

**IN THE CIRCUIT COURT OF THE
TWENTY-SECOND JUDICIAL CIRCUIT
CITY OF ST. LOUIS, STATE OF MISSOURI**

JOHN DOE and JANE DOE, individually and
on behalf of all others similarly
situated, *et al.*

Plaintiffs,

v.

SSM HEALTH CARE CORPORATION d/b/a
SSM HEALTH and NAVVIS & COMPANY,
LLC,

Defendants.

Case No: 2422-CC00208

Div. 1

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND INTEGRATED MEMORANDUM IN SUPPORT**

Plaintiffs, John Doe and Jane Doe (collectively, “Doe Plaintiffs”), and Donna Allen, Keeley Bogart, Melanie Burns, Detrick Clark, Richard Lilly, Julie Montiel, Jeff Ruderman, Julie Schaus, Dorothy Winston, and Duane Zellmer (collectively with Doe Plaintiffs, “Plaintiffs” or “proposed Class Representatives”), individually and on behalf of the Settlement Class (as defined below), by and through counsel, respectfully move the Court for preliminary approval of the proposed class action settlement (“Settlement”) with Defendants, Navvis & Company, LLC (“Navvis”) and SSM Health Care Corporation d/b/a SSM Health (collectively, “Defendants”) (together, “the Parties”) concurrently submitting this Memorandum of Law in Support, and respectfully stating as follows:

I. INTRODUCTION

This putative class action arises out of the compromise of personal information (“Private Information”) of approximately 2.8 million individuals between July 12, 2023, and July 25, 2023, during a ransomware attack of Navvis’s network, by cybercriminals. This Private Information may

have included individuals' names, Social Security numbers, dates of birth, and medical information, and other types of personally identifiable information or protected health information collected or maintained by Navvis (the "Incident"). *See* Settlement Agreement ("SA") ¶¶ IV, 1.10, 1.17. Navvis provided notification of the Incident to all potentially impacted individuals beginning on or about September 22, 2023, and concluding on June 6, 2024. *Id.* ¶ 1.10. To redress the harms caused by the Incident, Plaintiffs filed multiple putative class actions, including six (6) cases filed in Federal court, which have been consolidated,¹ and the instant case filed on February 2, 2024.² In each case, Plaintiffs allege that Defendants failed to adequately protect the Private Information, which was entrusted to Navvis, resulting in the Incident.

After months of settlement negotiations, including a mediation on June 20, 2024 with Bennett G. Picker of Stradley Ronon, and negotiations thereafter, the Parties have now reached the proposed Settlement as set forth in the Settlement Agreement attached as **Exhibit 1** ("SA"). As follows, the Settlement provides timely and excellent benefits to the Settlement Class, specifically targeted to remedy the harms allegedly caused by the Incident, providing both retrospective compensation for monetary losses, lost time, and loss of privacy, as well as prospective credit monitoring protection. *See* Declaration of Jack Garvey in Support of Motion for Preliminary Approval ("Garvey Decl.") ¶ 11, **attached as Exhibit 2**. As detailed hereinafter, under the proposed Settlement, Navvis will pay a \$6,000,000 non-reversionary fund, with up to \$500,000

¹ *Rekoske, et al. v. Navvis & Co., LLC et al.*, No. 4:24-cv-00029; *Maxwell Klassen v. Navvis & Co., LLC*, No. 4:24-cv-00035 (E.D. Mo.); *Melanie Burns v. Navvis & Co., LLC*, No. 4:24-cv-00039 (E.D. Mo.); *Julie Montiel v. Navvis & Co., LLC*, No. 4:24-cv-00040 (E.D. Mo.); *Patricia McCreary v. Navvis & Co., LLC*, No. 4:24-cv-00041 (E.D. Mo.); and *Richard Lilly v. Navvis & Co., LLC*, No. 4:24-cv-00065 (E.D. Mo.); *Detrick Clark v. Navvis and Co., LLC*, No. 4:24-cv-00514 (E.D. Mo).

² Pamela Clark filed an individual action in Hillsborough County, Florida, FL Circuit Court, captioned *Pamela Clark v. Navvis & Company, LLC*, Case No. 24-CA-003585 alleging that she suffered harms because of the Incident

supplemental reversionary funds (the “Settlement Fund”)³ for payment of: (i) two (2) additional years of three-bureau credit monitoring, (ii) documented Out-of-Pocket Expenses (Ordinary Losses) of up to \$2,000.00 per Settlement Class Member, including for lost time; (iii) Extraordinary Losses of up to \$5,000.00 per Settlement Class Member; (iv) *pro rata* cash payments to compensate the Settlement Class for the alleged loss of privacy associated with the Incident; (v) service awards of \$2,500.00 to each of the proposed Class Representatives, (vi) settlement notice and administration, and (vii) attorneys’ fees not to exceed one-third of the Settlement and litigation expenses. SA ¶¶ 2.1, 2.2, 2.3.1, 2.3.3, 2.3.2, 7.3, 2.7, 7.2; Garvey Decl. ¶ 11. Moreover, if any funds remain unpaid in the \$6,000,000 non-reversionary portion of the Settlement Fund after any checks remain uncashed, the Parties will agree on a charitable organization to receive the remaining funds in a *cy pres* payment. SA ¶ 1.28. To access these substantial benefits, Settlement Class Members need only submit a Claim Form (SA Exhibit C), along with any required documentation.

In addition, separate and apart from these benefits, Navvis has agreed to information security improvements, to expend an additional \$500,000 per year on cybersecurity, measured against the 2023 year, from 2024 to 2028. *Id.* ¶ 2.5. Accordingly, under the proposed Settlement, Settlement Class Members will *not only* be compensated for the harms allegedly caused by the Incident but will be protected in the future through credit monitoring and enhanced information security.

³ “Settlement Fund” is defined as the \$6,000,000 U.S. Dollars nonreversionary common fund established by Navvis pursuant to Section 2.1 of this Agreement, plus the supplemental \$500,000 reversionary funds to be made available in Tranche 3 if necessary (defined in Section 2.1 below). If any funds remain unpaid in the \$6,000,000 non-reversionary portion of the Settlement Fund after any checks remain uncashed, the Parties will agree on a charitable organization to receive the remaining funds in a *cy pres* payment. SA ¶ 1.28.

As follows, the Settlement satisfies the preliminary approval standard as likely to be approved as fair, reasonable, and adequate. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. Ct. App. 2011). Settlement Class Representatives respectfully move this Honorable Court for entry of an Order: (1) granting preliminary approval of the Settlement, in the form of the proposed Preliminary Approval Order tendered with this Motion (SA Exhibit D); (2) approving the Notice Program; (3) appointing EAG Gulf Coast LLC Legal Administration Services as Settlement Administrator; (4) preliminarily certifying the Settlement Class for settlement purposes only; (5) appointing Plaintiffs John Doe, Jane Doe, Donna Allen, Keeley Bogart, Melanie Burns, Detrick Clark, Richard Lilly, Julie Montiel, Jeff Ruderman, Julie Schaus, Dorothy Winston, and Duane Zellmer as Class Representatives; (6) Appointing John F. Garvey of Stranch, Jennings and Garvey, PLLC, as Settlement Class Counsel; (7) approving the form and content of the Short Notice, Long Notice, and Claim Form (SA Exhibits A-C); and (8) scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlement, final certification of the Settlement Class for settlement purposes only, and the request for attorneys' fees, costs, and expenses, and Class Representative service awards.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Facts: Navvis and the Incident

Defendant Navvis is a "Population Health, Value-Based Care Company" in St. Louis, Missouri which provides health management services to healthcare customers, including SSM Health Care Corporation d/b/a SSM Health. Class Action Petition ("Pet.") ¶ 3, 22; SA ¶ 1.19. Navvis is in the business of creating and managing electronic data management software used by health plans, systems, facilities, and professionals to store or transmit Private Information. Complaint ¶ 2, *Klassen v. Navvis & Co., LLC*, No. 4:24-cv-00035 (E.D. Mo.) ("*Klassen Compl.*").

In the ordinary course of its business, Navvis receives, stores, maintains, and uses Plaintiffs' and Class Members' Private Information, including but not limited to, their names, medical treatment information, and in some cases, Social Security numbers. *Id.* ¶ 25.

On July 25, 2023, Navvis became aware of suspicious activity on its computer network. Navvis immediately launched an investigation, to determine the nature and scope of the incident. Through its investigation, Navvis determined that, between July 12, 2023, and July 25, 2023, it was a victim of a ransomware cyberattack, in which a threat actor accessed certain systems that stored Private Information. Pet. ¶ 39. Navvis then "conducted a thorough forensics review of the systems and files to confirm what information was stored therein, and to whom the information related," which "identified certain individuals' information was present within the accessed records." *Id.* ¶ 40; Navvis Notice of Data Event, Pet. Ex. A. The types of Private Information compromised in the Incident included names, dates of birth, Medicaid/Medicare ID numbers, health plan information, medical treatment information, medical record numbers, patient account numbers, case identification numbers, provider and doctor information, and other health record information, and in some circumstances, Social Security numbers. *Id.* ¶ 41. Ultimately, 2.8 million individuals were potentially impacted by the Incident. SA ¶ 1.10. Navvis then provided notice of the Incident to all potentially impacted individuals beginning on or about September 22, 2023, and concluding on June 6, 2024. *Id.*

Plaintiffs are patients and customers of Navvis's customers. For example, the Doe Plaintiffs were patients of SSM Health, who provided their Private Information to SSM Health in connection with medical care; SSM Health, in turn, provided their Private Information to Navvis. Pet. ¶¶ 54-55, 65-66. Their Private Information was compromised in the Incident, as reflected in the notice letters they received. *Id.* ¶¶ 58-59, 69-70.

B. Procedural History and Settlement Negotiations

Following Navvis notifying potentially impacted persons of the Incident, numerous putative class actions were filed against Navvis and others. On January 5, 2024, Brian Rekoske filed suit against Navvis in the United States District Court for the Eastern District of Missouri. *See Rekoske v. Navvis & Co., LLC*, No. 4:24-cv-00029 (the “Federal Action”). Soon thereafter, at least five other related class action lawsuits were filed against Navvis in federal court: *Maxwell Klassen v. Navvis & Co., LLC*, No. 4:24-cv-00035 (E.D. Mo.); *Melanie Burns v. Navvis & Co., LLC*, No. 4:24-cv-00039 (E.D. Mo.); *Julie Montiel v. Navvis & Co., LLC*, No. 4:24-cv-00040 (E.D. Mo.); *Patricia McCreary v. Navvis & Co., LLC*, No. 4:24-cv-00041 (E.D. Mo.); and *Richard Lilly v. Navvis & Co., LLC*, No. 4:24-cv-00065 (E.D. Mo.). These were ultimately consolidated pursuant to court order on February 9, 2024. *See Federal Action*, Doc. 21. On March 11, 2024, a consolidated class action complaint was filed and a subsequently filed related action, *Detrick Clark v. Navvis and Co., LLC*, No. 4:24-cv-00514, was consolidated with the Federal Action. Garvey Decl. ¶ 4. Plaintiffs John and Jane Doe filed this action against Navvis and SSM Health on February 2, 2024. Finally, Pamela Clark filed an individual action in Hillsborough County, Florida Circuit Court, *Pamela Clark v. Navvis & Co., LLC*, No. 24-CA-003585. The Complaints all alleged that Plaintiffs suffered various harms due to the Incident, including fraudulent misuse of the Private Information disclosed in the Incident; increase in spam telephone calls, texts and emails; loss of the opportunity to control how Private Information is used; diminution in value of their Private Information; compromise and continuing publication of their Private Information; Out-of-pocket expenses associated with the prevention, detection, recovery, and remediation from identity theft or fraud; lost opportunity costs and lost wages associated with the time and effort expended addressing and trying to mitigate the actual and future consequences of the Incident, including, but

not limited to, efforts spent researching how to prevent, detect, contest, and recover from identity theft and fraud; delay in receipt of tax refund monies; emotional distress; and, the continued risk to their Private Information, which remained in possession of Navvis and is subject to further breaches so long as it failed to undertake appropriate measures to protect the Private Information in their possession. *See*, e.g., Pet. ¶ 121. In the various Complaints, Plaintiffs asserted causes of action including negligence; negligence per se; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any federal, state or territory breach notification statute or common law duty, and state data privacy, data security and state consumer protection statutes. SA ¶ 1.20. Plaintiffs, on behalf of themselves and the proposed Class, seek monetary damages of actual, compensatory, consequential, statutory, and punitive damages, as well as injunctive relief.

After the filing of the various Complaints, the parties engaged in varied, but vigorous, litigation. In the case at bar, the action was removed to Federal court, a motion to remand was filed and a motion to dismiss was briefed, and then the case was remanded back to this Court. *See John Doe, et al. v. SSM Health Care Corp.*, No. 4:24-cv-00317 (E.D. Mo.), Doc. No. 37 (granting remand). Thereafter, the parties engaged in settlement negotiations over a series of months, including a mediation on June 20, 2024, with Bennett G. Picker. Although the parties were unable to come to an amicable resolution of these cases at that mediation, the Parties continued negotiations, and were eventually able to come to an agreement for substantive relief to the Settlement Class, culminating in the Settlement Agreement (“SA,” Exhibit 1). As follows, the Settlement provides significant benefits for the Settlement Class designed to address the specific harms caused by the Incident. As such, the Court should preliminarily approve the proposed

Settlement.

III. SUMMARY OF THE SETTLEMENT

A. The Settlement Class

Under the proposed Settlement, the Parties agree to certification of the following Settlement Class for settlement purposes only, pursuant to Missouri Rule 52.08, “**All persons residing in the United States whose Private Information was compromised during the Incident.**” SA ¶ 1.25. Excluded from the Settlement Class are (i) Navvis and its officers and directors and the Related Parties; (ii) all Settlement Class Members who timely and validly opt out of the Settlement Class; (iii) any judges assigned to the Litigation and their staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the occurrence of the Incident or who pleads nolo contendere to any such charge. *Id.* ¶¶ 1.25, 2.8. Further excluded is anyone who opts-out of the proposed Settlement. *Id.* ¶ 4.1.

B. Settlement Benefits

The Settlement provides Settlement Class members with timely benefits targeted at remediating the specific harms they have suffered because of the Data Incident, including retrospective compensation for monetary losses and lost time, as well as prospective credit monitoring, and even business practices changes. Garvey Decl. ¶¶ 10-11. These benefits of the Settlement are available to all Settlement Class members, merely by submission of a valid claim (Claim Form, SA Exhibit C) as described hereinafter.

1. Compensation for Ordinary Losses

First, under the proposed Settlement, Class Members are eligible to receive compensation for Ordinary Losses for documented Out-of-Pocket Expenses, relating to the Incident. Specifically,

the Settlement provides that Settlement Class Members may receive reimbursement for Out-of-Pocket Expenses resulting from the Incident, not to exceed \$2,000 total per Settlement Class Member, including (i) unreimbursed bank or credit card fees; (ii) long distance phone charges (only if charged by the minute); (iii) long distance or cell phone charges (only if charged by the minute); (iv) data charges (only if charged based on the amount of data used); (v) postage; (vi) gasoline for local travel; and/or (vii) credit monitoring or other identity theft monitoring purchased by Settlement Class Members between July 12, 2023 and the date that notice of the Data Security Incident was sent by Navvis to Settlement Class Members. SA ¶ 2.3.1; Garvey Decl. ¶ 12(a). In addition, to qualify for these Ordinary Expense reimbursements, Class Members must have made reasonable efforts to avoid, or seek reimbursement for, such losses, including but not limited to exhaustion of all available credit monitoring insurance, identity theft insurance and fraud insurance. *Id.*

To be eligible for Ordinary Loss reimbursement for Out-of-Pocket Expenses, Settlement Class Members need only submit a Claim Form along with plausible documentation supporting their claims, such as receipts or other documentation that documents the costs incurred. This documentation must not be self-prepared by the claimant, such as handwritten receipts (although these may be considered to add clarity or support other submitted documentation and a description of how the time was spent). *Id.*

2. Compensation for Extraordinary Losses

In addition, under the Settlement, Class Members can receive compensation for Extraordinary Losses related to the Incident. SA ¶ 2.3.3. Settlement Class Members are eligible to receive reimbursement for documented extraordinary losses, not to exceed \$5,000 per Settlement Class Member for a documented monetary loss that: (i) is an actual, documented and unreimbursed

monetary loss caused by (A) injurious misuse of the Settlement Class Member's Private Information or (B) fraud associated with the Settlement Class Member's Private Information; (ii) was more likely than not caused by the Incident; (iii) occurred between July 12, 2023 and seven (7) days after the Court approved notice of settlement (pursuant to Section 3.2.3) is sent to Settlement Class Members; (iv) is not already covered by one or more of the other reimbursed expense categories. *Id.*; Garvey Decl. ¶ 12(b). In addition, to be eligible for the Extraordinary Loss reimbursement, Settlement Class Members must have made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of the Settlement Class Member's identity protection services, identity theft insurance or fraud insurance, if any such services/insurance applies. *Id.* To be eligible for compensation for Extraordinary Losses, Settlement Class Members must submit a valid Claim along with substantial and plausible documentation in support, subject to the same requirements for reimbursement for Ordinary Losses. *See* SA ¶ 2.3.1.

3. *Pro Rata Cash Payments*

Third, under the Settlement, Class Members may receive *pro rata* cash payments as specific compensation for their loss of privacy in the Incident, capped at \$150.00 per person (unless such a cap will not result in exhaustion of the \$6,000,000 non-reversionary fund). SA ¶ 2.3.2; Garvey Decl. ¶ 12(c). This cash payment will be increased or decreased on a *pro rata* basis based on the number of Class Members who make claims under the Settlement.

4. *Credit Monitoring*

Further still, the Settlement provides that all Settlement Class Members who submit a valid Claim using the Claim Form, including necessary supporting documentation, are eligible for two (2) additional years of three-bureau credit monitoring. *Id.* ¶ 2.2; Garvey Decl. ¶ 12(d).

5. *Order of Payments*

Under the proposed Settlement, the order of payments will be as follows: all Valid Claims for Credit Monitoring, for documented Out-of-Pocket Reimbursement and documented Extraordinary Loss Reimbursement shall be paid from the initial \$6,000,000 non-reversionary fund Settlement Fund payment (Tranche 1), as soon as practical in accordance with the Agreement. If payment for any such claims remain outstanding after these funds are exhausted, claims will be paid from supplemental reversionary payments of up to \$500,000 (Tranche 3). In this way, the total Settlement benefits available may rise to \$6.5 million. SA ¶ 2.3.4. At the same time, there is no reversion of Tranche 1 or Tranche 2. The Settlement specifically provides that at no point shall *any* portion of the Settlement Fund (Tranche 1 and Tranche 2 funds) totaling \$6 million, revert to Navvis, nor the interest earned therefrom. *Id.*

6. *Claims Process; Opt-outs, and Objections*

As noted prior, under the proposed Settlement, all Settlement Class Members need to do to access the foregoing benefits is submit a Valid Claim, via the Claim Form with the required documentation as explained above (SA Exhibit C). Although the Claim Form requires a sworn signature or electronic verification, it will not require notarization and will be made available to Settlement Class Members on both the Settlement Website (as described hereinafter and in paper format if requested. SA ¶ 1.3. This Claim Form shall include the ability for Settlement Class Members to select how they shall be paid and shall include options to be paid by check or by other electronic means usually and customarily offered by the Settlement Administrator (e.g., Venmo, PayPal, CashApp, Prepaid Electronic Credit Card, etc.). *Id.* To be valid, Settlement Class Members must submit the Claim Form, postmarked or submitted online, by the Claims Deadline, which is on or before the ninetieth (90th) day following the commencement of the Notice to Settlement

Class Members. *Id.* ¶¶ 1.2, 2.3.5. Moreover, under the proposed Settlement, Settlement Class Members shall have until sixty (60) days following the commencement of the Notice program to request exclusion from the Settlement, or “Opt-Out.” *Id.* ¶ 4.1-4.3, 1.15 (“Opt-Out Date”).

Likewise, Settlement Class Members may object to the proposed Settlement. To do so, they must merely file an objection before the Objection Date, which is (60) days following the commencement of the Notice program. *Id.* ¶ 1.14, 5.1. To be valid, the Objection must include: (i) the objector’s full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector’s signature and the signature of the objector’s duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector’s counsel has filed an objection to any proposed class action settlement within the last three (3) years. *Id.* Of course, any objections shall be heard by the Court at the Final Fairness Hearing.

7. Information Security Improvements

In addition to the above monetary benefits, the proposed Settlement provides for information security improvements by Navvis. Specifically, separate from and in addition to the Settlement Fund, Navvis has made commitments to spend an additional \$500,000 per year on cybersecurity, beginning in 2024 to 2028. This \$500,000 of additional spending will be measured

against Navvis's cybersecurity spending for 2023. Further, Navvis will disclose, upon request, efforts taken to date to Plaintiffs' Counsel via written declaration. SA ¶ 2.5; Garvey Decl. ¶ 11(e).

8. *Costs of Settlement Notice and Administration*

Navvis will also pay for the costs of notice to the Class and administration by EAG Gulf Coast LLC Legal Administration Services. SA ¶¶ 2.7, 3.1-3.2, 8.1-8.3. The costs of notice will be paid from the Settlement Fund. SA ¶ 2.7.

9. *Attorneys' Fees and Costs*

In addition, under the Settlement, and out of the Settlement Fund, Navvis has agreed to pay Plaintiffs' Counsels' attorneys' fees and expenses incurred litigating this action, if approved by the Court. As set forth in the Settlement Agreement, Plaintiffs' Counsel will seek an award of attorneys' fees not to exceed one-third (1/3rd) of the Settlement Fund from Tranches 1 and 2. SA ¶ 7.2 Further, Class Counsel will seek reimbursement for reasonable out-of-pocket costs and expenses not to exceed \$50,000. Navvis has agreed not to object to either request. The Parties did not discuss payment of attorneys' fees and reimbursement of expenses until after the substantive terms of the settlement had been agreed upon. *Id.* ¶ 7.1; Garvey Decl. ¶ 16.

10. *Service Awards*

Next, under the proposed Settlement, Navvis has agreed to pay service awards of \$2,500 to the named Class Representatives for a total payment of \$30,000.00, if approved by the Court. These service awards will be paid from the Settlement Fund. SA ¶¶ 2.1, 3.2. Class Counsel will move the Court for approval of this Service Award, and Navvis has agreed not to object to the request. S.A. ¶ 7.3. The Parties did not discuss the payment of service award to proposed Class

Representatives, until after the substantive terms of the settlement had been agreed upon. *Id.* ¶ 7.1.

IV. ARGUMENT

The Settlement is fair, reasonable, and adequate, and meets all the requirements for a class action under Missouri law and should therefore be preliminarily approved by the Court. The Settlement provides immediate benefits to the Settlement Class that are not guaranteed if the litigation continues. Through hard-fought negotiations between experienced counsel, including mediation, the Parties have reached an agreement that is fair and reasonable given the facts and claims at issue in this lawsuit. For these reasons and the reasons as follow, Plaintiffs respectfully request the Court to preliminarily approve the Settlement.

A. Legal Standard

Missouri Rule 52.08 governs class actions: “A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” Missouri Rule 52.08(e). The Rule is “essentially identical” to Federal Rule 23, and, therefore, Missouri courts “rely on federal cases where Missouri law has not definitively addressed an issue.” *Hope v. Nissan N. Am., Inc.*, 353 S.W.3d 68, 75 (Mo. Ct. App. 2011). Before “certifying a temporary settlement class, the trial court should first conduct a preliminary examination of the record before it and make a preliminary determination as to whether it appears that a settlement class should be tentatively certified.” *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 383 (Mo. Ct. App. 1997). “The [district] court must . . . review the record before it, and determine whether, based on that record, it appears that the settlement is fair and that certification may ultimately be approved.” *Id.* In determining whether a class action settlement is fair, reasonable, and adequate, Missouri courts must consider: “(1) the existence of fraud or collusion behind the settlement; (2)

the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members.” *Bachman*, 344 S.W.3d at 266 (citation omitted).

Whether certification may ultimately be approved is determined by examining whether the requirements of Rule 52.08(a) and (b)(3) are met. *See Chadwick*, 956 S.W.2d at 383. Rule 52.08(a) lists four prerequisites to class actions: (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. Rule 52.08(b)(3) provides that a class action may be maintained when “the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

B. The Settlement is Fair, Reasonable, and Adequate

1. The Settlement is not the Result of Fraud or Collusion

The Settlement is the product of a hard-fought, prolonged, and extensive arms’ length negotiations, conducted by experienced counsel after extensive analysis of the relevant facts and law. Garvey Decl. ¶ 6. Before beginning settlement negotiations, the Parties exchanged key information, in the multiple actions including as to the size of the putative class, the types of information accessed and stolen in the Incident, and Navvis’s investigation into and response to the Incident. *Id.* ¶ 7. Armed with this information, the Parties spent many months negotiating the key terms of the Settlement, including participating in mediation on June 20, 2024, with Bennett

G. Picker. At the mediation, both sides advanced their respective positions, and despite negotiating in good faith, were unable to come to a settlement at that time. Nevertheless, the Parties continued negotiations thereafter, eventually arriving at an agreement in principle, providing substantive relief to the Class, as set forth in the Settlement Agreement (“SA,” Exhibit 1).

Throughout the negotiations, Settlement Class Counsel and counsel for Defendant fought vigorously for the interests of their respective clients. *Id.* The in-depth arm’s length negotiations informed by relevant factual evidence demonstrates the absence of any fraud or collusion here. This factor supports the settlement being found to be fair, reasonable, and adequate.

2. *Litigation in this Action Would Likely Be Lengthy and Complex*

Although there are numerous actions being resolved in the proposed Settlement,⁴ the cases remain relatively early in litigation. Here, Defendants removed the case to federal court, where they filed a motion to dismiss, which was briefed, and the case was remanded to Missouri state court in May 2024. *See John Doe v. SSM Health Care Corp.*, No. 4:24-cv-00317 (E.D. Mo.), Dkt. 37 (granting remand). Thereafter, Defendants moved to transfer venue, which was denied. If this case were to proceed, it is likely that Defendants would move to dismiss Plaintiffs’ claims in state court, resulting in further extensive briefing and a hearing. Assuming Plaintiffs’ claims survive, the Parties would then engage in formal discovery, which is often complex and time consuming in data breach cases like this one. A motion for class certification would need to be filed and motions for summary judgment would likely be filed as well. Class certification is inherently risky and

⁴ The instant action, along with *Rekoske v. Navvis & Co., LLC*, No. 4:24-cv-00029 (“Federal Action”); *Maxwell Klassen v. Navvis & Co., LLC*, No. 4:24-cv-00035 (E.D. Mo.); *Melanie Burns v. Navvis & Co., LLC*, No. 4:24-cv-00039 (E.D. Mo.); *Julie Montiel v. Navvis & Co., LLC*, No. 4:24-cv-00040 (E.D. Mo.); *Patricia McCreary v. Navvis & Co., LLC*, No. 4:24-cv-00041 (E.D. Mo.); *Richard Lilly v. Navvis & Co., LLC*, No. 4:24-cv-00065 (E.D. Mo.); *Detrick Clark v. Navvis and Co., LLC*, No. 4:24-cv-00514 (E.D. Mo.); and *Pamela Clark v. Navvis & Company, LLC*, Case No. 24-CA-003585.

would require in-depth research and would necessitate the use of many judicial resources. Indeed, data breach cases, such as this one, are especially risky, expensive, and complex. *See In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”). Although data breach law is continuously developing, data breach cases are still relatively new, and courts around the country are still grappling with what legal principles apply to the claims. *In re Anthem Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that “many of the legal issues presented in [] data-breach case[s] are novel.”). Because the “legal issues involved [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law and well as other issues.” *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-2522, 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015). Assuming Plaintiffs—here and in each of the other cases—survive a probable motion to dismiss and motion for summary judgment, and obtain class certification, a trial would likely be lengthy, and various experts would be needed on both sides. Even if the Court entered judgment for Plaintiff, the judgment would likely lead to an appeal, further lengthening the time until benefits would be distributed to the Settlement Class. The result contained in the Settlement is particularly favorable given the risks of continued litigation. Although Class Counsel strongly believe in the merits of the claims asserted in this action, they are cognizant of the serious risks in prevailing on the merits, including proving causation, as well as risk at class certification and at trial, and surviving appeal. Garvey Decl. ¶ 17. In contrast to lengthy and complex proceedings, the proposed Settlement provides immediate and substantial benefits to victims of the Data Incident. *Id.* ¶ 18.

Both the complexity and the length of future proceedings in these actions would be great,

thus this factor also supports the fairness, reasonableness, and adequacy of the hard-fought settlement.

3. *The Parties Have Completed Enough Discovery to Craft a Fair Settlement*

The Parties have exchanged sufficient information to negotiate a fair, reasonable, and adequate settlement. Namely, informal discovery related to Navvis's (and its customers') investigations of the Incident, the types of information accessed in the Incident, and the number of people impacted by the Incident was provided by Defendants. Garvey Decl. ¶ 7. After examining this information, Proposed Class Counsel and Defendant's counsel were able to determine reasonable terms to provide for a settlement that is fair, reasonable, and adequate. *Id.* ¶ 8.

4. *Success for the Settlement Class on the Merits is not Guaranteed*

This factor is considered the "most important" by Missouri courts in determining whether a settlement is fair reasonable and adequate. *Bachman*, 344 S.W.3d at 266. Proposed Class Counsel and the Settlement Class Representative believes that the claims asserted in the litigation have merit. Garvey Decl.¶ 17. This is evidenced by their rigorous advocacy in the litigation and negotiations, including the unsuccessful mediation in June 2024, and subsequent negotiations resulting in the Settlement. However, Proposed Class Counsel also recognizes the substantial risks that exist if litigation continues. Navvis has aggressively maintained its position denying the allegations and any liability. *Id.*; SA ¶ III. Although the case was removed to Federal court, Navvis has previously argued that the Doe Plaintiffs did not have standing to pursue their claims, and that their claims otherwise failed under Missouri law. *See* Navvis Mot. to Dismiss, *John Doe v. SSM Health Care Corp.*, No. 4:24-cv-00317 (E.D. Mo.), Dkts. 28-29. If this litigation proceeds, Defendants can be expected to reiterate these arguments and deny Plaintiffs and the proposed Class have suffered any damage(s) and/or that the Action satisfies the requirements to be tried as a class

action under Missouri Rule of Civil Procedure 52.08. Although Plaintiffs and their Counsel disagree with Navvis's view, Proposed Class Counsel are mindful of the inherent problems of proof and possible defenses to the claims asserted in the litigation. *Id.* ¶ 17. Although plaintiffs around the country have often survived motions to dismiss in data breach cases, winning class certification and an eventual jury verdict is far from certain. *See, e.g., In re TD Ameritrade Acct. Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, at *5 (N.D. Cal. Sept. 13, 2011); *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. at 397 (refusing to certify a class of banks alleging damages from a data breach because of individual issues relating to causation); *Stollenwerk v. TriWest Healthcare All.*, No. CV-03-0185-PHX-SRB, Slip Op. at 5-6 (D. Ariz. June 10, 2008) (individualized issues relating to proof of causation would predominate over common questions in a class action case involving theft of computer equipment containing personal information).

Plaintiffs also recognize the difficulties in establishing liability on a class-wide basis through summary judgment or even at trial and in achieving a result better than that offered by the Settlement here. Garvey Decl. ¶ 17. And to get to that point could be years in the future because, while summary adjudication might have been able to narrow some of the legal questions, it is highly likely that a jury would have to decide whether Navvis exercised proper care in protecting its data. Moreover, to the best of Class Counsel's knowledge, "no data breach case has gone to trial." Max Meglio, Note, *Embracing Insecurity: Harm Reduction Through a No-Fault Approach to Consumer Data Breach Litigation*, 61 B.C. L. REV. 1223, 1235 (2020). Thus, a trial on the merits would be truly uncharted territory, making the risks difficult to fully evaluate by any party. This is on top of the complexities and risks of class trials that, though manageable, are more significant than a single plaintiff litigation.

In contrast with the risks and length of continuing with litigation, the benefits of the

Settlement are certain and immediate. Garvey Decl. ¶ 18. Settlement Class Members will be entitled to significant compensation of reimbursement of Out-of-Pocket Losses up to \$2,000.00, including lost time, and for Extraordinary Losses up to \$5,000.00, for losses that have occurred because of the Incident; as well as for two (2) additional years of three-bureau credit monitoring that will help to protect them from harms arising out of the Incident. To receive these benefits, the Settlement Class Members need to complete the Claim Form and submit the same either electronically through the dedicated Settlement Website, or by U.S. mail. SA ¶¶ 1.3, 2.3.5. The benefits obtained by the Settlement in favor of the class are fair, reasonable, and adequate when the complexity and uncertainty of further litigation is considered. Garvey Decl. ¶¶ 8, 17-18.

5. The Settlement Value is Well Within the Range of Possible Recovery

The benefits that will be made available to the Class through the Settlement are well within the range of possible recovery of the Settlement Class Members. Given the risks inherent in data breach litigation, Class Counsel believes that it is possible that the Class could receive nothing if the case is litigated. *See* Garvey Decl. ¶ 17; *see also* above (discussing the risks associated with proceeding in litigation). Further, the nature of the Settlement ensures that Settlement Class members will be compensated for their out-of-pocket costs (Ordinary Losses and Extraordinary Losses), as well as their time spent mitigating the effects of the Data Incident. This, along with the high value of the Settlement Fund, of initially \$6 million (Tranches 1 and 2), plus a possible supplemental \$500,000, virtually ensures that every Settlement Class member who submits a valid claim will receive compensation for the harms that they have allegedly suffered because of the breach.

6. The Settlement is Supported by Proposed Class Counsel and Plaintiff

Proposed Class Counsel believe that the Settlement is an excellent outcome for the

Settlement Class in view of the possible issues that could arise during litigation. Garvey Decl. ¶¶ 17-18. Likewise, Settlement Class Representatives all approve of the Settlement, as evidenced by their respective signatures on the Settlement Agreement. In the event of any opt-outs or objections, Settlement Class Representative and Proposed Class Counsel will respond to them in the Motion for Final Approval and at the Final Fairness Hearing.

C. The Settlement Meets the Prerequisites of Rule 52.08(a) and the Settlement Class Should be Preliminarily Certified for Settlement Purposes.

1. Numerosity

The number of persons in the proposed Settlement Class makes the joinder of all class members impracticable. The Settlement Class here consists of approximately 2.8 million individuals whose Private Information was potentially compromised during the Incident.” SA ¶¶ 1.10, 1.2.5. This is *well* over the number that has been approved by Missouri courts to satisfy numerosity. *See Frank v. Enviro-Tech Servs.*, 577 S.W.3d 163, 168 (Mo. Ct. App. 2019) (holding that a class of only eighty-two satisfies the numerosity requirement of Rule 52.08(a)); *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 168 (Mo. Ct. App. 2006) (holding that a class of hundreds is sufficient for the numerosity requirement and noting that “[c]lass certifications have been upheld where the class is composed of even 100 or less”). The numerosity requirement is easily satisfied here.

2. Commonality

Many questions of law and fact in the case are common to all Settlement Class members such that Rule 52.08(a)(2) is satisfied. “The common question ‘must be of such a nature that it is capable of classwide resolution’ such that the determination of its truth or falsity will resolve an issue that is central to the validity of each claim.” *Lucas Subway MidMo, Inc. v. The Mandatory Poster Agency, Inc.*, 524 S.W.3d 116, 129–30 (Mo. Ct. App. 2017) (quoting *Wal-Mart Stores, Inc.*

v. Dukes, 564 U.S. 338, 350 (2011)). “Rule 52.08(a)(2) does not require that all issues in the litigation be common, only that common questions exist. ‘[I]f the same evidence will suffice for each member to make a *prima facie* showing as to a given question, then it is a common question.’” *Elsea v. U.S. Eng'g Co.*, 463 S.W.3d 409, 419 (Mo. Ct. App. 2015) (quoting *Karen S. Little, L.L.C. v. Drury Inns, Inc.*, 306 S.W.3d 577, 581 (Mo.App.E.D.2010)).

Numerous common questions of law and fact exist here, including:

- a. whether Navvis violated the laws asserted in the Petition, and other statutory privacy and consumer protection laws;
- b. Whether Navvis had a duty to use reasonable care in safeguarding Plaintiffs’ and the Class’s Private Information;
- c. Whether SSM Health Care failed to properly supervise Navvis;
- d. whether Navvis breached an alleged duty to use reasonable care to safeguard Plaintiffs’ and the Class’s Private Information;
- e. Whether Navvis breached its alleged contractual promises to safeguard Plaintiffs’ and the Class’s Private Information;
- f. whether Navvis was negligent *per se* in allegedly not complying with privacy laws;
- g. whether Navvis knew or should have known their practices and representations related to the Incident, and Private Information were allegedly deceptive and unfair;
- h. whether Navvis knew or should have known about the alleged inadequacies of their data security policies and system and the alleged dangers associated with storing sensitive Private Information;

- i. whether Navvis failed to use reasonable care and commercially reasonable methods to safeguard and protect Plaintiffs' and the other Class Members' Private Information from unauthorized release and disclosure;
- j. whether the proper data security measures, policies, procedures and protocols were in place and operational within Navvis's computer and software systems to safeguard and protect Plaintiffs' and the other Class Members' Private Information from unauthorized release and disclosure;
- k. whether Navvis took reasonable measures to determine the extent of the Data Breach after it was discovered;
- l. whether Navvis's alleged delay in informing Plaintiffs and the Class of the Data Breach was unreasonable;
- m. whether Navvis's method of informing Plaintiffs and the Class of the Data Breach was unreasonable;
- n. whether Defendants' conduct was deceptive, unfair, or unconscionable, or constituted unfair competition;
- o. whether Navvis's conduct was likely to deceive the public;
- p. whether Navvis is liable for negligence or gross negligence;
- q. whether Navvis's conduct, practices, statements, and representations about the Data Breach of the Private Information violated applicable state laws;
- r. whether Navvis knew or should have known their representations were allegedly false, deceptive, unfair, and misleading;
- s. whether Plaintiffs and the Class were injured as a direct and proximate result of the Incident;

- t. whether Plaintiffs and the Class were damaged as a proximate cause or result of Navvis's alleged breach of their alleged contract with Plaintiffs and the Class;
- u. whether Navvis's practices and representations related to the Data Breach that potentially compromised the Private Information breached implied warranties;
- v. what the proper measure of damages is; and
- w. whether Plaintiffs and the Class Members are entitled to restitutionary, injunctive, declaratory, or other relief.

Pet. ¶ 150; *see also* Federal Action, Consolidated Complaint ¶ 254. Given the foregoing, Settlement Class Representatives and the Settlement Class readily satisfy the commonality requirement of Rule 52.08.

3. Typicality

In addition, Plaintiff's claims are also typical of the rest of the Settlement Class's claims. The typicality requirement "is fairly easily met so long as other class members have claims similar to the named plaintiff. Factual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." *Dale*, 204 S.W.3d at 169 (emphasis in original) (quoting *Carpe v. Aquila, Inc.*, 224 F.R.D. 454, 457 (W.D. Mo. 2004)).

Here, Plaintiffs and the Settlement Class all allegedly suffered injuries arising out of the Incident, including: monetary damages; misuse of Private Information; increase in spam telephone calls, texts and emails; loss of the opportunity to control how Private Information is used; diminution in value of their Private Information; compromise and continuing publication of their

Private Information; out-of-pocket expenses associated with the prevention, detection, recovery, and remediation from identity theft or fraud; lost opportunity costs and lost wages associated with the time and effort expended addressing and trying to mitigate the actual and future consequences of the Data Breach, including, but not limited to, efforts spent researching how to prevent, detect, contest, and recover from identity theft and fraud; delay in receipt of tax refund monies; unauthorized use of stolen Private Information; emotional distress; the continued risk to their Private Information, which remains in the possession of Navvis and its customers and is subject to further breaches so long as they failed to undertake the appropriate measures to protect the Private Information in their possession; as well as placing Plaintiffs and the proposed Class Members at an increased risk of fraud and identity theft. Pet. ¶¶ 121-122. Although the alleged injuries may differ somewhat, all their claims arise from the same event and under the same legal theories. The typicality requirement is met here.

4. Adequacy

Plaintiffs and Proposed Class Counsel are more than adequate, and easily meet this requirement. “To satisfy Rule 52.08(a)(4), a plaintiff must demonstrate that class counsel is qualified and competent to conduct the litigation and that the plaintiff has no interests that are antagonistic to the other proposed class members.” *Lucas Subway MidMo*, 524 S.W.3d at 130. Settlement Class Representatives have demonstrated that they are well-suited to represent the Settlement Class. In each of the cases, Plaintiffs came forward prior to each respective complaint, and they have been involved in this matter since that time. Plaintiffs have maintained contact with counsel, assisted in the investigation of the case, reviewed the Petition, remained available for consultation throughout the settlement negotiations, reviewed the Settlement Agreement, and answered counsel’s relevant questions. Plaintiffs do not have any conflicts with the proposed

Settlement Class and have adequately represented Class Members in the litigation. Their interests are aligned with those of the other Settlement Class members. Garvey Decl. ¶ 19.

Additionally, Proposed Class Counsel is qualified to represent the Settlement Class, as possessing significant experience leading the prosecution of complex class action matters, including data breach litigation. *See Id.* ¶ 20-21. The Rule 52.08(a)(4) adequacy requirement is met here.

D. The Settlement Meets the Requirements of Rule 52.08(b)(3)

1. Common Questions Predominate Over Questions Affecting Individuals

Having satisfied Rule 52.08(a), Plaintiffs must also satisfy “one of the three requirements of Rule 52.08(b)” to obtain class certification. *Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W.3d 712, 715 (Mo. 2007). Plaintiffs seeks certification under Rule 52.08(b)(3), “which requires the trial court to find that the questions of law or fact common to the class members ‘predominate over any questions affecting only individual members’ and that a class action is superior to other available methods for the fair and efficient adjudication of the matter.” *Id.*; Pet. ¶ 150. The predominance requirement tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. It “does not demand that every single issue in the case be common to all the class members, but only that there are substantial common issues which ‘predominate’ over the individual issues.” *Elsea*, 463 S.W.3d at 422 (quoting *State ex rel. McKeage v. Cordonnier*, 357 S.W.3d 597, 600 (Mo. 2012) (internal quotation omitted). “In fact, the predominance requirement can be satisfied if there is one single common issue that is the overriding issue in the litigation.” *Id.* “Further, predominance is not precluded when there needs to be an inquiry as to individual damages.” *Id.*

This litigation revolves around a singular event—the data Incident—that potentially

impacted all Settlement Class Members in similar ways. The main underlying legal question common to the claims of all Settlement Class Members is whether Navvis breached its alleged duties to keep the Settlement Class Members' Private Information, which Navvis acquired in connection with its customers, safe. The main factual questions surrounding this litigation are whether Navvis failed to take reasonable and adequate measures to prevent the Incident, whether Navvis detected the breach in a timely matter once initiated, and whether Navvis effectively remedied and mitigated the effects of the Incident. All these questions are common to all the Settlement Class Members. Predominance is satisfied.

2. A Class Action is Superior

“In addition to requiring that common questions of law and fact predominate, Rule 52.08(b)(3) requires that the court find that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” *Elsea*, 463 S.W.3d at 423 (quoting *Hale v. Wal-Mart Stores, Inc.*, 231 S.W.3d 215, 229 (Mo. Ct. App. 2007)). “The superiority requirement requires the trial court to balance, in terms of fairness and efficiency, the merits of a class action in resolving the controversy against those of alternative available methods of adjudication.” *Dale*, 204 S.W.3d at 181 (internal quotation omitted). “The balancing must be in keeping with judicial integrity, convenience, and economy.” *Id.* Another fact the Court may take into consideration is “the inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually.” *Id.* at 183.

A class action here is superior because of the increased efficiency and because a class action is likely the only way many Class Members would be able to receive any compensation for their injuries stemming from the Incident. Courts routinely recognize that class actions are superior to individual litigation in other data breach cases where class-wide settlements have been

approved. *See, e.g., Kerr v. Andrews McMeel Universal, Inc.*, No. 2316-CV12523 (Mo. Cir. Ct., Dec. 13, 2024) (granting final approval of settlement in data breach litigation); *Richardson v. Gershman Investment Corp.*, No. 22SL-CC03085 (Mo. Cir. Ct. Nov. 6, 2023) (same); *In re BJC Healthcare Data Breach Litig.*, No. 2022-CC09492 (Mo. Cir. Ct. Sept. 6, 2022) (same); *Morrison v. Entrust Corp.*, No. 23-CV-415, 2024 WL 2207563, at *5 (D. Minn. May 14, 2024) (“By their nature, data breach claims ordinarily involve many plaintiffs who allege to have suffered equivalent injuries resulting from the breach. And given the size of this class, and that asserted liability arises from a common course of Entrust’s alleged conduct, class resolution is superior to individual litigation.”) (citing *Savidge v. Pharm-Save, Inc.*, 727 F. Supp. 3d 661 (W.D. Ky. 2024)); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752, 2020 WL 4212811, at *7 (N.D. Cal. July 22, 2020); *Hameed-Bolden v. Forever 21 Retail, Inc.*, No. 2:18-CV-03019, 2019 WL 8953127, at *7 (C.D. Cal. Aug. 12, 2019); *Hutton v. Nat’l Bd. of Exam’rs in Optometry, Inc.*, No. JKB-16-3025, 2019 WL 3183651, at *4 (D. Md. July 15, 2019).

The Settlement Class here consists of approximately 2.8 million persons. SA ¶ 1.10. Having individual trials for all the Settlement Class Members would be impracticable and inefficient for the Court. *See Dale*, 204 S.W.3d at 183 (noting that “judicial economy would dictate that all such possible claims be tried in one class action lawsuit” when the number of claims were in the “hundreds or even thousands”). Further, the amount of alleged damages for each Settlement Class Member is relatively small compared to the cost of litigation. A class action is superior to any other form of resolution here.

V. THE NOTICE PROGRAM IS SATISFACTORY

The Notice program, to be implemented by experienced notice experts at EAG Gulf Coast LLC Legal Administration Services, will provide the best notice practicable in compliance with

Rule 52.08. The Notice program provides for robust direct notice to Settlement Class Members via U.S. Postal Service first class mail and email (Short Notice, SA Ex. A), as well as the creation of a website containing important information about the Settlement on which the Long Notice (SA Ex. B) is published. SA ¶¶ 3.1.5, 3.1.6. Under the proposed Settlement’s Notice program, within thirty (30) days of preliminary approval, the Settlement Administrator will send the Short Notice, a post-card notice, (SA Ex. 1) to the Settlement Class Members, to the Class’s postal addresses in Navvis’s records. SA ¶ 3.2.3. This is the Notice Commencement Date. *Id.* The notice will be sent to Settlement Class Members by USPS first class mail. *Id.*

To ensure the best notice practicable under the circumstances, prior to mailing the Short Notice, and within 21 days of the Preliminary Approval Order, the Settlement Administrator will run the postal addresses of Settlement Class Members through the USPS National Change of Address database to update any change of address on file with the USPS. SA ¶ 3.2.3. After the Short Notice is mailed, and if a Short Notice is returned by USPS because the postal address of the recipient is not valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice. *Id.* Moreover, in the event that—subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out Date and the Objection Date—a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, i.e., the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace. If a new address is ascertained, the Settlement Administrator will re-send the Short Notice within seven (7) days of receiving such information. *Id.*

The Short Notice is written in plain language and will be readily understandable to the

Settlement Class. It includes instructions on submitting a claim, as well as the procedures for Settlement Class Members to “opt-out” and object to the Settlement. Garvey Decl. ¶ 23. It will direct recipients to the Settlement Website and inform Settlement Class Members of, among other things, the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys’ fees, and the date of the Final Fairness Hearing. SA ¶ 1.30.

Even prior to the dissemination of the Short Notice, the Settlement Administrator shall establish the Settlement Website, which will inform Settlement Class Members of the terms of the Settlement, their rights, dates and deadlines and related information. It shall include, in.pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Agreement; (v) the Complaint filed in this action, the consolidated complaint filed in the Federal Action, and the complaint filed in the Florida State Court Action; (vi) Class Counsel’s application for attorneys’ fees and expenses and the service awards for Class Representatives; and (vii) any other materials agreed upon by the Settling Parties and/or required by the Court. SA ¶¶ 1.29, 3.2.2. Significantly, this Settlement Website shall provide Settlement Class Members with the ability to complete and submit the Claim Form, and supporting documentation, electronically. *Id.* Additionally, under the Settlement, a Long Notice will be posted on the Settlement Website. (SA Ex. B). SA ¶¶ 1.13, 3.2.2.

The Notice program provides the best practicable method to reach the potential class members and is consistent with other class action notice programs that have been approved by various courts for similarly situated matters. Direct USPS mail is the preferred form of notice for class members in a class action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175–76 (1974). *See, e.g., Kerr v. Andrews McMeel Universal, Inc.*, No. 2316-CV12523 (Mo. Cir. Ct. Aug. 11, 2024) (granting preliminary approval where notice was sent by U.S. Postal Service first class mail and

email, as well as the creation of website containing important information about the Settlement); *Richardson v. Gershman Investment Corp.*, No. 22SL-CC03085 (Mo. Cir. Ct., Jun. 21 2023) (granting preliminary approval where notice was sent by direct mail, along with settlement website). Both the Short Notice and Long Notice are written in plain language such that they will be readily understandable to the Settlement Class, and summarize the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, the requested attorneys' fees, and the date, time and place of the Final Fairness Hearing. SA ¶ 3.1.6; Garvey Decl. ¶ 23. Accordingly, the proposed Notice program satisfies Rules 52.08(c)(2) and (e).

VI. CONCLUSION

For the reasons set forth above, the Settlement readily meets the standard for preliminary approval under Missouri law. Plaintiffs respectfully request that this Honorable Court enter an Order:

- (1) granting preliminary approval of the Settlement, in the form of the proposed Preliminary Approval Order tendered with this Motion (SA Exhibit D);
- (2) approving the Notice Program;
- (3) appointing EAG Gulf Coast LLC Legal Administration Services as Settlement Administrator;
- (4) preliminarily certifying the Settlement Class for settlement purposes only;
- (5) appointing Plaintiffs, John Doe, Jane Doe, Donna Allen, Keeley Bogart, Melanie Burns, Detrick Clark, Richard Lilly, Julie Montiel, Jeff Ruderman, Julie Schaus, Dorothy Winston, Duane Zellmer as Class Representatives;

- (6) Appointing John F. Garvey of Stranch, Jennings and Garvey, PLLC, as Settlement Class Counsel;
- (7) approving the form and content of the Short Notice, Long Notice, and Claim Form (SA Exhibits A-C);
- (8) scheduling a Final Fairness Hearing; and,
- (9) Such other relief as the Court deems just and appropriate.

Date: February 7, 2025

Respectfully submitted,

/s/ John F. Garvey

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CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing pleading has been filed using the Court's electronic case filing system on February 7, 2025, thereby serving the registered parties of record.

/s/ John F. Garvey