**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF NEW YORK**

| | |
|---|---|
| IN RE PRACTICE RESOURCES, LLC DATA SECURITY BREACH LITIGATION | Case No: 6:22-cv-00890-LEK-DJS |

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT AND AWARD OF SERVICE AWARDS, ATTORNEYS' FEES AND COSTS**

David S. Almeida
**ALMEIDA LAW GROUP**
879 W. Webster Avenue
Chicago, IL 60614
Tel.: (708) 437-6476
david@almeidalawgroup.com

James J. Bilsborrow
**WEITZ & LUXENBERG, P.C.**
700 Broadway
New York, NY 10003
Tel.: (212) 558-5500
jbilsborrow@weitzlux.com

Nicholas A. Migliaccio
Jason S. Rathod
**MIGLIACCIO & RATHOD LLP**
412 H Street NE, Suite 302
Washington, DC 20002
Tel.: (202) 470-3520
nmigliaccio@classlawdc.com
jrathod@classlawdc.com

*Plaintiffs' Class Counsel*

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

***Page(s)***

***Cases***

***Statutes and Rules***

***Secondary Sources***

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs James Stewart, Susan Stewart, John Bachura, Brenda Sparks, and Steven N. Esce (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, through counsel of record ("Plaintiffs' Class Counsel") respectfully submit this Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Final Approval of Settlement and Award of Service Awards, Attorneys Fees' and Costs. Defendant Practice Resources, LLC ("PRL" or "Defendant" and together with Plaintiffs, the "Parties") does not oppose this Motion.

## BACKGROUND

A detailed summary of the relevant background and procedural history is set forth in Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement (hereafter, "Preliminary Approval Memorandum"), ECF No. 61-1, as well as the Court's Preliminary Approval Order, ECF No. 66, which Plaintiffs incorporate herein by reference.

PRL is a New York-based Management Service Organization ("MSO") with its principal place of business in Syracuse, New York. *See* Amended Consolidated Complaint ("ACC") ¶ 69, ECF No. 34. Plaintiffs allege that on or about April 12, 2022, PRL realized it was the victim of a cyberattack, potentially compromising the sensitive Private Information of over 940,000 individuals, including patients and employees of PRL's medical provider clients.[1] *Id.* ¶¶ 4, 6, 70. Plaintiffs allege that the data breach compromised Class Members' names, home addresses, dates of birth, dates of treatment, health plan numbers, including Medicare or Medicaid numbers, and medical record numbers. *Id.* ¶ 4. Plaintiffs allege that their sensitive Private Information was

[1] All capitalized terms in this memorandum shall have the same meanings as those defined in the Settlement Agreement unless otherwise specified.

compromised in the breach, while PRL denies the allegation and contends that Plaintiffs will be unable to demonstrate any Private Information was actually taken.

After briefing on PRL's motion to dismiss was completed, the Parties agreed to a private mediation. On November 13, 2023, the Parties engaged in a full-day mediation session with the Honorable Wayne Anderson. The Parties did not resolve the case on that day, though they made substantial progress toward doing so. On December 14, 2023, the Parties reached an agreement in principle with Judge Anderson's continued assistance. Over the next three months, the Parties negotiated the terms of the Settlement Agreement and its exhibits before ultimately executing the agreement on March 27, 2024. The Court granted preliminary approval of the class action settlement on September 23, 2024, and ordered notice to commence thirty-five days later. ECF No. 66.

## I. Material Terms and Benefits of the Settlement

The Settlement Class is defined as "all natural persons whose Private Information was compromised in the Data Breach, including all individuals who were sent the Notice of Data Privacy Incident on or around August 23, 2022." *Id.* ¶ 4. The Settlement establishes a Settlement Fund to compensate Settlement Class Members.

### A. The Settlement Fund

The Settlement establishes a non-reversionary fund in the amount of $1,500,000, which shall be used to compensate Settlement Class Members and to pay the costs of Administration, Costs, and any Fees and Service Awards. *See* S.A. § 3.1. To obtain compensation, Settlement Class Members may submit a claim for (1) a "Documented Loss Payment," which is available for up to $5,000 and requires an attestation and supporting documentation, Settlement Agreement ("S.A."), Dkt. 61-3 § 3.2(a); (2) "Credit Monitoring and Insurance Services," which allows a Settlement

Class Member to elect to receive credit bureau monitoring services and $1 million in identity theft insurance, S.A. § 3.2(b); or (3) a "Cash Fund Payment," which allows a Settlement Class Member to submit a claim to receive a pro rata Settlement Payment in cash, S.A. § 3.2(c). Any funds remaining after payments of Settlement Class benefits, Administration and other costs, any attorneys' fees, litigation expenses, and Service Awards, shall be used to make an equal payment to all Settlement Class Members who elected a Cash Fund Payment. *See* S.A. § 3.9.

**B. Changes to PRL's Data Security Capabilities**

PRL adopted measures to enhance its data security following the Data Breach. S.A. §§ 2.1-2.2. These changes will benefit Settlement Class Members whose Private Information remains in PRL's possession, custody or control. The data security mitigation measures adopted by PRL will provide enhanced protection of the Private Information of the Class, frustrating future attempts at unauthorized access to the information by third parties.

**C. Attorneys' Fees and Expenses**

The Settlement Agreement permits Class Counsel to seek approval of an award of attorneys' fees up to one-third of the Settlement Fund as well as reimbursement of reasonable costs and litigation expenses. *See* S.A. § 9.1 Accordingly, Class Counsel are moving for an award of attorneys' fees of $500,000, which is one-third of the Settlement Fund. In addition, Class Counsel seeks reimbursement of litigation costs and expenses amounting to $19,253.46. The Notice and Settlement Website both state that Class Counsel would seek attorneys' fees and costs in these amounts. *See* Decl. of Omar Silva Re: Notice Procedures ("Silva Decl."), Ex. C.[2] Settlement Class Members thus had the opportunity to review and comment upon the attorneys' fees and litigation

[2] The Silva Decl. is filed herewith as Exhibit 1.

expenses Class Counsel intended to request and no Settlement Class Member has filed an objection or opposed these requests.

**D. Service Awards to Named Plaintiffs**

The Settlement Agreement permits Plaintiffs to petition for a Service Award to each Named Plaintiff of up to $2,500. *See* S.A. § 8. Each Named Plaintiff assisted Class Counsel with their case investigation and provided supporting documentation and personal information to assist in the prosecution of the case. Plaintiffs are seeking a Service Award for each Named Plaintiff in the amount of $2,500 to recognize the time, effort, and expense incurred to benefit all Settlement Class Members. *See* S.A. § 8.1.

**E. Release and Dismissal with Prejudice**

In consideration of the Settlement, Plaintiffs and Settlement Class Members will release claims arising out of the Data Breach. *See* S.A. § 4.

## II. Objections and Opt-Out Requests

Following distribution of Notice, the Claims Administrator received 13 total requests for exclusion from the Settlement. *See* Silva Decl. ¶ 16. No Class member objected to the Settlement. *Id.* ¶ 17.

## ARGUMENT

## I. The Settlement Meets the Rule 23(e) Final Approval Standards.

Rule 23(e) of the Federal Rules of Civil Procedure requires court approval of any class action settlement. The court must "carefully scrutinize the settlement to ensure its fairness, adequacy, and reasonableness, and that it was not a product of collusion." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (citations omitted). This evaluation requires the Court to

consider "both the settlement's terms and the negotiating process leading to the settlement." *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 116 (2d Cir. 2005).

"The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation." *In re Advanced Battery Techs. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014). Accordingly, when exercising its discretion to approve the Settlement, the Court should be "mindful of 'the strong judicial policy in favor of settlements.'" *Wal-Mart Stores*, 396 F.3d at 116 (citations omitted). "Absent fraud or collusion," courts "should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014), *aff'd sub. nom.*, *Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

Rule 23(e)(2) provides that the Court should determine whether a proposed settlement is "fair, reasonable, and adequate" after considering whether:

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

Fed. R. Civ. P. 23(e)(2). Rule 23(e)(2)(A)-(B) focuses on procedural fairness, while Rule 23(e)(2)(C)-(D) focuses on the settlement's substantive fairness. *See Kirby v. FIC Restaurants, Inc.*, 2020 WL 5791582, at *2 (N.D.N.Y. Sept. 28, 2020).

Additionally, courts evaluating class action settlements in the Second Circuit have long considered the following factors set forth in *City of Detroit v. Grinnell Corp.*:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings, and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of the attendant risks of litigation.

495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). Not every factor must weigh in favor of settlement; "rather, the court should consider the totality of these factors in light of the particular circumstances." *Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 61 (S.D.N.Y. 2003).

As demonstrated herein, the Settlement readily satisfies the Rule 23(e)(2) and *Grinnell* factors,[3] meets the favored public policy of resolving class action claims, and warrants the Court's final approval.

**A. Plaintiffs & Class Counsel Have Adequately Represented the Settlement Class.**

In determining whether to approve a class action settlement, the court should consider whether "the class representatives and class counsel have adequately represented the class." Fed.

[3] The factors set forth in Rule 23(e)(2) were intended "to add to, rather than displace, the *Grinnell* factors." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019); *see also* Advisory Committee Notes to 2018 Amendments to Rule 23 (noting that the Rule 23(e)(2) factors are not intended to "displace" any factor previously adopted by the Court of Appeals). Accordingly, Plaintiffs will discuss both the factors set forth in Rule 23(e)(2) and the non-duplicative *Grinnell* factors.

R. Civ. P. 23(e)(2)(A). "[T]he adequacy requirement 'entails inquiry into whether: (1) plaintiffs' interests are antagonistic to the interests of other members of the class and (2) plaintiffs' attorneys are qualified, experienced, and able to conduct the litigation.'" *In re Barrick Gold Sec. Litig.*, 314 F.R.D. 91, 99 (S.D.N.Y. 2016).

*First*, there are no conflicting interests that exist between Plaintiffs and Settlement Class Members; to the contrary, Plaintiffs are members of the proposed Settlement Class and were victims of the PRL data breach whose Private Information was compromised as a result of that incident. Thus, the interests of Plaintiffs and the Settlement Class are coextensive given that each Plaintiff, like each Settlement Class Member, has a strong interest in obtaining redress for the harm allegedly caused by PRL.

*Second*, Class Counsel have extensive experience in class action litigation and data breach cases in particular. *See* Class Counsel Decls. of David S. Almeida, James Bilsborrow, and Nicholas Migliaccio (attached hereto as Exhibits 2-4). Further, Class Counsel put their experience to work in this case, investigating the breach as soon as it occurred, litigating a hard-fought Rule 12 motion, and engaging in mediation that required a full day with a neutral as well as continuing efforts to bridge remaining gaps following this session. Class Counsels' efforts ultimately resulted in a successful resolution for the class. These efforts demonstrate Class Counsels' adequacy. *See, e.g.*, *Karic v. Major Auto. Cos.*, 2016 WL 323673 (E.D.N.Y. 2016).

### B. The Settlement Was Negotiated at Arm's Length with the Assistance of an Experienced Mediator.

Rule 23(e)(2)(B) further supports final approval because the Settlement was reached only after protracted, arm's length negotiations facilitated by an experienced and well-respected mediator, the Hon. Wayne Anderson (ret.). "To determine procedural fairness, courts examine the negotiating process leading to the settlement." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp.

2d 611, 618 (S.D.N.Y. 2012). "A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel . . . ." *Wal-Mart Stores*, 396 F.3d at 116 (quoting Manual for Complex Litig. (Third) § 30.42 (1995)); *see also In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. 2011) (fact that "settlement was the product of prolonged, arm's-length negotiation, including as facilitated by a respected mediator" established that it was "procedurally fair"). This Settlement, which was negotiated at arm's length with the assistance of an experienced mediator, is procedurally fair and satisfies Fed. R. Civ. P. 23(e)(2)(B).

### C. The Settlement Provides Significant Relief to the Settlement Class, Taking Into Account the Relevant Rule 23(e) and *Grinnell Factors*.

#### 1. The relief provided by the Settlement is significant.

The best indicator of the fairness of the Settlement is the significance of the relief it provides—$1,500,000 in total value for the resolution of this litigation. Under this Settlement, Settlement Class Members can elect to receive out of pocket losses of up to $5,000, credit monitoring services for three years, or they may receive a pro rata cash payment. *See* S.A. § 3.1. These cash payments will equal approximately $20 for each Settlement Class Member. *See* Silva Decl. ¶ 15. By any measure, this is a reasonable recovery in a data breach class action settlement.

The Second Circuit has recognized that "[t]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth of a single percent of the potential recovery." *Grinnell*, 499 F.2d at 455 n.2. Consistent with that principle, courts often approve class settlements even where the benefits represent "only a fraction of the potential recovery." *See, e.g., In re Initial Public Offering Secs. Litig.* ("*In re IPO*"), 671 F. Supp. 2d 467, 483-85 (S.D.N.Y. 2009) (approving settlement that provided 2% of defendants' maximum possible liability and observing "the Second Circuit has held that . . . even a fraction of the potential does

not render a proposed settlement inadequate"); *see also In re Prudential Inc. Secs. Ltd. P'ships Litig.*, MDL No. 1005, M-21-67, 1995 WL 789907 (S.D.N.Y. Nov. 20, 1995) (approving settlement of between 1.6 and 5% of claimed damages); *In re Merrill Lynch Tyco Research Secs. Litig.*, 249 F.R.D. 124, 135 (S.D.N.Y. 2008) (approving settlement of 3% of estimated damages); *Hall v Children's Place Retail Stores, Inc.*, 669 F. Supp. 2d 399, 402 (S.D.N.Y. 2009) (approving settlement of between 5 to 12% of maximum damages). Here, the Settlement comports with Second Circuit authorities and will provide reasonable monetary relief, or security in the form of credit monitoring, without further uncertainty or delay.

**2. The costs, risks, and delay of trial and appeal make the relief provided by the Settlement even more valuable.**

The relief provided by the Settlement is even more significant when considered against the substantial costs, risks, and delays of continued litigation. *See* Fed. R. Civ. P. 23(e)(2)(C)(i); *see also Grinnell*, 495 F.2d at 463 (explaining that courts should consider "the complexity, expense, and likely duration of the litigation"). Under the Settlement, Settlement Class Members will obtain relief that is concrete, guaranteed, and immediate, while the benefits from continued litigation would be delayed at best and of lesser value at worst. Given that the litigation had not progressed past the Rule 12 stage at the time of resolution, continued litigation would likely span years and be costly to the parties, further taxing judicial resources. The substantial risk and delay of continued litigation weighs in favor of approving the Settlement. *See, e.g.*, *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006) ("Class action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation."); *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 155 (S.D.N.Y. 2013) ("[T]he more complex, expensive, and time consuming the future litigation, the more beneficial settlement becomes as a matter of efficiency to the parties and to the Court.").

**3. The Settlement claims process is straightforward and effective.**

Under Fed. R. Civ. P. 23(e)(2)(C)(ii), the Court must review the method by which the Settlement distributes relief to the Settlement Class. A plan for allocating settlement proceeds, like the Settlement itself, should be approved if it is fair, reasonable, and adequate. *See, e.g.*, *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012). "Measuring the proposed relief may require evaluation of any proposed claims process." Advisory Committee note to 2018 amendments.

The Settlement provides relief to the Settlement Class Members through a straightforward claims process designed to be as convenient as possible. Settlement Class Members have received information about the Settlement benefits through the comprehensive, Court-approved Notice Program, as detailed below. To obtain these benefits, Settlement Class Members were required to submit a simple Claim Form, which nearly 20,000 Settlement Class Members completed. *See* Silva Decl. ¶¶ 13-15. Settlement Class Members are not required to provide any additional paperwork unless they are seeking to recoup documented out of pocket losses.

**4. PRL likely could not withstand a greater judgment, which weighs in favor of approval.**

One factor courts may assess under *Grinnell* is the ability of the defendant to withstand a greater judgment. *Grinnell*, 495 F.2d at 463. Here, the data breach, investigation, remediation, and resulting litigation placed severe financial hardship on PRL, jeopardizing its ability to pay a judgment. It certainly could not have withstood a greater judgment while maintaining solvency. Accordingly, this *Grinnell* factor weighs in favor of approval.

**5. The requested attorneys' fees and costs are reasonable and will only be paid after the Effective Date.**

Rule 23(e)(2)(C)(iii) requires evaluation of the terms of any proposed attorneys' fees, including the timing of payment. As set forth in more detail below, Plaintiffs are petitioning the

Court for an award of attorneys' fees equal to one-third of the total Settlement Fund, or $500,000, and litigation costs of $19,253.46. These requests are reasonable and supported by law, evidence, and the results achieved in the case.

**6. There are no side agreements weighing against final approval.**

Rule 23(e)(2)(C)(iv) requires the Court to consider any side agreements that must be disclosed under Rule 23(e)(3). Here, there are no side agreements among the parties.

**D. The Settlement Treats Class Members Equitably Relative to Each Other.**

The Court must also consider whether the Settlement treats Settlement Class Members equitably relative to one another. Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement treats all Settlement Class Members equitably, offering every member of the Class the option of the same Settlement benefits: repayment for documented losses, credit monitoring for three years, or a pro rata cash payment. Because all Settlement Class Members are treated the same relative to one another, Rule 23(e)(2)(D) favors approval.

**E. The Overwhelmingly Positive Reaction of the Settlement Class Supports Final Approval.**

"It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002). Here, "[t]he fact that the vast majority of class members neither objected nor opted out is a strong indication that the proposed settlement is fair, reasonable, and adequate." *Wright v. Stern*, 553 F. Supp. 2d 337, 345 (S.D.N.Y. 2008). In fact, no objections have been filed and there are only thirteen opt out requests (out of nearly a million class members), which indicates the Settlement was supported by those Settlement Class Members who reviewed it. That only a handful of Settlement Class Members have elected to opt out provides strong evidence of the Settlement's fairness. *See, e.g., Romero v. La Revise Assocs.*, 58 F. Supp. 3d 411,

420 (S.D.N.Y. 2014) (approving settlement with 1.2% opt out rate); *Ferrick v. Spotify USA Inc.*, 2018 WL 2324076, at *4 (S.D.N.Y. May 22, 2018) (approving settlement where court received 1224 opt outs out of 535,380 notices mailed, and observing that "[d]espite the exclusions and objections . . . the vast majority of class members did not object to the settlement or opt out of it, which indicates that the settlement is fair"); *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (reaction of the class overwhelmingly supported settlement approval where 2.5 million notices generated 134 exclusion requests).

Moreover, no Settlement Class Members have filed an objection. This is yet more evidence of the Settlement Class Members' overwhelmingly positive reaction to the Settlement and weighs heavily in favor of approval. *See In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (11 objections out of 1.8 million mailed notices reflected "overwhelmingly positive reaction of the class . . . weigh[ing] heavily in favor of approval of the Settlement"). In sum, the positive reaction of the Settlement Class Members, including the minimal number of opt-out requests and complete lack of objections "weighs strongly in favor of" final approval. *In re Bear Stearns Cos. Inc. Secs., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 266-67 (S.D.N.Y. 2012) (holding that 5.1% exclusion rate and less than 1% objection rate "weighs strongly in favor of final approval"); *see also Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 239 (E.D.N.Y. 2010) ("[s]uch a small number of class members seeking exclusion or objecting [24 objections and 127 opt-outs out of 11,800,514 class members] indicates an overwhelmingly positive reaction of the class").

The Settlement was negotiated at arm's length by Class Counsel and Plaintiffs who fulfilled their responsibilities under Rule 23. The Agreement provides substantial benefits to Settlement Class Members while avoiding risky, uncertain, and expensive continuing litigation that had the

possibility of consuming PRL's assets without delivering relief to the Class. The Settlement Agreement is fair, reasonable, and adequate, thus satisfying the requirements of Rule 23(e)(2). Moreover, the Settlement is overwhelmingly supported by the Settlement Class Members, drawing not a single objection and minimal opt-out requests. Plaintiffs respectfully request that the Court grant final approval to the Settlement.

## II. The Court-Approved Notice Program Was the Best Practicable Notice.

"The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." *Wal-Mart Stores*, 396 F.3d at 113 (citations omitted). Here, the Court-appointed Claims Administrator, KCC, carefully reviewed the list of potentially affected individuals received from PRL to develop a refined list of unique individuals to provide with Notice. *See* Silva Decl. ¶¶ 5-6. The Claims Administrator then mailed postcard notice to 566,264 of those individuals and provided a notice packet via email to the remaining names on the list. *Id.* ¶ 7. According to the Claims Administrator, 80.63% of Settlement Class Members received the Notice, which falls within the range identified as reasonable by the Federal Judicial Center. *Id.* ¶ 9. Simply put, the Notice Program is reasonable and satisfies the requirements of due process and Rule 23.

## III. The Court Should Grant Final Approval to the Settlement Class.

In its Preliminary Approval Order, the Court conditionally certified the Settlement Class for purposes of settlement pursuant to Federal Rule 23(a) and 23(b)(3). Order ¶ 4, ECF No. 66. Since the Preliminary Approval Order issued, nothing has changed to call the Court's conclusion into question. For the reasons discussed in Plaintiffs' Preliminary Approval Memorandum, and further addressed herein, Plaintiffs respectfully submit that the Settlement Class satisfies all of the

elements of Rule 23(a) and Rule 23(b)(3). *See Bear Stearns*, 909 F. Supp. 2d at 264 (adopting the certification analysis at the preliminary approval stage and granting final class certification).

## IV. The Proposed Award for Attorneys' Fees is Reasonable.

Plaintiffs seeks the Court's approval of the Settlement as it pertains to the payment of attorneys' fees and expenses of $500,000 (one-third of the Settlement Fund) and $19,253.46 respectively for Plaintiffs' Counsel in their role as Class Counsel. These proposed fees and expenses will be deducted from the Settlement Fund.

There are two primary methods of calculating attorneys' fees: (i) the "percentage of the fund" and (ii) the "lodestar" method. *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 723 (2d Cir. 2023). In a class action, a district court has the discretion to choose either the lodestar or percentage-of-fund method. *Id*. However, there is a preference toward the percentage of the fund method, recognized by the Second Circuit, in cases—such as this one—where a common fund exists. *See, e.g., Baker v. Saint-Gobain Performance Plastics Corp.*, 2022 WL 1025185, at *7 (N.D.N.Y. Feb. 4, 2022). The percentage of the fund method is generally favored because it has the "advantage of aligning the interests of plaintiffs and their attorneys more fully by allowing the latter to share in both the upside and downside risk of litigation." *McDaniel v. County of Schenectady*, 595 F.3d 411, 419 (2d Cir. 2010).

Irrespective of which method is used, the following *Goldberger* factors are used to determine the reasonableness of a common fund fee: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. *Goldberger*, 209 F.3d at 50; s*ee also Kommer v. Ford Motor Co.*, 2020 WL

7356715, at *6 (N.D.N.Y. Dec. 15, 2020). As explained below, the *Goldberger* factors support approval of Class Counsel's fee application.

**1. Class Counsel Expended Significant Time and Labor.**

Since Class Counsel began its investigation and evaluation of Plaintiffs' claims related to the Data Breach and filed their Complaint in August 2022, Class Counsel has expended significant effort to achieve the $1,500,000.00 Settlement with Defendant for the benefit of approximately 940,000 potential Class Members. This Settlement was only reached after the filing of an amended complaint and briefing on PRL's motion to dismiss. While the motion to dismiss was pending, Class Counsel engaged in meet and confer efforts and exchanged materials with defense counsel to foster fruitful mediation. Toward this end, the Parties engaged in a full-day mediation session mediated by the Hon. Wayne Anderson. After the mediation did not resolve the case, the Parties continued to exchange information in the following weeks, until a resolution was achieved.

Moreover, Class Counsel is not finished working on this case as they must still prepare for and appear at the final approval hearing scheduled for June 11, 2025. *See* ECF No. 69. And Class Counsel will continue to engage in efforts on behalf of Class Members after the filing of this motion and while the settlement administration process continues. Courts have recognized that Class Counsel's fees are not based solely on time and effort already expended, but also on time that will be expended administering the settlement into the future. *See, e.g., Mendez v. MCSS Rest. Corp.*, 2022 WL 3704591, at *10 (E.D.N.Y. Aug. 26, 2022) ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward also supports their fee request.") (cleaned up).

Finally, Class Counsel has expended approximately 487.24 hours litigating this Action. *See* Counsel Decl. of David S. Almeida (dedicating 181.44 hours litigating this Action); Counsel Decl. of James Bilsborrow (spending 61.4 hours litigating this Action); Counsel Decl. of Nicholas Migliaccio (dedicating 244.4 hours litigating this Action). Class Counsel calculated these hours using time records maintained by the attorneys that participated in this Action. As such, the first *Goldberger* factor supports the reasonableness of Class Counsel's attorneys' fee request.

**2. The Magnitude and Complexity of the Action.**

The Settlement will bring final resolution to the claims of approximately 940,000 Class Members affected by the Data Breach. Under the second *Goldberger* factor, the size and difficulty of the issues in a case are significant factors to be considered in assessing a fee award. *See* 209 F.3d at 50. Here, the substantial size of the class and the complexity of the factual and legal questions involved further support the reasonableness of the fee award. *See, e.g.*, *In re Canon U.S.A. Data Breach Litig.*, 2024 WL 3650611, at *8 (E.D.N.Y. Aug. 5, 2024) (finding data breach case "speaks to a complex, rather than straightforward, class action litigation with difficult issues"); *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, 2022 WL 2063864, at *19 (S.D.N.Y. June 8, 2022) ("The magnitude and complexity of this case are reflected in the volume of affected payment cards and the technical details of how malware breached the retailers point-of-payment system and payment-card data made its way to the so-called 'dark web.'"). Notably, the Parties heavily contested a motion to dismiss and related issues leading up to and following meditation. Thus, this Action presented multiple complex issues and accordingly, the second *Goldberger* factor supports the reasonableness of Class Counsel's attorneys' fee request.

**3. The Risks of Litigation Support an Award of Attorney's Fees.**

Class Counsel litigated this case on a contingent basis in the face of tremendous risk. The risk of litigation is "perhaps the foremost factor to be considered in determining the award of

appropriate attorneys' fees." *Bitzko v. Weltman, Weinberg & Reis Co., LPA*, 2021 WL 3514663, at *8 (N.D.N.Y. Aug. 10, 2021) (quoting *Goldberger*, 209 F.3d at 54 (cleaned up)). The uncertainty that an ultimate recovery will be obtained is highly relevant in determining the reasonableness of an award. *See, e.g., Marroquin Alas v. Champlain Valley Specialty of New York, Inc.*, 2016 WL 3406111, at *8 (N.D.N.Y. June 17, 2016).

As already discussed, large-scale data breach cases are complicated and time-consuming. Ultimately, Plaintiffs would have faced a series of risks in pursuing this Action through a jury verdict and judgment.

Additionally, Class Counsel prosecuted this Action without assurance of payment. Any lawyer undertaking representation of large numbers of affected individuals must be prepared to invest time, energy, and resources—as Class Counsel has done. Courts consider that due to the contingent nature of the customary fee arrangement, lawyers make this investment with the possibility of an unsuccessful outcome. *See, e.g., In re BioScrip, Inc. Sec. Litig*., 273 F. Supp. 3d 474, 501 (S.D.N.Y 2017) (noting that the contingency risk analysis "weigh[ed] in favor of a large award" where lead counsel "worked for two years without compensation on a contingency fee basis"). Class Counsel stood to gain nothing if the Action was unsuccessful, despite having advanced significant costs and expenses. To date, Class Counsel has not received any compensation in this Action. As such, Class Counsel should be awarded attorneys' fees that recognize the risk associated with their representation of data breach victims in this Action.

**4. Class Counsel Provided High Quality Representation to the Settlement Class.**

Class Counsel efficiently and competently represented Plaintiffs and Class Members in this Action. "To determine the quality of the representation, courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Marroquin Alas*, 2016 WL 3406111, at *8 (cleaned up). The determination of whether a settlement amount is

reasonable "does not involve the use of a mathematical equation yielding a particularized sum." *Story v. SEFCU*, 2021 WL 736962, at *9 (N.D.N.Y. Feb. 25, 2021) (cleaned up). Instead, "there is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id*.

Here, the Settlement amount of $1,500,000.00 represents a good value to Class Members given the attendant risks of litigation and is commensurate with PRL's ability to pay. Moreover, Class Counsel are experienced in data breach and class action litigation. Class Counsel also exercised due diligence prior to filing the lawsuit and has actively litigated the Action since its inception. In this case, Class Members received high quality representation, and as such, this factor supports the requested fee award. *See, e.g.*, *Bitzko*, 2021 WL 3514663, at *8 (collecting cases finding that the "quality of the result achieved" supports a fee request).

**5. The Requested Fee in Relation to the Settlement Benefits Favors Granting the Requested Fee Award.**

In addition to considering the recovery obtained for purposes of determining the quality of representation, courts consider the requested fee in relation to the settlement amount. Class Counsel's requested fee of $500,000, or one-third of the Settlement Fund in this case, is commensurate with other settlements in this circuit. *See, e.g.*, *Nichols v. Noom, Inc.*, 2022 WL 2705354, at *10 (S.D.N.Y. July 12, 2022) (collecting cases); *Hill v. Cnty. of Montgomery*, 2021 WL 2227796, at *9 (N.D.N.Y. June 2, 2021) (same). Further analysis of Class Counsel's expended resources and labor demonstrates that the requested attorneys' fees are not a windfall. Thus, the fifth *Goldberger* factor supports Class Counsel's attorneys' fee request.

**6. Public Policy Weighs in Favor of Granting the Requested Fee Award.**

Public policy considerations weigh in favor of granting Class Counsel's requested fees. "The public benefits when attorneys undertake a complex commercial case that implicates consumer protections and data privacy." *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, 2022 WL 2063864, at *21. Notably, "the litigation and settlement of plaintiffs' claims incentivizes retailers to take stronger data-protection measures." *Id.*

Here, the fees that Class Counsel seek are reflective of their hard work and time in this Action. PRL has also adopted measures to enhance its data security. *See* S.A. §§ 2.1-2.2. These changes will benefit Class Members whose Private Information remains in PRL's possession as they will provide enhanced protection of the Class's Private Information from unauthorized access. *See Story*, 2021 WL 736962, at *13 (considering policy changes in granting fee award). The requested fees should be awarded to ensure that attorneys who represent individuals who would not otherwise be in a position to obtain any recovery are justly compensated. Accordingly, public policy considerations support the approval of Class Counsel's requested fee.

**7. Class Counsel's Fee Request is Reasonable Under a Lodestar Cross-Check.**

Courts also confirm the reasonableness of a percentage of the recovery awarded by cross-checking it with Class Counsel's lodestar. *Goldberger*, 209 F.3d at 50 ("[T]he lodestar remains useful as a baseline ... we encourage the practice of requiring documentation of hours as a 'cross check' on the reasonableness of the requested percentage.") The lodestar analysis is performed by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. In assessing the reasonableness of attorneys' hourly rates, courts typically consider the prevailing local market rates for similar services by lawyers of reasonably comparable skill, experience and reputation. *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998).

The geographic areas in which Class Counsel practices are taken into account in determining reasonable hourly billing rates where, as here, the case benefited from expertise outside of this judicial district. *See, e.g.*, *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, 522 F.3d 182, 191 (2d Cir. 2007) ("[A] district court may use an out-of-district rate…if it is clear that a reasonable, paying client would have paid those higher rates"); *Pope v. Cnty. of Albany*, 2015 WL 5510944, at *6 (N.D.N.Y. Sept. 16, 2015) (holding "courts should be mindful of the practice area of the underlying litigation and take this into account when determining a reasonable hourly rate").

As detailed herein, this case presented complex legal and factual issues, and for this reason, Class Counsel in New York and Washington, D.C. were retained who have extensive expertise in data privacy and class action litigation. For Washington, D.C. Class Counsel, the Court should credit the rates consistent with the Legal Services Index-Updated Laffey Matrix for lodestar for purposes of the cross-check. *See, e.g.*, *Hernandez v. Chipotle Mexican Grill, Inc*., 257 F. Supp. 3d 100, 116 (D.D.C. 2017) ("LSI Laffey Matrix properly reflects a reasonable, and conservative, estimate of the prevailing market rates, for complex federal litigation in the Washington, D.C. area.") (collecting authority).

Here Class Counsel have expended approximately 487.24 hours on this Action. Class Counsel's current time does not include the time Class Counsel will spend preparing for and attending the final approval hearing, nor does it include the time that Class Counsel will spend on behalf of Class Members after the filing of this motion and while the Settlement administration process continues. *See, e.g.*, *Parker v. Jekyll & Hyde Ent. Holdings, L.L.C.*, 2010 WL 532960, at *2 (S.D.N.Y. Feb. 9, 2010) ("[A]s class counsel is likely to expend significant effort in the future

implementing the complex procedure agreed upon for collecting and distributing the settlement funds, the multiplier will diminish over time.").

Notably, Class Counsel's hours worked on this Action amounts to a total lodestar of $326,521.90 of their $500,000 fee request. *See* Exs. 2-5 (demonstrating lodestar totals for Class Counsel). Consequently, Class Counsel's fee request represents a multiplier of approximately 1.5. This falls comfortably within the range of multipliers approved by courts in this district. *See, e.g.*, *Pickard v. OnSite Facility Servs., LLC*, 2023 WL 7019256, at *11 (N.D.N.Y. Oct. 25, 2023) (collecting cases where courts awarded lodestar multipliers between two and six); *Edwards v. Mid-Hudson Valley Fed. Credit Union*, 2023 WL 5806409, at *13 (N.D.N.Y. Sept. 7, 2023) (same). Accordingly, the lodestar cross-check further supports the requested fee award.

## V. Class Counsel's Request for Costs and Expenses Should be Approved.

Class Counsel requests reimbursement of expenses in the amount of $19,253.46 to cover costs associated with, among other things, filing, service, and mediation-related fees. "Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses." *Baker v. Saint-Gobain Performance Plastics Corp.*, 2022 WL 1025185, at *9 (N.D.N.Y. Feb. 4, 2022) (cleaned up & collecting cases). Class Counsel's costs and expenses are reasonable given the scope of this litigation to date, are documented on the books of Class Counsel, and are reasonable in relation to the Settlement Fund.

This Action was undertaken on a wholly contingent basis and from the outset, and Class Counsel understood that it was embarking on a complex, lengthy, and potentially expensive litigation with no guarantee of compensation. In determining to pursue this Action, Class Counsel was obliged to ensure that sufficient resources were dedicated to the prosecution of this litigation and that funds were available to advance out-of-pocket costs. Class Counsel did in fact advance

these costs despite the fact that there was no assurance that the Class would recover against PRL. The costs and expenses advanced by Class Counsel, which have benefited all Class Members, are of the type normally incurred in a complex litigation such as this one, and which are routinely approved by courts in this Circuit. *See, e.g.*, *Baker*, 2022 WL 1025185, at *9 (approving costs including "expert witness expenses, costs associated with document production and storage, deposition expenses, travel in connection with litigation, and expenses related to procuring the services of a well-qualified mediator").

Plaintiffs' Counsel has also negotiated with an independent and experienced third-party claims administrator, KCC (n/k/a Verita), to administer the Settlement and related tax and accounting issues for a total cap of administration costs at $506,000. *See* Silva Decl. ¶ 18. Ultimately, Class Counsel's request for costs and expenses is reasonable and should be approved by the Court.

## VI. Plaintiffs' Requested Service Awards should be Approved.

Plaintiffs request Service Awards of Two Thousand Five Hundred Dollars ($2,500) per Class Representative. "Courts regularly grant requests for service awards in class actions to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs." *Ashe v. Arrow Fin. Corp.*, 2025 WL 487427, at *11 (N.D.N.Y. Feb. 13, 2025) (cleaned up & collecting cases).

The Class Representatives stepped forward to place their names on the complaints and provided support to this litigation and valuable information about their experiences. Plaintiffs substantially aided Class Counsel in preparing the case by making themselves available as needed and reviewing court filings. The proposed Service Awards here are in line with others for similar

cases within the Circuit. *See, e.g.*, *Ashe*, 2025 WL 487427, at *11 (granting $2,000 service award); *Robbins v. Premier Senior Living, LLC*, 2024 WL 4308696, at *3 (N.D.N.Y. Apr. 12, 2024) (granting $5,000 service award); *Story*, 2021 WL 736962, at *11 (approving $15,000 service award for each of the named plaintiffs). For their past and continuing dedication to the Settlement Class, Class Counsel respectfully requests that the Service Awards be approved for the Named Plaintiffs James Stewart, Susan Stewart, John Bachura, Brenda Sparks, and Steven N. Esce.

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the proposed Settlement as fair, reasonable, and adequate and approve the service awards, fees, and expenses sought herein.

Dated: May 28, 2025

*/s/ James Bilsborrow*
James Bilsborrow (NY Bar # 519903)
**WEITZ & LUXENBERG, P.C.**
700 Broadway
New York, NY 10003
(212) 558-5500
jbilsborrow@weitzlux.com

*/s/ David S. Almeida*
David S. Almeida (NY Bar # 3056520)
**ALMEIDA LAW GROUP LLC**
849 W. Webster Avenue
Chicago, IL 60614
(312) 576-3024
david@almeidalawgroup.com

*/s/ Nicholas A. Migliaccio*
Nicholas A. Migliaccio* (NY Bar # 4035838)
Jason S. Rathod (pro hac vice)
**MIGLIACCIO & RATHOD LLP**
412 H St. NE, Suite 302,
Washington, D.C. 20002
(202) 470-3520
nmigliaccio@classlawdc.com

*Permanently admitted in N.D.N.Y.
(Bar Roll Number: 519012)

*Settlement Class Counsel*