I saw coming down the pike over at the court of appeals and the Supreme Court, and one was McConnell and the other -- of course, the one they have right now is Collins.

And I became even more concerned when I watched the oral arguments and, in fact, I became so concerned, we went -- I went back -- Mr. Canfield and I went back to all of our folks and said, "We'd better file an amicus in McConnell," and we did, which I think was much better than the original

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case of the plaintiff, the brief of the plaintiff.

But there is substantial risk in this case, and I think everybody recognizes that. We don't know what

the contours of what the Supreme Court is finally going to do after McConnell. But I thought that hopefully that McConnell would be decided on sovereign immunity grounds that said, Listen. This Department of Labor at the State of Georgia, we've said that the king can do no wrong, and therefore, whether I agree with it or not, it would be a narrow holding.

That is not what the Supreme Court did. What the Supreme Court did is they said, Oh, no, there's not any sovereign immunity, but there's no duty, and explicitly overruled Bradley, the suicide case that came out of Bradley down in Columbus.

And so what is the risk here? The risk is great. As you mentioned in one of your comments to counsel, if you don't think there's risk, just look at the financial folks. And there is risk.

And I was -- all of us were very concerned about McConnell. I'm very concerned about Collins.

And I will say this to my distinguished folks on the other side. When McConnell came down, we had a Term Sheet. We did not have a definitive agreement.

And as soon as I saw the McConnell decision, that morning, I said, "Equifax is going to try to squish out of

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this, is going to try to see if they can squirm out of it."

And I wasn't there, of course, to hear the discussions that occurred between the lawyers for Equifax and their client, but I will give credit to the lawyers for Equifax. I'm sure that even if it were

suggested, they told the folks-to-be at Equifax that a deal is a deal.

And I think only by, really, the accident of timing and the fact that we had lawyers on the other side that stuck to their word is the only reason this settlement is here, because the exposure after McConnell, in my view, I think you can still sustain a case, but I think it's going to have one hand -- a data breach case, but I think you're going to have one hand tied behind you after McConnell.

Now, I want to talk a little bit of what I call the balance in this case, and I think this is the thing that plaintiffs' lawyers miss a lot of times.

One is, you know, we seem to be in our society and our politics right now that there is no balance or moderation. Everybody's on one extreme or another.

Johnny Isakson and I were talking about the other day and he had an interesting remark. He says, "Do you realize that if either one of us were starting politics today, neither one of us could get nominated in the party that we got elected from?"

I said, "I don't think I could be nominated in

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either one."

He says, "Well, I know I couldn't be nominated for the Democrats, and I have serious doubts about the Republicans."

The point is we have forgotten and lawyers have forgotten they have a duty to their clients that's paramount.

But let me tell you from having been in cases over the years, the worst thing that you can do is force the opposing side into bankruptcy, because if you think that these fees are healthy, we're nothing compared to those bankruptcy lawyers.

We're in one right now where a defendant, Emrys, in the Tout cases filed for reorganization and bankruptcy. I think they finally liquidated. But the legal fees have been over $5 million a month, and there's going to be nothing left in Emrys.

Now, what would have happened here if there hadn't be lawyers in good faith on both sides trying to work something out that extracts the most that it can, the most that can be paid without putting them into bankruptcy, where nobody wins except bankruptcy lawyers?

Now, I believe in lawyers getting paid and I'm a big believer in it, and I'm in favor of lawyers getting paid well. But it does not help your client when they go into bankruptcy, and that was a consideration I don't think has

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been talked about today.

What is the balance to get the most without putting them out of existence, where they can pay nothing? And I think that that balance has been met here, and

the balance is this -- and let me tell you one other thing, too. What happens if Equifax goes bankrupt and goes out of business?

You only have three major credit bureaus, credit-reporting bureaus, and so you're going to increase the monopoly of the two that's left.

Lawyers have to have common sense in balancing something like that, and I think that we've accomplished that in this case.

Now, you've had some objectors. Mr. Siegel has talked about this a little bit.

Objectors really are of two types: They are the professional that have a mercenary bent; and then there are the idealogical that, you know, just don't like Class actions.

I put Mr. Frank in that, represented by Ms. Holyoak.

Most of the others I put in -- I won't characterize some of the ones that have appeared before you today, but most of them I see before you are mercenaries.

And nothing that I have heard today or I have read in any of the papers, in my view, contradicts the fact that

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in the overall balance of things, this is the best settlement that can be reached and applied for and made applicable to the greatest number.

Now, I wish my colleagues, my distinguished opponents from Massachusetts and Indiana were still on the phone. I wish they had come down. I was going to tell them we don't make everybody eat grits that comes from up north, that Waffle House even has hash browns now.

But, unfortunately, what we've got here -- and you know this, too -- the competition between governments on who gets the credit can be a destructive thing. I've seen it in government and I know you have, too.

It kind of reminds me of factions in the Baptist Church that are running off the preacher. You know, "I want credit for that. I found out he was going with the -- with one of the choir members."

And the other one says, "Oh, no, no, no." Says, "You know, I found out he was nipping on the side."

It's who gets credit for running off the preacher, and that's what they're trying to do. And if they want to pursue their actions on behalf of Massachusetts and Indiana, go to it. But they're not -- I will tell you that they will not be able to accomplish more than what is done in this Settlement Agreement.

And what they really want to do is they are looking

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for the news conference. "I did it, and I need to be re-elected, by the way." And I don't believe that that is the basic reason to reject this settlement.

Now, the overall issue still comes back to what I said earlier. In balance, given the financial condition of

Equifax, given the fact that this is a large breach, given the fact that some have suffered damages that others have not, that need to be protected for the future, what is the best balance? And I think that it is found here.

You're never going to satisfy everybody. It is impossible to satisfy everybody, but this satisfies the great number. And if they don't like it, opt out. Go to it. Gather up your million four hundred thousand dollars and pay experts and go to it.

But overall, I think the Plaintiffs in this case have represented this Class well.

Now, this will get me -- the one thing that I take particular offense to -- I generally don't take offense to anything. My hide is about as thick as a rhinoceros, but I particularly take offense of what I've read in the papers, and what I've heard today is, "You gave in to King and Spalding and Equifax. You just folded."

Now, let me tell you something. King and Spalding is on the other side of a lot of cases we have, and it's a major league sport to fight them. But don't think that I'm

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going to give into. They're honorable folks.

But I'm not -- to the idea that that Ken Canfield and all of us got in the back room and says, "We're afraid of King and Spalding. We just can't take that pressure," and that we cooked up some deal that hurt somebody that we were representing, I resent that. And anybody

that makes such an allegation of that should not be believed.

Now, let me just say this. Let me just say this in closing to it. I've talked a little bit about attorneys' fees.

Yes, the attorneys' fees, I think, are reasonable. There's a lot of long division in this case, as you probably have seen in everything else. There's no lawyer going to get $77 million.

However, you don't take into consideration that we don't get paid in cases where we, in fact, lose or they just strike out.

I remember what Big Bobby Flournoy said one time. He asked me this before he became a judge. He said, "Have you discovered that monster in your office?" I was young. He says, "Have you discovered that monster in your office?"

I said, "What are you talking about, Bob?"

He says, "Well, there's a leviathan that lives in your office and it grows during the month, and at the end of the month it knocks on your door and you open the door and

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you throw barrels of money into its mouth to pay the overhead, and then it recedes for another month and you have to do it all over again."

This case was -- I've tried -- I don't know how many cases I've tried. I've been in about 300 appeals. So I guess you could -- I hate to think that I had to appeal

that many losses. Sometimes I was the appellee in the case. But I've tried a lot of cases and I've been in a lot of cases.

This is by far the most complex and the most difficult case that I've been in because it had so many weighing of the factors, as I've tried to put into it. Whether you look at it as 20 or 25 percent really doesn't matter.

And you know there's going to be an appeal. We're going to have an appeal in this case that's going to be another two years.

It's kind of like -- I had a lawyer that was arguing with me the other day about he wanted to put -- we got about 20 or 30 of the cases, and he said, "We just need to try one of these a year." He says, "They're so big."

And I said, "Let me tell you something. I'll be 72 years old." I said, "You've got greater faith in my longevity than I do."

And that's where we are in this case. These lawyers -- and Judge Phillips, I became -- I thought he was

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high when at first we were having to front some money, but he was good. And I think that it would have taken a former federal judge that had broad experience in large cases and difficult cases, as this one was, to be able to resolve this case.

So in summary, I tell you this. We baked this cake and I think we baked a pretty good cake.

And all these other folks that are here throwing rocks, find your own case and decide how to do it and see how difficult it is.

I ask you to approve the settlement and the fee award that's requested. Thank you, Your Honor.

MR. FROELICH: Your Honor, excuse me. May I be heard for a minute?

THE COURT: No, sir.

No, Mr. Andrews.

Mr. Balser, do you want to say anything else?

MR. BALSER: Nothing further on behalf of Equifax, Your Honor.

THE COURT: All right. In order for me to do what I think I need to do in this case, I need to take a five-minute break. So we're in recess for five minutes.

(Recess taken from 1:26 p.m. until 1:35 p.m.)

THE COURT: So I don't think there's any

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disagreement about the fact that this is an historically significant data breach settlement, and I don't think anyone can credibly argue that it doesn't provide substantial relief that benefits the Class members now and in the future.

Equifax is going to contribute $380 million to a fund for which benefits, fees, expenses, administration of the

Class will be paid, and an additional $125 million for certain out-of-pocket expenses.

Class members can claim up to $20,000 for actual documented losses. They get four years of three-bureau credit monitoring, worth approximately $1,200, and an additional six years of one-bureau credit monitoring through Equifax that's worth up to $720; identity restoration services through Experian, subject to a $38 million cap; cash compensation for time spent; and cash payment as an alternative to the credit-monitoring services.

And significantly to me, Equifax is undertaking to spend $1 billion to upgrade its data security and related technology over a period of five years.

So the settlement, if it's approved by me, is going to cost Equifax anywhere from $1.38 billion to approximately $1.5 billion.

So let me talk first about the objections to the settlement, and, of course, there's no way in the next few minutes I'm going to be able to address all of them. But let

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me say this. There's been a degree of public anger about what happened in the Equifax data breach that is unprecedented. I've seen it in the dozens and dozens of letters that have come directly to me. I've never seen anything like it in any other consumer case that I've handled. I certainly never saw that in the Home Depot case.

And I think this is the reason for that: You choose to go to Home Depot. You choose whether or not to use a credit card. You choose whether or not you use cash. Nobody chooses to give their personal information to Equifax. Equifax gets that information from the merchants and banks and landlords and employers and other people that all of us have to deal with in our daily lives, and then Equifax makes money off that, giving that information back to the merchants and banks and landlords and employers.

And I think that is what accounts for some of the extreme anger about what happened when Equifax failed to take reasonable measures to protect that information that nobody gave them voluntarily to begin with. And I get that. I understand that. But that public anger doesn't change what my role in considering this settlement is.

When a settlement results from hard-fought litigation and arm's-length negotiations, objections that the settlement doesn't do enough is not a reason to reject a settlement if I find that the settlement is fair, reasonable

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and adequate.

In a similar vein, objections that the settlement is too small or that Equifax should be made to pay more to punish it to deter bad behavior simply don't take into account the risks and the realities of litigation that are not a basis for rejecting the settlement.

And as a Judge being asked to consider approving the settlement, I have to take into account the fact that the Plaintiffs, if they had continued to litigate the case, would end up with nothing.

Other objectors asked me to rewrite the Settlement Agreement, and I can't do that either. That's not my role in this case.

As I said, I can't address every single objection; but let me say that I did find Professor Klonoff's responses to the objections to be, generally speaking, meritorious and appropriate. As he points out in paragraph 29 of his affidavit, the number of objectors is small in light of the 149 million people who are members of the Class.

The settlement was reached only after the litigation had been advanced beyond the motion-to-dismiss stage. It was the product of the work of an experienced and able mediator, and that fact also supports approval of the settlement.

And I agree with Professor Klonoff's statement that

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it's not the function of a private settlement to remove Equifax officials from their jobs, to see that they're criminally prosecuted, to force Equifax to cease its operations, or strip Equifax officials of their personal assets. My job is to determine whether the settlement is fair, reasonable and adequate.

As Professor Klonoff states, many of the objections are based on relief that Class counsel could never get, even if the case was litigated through trial.

As in any settlement, there were elements of compromise. There had to be a process of give and take, and that means you don't ever get everything that you want. And anyone who is dissatisfied with the settlement certainly under Rule 23 can always opt out.

And for the reasons stated by Mr. Siegel, it's my judgment that most of the objections that were voiced here today did not take into consideration the best interest of the Class itself.

So I think that the settlement should not be disapproved for any of the reasons given by the objectors.

So that then leads to the question of whether the settlement should be approved under the factors set forth in Rule 23(e) and controlling Eleventh Circuit case law, and I believe that it should, and I'm going to just briefly discuss those factors.

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Rule 23(e)(2) requires a finding as to whether the Class representative, the Class counsel have adequately represented the Class. In my opinion, they have. They have vigorously prosecuted this case. They've devoted, I believe, approximately 33,000 hours of time to achieve the settlement. They defeated Equifax's motion to dismiss. As Judge Phillips noted, the arguments and positions asserted by all of the Plaintiffs' counsel were the product of much hard work. They were complex and highly adversarial.

The next factor is the adequacy of relief provided to the Class.

I've already outlined the benefits to be provided by the settlement, which I think are substantial and, as I said, will cost Equifax anywhere from $1.38 billion to $1.5 billion.

The next factor is the risk, cost and delay of trial and appeal.

In my opinion, Plaintiffs' counsel took a serious risk that this litigation would terminate in Equifax's favor. And the discussion about the McConnell and Collins cases that we've had here today reinforce my opinion about that, and that that is a factor that must be considered by me in deciding whether or not to approve the settlement.

I think that the relief provided for the Class is adequate, taking into consideration the effectiveness and

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proposed method of distributing relief to the Class.

And I'll discuss the terms of the proposed award of attorneys' fees in just a minute.

Finally, I think under Rule 23(e)(2), I believe the proposal treats Class members equitably relative to each other.

So for all of those reasons, I think that the settlement should be approved and also approved considering the Bennett versus Behring Corporation factors adopted by the Eleventh Circuit in 1984.

I've already touched on most of those already, including the likelihood of success at trial; the range of possible recoveries, which in my opinion in this case the settlement is in the high range; the complexity, expense and duration of the litigation; the substance and relatively lack of opposition to the settlement; and the stage of the proceedings at which the settlement was achieved.

So, again, I grant the motion to approve the proposed settlement.

I'm also going to grant the Plaintiffs' motion for an award of attorneys' fees, expenses and service awards.

And I'm going to award the Plaintiffs' attorneys $77.5 million in fees, $1,248,033.46 in expenses, and $2,500 service awards for the Class representatives.

Again, I believe that the objections to the

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attorneys' fees are generally unwarranted. I think many of the objections were based upon erroneous press accounts of what benefits the Class would receive as opposed to the actual benefits that I outlined at the first part of my remarks.

I think I'm required to award attorneys' fees in this case based upon a percentage, and I believe that a 25-percent percentage of the original cash fund of $310 million is reasonable. And if you consider that amounts to basically a 20-percent percentage of the ultimate $380 million cash fund, it's even more reasonable.

I believe that a 25-percent percentage or a 20 percent, depending upon how you consider it, is a fair and reasonable one, considering the appropriate factors.

Again, Class counsel faced substantial risk that the case would result in Equifax's favor.

I reject the idea that the non-monetary benefits can't be considered in determining the percentage in this case, which makes the percentage that I'm awarding even less when you consider the $1 billion that Equifax is committing to improve its cybersecurity.

I think the objections fail to adequately count for the value of the credit monitoring provided as a part of the settlement.

I think the percentage in this case is comparable

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to other attorneys' fee awards in comparable data breach cases, such as Anthem and Target and Home Depot.

I don't believe that the percentage should be reduced because it's a so-called mega fund case.

I believe Class counsel's expenses should be reimbursed in the amount I indicated, and that the service awards are appropriate.

So for those reasons, I'm granting the Plaintiffs' motion for attorneys' fees, expenses and service awards.

I think that the result that has been achieved in this case is exceptional and justifies approving the award as requested.

Getting back to the objections to the settlement itself, let me address two that I failed to address.

Number one is the objection that subclasses should have been created in this case. I believe that objection is totally without merit. It's highly unlikely that any individuals would have benefited in any way from state statutory remedies that might be available, and if they thought they would, they could opt out. So for the same reasons given in Target and others, I don't think that is a valid objection to the proposed settlement.

And then, second, let me address the objections by the Attorney Generals of Indiana and Massachusetts. I don't think that their objections are valid. Number one, I don't

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think they have standing to state objections to the settlement because they're not members of the Class.

Number two, there's nothing in this settlement that prevents the Attorney Generals of Indiana and Massachusetts from pursuing their enforcement actions in state court. They're doing that and nothing in the Settlement Agreement is going to stop them from doing that.

And any litigation about the effect of any releases in this case, in my opinion, is more appropriately addressed in the state courts in Indiana and

Massachusetts rather than by me. So I'm not commenting on that one way or the other. And any request by them for me to rule on that would be a request for an advisory opinion, which I'm not going to give.

So those are my rulings on the two motions.

And, Mr. Canfield, if you will prepare a written order that summarizes my rulings on the motions and my adoption basically of the arguments that have been made by the Plaintiffs and by Equifax in the hearing today, get Mr. Balser's approval as to form, and present it to me, I'll consider signing it.

MR. CANFIELD: We will do that, Your Honor. In fact, we've been collectively working on a proposed order, and we will modify it as appropriate, in light of the Court's comments today, and submit that.

We will need to get a copy of the transcript before

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we do that, and with the holidays, it may be -- take us a little bit longer than it otherwise would, but we will do it as expeditiously as possible.

One question I had in listening to the Court's ruling. I had a little difficulty hearing the amount of expenses that you awarded. However, I don't think that it was the expense amount that reflected the updated figures that we've submitted at almost midnight last night. So it's not surprising the Court wouldn't have had the benefit of that.

But our total expenses, including the amounts that have been incurred in the last month or so, is $1,404,855.35. And we would urge the Court to include all of the most recent expenses in its expense award.

THE COURT: I think that's appropriate, Mr. Canfield.

So notwithstanding what I said, the award of expenses is $1,404,855.35.

MR. CANFIELD: Thank you, Your Honor. What the parties have been discussing would actually involve the entry of three separate orders by the Court. One is the consent order that deals with the injunctive relief that would apply to Equifax going forward.

One is the opinion that reflects what the Court has ruled on today.

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And a third document, which we think is a good idea, would be to have a separate final judgment that would contain the typical provisions that are used in a Class action when it gets wrapped up.

And what we would propose to do is submit to Your Honor all three of those documents at the same time.

THE COURT: That'll be fine.

As far as the transcript is concerned, if you'll talk to Ms. Peede, I think you'll find that it's going to be available tomorrow.

MR. CANFIELD: That makes our job a lot easier.

THE COURT: Well, yes and no, because you then don't have an excuse not to work through Christmas.

(Courtroom laughter.)

THE COURT: But the transcript will be available, and I understand that you have your own lives to live and I'm not expecting it on Christmas Eve or the day after Christmas, Mr. Canfield.

MR. CANFIELD: Hopefully, we can get it before Christmas; but if we can't, we appreciate the Court's indulgence.

THE COURT: Is there anything else?

MR. CANFIELD: Nothing from the Plaintiffs, Your Honor.

THE COURT: Mr. Balser?

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MR. BALSER: Nothing further for Equifax, Your Honor.

THE COURT: All right.

Court's in recess until further order.

(Proceedings concluded at 2:00 p.m.)

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Reporter's Certification

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Diane Peede, RMR, CRR, CRC
Official Court Reporter
United States District Court
Northern District of Georgia

Date: December 20, 2019

APPENDIX F

Fed. R. Civ. P. 23

Rule 23. Class Actions

(a) PREREQUISITES. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) TYPES OF CLASS ACTIONS. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would

be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) CERTIFICATION ORDER; NOTICE TO CLASS MEMBERS; JUDGMENT; ISSUES CLASSES; SUBCLASSES.

(1) *Certification Order*.

(A) *Time to Issue*. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel*. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order*. An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice*.

(A) *For (b)(1) or (b)(2) Classes*. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes*. For any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or

more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

(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 under Rule 23(c)(3).

(3) *Judgment*. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues*. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses*. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) CONDUCTING THE ACTION.

(1) *In General*. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of

absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders*. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) SETTLEMENT, VOLUNTARY DISMISSAL, OR COMPROMISE. The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) *Notice to the Class*.

(A) *Information That Parties Must Provide to the Court*. The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) *Grounds for a Decision to Give Notice*. The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) *Approval of the Proposal*. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) *Identifying Agreements*. The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) *New Opportunity to Be Excluded*. If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) *Class-Member Objections*.

(A) *In General*. Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

(B) *Court Approval Required for Payment in Connection with an Objection*. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(C) *Procedure for Approval After an Appeal*. If approval under Rule 23(e)(5)(B) has not been

obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.

(f) APPEALS. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) CLASS COUNSEL.

(1) *Appointing Class Counsel*. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel*. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel*. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel*. Class counsel must fairly and adequately represent the interests of the class.

(h) ATTORNEY'S FEES AND NONTAXABLE COSTS. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)