IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BENSON GITHIEYA, *et al*.,

Plaintiffs,

v.

GLOBAL TEL LINK CORP.,

Defendant.

CIVIL ACTION NO:
1:15-CV-00986-AT

UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

Following six and-a-half years of hard-fought litigation, three mediations, and over six weeks of challenging negotiations of the final settlement agreement, Plaintiffs Benson Githieya, Darlene Byers, the Estate of Nellie Lockett, Michelle Mendoza, Sarai Morris, Betty Davis, and Adrian Mohamed (together, the "Class Plaintiffs") and Defendant Global Tel*Link Corporation ("GTL") have reached an agreement to settle this case, providing comprehensive relief for a proposed nationwide class of AdvancePay accountholders who were impacted by GTL's inactivity policy. The proposed settlement class encompasses any person, nationwide, who established and funded a prepaid account through GTL's interactive-voice response system and lost money due to GTL's inactivity policy between April 3, 2011 and October 6, 2021.

In exchange for a release of Plaintiffs' claims, the proposed settlement requires GTL to establish a settlement fund of up to $67 million through which members of the settlement class can receive a full reimbursement of 100% of the amount of funds they lost as a result of GTL's inactivity policy. Those class members who currently have an active AdvancePay account will automatically receive a 100% credit on their active account without having to file a claim form or take any other action. The remaining Class members, who do not have an active

AdvancePay account, can file a simple, one-page claim form to receive a full refund of any funds that GTL retained under its inactivity policy. Moreover, in the event former AdvancePay account holders do not file a claim, those class members will still automatically receive a credit for their claim amount if they establish an AdvancePay account at any point in the two years after the settlement becomes final. In short, the proposed settlement does everything reasonably possible to return to class members nationwide the money that GTL retained as a result of its inactivity policy.

The proposed settlement goes further still by achieving reforms to GTL's inactivity policy that will prevent the kind of alleged breaches of contract that resulted in this lawsuit. The settlement agreement requires that GTL clearly disclose and obtain the consent of future account holders to its inactivity policy. In addition, the settlement agreement requires GTL to (i) extend the minimum inactivity period from 90 days to 180 days before an account is deemed inactive and the money therein becomes subject to forfeiture; (ii) provide refunds to accountholders of any unused money in active AdvancePay accounts; (iii) require affirmative assent to the inactivity policy by new accountholders; (iv) provide pre-forfeiture notices to accountholders to alert them to the inactivity policy and

instruct them on how to avoid having funds in their account taken; and (v) bolster training for customer service personnel about the inactivity policy.

Considering the monetary and non-monetary aspects of this settlement together, it is difficult to imagine a more successful outcome for class members in this case. The proposed settlement class has now expanded nationwide—not just limited to Georgia and South Carolina, as with the litigation class. Each settlement class member will be eligible for a 100% refund of the money that GTL took from his or her AdvancePay account. On top of that, the non-monetary relief provisions ensure that, at least for the five-year compliance period, GTL will make substantive reforms to its inactivity policy and provide accountholders with fair notice before reducing inactive account balances (after at least 180 days of inactivity) to $0.00. The proposed settlement therefore achieves more than the class likely could have obtained had the case been litigated through trial.

Because the proposed settlement is highly favorable to the class, and for the reasons explained below, Plaintiffs now ask that the Court certify the nationwide settlement class, preliminarily approve this settlement, and direct that notice be issued to potential class members pursuant to the parties' notice plan.

BACKGROUND AND PROCEDURAL HISTORY

I. Background

On April 3, 2015, Githieya filed a complaint in this Action, on behalf of himself and a putative nationwide class. Dkt. 1.[1] The complaint challenged GTL's inactivity policy for prepaid accounts established through the IVR under federal and state law and sought an injunction, damages, attorneys' fees, and costs. *Id.*; *see also* dkt. 72 at 23; dkt. 178 at 2. GTL moved to compel Plaintiff Githieya to arbitrate his claims. Dkt. 17. The Court granted the motion, dkt. 23, but the arbitrator ultimately determined that the claims were not arbitrable, dkt. 27-1.

On October 23, 2017, the Court allowed Darlene Byers and Nellie Lockett to be added as potential additional class representatives, and Plaintiffs filed their Second Amended Class Action Complaint. Dkt. 71; *see also* dkt. 72. For nearly a year, the parties engaged in extensive discovery, exchanging hundreds of thousands of pages of documents and data and taking more than half a dozen depositions. The parties also engaged in significant motions practice, including multiple disputes regarding the scope of discovery, GTL's motion to dismiss all of

[1] For docket entries, Plaintiffs cite the page numbers assigned by the Court's CM/ECF system, not any internal pagination.

Plaintiffs' claims, Plaintiffs' motion for class certification, and Plaintiffs' motion for sanctions.

In their third amended complaint and later in their motion for class certification, Plaintiffs asked the Court to certify the following class:

> All persons nationwide who (i) established and funded a prepaid account through GTL's interactive-voice-response ("IVR") system and (ii) had a positive account balance that was reduced to $0.00 due to account inactivity for 180 days or less.

Dkt. 178 at 14; dkt. 123-1 at 5. On November 30, 2020, the Court granted Plaintiffs' motion for class certification as to their claims for breach of contract and unjust enrichment. The Court modified the class definition, certifying a class defined as follows:

> All persons nationwide who (i) established and funded a prepaid account through GTL's interactive-voice-response ("IVR") system in order to receive telephone calls from a person incarcerated in Georgia or South Carolina, and (ii) had a positive account balance that was reduced to $0.00 due to account inactivity for 180 days or less on or after April 3, 2011.

Dkt. 278 at 17.

On December 14, 2020, GTL filed a petition for permission to appeal the Court's class-certification decision to the Eleventh Circuit pursuant to Federal Rule of Civil Procedure 23(f). The Eleventh Circuit declined the appeal. *See* dkt. 302.

In April 2021, Plaintiffs sought leave to conduct discovery in support of a

planned motion to expand the class definition to include all persons nationwide affected by GTL's inactivity policy, and the Court granted that request. Dkt. 281 at 1–9. In addition, on June 18, 2021, Plaintiffs filed a motion to add Plaintiffs Michelle Mendoza, Sarai Morris, Betty Davis, and Adrian Mohamed. Dkt. 297. The parties agree that these new plaintiffs should be added to this action and serve as representatives of the settlement class. *See* Ex. 1 (Settlement Agreement) at 8.

Following several months of discovery, the parties agreed to stay the case to engage in settlement discussions and mediation. Dkt. 318. On September 30, 2021, and October 1, 2021, the parties engaged in a mediation before Hunter R. Hughes, III. Within several days of that mediation, the parties reached agreement on the material terms of settlement by executing a Confidential Settlement Term Sheet. Ex. 2 (Declaration of Michael Caplan) ¶¶ 42–43. The parties signed the final Class Action Settlement Agreement on November 26, 2021. *Id.* ¶ 47.

Plaintiffs now move this Court to preliminarily approve the proposed settlement agreement and to issue notice to the Settlement Class.

II. Settlement Terms

A. The Settlement Class

The proposed settlement defines the Settlement Class as: "All persons nationwide who (i) established and funded a prepaid account through GTL's

interactive-voice response ('IVR') system and (ii) had a positive account balance that was reduced to $0.00 due to account inactivity for 180 days or less on or after April 3, 2011, and through and including October 6, 2021." Ex. 1 at 17-18.

B. The Settlement Fund

The Settlement Fund consists of up to $67 million in cash and credits combined, inclusive of (i) attorneys' fees, costs, and expenses; (ii) the case-contribution award to the class representatives; and (iii) notice and administrative costs.[2] From the Settlement Fund, each Settlement Class member will be entitled to claim or be credited the amount of deposits retained by GTL due to the inactivity policy from April 3, 2011 through October 6, 2021 (the "Claim Amount"). Those claims or credits will be distributed in the following manner:

- ***Current AdvancePay Accountholders.*** For Settlement Class members who currently have an AdvancePay account, GTL will automatically credit their account with their Claim Amount, without the need for that class member to submit a claim form.

- ***Former AdvancePay Accountholders***. For Settlement Class members who do not have a current AdvancePay account and who timely submit a claim form, the Settlement Administrator will pay that member their Claim Amount by check, prepaid debit card, or electronic payment within 30 days of either final approval of the proposed settlement or the date the settlement administrator

[2] The amount of the Settlement Fund available to pay class members' claims (*i.e.*, the Settlement Fund less attorneys' fees, case-contribution awards, and notice and claims administration costs) is referred to in the Settlement Agreement as the "Net Settlement Consideration."

determines Claim Amounts. For Settlement Class members without a current account who do not submit a claim form, but who reactivate an AdvancePay account within two years following final approval of the proposed settlement, GTL will automatically credit that account with the class member's Claim Amount. *Id.* at 22–24.[3]

C. Non-Monetary Relief

In addition to the Settlement Fund, the proposed settlement provides for significant non-monetary relief. For a period of five years following final approval of the proposed settlement, GTL has agreed to the following requirements:

- ***Longer Inactivity Period.*** GTL has agreed to lengthen the period of time required before initiating the inactivity policy to 180 days nationwide—up from the previous standard time period of 90 days. Ex. 1 at 26–27.

- ***Disclosure of and Assent to Inactivity Policy.*** GTL has agreed to revise its IVR script to include a disclosure that (i) describes the 180-day inactivity policy, (ii) states that any funds remaining in an inactive account are subject to forfeiture, and (iii) states how forfeited unused funds can be refunded to the holder's AdvancePay account by contacting GTL's customer service. Importantly, the IVR system will require new accountholders to press a button to manifest assent to the inactivity policy. *Id.* at 27–28.

- ***Notices of Inactivity Policy.*** GTL will also maintain a banner on the homepage of its website that will provide a detailed disclosure regarding the 180-day inactivity policy, along with information about

[3] If the Settlement Fund is exhausted during the two-year automatic credit period, GTL's obligation to continue to automatically credit non-claiming class members' reactivated accounts will cease. Ex. 1 at 24–25. During the two-year automatic credit period, GTL is required to provide semi-annual reports to class counsel regarding its payment of credits during this period. *Id.* at 24.

how an accountholder can keep their account active or can obtain a refund of unused funds. GTL will also provide enhanced disclosures about its inactivity policy and refund policy in any printed materials that it uses to market or advertise AdvancePay accounts. *Id.* at 28.

- ***Training of Customer Service Personnel.*** GTL will include enhanced disclosures of the inactivity policy similar to those described above in its training documents for customer service personnel. Within 45 days of the settlement becoming effective, GTL will provide training on the inactivity policy and the changes dictated by the proposed settlement to all customer-service personnel. GTL will provide the same training to any new customer-service personnel within 45 days of their hiring. *Id.* at 28–29.

- ***Refund Policy.*** GTL will permit any AdvancePay accountholder to obtain a refund of any funds remaining in their account at any time while the account remains active. *Id.* at 29.

- ***Pre-Forfeiture Notification.*** GTL will allow AdvancePay accountholders to opt into receiving a text message notifying them of the possibility of forfeiture 30 days before any funds in their account become subject to forfeiture due to inactivity and of their right to request a refund of their account balance during those 30 days. GTL will also provide an opportunity for accountholders to opt into similar email notices. *Id.* at 29–31.

LEGAL STANDARD

"A class action may be settled only with court approval . . . ." *In re Equifax Inc. Customer Data Sec. Breach Litig.* ("*In re Equifax*"), 999 F.3d 1247, 1273 (11th Cir. 2021). This Motion addresses the first stage of the approval process: preliminary approval and notice to the settlement class members. In considering a motion for preliminary approval, this Court must follow a three-step analysis.

First, this Court must determine that certification of the settlement class is appropriate under Federal Rules of Civil Procedure 23(a) and (b). *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 553 (N.D. Ga. 2007). The parties "must first establish that the four prerequisites of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—are met." *Id.* The parties "must also establish that one of the three requirements of Rule 23(b) is met." *Id.* Under Rule 23(b)(2), certification is appropriate where the defendant has "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole . . . ." Fed. R. Civ. P. 23(b)(2). Under Rule 23(b)(3), certification is appropriate where "questions of law or fact common to class members predominate over any questions affecting only individual members, and [where] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In addition, the parties "must establish that the proposed class is adequately defined and clearly ascertainable." *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012).

Second, if this Court determines that the settlement class can be certified under Rule 23, then this Court must "find the settlement 'fair, reasonable, and adequate' based on a number of factors" listed in Federal Rule of Civil Procedure

23(e)(2). *In re Equifax*, 999 F.3d at 1273. The Eleventh Circuit "has also instructed district courts to consider several additional factors called the *Bennett* factors." *Id.* (citing *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)). The *Bennett* 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. *Bennett*, 737 F.2d at 986. This Court's judgment regarding the fairness, reasonableness, and adequacy of the settlement must be "informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Id*.

Third, should the Court determine that preliminary approval is appropriate, the Court must then evaluate the notice procedures proposed by the parties and direct how combined notice of the proposed class and settlement will be issued to class members. *Columbus Drywall & Insulation, Inc.*, 258 F.R.D. at 560–61.

ARGUMENT AND CITATION TO AUTHORITY

I. This Court should preliminarily certify the Settlement Class because it meets all requirements of Rule 23(a) and (b).

As explained more fully below, the parties' proposed Settlement Class meets all requirements of Rule 23. Accordingly, this Court should preliminarily certify the Settlement Class.

A. The Settlement Class meets the requirements of Rule 23(a).

1. The Settlement Class is ascertainable.

Before reaching the enumerated pre-requisites of Rule 23(a), this Court must first determine that the "proposed class is adequately defined and clearly ascertainable." *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1302 (11th Cir. 2021) (internal quotation marks omitted). For purposes of this inquiry, "a proposed class is ascertainable if it is adequately defined such that its membership is capable of determination." *Id.* at 1304. "A class is inadequately defined if it is defined through vague or subjective criteria." *Id.* at 1302.[4]

Here, the parties' settlement defines the Settlement Class as "[a]ll persons nationwide who (i) established and funded a prepaid account through GTL's

[4] In *Cherry*, the Eleventh Circuit joined the Second, Sixth, Seventh, Eighth, and Ninth Circuits in holding that the ascertainability inquiry does not include an administrative feasibility requirement. *Cherry*, 986 F.3d at 1302.

interactive-voice response ('IVR') system and (ii) had a positive account balance that was reduced to $0.00 due to account inactivity for 180 days or less on or after April 3, 2011, and through and including October 6, 2021." Ex. 1 at 17–18. This definition uses clear and objective criteria that would allow this Court to determine who is a member of the Settlement Class. Moreover, the Settlement Agreement clearly sets forth the manner in which the class is to be identified by reference to available GTL data. *Id.* at 47–51. As a result, the Settlement Class easily satisfies the *Cherry* ascertainability standard.

2. The Settlement Class is sufficiently numerous.

Next, the Court must consider each of the enumerated requirements in Rule 23(a). The first of those requirements is that the Settlement Class is sufficiently numerous "that joinder of all class members is impracticable." Fed. R. Civ. P. 23(a)(1). The Settlement Class easily meets this test, as the potential Settlement Class members number in the millions, Ex. 2 ¶ 59, rendering joinder impossible. Indeed, the Settlement Class is larger than the Litigation Class, which this Court has already found sufficiently numerous to warrant class treatment. Dkt. 276 at 28–29. As a result, the Settlement Class satisfies the numerosity requirement.

3. There are questions of fact and law common to the Settlement Class.

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The commonality requirement is a "low hurdle" because it requires only "that there be at least one issue whose resolution will affect all or a significant number of the putative class members." *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355–56 (11th Cir. 2009). The "commonality element is generally satisfied when a plaintiff alleges that Defendants have engaged in a standardized course of conduct that affects all class members." *In re Checking Acct. Overdraft Litig.*, 307 F.R.D. 656, 668 (S.D. Fla. 2015) (internal quotation marks and citations omitted). Such is the case here. The Settlement Class's claims are all rooted in a common factual issue: GTL's use of a uniform inactivity practice with respect to each of the putative Settlement Class members' prepaid accounts. That practice is central to each of the claims in this case and is common to each settlement class member. *E.g.*, dkt. 123-1 at 21–33; dkt. 276 at 21–27. Thus, the Settlement Class satisfies the commonality requirement.

4. The class representatives' claims are typical of the Settlement Class.

The class representatives also meet Rule 23(a)(3)'s requirement that "the claims or defenses of the representative parties are typical of the claims or defenses

of the class." Fed. R. Civ. P. 23(a)(3). A "representative plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of the other class members, and his or her claims are based on the same legal theory." *In re Tri-State Crematory Litig.*, 215 F.R.D. 660, 690 (N.D. Ga. 2003) (internal quotation marks omitted).

This Court has already found the initial class representatives to have claims typical of those of the Litigation Class. Dkt. 276 at 29–30. This same conclusion holds for the Settlement Class, as both the class members and the class representatives all complain of the same kind of injury "from the same event or pattern or practice"— *i.e.*, they all had their account balances reduced to $0.00 due to GTL's inactivity policy. *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). As this Court noted in its class-certification order, GTL's practice of taking AdvancePay account holders' deposits after a period of inactivity "is relatively uniform nationwide." Dkt. 276 at 18. As a result, the class representatives' claims are typical of the Settlement Class.

5. The class representatives and class counsel are adequate to protect the interests of the Settlement Class.

Finally, Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class," and Rule 23(g) requires this Court to appoint adequate counsel to represent the class. Fed. R. Civ. P. 23(a)(4) & (g).

"To adequately represent a class, a named plaintiff must show that she possesses the integrity and personal characteristics necessary to act in a fiduciary role representing the interests of the class, and has no interests antagonistic to the interests of the class." *Sanchez-Knutson v. Ford Motor Co.*, 310 F.R.D. 529, 540 (S.D. Fla. 2015). This Court has already found Mr. Githieya, Ms. Byers, and Ms. Lockett[5] to be adequate representatives of the Litigation Class. Dkt. 276 at 30. In addition, Plaintiffs have moved this Court for leave to add four additional class representatives: Michelle Mendoza, Sarai Morris, Betty Davis, and Adrian Mohamed. Dkt. 298. As discussed in that motion, and as is particularly relevant for purposes of certifying the nationwide Settlement Class, these four potential representatives add geographic diversity to the group of class representatives, as they reside in or have received calls from prisons in California, Texas, Ohio, Pennsylvania, Michigan, and Arizona. *Id.* at 2. Each of these seven potential representatives understand the gravamen and gravity of this case, as well as their duties and fiduciary obligations as class representatives. Ex. 2 ¶ 84. None of them have interests antagonistic to members of the Settlement Class, and each of them will vigorously protect the Settlement Class. *Id.* ¶ 85. This Court should therefore

[5] Plaintiff Nellie Lockett passed away earlier this year. On November 3, 2021, the Court substituted her husband, Mr. Bobby G. Lockett, as administrator of Ms. Lockett's estate. *See* dkt. 323.

grant Plaintiffs' Motion to Add Plaintiffs (dkt. 298) and appoint each as a Settlement Class representative.

With respect to appointment of class counsel, this Court "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." *Sanchez-Knutson*, 310 F.R.D. at 542. This Court has already appointed Caplan Cobb LLP, Radford & Keebaugh, LLC, and Goldstein, Borgen, Dardarian & Ho as class counsel. Dkt. 276 & Order dated Jul. 28, 2021. All three firms should be appointed as class counsel with respect to the Settlement Class. They are each highly experienced in litigating class actions and comparably complex cases, as well as well-versed in the areas of law at issue here. Ex. 2 ¶¶ 12–27. Each of these firms have undertaken an enormous amount of work to zealously represent both the Litigation Class members and the putative Settlement Class members up to this point in the case, and they will continue to devote whatever resources are necessary to provide the highest caliber representation possible to the Settlement Class. *Id.* ¶ 26. Accordingly, Plaintiffs' counsel respectfully request that this Court appoint them as Settlement Class Counsel under Rule 23(g).

B. The Settlement Class meets the requirements of Rule 23(b).

In addition to meeting the requirements of Rule 23(a), the Settlement Class also satisfies the criteria in Rule 23(b)(3) and the requirements of 23(b)(2) with respect to the non-monetary aspects of the settlement.

1. The Settlement Class satisfies Rule 23(b)(3).

i. Common issues of law and fact predominate.

The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453–54 (2016) (internal quotation marks omitted). In the Eleventh Circuit, the predominance inquiry is "customarily applied . . . on a claim-by-claim basis." *Battle v. Liberty Nat'l Life Ins. Co.*, 770 F. Supp. 1499, 1516 n.48 (N.D. Ala. 1991), *aff'd* 974 F.2d 1279 (11th Cir. 1992).

In certifying the Litigation Class, this Court has already determined that common issues of fact and law predominate for each of the Plaintiffs' claims. Dkt. 276 at 21–27. That conclusion holds here, as the predominance inquiry is the same in the settlement context as in the litigation context. *Amchem Prods., Inc.*, 521 U.S.

at 623. And the expansion of the Settlement Class to cover individuals affected by GTL's inactivity practice nationwide—as opposed to only those individuals who set up accounts to receive phone calls from prison facilities in Georgia or South Carolina—does not alter the fact that common issues of fact and law predominate here. Regardless of the geographic scope of the class, Plaintiffs' claims remain the same. And it remains true that those claims can be proven almost entirely through class-wide evidence from GTL's records. *See* dkt. 276 at 21–22. As a result, common issues of fact and law predominate.

ii. Class-wide settlement is the superior method for resolving the claims at issue in this case.

Finally, class treatment here is superior, especially in the context of a settlement. "[T]he superiority requirement of Rule 23(b)(3) turns on whether a class action is better than other available methods of adjudication." *Cherry*, 986 F.3d at 1304. As this Court has already determined in its certification of the Litigation Class, class treatment is superior because "pursuing the individual claims in this case would likely be economically infeasible." Dkt. 276 at 28 (noting that GTL took an average of less than $8 from each accountholder); *see also Lewis v. ARS Nat'l Servs., Inc.*, No. 2:09CV1041-MHT, 2011 WL 3903092, at *4 (M.D. Ala. Sept. 6, 2011) ("Certification under 23(b)(3) is often appropriate for cases in

which individual damages are low, thereby providing little incentive for individual suits." (citing *Amchem Prods., Inc.*, 521 U.S. at 617)).

Further, the manageability concerns that led this Court to narrow the geographic scope of the Litigation Class are not relevant in the context of settlement. As the Supreme Court has held, in the settlement context, "a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Amchem Prods., Inc.*, 521 U.S. at 620.[6] In short, any concerns over the manageability or administrative feasibility of a nationwide class are not relevant to the resolution of this Motion, as Plaintiffs are seeking certification of a settlement class, and the Court will not be tasked with managing a trial.

2. The Settlement Class also satisfies Rule 23(b)(2) with respect to the non-monetary relief the settlement provides.

With respect to the non-monetary relief provided for in the settlement, the Court should also certify the class under Rule 23(b)(2) because GTL "acted or

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[6] *See also In re Checking Acct. Overdraft Litig.*, 275 F.R.D. 654, 659 (S.D. Fla. 2011) ("In deciding whether to provisionally certify a settlement class, . . . the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial."); *Williams v. Mohawk Indus., Inc.*, No. 4:04-CV-03-HLM, 2010 WL 11500531, at *2 (N.D. Ga. Apr. 12, 2010) ("[A]ny manageability issues that might or might not arise at trial from proving injury and damages on behalf of the class members are not relevant to certification of a settlement class.").

refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole . . . .” Fed. R. Civ. P. 23(b)(2). “[T]he ‘key’ to demonstrating a Rule 23(b)(2) class is ‘the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.’” *J.M. by & through Lewis v. Crittenden*, 337 F.R.D. 434, 453 (N.D. Ga. 2019) (quoting *Wal-Mart v. Dukes*, 564 U.S. 338, 360 (2011)). In other words, “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.” *Dukes*, 564 U.S. at 360.

Certification under Rule 23(b)(2) is appropriate here because GTL’s application of its inactivity policy constitutes an action that applies generally to the class, as the policy was implemented uniformly nationwide and across the class. Furthermore, the non-monetary relief provided for in the Settlement Agreement applies equally to all members of the Settlement Class. This demonstrates that a single, final order approving of the non-monetary aspects of the settlement could provide full relief to the class, without the need for any individualized review of the putative class members’ claims. As a result, the Settlement Class satisfies Rule 23(b)(2) for purposes of preliminary approval of the proposed settlement. *E.g.*,

J.M., 337 F.R.D. at 453–54 (certifying class under Rule 23(b)(2) where "one injunction . . . will provide relief to each member of the class") (internal quotation marks omitted); *Georgia Advoc. Off. v. Jackson*, No. 1:19-CV-1634-WMR-JFK, 2019 WL 8438491, at *7 (N.D. Ga. July 30, 2019), *report and recommendation adopted*, No. 119CV01634WMRJFK, 2019 WL 8438493 (N.D. Ga. Sept. 10, 2019) (same).

* * *

For the reasons set forth above, the Settlement Class meets all criteria of Rule 23(a) and Rule 23(b). This Court should certify the Settlement Class for purposes of preliminarily approving the proposed settlement.

II. The Court should preliminarily approve the proposed settlement because it is fair, reasonable, and provides more than sufficient benefits to the class members.

Rule 23(e)(2) requires that any class-wide settlement be "fair, reasonable, and adequate," and it provides four criteria that this Court must consider in making that determination. Fed. R. Civ. P. 23(e)(2). As set forth below, the parties' proposed settlement meets all of these criteria. The parties therefore respectfully request that this Court preliminarily approve the settlement and direct that notice be issued to the class.

A. The Settlement Class was well represented, and the settlement resulted from a good-faith and arm's-length negotiation.

Rule 23(e)(2)(A) and (B) ask whether "the class representatives and class counsel have adequately represented the class" and whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(A) & (B). As relayed in the comments to the rule, these criteria "identify matters that might be described as 'procedural' concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23 advisory committee's note to the 2018 amendments.

When analyzing the adequacy of representation by Plaintiffs and class counsel, this Court should 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." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *5 (N.D. Ga. Mar. 17, 2020), *rev'd in part on other grounds*, 999 F.3d 1247 (11th Cir. 2021). With respect to class counsel, "the focus at this point is on the actual performance of counsel acting on behalf of the class." Fed. R. Civ. P. 23 advisory committee's note to the 2018 amendments.

For the same reasons described above in the context of class certification, both the class representatives and class counsel have been more than adequate in

this case. *Supra* at 16–18. The class representatives have no interests that are adverse to other members of the Settlement Class. Ex. 2 ¶¶ 84–85. And proposed class counsel is well qualified to handle the settlement and has extensive relevant experience. *Id.* ¶¶ 12–27. Counsel has zealously represented the class to this point in the case, doggedly pursuing discovery and obtaining certification of a litigation class. *Id.* ¶¶ 26, 29–31. Counsel submits that the highly favorable terms of the proposed settlement—which not only likely obtains full recovery of damages for Settlement Class members, but also locks in non-monetary relief that prevents future breaches of contract from further damaging class members—is evidence of the high quality of their representation of the class. As such, this factor is easily met, both by the class representatives and by class counsel.

With regard to the negotiation of the settlement, the proposed settlement is the result of six-and-a-half years of litigation and a negotiation process between class counsel and GTL's counsel that took almost a year. Those negotiations were aided by three formal mediations with Hunter R. Hughes III—the third of which lasted two days and was not successful until post-mediation negotiations led to resolution. *Id.* ¶¶ 33–43. Mr. Hughes has been recognized by numerous professional organizations as one of the top attorneys and mediators in the country, and he has offered to provide a declaration attesting to the arm's-length nature of

the negotiations in this case. *Id.* ¶¶ 35, 44. The parties' arm's-length settlement negotiations were also aided by a multi-part, post-settlement arbitration process, with Mr. Hughes and L. Joseph Loveland, Jr. serving as arbitrators during the negotiation of the final class settlement agreement. *Id.* ¶¶ 45–47. Mr. Loveland was a partner at King & Spalding for decades and has more than 40 years of experience in complex commercial litigation. *Id.* ¶ 46. Both he and Mr. Hughes assisted the parties in resolving a number of disputed issues relating to the finalization of the settlement agreement. *Id.*

The facts that the negotiations were aided by three formal mediations and that a pair of neutral and highly-respected arbitrators resolved a number of disputed issues regarding the proposed settlement agreement are strong evidence that the negotiation process here meets the standard of Rule 23(e). *See Wilson v. EverBank*, No. 14-CIV-22264, 2016 WL 457011, at *6 (S.D. Fla. Feb. 3, 2016) ("The very fact of [mediator's] involvement . . . weighs in favor of approval."); *see also* Fed. R. Civ. P. 23 advisory committee's note to 2018 amendments ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."). That is further underscored by how favorable the proposed settlement is to the Settlement Class.

This Court should find that the settlement is procedurally sound, both because the class was well represented by Plaintiffs and by counsel, and because the settlement negotiations were conducted appropriately at arm's length and in good faith with the best interests of the Settlement Class in mind.

B. The settlement provides significant benefits to the class.

Next, Rule 23(e)(2)(C) requires a substantive review of the proposed settlement to ensure that "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; [and] (iii) the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C).

The parties' proposed settlement satisfies all of the substantive considerations outlined in the rule. The settlement would establish a $67 million settlement fund out of which class members would be paid the full amount of funds they lost as a result of GTL's inactivity policy. Given the size of the fund, it is likely that each class member will actually receive that full refund, rather than a pro rata share. Ex. 2 ¶¶ 69–70. The Settlement Fund alone is nearly 70% of the maximum damages that would be available here—a very favorable discount on the total potential recovery, given that the settlement benefits are guaranteed, will be

available to class members now, and will avoid the incursion of more attorneys' fees and expenses. *Id.* ¶ 63 (calculating maximum breach-of-contract damages as approximately $96 million). Even after deducting the costs of administering the settlement, any case-contribution awards, and the attorneys' fees and costs class counsel will request, the amount available to class members is nearly 50% of the maximum potential damages that could be recoverable if this case proceeded to trial. *Id.* ¶ 83.

In addition, the non-monetary relief adds significant value to the settlement. Those non-monetary provisions protect class members through affirmative disclosures, affirmative assent, and pre-forfeiture notifications—thereby avoiding future breaches of contract and cutting off a significant amount of potential harm to class members for at least the next five years. *Id.* ¶¶ 76–80. Based upon class counsel's preliminary analysis and work with Ian Ratner and Samuel Hewitt of B. Riley Financial Advisors, class counsel estimates that the value of the non-monetary relief provisions in the settlement approximates $75 million over the next five years. *Id.* ¶¶ 79–80.[7]

[7] Class counsel intend to offer detailed expert testimony regarding the value of the non-monetary benefits of the settlement in connection with their motion for final approval and motion for attorneys' fees and expenses.

Taking the monetary and non-monetary provisions together, the value of the proposed settlement is approximately $145 million—higher than the approximately $96 million that Plaintiffs have calculated as their maximum potential damages if this litigation were to continue. *Id.* ¶ 81. In other words, this settlement allows class members to avoid the significant uncertainties and expenses of litigation, while providing the class with full refunds and meaningful reforms to GTL's practices that would be unavailable if they saw this case through trial.

1. The proposed settlement avoids the costs, risks, and delay of trial and appeal.

By settling this case, the Class will avoid the uncertainties of litigation, which are significant here. Continued litigation would almost certainly be protracted and very expensive, both in terms of attorneys' fees and expenses. GTL has fiercely litigated this case with tactics that have resulted in serious delays and have required the devotion of significant amounts of time by class counsel. Those tactics have at several points crossed the line into sanctionable behavior, which has forced class counsel to devote even more time and resources to zealously represent the class. As a result, the parties have not even finished the discovery process, more than six years into the case.

Class counsel expect that, without a settlement, GTL would continue to litigate this case vigorously. Given the stage of litigation here, class counsel

anticipates that the case could take many years to resolve, as the parties still have to conclude class discovery, revisit the scope of the litigation class, go through the process of damages and expert discovery, litigate any summary judgment motion by GTL, conduct a trial on the merits, and then resolve any damages issues. Then there would almost certainly be a lengthy appellate process that could itself add years to the case.

All of these procedural steps would not only delay resolution of the case, but would also require a substantial amount of attorney hours and litigation expenses. The proposed settlement allows the class to avoid the remaining delays and costs of litigation. Class members would receive their refunds now, making the recovery of higher value to the class members than a refund many years from now. As a result, this factor weighs in favor of approving the settlement. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *7 (finding settlement provided adequate relief to the class in part because settlement "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").

2. The claims process is simple and, for many Settlement Class members, automatic.

The parties' proposed settlement provides an efficient and straightforward method of distributing benefits to the Settlement Class. The class can essentially be broken into three groups, each with a simple process for obtaining the amount that GTL previously retained due to inactivity. First, those class members who have an active AdvancePay account at the time of final approval of the settlement will automatically receive an account credit for their full claim amount without the need to file a claim. Second, those class members who no longer have an active AdvancePay account can receive a full refund of their claim amount simply by filling out their contact information on the claim form, signing a verification, and returning it to the settlement administrator. *See* Ex. 3 (Decl. of Tiffaney Janowicz) ¶¶ 36–38 & Ex. H thereto. Third, even those class members who no longer have an active AdvancePay account and who do not return a claim form still have a chance at recovery under the settlement terms. If any of those class members reactivate their AdvancePay account within two years of the settlement becoming final, then GTL will automatically credit their account with their claim amount. This process is very simple—in two of the three instances, requiring no effort from class members at all—and provides an efficient way of distributing benefits to the maximum number of class members.

3. The settlement provisions regarding attorneys' fees are reasonable.

The proposed settlement contemplates that class counsel may seek, subject to this Court's approval, up to 27.5% of the $67 million Settlement Fund ($18,425,000) in attorneys' fees and up to $250,000 in costs and expenses incurred in this action. Ex. 1 at 35–36. Those amounts will be paid in addition to GTL's obligation to pay the full claim amount for each claiming class member. *Id.* at 20. The fee amount is equal to 27.5% of the Settlement Fund amount (although the fraction of attorneys' fees of the overall value of the settlement, including non-monetary benefits, is much smaller), which is well within the 20% to 30% range found to be reasonable in this circuit for common-fund cases. *E.g.*, *In re Equifax*, 999 F.3d at 1281 (collecting cases) ("'The majority of common fund fee awards fall between 20% to 30% of the fund . . . .'" (quoting *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991))); *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (noting that "courts nationwide have repeatedly awarded fees of 30 percent or higher in so-called 'megafund' settlements"). Class counsel's proposed fee is further justified here by the particularly complex nature of the facts in this case, the complicated procedural history of this litigation, and the large number of beneficiaries of this settlement

nationwide. This Court should preliminarily find the attorneys' fees and expenses proposed in the settlement are reasonable.

C. The settlement treats class members equitably.

Next, this Court must consider whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). The proposed settlement here fairly allocates the benefits of the settlement to members of the Settlement Class. Each class member has an opportunity to obtain full recovery of the amount that GTL retained from their accounts due to its inactivity policy. To the extent that class members' recovery is reduced in the unlikely event of exhaustion of the Settlement Fund, those reductions are fairly distributed among class members. If the fund is exhausted as a result of the affirmative claims process, then class members' claim amounts will be reduced pro rata—an inherently equitable method. Ex. 2 ¶ 71. If the fund is instead exhausted during the extended automatic credit period, then the opportunity to obtain a credit ends when the fund runs out. *Id.* ¶ 72. This treatment is equitable, as affected class members would have had the same opportunity as all other members to obtain their full claim amount by submitting a claim form. The extended automatic credit period is, in effect, an additional benefit for class members who do not take affirmative action to claim their funds. In sum, the proposed settlement treats all members of

the Settlement Class equitably, which counsels in favor of finding that the settlement is fair, reasonable, and adequate.[8]

D. The *Bennett* factors favor preliminary approval.

In addition to the factors enumerated in Rule 23(e)(2), this Court's evaluation of the proposed settlement should also be guided by the factors laid out by the Eleventh Circuit in *Bennett*. Those 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. *Bennett*, 737 F.2d at 986. Many of these factors overlap with the analysis described above, and together they show that the proposed settlement is quite reasonable and should be preliminarily approved.

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[8] Class counsel intends to request a conditional case-contribution award of up to $25,000 per class representative, requiring GTL to make such payment if the Eleventh Circuit reverses, vacates, or otherwise revises its decision in *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1248 (11th Cir. 2020), to permit case-contribution awards. Ex. 1 at 38. As of the date of this Motion, the Eleventh Circuit has not issued the mandate in *Johnson*. This amount is reasonable in light of the class representatives' contributions to this case. Ex. 2 ¶ 92. Indeed, "[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred." *In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-CV-1035-WMR, 2019 WL 2720818, at *1 (N.D. Ga. June 6, 2019).

With respect to the first and fourth factors, while Plaintiffs' claims are strong, the likelihood of success at trial—particularly for a nationwide class—is uncertain. The only certainty is that, if the parties continued to litigate, this case would stretch on for many more years and would be very difficult and expensive to litigate. By contrast, the settlement resolves this case now and provides guaranteed benefits to a nationwide class—many of which would be unavailable even if this case did go to trial. Thus, these factors weigh in favor of preliminary approval.

With respect to the second and third factors, as noted above, Plaintiffs have calculated that the maximum amount of potential damages at trial is approximately $96 million. Ex. 2 ¶ 63. The Settlement Fund is approximately 70% of that amount, and considering the value of the non-monetary relief, the total value of the proposed settlement actually exceeds the maximum amount of damages that might potentially be available through litigation. As a result, the proposed settlement amount is more than reasonable, and these factors, too, favor preliminary approval of the settlement.

With respect to the fifth factor, there is currently not sufficient data to understand any opposition by absent class members to the settlement, though class counsel expects the settlement to be quite favorably received. This factor can be re-

evaluated at the final approval stage, when the Court can consider the number of class members who objected or opted out of the class.

Finally, with respect to the sixth factor, this settlement was reached at a point in the case when class counsel had a deep understanding of the underlying facts and of the potential value of the class members' claims. Ex. 2 ¶¶ 48–49. At the same time, class counsel has worked diligently to resolve this case early enough to save the class members a significant amount of time, fees, and expenses. This factor counsels in favor of preliminarily approving the settlement.

In sum, each of the *Bennett* factors that can be evaluated at this stage show that the proposed settlement is fair, reasonable, and more than adequate.

E. There are no undisclosed side agreements.

Rule 23(e)(3) requires the parties "file a statement identifying any agreement made in connection with the proposal." Here, there are none.

* * *

For the reasons described above, the parties' proposed settlement meets all of the criteria for preliminary approval in Rule 23 and those laid out by the Eleventh Circuit. The settlement framework provides essentially complete relief to class members by refunding or crediting the full amount of funds lost due to GTL's inactivity policy. In addition, it provides non-monetary relief that would be

otherwise unavailable through litigation and will ensure that GTL reforms the inactivity policy to avoid similar harms in the future. These substantial benefits render the settlement fair, reasonable, and more than adequate. This Court should preliminarily approve the proposed settlement.

III. The Court should approve the form and plan for disseminating notice to the class members.

Following preliminary approval, Rule 23(e)(1) requires that the Court "direct notice in a reasonable manner to all class members who would be bound by the proposal." That notice "must contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action." *In re HealthSouth Corp. Sec. Litig.*, 334 F. App'x 248, 254 (11th Cir. 2009) (internal quotation marks omitted).

A. The Court should adopt the parties' proposed notice program.

The parties' proposed notice plan—which was developed in conjunction with Rust Consulting and Kinsella Media ("Rust"), a legal notification firm with extensive experience designing large-scale legal notification plans—meets the criteria of Rule 23. Ex. 3 ¶¶ 1–5 and Ex. A thereto. The proposed summary notices and long-form notice would be in substantially the same form as Exhibits C–G to the Janowicz declaration. The summary notice will inform Settlement Class members of, among other things: the nature of this case and the Plaintiffs' claims;

the terms of the proposed settlement; how to make a claim for benefits of the settlement, if it is approved; how to object to the settlement or opt out of the class; the existence of class and the provision for payment of attorneys' fees in the settlement; the hearing this Court will hold for final approval of the settlement; and how class members can obtain a long-form notice with more information about the settlement. Exhibits C–G to Janowicz Declaration (Ex. 3). The proposed notices provide more than sufficient information to allow class members to determine how to proceed with respect to the settlement and to meet the requirements of due process.

Further, the parties' proposed plan for distributing notice will ensure that as many potential class members as possible will receive notice of the settlement. Indeed, the notice plan includes cutting-edge methods to reach approximately 10 million potential class members. The notice program includes providing postcard notices with postage-prepaid tear-off claims forms for Settlement Class members for whom GTL's records contain a physical address. Ex. 3 ¶ 12. Rust will also update those addresses using the National Change of Address database and remail returned postcards if a forwarding address is provided or can be traced using national databases like Transunion. *Id.* ¶ 13. Rust will also provide notice by email, including performing a sophisticated skip trace to find email addresses for

Settlement Class members for whom GTL's records contain only a phone number and providing up to eight follow-up emails where it receives notification an email was not successfully delivered. *Id.* ¶¶ 9–11. In addition, the parties have agreed that such notice will be sent to any such accountholders for whom (i) GTL's records are inconclusive about the method by which the account was established and funded or (ii) GTL deleted records that would reflect the method by which the account was established and funded. Ex. 1 at 49–51.

Moreover, Rust has proposed a robust publication notice media program and claims-stimulation process that includes digital advertising across multiple platforms in multiple languages, including Google, Facebook, YouTube, Instagram, and other platforms, as well as in nationally circulated print publications likely to be read by class members, *id.* ¶¶ 23–25, and high-circulation publications in the highly-affected geographies, *id.* ¶¶ 21, 23–28. Rust estimates that the digital advertising alone will be viewed more approximately 124 million times—more than a dozen times the size of the Settlement Class. *Id.* ¶ 28. That digital advertising will also be targeted using sophisticated demographic tools designed to ensure that populations most likely to be impacted by the settlement are more likely to see the digital notices. *Id.* ¶¶ 29–30. In addition, Rust will implement an "earned media" program to amplify the notice by providing details

of the settlement to more than 5,400 traditional media outlets and more than 4,000 national websites. *Id.* ¶ 32.

The parties respectfully request that this Court approve the proposed notice plan, as described in the Settlement Agreement (Ex. 1 at 47-62), in the declaration of Rust Senior Vice President Tiffaney Janowicz (Ex. 3), and as exemplified by Exhibits C–H to the Janowicz declaration.

B. The Court should adopt the parties' proposed settlement schedule.

Finally, the parties request that this Court set the following proposed schedule for disseminating notice and holding a final approval hearing:

Event	Deadline
Settlement Administrator will publish the Settlement Website	21 days after entry of Preliminary Approval Order
Class notice mailed or emailed (as required by the Settlement Agreement) to individuals on the Class Notice List	28 days after entry of the Preliminary Approval Order (the "Notice Date")
First Published Class Notice to be published in Prison Legal News	28 days after entry of the Preliminary Approval Order
Reminder Notice emailed to any individuals on the Class Notice List who have not submitted a claim form	90 days after Notice Date (or within one week thereof)
Second Published Class Notice to be published in Prison Legal News	30 days prior to Claim Deadline
Last day for Class Counsel to file Motion for Attorneys' Fees, Expenses, and Costs and Motion for Case-Contribution Awards	14 days prior to Opt-Out Date/Objection Date
Last day for Settlement Class Members to object or opt out of the Settlement	60 days after the Notice Date

Last day for Settlement Class Members to submit a Claim Form	120 days after the Notice Date
Settlement Administrator will provide counsel for the Parties with a report on the Opt-Outs, as described in Section X.H of the Settlement Agreement	14 days after the Opt-Out Date
Settlement Administrator will provide counsel for the Parties with a report on the total number of notices issued under Settlement Class Notice Program	14 days after the close of the Class Notice Period
Settlement Administrator will provide Class Counsel with a declaration reflecting that the Settlement Class Notice Program was executed in accordance with the Preliminary Approval Order	21 days prior to the Fairness Hearing
Last day to file Motion for Final Approval of Settlement	35 calendar days before Fairness Hearing
Fairness Hearing	At least 180 days after entry of Preliminary Approval Order

CONCLUSION

For the reasons set forth above, the parties respectfully request that this Court preliminarily certify the Settlement Class, approve their proposed settlement, and direct that notice be issued to potential class members. A proposed order granting this Motion is attached for the Court's convenience.

[signature on next page]

Respectfully submitted this 6th day of December, 2021.

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Plaintiffs' and Class Counsel

LOCAL RULE 7.1(D) CERTIFICATION

The undersigned counsel certifies that the foregoing document has been prepared with one of the font and point selections approved by the Court in LR 5.1(B).

This 6th day of December, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I caused a true and correct copy of the foregoing document to be filed with the clerk's office by this Court's CM/ECF system which will serve a true and correct copy of the same upon all counsel of record.

This 6th day of December, 2021.

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