

**IN THE FORTY-FIFTH DISTRICT OF PENNSYLVANIA  
LACKAWANNA COUNTY COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

YVONNE AYALA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

COMMONWEALTH HEALTH  
PHYSICIAN NETWORK, et. al,

Defendants.

COURT OF COMMON PLEAS  
LACKAWANNA COUNTY, PA

No. 2023-cv-3008

**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND CERTIFICATION OF THE SETTLEMENT CLASS**

MAURIE B. KELLY  
LACKAWANNA COUNTY  
2024 APR 22 P 2:28  
CLERK OF JUDICIAL  
RECORDS CIVIL DIVISION

Pursuant to Rules 1702, 1708, 1709, 1710, 1712, and 1714 of the Pennsylvania Rules of Civil Procedure, Plaintiff Yvonne Ayala, and the Class she seeks to represent, by and through her counsel of record, respectfully request the Court:

1. Preliminarily approve the Settlement;
2. Certify, for settlement purposes, the proposed Settlement Class,
3. Appoint Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello and as the Class Representatives, and Francesca K. Burne and Jean S. Martin from Morgan & Morgan Complex Litigation Group as Class Counsel;
4. Approve the Notice Plan set forth in the Agreement and approve the form and content of the claim form and notices, attached to the Agreement as Exhibits A, C, and D ;
5. Appoint Postlethwaite & Netterville, APAC as the Settlement Administrator; and
8. Schedule a fairness hearing on Final Approval to occur no sooner than one hundred and twenty (120) days after the date of the Preliminary Approval is entered.

Plaintiff moves this Court for the entry of an Order of Preliminary Approval. A proposed Preliminary Approval Order has been filed herewith.

Respectfully submitted, This 22nd day of April, 2024.

BY:  
*s/ Francesca Kester*  
Francesca Kester, Pa Bar No. 324523  
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**IN THE FORTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA  
LACKAWANNA COUNTY COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

YVONNE AYALA, individually and on  
behalf of all others similarly situated,

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COMMONWEALTH HEALTH  
PHYSICIAN NETWORK, et. al,

Defendants.

COURT OF COMMON PLEAS  
LACKAWANNA COUNTY, PA

NO. XXX

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT AND  
CERTIFICATION OF THE SETTLEMENT CLASS**

MAURIE B. KELLY  
LACKAWANNA COUNTY  
2024 APR 22 P 2:28  
CLEAR OF OFFICIAL  
RECORDS CIVIL DIVISION

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Pursuant to Rules 1702, 1708, 1709, 1710, 1712, and 1714 of the Pennsylvania Rules of Civil Procedure, Plaintiff Yvonne Ayala respectfully submits this Memorandum of Law in support of her Unopposed Motion for Preliminary Approval of the Class Action Settlement, and for Certification of the Settlement Class.

## **I. INTRODUCTION**

Plaintiff respectfully moves for Preliminary Approval of the Settlement set forth in the Settlement Agreement (“Settlement” or “Agreement,” attached as **Exhibit 1**), which resolves Plaintiff’s and the Class’s claims against Commonwealth Health Physician Network – d/b/a Great Valley Cardiology—and Scranton Cardiovascular Physician Services, LLC (together “GVC” or “Defendants”) in the above-captioned action. The Settlement provides substantial relief to the Settlement Class by way of a common fund of \$2,000,000.00, which will provide the Settlement Class with monetary benefits and credit monitoring and insurance services (“CMIS”) to those who make claims. The monetary component of the Settlement provides payment to compensate Settlement Class Members for documented losses, but also allows Settlement Class Members to receive an alternate pro rata settlement payment in cash. Importantly, the proposed Settlement also provides injunctive relief in the form of security commitments from GVC. The terms of the Settlement are well within the range of reasonableness, consistent with applicable statutes and case law.<sup>1</sup>

In addition to approving the Settlement, Plaintiff respectfully requests the Court approve the Settlement’s Notice Plan and the form and content of the claim form and notices, appoint the Settlement Administrator, certify a Settlement Class, and schedule a Final Approval Hearing.

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<sup>1</sup> All capitalized terms used herein have the meaning assigned in the Settlement Agreement attached hereto as **Exhibit 1**.

### **A. Factual Background.**

Plaintiff alleges on or about June 12, 2023, GVC announced a breach of its information systems containing patient data that occurred between February 2, 2023, and April 14, 2023 (the “Data Breach”). Compl. ¶ 3. According to GVC’s submission to the U.S. Secretary of Health and Human Services at the Office for Civil Rights (“OCR”), the Data Breach compromised the personally identifiable information (“PII”) and protected health information (“PHI”) of more than 181,000 individuals. *Id.* The compromised information included patient names, addresses, demographic information such as dates of birth, Social Security numbers, drivers’ license numbers, passport numbers, credit card and debit card information, bank account information, health insurance information and health insurance claims information, dates of service, diagnoses, medications, lab results, and other treatment information. *Id.* at ¶ 1.

Plaintiff filed her lawsuit against GVC on July 17, 2023, alleging claims for negligence, negligence per se, breach of implied contract, and breach of fiduciary duty, contending that GVC failed to properly secure its computer systems, resulting in an unauthorized third-party gaining access to PII and PHI belonging to Plaintiff and Settlement Class Members. Several other lawsuits were filed around the same time period, both in this court and U.S. District Court for the Middle District of Pennsylvania. With the exception of this Action, all other actions were removed to U.S. District Court for the Middle District of Pennsylvania. *See Boccadori v. Scranton Cardiovascular Physician Services*, Case No. 3:23-cv-01008; *Jarrow v. Commonwealth Health Physician Network*, Case No. 3:23-cv-01237; *Counterman v. Scranton Cardiovascular Physician Services*, Case No. 3:23-cv-01015; *Schulte v. Scranton Cardiovascular Physician Services*, Case No. 3:23-cv-01050; *Maziarz v. Commonwealth Health Physician Network*, Case No. 3:23-cv-01279; *Ferguson v. Scranton Cardiovascular Physician Services*, Case No. 3:2023-cv-01112; and, *Barth v. Scranton Cardiovascular Physician Services*, Case No. 3:23-cv-0117 (together the “Related Action”). The Related Actions are all being voluntarily dismissed.



Defendants deny any wrongdoing and maintain their practices comply with applicable laws and industry standards.

### **B. Settlement.**

Recognizing the risks and expense of continued litigation, the Parties began discussing the possibility of early resolution. The Settlement before the Court is the product of substantial arm's length negotiations occurring over several months' time. In particular, the Parties engaged in informal discovery and informal and formal settlement discussions, which began in approximately September 2023.<sup>2</sup> During these negotiations, the Parties engaged in pre-mediation discovery to fully evaluate the merits and challenges to their case.<sup>3</sup> The Parties participated in mediation on November 6, 2023, with the Honorable Thomas M. Blewitt (Ret.). Judge Blewitt, having served as a federal Magistrate Judge in the Middle District of Pennsylvania for twenty-three (23) years, and he now works as a neutral for the Judicial Arbitration and Mediation Services ("JAMS"). The mediation assisted the Parties in resolving their outstanding differences and resulted in an agreement to settle this matter in principle. Since that time, the Parties have diligently negotiated a formal settlement agreement, according to which the Settlement Administrator will calculate each eligible Settlement Class Member's monetary award from the Settlement based on which claim categories the individual selects, and the supporting documentation, where applicable, is provided.<sup>4</sup>

In addition, as part of the settlement, and equally as important as the monetary benefits offered to the Class, GVC has entered into certain business commitments that will provide greater safeguards to the Class Members' PHI and PII which is still in its possession. GVC has been and will be taking negotiated and agreed upon steps on an ongoing basis to improve their cyber security

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<sup>2</sup> See **Exhibit 2**, Declaration of Jean S. Martin ("Martin Decl.") ¶ 16.

<sup>3</sup> *Id.* at ¶ 17.

<sup>4</sup> *Id.* at ¶¶ 20-21.

training, testing, and monitoring protocols and increasing the safety and security of the confidential information entrusted to it by the Plaintiff and the Class.

## **II. SUMMARY OF THE SETTLEMENT TERMS.**

The Settlement's terms are detailed in the Agreement attached hereto as **Exhibit 1**. The following is a summary of the material terms of the Settlement.

### **A. The Settlement Class.**

The Settlement Class is defined as:

All natural persons whose Personal Information was potentially compromised in the Data Breach and who were sent the Notice of Data Privacy Incident on or around June 2023.

Agreement ¶ 1.44. The Settlement Class excludes:

(1) the Judges presiding over the Action and members of their immediate families and their staff; (2) GVC, its subsidiaries, parent companies, successors, predecessors, and any entity in which GVC or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

*Id.*

### **B. Monetary Relief for the Benefit of the Class.**

Under the Agreement, GVC will establish a Settlement Fund of \$2,000,000.00. The Settlement Fund will be used to pay Approved Claims, Administrative Expenses, and any Fee Award and Costs, and Service Awards approved by the Court. Each Class Member may submit a claim for payment for either:

*Documented Loss Payment:* Class Members may submit a claim for a Settlement Payment of up to \$5,000 (Five Thousand Dollars) for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Class Member must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss made under penalty of perjury; and (iii) Reasonable Documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement. If a Class Member does not submit

Reasonable Documentation supporting a Documented Loss Payment claim, or if a Class Member's claim for a Documented Loss Payment is rejected by the Settlement Administrator for any reason, and the Class Member fails to cure his or her claim, the claim will be rejected and the Class Member's claim will instead be automatically placed into the Cash Fund Payment category below. As part of a Documented Loss Payment Claim, Class Members may submit for reimbursement for time spent remedying issues related to the Data Breach for up to six (6) total hours at a rate of \$25 ("Lost-Time Claims"). No documentation need be submitted in connection with Lost-Time Claims, but Settlement Class Members must attest that the time claimed was actually spent as a result of the Data Breach; or

*Cash Fund Payment:* In the alternative to the Documented Loss Payment, Class Members may submit a claim to receive a *pro rata* Settlement Payment in cash ("Cash Fund Payment"). The amount of the Cash Fund Payment will be calculated in accordance with Section 3.7 of the Settlement Agreement.

In addition to submitting a claim for either a Documented Loss Payment or a Cash Fund Payment, Class Members may elect to claim three years of CMIS to be provided by a vendor agreed upon by the parties. The CMIS benefit will provide at a minimum three credit bureau monitoring services and \$1 million in identity theft insurance. This benefit will be available to Class Members irrespective of whether they took advantage of any previous offering of credit monitoring from GVC.

### **C. Non-Monetary Relief.**

A further important benefit to the class and the Settlement Class Members are the business changes Defendants have made and is committed to continue making as part of the Settlement. The business changes involve information security enhancements, annual penetration testing, 24/7 SOC monitoring, annual security risk assessments, multi-factor authentication for employee email accounts, and updated policies and procedures designed to protect PII and PHI. Agreement ¶ 2.1. These information security enhancements are extremely beneficial to Settlement Class Members because these enhancements provide additional security to Plaintiff's and Settlement Class

Members' PII and PHI in Defendants' possession, and reduce the likelihood of future data breaches.<sup>5</sup>

**D. Class Release.**

In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt-out will be deemed to have released Defendants from claims relating to the subject matter of the Action. The detailed release language is narrowly tailored to release only claims on behalf of Settlement Class Members that were or could have been asserted in this action, and applies to claims only arising out of this Data Breach, the security of Settlement Class Members' PII and PHI, and the provision of notice relating to the Data Breach. The detailed release language can be found at Paragraphs 4.1 through 4.3 of the Agreement.

**E. The Notice Plan.**

The Notice Plan is designed to provide the best notice practicable based on the information Defendants have about the Settlement Class Members, and it is reasonably calculated to apprise the Settlement Class Members of the terms of the Settlement, how to file claims, their rights to opt-out of or object to the Settlement, Class Counsel's anticipated fee application, and the anticipated request for Service Awards for the Class Representatives. *See* Agreement ¶¶ 6.1-6.3.

The Notice Program is comprised of two parts: (1) Direct Notice to all identifiable Settlement Class Members (the "Summary Notice"); and (2) a customary Long Form Notice with more detail than the Summary Notice, which will be available on the Settlement Website. Agreement ¶ 6.3.

All forms of Notice to the Settlement Class will include, among other information, a description of the material terms of the Settlement; a procedure and date by which Settlement Class Members may submit Claim Forms; a procedure and date by which Settlement Class Members

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<sup>5</sup> Martin Decl. ¶ 33.

may exclude themselves from or “opt-out” of the Settlement Class; a procedure and date by which Settlement Class members may object to the Settlement; the date of the Final Approval Hearing; and the address of the Settlement Website where Settlement Class Members may access the Settlement Agreement and other case related documents and information. *See* Exs. C and D to the Settlement Agreement.

**1. The Mailed Notice Program.**

The Settlement Administrator will administer the Notice Plan. Within five (5) days from the date the preliminary approval order is entered, Defendants will provide the names, email addresses, last known addresses, and telephone numbers of persons within the Settlement Class to the Settlement Administrator. Agreement ¶ 6.4. Within thirty-five (35) days from the date the preliminary approval order is entered, the Settlement Administrator shall mail the Summary Notice to the postal addresses provided to Defendants when the Settlement Class Members conducted transactions with Defendants, or other reasonable alternative means. Agreement ¶ 1.27. The Settlement Administrator will prepare an affidavit confirming that the Notice Program was completed, and Class Counsel will file the affidavit with the Court in conjunction with Plaintiff’s Motion for Final Approval of the Settlement.

**2. The Settlement Website and Long Form Notice.**

The Settlement Administrator will establish a Settlement Website, as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. Agreement ¶ 6.7. The Settlement Website will be established prior to dissemination of the Summary Notice and prior to the Notice Date. A toll-free help line shall also be made available to provide Settlement Class Members with additional information about the settlement. *Id.* The Settlement Website will include hyperlinks to the Complaint, Settlement Agreement, Summary Notice, Long-Form Notice, Claim Form, Preliminary Approval Order, Class Counsel’s anticipated motion for attorneys’ fees and costs, and other important case documents. *Id.*

#### **F. Settlement Administration.**

The proposed Settlement Administrator is Postlethwaite & Netterville, APAC (“P&N”) one of the leading class action settlement administrators in the United States. A declaration summarizing P&N’s experience in this area is attached as **Exhibit 3**, Declaration of Brandon Schwartz Regarding Proposed Notice Program and Administration. P&N’s responsibilities include, among other things, the following: (1) assisting in the preparation of the Summary and Long Form Notices; (2) sending the mailed Summary Notice; (3) establishing and maintaining the Settlement Website and the toll-free telephone line for Settlement Class Member inquiries; (4) receiving and processing Claim Forms; (5) receiving and processing inquiries and requests for exclusion and objections from Settlement Class Members; and (6) mailing settlement payment checks or processing electronic payments. All fees and expenses related to Settlement Administration shall be paid by Defendants. Agreement ¶ 3.14.

#### **G. Class Representative Service Awards.**

Class Counsel will seek Service Award payments for Class Representatives in the amount of \$1,500 each to Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabell., subject to Court approval. *Id.* ¶ 8.1. Such awards are meant to compensate Class Representatives for their work in this Litigation and effort on behalf of the Class. The Settlement Agreement is not contingent upon the Court awarding the Service Awards, and the Parties negotiated the Service Award agreement only after reaching agreement on all other material terms of the Settlement. Martin Decl. ¶ 39.

#### **H. Attorneys’ Fees and Costs.**

Defendants have agreed to pay Class Counsel attorneys’ fees of up to one-third of the Settlement Fund and, separately, reasonably incurred costs and expenses subject to court approval. *Id.* ¶ 9.1. The Settlement Agreement is not contingent upon the Court awarding the requested

attorneys' fees and litigation costs and expenses; and the Parties negotiated the agreement regarding Class Counsel's fees and costs only after reaching agreement on all other material terms of the Settlement. Martin Decl. ¶ 40.

### III. ARGUMENT

#### A. Preliminary Approval Should Be Granted.

##### 1. The Legal Standard for Preliminary Approval.

Rule 1714 of the Pennsylvania Rules of Civil Procedure requires judicial approval after a hearing for the compromise of claims brought on a class basis.<sup>6</sup> The Court's decision to approve or disapprove a class settlement is discretionary. *Buchanan v. Century Fed. Sav. & Loan Ass'n*, 393 A.2d 704, 709 (Pa. Super. Ct. 1978) (citing *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799 (3d Cir. 1974)). In exercising their discretion, courts are mindful of the public policy principle that "settlements are favored in class action lawsuits." *Dauphin Deposit Bank & Trust Co. v. Hess*, 727 A.2d 1076, 1078 (Pa. 1999). Class settlements conserve "substantial judicial resources . . . by avoiding formal litigation." *Krangel v. Golden Rule Res., Inc.*, 194 F.R.D. 501, 504 (E.D. Pa. 2000) (quoting *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)). And "because of the uncertainties of outcome, difficulties of proof, and length of litigation, class action suits lend themselves readily to compromise." *Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C. 4th 502, 514 (Pa. Com. Pl. 2002) (quoting Herbert B. Newberg and Alba Conte, *Newberg on Class Actions* § 11.41 (3d ed. 1992)).

Before granting preliminary approval of a proposed class action settlement, the Court must determine whether the settlement is "within the range of possible approval." *Brophy v. Phila. Gas Works*, 921 A.2d 80, 88 (Pa. Commw. Ct. 2007). Settlement negotiations involving arm's length,

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<sup>6</sup> Pennsylvania courts regularly cite to federal case law in determining whether to approve a class action settlement. See, e.g., *Buchanan v. Century Fed. Sav. & Loan Ass'n*, 393 A.2d 704, 709 n.13 (Pa. Super. Ct. 1978). Plaintiff likewise cites federal precedent in this Motion.

informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. See MANUAL FOR COMPLEX LITIGATION (Third) § 30.42 at 240 (1995) (“[A] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms’ length negotiations between experienced, capable counsel after meaningful discovery”) (internal citation omitted).

The Pennsylvania Supreme Court has held the following seven factors should be considered when evaluating whether to grant final approval of a proposed class action settlement:

(1) the risks of establishing liability and damages, (2) the range of reasonableness of the settlement in light of the best possible recovery, (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation, (4) the complexity, expense and likely duration of the litigation, (5) the stage of the proceedings and the amount of discovery completed, (6) the recommendations of competent counsel, and (7) the reaction of the class to the settlement.<sup>7</sup>

*Buchanan*, 393 A.2d at 709, *accord Shaev v. Sidhu*, Nov. Term 2005, No. 0983, 2009 Phila. Ct. Com. Pl. LEXIS 63, at \*22-23 (Pa. Com. Pl. 2009). “In considering these factors, there is no exact calculus or formula for the court to use: ‘[i]n effect the court should conclude that the settlement secures an adequate advantage for the class in return for the surrender of litigation rights.’” *Milkman*, 61 Pa. D. & C. 4th at 532 (quoting *Buchanan*, 393 A.2d at 709). A preliminary evaluation of these factors shows this Settlement falls within the range of reasonableness and should be preliminarily approved.

## **2. The Settlement Satisfies the Criteria for Preliminary Approval.**

The Settlement meets all the criteria relevant to approval, and thus the Settlement should be preliminarily approved.

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<sup>7</sup> Since Notice has not yet been approved or provided to the Class, it is premature to discuss the seventh factor regarding the reaction of the Class to the Settlement. This factor will be addressed in the Final Approval Motion.



**i. The Settlement is the product of informed negotiations conducted in good faith and at arm's length.**

In negotiating this Settlement, Class Counsel had the benefit of years of experience in negotiating settlements in a number of data breach cases.<sup>8</sup> As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiff's claims and engaged in informal discovery with Defendants.<sup>9</sup> Before mediation, Plaintiff and Defendants discussed the list of categories of information about which exchange was necessary to engage in any settlement discussions at all. Defendants provided Plaintiff's Counsel answers to specific questions regarding the Class and the categories of information accessed.<sup>10</sup>

The Parties' review of this discovery enabled them to evaluate the strengths and weaknesses of their respective claims and defenses and conduct a well-informed settlement negotiation. *See Klingensmith v. Max & Erma's Rests., Inc.*, No. 07-0318, 2007 WL 3118505, at \*4 (W.D. Pa. Oct. 23, 2007) (agreeing with plaintiff's statement "that time after sufficient discovery to put parties on firm notice of strengths and weaknesses of case, but before bulk of litigation discovery has been taken, is particularly appropriate to settlement"). Class Counsel were also well positioned to evaluate the strengths and weaknesses of Plaintiff's claims, and the appropriate basis upon which to settle them, as a result of their roles in similar data breach class action cases against entities throughout the nation.<sup>11</sup>

Following mediation, the Parties reached an agreement in principle.<sup>12</sup> Thereafter, the Parties continued negotiating a formal settlement agreement, which was signed on April 17, 2024.<sup>13</sup>

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<sup>8</sup> Martin Decl. ¶ 42.

<sup>9</sup> Id. at ¶ 46.

<sup>10</sup> Id. at ¶ 18.

<sup>11</sup> Id. at ¶ at 47.

<sup>12</sup> Id. ¶ at 19.

<sup>13</sup> Id. at ¶ 22.

These facts demonstrate the Settlement is the result of intensive, arm's length negotiations between experienced attorneys familiar with class action litigation and with the legal and factual issues of this Action. Courts properly consider the "tangible benefits derived from reaching a settlement through mediation" in determining whether to approve a settlement. *Treasurer of State v. Ballard Spahr Andrews & Ingersoll LLP*, 866 A.2d 479, 487 (Pa. Commw. Ct. 2005) (finding lower court's disapproval of a settlement to be an abuse of discretion because "the parties' submissions and the history of the pre-mediation investigations and of the protracted mediation process serve to demonstrate that relevant considerations as to various litigation options had been fully investigated and evaluated by competent counsel"). Because "the settlement was arrived at by experienced, competent counsel after arm's length negotiations" and is not the product of collusion, the Settlement should be preliminarily approved. *Id.* at 486.

**ii. The risks of establishing liability and damages favor settlement, and the Settlement is within the range of reasonableness in light of the attendant litigation risks.**

Plaintiff and Class Counsel are confident in the strength of their case. Nonetheless, Defendants have asserted defenses they believe could entirely preclude recovery. Plaintiff and Class Counsel are therefore mindful of the inherent risks in continued litigation, and in their ability to establish class-wide damages and liability. Plaintiff faces a risk that the Court could disallow some of their claims on legal grounds and that a jury would determine that Defendants did not act negligently, did not breach its implied contract, did not breach the duty of confidence, and/or Defendants' acts and/or omissions did not warrant injunctive and/or declaratory relief.

Moreover, protracted litigation carries with it inherent risks that would have delayed and endangered Class Members' monetary recovery. Even if Plaintiff did prevail at trial, recovery could be delayed for years by appeals. Under the circumstances, Plaintiff and Class Counsel appropriately determined that the benefits to the Class in the Settlement reached with Defendants

outweigh the gamble of continued litigation.<sup>14</sup> Accordingly, the Settlement should be approved as it provides substantial relief to Settlement Class Members without further delay and without exposing Plaintiff and absent Settlement Class Members to the risks associated with continued litigation. The Settlement is well within the range of reasonableness in light of the attendant risks of litigation.

Weighing the risks of litigation [i.e., establishing breach of contracts and fiduciary duties and that the representative plaintiffs were adequate and typical class representatives] and benefits of the settlement [i.e., an award of monetary damages to the class], the Court believes that the settlement falls within the range of reasonableness.

*Shaev, supra*, 2009 Phila. Ct. Com. Pl. LEXIS 63, at \*24-28; 4 William B. Rubenstein, Alba Conte, and Herbert B. Newberg, *Newberg on Class Actions* § 11:50 at 155 (4th ed. 2002) (“In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results”); *Ashley v. Atl. Richfield Co.*, 794 F.2d 128, 134 n.9 (3d Cir. 1986) (“Physical, psychological and monetary benefits inure to both sides of a settlement agreement. Indeed, the avoidance of litigation expense and delay is precisely what settlement contemplates”).

**iii. The Settlement is within the range of reasonableness in light of the best possible recovery.**

As stated above, the Settlement is an excellent recovery for the Settlement Class Members and is reasonable in light of the facts and circumstances in this case. Class Counsel has extensive experience in similar data breach cases. For example, Class Counsel Jean Martin has been appointed to lead several privacy and data breach class actions, including serving as co-lead counsel in *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.), *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.), and *In Re: Ambry Genetics*

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<sup>14</sup> Martin Decl. ¶ 49.

*Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.). Francesca Burne has been appointed settlement class counsel in data privacy cases including *Portier, et al. v. NEO Technology Solutions, et al.* Case No.: 3:17-cv-30111 (D. Mass.) and *Franchi v. Barlow Respiratory Hospital*, Case No. 22STC09016 (Cal. Super. Ct.).

Ms. Martin and Ms. Burne have worked together on landmark data privacy cases including *Tillman et al., v. Morgan Stanley Smith Barney, LLC*, Case No. 20cv591-PAE, (S.D. NY) (\$68 million settlement for 15 million class members) and *In re: Capital One Customer Data Security Breach Litigation*, MDL No. 1:19-md-2915 (one of the largest data breach class action settlements in history with a \$190 million settlement). They also presently represent plaintiffs in a data breach case in which the plaintiffs moved for class certification, resulting in the first order in the country granting Federal Rule of Civil Procedure 23(b)(3) certification in a consumer payment card data breach. *See In re Brinker Data Incident Litig.*, No. 3:18-cv-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021), *vacated in part sub nom. Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883 (11th Cir. 2023).<sup>15</sup>

Class Counsel have litigated and settled several data breach cases of all sizes and in varying amounts. This settlement in their experience falls within the range of reasonableness in light of potential recovery after risk filled and protracted litigation.

**iv. The complexity, expense, and likely duration of the litigation favor settlement.**

Where, as here, Class Counsel and Defendants have reached a settlement regarding “a vigorously disputed matter, the Court need not inquire as to whether the best possible recovery has been achieved but whether, in view of the stage of the proceedings, complexity, expense and likely duration of further litigation, as well as the risks of litigation, the settlement is reasonable.” *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 948 (Pa. 1986) (internal quotation omitted); *see*

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<sup>15</sup> Martin Decl. ¶ 45.

*also Gregg v. Independence Blue Cross*, Dec. Term 200, No. 3482, 2004 WL 869063, at \*40 (Pa. Com. Pl. April 22, 2004) (holding that “[t]he complex nature, the high expense and the likelihood of years’ passing without final resolution weigh in favor of settlement”).

This case presents complexities not at issue in other cases. Establishing liability and damages at trial would require multiple experts’ extensive work and testimony. In addition, Defendants presented, and would continue to present, defenses it believes could bar recovery, thereby increasing Plaintiff’s risk of no recovery while causing litigation effort and expenses to mount. Further, the traditional means for handling claims like those at issue here would tax the court system, require a massive expenditure of public and private resources, and given the relatively small value of the claims of the individual class members, would make individual resolution impracticable. Additionally, if this matter was to go to trial, it would likely take several more years to reach a final resolution. Thus, the proposed Settlement is the best vehicle for Settlement Class Members to receive relief in a prompt and efficient manner.

**v. The stage of the proceedings and the amount of discovery completed favor settlement.**

Class Counsel’s extensive experience in similar data breach cases allowed them to efficiently seek the essential information needed to evaluate the strengths and weaknesses of the claims through informal discovery.<sup>16</sup> Defendants provided to Class Counsel essential pieces of information—including informal discovery responses to questions from Plaintiff—prior to the parties’ engagement of settlement negotiations.<sup>17</sup> This information ensured Plaintiff and her counsel had the information necessary to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation. Therefore, it is “particularly appropriate to settle[]” because there has been “sufficient discovery to put parties on firm notice of strengths and

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<sup>16</sup> Martin Decl. ¶¶ 15, 47.

<sup>17</sup> Id. at ¶ 15.

weaknesses of case,” even though the “bulk of litigation discovery has [not yet] been taken.” *See Klingensmith*, 2007 WL 3118505, at \*4.

**vi. The recommendations of competent counsel favor settlement.**

“The court must [] consider the recommendations of competent counsel in evaluating the reasonableness of the settlement, and those recommendations are given substantial weight.” *Gregg*, 2004 WL 869063, at \*41 (*citing Milkman*, 61 Pa. D. & C. 4th at 545). The particular weight attributed to the counsel’s recommendation depends on factors such as competence, the length of involvement in the case, experience in the particular type of litigation, and amount of discovery completed. *Austin v. Pa. Dep’t of Corrs.*, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995). “Usually, however, an evaluation of all the criteria leads courts to conclude that the recommendation of counsel is entitled to great weight following ‘arm’s length negotiations’ by counsel who have ‘the experience and ability . . . necessary [for] effective representation of the class’s interests.’” *Id.* (*quoting Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982)).

Class Counsel strongly endorse this Settlement.<sup>18</sup> Since Defendants was served, the Parties have been pushing this case forward, and as stated above, Class Counsel are competent and experienced in class action litigation (particularly in data breach cases), the Parties have completed adequate informal discovery, and the Settlement is a result of arm’s-length negotiations. Therefore, Class Counsel’s recommendations in favor of the Settlement should be afforded great weight.

**B. Certification of the Settlement Class is Appropriate Because the Rule 1702 Requirements are Met.**

The prerequisites for class certification under Rule 1702 are that (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

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<sup>18</sup> Martin Decl. ¶ 55.

claims or defenses of the class, (4) the representative parties will fairly and adequately assert and protect the interests of the class, under the criteria set forth in Rule 1709; and (5) a class action provides a fair and efficient method for adjudication of the controversy, under the criteria set forth in Rule 1708. For the reasons set forth below, certification is appropriate under Rules 1702, 1708, 1709, and 1710 of the Pennsylvania Rules of Civil Procedure.

**1. Numerosity.**

“To satisfy this criterion, the class must be both numerous and identifiable, and ‘whether the class is sufficiently numerous is not dependent upon any arbitrary limit, but upon the facts of each case.’” *Dunn v. Allegheny Cnty. Prop. Assessment Appeals & Review*, 794 A.2d 416, 423 (Pa. Commw. Ct. 2002) (quoting *Cook v. Highland Water & Sewer Auth.*, 530 A.2d 499, 503 (Pa. Commw. Ct. 1987)). And while there is no “arbitrary limit,” “[i]t has been suggested that forty or fifty is normally the number of class members required to satisfy the numerosity requirement.” *Freeport Area Sch. Dist. v. Commonwealth, Human Relations Comm’n*, 335 A.2d 873, 879 n.6 (Pa. Commw. Ct. 1975) (citing *Delle Donne and VanHom, Pennsylvania Class Actions: The Future in Light of Recent Restrictions on Federal Access?*, 78 Dick. L. Rev. 460, 501 (1974)).

Here, the numerosity requirement is satisfied because the Settlement Class consists of approximately 181,796 individuals, and joinder of all such persons is impracticable. *See Roethlein v. Schmidt*, 2006 Phila. Ct. Com. PL LEXIS 530, at \* 1 (Pa. Com. Pl. Aug. 21, 2006) (“the numerosity requirement . . . is satisfied because the number of members of the Class is in the thousands, and thus, the Class members are so numerous that their joinder before the Court would be impracticable”).

**2. Commonality.**

The commonality requirement compels plaintiff to demonstrate that class members “have suffered the same injury” and their claims “depend upon a common contention . . . of such a nature

that it is capable of class-wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (citation omitted). Under Pennsylvania law, “questions of law or fact common to the class generally exist if the members’ grievances arise out of the ‘same practice or course of conduct on the part of the class opponent.’” *Schall v. Windermere Court Apts.*, 27 Pa. D. & C. 5th 471, 480 (Pa. Com. Pl. 2013) (quoting *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 664 (Pa. 2009)). Essentially, commonality will be found if “proof on these issues as to one is proof as to all.” *Id.* at 482 (citing *Liss*, 983 A.2d at 663).

This requirement is satisfied here. There are multiple questions of law and fact, all arising from Defendants’ common, class-wide practices and/or conduct. These practices and/or conduct allegedly injured Settlement Class Members in the exact same way—the Data Breach afforded access to Settlement Class Members’ PII and PHI by an unauthorized third party. Furthermore, the factual and legal issues are capable of class-wide resolution because “proof on these issues as to one is proof as to all”—the Class Representatives’ proof of the alleged vulnerabilities in Defendants’ security design, maintenance, and training is subject to common proof. In addition, what happened with the illegally accessed information is also an issue of common proof. Further, the Class Representatives’ proof that they were injured by Defendants’ allegedly unlawful practices and/or conduct, will be applicable to the entire Class.

### **3. Typicality.**

For similar reasons, the Class Representatives’ claims are reasonably coextensive with those of the absent Class Members, such that the typicality requirement is satisfied. *In re Sheriff’s Excess Proceeds Litig.*, 98 A.3d 706, 733 (Pa. Commw. Ct. 2014) (“Typicality exists if the class representative’s claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class.”) (quoting *Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 31 (Pa. 2011)). This requirement “ensures that the legal theories of the representative



and the class do not conflict, and that the interests of the absentee class members will be fairly represented.” *In re Sheriff’s Excess Proceeds Litig.*, 98 A.3d at 733 (quoting *Samuel-Bassett*, 34 A.3d at 31). But “typicality does not require that the claims of the representative and the class be identical, and the requirement may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.” *Id.*

Here, the Class Representatives are typical of absent Settlement Class Members because they were impacted by the same incident—a data breach in which PII and PHI was accessed by an unauthorized third party. Moreover, the benefits available to Class Representatives and Settlement Class Members are the same under the Settlement. Therefore, Plaintiff’s and Class Representatives’ legal theories do not conflict with those of absentee Settlement Class Members, and the Class Representatives will represent the interests of absentee Settlement Class Members fairly, because such interests parallel their own.

#### **4. Representative Parties Will Protect the Class’s Interests.**

The Class Representatives have and will continue to satisfy their obligations to fairly and adequately assert and protect the interests of the Settlement Class under Rules 1702(4) and 1709.

For this requirement, courts consider:

- (1) whether the attorney for the representative parties will adequately represent the interests of the class,
- (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and
- (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa R. Civ. Pro. 1709.

“With regard to the first factor, generally, ‘until the contrary is demonstrated, courts will assume that members of the bar are skilled in their profession.’” *Dunn*, 794 A.2d at 425 (quoting *Janicik v. Prudential Ins. Co.*, 451 A.2d 451, 458 (Pa. Super. Ct. 1982)). Class Representatives are

represented by qualified and competent counsel with extensive experience and expertise prosecuting complex class actions, including actions substantially similar to the instant Case.<sup>19</sup> Therefore, the first factor is satisfied.

“Under Rule 1709(2), conflicts are interests antagonistic to other class members.” *Grajales v. Safe Haven Quality Care, LLC*, 2012 Pa. Dist. & Cnty. Dec. LEXIS 8, at \*4 (Pa. Com. Pl. 2012) (citing *Samuels v. Smock*, 422 A.2d 902, 903 (Pa. Commw. Ct. 1980)). And just as with Rule 1709(1), “courts have generally presumed that here is no conflict of interest on the part of the representative parties unless the contrary is established and ‘have relied upon the adversary system and the court’s supervisory powers to expose and mitigate any conflict.’” *Dunn*, 794 A.2d at 425-26 (quoting *Janicik*, 451 A.2d at 459). Class Representatives’ interests are coextensive with, and not antagonistic to, the interests of the Settlement Class because the Settlement provides for the compensation of each Settlement Class Member’s documented losses or elective *pro rata* settlement payments using the same claim form, evaluation method, and approval process to determine the recovery amount from the Settlement Fund for each Settlement Class Member that submits a claim form. Therefore, the second factor is satisfied.

Finally, “if the attorney for the class representatives is ethically advancing costs to representatives of a generally impecunious class, the adequate financing requirement will ordinarily be met.” *Grajales*, 2012 Pa. Dist. & Cnty. Dec. LEXIS 8, at \*7 (quoting *Haft v. United States Steel Corp.*, 451 A.2d 445, 448 (Pa. Super. Ct. 1982)). Here, Class Counsel have advanced all costs in this case to date and have not received any compensation for their work to date from any source. As such, the third factor is met.

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<sup>19</sup> Martin Decl. ¶¶ 42-45.

Because all of the requirements of Rule 1709 are met, this Court should find that Class Representatives and Class Counsel will fairly and adequately assert and protect the interests of the Class.

**5. A Class Action Provides a Fair and Efficient Method for Adjudication.**

Under Pennsylvania Rules 1702(5) and 1708 (which is similar to Rule 23(b) of the Federal Rules of Civil Procedure),<sup>20</sup> certification is appropriate if a class action is a fair and efficient method of adjudicating the controversy. In making this determination, the court considers:

- (c) Where monetary recovery alone is sought, the court shall consider:
  - (1) whether common questions of law or fact predominate over any question affecting only individual members;
  - (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
  - (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
    - (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
    - (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
  - (4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
  - (5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
  - (6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class

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<sup>20</sup> “Unlike in federal class action litigation, class actions brought under the Pennsylvania rules need not be ‘superior’ to alternative methods.” *Janicik*, 451 A.2d at 461.

members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

(b) Where equitable or declaratory relief alone is sought, the court shall consider:

(1) the criteria set forth in subsections (1) through (5) of subdivision (a), and

(2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.

© Where both monetary and other relief is sought, the court shall consider all the criteria in both subdivisions (a) and (b).

Pa Civ. R. Pro. 1708.

The first factor regarding common questions of law or fact predominating over individual questions is met. Under Rule 1708(a)(1), “[t]he analysis of predominance . . . is closely related to that of commonality under Rule 1702(2).” *Lewis v. Bayer AG*, 66 Pa. D. & C. 4th 470, 515 (Pa. Com. Pl. 2004) (citing *Janicik*, 451 A.2d at 461). Thus, courts may adopt and incorporate their analysis of commonality and conclude that the requirement of predominance has been satisfied. *See id.*

Here, each Settlement Class Member’s relationship with Defendants arises from common legal and factual issues. Each Settlement Class Members’ relationship with Defendants is in the healthcare provider context. Additionally, each Settlement Class Member was subjected to the same practices and conduct, and each was allegedly harmed by having their PII and PHI accessed by an unauthorized party while in the possession of the Defendants. And each alleges harm which is subject to class-wide damage analysis. The predominance requirement is satisfied here, because

liability questions common to all Settlement Class Members substantially outweigh any possible issues that are individual to each Settlement Class Member.

The second factor regarding the size of the class and the difficulties in managing the class action is also met. Here, the Class is made up of approximately 181,000 individuals, all of whom were connected to Defendants through the healthcare system, and all of whose addresses are in Defendants' possession. In *Schall*, the court found that "[t]he class is not burdensomely large" because "its members are easily identifiable and to the extent that their damages claims are distinct, the court has at its disposal a variety of means to manage them." 27 Pa. D. & C. 5th 471 at ¶ 49. In this case, as shown above, the Settlement Class Members are easily identifiable through Defendants' records, and any differences in their damage claims will be accounted for by the claims process and calculation method outlined herein. Also, review of this factor is limited because when "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (internal citation omitted). Thus, the size and manageability requirement is met.

The third factor regarding the risks of prosecution of separate actions is also met here. The prosecution of separate actions by individual Settlement Class Members would create a risk of inconsistent adjudications which would impair the protection of other Members' interests. And, dollar wise, the separate claims of individual Settlement Class Members are insufficient in amount to support such separate actions. See *Board v. SEPTA*, 14 Pa. D. & C. 5th 301, 316 (Pa. Com. Pl. 2010) ("In considering the separate effect of actions, the precedential effect of a decision is to be considered as well as the parties' circumstances and respective ability to pursue separate actions"). Here, it would be nearly impossible for the Settlement Class Members to file their own actions—the time and expense required to initiate and pursue such litigation would be enormous in comparison with the relatively small benefit to which each Settlement Class Member is entitled.

And even if these thousands of suits were to be brought, there would be a “significant risk of inconsistent adjudications if tried separately,” (*see id.*) because, for example, one claim might be dismissed in one court while a substantially similar claim might be upheld in another court. This would severely impair the rights of the non-litigating Settlement Class Members. Therefore, “because of the straightforward nature of the issues and facts involved, as a single certified class one case will determine liability and one verdict will establish all obligations.” *Id.*

Fourth, although Related Actions were filed regarding the same Data Breach, those cases are being voluntarily dismissed in light of the proposed class-wide Settlement in this Action. And fifth, venue in the Lackawanna County Court of Common Pleas is proper under the Pennsylvania Rules of Civil Procedure for litigation of the claims of the entire Settlement Class. Therefore, these two factors are met. *See Basile v. H & R Block, Inc.*, 34 Phila. 1, 62 (Pa. Com. Pl.1997), *aff’d in part and rev’d in part on other grounds*, 729 A.2d 574 (Pa. Super. Ct., 1999).

Sixth, in view of the complexities of the issues and the expenses of litigation, it is not reasonable, nor does it make financial sense to bring separate actions for the claims of individual Class Members. The ability of an individual Class Member to bring a lawsuit against the Defendants would require substantial financial resources to prove, among other things, Defendants owed one or more duties to protect the PII and PHI in its possession, Defendants breached their duties, Defendants’ breach of their duties caused the Data Breach, whether an unauthorized party accessed the individual’s PII and/or PHI as part of the Data Breach, and whether the individual suffered damages due to the Data Breach. These are complex issues requiring investigation and expert testimony, in return for comparatively small potential award for damages. Even if some Settlement Class Members were able to persuade an attorney or law firm to take-on their cases on a contingent fee basis, it is likely many Settlement Class Members would be left without willing counsel or the financial resources to bring and prosecute their individual claims. These claims would likely go unlitigated and, therefore, this factor is met.

Seventh, it is not likely a Settlement Class Member's individual recovery amount will be so small in relation to the expense and effort of administering the action as to not justify a class action. Here, Defendants will pay \$2,000,000. The Settlement Class Members are current and former patients and are easily identified and notified of the settlement and claims process to receive their portion of the Settlement Fund. *See* Pa. R. Civ. P. 1708(a)(7); *see also Haft*, 451 A.2d at 450 (holding that "the amounts which may be recovered by the individual class members will be large enough in relation to the expenses and effort of administering the action as to justify a class action" where "potential individual recoveries will be more than de minimis" and "[a]ll class members are present or former employees of appellee, and thus the costs of identifying and notifying them is unlikely to be unduly burdensome"). Therefore, a class action is justified.

The final factor, applicable to non-monetary relief, is also met. Defendants' practices and/or conduct allegedly injured Settlement Class Members in the same way—the Data Breach afforded access to Settlement Class Members' PII and PHI by an unauthorized third party. Defendants' alleged vulnerabilities in its security design, maintenance, and training is subject to common proof and generally applicable to the Settlement Class. Additionally, what happened with the illegally accessed information is also an issue of common proof, applicable to the Class Representatives and the Settlement Class. Therefore, the non-monetary relief is appropriate with respect to the Settlement Class. Thus, this factor is met, and a class action is justified.

Because all of Rule 1708's requirements are met, a class action is a fair and efficient method of adjudicating this controversy. Additionally, Plaintiff respectfully requests the Court certify the Settlement Class. Certification of the proposed Settlement Class will allow notice of the proposed Settlement to Settlement Class Members. For purposes of this Settlement only, Defendants do not oppose class certification.

### **C. The Court Should Approve the Proposed Notice Plan.**

Rule 1714(c) of the Pennsylvania Rules of Civil Procedure requires that “[i]f an action has been certified as a class action, notice of the proposed . . . settlement . . . shall be given to all members of the class in such manner as the court may direct.” For class members who can be identified with reasonable effort, “[t]he court may require individual notice to be given by personal service or by mail.” Pa. R. Civ. P. 1712(b).

For notice in a class action to be considered adequate, it “must present a fair recital of the subject matter and proposed terms and inform the class members of an opportunity to be heard,” but it “need not provide a complete source of settlement information.” *Fischer v. Madway*, 485 A.2d 809, 811 (Pa. Super. Ct. 1984) (internal citations and quotations omitted). The description of the proposed settlement may be “very general[,] . . . including a summary of the monetary or other benefits that the class would receive and an estimation of attorneys’ fees and other expenses,” and “[i]t is enough that the notice contain facts sufficient to alert interested persons to the terms of the proposed settlement and also the means by which further inquiry can be made and objection recorded.” *Id.* at 811 (internal citations and quotations omitted).

The proposed Notice Plan satisfies these criteria. The proposed Notice (1) describes the substantive terms of the Settlement; (2) advises Settlement Class Members of their option and deadline to opt-out or object to the Settlement; (3) indicates how Settlement Class Members may obtain additional information about the Settlement, and (4) advises Settlement Class Members of the process and instructions for making claims, and the applicable deadlines. *See* Exhibits. C-D. Moreover, Notice shall be provided to Settlement Class Members via mail to the postal address provided to Defendants by Settlement Class Members when the Settlement Class Members conducted transactions with Defendants. The Notice Plan is designed to reach Settlement Class Members through direct mail notice, and the Long Form Notice will be available on the Settlement Website, which constitutes the best practicable forms of notice. *See Bradburn Parent Teacher*



*Store, Inc. v. 3M (Minnesota Mining & Mfg. Co.)*, 513 F. Supp. 2d 322, 329 (E.D. Pa. 2007) (finding that direct notice via first class mail satisfies the notice requirements of both Fed. R. Civ. P. 23 and the due process clause); *In re American Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 237 (E.D. Pa. 2009) (finding that direct notice via first class mail and the creation of a settlement website satisfy the notice requirements of both Fed. R. Civ. P. 23 and the due process clause). Therefore, the Court should approve the Notice Plan and the form and content of the Notices attached to the Agreement as Exhibits C-D.

**D. The Court Should Schedule a Final Approval Hearing.**

The last step in the Settlement approval process is a Final Approval Hearing, at which the Court will hear all evidence and arguments necessary to make its final evaluation of the Settlement. The Court will determine, at or after the Final Approval Hearing, whether the Settlement should be approved and whether to approve Class Counsel's application for attorneys' fees and reimbursement of costs and expenses. Plaintiff requests the Court schedule the Final Approval Hearing to occur no sooner than one hundred and twenty (120) days after the Preliminary Approval Order, at a date, time, and location convenient to the Court. Plaintiff will file a motion for Final Approval of the Settlement no later than fourteen (14) days prior to the Final Approval Hearing, and a motion for a Fee Award and Costs no later than fourteen (14) days prior to the Objection Deadline.

**IV. CONCLUSION**

Based on the foregoing, Plaintiff respectfully requests the Court:

- (1) preliminarily approve the Settlement;
- (2) certify for settlement purposes the proposed Settlement Class,
- (3) appoint Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello as the Class Representatives, and

Francesca K. Burne and Jean S. Martin of Morgan & Morgan Complex Litigation Group as Class Counsel;

- (4) approve the Notice Plan set forth in the Agreement and approve the form and content of the claim form and Notices, attached to the Agreement as **Exhibits A, C, and D**;
- (5) appoint Postlethwaite & Netterville, APAC as the Settlement Administrator;
- (6) approve and order the opt-out and objection procedures set forth in the Agreement; and
- (7) schedule a fairness hearing on Final Approval to occur no sooner than one hundred and twenty (120) days after the date of the Preliminary Approval is entered

A proposed Preliminary Approval Order has been filed herewith as **Exhibit E**.

Respectfully submitted this 22<sup>nd</sup> day of April, 2024.

BY:

s/ Francesca Kester

Francesca Kester, Pa Bar No. 324523

Jean S. Martin, *admitted pro hac vice*

**MORGAN & MORGAN COMPLEX  
LITIGATION GROUP**

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**CERTIFICATE OF CONCURRENCE**

Pursuant to Local Rule 208.2(d), Plaintiff sought concurrence in this Motion from Defendant. Defendant has indicated that it does not oppose Plaintiff's Motion for Preliminary Approval.

s/ Francesca Kester Burne  
Francesca Kester Burne

— **EXHIBIT 1** —

## **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release, dated [Apr. 17], 2024, is made and entered into by and among Plaintiff, for herself individually and on behalf of the Settlement Class (as defined below), and Defendant Commonwealth Health Physician Network dba Great Valley Cardiology (“GVC”). This Settlement Agreement fully and finally resolves and settles all of Plaintiff’s and the Settlement Class’s Released Claims, upon and subject to the terms and conditions hereof, and subject to the Court’s approval.

### **RECITALS**

**WHEREAS**, on or about April 13, 2023, GVC discovered that it was the intended target of a potential cyberattack. Although GVC successfully prevented the cyberattack, it discovered during its subsequent investigation that between February 2 to April 3, 2023, GVC had experienced a cybersecurity incident where an unauthorized third-party gained access to GVC’s network, and may have impacted Personal Information (the “Data Breach”).

**WHEREAS**, during the period of the Data Breach, an unauthorized third party may have gained access to the name, address, demographic information, date of birth, social security number, health insurance information, health insurance claims information, medical information, driver’s license number, passport number, credit card/debit card numbers, and/or bank account number. (collectively, “Personal Information”) of approximately 181,796 individuals.

**WHEREAS**, GVC began notifying impacted individuals about the Data Breach on or around June 12, 2023, including supplemental notices sent on or around June 28, 2023.

**WHEREAS**, on July 14, 2023, Plaintiff Yvonne Ayala (“Plaintiff”) filed her complaint against GVC in the Court of Common Pleas of Lackawanna County, Pennsylvania as Case No. 2023-cv-3008 (the “Action”).

**WHEREAS**, GVC has been named as a defendant in nine (9) pending lawsuits, including this Action, filed in the United States District Court for the Middle District of Pennsylvania and the Court of Common Pleas of Lackawanna County, Pennsylvania. Except for this Action, all other state court cases were subsequently removed to the U.S. District Court for the Middle District of Pennsylvania.

**WHEREAS**, after considerable meet and confer efforts, the Parties agreed to mediate the case.

**WHEREAS**, in preparation for the scheduled mediation, the Parties exchanged certain information related to the Action, including details of the Data Breach and the composition of the putative class. The Parties also prepared for mediation by laying out their respective positions on the litigation, including with respect to the merits, class certification and settlement, to each other and the mediator.

**WHEREAS**, in the weeks prior to the mediation, the Parties maintained an open dialogue concerning the contours of a potential agreement to begin settlement negotiations.

**WHEREAS**, on November 6, 2023, the Parties engaged in a mediation session before the Honorable Thomas M. Blewitt (Ret.). Judge Blewitt had served as a federal Magistrate Judge in the Middle District of Pennsylvania for twenty-three (23) years, and he now works as a neutral for the Judicial Arbitration and Mediation Services (“JAMS”). The mediation assisted the parties in resolving their outstanding differences and resulted in an agreement to settle this matter in principle. In the time that followed that mediation session, the Parties were able to finalize all the terms of this Settlement Agreement.

**WHEREAS**, pursuant to the terms set forth below, this Agreement resolves all actual and potential claims, actions, and proceedings as set forth in the release contained herein, by and on behalf of members of the Settlement Class defined herein, but excludes the claims of all Class Members who opt out from the Settlement Class pursuant to the terms and conditions herein.

**WHEREAS**, Proposed Settlement Class Counsel (“Class Counsel”), on behalf of Plaintiff and the Settlement Class, have thoroughly examined the law and facts relating to the matters at issue in the Action, Plaintiff’s claims, and GVC’s potential defenses, including conducting independent investigation and confirmatory discovery, conferring with defense counsel through the settlement negotiation process, as well as conducting an assessment of the merits of expected arguments and defenses throughout the litigation, including on a motion for class certification. Based on a thorough analysis of the facts and the law applicable to Plaintiff’s claims in the Action, and taking into account the burden, expense, and delay of continued litigation, including the risks and uncertainties associated with litigating class certification and other defenses GVC may assert, a protracted trial and appeal(s), as well as the opportunity for a fair, cost-effective, and assured method of resolving the claims of the Settlement Class, Plaintiff and Class Counsel believe that resolution is an appropriate and reasonable means of ensuring that the Class is afforded important benefits expediently. Plaintiff and Class Counsel have also taken into account the uncertain outcome and the risk of continued litigation, as well as the difficulties and delays inherent in such litigation.

**WHEREAS**, Plaintiff and Class Counsel believe that the terms set forth in this Settlement Agreement confer substantial benefits upon the Settlement Class and have determined that they are fair, reasonable, adequate, and in the best interests of the Settlement Class.

**WHEREAS**, GVC has similarly concluded that this Agreement is desirable in order to avoid the time, risk, and expense of defending protracted litigation, and to resolve finally and completely the claims of Plaintiff and the Settlement Class with a settlement that is fair, reasonable, and adequate.

**WHEREAS**, this Agreement, whether or not consummated, and any actions or proceedings taken pursuant to this Agreement, are for settlement purposes only, and GVC specifically denies any and all wrongdoing. The existence of, terms in, and any action taken under or in connection with this Agreement shall not constitute, be construed as, or be admissible in evidence as, any admission by GVC of (i) the validity of any claim, defense, or fact asserted in the Action or any other pending or future action, or (ii) any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties.

**WHEREAS**, the foregoing Recitals are true and correct and are hereby fully incorporated in, and made a part of, this Agreement.

**WHEREAS**, this Agreement is conditioned upon the Court approving this settlement at a Final Approval Hearing, the staying of the pending federal actions, the dismissal of those actions after final Court approval of this settlement.

**NOW, THEREFORE**, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree, as follows:

**1. DEFINITIONS**

As used in this Agreement, the following terms shall be defined as follows:

- 1.1 “Action” means the class action captioned *Yvonne Ayala v. Commonwealth Health Physician Network dba Great Valley Cardiology, et al.*, Case No. 2023-cv-3008, filed on July 14, 2023, in the Court of Common Pleas of Lackawanna County, Pennsylvania.
- 1.2 “Administrative Expenses” means all charges and expenses incurred by the Settlement Administrator in the administration of this Settlement, including, without limitation, all expenses and costs associated with claims administration, the Notice Plan and providing Notice to the Settlement Class. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.
- 1.3 “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement and Release. The terms of the Settlement Agreement are set forth herein including the exhibits hereto.
- 1.4 “Approved Claim(s)” means a claim as evidenced by a Claim Form submitted by a Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is physically signed or electronically verified by the Class Member; (c) satisfies the conditions of eligibility for a Settlement Benefit as set forth herein; and (d) has been approved by the Settlement Administrator.
- 1.5 “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the federal government.
- 1.6 “CAFA Notice” means the notice to be disseminated to appropriate federal and state officials pursuant to the requirements of 28 U.S.C. § 1715(b) and in accordance with Section 5.2 of this Agreement.
- 1.7 “Claimant” means a Class Member who submits a Claim Form for a Settlement Payment.

- 1.8 “Claim Form” means the form attached hereto as **Exhibit A**, as approved by the Court. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the Settlement Website) by Class Members who wish to file a claim for their given share of the Settlement Benefits pursuant to the terms and conditions of this Agreement. The Claim Form shall be available for download from the Settlement Website. The Settlement Administrator shall mail a Claim Form, in hardcopy form, to any Class Member who so requests.
- 1.9 “Claims Deadline” means the date by which all Claim Forms must be received to be considered timely and shall be set as the date ninety (90) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Long Form Notice, the Summary Notice, the Claim Form, and the Court’s order granting Preliminary Approval.
- 1.10 “Claims Period” means the period of time during which Class Members may submit Claim Forms to receive their given share of the Settlement Benefits and shall commence on the Notice Date and shall end on the date ninety (90) days thereafter.
- 1.11 “Class Counsel” or “Settlement Class Counsel” means Jean S. Martin and Francesca K. Burne of Morgan & Morgan Complex Litigation Group.
- 1.12 “Class Member” means a member of the Settlement Class.
- 1.13 “Class Representatives” mean Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello.
- 1.14 “Court” means the Court of Common Pleas of Lackawanna County, Pennsylvania.
- 1.15 “Data Breach” refers to the unauthorized access that is the subject of the Action and which GVC learned may have impacted Personal Information on or around April 13, 2023, and disclosed publicly on or around June 12, 2023.
- 1.16 “Documented Loss” refers to monetary losses incurred by a Class Member and supported by Reasonable Documentation for attempting to remedy or remedying issues that are reasonably traceable to the Data Breach, as further described in Section 3.2(a) below. Documented Loss must be supported by Reasonable Documentation that a Class Member actually incurred unreimbursed losses and consequential expenses that are more likely than not attributable to the Data Breach and incurred on or after February 2, 2023.
- 1.17 “Effective Date” means the date upon which the Settlement contemplated by this Agreement shall become effective as set forth in Section 10.1 below.
- 1.18 “Entity” means any person, corporation, partnership, limited liability company, association, trust, agency, or other organization of any type.

- 1.19 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of reasonable litigation costs and expenses awarded by the Court to Class Counsel, to be paid from the Settlement Fund.
- 1.20 “Final Approval Order and Judgment” means the order to be entered by the Court after the Final Approval Hearing which among other things, approves the Settlement Agreement and the settlement as fair, adequate, and reasonable, enter the Judgment, dismisses the Action with prejudice, and confirms that final certification of the Settlement Class. The Final Approval Order must be substantially similar to the form attached hereto as **Exhibit B**.
- 1.21 “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to the Pennsylvania Rules of Civil Procedure and whether to issue the Final Approval Order and Judgment.
- 1.22 “GVC’s Counsel” or references to counsel for GVC means attorney Jonathan O. Harris and other attorneys at the law firm Jackson Lewis P.C.
- 1.23 “GVC” or “Defendant” means Defendant Commonwealth Health Physician Network Cardiology d/b/a Great Valley Cardiology and its current and former affiliates, parents, subsidiaries, and successors.
- 1.24 “Long Form Notice” means the long form notice of settlement substantially in the form attached hereto as **Exhibit D**.
- 1.25 “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Administrative Expenses incurred pursuant to this Settlement Agreement, (ii) Service Awards approved by the Court, (iii) any amounts approved by the Court for the Fee Award and Costs, and (iv) applicable taxes, if any.
- 1.26 “Notice” means notice of the proposed class action settlement to be provided to Class Members pursuant to the Notice Plan approved by the Court in connection with preliminary approval of the Settlement. The Notice shall consist of the Summary Notice, the Long Form Notice, and the Settlement Website and toll-free telephone line.
- 1.27 “Notice Date” means the date upon which Settlement Class Notice is initially disseminated to the Settlement Class by the Settlement Administrator, which shall be no later than thirty-five (35) days after entry of the Preliminary Approval Order.
- 1.28 “Notice Plan” means the settlement notice program, as approved by the Court, developed by the Settlement Administrator and described in this Agreement for



disseminating Notice to the Class Members of the terms of this Agreement and the Final Approval Hearing.

- 1.29 “Objection Deadline” means the date by which Class Members must postmark required copies of any written objections, pursuant to the terms and conditions herein, to this Settlement Agreement and to any application and motion for (i) the Fee Award and Costs, and (ii) the Service Awards, which shall be sixty (60) days following the Notice Date.
- 1.30 “Opt-Out Period” means the period in which a Class Member may submit a Request for Exclusion, pursuant to the terms and conditions herein, which shall expire sixty (60) days following the Notice Date. The deadline by which Class Members must postmark a Request for Exclusion shall be sixty (60) days following the Notice Date and will be clearly set forth in the Settlement Class Notice.
- 1.31 “Parties” means the Plaintiff and Defendant GVC.
- 1.32 “Personal Information” means information potentially compromised in the Data Breach, including names, addresses, demographic information, dates of birth, patient number, Social Security numbers, health insurance information, health insurance claims information, medical information, driver’s license numbers, passport numbers, credit card/debit card numbers, and/or bank account numbers.
- 1.33 “Plaintiff” means Yvonne Ayala.
- 1.34 “Preliminary Approval Order” means an order by the Court that grants conditional certification of the Settlement Class, preliminarily approves the Settlement (including, but not limited to, the forms and procedure for providing Notice to the Settlement Class), permits Notice to the proposed Settlement Class, establishes a procedure for Class Members to object to or opt out of the Settlement, and sets a date for the Final Approval Hearing, without material change to the Parties’ agreed-upon proposed preliminary approval order attached hereto as **Exhibit E**.
- 1.35 “Reasonable Documentation” means documentation supporting a claim for Documented Loss including, but not limited to, credit card statements, bank statements, invoices, telephone records, and receipts. Documented Loss costs cannot be documented solely by a personal certification, declaration, or affidavit from the Claimant; a Class Member must provide supporting documentation.
- 1.36 “Related Federal Actions” means the putative class action cases styled as: *Boccardori v. Scranton Cardiovascular Physician Services*, Case No. 3:23-cv-01008; *Jarrow v. Commonwealth Health Physician Network*, Case No. 3:23-cv-01237; *Counterman v. Scranton Cardiovascular Physician Services*, Case No. 3:23-cv-01015; *Schulte v. Scranton Cardiovascular Physician Services*, Case No. 3:23-cv-01050; *Maziarz v. Commonwealth Health Physician Network*, Case No. 3:23-cv-01279; *Ferguson v. Scranton Cardiovascular Physician Services*, Case No. 3:2023-cv-01112; and, *Barth v. Scranton Cardiovascular Physician Services*, Case No. 3:23-cv-01170.

- 1.37 “Released Claims” means any claim, liability, right, demand, suit, obligation, damage, including consequential damage, loss or cost, punitive damage, attorneys’ fees, costs, and expenses, action or cause of action, of every kind or description—whether known or Unknown (as the term “Unknown Claims” is defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that was or could have been asserted on behalf of the Settlement Class in the Action related to or arising from the Data Breach regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, and regardless of whether they are foreseen or unforeseen, suspected or unsuspected, or fixed or contingent, arising out of, or related or connected in any way with the claims or causes of action of every kind and description that were brought, alleged, argued, raised or asserted in any pleading or court filing in the Action. “Released Claims” do not include any claims against any entity other than Released Parties and are subject to Section 4 below.
- 1.38 “Released Parties” means Defendant and its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of its past, present, and future officers, directors, employees, equity holders, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing. Each of the Released Parties may be referred to individually as a “Released Party.”
- 1.39 “Request for Exclusion” is the written communication by a Class Member in which he or she requests to be excluded from the Settlement Class pursuant to the terms of the Agreement.
- 1.40 “Service Awards” means the amount awarded by the Court and paid to the Class Representative(s) in recognition of their role in this litigation, as set forth in Section 8 below.
- 1.41 “Settlement” means this settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.
- 1.42 “Settlement Administrator” means Postlethwaite & Netterville, APAC, the third-party class action settlement administrator to selected by the Parties subject to the approval of the Court. Under the supervision of Class Counsel, the Settlement Administrator shall oversee and implement the Notice Plan and receive any requests for exclusion or objections from the Class. Class Counsel and GVC may, by agreement, substitute a different Settlement Administrator, subject to Court approval.
- 1.43 “Settlement Benefit(s)” means any Settlement Payment, the Credit Monitoring and Insurance Services, the Documented Loss Payments, the Cash Fund Payments, the Prospective Relief set forth in Sections 2 and 3 herein, and any other benefits Class Members receive pursuant to this Agreement, including non-monetary benefits and relief, the Fee Award and Costs, and Administrative Expenses.

- 1.44 “Settlement Class” and “Class” means all natural persons whose Personal Information was potentially compromised in the Data Breach and who were sent the Notice of Data Privacy Incident on or around June 2023. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their immediate families and their staff; (2) GVC, its subsidiaries, parent companies, successors, predecessors, and any entity in which GVC or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.
- 1.45 “Settlement Fund” means the sum of **Two Million Dollars and No Cents (\$2,000,000.00)**, to be paid by GVC, as specified in Section 3.1 of this Agreement.
- 1.46 “Settlement Payment” means any payment to be made to any Class Member on Approved Claims pursuant to Section 3.2 herein.
- 1.47 “Settlement Website” means the Internet website to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of Claim Forms and Requests for Exclusion, and provides access to relevant case documents including the Settlement Class Notice, information about the submission of Claim Forms, and other relevant documents, including downloadable Claim Forms.
- 1.48 “Summary Notice” means the summary notice of the proposed Settlement herein, substantially in the form attached hereto as **Exhibit C**.
- 1.49 “Taxes” means all federal, state, or local taxes of any kind on any income earned by the Settlement Fund and the expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants). All (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the operation and implementation of this Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Agreement (“Tax Expenses”), shall be paid out of the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, an Administration Expense and shall be timely paid by the Settlement Administrator, out of the Settlement Fund, without prior order from the Court and the Settlement Administrator shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Class Members with Approved Claims any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and

Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(1)(2)). The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Agreement. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the Settlement Administrator shall be the “administrator.” The Settlement Administrator shall timely and properly file or cause to be filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund and the escrow account (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this Agreement) shall be consistent with this Section and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in this Agreement.

- 1.50 “Unknown Claims” means any and all Released Claims that GVC or any Class Representative or Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date and which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to the Settlement. Class Representative(s) and Class Counsel acknowledge, and each Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

## **2. SECURITY COMMITMENTS; PROSPECTIVE RELIEF**

- 2.1 GVC agrees to adopt, continue, and/or implement the following (or substantially similar) data and information security measures, at its expense, which are designed to strengthen GVC’s data and information security. The parties have agreed that GVC will implement the measures for at least two years from the Effective Date of this Agreement:

1. Internal vulnerability management system
2. Annual penetration testing
3. 24/7 SOC monitoring
4. Annual security risk assessments
5. Regular phishing simulation campaigns
6. MFA is enforced for employee email accounts
7. Annual security awareness training for employees
8. Policies and procedures designed to protect patient information

- 2.2 Upon request, GVC will provide Class Counsel with sufficient information to confirm that each of these measures has been or will be implemented, including through a confirmatory interview conducted with one of GVC's IT professionals who can attest to the measures that GVC has or will take in accordance with this Agreement. GVC further agrees to provide Class Counsel with ongoing status reports as needed at their request.

### **3. SETTLEMENT FUND / MONETARY PAYMENT / BENEFITS DETAILS**

- 3.1 GVC agrees to make or cause to be made a payment of Two Million Dollars and No Cents (\$2,000,000.00). GVC agrees to create the Settlement Fund within ten (10) days after the later of (a) entry of the Preliminary Approval Order, which shall include an order establishing the Settlement Fund pursuant to Treasury Regulation § 1.468B-1(c)(1), or (b) receipt from the Settlement Administrator of detailed wire instructions and a completed W-9 form, by making or causing to be made a deposit of Six Hundred Thousand Dollars and No Cents (\$600,000.00), to be deposited in an interest-bearing bank escrow account established and administered by the Settlement Administrator (the "Escrow Account") to defray the actual expenses of notice of claims administration. GVC agrees to make or cause to be made a payment of One Million Four Hundred Thousand Dollars and No Cents (\$1,400,000.00) to be deposited in the Escrow Account within ten (10) days following the Effective Date. The Escrow Account shall be held in a Qualified Settlement Fund (defined below) in interest-bearing bank account deposits with commercial banks with excess capital exceeding One Billion United States Dollars and Zero Cents (\$1,000,000,000.00), with a rating of "A" or higher by S&P and in an account that is fully insured by the United States Government or the FDIC. The Settlement Fund will be used to pay Approved Claims, Administrative Expenses (to be agreed upon by both parties), the Fee Award and Costs, and Service Awards. For the avoidance of doubt, and for purposes of this Settlement Agreement only, GVC's liability shall not exceed Two Million Dollars and No Cents (\$2,000,000.00).
- (a) All interest on the funds in the Escrow Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Administrator is responsible for the payment of all Taxes.
- (b) The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1 at all times after the creation of the Escrow Account. All Taxes shall be paid out of the Escrow Account. Defendant, Defendant's Counsel, Plaintiff, and Class Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold Defendant, Defendant's Counsel, Plaintiff, and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification). For the purpose of the Internal Revenue Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the

“administrator” of the Settlement Fund. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in the previous paragraph) shall be consistent with this paragraph and in all events shall reflect that all taxes (including the Taxes, any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settlement Administrator shall maintain control over the Settlement Fund and shall be responsible for all disbursements. The Settlement Administrator shall not disburse any portion of the Settlement Fund except as provided in this Agreement and with the written agreement of Class Counsel and Defendant’s Counsel or by order of the Court. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement or further order of the Court.

3.2 Settlement Payments: Each Class Member may qualify and submit a claim for Credit Monitoring and Insurance Services and either the Documented Loss Payment or Cash Fund Payment:

(a) Documented Loss Payment. Class Members may submit a claim for a Settlement Payment of up to \$5,000 (Five Thousand Dollars) for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Class Member must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss made under penalty of perjury; and (iii) Reasonable Documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement. If a Class Member does not submit Reasonable Documentation supporting a Documented Loss Payment claim, or if a Class Member’s claim for a Documented Loss Payment is rejected by the Settlement Administrator for any reason, and the Class Member fails to cure his or her claim, the claim will be rejected and the Class Member’s claim will instead be automatically placed into the Cash Fund Payment category below. As part of a Documented Loss Payment Claim, Class Members may submit for reimbursement for time spent remedying issues related to the Data Breach for up to six (6) total hours at a rate of \$25 (“Lost-Time Claims”). No documentation need be submitted in connection with Lost-Time Claims, but Settlement Class Members must attest that the time claimed was actually spent as a result of the Data Breach.Cash Fund Payment. In the alternative to the Documented Loss Payment, Class Members may submit a claim to receive a pro rata Settlement Payment in cash (“Cash Fund Payment”). The amount of the Cash Fund Payment will be calculated in accordance with Section 3.7 below. The Claim for a Cash

Fund Payment may only be submitted in the alternative to the Documented Loss Payment Claim under Section 3.2(a).

(b) Credit Monitoring and Insurance Services (“CMIS”). In addition to a claim for either the Documented Loss Payment or the Cash Fund Payment, Class Members may elect to claim two years of CMIS to be provided by a vendor agreed upon by the parties. The CMIS benefit will provide at a minimum three credit bureau monitoring services and \$1 million in identity theft insurance. Said CMIS benefits will be available to Class Members irrespective of whether they took advantage of any previous offering of credit monitoring from GVC. Class Members will be permitted to postpone activation of their CMIS settlement benefit for up to at least 12 months.

- 3.3 Settlement Payment Methods. Class Members will be provided the option to receive any Settlement Payment due to them pursuant to the terms of this Agreement via various digital methods. In the event that Class Members do not exercise this option with the Settlement Administrator, they will receive their Settlement Payment via a physical check sent to them by U.S. Mail.
- 3.4 Deadline to File Claims. Claim Forms must be received postmarked or electronically within ninety (90) days after the Notice Date.
- 3.5 The Settlement Administrator. The Settlement Administrator shall have the authority to determine whether a Claim Form is valid, timely, and complete. To the extent the Settlement Administrator determines a claim is deficient for a reason other than late posting, within a reasonable amount of time, the Settlement Administrator shall notify the Claimant (with a copy to Class Counsel) of the deficiencies and notify the Claimant that he or she shall have thirty (30) days to cure the deficiencies and re-submit the claim. No notification is required for late-posted claims. The Settlement Administrator shall exercise reasonable discretion to determine whether the Claimant has cured the deficient claim. If the Claimant fails to cure the deficiency, the claim shall stand as denied, and the Class Member shall be so notified if practicable.
- 3.6 Timing of Settlement Benefits. Within ninety (90) days after: (i) the Effective Date; or (ii) all Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever date is later, the Settlement Administrator shall cause funds to be distributed to each Class Member who is entitled to funds based on the selection made on their given Claim Form.
- 3.7 Distribution of Settlement Payments: The Settlement is designed to exhaust the Settlement Fund. The Settlement Fund shall be used to make payments for the following: (i) Administrative Expenses, (ii) Fee Award and Costs, (iii) Service Award, and (iv) taxes. The remaining amount is the Net Settlement Fund.

The Settlement Administrator will first apply the Net Settlement Fund to pay valid claims for Documented Loss Payments. In the event that the aggregate amount of all Documented Loss Payments exceeds the total amount of the Net Settlement Fund, then the value of the Documented Loss Payment to be paid to each Class Member shall be reduced, on a pro rata basis, such that the aggregate value of all Documented Loss Payments does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be used for CMIS claims or distributed to Claimants with Approved Claims for Cash Fund Payments.

If Net Settlement Funds remain after paying for Documented Loss Payments, the Settlement Administrator will next use it to pay valid claims for CMIS. In the event the Net Settlement Fund is insufficient to cover the payment for the CMIS claimed by Class Members, the duration of the CMIS coverage period will be reduced to exhaust the fund. In such an event, no Net Settlement Funds will be distributed to Cash Fund Payments. In such an event, no Net Settlement Funds will be distributed to Claimants with Approved Claims for Cash Fund Payments.

The amount of the Net Settlement Fund remaining after all Documented Loss Payments are applied and the payments for the CMIS are made shall be referred to as the "Post CM/DL Net Settlement Fund." The Settlement Administrator shall then utilize the Post CM/DL Net Settlement Fund to make all Cash Fund Payments pursuant to Section 3.2(b) herein, provided that the average check amount is equal to or greater than Three Dollars and No Cents (\$3.00). The amount of each Cash Fund Payment shall be calculated by dividing the Post CM/DL Net Settlement Fund by the number of valid claims submitted for Cash Fund Payments. In the event that the average check amount for Cash Fund Payments would be less than Three Dollars and No Cents (\$3.00), the monies in the Post CM/DL Net Settlement Fund shall be distributed in accordance with Section 3.9 pertaining to Residual Funds.

All such determinations for payment of Claims as set forth above shall be performed by the Settlement Administrator.

- 3.8 Deadline to Deposit or Cash Physical Checks. Class Members with Approved Claims who receive a Documented Loss Payment or a Cash Fund Payment, by physical check, shall have sixty (60) days following distribution to deposit or cash their benefit check.
- 3.9 Residual Funds. The Settlement is designed to exhaust the Settlement Fund. To the extent any monies remain in the Net Settlement Fund (or Post CM/DL Net Settlement Fund) more than 120 days after the distribution of all Settlement Payments to the class members, a subsequent Settlement Payment will be evenly made to all Class Members with approved claims for Cash Fund Payments who cashed or deposited the initial payment they received, provided that the average check amount is equal to or greater than Three Dollars and No Cents (\$3.00). The distribution of this remaining Net Settlement Fund (or Post CM/DL Net Settlement Fund) shall continue until the average check or digital payment in a distribution is less than three dollars (\$3.00), whereupon the amount remaining in the Net



Settlement Fund (or Post CM/DL Net Settlement Fund), if any, shall be distributed by mutual agreement of the Parties to a Court-approved non-profit recipient. Should it become necessary to distribute any remaining amount of the Net Settlement Fund (or Post CM/DL Net Settlement Fund) to a Court-approved non-profit recipient, the Parties shall petition the Court for permission to do so, providing the Court with details of the proposed non-profit recipient.

- 3.10 Returned Payments. For any Settlement Payment returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make one additional effort to make any digital payments and engage in a reasonable efforts to find a valid address (in the case of physical checks) and resend the Settlement Payment within thirty (30) days after the physical check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall make one attempt to repay or resend a Settlement Payment.
- 3.11 Residue of Settlement Fund. No portion of the Settlement Fund shall ever revert or be repaid to GVC after the Effective Date.
- 3.12 Custody of Settlement Fund. The Settlement Fund shall be deposited into the Escrow Account but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled. In the event this Settlement Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason, any amounts remaining in the Settlement Fund after payment of all Administrative Expenses incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any Taxes, shall be returned to GVC and/or its insurer, and no other person or entity shall have any further claim whatsoever to such amounts.
- 3.13 Non-Reversionary. This is a non-reversionary settlement. As of the Effective Date, all rights of GVC and/or its insurer in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as set forth herein. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to GVC and/or its insurers.
- 3.14 Use of the Settlement Fund. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) all Administrative Expenses; (ii) any Taxes; (iii) any Service Awards; (iv) any Fee Award and Costs; and (v) the Settlement Payments and/or Settlement Benefits, pursuant to the terms and conditions of this Agreement.
- 3.15 Payment / Withdrawal Authorization. No amounts from the Settlement Fund may be withdrawn unless (i) expressly authorized by the Settlement Agreement or (ii) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable Administrative Expenses from the Settlement Fund

as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and GVC with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) Business Days prior to making such withdrawal or payment.

- 3.16 Payments to Class Members. The Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund to Class Members pursuant to this Agreement.
- 3.17 Taxes. All Taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Taxes do not include any federal, state, and local tax owed by any Claimant, Class Representative, or Class Member as a result of any benefit or payment received as a result of the Settlement. Each Claimant, Class Representative, and Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.
- 3.18 Limitation of Liability.
- (a) GVC and its Counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.
  - (b) Class Representative and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the

formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

- (c) The Settlement Administrator shall indemnify and hold Class Counsel, the Settlement Class, Class Representative, and GVC, and GVC's Counsel harmless for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

#### **4. RELEASE**

- 4.1 Upon the Effective Date, and in consideration of the Settlement Benefits described herein, the Class Representatives and all Class Members identified in the settlement class list in accordance with Section 6.4, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, release and discharge all Released Claims, including Unknown Claims, against each of the Released Parties and agree to refrain from instituting, directing or maintaining any lawsuit, contested matter, adversary proceeding, or miscellaneous proceeding against each of the Released Parties that relates to the Data Breach or otherwise arises out of the same facts and circumstances set forth in the class action complaint in this Action. This Settlement releases claims against only the Released Parties. This Settlement does not release, and it is not the intention of the Parties to this Settlement to release, any claims against any third party. Nor does this Release apply to any Class Member who timely excludes himself or herself from the Settlement.
- 4.2 The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes that risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

- 4.3 Notwithstanding any other provision of this Agreement (including, without limitation, this Section), nothing in this Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any court order implementing this Agreement, in a manner consistent with the terms of this Agreement.

## 5. REQUIRED EVENTS AND COOPERATION BY PARTIES

- 5.1 Preliminary Approval. Class Counsel shall submit this Agreement to the Court and shall promptly move the Court to enter the Preliminary Approval Order, in the form attached as **Exhibit E**.
- 5.2 CAFA Notice. Within ten (10) days after Plaintiff files the motion for preliminary approval of the Settlement, Defendant shall provide CAFA Notice to the appropriate officials of the United States, the Commonwealth of Pennsylvania, the other forty-nine states, and U.S. territories. Defendant shall bear the costs of such notice. When Defendant provides CAFA Notice in accordance with Section 11(a) of this Agreement, they shall provide copies of the CAFA Notice to Plaintiff.
- 5.3 Cooperation. The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish all requirements of this Agreement on the schedule set by the Court, subject to the terms of this Agreement. If, for any reason, the Parties determine that the schedule set by the Court is no longer feasible, the Parties shall use their best judgment to amend the schedule to accomplish the goals of this Agreement.
- 5.4 Certification of the Settlement Class. For purposes of this Settlement only, Plaintiff and GVC stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. GVC reserves the right to contest class certification for all other purposes. Plaintiff and GVC further stipulate to designate the Class Representative as the representatives for the Settlement Class.
- 5.5 Resolution of Related Federal Actions. The Class Representatives and Class Counsel shall cooperate and assist with any reasonable actions and steps in furtherance of the stay and dismissal of the Related Federal Actions.
- 5.6 Final Approval. The Parties shall request that the Court schedule the Final Approval Hearing for a date that is no earlier than one hundred twenty (120) days after the entry of the Preliminary Approval Order. The Parties may file a Motion for Final Approval no later than fourteen (14) days prior to the Final Approval Hearing, and a Response to any objections to the Settlement or a Supplement to the Motion for Final Approval no later than seven (7) days prior to the Final Approval Hearing.

## 6. CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

- 6.1 Notice shall be disseminated pursuant to the Court's Preliminary Approval Order.
- 6.2 The Settlement Administrator shall oversee and implement the Notice Plan approved by the Court. All costs associated with the Notice Plan shall be paid from the Settlement Fund.
- 6.3 Direct Notice. No later than the Notice Date, or such other time as may be ordered by the Court, the Settlement Administrator shall disseminate Notice to the Class Members via direct mail.
- 6.4 Settlement Class List. Within five (5) days after the issuance of the Preliminary Approval Order, and contingent upon the Settlement Administrator executing a Data Protection Agreement that is acceptable to GVC, GVC will provide to the Settlement Administrator a list of any and all names, mailing addresses, telephone numbers, and email addresses of any and all Class Members that it has in its possession, custody, or control.
- 6.5 Confidentiality. Any information relating to Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to the Class Members (as set forth herein) and allowing them to recover under this Agreement; shall be kept in strict confidence by the Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall be destroyed after all distributions to Class Members have been made; and shall not be used for any other purpose. Moreover, because the Class Member list and information contained therein will be provided to the Settlement Administrator solely for purposes of providing the Class Notice and Settlement Benefits and processing opt-out requests, the Settlement Administrator will execute a confidentiality and non-disclosure agreement and Data Protection Agreement with Class Counsel and GVC's Counsel, and will ensure that any information provided to it by Class Members, Class Counsel, GVC, or GVC's Counsel, will be secure and used solely for the purpose of effecting this Settlement. The Data Protection Agreement will, at minimum, require the Settlement Administrator to: implement reasonable safeguards to secure the Settlement Class List and related data; require the Settlement Administrator to notify GVC within 48 hours of a data security incident involving GVC' data; and indemnify GVC for any costs associated with a data security incident involving the Settlement Administrator or its vendors, including but not limited to all costs associated with investigating the data security incident and the cost of providing notice to affected individuals.
- 6.6 Fraud Prevention. The Settlement Administrator shall use reasonable and customary fraud-prevention mechanisms to prevent (i) submission of Claim Forms by persons other than potential Class Members, (ii) submission of more than one Claim Form per person, and (iii) submission of Claim Forms seeking amounts to which the claimant is not entitled. In the event a Claim Form is submitted without

a unique Class Member identifier, the Settlement Administrator shall employ reasonable efforts to ensure that the Claim is valid.

- 6.7 Settlement Website. Prior to any dissemination of the Summary Notice and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the Internet in accordance with this Agreement. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, and the operative Class Action Complaint in the Action, and will (on its URL landing page) notify the Settlement Class of the date, time, and place of the Final Approval Hearing. The Settlement Website shall also provide the toll-free telephone number and mailing address through which Class Members may contact the Settlement Administrator directly.
- 6.8 Opt-Out/Request for Exclusion. The Notice shall explain that the procedure for Class Members to opt-out and exclude themselves from the Settlement Class is by notifying the Settlement Administrator in writing, postmarked no later than sixty (60) days after the Notice Date. Any Class Member may submit a Request for Exclusion from the Settlement at any time during the Opt-Out Period. To be valid, the Request for Exclusion must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. In the event a Class Member submits a Request for Exclusion to the Settlement Administrator via US Mail, such Request for Exclusion must be in writing and must identify the case name "*Yvonne Ayala v. Commonwealth Health Physician Network dba Great Valley Cardiology, et al.*"; state the name, address, telephone number and unique identifier of the Class Member seeking exclusion; identify any lawyer representing the Class Member seeking to opt out; be physically signed by the person(s) seeking exclusion; and must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in '*Yvonne Ayala v. Commonwealth Health Physician Network dba Great Valley Cardiology, et al.*'" Any person who elects to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. Requests for Exclusion may only be done on an individual basis, and no person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs.

In the event that within ten (10) days after the Opt-Out Date is approved by the Court, there have been more than 150 timely and valid individual opt-outs (exclusions) submitted, GVC may, by notifying Class Counsel and the Court in writing, void this Agreement. If GVC terminates the Agreement under this section, GVC shall be obligated to pay the Administrative Expenses incurred by the Settlement Administrator to that date for work performed in connection with the Agreement.

6.9 Objections. The Notice shall explain that the procedure for Class Members to object to the Settlement is by submitting written objections to the Settlement Administrator and Settlement Class Counsel no later than sixty (60) days after the Notice Date (the "Objection Deadline"). Plaintiff will file all objections with the Court in connection with the filing of her Motion for Final Approval. Any Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Class Member who wishes to object to the Settlement, the Settlement Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Final Approval Hearing and show cause, if any, for why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement Benefits should not be approved, or why the Service Awards and/or the Fee Award and Costs should not be granted, may do so, but must proceed as set forth in this paragraph. No Class Member or other person will be heard on such matters unless they have submitted in this Action the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider, within sixty (60) days following the Notice Date. All written objections and supporting papers must be submitted to the Settlement Administrator and Class Counsel. All objections must be postmarked on or before the Objection Deadline, as set forth above. Any Class Member who does not make their objections in the manner and by the date set forth in this paragraph shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court. Without limiting the foregoing, any challenge to the Settlement Agreement, the Order Granting Preliminary Approval of the Class Action Settlement Agreement, and the Final Approval Order and Judgment shall be pursuant to appeal under the applicable rules of appellate procedure and not through a collateral attack.

## 7. SETTLEMENT ADMINISTRATION

### 7.1 Submission of Claims.

- (a) Submission of Electronic and Hard Copy Claims. Class Members may submit electronically verified Claim Forms to the Settlement Administrator through the Settlement Website or may download Claim Forms to be filled out, signed, and submitted physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement Administrator shall reject any Claim Forms that are incomplete, inaccurate, or not timely received and will provide Claimants notice and the ability to cure defective claims, unless otherwise noted in this Agreement.
- (b) Review of Claim Forms. The Settlement Administrator will review Claim Forms submitted by Class Members to determine whether they are eligible for a Settlement Payment.

7.2 Settlement Administrator's Duties.

- (a) Cost Effective Claims Processing. The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner, and calculate Settlement Payments in accordance with this Agreement.
- (b) Dissemination of Notices. The Settlement Administrator shall disseminate the Notice Plan as provided for in this Agreement.
- (c) Maintenance of Records. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and GVC's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and GVC's Counsel with information concerning Notice, administration, and implementation of the Settlement. Without limiting the foregoing, the Settlement Administrator also shall:
  - (i) Receive Requests for Exclusion from Class Members and provide Class Counsel and GVC's Counsel a copy thereof no later than five (5) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion or other requests from Class Members after expiration of the Opt-Out Period, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and GVC's Counsel;
  - (ii) Provide weekly reports to Class Counsel and GVC's Counsel that include, without limitation, reports regarding the number of Claim Forms received, the number of Claim Forms approved by the Settlement Administrator, the amount of Claims Forms received (including a breakdown of what types of claims were received and approved), and the categorization and description of Claim Forms rejected by the Settlement Administrator. The Settlement Administrator shall also, as requested by Class Counsel or GVC's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
  - (iii) Make available for inspection by Class Counsel and GVC's Counsel the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice;



- (iv) Cooperate with any audit by Class Counsel or GVC's Counsel, who shall have the right but not the obligation to review, audit, and evaluate all Claim Forms for accuracy, veracity, completeness, and compliance with the terms and conditions of this Agreement.

7.3 Requests For Additional Information: In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Class Member who submits a Claim Form.

## **8. SERVICE AWARDS**

- 8.1 Plaintiff and Class Counsel may seek Service Awards to the Class Representatives of up to \$1,500 (One Thousand Five Hundred Dollars) per Class Representative. Class Counsel may file a motion seeking Service Awards for the Class Representatives on or before fourteen (14) days prior to the Objection Deadline.
- 8.2 The Settlement Administrator shall pay the Service Awards approved by the Court to the Class Representatives from the Settlement Fund. Such Service Awards shall be paid by the Settlement Administrator, in the amount approved by the Court, within five (5) Business Days after the Effective Date.
- 8.3 In the event the Court declines to approve, in whole or in part, the payment of the Service Award in the amounts requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Service Award shall constitute grounds for cancellation or termination of this Agreement.
- 8.4 The Parties did not discuss or agree upon the amount of the maximum amount of Service Awards for which Class Representatives can apply for, until after the substantive terms of the Settlement had been agreed upon.

## **9. ATTORNEYS' FEES, COSTS, AND EXPENSES**

- 9.1 Class Counsel may file a motion seeking an award of attorneys' fees of up to one-third of the Settlement Fund, and, separately, reasonably incurred litigation expenses and costs (i.e., Fee Award and Costs), no later than fourteen (14) days prior to the Objection Deadline. The motion for a Fee Award and Cost shall be posted on the Settlement Website. The Settlement Administrator shall pay any attorneys' fees, costs, and expenses awarded by the Court to Class Counsel in the amount approved by the Court, from the Settlement Fund, within five (5) Business Days after the Effective Date.
- 9.2 Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst themselves.

- 9.3 The Settlement is not conditioned upon the Court's approval of an award of Class Counsel's Fee Award and Costs or Service Awards.

## 10. EFFECTIVE DATE, MODIFICATION, AND TERMINATION

- 10.1 The Effective Date of the Settlement shall be the first day after all of the following conditions have occurred:
- (a) GVC and Class Counsel execute this Agreement;
  - (b) The Court enters the Preliminary Approval Order attached hereto as **Exhibit E**, without material change;
  - (c) Notice is provided to the Settlement Class consistent with the Preliminary Approval Order;
  - (d) The Court enters the Final Approval Order and Judgment attached hereto as **Exhibit B** and **Exhibit C**, respectively, without material change; and
  - (e) The Final Approval Order and Judgment have become "Final" because: (i) the time for appeal, petition, rehearing or other review has expired; or (ii) if any appeal, petition, request for rehearing or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, requests for rehearing or other review has expired.
- 10.2 In the event that the Court declines to enter the Preliminary Approval Order, declines to enter the Final Approval Order and Judgment, the Related Federal Actions are not stayed and dismissed as putative class actions, or the Final Approval Order and Judgment does not become Final (as described in Paragraph 10.1(e) of this Agreement), GVC may at its sole discretion terminate this Agreement on five (5) Business Days written notice from GVC's Counsel to Class Counsel. It shall not be an event triggering GVC's right to terminate this Agreement if one or more of the plaintiffs in the Related Federal Actions opts out of this Settlement and continues or brings an action against GVC on an individual basis.
- 10.3 In the event the terms or conditions of this Settlement Agreement are materially modified by any court, any Party in its sole discretion to be exercised within fourteen (14) days after such modification may declare this Settlement Agreement null and void. In the event of a material modification by any court, and in the event the Parties do not exercise their unilateral options to withdraw from this Settlement Agreement pursuant to this Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt to reach an agreement as to how best to effectuate the court-ordered modification. For the avoidance of doubt, a "material modification" shall not include any reduction by the Court of the Fee Award and Costs and/or Service Awards.

- 10.4 Except as otherwise provided herein, in the event the Settlement is terminated, the Parties to this Agreement, including Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. In addition, the Parties agree that in the event the Settlement is terminated, any orders entered pursuant to the Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses.
- 10.5 In the event this Agreement is terminated pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of 10.5, and 10.6 herein) and shall have no legal effect, and the Parties will return to their respective positions existing immediately before the execution of this Agreement.
- 10.6 Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur (collectively, a "Termination Event"), Class Members, Plaintiff, and Class Counsel shall not in any way be responsible or liable for any of the Administrative Expenses, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs. In the event of a Termination Event, then (a) this Settlement Agreement shall be null and void and of no force and effect; (b) the Settlement Fund and any and all interest earned thereon, less monies expended toward settlement administration, will be returned to Defendant within 10 days after the date the Settlement Agreement becomes null and void; and (c) any release shall be of no force or effect. In such event, unless the Parties can negotiate a modified settlement agreement, the Action will revert to the status that existed before the Settlement Agreement's execution date; the Parties will each be returned to their respective procedural postures in the litigation, and neither the Settlement Agreement nor any facts concerning its negotiation, discussion or terms will be admissible in evidence for any purpose in the Action (or in any other litigation).

## **11. NO ADMISSION OF WRONGDOING OR LIABILITY**

- 11.1 This Agreement, whether or not consummated, any communications and negotiations relating to this Agreement or the Settlement, and any proceedings taken pursuant to the Agreement:
- (a) shall not be offered or received against GVC as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by GVC with respect to the truth of any fact alleged by any Plaintiff or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of GVC;

- (b) shall not be offered or received against GVC as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by GVC;
- (c) shall not be offered or received against GVC as evidence of a presumption, concession or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against GVC, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Parties may refer to it to effectuate the liability protection granted them hereunder;
- (d) shall not be construed against GVC as an admission or concession that the consideration to be given hereunder represents the relief that could be or would have been awarded after trial; and
- (e) shall not be construed as or received in evidence as an admission, concession or presumption against the Class Representative or any Class Member that any of their claims are without merit, or that any defenses asserted by GVC have any merit.

## 12. REPRESENTATIONS

- 12.1 Each Party represents that: (i) such Party has full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval; (ii) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party; (iii) this Agreement constitutes a valid, binding, and enforceable agreement; and (iv) no consent or approval of any person or entity is necessary for such Party to enter into this Agreement.

## 13. NOTICE

- 13.1 All notices to Class Counsel provided for in this Agreement shall be sent by email (to all email addresses set forth below) and by First-Class mail to all of the following:

**MORGAN & MORGAN**  
Francesca K. Burne  
Jean S. Martin  
201 N. Franklin Street, 7<sup>th</sup> Floor  
Tampa, FL 33602  
[fburne@forthepeople.com](mailto:fburne@forthepeople.com)  
[jeanmartin@forthepeople.com](mailto:jeanmartin@forthepeople.com)

*Settlement Class Counsel*

- 13.2 All notices to GVC or GVC's Counsel provided for in this Agreement shall be sent by email and First Class mail to the following:

Jonathan O. Harris  
**JACKSON LEWIS P.C.**  
611 Commerce Street  
Suite 2803  
Nashville, TN 37203  
Jonathan.Harris@jacksonlewis.com

- 13.3 All notices to the Settlement Administrator provided for in this Agreement shall be sent by email and First Class mail to the following address:

Great Valley Cardiology Data Breach Settlement Administrator  
P.O. Box: *To Be Determined*  
Address: *To Be Determined*  
Email: *To Be Determined*

- 13.4 The notice recipients and addresses designated in this Section may be changed by written notice.

**14. MISCELLANEOUS PROVISIONS**

- 14.1 Representation by Counsel. Plaintiff and GVC represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.
- 14.2 Best Efforts. The Parties agree that they will make all reasonable efforts needed to reach the Effective Date and fulfill their obligations under this Agreement.
- 14.3 Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the Exhibits thereto, are contractual and are not a mere recital, and each signatory warrants that he, she, or it is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that they or it represents.
- 14.4 Integration. This Agreement constitutes the entire agreement among the Parties and no representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

- 14.5 Drafting. The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentum*. This Settlement Agreement is a collaborative effort of the Parties and their attorneys that was negotiated on an arm's-length basis between parties of equal bargaining power. Accordingly, this Agreement shall be neutral, and no ambiguity shall be construed in favor of or against any of the Parties. The Parties expressly waive any otherwise applicable presumption(s) that uncertainties in a contract are interpreted against the party who caused the uncertainty to exist.
- 14.6 Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the persons who executed this Agreement or their successors-in-interest.
- 14.7 Waiver. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 14.8 Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.
- 14.9 Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties thereto.
- 14.10 Survival. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.
- 14.11 Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of Tennessee, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.
- 14.12 Interpretation.
- (a) Definitions apply to the singular and plural forms of each term defined.
  - (b) Definitions apply to the masculine, feminine, and neuter genders of each term defined.
  - (c) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

- 14.13 No Precedential Value. The Parties agree and acknowledge that this Agreement carries no precedential value.
- 14.14 Fair and Reasonable. The Parties and their counsel believe this Agreement is a fair, reasonable, and adequate compromise of the disputed claims, in the best interest of the Parties, and have arrived at this Agreement as a result of arm's-length negotiations with the assistance of an experienced mediator.
- 14.15 Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement.
- 14.16 Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.
- 14.17 Exhibits. The exhibits to this Agreement and any exhibits thereto are an integral and material part of the Settlement. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.
- 14.18 Counterparts and Signatures. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts. Digital signatures shall have the same force and effect as the original.
- 14.19 Facsimile and Electronic Mail. Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.
- 14.20 No Assignment. Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.
- 14.21 Deadlines. If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next Business Day. All reference to "days" in this Agreement shall refer to calendar days, unless otherwise specified. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.
- 14.22 Dollar Amounts. All dollar amounts are in United States dollars, unless otherwise expressly stated.

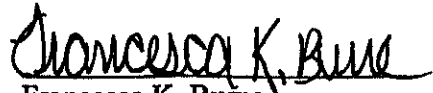
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized counsel:

(signatures on following page(s))



**MORGAN & MORGAN**

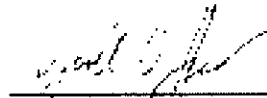
Dated: Apr. 16, 2024



Francesca K. Burne  
*Proposed Settlement Class Counsel*

**JACKSON LEWIS P.C.**

Dated: April 17, 2024



Jonathan O. Harris

*Counsel for Defendant, GVC*

— EXHIBIT A —

Great Valley Cardiology Data Breach Settlement Administrator  
P.O. Box XXXX  
Baton Rouge, LA 70821

Your Claim Form Must Be Submitted Online or  
Postmarked By Month Date, Year

***Ayala v. Commonwealth Health Physician Network, et. al.***

Lackawanna County Court of Common Pleas, Docket No. 2023-CV-3008

**CLAIM FORM**

**GENERAL INSTRUCTIONS**

Complete this Claim Form if you are a Settlement Class Member and you wish to receive Settlement benefits.

You are a member of the Settlement Class and eligible to submit a Claim Form if:

You are an individual whose Personal Information was potentially compromised in the Data Breach experienced by GVC between February 2 and April 3, 2023, and who were sent the Notice of Data Privacy Incident on or around June 2023.

Settlement Class Members may submit a claim form for: (1) Documented Losses – up to a total of \$5,000 per claimant; or (2) a pro rata Settlement Payment in cash. Settlement Class Members may also elect to claim two years of credit monitoring and insurance services ("CMIS").

**Documented Loss Payment:** Claims under this category must be supported with documentation and: 1) The loss is an actual, documented, and unreimbursed monetary loss arising from identity theft, fraud, or similar misuse; (2) the loss was more likely than not caused by the Data Breach; and (3) the loss occurred between February 2, 2023 and [insert date of the Settlement Agreement]. As part of a Documented Loss Payment Claim, Class Members may submit for reimbursement for time spent remedying issues related to the Data Breach for up to six (6) total hours at a rate of \$25 (for a total of \$150). No documentation need be submitted in connection with lost-time claims, but Settlement Class Members must attest that the time claimed was actually spent as a result of the Data Breach.

**Cash Fund Payment:** In the alternative to claiming Documented Losses, Settlement Class Members may elect to receive a *pro rata* share of the Settlement Fund.

**Credit Monitoring and Insurance Services ("CMIS").** Settlement Class Members shall have the ability to make a claim for 2 years of credit monitoring and identity theft protection services with \$1 million in insurance by choosing this benefit on this Claim Form.

This Claim Form may be submitted electronically *via* the Settlement Website at [www.XXXXXXX.com](http://www.XXXXXXX.com) or completed and mailed, including any supporting documentation, to: *Great Valley Cardiology Data Breach Settlement Administrator*, P.O. Box XXXX, Baton Rouge, LA 70821.

**I. SETTLEMENT CLASS MEMBER NAME AND CONTACT INFORMATION**

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this form.

First Name\* \_\_\_\_\_ Last Name\* \_\_\_\_\_

Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)\* \_\_\_\_\_

City\* \_\_\_\_\_ State\* \_\_\_\_\_ Zip Code\* \_\_\_\_\_

Email Address\* \_\_\_\_\_

Telephone Number\* \_\_\_\_\_ Notice ID, if known\* \_\_\_\_\_



— **EXHIBIT B** —

**IN THE FORTY-FIFTH DISTRICT OF PENNSYLVANIA  
LACKAWANNA COUNTY COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

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<p>YVONNE AYALA, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>COMMONWEALTH HEALTH PHYSICIAN NETWORK, et. al,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">COURT OF COMMON PLEAS LACKAWANNA COUNTY, PA</p> <p style="text-align: center;">No. 2023-cv-3008</p>
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**[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT  
GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

This matter came before the Court on Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement and entry of final judgment (“Motion”).

On \_\_\_\_\_, the Court entered an Order preliminarily approving the proposed Settlement pursuant to the terms of the Parties’ Settlement Agreement and directing that notice be given to the Settlement Class.

On \_\_\_\_\_, pursuant to the notice requirements set forth in the Settlement Agreement and the Order Preliminarily Approving the Settlement and Directing Notice to the Settlement Class, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Approval Hearing.

On \_\_\_\_\_, the Court held a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated

by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. Prior to the Final Approval Hearing, a declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as required by the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the final approval hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees and costs to Class Counsel, and the payment of Service Awards to the Class Representatives;

Having given an opportunity to be heard to all requesting persons in accordance with the Order Preliminarily Approving the Settlement and Directing Notice to the Settlement Class, having heard the presentation of Class Counsel and counsel for Defendant, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees and costs and expenses, and the application for Service Awards to the Class Representatives, and having reviewed the materials in support thereof, and good cause appearing:

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The Court finds, for settlement purposes only, that the factors delineated in Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709 are present and that certification of the proposed Settlement Class<sup>1</sup> is appropriate under Rule 1710. The Court, therefore, certifies the following Settlement Class:

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<sup>1</sup> The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.

All natural persons whose Personal Information was potentially compromised in the Data Breach and who were sent the Notice of Data Privacy Incident on or around June 2023.

Excluded from the Class are 1) this Court and members of their immediate families and their staff; (2) GVC, its subsidiaries, parent companies, successors, predecessors, and any entity in which GVC or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

2. The Court finds, for settlement purposes only, that the Settlement Class meets the requirements for certification under Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709:

- a. the proposed Settlement Class is easily identifiable and so numerous that joinder of all members of the class is impracticable;
- b. there are questions of law and/or fact common to the proposed Settlement Class;
- c. the Class Representatives' claims are typical of the claims of the members of the proposed Settlement Class;
- d. the Class Representatives will fairly and adequately represent the interests of the members of the proposed Settlement Class;
- e. common issues will likely predominate over individual issues; and
- f. Class Counsel are qualified to serve as counsel the proposed Settlement Class.

3. The Court appoints Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello as Class Representatives for the proposed Settlement Class. The Court finds that the Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and will be adequate Settlement Class Representatives.

4. The Court finds that the following counsel are experienced and adequate counsel and are hereby designated as Class Counsel:



Jean S. Martin  
**MORGAN & MORGAN COMPLEX LITIGATION GROUP**  
201 N. Franklin Street, 7th Floor  
Tampa, Florida 33602  
Tel: (813) 223-5505  
jeanmartin@forthepeople.com

Francesca K. Burne  
**MORGAN & MORGAN COMPLEX LITIGATION GROUP**  
201 N. Franklin Street, 7th Floor  
Tampa, Florida 33602  
Tel: (813) 223-5505  
fburne@forthepeople.com

5. The Court approves the Settlement as fair, reasonable, and adequate and accordingly the Settlement is finally approved. The Court finds the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator.

6. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

7. The Court has considered all objections to the Settlement, including the objections of \_\_\_\_\_. The Court finds these objections do not counsel against Settlement approval, and the objections are hereby overruled in all respects. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

8. The Settlement Class, which is bound by this Final Approval Order and Judgment, includes all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class. A list of those putative Settlement Class Members who have timely elected to opt out of the Settlement and the Settlement Class, and who therefore are not bound by the Settlement, this Order and the Judgment to be entered hereon, has been submitted to

the Court in the Declaration of \_\_\_\_\_, filed in advance of the Final Approval hearing. That list is attached as Exhibit A to this Order.

9. All Settlement Class Members (as permanently certified below) shall be subject to all of the provisions of the Settlement, this Order and the Final Judgment to be entered hereon. Upon the Effective Date, members of the Settlement Class who did not validly and timely exclude themselves from the Settlement Class shall, by operation of this Final Approval Order, have fully, finally, forever, and irrevocably released, relinquished and discharged Defendant from all claims that were or could have been asserted in the Action, as specified in the Settlement Agreement. All such Settlement Class Members shall be bound by the terms of the Settlement Agreement upon entry of this final approval order.

10. Notwithstanding the certification of the foregoing Settlement Class and appointment of the Class Representatives for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Class Representatives shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

11. The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Settlement Agreement (including the exhibits thereto): (a) was the best practicable notice to the Settlement Class; (b) was reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement, including but not limited to their rights to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) was reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) met all applicable requirements of

law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements.

12. Within the time period set forth in the Settlement Agreement, the relief provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

13. Upon the Effective Date, Class Representatives and Settlement Class Members shall be hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement and this Order, or seeking any award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Litigation and/or as a result of or in addition to those provided by the Settlement Agreement. In addition, Plaintiff and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a setoff or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

14. Upon the Effective Date, each Settlement Class Member, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all released claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Class Representatives, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the released claims is asserted.

15. Upon the Effective Date, Defendant shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Class

Plaintiff, each and all of the Settlement Class Members, Settlement Class Counsel, of all claims based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation, except for enforcement of the Settlement Agreement. Any other claims or defenses Defendant may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation are specifically preserved and shall not be affected by the preceding sentence.

16. The terms of the Settlement Agreement, this Final Approval Order and the Judgment to be entered hereon shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Litigation or are in any way related to the Data Breach at issue in the Litigation.

17. This Final Approval Order and Judgment, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendant of any fault, wrongdoing, or liability on the part of Defendant or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation. This Order and Judgment, the Settlement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; *provided, however,* that the Settlement, this Order and Judgment may be filed in any action by Defendant or Settlement Class Members seeking to enforce the Settlement or the Judgment by injunctive or

other relief, or to assert defenses including, but not limited to, res judicata, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to released claims and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

19. This case is hereby dismissed in its entirety with prejudice. Except as otherwise provided in this Court's orders, the parties shall bear their own costs and attorney's fees. Without affecting the finality of this Final Approval Order and Judgment in any way, the Court reserves jurisdiction over all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Order and Settlement.

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_

— EXHIBIT C —

**To all persons whose personal information was potentially impacted by a cybersecurity incident that Great Valley Cardiology initially disclosed on or around June 2023, a proposed class action settlement may affect your rights.**

For more information on the proposed settlement, including how to submit a claim, exclude yourself, or submit an objection, please visit [Website URL](#).

*A state court has authorized this Notice.*

*This is not a solicitation from a lawyer.*

Commonwealth Health Physician Network/Great Valley Cardiology Data  
Breach Litigation

c/o Settlement Administrator

XX

XX

«ScanString»

Postal Service: Please do not mark barcode.

Notice ID: «Notice ID»

Confirmation Code: «Confirmation Code»

«FirstName» «LastName»

«Address1»

***Ayala v. Commonwealth Health Physician Network, et. al., Docket No. 2023-CV-3008***

**Why am I receiving this notice?** You are receiving this Notice because the records of Commonwealth Health Physician Network, doing business as Great Valley Cardiology, and Scranton Cardiovascular Physician Services, LLC. ("GVC") show that your personal information may have been impacted as a result of a cybersecurity incident that GVC initially disclosed on or around June 2023 ("Data Breach"). You are therefore likely a Settlement Class Member eligible to receive benefits under this Settlement.

**What are the Settlement Benefits?** Under the Settlement, GVC will create a Settlement Fund consisting of \$2,000,000.00 to be used for valid and timely claims for Documented Loss Payments or Cash Fund Payments summarized below.

- Documented Loss Payment – Up to a total of \$5,000 per claimant, including for time spent remediating related issues.
- Cash Fund Payment – In the alternative to the above, a pro rata Settlement Payment in cash.

Settlement Class Members also can obtain Credit Monitoring and Insurance Services ("CMIS") under the Settlement.

Please visit \_\_\_\_\_ for a full description of the Settlement benefits and documentation requirements.

**How do I Submit a Claim Form for Benefits?** You must submit a Claim Form, available at \_\_\_\_\_ to be eligible to receive a Settlement benefit. Your completed Claim Form must be submitted online, or mailed to the Settlement Administrator and postmarked, by \_\_\_\_\_.

**What are my other options?** If you **Do Nothing**, you will be legally bound by the terms of the Settlement, and you will release your claims against GVC and other Released Parties as defined in the Settlement Agreement. You may **Opt-Out** of or **Object** to the Settlement by \_\_\_\_\_, Please visit \_\_\_\_\_ for more information on how to Opt-Out and exclude yourself from or Object to the Settlement.

**Do I have a Lawyer in this Case?** Yes, the Court appointed the law firm of Morgan & Morgan to represent members of the Settlement Class. For litigating the case and negotiating the Settlement, Class Counsel will file a motion seeking Court approval for the payment of their attorneys' fees and costs in an amount no greater than \$666,666.00 for attorneys' fees and costs. You will not be charged directly for these lawyers; instead, they will receive compensation from GVC (subject to Court approval). If you want to be represented by your own lawyer, you may hire one at your own expense.

**The Court's Final Approval Hearing.** The Court is scheduled to hold a Final Approval Hearing on \_\_\_\_\_, to consider whether to approve the Settlement, service awards for the Class Representatives of \$1,500.00 each, and a request for attorneys' fees and expenses for Settlement Class Counsel. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to.

**This notice is only a summary. For more information, visit \_\_\_\_\_ or call toll-free 1-XXX-XXX-XXXX.**



*Ayala v. Commonwealth Health Physician Network, et. al., Docket No. 2023-CV-3008*

— EXHIBIT D —

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

Lackawanna County Court of Common Pleas  
*Ayala v. Commonwealth Health Physician Network, et al.*  
Docket No. 2023-CV-3008

*A state court authorized this Notice. You are not being sued.*  
*This is not a solicitation from a lawyer.*

- A Settlement has been reached with Commonwealth Health Physician Network, doing business as Great Valley Cardiology, and Scranton Cardiovascular Physician Services, LLC. (“GVC” or “Defendant”) in a class action lawsuit about a cybersecurity incident that was disclosed on or around June 2023 (“Data Breach”).
- The lawsuit is captioned *Ayala v. Commonwealth Health Physician Network, et al.*, Docket No. 2023-CV-3008 (the “Action”), pending in the Lackawanna County Court of Common Pleas. GVC denies the allegations and all liability or wrongdoing with respect to any and all facts and claims alleged in the lawsuit but has agreed to a settlement to avoid the costs and risks associated with continuing this case.
- You are included in this Settlement if you are a Settlement Class Member. A Settlement Class Member is an individual who resides in the United States whose Personal Information was potentially compromised in the Data Breach experienced by GVC between February 2 and April 3, 2023, and disclosed publicly in June 2023.
- Your rights are affected whether you act or don’t act. Please read this Notice carefully.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		<b>DEADLINE</b>
<b>SUBMIT A CLAIM</b>	<p>The only way to receive cash and other benefits from this Settlement is by submitting a valid and timely Claim Form.</p> <p>You can submit your Claim Form online at _____ or download the Claim Form from the Settlement Website and mail it to the Settlement Administrator. You may also call or email the Settlement Administrator to receive a paper copy of the Claim Form.</p>	_____, 2024
<b>OPT OUT OF THE SETTLEMENT</b>	<p>You can choose to opt out of the Settlement and receive no payment. This option allows you to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims resolved by this Settlement. You can elect to retain your own legal counsel at your own expense.</p>	_____, 2024
<b>OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING</b>	<p>If you do not opt out of the Settlement, you may object to it by writing to the Court about why you don't like the Settlement. You may also ask the Court for permission to speak about your objection at the Final Approval Hearing. If you object, you may also file a claim for benefits.</p>	_____, 2024
<b>DO NOTHING</b>	<p>Unless you opt out of the settlement, you are part of the Settlement. If you do nothing, you will not get a payment from this Settlement and you will give up the right to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims resolved by this Settlement.</p>	No Deadline

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.

## WHAT THIS NOTICE CONTAINS

<u>BASIC INFORMATION</u> .....	3
<u>WHO IS IN THE SETTLEMENT</u> .....	4
<u>THE SETTLEMENT BENEFITS</u> .....	4
<u>HOW TO GET A PAYMENT—MAKING A CLAIM</u> .....	6
<u>THE LAWYERS REPRESENTING YOU</u> .....	6
<u>OPTING OUT OF THE SETTLEMENT</u> .....	7
<u>COMMENTING ON OR OBJECTING TO THE SETTLEMENT</u> .....	7
<u>THE COURT’S FINAL APPROVAL HEARING</u> .....	9
<u>IF I DO NOTHING</u> .....	9
<u>GETTING MORE INFORMATION</u> .....	9

## BASIC INFORMATION

### 1. Why was this Notice issued?

A state court authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, your legal rights, what benefits are available, and who can receive them.

The Civil Trial Division of the Lackawanna County Court of Common Pleas is overseeing this class action. The lawsuit is captioned *Ayala v. Commonwealth Health Physician Network, et al.*, Docket No. 2023-CV-3008 The person that filed this lawsuit is called the “Plaintiff” and the company she sued is called the “Defendant.”

### 2. What is this lawsuit about?

This lawsuit alleges that personal information was impacted by the cybersecurity incident that GVC initially disclosed on or around June 2023 (“Data Breach”).

### 3. What is a class action?

In a class action, one or more individuals represent other people with similar claims. These individuals are known as “Class Representatives.” Together, the people included in the class action are called a “class” or “class members.” One court resolves the lawsuit for all settlement class members, except for those who opt out from a settlement. In this Settlement, the Class Representatives are Yvonne Ayala

Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello.

#### 4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiff or the Defendant. The Defendant denies all claims and contends that it has not violated any laws. Plaintiff and the Defendant agreed to a Settlement to avoid the costs and risks of a trial, and through the Settlement, Settlement Class Members are eligible to receive payments. The Plaintiff and her attorneys think the Settlement is best for all Settlement Class Members.

### WHO IS IN THE SETTLEMENT?

#### 5. Who is included in the Settlement?

The Settlement Class consists of all natural persons whose Personal Information was potentially compromised in the Data Breach and who were sent the Notice of Data Privacy Incident on or around June 2023.

#### 6. Are there exceptions to being included?

Yes. Excluded from the Settlement Class are (i) GVC and its related entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) the successors or assigns of any such excluded natural person.

If you are not sure whether you are included in the Settlement Class, you can ask for free help by emailing or writing to Settlement Administrator at:

[email address]

*Great Valley Cardiology Data Breach Settlement*, c/o Settlement Administrator, [SA Address]

You may also view the Settlement Agreement and Release (“Settlement Agreement”) at [Website URL].

### THE SETTLEMENT BENEFITS

#### 7. What does the Settlement provide?

Under the Settlement, GVC will create a Settlement Fund consisting of \$2,000,000.00 to be used to pay valid and timely claims for Documented Loss Payments, Alternative Cash Fund Payments, and Credit Monitoring and Insurance Services (“CMIS”), explained below.

## 8. How much will my payment be?

Payments will vary - Settlement Class Members may submit a claim form for: (1) Documented Loss Payments – up to a total of \$5,000 per claimant, to include reimbursement for time spent remediating issues related to the Data Breach at \$25 per hour for up to six hours (for a total of \$150 and subject to the \$5,000 cap for Documented Loss Payments); *or* (2) a *pro rata* Settlement Payment in cash (“Cash Fund Payment”). In addition, Settlement Class Members may elect to claim two years of CMIS.

**Documented Loss Payment:** Documented Losses must generally be supported with documentation and: (1) The loss is an actual, documented, and unreimbursed monetary loss arising from identity theft, fraud, or similar misuse; (2) the loss was more likely than not caused by the Data Breach; and (3) the loss occurred between February 2, 2023 and [\_\_insert date of the Settlement Agreement\_\_]. Class Members may also submit for reimbursement for time spent remediating issues related to the Data Breach for up to six (6) total hours at a rate of \$25. No documentation need be submitted in connection with lost-time, but Settlement Class Members must attest that the time claimed was actually spent as a result of the Data Breach.

**Cash Fund Payment:** In the alternative to claiming Documented Losses, Settlement Class Members can make a claim to receive a *pro rata* Cash Fund Payment.

**Credit Monitoring Services.** In addition to making a claim for either a Documented Loss Payment or a Cash Fund Payment, Settlement Class Members also may make a claim to receive two (2) years of credit monitoring and identity theft protection services with \$1 million in insurance by choosing this benefit on this Claim Form.

## 9. What claims am I releasing if I stay in the Settlement Class?

Unless you opt out of the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the Defendant about any of the legal claims this Settlement resolves. The “Release” section in the Settlement Agreement describes the legal claims that you give up if you remain in the Settlement Class. The Settlement Agreement can be found at [Website URL].

## **HOW TO GET A PAYMENT - MAKING A CLAIM**

### **10. How do I submit a claim and get a cash payment?**

You may file a claim if your Personal Information was potentially compromised in the Data Breach, and you were sent the Notice of Data Privacy Incident on or around June 2023.

Claim Forms may be submitted online at [Website URL] or printed from the website and mailed to the Settlement Administrator at: *Great Valley Cardiology Data Breach Settlement*, c/o Settlement Administrator, XXX

You may also contact the Settlement Administrator to request a Claim Form by telephone 1-XXX-XXX-XXXX, by email [Email Address], or by U.S. mail at the address above.

### **11. What is the deadline for submitting a claim?**

If you submit a claim by U.S. mail, the completed and signed Claim Form must be postmarked by [Deadline Date]. If submitting a Claim Form online, you must do so by [Deadline Date].

### **12. When will I get my payment?**

The Court is scheduled to hold a final approval hearing on \_\_\_\_\_, 2024 to decide whether to approve the Settlement, how much attorneys' fees and costs to award to Settlement Class Counsel for representing the Settlement Class, and whether to award a Service Award to each Class Representative who brought this Action on behalf of the Settlement Class.

If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. Settlement payments will be distributed as soon as possible, if and when the Court grants final approval to the Settlement and after any appeals are resolved.

## **THE LAWYERS REPRESENTING YOU**

### **13. Do I have a lawyer in the case?**

Yes, the Court appointed the law firm of Morgan & Morgan to represent you and other members of the Settlement Class ("Settlement Class Counsel"). You will not be charged directly for these lawyers; instead, they will receive compensation from GVC (subject to Court approval). If you want to be represented by your own lawyer, you may hire one at your own expense.



## 14. Should I get my own lawyer?

It is not necessary for you to hire your own lawyer because Settlement Class Counsel works for you. If you want to be represented by your own lawyer, you may hire one at your own expense.

## 15. How will the lawyers be paid?

Settlement Class Counsel will file a motion for an award of attorneys' fees and litigation costs and expenses to be paid by GVC out of the Settlement Fund. GVC has agreed not to oppose Settlement Class Counsel's request for an award of attorneys' fees and costs not to exceed \$666,666.00.

Settlement Class Counsel will also seek a service award payment for the Class Representatives in recognition for their contributions to this Action. GVC has agreed not to oppose Settlement Class Counsel's request for service awards not to exceed \$1,500.00 per representative.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

## 16. How do I opt out of the Settlement?

If you do not want to receive any benefits from the Settlement, and you want to keep your right, if any, to separately sue the Defendant about the legal issues in this case, you must take steps to exclude yourself from the Settlement Class. This is called "opting out" of the Settlement Class. The deadline for requesting exclusion from the Settlement is **[Deadline Date]**.

To exclude yourself from the Settlement, you must submit a written request for exclusion that includes the following information:

- your full name;
- current address and telephone number;
- personal signature; and
- the words "Request for Exclusion" or a comparable statement that you do not wish to participate in the Settlement at the top of the communication.

Your request for exclusion must be mailed to the Settlement Administrator at the address below, postmarked no later than **[Deadline Date]**.

*Great Valley Cardiology Data Breach Settlement Administrator*

ATTN: Exclusion Request

XXX

XXXXX

If you exclude yourself, you are telling the Court that you do not want to be part of the Settlement. You will not be eligible to receive a payment or any other benefits under the Settlement if you exclude yourself. You may only exclude yourself – not any other person.

## COMMENTING ON OR OBJECTING TO THE SETTLEMENT

### 17. How do I tell the Court if I like or do not like the Settlement?

If you are a Settlement Class Member, you can choose (but are not required) to object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve the Settlement.

For an objection to be considered by the Court, the objection must clearly: (a) identify the case name and number; (b) state the Class Member's full name, current mailing address, and telephone number; (c) contain a statement by the Class Member that he or she believes themselves to be a member of the Settlement Class; (d) include proof that the Class Member is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Data Breach); (e) identify the specific grounds for the objection; (f) identify whether the objection is an objection to the Settlement in part or in whole; (g) state whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class; (h) identify all counsel representing the Class Member, if any; (i) include a list 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 five (5) years; (j) include all documents or writings that the Class Member desires the Court to consider; (k) contain a statement regarding whether the Class Member (or counsel of his or her choosing) intends to appear at the Final Approval Hearing; and (l) contain the signature of the Class Member or the Class Member's duly authorized attorney or representative.

Any Settlement Class Member who does not file a timely and adequate objection in accordance with above paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement and shall be bound by the terms of the Agreement and by all proceedings, orders, and judgments in the Action.

Objections must be submitted to the Settlement Administrator and Settlement Class Counsel no later than **[Deadline Date]**.

*Great Valley Cardiology Data Breach Settlement Administrator*

ATTN: Exclusion Request

XXX

XXXXX

and

MORGAN & MORGAN COMPLEX LITIGATION GROUP

ATTN: Jean S. Martin and Francesca K. Burne

201 N. Franklin Street, 7<sup>th</sup> Floor

Tampa, Florida 33602

## 18. What is the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is opting out and stating to the Court that you do not want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because the Settlement no longer affects you.

## THE COURT'S FINAL APPROVAL HEARING

## 19. When is the Court's Final Approval Hearing?

The Court is scheduled to hold a final approval hearing on \_\_\_\_\_, 2024 at \_\_\_\_\_ a.m./p.m. E.T., at the Lackawanna County Courthouse, 200 N. Washington Ave, Scranton, PA 18503, to decide whether to approve the Settlement, how much attorneys' fees and costs to award to Settlement Class Counsel for representing the Settlement Class, and whether to award a service award payment to each Class Representative who brought this Action on behalf of the Settlement Class. If you are a Settlement Class Member, you or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice. Please check [www.\\_\\_\\_\\_\\_](http://www._____) for updates.

## 20. Do I have to come to the Final Approval Hearing?

No. Settlement Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you file an objection, you do not have to come to the Final Approval Hearing to talk about it. If you file your written objection on time and in accordance with the requirements above, the Court will consider it. You may also pay your own lawyer to attend, but such attendance is not necessary for the Court to consider an objection that was filed on time and meets the requirements above.

## IF I DO NOTHING

## 21. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will give up the rights explained in **Question 9**, including your right to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against the Defendant and the Released Parties, as defined in the Settlement Agreement, about the legal issues resolved by this Settlement. In addition, you will not receive a payment from this Settlement.

## **GETTING MORE INFORMATION**

### **22. How do I get more information?**

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at the Settlement Website, [Website URL].

If you have additional questions, you may contact the Settlement Administrator by email, phone, or mail:

Email: [Email Address]

Toll-Free: 1-XXX-XXX-XXXX

Mail: GVC Data Breach Settlement Administrator, [ADDRESS]

Publicly filed documents can also be obtained by visiting the office of the Clerk of the Lackawanna County Court of Common Pleas or by reviewing the Court's online docket.

**PLEASE DO NOT CONTACT THE COURT OR GVC**

— **EXHIBIT E** —

**IN THE FORTY-FIFTH DISTRICT OF PENNSYLVANIA  
LACKAWANNA COUNTY COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

<p>YVONNE AYALA, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>COMMONWEALTH HEALTH PHYSICIAN NETWORK, et. al,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">COURT OF COMMON PLEAS LACKAWANNA COUNTY, PA</p> <p style="text-align: center;">No. 2023-cv-3008</p>
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**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION  
SETTLEMENT, CERTIFYING THE SETTLEMENT CLASS,  
AND PROVIDING FOR NOTICE TO THE SETTLEMENT CLASS**

The parties to the above-captioned action (the “Action”) filed against Commonwealth Health Physician Network -- dba Great Valley Cardiology—and Scranton Cardiovascular Physician Services, LLC (together “GVC” or “Defendant”) have agreed to settle the Action pursuant to the terms and conditions set forth in the executed Settlement Agreement (the “Settlement”).<sup>1</sup> This Action arose out of a data breach in which an unknown third party allegedly gained access to Defendant’s information systems, which contained protected identifying information (“PII”) and protected health information (“PHI”) belonging to Plaintiff and Settlement Class Members, between February 3, 2023 and April 14, 2023 (the “Data Breach”). The Parties reached the Settlement through arms’ length negotiations with the assistance of an experienced and well-respected mediator, the Honorable Thomas M. Blewitt (Ret.) of the Judicial Arbitration and Mediation Services (“JAMS”).

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<sup>1</sup> All capitalized terms in this Order have the same meaning as defined in the Settlement, unless otherwise defined herein.

Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the Settlement Class Members would fully, finally, and forever resolve, discharge and release their claims in exchange for Defendant's creation of a Settlement Fund in the amount of \$2,000,000.0, which will be used to pay Approved Claims of Settlement Class Members, Administrative Expenses, Class Representative Service Awards, and any attorneys' fees and reimbursement of litigation expenses awarded by the Court.

The Settlement Agreement was filed with the Court as an attachment to Plaintiff's Unopposed Motion for Preliminary Approval of Settlement, and for Certification of the Settlement Class. Upon considering Plaintiff's motion; the Settlement and all exhibits thereto; the representations, arguments, and recommendations of counsel; and the requirements of law, the Court finds:

- 1) for settlement purposes only, the proposed Settlement Class meets the requirements of Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709, and should be certified;
- 2) Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello and their counsel identified below should be appointed Class Representatives and Class Counsel;
- 3) the Settlement is the result of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel; was reached with the assistance of an experienced, highly qualified mediator; and is not the result of collusion;
- 4) the Settlement is within the range of reasonableness and should be preliminarily approved;

- 5) the proposed Notice Plan and proposed forms of notice satisfy Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action; class certification; the terms of the Settlement; Class Counsel's intent to request an award of attorneys' fees, litigation costs, and expenses and request Service Awards for Class Representatives; and their rights regarding opting-out of the Settlement Class and objecting to the Settlement;
- 6) Postlethwaite & Netterville, APAC should be appointed as the Settlement Administrator;
- 7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Pennsylvania Rule of Civil Procedure 1714, to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether to grant Class Counsel's motion for Fee Award and Costs and request for Service Awards for Class Representatives; and
- 8) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, IT IS HEREBY ORDERED AND ADJUDGED as follows:

Conditional Class Certification and Appointment of Class Representatives and Class Counsel.

1. The Court finds, for settlement purposes only, that the factors delineated in Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709 are present and that certification of the proposed Settlement Class is appropriate under Rule 1710. The Court, therefore, certifies the following Settlement Class:

All natural persons whose Personal Information was potentially compromised in the Data Breach and who were sent the Notice of Data Privacy Incident on or around June 2023.

Excluded from the Class are:



(1) this Court and members of their immediate families and their staff; (2) GVC, its subsidiaries, parent companies, successors, predecessors, and any entity in which GVC or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

2. The Court preliminarily concludes that, for the purposes of approving this Settlement only and for no other effect on the Action, the proposed Settlement Class likely meets the requirements for certification under Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709:

- a. the proposed Settlement Class is easily identifiable and so numerous that joinder of all members of the class is impracticable;
- b. there are questions of law and/or fact common to the proposed Settlement Class;
- c. the Class Representatives' claims are typical of the claims of the members of the proposed Settlement Class;
- d. the Class Representatives will fairly and adequately represent the interests of the members of the proposed Settlement Class;
- e. common issues will likely predominate over individual issues; and
- f. Class Counsel are qualified to serve as counsel the proposed Settlement Class.

3. The Court appoints Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello as Class Representatives for the proposed Settlement Class.

4. The Court appoints the following as Class Counsel:

Jean S. Martin  
**MORGAN & MORGAN COMPLEX LITIGATION GROUP**  
201 N. Franklin Street, 7th Floor  
Tampa, Florida 33602  
Tel: (813) 223-5505  
[jeanmartin@forthepeople.com](mailto:jeanmartin@forthepeople.com)

Francesca K. Burne  
**MORGAN & MORGAN COMPLEX LITIGATION GROUP**  
201 N. Franklin Street, 7th Floor  
Tampa, Florida 33602  
Tel: (813) 223-5505  
[fburne@forthepeople.com](mailto:fburne@forthepeople.com)

Preliminary Approval of the Settlement.

5. The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator. The Court further finds the Settlement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant final approval to the Settlement and enter Final Judgment.

Approval of Notice, Notice Plan, Claim Form, and Direction to Effectuate Notice

6. The Court approves the form and content of Notices and Claim Form, substantially in the forms attached as Exhibits A, C, and D to the Settlement. The Court further finds the Notice Plan is the best practicable under the circumstances. The Notice Plan is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement, Class Counsel's motion for Fee Award and

Costs and request for Service Awards for Class Representatives, and their rights regarding opting-out of the Settlement Class and objecting to the Settlement. The Notice and Notice Plan constitute sufficient notice to all persons entitled to notice. The Notice and Notice Plan satisfy all applicable requirements of law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements.

7. The Court directs that Postlethwaite & Netterville, APAC act as the Settlement Administrator.

8. The Settlement Administrator shall implement the Notice Plan, as set forth below and in the Settlement, using substantially the form of Notice and Claim Form attached as Exhibits A, C, and D to the Settlement and approved by this Order. Notice shall be provided to the Settlement Class Members pursuant to the Notice Plan, as specified in the Settlement and approved by this Order. The Notice Plan shall include the mailed Summary Notice and the Long Notice posted on the Settlement Website, as set forth in the Settlement and below.

*Mailed Notice Plan*

9. The Settlement Administrator shall administer the Notice Plan. Within five (5) days from the date the preliminary approval order is entered, Defendant will provide the names, email addresses, last known addresses, and telephone numbers of persons within the Settlement Class to the Settlement Administrator. Within thirty-five (35) days from the date the preliminary approval order is entered, the Settlement Administrator shall mail the Summary Notice to the postal address provided by Defendant.

10. The Settlement Administrator shall provide Class Counsel and Defendant's counsel an affidavit confirming the Notice Plan was completed in a timely manner. Class Counsel shall file such affidavit with the Court in conjunction with Plaintiff's motion for Final Approval of the Settlement.

*Settlement Website and Toll-Free Settlement Line*

11. The Settlement Administrator shall establish a Settlement Website as a means for persons in the Settlement Class to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than the Notice Date.

12. The Settlement Administrator shall establish and maintain a toll-free telephone line for persons in the Settlement Class to call with Settlement-related inquiries, and to provide information to persons who call with or otherwise communicate such inquiries (except that the Settlement Administrator shall not give, and shall not be expected to give, legal advice).

13. The Settlement Administrator is directed to perform all substantive responsibilities with respect to effectuating the Notice Plan, as set forth in the Settlement Agreement.

Final Approval Hearing, Opt-Outs, and Objections

14. The Court directs that a Final Approval Hearing shall be scheduled for \_\_\_\_\_, 2024, at \_\_\_\_ a.m./p.m., to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether Class Counsel's motion for Fee Award and Costs and request for Service Awards for Class Representatives should be granted.

15. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise the right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Notice at any time before the Opt-Out Deadline. To be valid and timely, opt-out requests must be postmarked on or before the Opt-Out Deadline and mailed to the address indicated in the Long Notice. The Opt-Out Deadline shall be 60 days after the Notice Date, and shall be specified in the mailed Summary Notice and Long Notice on the settlement website. All persons within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by the terms of the Settlement.

16. The Court further directs that any person in the Settlement Class who does not timely and validly opt-out of the Settlement Class may object to the Settlement, Class Counsel's motion for Fee Award and Costs and/or the request for Service Awards for the Class Representatives. Objections to the Settlement, Fee Application, and/or request for Service Awards must be submitted in writing to the Settlement Administrator and Class Counsel, as detailed in the Notice. Plaintiff shall file all objections with the Court in connection with the filing of her Motion for Final Approval.

17. For an objection to be considered by the Court, the objection must be postmarked no later than the Objection Deadline, which shall be 60 days after the Notice Date, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the case name *Yvonne Ayala v. Commonwealth Health Physician Network dba Great Valley Cardiology, et al*;
- b. the objector's full name, address, telephone number, and e-mail address (if any);
- c. information identifying the objector as a Settlement Class Member, including proof the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Incident);
- d. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- e. the identity of all counsel representing the objector;
- f. a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and
- g. the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and

- h. a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last five (5) years.

Further Papers in Support of Settlement and Fee Application.

18. Class Counsel shall file their motion for Fee Award and Costs and request for Service Awards for Class Representatives no later than fourteen (14) days prior to the Opt-Out/Objection Deadline.

19. Plaintiff shall file her Motion for Final Approval of the Settlement no later than fourteen (14) days prior to the Final Approval Hearing.

Effect of Failure to Approve the Settlement.

20. In the event the Settlement is not approved by the Court, the Effective Date fails to occur, or for any reason the Parties fail to obtain a final judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with the Settlement shall become null and void, and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding.
- b. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant or Plaintiff on any point of fact or law.
- c. The certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action based on the Settlement and/or certification of the Settlement Class. Defendant shall not be precluded from challenging class certification in further proceedings in the Action or in any other action. No agreements made

by or entered into by Defendant in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other action.

- d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders, and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence.

21. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing, and the actions that must precede it:

<b>EVENT</b>	<b>DEADLINE</b>
Establish the Settlement Website and toll-free telephone line.	As soon as practicable following the entry of the Preliminary Approval Order and prior to the Notice Date.
Disseminate Summary Notice ("Notice Date")	No later than 35 days from the date of the entry of the Preliminary Approval Order.
Objection and Requests for Exclusion (Opt-Out) Deadline.	No later than 60 days from the Notice Date.
Claims Deadline	No later than 90 days after the Notice Date.
File Class Counsel's Motion for Fee Award and Request for Service Awards for Class Representatives	No later than 14 days before Objection/Opt-Out Deadline
File Plaintiff's Motion for Final Approval of the Settlement	No later than 14 days before the Final Approval Hearing.

Dated: \_\_\_\_\_, 2024 \_\_\_\_\_

— EXHIBIT 2 —



**IN THE FORTY-FIFTH DISTRICT OF PENNSYLVANIA  
LACKAWANNA COUNTY COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

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<p>YVONNE AYALA, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>COMMONWEALTH HEALTH PHYSICIAN NETWORK, et. al,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">COURT OF COMMON PLEAS LACKAWANNA COUNTY, PA</p> <p style="text-align: center;">No. 2023-cv-3008</p>
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**DECLARATION OF JEAN S. MARTIN ON BEHALF OF PROPOSED CLASS  
COUNSEL IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND  
CERTIFICATION OF THE SETTLEMENT CLASS**

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I, Jean Sutton Martin, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this Declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of the Class Action Settlement and Certification of the Settlement Class.<sup>1</sup>

2. I have personal knowledge of the matters stated herein and if called upon, I could and would competently testify.

3. Myself and Francesca K. Burne are counsel for Plaintiff and the Class in the above-referenced matter.

4. After several months of arm's length negotiations, Plaintiff, Class Counsel, and Defendant Commonwealth Health Physician Network – d/b/a Great Valley Cardiology—and Scranton Cardiovascular Physician Services, LLC (together "GVC" or "Defendants") entered into a Settlement Agreement ("Settlement" or "Agreement") under which Defendants will pay \$2,00,000 into a Settlement Fund which will be used to compensate Plaintiff and Class Members for harms caused by the Data Breach.

5. The Action involved sharply opposed positions on several fundamental legal questions, including: (i) whether Plaintiff stated valid claims; (ii) whether the Class was certifiable; (iii) whether Defendants' acts and/or omissions constituted negligence; (iv) whether Defendants' acts and/or omissions constituted a breach of contract and/or breach of implied contract; (v) whether Defendants' acts and/or omissions constituted a breach of fiduciary duty; (vi) whether declaratory relief was appropriate; and (vii) the appropriate methodology for establishing damages on a class-wide basis and the amount of damages to be recovered.

6. We continue to believe the claims asserted in the Action are meritorious; that Plaintiff would establish liability and recover substantial damages if the Action proceeded to trial; and that the final judgment and this Court's certification of the Class would be affirmed on appeal.

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<sup>1</sup> All capitalized defined terms used herein have the same meanings ascribed in the Settlement Agreement.

Plaintiff's ultimate success in the litigation, however, requires her to prevail, in whole or in part, at all of these junctures. Conversely, Defendants' success at any one of these junctures could or would have defeated Plaintiff's claims. Thus, continued litigation posed significant risks and countless uncertainties, as well as the time, expense, and delays associated with trial and appellate proceedings—particularly in the context of complex litigation. In light of the foregoing, the Settlement is fair and reasonable, providing significant benefits to the Settlement Class Members in the form of monetary and non-monetary relief, as discussed in further detail herein.

**Theory of the Case.**

7. Plaintiff sued Defendants on behalf of themselves and all others similarly situated whose protected identifying information (“PII”) and protected health information (“PHI”) were part of a data breach in which an unknown third party allegedly gained access to sensitive personal information belonging to Defendants' patients between February 2, 2023, and April 14, 2023 (the “Incident”).

8. Plaintiff alleges GVC failed to properly secure its computer systems—thereby allowing an unauthorized third party to gain access to sensitive patient PII and PHI—including names, addresses, birth dates, Social Security numbers, drivers' license numbers, passport numbers, credit card and debit card information, health insurance information and health insurance claims information, service dates, diagnoses, medications lab results, and other treatment information—belonging to Plaintiff and Settlement Class Members.

9. Plaintiff alleges GVC failed to: (1) properly secure and safeguard protected their PII and/or PHI; (2) comply with industry standards governing the protection of information systems containing PII and/or PHI; and (3) provide timely, accurate, and adequate notice to Plaintiff and Settlement Class Members that their PII and/or PHI were compromised.

10. Plaintiff further alleges Defendants' acts, omissions, and/or practices constitute (i) negligence, (ii) negligence *per se*, (iii) breach of implied contract, and (iv) breach of fiduciary duty—warranting monetary and other relief.

11. Plaintiff claims Settlement Class Members should be compensated for lost time, ordinary (out-of-pocket) losses, and extraordinary losses resulting from the Data Breach.

12. Settlement Class Members seeking compensation under the Settlement must complete and submit a Claim Form to the Claims Administrator.

13. The Class is comprised of approximately 181,000 individuals who were provided notice of the Data Breach. Defendant began providing notice on or about June 12, 2023, and sent additional notices between on or around June 28, 2023.

**Background.**

14. On July 17, 2023, Plaintiff Ayala filed her class action in this Court, alleging claims for negligence, negligence *per se*, breach of implied contract, and breach of fiduciary duty (“Ayala” action).

15. The Parties agreed to mediate this matter, and in preparation for mediation, the Parties conducted informal discovery, comprised of written questions and answers, and the production of key documents.

**Settlement Negotiations.**

16. Settlement discussions began in approximately September 2023, and included informal and formal negotiations.

17. During these negotiations, the Parties agreed to, and engaged in, pre-mediation discovery so the Parties could fully evaluate the merits and challenges to their case. The Parties discussed the list of categories of information, and some specific information, about which discovery was necessary in order to have meaningful settlement discussions.

18. Defense Counsel provided Plaintiff's Counsel answers to specific questions regarding the geographical reach of the Class, the categories of information accessed, and the number of Settlement Class Members whose PII and PHI were exposed.

19. The Parties participated in mediation on November 6, 2023, with the Honorable Thomas M. Blewitt (Ret.). Judge Blewitt served as a federal Magistrate Judge in the Middle District of Pennsylvania for twenty-three (23) years, and he now works as a neutral for the Judicial Arbitration and Mediation Services ("JAMS"). During the mediation date, Parties continued negotiating and advancing their positions and making some compromises. And then, only after ongoing and considerable negotiations, the Parties reached an agreement in principle, subject to the preparation and execution of a formal settlement agreement, and subject to Preliminary Approval and Final Approval (as defined below) by the Court as required by Rules 1702, 1708, 1709, 1710, and 1714 of the Pennsylvania Rules of Civil Procedure.

20. Pursuant to the agreement in principle and as set forth below, Plaintiff and the Settlement Class Members agreed to fully, finally, and forever resolve, discharge, and release only claims on behalf of Settlement Class Members that were or could have been asserted in this action, and applies to claims only arising out of this Incident, in exchange for the Defendants' agreement to pay up to \$2,000,000 in damages to Settlement Class Members.

21. Since reaching an agreement in principle, the Parties have diligently negotiated a formal settlement agreement, according to which the Settlement Administrator will calculate each eligible Settlement Class Member's monetary award from the Settlement based on which claim categories the individual selects, and the supporting documentation provided.<sup>2</sup>

22. On April 17, 2024, after additional negotiations on the details of the formal agreement, the Parties signed the Settlement Agreement.

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<sup>2</sup> Agreement ¶ 3.2(a).

## Settlement Terms

23. The Settlement requires Defendant pay \$2,000,000 which will be used to compensate Plaintiff and Class Members, pay any Court-ordered attorneys' fees and reasonable costs awarded to Class Counsel, pay Service Awards to Plaintiff subject to court approval; and pay settlement expenses, including the Notice to the Settlement Class and Claims Administration.

24. All Settlement Class Members who do not opt-out of the Settlement will be (1) deemed to have released Defendants from claims relating to the subject matter of the Action, and (2) eligible to submit a claim form to the Settlement Administrator.

25. The Settlement Administrator will examine each claim form submitted by the Settlement Class Members, and any associated supporting information and/or documents, for compensation under the different claim groups.

26. "Lost-Time Claims" are for compensation for any lost time as a result of the Data Breach by the Settlement Class Members. Agreement ¶ 3.2(a). Settlement Class Members are eligible for compensation of up to 6 hours of lost time (at \$25.00 per hour) spent dealing with the Data Breach. *Id.* Settlement Class Members need only submit a brief description of the actions taken and an attestation to the Claims Administrator that the lost time was spent dealing with issues relating to the Data Breach. *Id.* The maximum amount a claimant may recover under Lost-Time Claims is \$150.00. *Id.*

27. "Documented Loss Payment" claims are for compensation of documented losses as a result of the Data Breach by the Settlement Class Members. *Id.* at ¶ 1.16. Examples of documented losses include: "monetary losses incurred by a Class Member and supported by Reasonable Documentation for attempting to remedy or remedying issues that are reasonably traceable to the Data Breach[.]" *Id.*

28. Settlement Class Members must submit documentation to the Claims Administrator that the out-of-pocket expenses and/or charges were incurred and are fairly and reasonably

traceable to the Data Breach. *Id.* at ¶ 3.2(a). The maximum amount a claimant may recover under Documented-Loss Claims is \$5,000.00. *Id.*

29. “Cash Fund Payment” claims are for compensation in the form of a pro rata Settlement Payment in cash. A claim for Cash Fund Payment may be submitted in the alternative to Documented Loss Payment claims.

30. “Credit Monitoring and Insurance Services” (“CMIS”) benefits will be available to Class Members regardless of whether they took advantage of any prior offering of credit monitoring from Defendants. The CMIS benefit includes two (2) years of credit monitoring services and \$1 million in identity theft insurance. CMIS benefits are offered in addition to claims for either Documented Loss Payment or Cash Fund Payment.

31. Settlement Class Members seeking reimbursement must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the Claims Deadline, as set forth in the Notice to the class, including this deadline and other relevant dates. Agreement ¶ 3.4.

32. The final settlement amount will be determined after the claim submittal deadline has passed, which is 90 days after deadline to provide Notice of settlement to Class Members. Agreement ¶ 1.9. The Settlement Administrator will disburse settlement funds to Settlement Class Members with approved claims within ninety (90) days of the Effective Date, or within ninety (90) days of the date that the claim is approved, whichever is later.<sup>3</sup> Agreement ¶¶ 3.6.

33. A further important benefit to the class and the Settlement Class Members are the business changes Defendants have made and are committed to continue making as part of the Settlement. The business changes involve information security enhancements, which include

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<sup>3</sup> The Effective Date being the first date when the settlement is finally approved and either the deadline to appeal has passed, or when the appeal is dismissed, judgement affirmed, or when such dismissal or affirmance has become no longer subject to further appeal or review. Agreement ¶ 1.10-1.11.

internal vulnerability management systems, annual penetration testing, 24/7 security operations center monitoring, annual security risk assessments, regular phishing simulation campaigns, enforcement of multifactor authentication for employee email accounts, annual security awareness training for employees, and policies and procedures designed to protect patient information. Agreement ¶ 2.1. These information security enhancements are extremely beneficial to Settlement Class Members because these enhancements provide additional security to Plaintiff's and Settlement Class Members' PII and PHI in Defendants' possession, and reduce the likelihood of future data breaches.

34. In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt-out will be deemed to have released Defendant from claims relating to the subject matter of the Action. The detailed release language is narrowly tailored to release only claims on behalf of Settlement Class Members that were or could have been asserted in this action, and applies only to claims arising out of this Incident, the security of Settlement Class Members' PII and PHI, and the notice provision relating to the Data Breach. The detailed release language can be found at Paragraphs 4.1 through 4.3 of the Agreement, with the definitions in Paragraphs 1.1 and 1.50 relating thereto.

**Notice Plan.**

35. The Notice Plan is designed to provide the best notice practicable based on the information Defendants have available about the Settlement Class Members, and it is reasonably calculated to apprise the Settlement Class Members of the terms of the Settlement, how to file claims, their right to opt-out of or object to the Settlement, Class Counsel's anticipated fee application, and the anticipated request for Service Awards for the Plaintiff. Agreement ¶¶ 6.1-6.3. The Notices and Notice Plan constitute sufficient notice to all persons entitled to notice and satisfy all applicable requirements of law, including, but not limited to, Pennsylvania law and the constitutional due process requirement.



36. The Notice Plan is comprised of two parts: (1) Direct Notice to all identifiable Settlement Class Members (“Summary Notice”), and (2) a customary Long Form Notice with more detail than the Summary Notice, which will be available on the Settlement Website. Agreement ¶ 6.3.

37. All fees and expenses related to Settlement Administration shall be paid by Defendants. Agreement ¶ 3.14.

**Service Awards and Attorneys’ Fees and Costs.**

38. Class Counsel will seek, and Defendants agreed not to oppose, Service Awards in the amount of \$1,500 each to the following Class Representatives: Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabell., subject to Court approval. *Id.* at ¶ 8.1. Such awards are meant to compensate Class Representatives for their work in this Litigation and effort on behalf of the Class.

39. The Settlement Agreement is not contingent upon the Court awarding the Service Awards, and the Parties negotiated the Service Award agreement only after reaching agreement on all other material terms of the Settlement.

40. The Settlement Agreement is not contingent upon the Court awarding the requested attorneys’ fees and litigation costs and expenses; and the Parties negotiated the agreement regarding Class Counsel’s fees and costs only after reaching agreement on all other material terms of the Settlement.

41. Class Counsel will seek, and Defendant agreed not to oppose, an award of up to one-third of the Settlement Fund for Court-ordered attorneys’ fees and reasonable costs awarded to Class Counsel.

### Considerations Supporting Settlement.

42. In negotiating this Settlement, proposed Class Counsel had the benefit of years of experience litigating and negotiating settlements in hundreds of data breach cases.

43. I have been appointed to lead or help lead several large privacy and data breach class actions, including serving as co-lead counsel in *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) (\$68 million settlement for 15 million class members), *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.), *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.), and *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.), all of which received final approval of settlements.

44. Ms. Burne has been appointed settlement class counsel in data privacy cases including *Portier, et al. v. NEO Technology Solutions, et al.* Case No.: 3:17-cv-30111 (D. Mass.) and *Franchi v. Barlow Respiratory Hospital*, Case No. 22STC09016 (Cal. Super. Ct.). Ms. Burne and I worked together on landmark data privacy cases including *Tillman et al., v. Morgan Stanley Smith Barney, LLC*, Case No. 20cv591-PAE, (S.D. NY) (\$68 million settlement for 15 million class members) and *In re: Capital One Customer Data Security Breach Litigation*, MDL No. 1:19-md-2915 (one of the largest data breach class action settlements in history with a \$190 million settlement).

45. Further, Ms. Burne and I presently represent plaintiffs in a data breach case in which the plaintiffs moved for class certification, resulting in the first order in the country granting Federal Rule of Civil Procedure 23(b)(3) certification in a consumer payment card data breach. *See In re Brinker Data Incident Litig.*, No. 3:18-cv-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021), *vacated in part sub nom. Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883 (11th Cir. 2023).

46. Proposed Class Counsel conducted a thorough and efficient investigation and analysis of Plaintiff's claims and Defendants' defenses. This investigation enabled us to gain an understanding of the evidence related to central legal and factual issues in the Action as they relate to class certification and the merits of Plaintiff's and the Class's claims, and prepared counsel for well-informed, arm's length settlement negotiations.

47. The informal discovery, combined with our experience in numerous similar class action cases, prepared us for settlement negotiations. We have a thorough understanding of the practical and legal issues Plaintiff and the Class would continue to face litigating these claims against Defendant based, in large part, on similar claims challenging other data breach cases litigated across the country. We were well positioned to evaluate the strengths and weaknesses of Plaintiff's and the Class's claims, as well as the appropriate basis upon which to settle them as a result of our leadership roles in similar data breach class action cases against entities throughout the country.

48. While we are confident in the strength of our case, we are also pragmatic in our awareness of the various defenses available to Defendants and the risks inherent to litigation. Defendant denies that it is liable to Plaintiff and the Settlement Class, and it asserted various defenses, which, if it prevailed, would preclude or seriously limited any recovery for Plaintiff and the Class. For example, Plaintiff faced a risk that a jury might determine that Defendants did not act negligently, provided industry standard cyber-security, properly trained its employees on computer safety, did not breach its contract, did not breach its implied contract, and/or did not breach its fiduciary duty.

49. Moreover, protracted litigation carries with it inherent risks that would have delayed and endangered Class Members' monetary recovery. Even if Plaintiff did prevail at trial, recovery could be delayed for years by appeals. Under the circumstances, Plaintiff and Class

Counsel appropriately determined that the Settlement reached with Defendant outweighs the gamble of continued litigation.

50. The Settlement provides immediate relief to Class Members without further delay. Moreover, it was the result of intensive, arm's length negotiations between experienced attorneys familiar with class action litigation and with the legal and factual issues of this case and similar data breach class actions.

51. The Settlement is the best vehicle for Class Members to receive the relief to which they are entitled in a prompt and efficient manner. Ongoing litigation would involve lengthy pretrial proceedings in this Court and, ultimately, a trial and appeal. Absent the Settlement, the Action would likely continue for several more years and the outcome would be uncertain.

52. The \$2,000,000 Settlement Fund is an excellent recovery for the Settlement Class Members and is reasonable in light of the facts and circumstances in this case. Typically, individuals who had their PII and/or PHI accessed by unauthorized parties only get a year of credit monitoring. Here, Settlement Class Members can submit a claim form to get an additional year of Identity Monitoring Services *and* receive compensation for lost time, ordinary (out-of-pocket) losses, and extraordinary losses resulting from the Data Breach.

53. In addition to monetary relief, benefits to the Settlement Class Members include significant business changes Defendants have made, and is committed to continue making, as part of the Settlement. The business changes involve information security enhancements, which include internal vulnerability management systems, annual penetration testing, 24/7 security operations center monitoring, annual security risk assessments, regular phishing simulation campaigns, enforcement of multifactor authentication for employee email accounts, annual security awareness training for employees, and policies and procedures designed to protect patient information. Agreement ¶ 2.1. These information security enhancements are extremely beneficial to Settlement Class Members because these enhancements provide additional security to Plaintiff's and

Settlement Class Members' PII and PHI in Defendants' possession, and reduce the likelihood of future data breaches.

54. Based upon our experience in this area of litigation, proposed Class Counsel has determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

55. Based on the facts and circumstances in this case, proposed Class Counsel and Plaintiff strongly endorse this Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 22, 2024, in Tampa, Florida.

*s/ Jean Sutton Martin*  
JEAN SUTTON MARTIN  
jeanmartin@ForThePeople.com  
MORGAN & MORGAN  
201 N. Franklin Street, 7th Floor  
Tampa, Florida 33602  
Telephone: (813) 223-5505  
Facsimile: (813) 223-5402

— EXHIBIT 3 —

**IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY, PENNSYLVANIA**

YVONNE AYALA, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

COMMONWEALTH HEALTH PHYSICIAN  
NETWORK d/b/a GREAT VALLEY  
CARDIOLOGY,

Defendant

Case No. 2023-CV-3008

**DECLARATION OF BRANDON SCHWARTZ  
REGARDING PROPOSED NOTICE  
PROGRAM AND ADMINISTRATION**

I, Brandon Schwartz, declare as follows:

1. I am a Director of Legal Notice, and I am preparing this Declaration for the proposed Administrator, Postlethwaite & Netterville, APAC (“P&N”)<sup>1</sup>, a full-service administration firm providing legal administration services, including the design, development, and implementation of unbiased complex legal notification programs. We were asked by Counsel to review the proposed Notice Plan in the above-referenced matter (the “Action”)<sup>2</sup>. The following statements are based on my personal knowledge as well as information provided by other experienced employees working under my supervision.

### EXPERIENCE

2. We have undertaken the creation and execution of notice plans, along with the administration of diverse class action and mass action settlements. Our expertise extends across a wide array of subject matters, encompassing but not limited to privacy, products liability, consumer rights, mass tort, antitrust, insurance, and healthcare. The accomplished members of our team possess extensive experience in the design and implementation of notice procedures involving various aspects of class certification and settlement programs.

3. A sample of court opinions on the adequacy of our notice and Settlement Administration experience is included in P&N’s curriculum vitae as Exhibit A.

### OVERVIEW

4. Based on our review of the Settlement Agreement, the Settlement Class is defined, as follows:

“Settlement Class” and “Class” means all natural persons whose Personal Information was potentially compromised in the Data Breach and who were sent the Notice of Data Privacy Incident on or around June 2023. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their immediate families and their staff; (2) GVC, its subsidiaries, parent companies, successors, predecessors, and any entity in which GVC or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

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<sup>1</sup> As of May 21, 2023, the directors & employees of Postlethwaite & Netterville, APAC (“P&N”) joined EisnerAmper as EAG Gulf Coast, LLC. Where P&N is named as an entity, EAG Gulf Coast, LLC employees will service work contracted with P&N.

<sup>2</sup> All capitalized terms not otherwise defined in this document shall have the meaning ascribed to them in the Settlement Agreement.



5. The objective of this Notice Program is to ensure the delivery of the most feasible and effective notice to the Settlement Class, in compliance with the provisions set forth in Lacka. Co. R.C.P. 1712.

6. Consequently, it is my opinion that the ensuing Notice Program satisfies due process standards.

### **PROPOSED NOTICE PROGRAM**

7. Class Counsel has informed P&N that the estimated size of the Settlement Class is approximately 181,764 individuals. Upon preliminary approval of the Settlement Agreement, it has been conveyed that the Defendant will furnish a list of all records comprising of, to the extent available, the names and mailing addresses for each Settlement Class Member (“Settlement Class List”), which will facilitate the implementation of notice via U.S. mail.

#### **Direct Mail Notice**

8. In accordance with the Settlement Agreement, P&N will format the Summary Notice as a Postcard (“Postcard Notice”), in substantially similar form as Exhibit C to the Settlement Agreement, to be mailed via United States Postal Service (“USPS”) First Class Mail. Prior to mailing, all mailing addresses will be checked against the National Change of Address (“NCOA”) database maintained by USPS to ensure Settlement Class Member address information is up-to-date and accurately formatted for mailing.<sup>3</sup> In addition, the addresses will be certified via the Coding Accuracy Support System (CASS) to ensure the quality of zip codes, and will be validated through Delivery Point Validation (DPV) to verify the accuracy of the addresses. Should NCOA provide a more current mailing address for a Settlement Class Member, P&N will update the address accordingly. If a Postcard Notice is returned with forwarding address information, P&N will re-mail to the forwarded address. For all Postcard Notices that are returned as undeliverable, P&N will utilize standard skip-tracing to obtain forwarding address information, and if skip-tracing produces a different mailing address, P&N will re-mail the Notice to the address identified through

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<sup>3</sup> The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service™. The address information is maintained on the database for 48 months and reduces undeliverable mail by providing the most current address information, including standardized and delivery point coded addresses, for matches made to the NCOA file for individual, family, and business moves.

the skip-trace.

**Settlement Website**

9. P&N will create and maintain a website, [www.GVCDDataSettlement.com](http://www.GVCDDataSettlement.com), dedicated to this Settlement (“Settlement Website”). The website address will be prominently included in the Summary Notice and Long Form Notice (collectively, the “Notices”). The Notices, along with other relevant documents such as the Settlement Agreement and the Preliminary Approval Order, will be posted on the Settlement Website for Class Members to review and download. The Settlement Website will also provide the ability for Class Members to file an online Claim Form, and will include relevant dates, answers to frequently asked questions, instructions for how Class Members may opt-out (request exclusion) from or object to the Settlement Agreement, contact information for the Settlement Administrator, and other case-related information.

**Dedicated Toll-Free Hotline**

10. A dedicated toll-free informational hotline will be available 24 hours per day, seven days per week. The hotline will utilize an interactive voice response (IVR) system where Class Members can obtain essential information regarding the Settlement and be provided responses to frequently asked questions. Class Members will also have the option to leave a voicemail and receive a call back from the Claims Administrator.

**Requests for Exclusion**

11. Class Members that want to exclude themselves from the Class may submit a request for exclusion by mail to a dedicated Post Office Box. P&N will maintain the Post Office Box, will monitor all delivered mail, and will track all exclusion requests received, which will be provided to the Parties.


**CONCLUSION**

12. It is my opinion, based on my experience, as well as the expertise of my team, that this method of focused notice dissemination provides effective notice in this Action, will provide the best notice that is practicable, adheres to Lacka. Co. R.C.P. 1712 and Fed. R. Civ. P. 23, exceeds the requirements of due process, including its “desire to actually inform” requirement.<sup>4</sup>

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<sup>4</sup> *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this 17th day of April, 2024 in Portland, Oregon.

  
\_\_\_\_\_  
Brandon Schwartz



assurance - consulting - tax - technology

[pncpa.com](http://pncpa.com)

## Exhibit A: CV of P&N

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## Introduction

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Postlethwaite & Netterville, APAC, (P&N) offers technical experience and diverse resources that are unique to the class action settlement administration space.

**Experience:** Since 1999, P&N has successfully administered numerous class action settlements in state court and federal court (including multidistrict litigation). Our team has processed and reviewed claims and managed distributions for settlements involving billions of dollars in settlement funds.

**Breadth, Depth and Flexibility of Resources:** Our approach to settlement administration provides a dedicated core team that is able to draw upon numerous specialized resources across diverse service areas within our firm of over 400 employees as needs arise.

We leverage the knowledge and experience of professionals holding the following designations, among others:

- Juris Doctor (JD)
- Project Management Professional (PMP)
- Certified Public Accountant (CPA)
- Certified Internal Auditor (CIA)
- Certified Information Systems Auditor (CISA)
- Certified Fraud Examiner (CFE)
- Certified in Financial Forensics (CFF)
- Certified Information Systems Security Professional (CISSP)
- Certified Security Engineer (CSE)
- Certified Information Security Manager
- Certified in Risk and Information Systems Control

**Capabilities and Experience Rooted in Quality and Objectivity:** As a 65+ year old accounting and business advisory firm, objectivity, integrity, and quality have been the cornerstones of our sustained success. These principles drive our work product, our decision-making, and our interactions with clients and team members. ***Our teams are well-versed in the development of and adherence to stringent quality assurance and quality control standards across a variety of disciplines.***



## Notable Claims Administration Experience and Testimonials

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The cornerstones of P&N's success as a firm translate well to the administration of large settlement programs, and our quality of work is particularly apparent in matters involving complex claims. P&N receives consistent positive feedback from clients related to our attention to detail and responsiveness:

**"P&N did an outstanding job. Key factors that separated them from the pack were attention to detail and responsiveness. In the fluid process of administering a class settlement P&N was there for us at every step of the way responding to most requests within minutes."**

*Mark Greenstone, Plaintiff's Co-Lead Counsel*

Our team has significant experience in complex settlement matters, including the following subset of our overall experience:

### **In Re: Cathode Ray Tube (CRT) Antitrust Litigation (MDL 1917)**

**Nature of Work:** In cooperation with our project partner, The Notice Company, Inc., P&N performs claims administration services for indirect purchaser class action settlements in this multidistrict litigation totaling over \$547,750,000 to date. The scope of P&N's services includes (1) custom website and database application development and maintenance, (2) claim data acquisition and management, (3) claims processing and validation, (4) claims deficiency and audit processing, (5) quality control and fraud, waste, and abuse monitoring, (6) custom reporting, (7) call center support and claimant communications, (8) claim allocation determination and distribution, and (9) project management services.

### **In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico (MDL 2179)**

**Nature of Work:** P&N was approved by the United States District Court for the Eastern District of Louisiana to process business economic loss and seafood harvester claims within the Deepwater Horizon Economic and Property Damages Settlement. P&N participated in determining over \$1 billion in eligible claims within the first six months of the program and approximately \$10 billion to date. P&N committed a significant multi-city team of 400+ accounting and finance professionals to the ongoing effort, providing claim eligibility review, economic damages calculations, and claimant communications for over 100,000 businesses and seafood harvesters with representation from 2,000+ law and accounting firms.



## In Re: Testosterone Replacement Therapy Products Liability Litigation (MDL 2545)

**Nature of Work:** P&N provides claims administration services related to custom technology development, project management, and attorney communications support. In coordination with the Court-appointed Special Master, Randi S. Ellis, P&N has developed secure, customized, web-based technology applications that are the framework for claim filing and document management efforts for over 130 participating law firms. Our claims platform also serves as both the central repository for personal injury claims adjudication and allocation functions of the Special Master.

**"I have worked with P&N on multiple large settlement projects in my role as Special Master. We are currently working together to administer a mass tort settlement where their technology platform has been able to streamline the claims process and securely manage sensitive claimant data. They are always willing to brainstorm with me when I need assistance which is why they have become a trusted partner and my first call."**

*Randi Ellis, Court Appointed Special Master*

## In Re: E.I. du Pont de Nemours and Company C8 Personal Injury Litigation (MDL 2433)

**Nature of Work:** P&N developed a secure, customized, web-based database application that served as the framework for claim filing and document management efforts for approximately 3,700 personal injury claims. In cooperation with the Special Master, Daniel J. Balhoff, P&N also provided project management services to facilitate the logistics of the claims process life cycle. Our claims database technology also served as both the central repository for claims determinations and allocation reporting to the Plaintiff Steering Committee and Lien Resolution Administrator.

**"P&N was tasked with building out a user friendly settlement submission web-based platform, training the law firms on how it would be used, coordinating with the Special Master and Claims Administrator reviewers, exchanging information with the third party lien resolution group, and providing responsive updates and reporting to the litigation lead counsel and individual participating law firms. P&N did a phenomenal job in all respects."**

**Throughout the process, P&N provided personalized and immediately responsive service. Reporting was routinely updated and modified based upon new requests from lead counsel and the individual submitting firms were provided one-on-one service when needed. Based on my experiences with P&N, I would certainly recommend them and will actively seek to include proposals from them in any future residual programs in which I have an interest."**

*John J. Balhoff, Plaintiff Steering Committee Member*



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pnclassaction.com

## In Re: FEMA Trailer Formaldehyde Products Liability Litigation (MDL 1873)

**Nature of Work:** P&N provided full scale notice and claims administration services for this multi-settlement MDL involving over \$45,000,000 in settlement funds. The scope of P&N's services includes (1) notice administration, (2) custom website and database application development and maintenance, (3) claim data acquisition and management, (4) claims processing and deficiency curing, (5) call center support and claimant communications, (6) claim allocation determination and distribution, and (7) quality control and project management services.

**"In serving as a Court-appointed Special Master, I have worked with P&N's claims administration team on several occasions. I have always found them to be extremely attentive to detail, responsive, and committed to a high quality work product. Furthermore, they are proactive - once I tell them my goals, they come up with creative solutions to get there. The bottom line is that I can trust them to do the job right in a timely and efficient manner."**

*Daniel J. Balhoff, Court-Appointed Special Master*



## P&N Claims Administration Experience

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### SAMPLE JUDICIAL COMMENTS

- **Hezi v. Celsius Holdings, Inc.**, No. 1:21-CV-09892-VM (S.D.N.Y.), Judge Jennifer H. Rearden on April 5, 2023:

*The Court finds and determines that the notice procedure carried out by Claims Administrator Postlethwaite & Netterville, APAC ("P&N") afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding approval of the Settlement based on the responses of Class Members. The Court finds and determines that the Notice was the best notice practicable, and has satisfied the requirements of law and due process.*

- **Scott Gilmore et al. v. Monsanto Company, et al.**, No. 3:21-CV-8159 (N.D. Cal.), Judge Vince Chhabria on March 31, 2023:

*The Court finds that Class Notice has been disseminated to the Class in compliance with the Court's Preliminary Approval Order and the Notice Plan. The Court further finds that this provided the best notice to the Class practicable under the circumstances, fully satisfied due process, met the requirements of Rule 23 of the Federal Rules of Civil Procedure, and complied with all other applicable law.*

- **John Doe et al. v. Katherine Shaw Bethea Hospital and KSB Medical Group, Inc.**, No. 2021L00026 (Fifteenth Judicial Circuit of Illinois, Lee County), on March 28, 2023:

*The Court has determined that the notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.*

- **Sanders et al. v. Ibex Global Solutions, Inc. et al.**, No. 1:22-CV-00591 (D.D.C.), Judge Trevor N. McFadden on March 10, 2023:

*An affidavit or declaration of the Settlement Administrator's compliance with the Notice process has been filed with the Court. The Notice process as set forth in the Settlement Agreement and ordered in the Preliminary Approval Order constitutes the best notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Class Members in accordance with the requirements of Federal Rule of Civil Procedure 23(c)(2).*

- **Vaccaro v. Super Care, Inc.**, No. 20STCV03833 (Cal. Superior Court), Judge David S. Cunningham on March 10, 2023:

*The Class Notice provided to the Settlement Class conforms with the requirements of California Code of Civil Procedure § 382, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Class Members. The notice fully satisfied the requirements of Due Process.*

- **Gonshorowski v. Spencer Gifts, LLC**, No. ATL-L-000311-22 (N.J. Super. Ct.), Judge Danielle Walcoff on March 3, 2023:

*The Court finds that the Notice issued to the Settlement Class, as ordered in the Amended Preliminary Approval Order, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with New Jersey Court Rules 4:32-2(b)(2) and (e)(1)(B) and due process.*

- **Vaccaro v. Delta Drugs II, Inc.**, No. 20STCV28871 (Cal. Superior Court), Judge Elihu M. Berle on March 2, 2023:

*The Class Notice provided to the Settlement Class conforms with the requirements of California Code of Civil Procedure § 382, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Class Members. The notice fully satisfied the requirements of Due Process.*

- **Pagan, et al. v. Faneuil, Inc.**, No. 3:22-CV-297 (E.D. Va), Judge Robert E. Payne on February 16, 2023:

*The Court finds that the Notice Program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their right to object and to appear at the final approval hearing or to exclude themselves from the Settlement Agreement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and other applicable law.*

- **LaPrairie v. Presidio, Inc., et al.**, No. 1:21-CV-08795-JFK (S.D.N.Y.), Judge Andrew L. Carter, Jr. on December 12, 2022:

*The Court hereby fully, finally and unconditionally approves the Settlement embodied in the Settlement Agreement as being a fair, reasonable and adequate settlement and compromise of the claims asserted in the Action. The Class Members have been given proper and adequate notice of the Settlement, fairness hearing, Class Counsel's application for attorneys' fees, and the service award to the Settlement Class Representative. An affidavit or declaration of the Settlement Administrator's compliance with the Notice process has been filed with the Court. The Notice process as set forth in the Settlement Agreement and ordered in the Preliminary Approval Order constitutes the best notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Class Members in accordance with the requirements of Federal Rule of Civil Procedure 23(c)(2).*

- **Nelson v. Bansley & Kiener, LLP**, No. 2021-CH-06274 (Circuit Court of Cook County, IL), Judge Sophia H. Hall on November 30, 2022:

*The court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with requirements of 735 ILCS 5/2-801, et seq.*

- **Buck, et al. v. Northwest Commercial Real Estate Investments, LLC, et al.**, No. 21-2-03929-1-SEA (Superior Court King County, WA), Judge Douglass A. North on September 30, 2022:

*Pursuant to the Court's Preliminary Approval Order, Postcard Notice was distributed to the Class by First Class mail and Email Notice was distributed to all Class Members for whom the Settlement Administrator had a valid email address. The Court hereby finds and concludes that Postcard and Email Notice was disseminated to members of the Settlement Class in accordance with the terms set forth in the Settlement and in compliance with the Court's Preliminary Approval Order. The Court further finds and concludes that the Postcard and Email Notice, and the distribution procedures set forth in the Settlement fully satisfy CR 23(c)(2) and the requirements of due process, were the best notice practicable under the circumstances, provided individual notice to all members of the Class who could be identified through reasonable effort, provided an opportunity for the Class Members to object or exclude themselves from the Settlement, and support the Court's exercise of jurisdiction over the Settlement Class Members as contemplated in the Settlement and this Final Approval Order.*

- **Rivera, et al. v. Google LLC**, No. 2019-CH-00990 (Circuit Court of Cook County, IL), Judge Anna M. Loftus on September 28, 2022:

*Pursuant to this Court's Order granting preliminary approval of the Settlement, Postlethwaite & Netterville, APAC ("P&N") served as Settlement Administrator. This Court finds that the Settlement Administrator performed all duties thus far required as set forth in the Settlement Agreement.*

*The Court finds that the Settlement Administrator has complied with the approved notice process as confirmed by its Declaration filed with the Court. The Court further finds that the Notice plan set forth in the Settlement as executed by the Settlement Administrator satisfied the requirements of Due Process and 735 ILCS 5/2-803. The Notice plan was reasonably calculated and constituted the best notice practicable to apprise Settlement Class Members of the nature of this litigation, the scope of the Settlement Class, the terms of the Settlement, the right of Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court finds and concludes that the Settlement Class Members have been provided the best notice practicable under the circumstances, and that the Notice plan was clearly designed to advise the Settlement Class Members of their rights.*

- ***Davonna James, individually and on behalf of all others similarly situated v. CohnReznick LLP***, No. 1:21-cv-06544 (S.D.N.Y.), Judge Lewis J. Liman on September 21, 2022:

*The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2).*

- ***Patricia Davidson, et al. v. Healthgrades Operating Company, Inc.***, No. 21-cv-01250-RBJ (D. Colo), Judge R. Brooke Jackson on August 22, 2022:

*The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2).*

- ***Hosch et al. v. Drybar Holdings LLC***, No. 2021-CH-01976 (Circuit Court of Cook County, IL), Judge Pamela M. Meyerson on June 27, 2022:

*The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.*

- ***Baldwin et al. v. National Western Life Insurance Company***, No. 2:21-cv-04066-WJE (W.D. MO), Judge Willie J. Epps, Jr. on June 16, 2022:

*The Court finds that such Notice as therein ordered, constituted the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Rule 23(c)(2).*

- **Chapman et al. v. voestalpine Texas Holding LLC**, No. 2:17-cv-174 (S.D. Tex.), Judge Nelva Gonzales Ramos on June 15, 2022:

*The Class and Collective Notice provided pursuant to the Agreement and the Order Granting Preliminary Approval of Class Settlement:*

- (a) *Constituted the best practicable notice, under the circumstances;*
- (b) *Constituted notice that was reasonably calculated to apprise the Class Members of the pendency of this lawsuit, their right to object or exclude themselves from the proposed settlement, and to appear at the Fairness Hearing;*
- (c) *Was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and*
- (d) *Met all applicable requirements of the Federal Rules of Civil Procedure and the Due Process Clause of the United States Constitution because it stated in plain, easily understood language the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through an attorney if the member so desires; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on members under Rule 23(c)(3).*

- **Clopp et al. v. Pacific Market Research LLC**, No. 21-2-08738-4 (Superior Court King County, WA), Judge Kristin Richardson on May 27, 2022:

*The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Washington Civil Rule 23(c)(2).*

- **Whitlock v. Christian Homes, Inc., et al**, No. 2020L6 (Circuit Court of Logan County, IL), Judge Jonathan Wright on May 6, 2022:

*The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.*

- **Hanson v. Welch Foods Inc.**, No. 3:20-cv-02011-JCS (N.D. Cal.), Judge Joseph C. Spero on April 15, 2022:

*The Class Notice and claims submission procedures set forth in Sections 5 and 9 of the Settlement Agreement, and the Notice Plan detailed in the Declaration of Brandon Schwartz filed on October 1, 2021, fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided individual notice to all Settlement Class Members who*

*could be identified through reasonable effort, and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Settlement Agreement and this Order. See Fed. R. Civ. P. 23(e)(2)(C)(ii).*

- **Dein v. Seattle City Light**, No. 19-2-21999-8 SEA (Superior Court King County, WA), Judge Kristin Richardson on April 15, 2022:

*The Court hereby finds and concludes that the notice was disseminated to Settlement Class Members in accordance with the terms set forth in the Settlement and in compliance with the Court's Preliminary Approval Order. The Court further finds and concludes that the notice fully satisfies CR 23(c)(2) and the requirements of due process, was the best notice practicable under the circumstances, provided individual notice to all members of the Class who could be identified through reasonable effort, and provided an opportunity for the Class Members to object to or exclude themselves from the Settlement.*

- **Frank v. Cannabis & Glass, LLC, et al**, No. 19-cv-00250 (E.D. Wash.), Judge Stanley A. Bastian on April 11, 2022:

*Postlethwaite & Netterville, APAC, ("P&N"), the Settlement Administrator approved by the Court, completed the delivery of Class Notice according to the terms of the Agreement. The Class Text Message Notice given by the Settlement Administrator to the Settlement Class, which set forth the principal terms of the Agreement and other matters, was the best practicable notice under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort.*

- **McMorrow, et al. v. Mondelez International, Inc**, No. 17-cv-02327 (S.D. Cal.), Judge Cynthia Bashant on April 8, 2022:

*Notice was administered nationwide and achieved an overwhelmingly positive outcome, surpassing estimates from the Claims Administrator both in the predicted reach of the notice (72.94% as compared to 70%) as well as in participation from the class (80% more claims submitted than expected). (Schwartz Decl. ¶ 14, ECF No. 206-1; Final App. Mot. 3.) Only 46 potential Class Members submitted exclusions (Schwartz Decl. ¶ 21), and only one submitted an objection—however the objection opposes the distribution of fees and costs rather than the settlement itself. (Obj. 3.) The Court agrees with Plaintiffs that the strong claims rate, single fee-related objection, and low opt-out rate weigh in favor of final approval.*

- **Daley, et al. v. Greystar Management Services LP, et al.**, No. 2:18-cv-00381 (E.D. Wash.), Judge Salvador Mendoz, Jr. on February 1, 2022:

*The Settlement Administrator completed the delivery of Class Notice according to the terms of the Agreement. The Class Notice given by the Settlement Administrator to the Settlement Class...was the best practicable notice under the circumstances. The Class Notice program...was reasonable and provided due and adequate notice of these*

*proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such notice. The Class Notice given to the Settlement Class Members satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of constitutional due process. The Class Notice was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of this Action....*

- **Mansour, et al. v. Bumble Trading, Inc.**, No. RIC1810011 (Cal. Super.), Judge Sunshine Sykes on January 27, 2022:

*The Court finds that the Class Notice and the manner of its dissemination constituted the best practicable notice under the circumstances and was reasonably calculated, under all the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the Agreement, and their right to object to or exclude themselves from the Settlement Class. The Court finds that the notice was reasonable, that it constituted due, adequate and sufficient notice to all persons entitled to receive notice, and that it met the requirements of due process, Rules of Court 3.766 and 3.769(f), and any other applicable laws.*

- **Hadley, et al. v. Kellogg Sales Company**, No. 16-cv-04955 (N.D. Cal.), Judge Lucy H. Koh on November 23, 2021:

*The Class Notice and claims submission procedures set forth in Sections 4 and 6 of the Settlement Agreement, and the Notice Plan filed on March 10, 2021, fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided individual notice to all Settlement Class Members who could be identified through reasonable effort, and support the Court's exercise of jurisdiction over the Settlement Classes as contemplated in the Settlement Agreement and this Order. See Fed. R. Civ. P. 23(e)(2)(C)(ii).*

- **Miracle-Pond, et al. v. Shutterfly, Inc.**, No. 2019-CH-07050 (Circuit Court of Cook County, IL), Judge Raymond W. Mitchell on September 9, 2021:

*This Court finds that the Settlement Administrator performed all duties thus far required as set forth in the Settlement Agreement. The Court finds that the Settlement Administrator has complied with the approved notice process as confirmed by its Declaration filed with the Court. The Court further finds that the Notice plan set forth in the Settlement as executed by the Settlement Administrator satisfied the requirements of Due Process and 735 ILCS 5/2-803. The Notice plan was reasonably calculated and constituted the best notice practicable to apprise Settlement Class Members of the nature of this litigation, the scope of the Settlement Class, the terms of the Settlement, the right of Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court finds and concludes that the Settlement Class Members have been provided the best notice practicable under the circumstances, and that the Notice plan was clearly designed to advise the Settlement Class Members of their rights.*



- **Jackson-Battle, et al. v. Navicent Health, Inc.**, No. 2020-CV-072287 (Ga Super.), Judge Jeffery O. Monroe on August 4, 2021:

*The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of O.C.G.A. §§ 9-11-23(c)(2).*

- **In re: Interior Molded Doors Indirect Purchasers Antitrust Litigation**, No. 3:18-cv-00850 (E.D. Va.), Judge John A. Gibney on July 27, 2021:

*The notice given to the Settlement Class of the settlement set forth in the Settlement Agreement and the other matters set forth herein was the best notice practicable under the circumstances. Said notice provided due and adequate notice of the proceedings an of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons and entities entitled to such notice, and said notice fully satisfied the requirements of Rules 23(c)(2) and 23(e) and the requirements of due process.*

- **Krommenhock, et al. v. Post Foods, LLC**, No. 16-cv-04958 (N.D. Cal.), Judge William H. Orrick on June 25, 2021:

*The Class Notice and claims submission procedures set forth in Sections 4 and 6 of the Settlement Agreement and the Notice Plan filed on January 18, 2021 fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided individual notice to all Settlement Class Members who could be identified through reasonable effort, and support the Court's exercise of jurisdiction over the Settlement Classes as contemplated in the Settlement Agreement and this Order. See Fed. R. Civ. P. 23(e)(2)(C)(ii).*

- **Winters, et al. v. Two Towns Ciderhouse, Inc.**, No. 20-cv-00468 (S.D. Cal.), Judge Cynthia Bashant on May 11, 2021:

*The settlement administrator, Postlethwaite and Netterville, APAC ("P&N") completed notice as directed by the Court in its Order Granting Preliminary Approval of the Class Action Settlement. (Decl. of Brandon Schwartz Re: Notice Plan Implementation and Settlement Administration ("Schwartz Decl.") ¶¶ 4-14, ECF No. 24-5.)...Thus, the Court finds the Notice complies with due process....With respect to the reaction of the class, it appears the class members' response has been overwhelmingly positive.*

- **Siddle, et al. v. The Duracell Company, et al.**, No. 4:19-cv-00568 (N.D. Cal.), Judge James Donato on April 19, 2021:

*The Court finds that the Class Notice and Claims Administration procedures set forth in the Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided due and sufficient individual notice to all persons in the Settlement Class who*



*could be identified through reasonable effort, and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Agreement and this Final Approval Order.*

- **Fabricant v. Amerisave Mortgage Corporation**, No. 19-cv-04659-AB-AS (C.D. Cal.), Judge Andre Birotte, Jr. on November 25, 2020:

*The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The notice fully satisfied the requirements of Due Process. No Settlement Class Members have objected to the terms of the Settlement.*

- **Snyder, et al. v. U.S. Bank, N.A., et al.**, No. 1:16-CV-11675 (N.D. Ill), Judge Matthew F. Kennelly on June 18, 2020:

*The Court makes the following findings and conclusions regarding notice to the Settlement Class:*

*a. The Class Notice was disseminated to persons in the Settlement Class in accordance with the terms of the Settlement Agreement and the Class Notice and its dissemination were in compliance with the Court's Preliminary Approval Order; b. The Class Notice: (i) constituted the best practicable notice under the circumstances to potential Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Consolidated Litigation, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient individual notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.*

- **Edward Makaron et al. v. Enagic USA, Inc.**, No. 2:15-cv-05145 (C.D. Cal.), Judge Dean D. Pregerson on January 16, 2020:

*The Court makes the following findings and conclusions regarding notice to the Class:*

*a. The Class Notice was disseminated to persons in the Class in accordance with the terms of the Settlement Agreement and the Class Notice and its dissemination were in compliance with the Court's Preliminary Approval Order;*

*b. The Class Notice: (i) constituted the best practicable notice under the circumstances to potential Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due,*

*adequate, and sufficient individual notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.*

- **Kimberly Miller et al. v. P.S.C, Inc., d/b/a Puget Sound Collections**, No. 3:17-cv-05864 (W. D. Wash.), Judge Ronald B. Leighton on January 10, 2020:

*The Court finds that the notice given to Class Members pursuant to the terms of the Agreement fully and accurately informed Class Members of all material elements of the settlement and constituted valid, sufficient, and due notice to all Class Members. The notice fully complied with due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law.*

- **John Karpilovsky and Jimmie Criollo, Jr. et al. v. All Web Leads, Inc.**, No. 1:17-cv-01307 (N.D. Ill), Judge Harry D. Leinenweber on August 8, 2019:

*The Court hereby finds and concludes that Class Notice was disseminated to members of the Settlement Class in accordance with the terms set forth in the Settlement Agreement and that Class Notice and its dissemination were in compliance with this Court's Preliminary Approval Order.*

*The Court further finds and concludes that the Class Notice and claims submission procedures set forth in the Settlement Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided individual notice to all Settlement Class Members who could be identified through reasonable effort, and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Settlement and this Order.*

- **Paul Story v. Mammoth Mountain Ski Area, LLC**, No. 2:14-cv-02422 (E.D. Cal.), Judge John A. Mendez on March 13, 2018:

*The Court finds that the Settlement Administrator delivered the Class Notice to the Class following the procedures set forth in the Settlement Agreement; that the Class Notice and the procedures followed by the Settlement Administrator constituted the best notice practicable under the circumstances; and that the Class Notice and the procedures contemplated by the Settlement Agreement were in full compliance with the laws of the United States and the requirements of due process. These findings support final approval of the Settlement Agreement.*

- **John Burford, et al. v. Cargill, Incorporated**, No. 05-0283 (W.D. La.), Judge S. Maurice Hicks, Jr. on November 8, 2012:

*Considering the aforementioned Declarations of Carpenter and Mire as well as the additional arguments made in the Joint Motion and during the Fairness Hearing, the Court finds that the notice procedures employed in this case satisfied all of the Rule 23 requirements and due process.*

- **In RE: FEMA Trailer Formaldehyde Product Liability Litigation**, MDL No. 1873, (E.D La.), Judge Kurt D. Engelhardt on September 27, 2012:

*After completing the necessary rigorous analysis, including careful consideration of Mr. Henderson's Declaration and Mr. Balhoff's Declaration, along with the Declaration of Justin I. Woods, the Court finds that the first-class mail notice to the List of Potential Class Members (or to their attorneys, if known by the PSC), Publication Notice and distribution of the notice in accordance with the Settlement Notice Plan, the terms of the Settlement Agreement, and this Court's Preliminary Approval Order:*

- (a) constituted the best practicable notice to Class Members under the circumstances;*
- (b) provided Class Members with adequate instructions and a variety of means to obtain information pertaining to their rights and obligations under the settlement so that a full opportunity has been afforded to Class Members and all other persons wishing to be heard;*
- (c) was reasonably calculated, under the circumstances, to apprise Class Members of: (i) the pendency of this proposed class action settlement, (ii) their right to exclude themselves from the Class and the proposed settlement, (iii) their right to object to any aspect of the proposed settlement (including final certification of the settlement class, the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of representation by Plaintiffs or the PSC, and/or the award of attorneys' fees), (iv) their right to appear at the Fairness Hearing - either on their own or through counsel hired at their own expense - if they did not exclude themselves from the Class, and (v) the binding effect of the Preliminary Approval Order and Final Order and Judgment in this action, whether favorable or unfavorable, on all persons who do not timely request exclusion from the Class;*
- (d) was calculated to reach a large number of Class Members, and the prepared notice documents adequately informed Class Members of the class action, properly described their rights, and clearly conformed to the high standards for modern notice programs;*
- (e) focused on the effective communication of information about the class action. The notices prepared were couched in plain and easily understood language and were written and designed to the highest communication standards;*
- (f) afforded sufficient notice and time to Class Members to receive notice and decide whether to request exclusion or to object to the settlement.;*
- (g) was reasonable and constituted due, adequate, effective, and sufficient notice to all persons entitled to be provided with notice; and*
- (h) fully satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, including the Due Process Clause, and any other applicable law.*

## Class Action & Mass Tort Settlement Administration

P&N provides pre-settlement consulting and post-settlement administration services in connection with lawsuits pending in state and federal courts nationwide. Since 1999, P&N has processed billions of dollars in settlement claims. Our innovative team successfully administers a wide variety of settlements, and our industry-leading technology enables us to develop customizable administration solutions for class action and mass tort litigations.

### SAMPLE CASE EXPERIENCE



#### ENVIRONMENTAL/TOXIC TORTS

- In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico (MDL 2179)
- Sanchez et al v. Texas Brine, LLC et al.
- In Re: FEMA Trailer Formaldehyde Products Liability Litigation (MDL 1873)
- Burmaster et al. v. Plaquemines Parish Government, et al.
- Cajuns for Clean Water, LLC et al. v. Cecilia Water Corporation, et al.
- Cooper, et al. v. Louisiana Department of Public Works
- Howard, et al. v. Union Carbide Corporation



#### CONSUMER

- Jones et al. v. Monsanto Co.
- Siddle et al. v. The Duracell Co. et al.
- Hughes et al. v. AutoZone Parts Inc. et al.
- Strong v. Numerica Credit Union
- Schexnayder Jr, et al. v. Entergy Louisiana, Inc., et al.
- Winters v. Two Towns Ciderhouse, Inc.
- Burford et al. v. Cargill, Incorporated
- Duhe, Jr., et al. v. Texaco, Inc., et al.
- Martinez, et al. v. Sun West Mortgage Company, Inc.



#### TCPA

- Fabricant v. AmeriSave Mortgage Corp.
- Snyder, et al. v. U.S. Bank, N.A., et al. (Deutsche Bank Settlement and Wilmington Trust Settlement)
- Makaron v. Enagic USA, Inc.
- Story v. Mammoth Mountain Ski Area, LLC



#### MASS TORTS

- In Re: E.I. du Pont de Nemours and Company C8 Personal Injury Litigation (MDL 2433)<sup>†</sup>
- In Re: Testosterone Replacement Therapy Products Liability Litigation (MDL 2545)<sup>†</sup>
- Chevron Richmond Refinery Fire Settlement
- DePuy ASR Inventory Settlement<sup>‡</sup>
- Essure Product Liability Inventory Settlement<sup>‡</sup>



#### ANTITRUST

- In Re: Cathode Ray Tube (CRT) Antitrust Litigation (MDL 1917)<sup>\*</sup>
- In Re: Interior Molded Doors Antitrust Litigation (Indirect)



#### DATA BREACH

- Bailey, et al. v. Grays Harbor County Public Hospital No. 2
- Jackson-Battle, et al. v. Navicent Health, Inc.

<sup>\*</sup>Services provided in cooperation with The Notice Company, Inc.

<sup>†</sup>Services provided in cooperation with the Court-Appointed Special Master

<sup>‡</sup>Inventory settlement