

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>TASHICA FULTON-GREEN and DANIEL CREVAK, on behalf of themselves and all others similarly situated,</b>	:	
	:	<b>CIVIL ACTION</b>
	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	<b>NO. 18-274</b>
	:	
<b>ACCOLADE, INC.,</b>	:	
<i>Defendant.</i>	:	

**MEMORANDUM**

PRATTER, J.

JANUARY 23, 2019

In this putative class action, Accolade, Inc. allegedly released the plaintiffs’ personal identifying information in a company-wide data breach. Early in the life of this litigation, the parties reached a settlement agreement. They now request preliminary approval of the proposed class settlement. The Court grants the motion for preliminary approval because it is within the range of possible approval, the requirements of conditional class certification are met, and the notice plan is reasonably designed to notify class members of the settlement agreement.

**BACKGROUND**

In January 2017, Accolade, Inc. was the target of a “phishing” scheme.”<sup>1</sup> A cybercriminal requested the W-2s for current and former U.S.-based Accolade employees from an Accolade employee who then sent the unencrypted files via email. The W-2s included personally identifying information (PII) such as employees’ names, addresses, Social Security Numbers, salaries, and taxes withheld for 2016. Tashica Fulton-Green and Daniel Crevak’s PII

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<sup>1</sup> A “phishing” scheme is an attempt to acquire personal information, such as usernames, passwords, credit card details, and other sensitive information, by masquerading as a trustworthy entity or individual through an electronic communication, such as email.

was included in the breach. They filed suit against Accolade on behalf of themselves and all others similarly situated alleging negligence, negligence per se, breach of implied contract, and breach of fiduciary duty.

The parties entered into a settlement agreement following negotiations and a private mediation overseen by Rodney A. Max of Upchurch Watson White & Max. The parties agreed to settle this action, pursuant to the terms of their settlement agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the settlement. Final approval of the settlement will result in dismissal of this action with prejudice.

#### **LEGAL STANDARD**

The preliminary approval determination for settlement of litigation such as this requires the Court to consider whether “(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003) (citing *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 55 F.3d 768, 785-86 (3d Cir. 1995)); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 233 n.18 (3d Cir. 2001). If, after consideration of those factors, a court concludes that the settlement should be preliminarily approved, “. . . an initial presumption of fairness . . .” is established. *In re Linerboard*, 292 F.Supp.2d at 638 (citing *In re Gen. Motors Corp.*, 55 F.3d at 785).

In addition, where, as here, the Court has not already certified a class, the Court must also determine whether the proposed settlement class satisfies the requirements of Rule 23. *Amchem v. Windsor*, 521 U.S. 591, 620 (1997). At the preliminary approval stage, the Court may conditionally certify the class for purposes of providing notice. *Manual for Complex Litigation*, § 21.632 (4th ed. 2004) (hereinafter “*MCL 4th*”) (“The judge should make a preliminary

determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).”). Accordingly, at this stage, the Court must determine whether the proposed class should be conditionally certified, leaving the final certification decision for the subsequent fairness hearing.

Rule 23(a) requires that the parties moving for class certification demonstrate the following:

(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.

Fed. R. Civ. P. 23(a). Even if the requirements of Rule 23(a) are met, the parties must also show that the action can be maintained under at least one of the subsections of Rule 23(b).

## **DISCUSSION**

For the reasons outlined in this Memorandum, the Court concludes that an initial presumption of fairness has been established in this case and the parties’ settlement should be preliminarily approved.

### **I. Proposed Class**

The proposed settlement class will consist of:

All current and former Accolade employees whose W-2 data was compromised as a result of the Data Disclosure which occurred on or about January 17, 2017.

Under the proposed settlement, all class members are entitled to enroll in identity theft protection for 24 months through Experian’s ProtectMyID service. Class members who have already enrolled in the program will be instructed on how to enroll for an additional 24 months. Class members will also be entitled to seek reimbursement for four claim categories (A–D), with an overall cap of \$1500 paid to each class member. However, participants must have spent at

least one full hour dealing with the theft of their PII before they can claim any lost time. The treatment of each claim category is set out as follows:

**Claim Category A:** Class members who had a false tax return filed after January 16, 2017 are eligible for a basic payment of \$75. They must provide proof of the false tax return, attest that they have no knowledge of a false return being filed in the previous three years, submit a self-verifying statement for time spent dealing with the effects of the breach, and submit documentation of recovery. Accolade will reimburse claimants at \$25 per hour spent dealing with the effects of a false tax return. There is a maximum recovery of \$275 per claimant for claims made pursuant to Claim Category A.

**Claim Category B:** Class members who had an IRS tax transcript requested using their PII after January 16, 2017 and submitted an identity theft affidavit to the IRS are eligible for payment of \$75. They must provide proof of the issuance of a tax transcript by the IRS and submission of an identity theft affidavit, attest that they have no knowledge of an IRS transcript being fraudulently requested using their PII in the previous three years, and submit a self-verifying statement for time spent dealing with the effects of the breach. Accolade will reimburse Category B claimants at \$25 per hour spent dealing with the effects of having their IRS tax transcript requested using their PII. There is a maximum per claimant recovery of \$125 for claims made pursuant to Claim Category B.

**Claim Category C:** Class members who experienced incidents of identity theft or financial fraud (other than those covered by Categories A and B) after January 16, 2017 are eligible for payment of \$75. This includes the opening of new bank accounts, credit applications, FAFSA applications, etc. It does not include fraud on existing credit cards. These Category C class members must provide proof of fraudulent activity or details of such activity

and why proof does not exist, attest that they have no knowledge of identity theft (other than fraudulent credit card activity) filed in the previous three years, and submit a self-verifying statement for time spent dealing with the effects of the breach. Accolade will reimburse claimants at \$25 per hour spent dealing with the effects of identity theft. There is a maximum per claimant recovery of \$275 for claims made pursuant to Claim Category C.

**Claim Category D:** Class members who claim they suffered out of pocket expenses (other than those covered in categories A, B, or C) as a result of the data disclosure are entitled to reimbursement of such amount. They must submit reasonable documentation supporting their claim for expenses, proof of fraudulent activity or details of such activity or why proof does not exist, include a detailed explanation of the activities related to the data disclosure that the claimant spent time on, and submit a self-verifying statement for time spent dealing with the effects of the breach. Accolade will reimburse claimants at \$25 per hour spent for up to 3 hours for claims made pursuant to Claim Category D. Claimants are not entitled to reimbursement of expenses that have already been reimbursed through Experian or any other source.

The settlement agreement also provides for injunctive relief which includes undertaking and maintaining the following cybersecurity measures for two years: cybersecurity awareness and training program, training employees on new policies for handling PII, implementing and operating systems to help detect and filter phishing attempts, restricting access to tax and payroll information, random testing of policies, and access control review.

#### **I. Range of Reasonableness**

At this preliminary stage, there is little disputing that the proposed settlement easily passes the reasonableness test. The parties assure the Court that the settlement was reached as a result of arm's length negotiations with an experienced mediator. The mediator, who will also serve as claims referee, has experience in that capacity as well. Based on the information

provided and critically considered by the Court, proposed Class Counsel are experienced in litigating and resolving data breach class actions such as this. Even though formal discovery has not started, reflecting a rational appreciation of the immediately verifiable matters giving rise to this claim, the parties exchanged a substantial amount of information regarding the discrete issues in this case. There are no objectors as of yet. Costs associated with notice and claims administration will be separate from the monies made available to pay claims. Although the Court notes that the Class Representatives are expected to receive a service award, the parties state that the award is nominal and will also be separate from the monies made available to pay claims. The Court finds nothing to indicate that the Class Representatives have interests antagonistic to the rest of the class members. Finally, the settlement agreement appears to deal with the major issues central to this case: protecting class members whose PII was released in the data breach, reimbursing them for the time and expense spent dealing with the effects of the data breach, and putting systems in place at Accolade to prevent a similar breach in the future.

## **II. Rule 23(a) Factors**

The Court also has reviewed the Rule 23(a) factors: numerosity, commonality, typicality and adequacy of representation.

### **A. Numerosity**

Under Federal Rule of Civil Procedure 23(a), the first factor to consider in certifying a class is whether “the class is so numerous that joinder of all members is impracticable.” The proposed class in this case includes 973 people, easily meeting the numerosity requirement. *Stewart v. Abraham*, 275 F.3d 220, 227–28 (3d Cir. 2001) (“No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.”). This factor is met, particularly for the limited purpose of conditionally certifying a class.

### ***B. Commonality***

Under Federal Rule of Civil Procedure 23(a), the second factor to consider in certifying a class is whether “there are questions of law or fact common to the class.” Here, the proposed class members all suffered from the same data breach. There are common questions as to how the data breach occurred, whether Accolade had a duty to protect PII, and whether the employees were harmed by the breach. Thus, this factor is satisfied for purposes of conditional certification.

### ***C. Typicality***

The third 23(a) factor is typicality, i.e., whether “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Accolade released the W-2s for Ms. Fulton-Green and Mr. Crevak in the same data breach as that of all the other class members. Their claims are not only similar to those of other class members but are virtually identical. Ms. Fulton-Green and Mr. Crevak each seek to hold Accolade liable for damages related to the breach and share common questions of law and fact with all other class members. Thus, their claims are typical of the class delineated for the proposed settlement.

### ***D. Adequacy of Representation***

The final Rule 23(a) factor focuses on adequacy – whether “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The rule “tests the qualifications of class counsel and the class representatives. It also aims to root out conflicts of interest within the class to ensure that all class members are fairly and adequately represented in negotiations.” *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.2d 410, 428 (3d Cir. 2016). There are no discernable conflicts between named class representatives and other potential class members. Class Counsel are well experienced and qualified, as previously mentioned. Therefore, this final factor weighs in favor of conditionally certifying a settlement class.

### **III. Rule 23(b)(3) Factors**

Under Fed. R. Civ. P. 23(b)(3), a class action may be maintained if common questions of law or fact predominate questions affecting only individuals and a class action is “superior to other available methods for fairly and efficiently adjudicating the controversy.” In making this determination, courts should consider: “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3).

In this case, all of the claims are almost identical because they arise from the same underlying activity and the damages should be easily provable and quantifiable. Furthermore, the value of the individual claims may be modest and thus impractical to litigate on a case by case basis. This is particularly true for people like Ms. Fulton-Green who have not suffered identity theft but have had to spend time notifying institutions and signing up for identity theft protection programs.

### **IV. Proposed Notice**

Under Rule 23(e), the Court’s final duty in preliminarily approving a settlement is to ensure that potential class members receive appropriate notice of the proposed settlement. Here, the proposed notice program is sufficient. The parties propose to hire Epiq Systems as Settlement Administrator. Notice will be provided by direct notice and notice on the settlement website. Accolade will provide Epiq Systems with the names and addresses of the settlement class members within seven (7) days of the entry of this preliminary order. Epiq Systems will secure updated addresses via the National Change of Address database and will mail directly the Class Notice and a claim form to all class members within 30 days of the entry of this

preliminary order. If a forwarding address is provided for an undeliverable notice, Epiq Systems will re-mail the notice to that address.

There will also be a settlement website up and running within 30 days of the entry of the preliminary approval order. It will include the complaint, short form notice, long form notice, claim form, settlement agreement, and other relevant settlement and Court documents. The settlement website will be maintained until 30 days after the claims deadline has passed.

The notice itself explains the settlement in plain language with helpful charts and FAQs. Thus, the Court finds that the proposed notice program offers the best practicable notice to class members under the circumstances.

#### **CONCLUSION**

For the foregoing reasons, the Court will grant the Motion for Preliminary Settlement Approval in this matter. An appropriate Order, with attendant time requisites, follows.

BY THE COURT:

S/Gene E.K. Pratter  
GENE E.K. PRATTER  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
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<b>TASHICA FULTON-GREEN and DANIEL CREVAK, on behalf of themselves and all others similarly situated,</b>	:	
	:	<b>CIVIL ACTION</b>
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<i>Plaintiffs,</i>	:	
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v.	:	<b>NO. 18-274</b>
	:	
<b>ACCOLADE, INC.,</b>	:	
<i>Defendant.</i>	:	

**ORDER**

**AND NOW**, this 23rd day of January, 2019, upon consideration of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. No. 19), Plaintiffs’ Consent Motion for Approval of Class Action Settlement (Doc. No. 20), the revisions thereto (Doc. No. 20), and a preliminary approval hearing held on December 20, 2018, it is **ORDERED** that:

1. Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. No. 19) is **DEEMED MOOT**;

2. Plaintiffs’ Consent Motion for Approval of Class Action Settlement (Doc. No. 20) is **GRANTED** as follows:

3. **Class Certification for Settlement Purposes Only:** For purposes of settlement only, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), the following nationwide class is conditionally certified:

All current and former Accolade employees whose W-2 data was compromised as a result of the Data Disclosure which occurred on or about January 17, 2017.

And, for purposes of settlement only, the Court provisionally finds that: (a) the Settlement class is so numerous that joinder of all Settlement Class Members would be

impracticable; (b) there are issues of law and fact common to the settlement class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class and the Settlement Class Representatives have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

**4. Settlement Class Representatives and Settlement Class Counsel:** The Class Representatives named in Plaintiffs' First Amended Complaint (Docket No. 16) are appointed to serve as Class Representatives for settlement purposes only. John A. Yanchunis of Morgan & Morgan Complex Litigation Group; Bruce Steckler of Steckler Gresham Cochran PLLC; and Charles E. Schaffer of Levin Sedran & Berman are appointed to serve as Settlement Counsel;

**5. Preliminary Settlement Approval:** The Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, and adequate, and within the range of reasonableness, such that a presumption of fairness is appropriate for the purposes of preliminary settlement approval;

**6. Final Approval Hearing:** A Final Fairness Hearing shall be held on **July 24, 2019 at 2:00 p.m.** in Courtroom 10B to determine whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e); (b) the Settlement should be finally approved as fair, reasonable, and adequate

pursuant to Federal Rule of Civil Procedure 23(e); (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses should be approved pursuant to Federal Rule of Civil Procedure 23(h); and (f) the motion of Settlement Class Representatives for a Service Award should be approved.

Plaintiffs' Motion for Final Approval of the Settlement, Service Award Request, and Fee Request shall be filed with the Court at least **30 Days prior to the Final Approval Hearing**. By no later than **14 Days prior to the Final Approval Hearing**, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Award Request and Fee Request.

The Fairness Hearing may be postponed, adjourned, or continued by Order of the Court without further notice to the Settlement Class;

7. **Notice to the Class:** The Court finds that the proposed notice program is the best practicable notice under the circumstances and is reasonably calculated to apprise Settlement Class Members of the pendency of this Action and their right to object to or exclude themselves from the Settlement Class.

By **30 days from the date of this Order**, the Settlement Administrator shall initiate the Notice Program, which shall be completed in the manner set forth in Section VI of the Settlement Agreement.

8. **Class Action Fairness Act Notice:** Within 10 Days after the filing of the motion for preliminary approval, the Settlement Administrator shall have served or have caused to be

served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).

9. **Settlement Administrator:** The Court appoints Epiq Systems, Inc. as the Settlement Administrator, with responsibility for class notice and claims administration. Defendant shall pay all costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Settlement Administrator’s fees.

10. **Claims Referee:** The Court appoints Rodney Max as Claims Referee.

11. The Settlement Claims Process, together with all applicable forms described in the Settlement Agreement, are approved;

12. **Exclusion from Class:** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked **no later than 120 Days from the date of this Order**. The written notification must include the individual’s full name, address, and telephone number; an unequivocal statement that he or she wants to be excluded from the Action; and the original signature of the individual or a person previously authorized by law, to act on behalf of the individual with respect to the claims asserted in this action.

The Settlement Administrator shall provide the Parties with copies of all completed optout notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may move to file under seal with the Court **no later than 10 Days prior to the Final Approval Hearing**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement. If Final Judgment is

entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

**13. Objections and Appearances:** A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is (a) electronically filed with the Court by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Plaintiffs' Counsel, and Defendant's Counsel, at the addresses listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. Pursuant to Fed. R. Civ. P. 23(e)(5)(A), the "objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection."

For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 90 of the Settlement Agreement, which is as follows:

- a. the objector's full name, current address, telephone number, and email address (if any);
- b. the Settlement Class Member's original signature;

- c. information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (e.g., copy of Notice or copy of original notice of the Data Disclosure);
- d. a statement of all grounds for the objection, including any legal support for the objection that the objector believes applicable;
- e. identification of all counsel representing the objector;
- f. whether the objector and/or his or her counsel will appear at the Final Approval Hearing;
- g. the signature of the objector's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation;
- h. a list, including 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 in the past three (3) years; and
- i. copies of any documents that the objecting Settlement Class Member wishes to submit in support of his or her position.

Any Settlement Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Judgment is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve on Class Counsel and Accolade's Counsel) by the

Objection Deadline. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers, and a list identifying all objections such counsel has filed to class action settlements from January 1, 2015 to the present, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney. If the objecting Settlement Class Member intends to request the Court for permission to call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must provide a list of any such witnesses together with a brief summary of each witness's expected testimony at least sixty (60) Days before the Final Approval Hearing.

If Final Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

14. **Claims Process and Distribution and Allocation Plan:** Settlement Class Representative and Defendant have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for remuneration described in Section V of the Settlement Agreement and directs that the Settlement Administrator

effectuate the distribution of settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If Final Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Agreement, and the Final Judgment.

15. **Termination of Settlement:** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of June 5, 2018, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

16. **Use of Order:** This Order shall be of no force or effect if Final Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representative or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is

inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

17. **Stay of Proceedings:** Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Judgment, or until further order of this Court.

18. **Summary of Deadlines:** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

**Notice Deadline:** 30 Days after Preliminary Approval

**Motion for Final Approval:** 30 Days before Final Approval Hearing

**Motion for Service Awards, Attorneys' Fees and Costs:** 30 Days before Final Approval Hearing

**Opt-Out Deadline:** 120 Days after Preliminary Approval

**Objection Deadline:** 120 Days after Preliminary Approval

**Replies in Support of Final Approval, Service Awards and Fee Requests:** 14 Days before Final Approval Hearing

**Claim Deadline:** 360 Days after Notice Deadline

**Final Approval Hearing:** 180 Days after Preliminary Approval

BY THE COURT:

S/Gene E.K. Pratter  
GENE E.K. PRATTER  
UNITED STATES DISTRICT JUDGE