IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

NANCY ALBERT, SUSAN ANDESMITH, PATRICIA ARAGON, CAROL CARTWRIGHT, BRANDON COLON, DENNIS HENZEN, WENDY HOOVER, ANNE MAGYAR, TAWNYA MATHIS, TRUDI MOORE, KATHLEEN MORASH, GWENDOLYN PALMATEER, MONICA RICE, KAREN ROGERS WASHINGTON, ROBERT SCUTERI, KELLEY BAGWELL, DONNA FERNER, DIANE HAUSHALTER, ANNELLE LYKE, SHIRLEY PARNISKE, CAROLYN SCHROEDER, CLIFFORD HORNSBY, SHERRY CATLETT, and MICHAEL SANDERS, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

SCHOOL BOARD OF MANATEE COUNTY, FLORIDA,

Defendant.
_____/

Case No. 17-CA-004113

CLASS REPRESENTATION

ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND CERTIFYING SETTLEMENT CLASS, APPROVING OF NOTICE TO THE CLASS, AND APPOINTING OF CLASS COUNSEL

Came on before the Court for consideration the Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement by Plaintiffs Nancy Albert, Susan Andesmith, Patricia Aragon, Carol Cartwright, Brandon Colon, Dennis Henzen, Wendy Hoover, Anne Magyar, Tawnya Mathis, Trudi Moore, Kathleen Morash, Gwendolyn Palmateer, Monica Rice, Karen Rogers Washington, Robert Scuteri, Kelley Bagwell, Donna Ferner, Diane Haushalter, Annelle Lyke, Shirley Parniske, Carolyn Schroeder, Clifford Hornsby, Sherry Catlett, Michael

Sanders, individually and on behalf of all others similarly situated ("Plaintiffs"). For the reasons set forth below, the motion is granted.

CLASS SETTLEMENT APPROVAL PROCESS

Rule 1.220(e) of the Florida Rules of Civil Procedure requires judicial approval of any settlement agreement in a class action. *See* Fla. R. Civ. P. 1.220(e). The purpose of obtaining preliminary approval is to determine if the proposed settlement falls within the range of possible approval. *See Chase Manhattan Mortg. Corp v. Porcher,* 898 *So* 2d 153, 156 (Fla. 4th DCA 2005). A court "must conduct a rigorous analysis to determine whether the elements of class action requirements have been met," which requires "heightened scrutiny" when the parties seek "certification of the class and approval of their settlements simultaneously." *Grosso v Fidelity National Title Ins. Co.*, 983 So.2d 1165, 1170 (Fla. 3d DCA 2008).

To certify a class action for settlement purposes, a court must find that all of the requirements of Rule 1.220(a), Fla. R. Civ. P., and at least one subdivision of Rule 1.220(b), are satisfied. *See Sosa v. Safeway Premium Fin Co* , 73 So. 3d 91, 106 (Fla. 2011); *Grosso*, 983 So. 2d at 1170.

The Court has considered the Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement ("Motion"), the record, and the Plaintiffs and the School Board's Settlement Agreement ("Settlement"), dated as of February 28, 2018, (attached as Exhibit A to the Joint Motion). Based on these arguments and submissions, the Court hereby sets forth the following findings of fact and conclusions of law upon which this Order is based.

I. FINDINGS OF FACT

It is alleged that, on or about January 26, 2017, an employee of the Manatee County School Board (the "School Board")[1] responded to a phishing email purporting to be from the School Board's Superintendent and sent to unknown third parties information on Forms W-2 containing personally identifiable information of the School Board's employees (including, among other things, the employees' names, mailing addresses, wage information, and social security numbers) ("PII"). On February 3, 2017, upon discovering the alleged inadvertent disclosure of PII, Defendant notified its employees and law enforcement, and worked to engage AllClear ID to provide identity theft monitoring and restoration services to all impacted individuals, which services became available on February 10, 2017, for a period of 24 months.

On September 18, 2017, Plaintiffs commenced this action on behalf of themselves and all others similarly situated, in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida. In the Complaint, Plaintiffs allege that the School Board requires certain PII of its employees as a condition of employment; the School Board had a duty to safeguard the data of its employees; and that the School Board acted negligently in disclosing the data to unknown third parties. In the Complaint, Plaintiffs brought claims against the School Board for negligence and breach of implied contract.

II. CONCLUSIONS OF LAW

Based upon the Settlement Agreement entered into by Plaintiffs and the School Board, the School Board's withdrawal of its defenses and objections to class certification solely for purposes of this class certification settlement, and the Court's review of the Settlement

[1] The Board is a five-member political entity that oversees the District. The Board is the defendant in this matter, but the District is the entity whose conduct is primarily at issue. For purposes of this Order, the terms should be considered as equivalent.

Agreement, the motion for preliminary approval, the exhibits to the motion and declarations of John Yanchunis and Charles Marr, the Court hereby preliminarily approves the Settlement Agreement dated as of February 28, 2018, as fair, adequate, and reasonable, and preliminarily certifies the following settlement class:

> All current and former Manatee County School Board employees, whose W-2 data was compromised as a result of the data disclosure which occurred on or about January 26, 2017.

The Court has personal jurisdiction over all members of the Settlement Class ("Class Members") and has subject matter jurisdiction, including jurisdiction to preliminary approve the proposed settlement and conditionally certify a class for settlement purposes.

A. Numerosity, Fla. R. Civ. P. 1220(a)(1)

Numerosity is satisfied on this record because joinder of more than 7,700 persons into a single action would be impracticable. *See Estate of Bobinger v Deltona Corp.*, 563 So. 2d 739, 742 (Fla. 2d DCA 1990) (noting that numerosity requires "specifying the approximate number in the class" and that the proposed class of over 400 persons was sufficiently numerous).

B. Commonality, Fla. R. Civ. P. 1220(a)(2) and (b)(3)

Commonality is satisfied where "the claim of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim of each member in the class." *Bouchard Transp Co v Updegraff*, 807 So. 2d 768, 771 (Fla. 2d DCA 2002) ("The class of residential property owners whose property was physically invaded by the pollution meets the test of commonality and predominance."). The Court finds that the commonality requirement is satisfied, for purposes of approving the Settlement Agreement and conditionally certifying the Settlement Class in that all members of the class are current or former employees of the School Board whose personal information was disclosed without authorization by the School Board in January 2017.

Additionally, the Court finds that Plaintiffs' and the Settlement Class' claims arise from a common course of conduct and each shares a common interest in obtaining relief from the School Board as it relates to how the School Board collects, stores, and protects electronic files that contain the personal information of its current and former employees. These commonalities satisfy the requirement for the purpose of preliminarily approving the Settlement Agreement and certifying the Settlement Class.

C. Typicality, Fla. R. Civ. P. 1220(a)(3)

The Court finds that the typicality requirement is satisfied for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class based on the similarity of Plaintiffs' claims with those of the Settlement Class. A common course of action by the defendant against the purported class and class representatives suffices to show typicality. *See Safeway Premium*, 73 So. 3d at 114. Plaintiffs' claims are typical of those of other class members because Plaintiffs, like that of every other class member, allege that the School Board unlawfully disclosed their personal information.

D. Adequacy, Fla. R. Civ. P. 1220(a)(4)

The Court finds that Plaintiffs have no interests antagonistic to the Class they seek to represent and that Class Counsel is experienced in litigating class action cases. *See id.* at 115. Accordingly, the adequacy requirement is satisfied for purposes of approving the Settlement Agreement and conditionally certifying the Settlement Class.

E. Rule 1.220(b) Requirements

The Court also finds that the requirements of Rule 1.220(b)(1)(A), 1.220(b)(2), and 1.220(b)(3) have been satisfied for the purposes of approving the Settlement Agreement and certifying the Settlement Class. In particular, the Court, in its review of the factual record, finds

that "the prosecution of separate claims or defenses by or against individual members of the class would create a risk of . . . inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class." Fla. R. Civ. P. 1.220(b)(1)(A). Florida law interprets this rule to mean that "it is not enough that separate litigation may result in inconsistent adjudications." Rather, the Rule explicitly requires that such adjudication impose "incompatible *standards of conduct* on the party opposing the class." *Seven Hills, Inc v. Bentley*, 848 So. 2d 345, 354 (Fla. 1st DCA 2003) (emphasis added) (citation omitted). The Court finds here that the prosecution of separate claims or defenses by individual members of the class would create a risk of inconsistent or varying adjudications as different courts may impose on the School Board different standards of conduct regarding the School Board's collection, storage, maintenance, and disclosure of its current or former employees' personal information. This potential for inconsistencies could put the School Board in the untenable "position of being unable to comply with one judgment without violating the terms of another judgment," *id* at 354, and could potentially "impair its ability to pursue a uniform continuing course of conduct," *id* at 353, in implementing changes to its information security practices and organization as agreed to in the Settlement The Court also finds that certification under Rule 1.220(b)(2) and 1.220(b)(3) is appropriate where Plaintiffs allege that the School Board has failed to protect the personal information of the entire class and that common issues predominate over individual issues, making final injunctive relief and monetary damages concerning the class as a whole appropriate.

Accordingly, the Court finds that the Settlement Class may be certified under Rule 1.220(b)(1)(A), 1.220(b)(2), and 1.220(b)(3).

F. Approval of Notice

The Court approves, in form and content: (a) the proposed Notice of Pendency of Class Action, substantially in the form attached to the parties' motion as Exhibit C (the "Long Form Notice"); and (b) the Short Form Notice of Pendency of Class Action, substantially in the form attached to the parties' motion as Exhibit D (the "Short Form Notice" or "Postcard"). The mailing of the Short Form Notice: (a) will fully satisfy the requirements of Rule 1.220, Florida Rules of Civil Procedure, due process, and applicable law; (b) is the best notice practicable; and (c) shall constitute due and sufficient notice of the Settlement and Fairness Hearing to Class Members.

At or before the Final Fairness Hearing, the parties shall file with the Court a proof of mailing of the Class Notice.

NOW, THEREFORE, IT IS HEREBY ORDERED this 5 day of April 2018 that:

1. The Court hereby appoints Nancy Albert, Susan Andesmith, Patricia Aragon, Carol Cartwright, Brandon Colon, Dennis Henzen, Wendy Hoover, Anne Magyar, Tawnya Mathis, Trudi Moore, Kathleen Morash, Gwendolyn Palmateer, Monica Rice, Karen Rogers Washington, Robert Scuteri, Kelley Bagwell, Donna Ferner, Diane Haushalter, Annelle Lyke, Shirley Parniske, Carolyn Schroeder, Clifford Hornsby, Sherry Catlett, Michael Sanders, as Class Representatives of the Settlement Class, appoints John A. Yanchunis as Lead Class counsel, and appoints Marisa Glassman, of Morgan & Morgan Complex Litigation Group; Jean Sutton Martin of the Law Office of Jean Sutton Martin PLLC; and Ronald G. Meyer of Meyer, Brooks, Demma & Blohm, P.A.,, as Class Counsel for the Settlement Class.

2. The Court further appoints the following seven individuals as Class Representatives pursuant to the parties' Settlement Agreement and as included in the Amended Complaint: Kathleen Bishop, Matthew Donovan, William Verhoeve, Cassandra Lang, Shirley Hamilton, Robert F. Hamilton, and April Robinson.

3. The Court appoints Epiq Systems as Claim Administrator and within sixty (60) days after the date on which this order is entered, the Claim Administrator shall, at the School Board's expense, cause a copy of the Short Form Notice Notice to be mailed via United States mail, postage pre-paid to all members of the Settlement Class who can be identified with reasonable effort at their last known addresses appearing in the records by or on behalf of the School Board. Directing that the School Board shall, at its own expense, cause the Claim Administrator to: (i) maintain a website, which shall provide Class Members with current information regarding the settlement and the Long Form; and (ii) make a copy of the Long Form Notice available to any Class Member who requests a copy of it;

4. The Court directs that all proceedings in this action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement, are hereby stayed and suspended until further order of this Court.

5. A hearing (the "Final Fairness Hearing") is hereby scheduled to be held before the Court on (Month) September (Day) 13, 2018, at (Time) 11:00 (a.m./p.m.), which is as required by the Settlement Agreement, a date no sooner than 45 days but no later than 75 days after the Objection and Opt Out Period (as defined in the Settlement Agreement) expires, or as soon thereafter as may be heard, for the following purposes:

a. To determine whether the proposed Settlement is fair, reasonable, adequate, and in the Settlement Class's best interests, and whether the Settlement should be finally approved by the Court;

b. To determine whether final judgment as provided under the Settlement Agreement should be entered dismissing the Amended Class Action Complaint with prejudice; and to determine whether releases should be provided to the Released Parties as defined and set forth in the Settlement Agreement;

c. To consider whether to provide incentive awards to each of the Named Plaintiffs;

d. To consider whether to award Class Counsel's fees, cost and expenses as set forth in the Settlement Agreement; and

e. To rule upon such other matters as the Court may deem appropriate.

6. At least 15 days prior to the Fairness Hearing: (a) the parties shall submit a motion to approve the settlement; (b) Class Counsel shall submit an application for an award of attorneys' fees, costs, and expenses; and (c) the Class Representatives shall submit an application for an award of an incentive award. The parties shall file all objections and opt out requests with the Court prior to the Fairness Hearing.

7. Lead Class counsel and Class Counsel are authorized to act on behalf of the Settlement Class with respect to all acts required by the Settlement Agreement or such other acts that are reasonably necessary to consummate the proposed settlement set forth in the Agreement.

8. Any Settlement Class Member may appear and show cause why the proposed settlement of the Action embodied in the Settlement Agreement should not be approved as fair, reasonable, and adequate, or why a judgment should or should not be entered thereon, or

why the incentive award to the Class Representatives in this Action should not be made, or why fees inclusive of the expenses should not be awarded as provided in the Settlement Agreement; provided, however, that no Settlement Class Member or any other Person, shall be heard or entitled to contest the approval of the proposed Settlement, or, if approved, the Judgment to be entered thereon, unless on or after sixty (60) days from the date of mailing of the Short Form Notice, and forty-five (45) days before the Fairness Hearing, that person has caused to be filed written objections or a petition to intervene in the manner and form outlined in the Settlement Agreement, stating all supporting bases and reasons with the Settlement Administrator. The Settlement Administrator will provide Proposed Settlement Class Counsel with the Opt Out List within ten (10) days after the Opt Out and Objection Date.

9. For the objection to be considered by the Court, an objecting party's attendance at the Final Fairness Hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement are required to indicate in their written objection or petition to intervene their intention to appear at the hearing. All written objections shall conform to the requirements of the Settlement Agreement and shall indicate the basis upon which the person submitting the objections claims to be a member of the Settlement Class and shall clearly identify any and all witnesses, documents, and other evidence of any kind that are to be presented at the Final Fairness Hearing in connection with such objections and shall further set forth the substance of any testimony to be given by such witnesses.

10. Any Settlement Class Member who does not make his, her, or its objection in the manner provided in the preceding paragraph of this Order shall be deemed to have waived such

objection and shall forever be foreclosed from making any objections to the fairness, adequacy, or reasonableness of the Settlement.

DONE AND ORDERED in Chambers in Manatee County, Florida this 5 day of April 2018.

The Honorable Lon Arend

Conformed copies to:

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