IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

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

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Plaintiffs James Stewart, Susan Stewart, John Bachura, Brenda Sparks, and Steven N. Esce (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, through counsel of record ("Plaintiffs' Class Counsel") with the consent of the Defendant Practice Resources, LLC respectfully submit this Memorandum of Law in Support of Plaintiffs' Unopposed Motion Motion for Preliminary Approval of Settlement.

INTRODUCTION

In a Settlement Agreement executed on March 27, 2024, Class Counsel and Defense Counsel have negotiated a proposed Settlement that provides substantial benefits to individuals whose Private Information was accessed without authorization due to a data breach ("Data Breach") experienced by Defendant Practice Resources, LLC ("PRL" or "Defendant"). The Settlement creates a Settlement Fund of $1,500,000.00 for the benefit of approximately 942,138 class members. The specifics of this relief are set forth in the Settlement Agreement.

This highly beneficial Settlement represents the culmination of over one and a half years of highly contested litigation between the Parties. The parties filed extensive motions and briefings with the Court. While actions remained pending, Class Counsel engaged in considerable meet and confer efforts, as well as exchanged materials with defense counsel to

foster fruitful mediation sessions. Toward this end, the Parties engaged in one full-day mediation session mediated by the Honorable Wayne Anderson, during which they engaged in a vigorous exchange regarding their respective claims and defenses. Though the mediation session did not resolve the case, the Parties continued to exchange information in the following weeks, until a resolution was achieved. Although these lengthy and complex negotiations have been difficult, the Parties' good-faith efforts to resolve this Litigation ultimately resulted in an arms-length Settlement representing a thoughtful compromise (which takes into consideration the Parties' respective concerns – a meaningful solution to the breach of Private Information experienced by the members of the Class and PRL's financial situation). In short, Plaintiffs and Defendant respectfully submit that this Settlement is fair, adequate, and reasonable for the Settlement Class and that the requirements for final approval will be satisfied. In considering preliminary approval, this more than suffices to permit Class Notice to be provided to the Settlement Class and a Final Fairness Hearing to be scheduled.

Moreover, the Plaintiffs with the consent of Defendants request that, along with granting preliminary approval of the Settlement, the Court adopt the schedule set forth below (which will assist the Parties in effectuating the various steps in the Settlement Approval Process under the Settlement Agreement):

Event	Date
PRL provides CAFA Notice required by 28 U.S.C. § 1715(b)	Within 10 days after the filing of this Motion
PRL to provide contact information for Settlement Class Members	Within 14 days after entry of Preliminary Approval Order
Notice Program commences	Within 35 days after entry of Preliminary Approval Order
Notice Program concludes	Within 45 days after entry of Preliminary Approval Order
Compliance with CAFA Waiting Period under 28 U.S.C. § 1715(d):	90 days after the appropriate governmental offices are served with CAFA notice

Postmark deadline for request for exclusion (opt-out) or objections:	60 days after commencement of Notice Program
Deadline to file Plaintiffs' Motion for Final Approval of the Settlement Agreement and Motion for Attorneys' Fees, Expenses, and Service Awards:	No later than 14 days prior to the Final Fairness Hearing
Postmark/Filing deadline for members of the Class to file claims	90 days after commencement of the Notice Program
Deadline for Plaintiffs to file any Response to Objections or Supplement to Motion for Final Approval	No later than 7 days prior to the Final Fairness Hearing
Deadline for Claims Administrator to file or cause to be filed, if necessary, a supplemental declaration with the Court	At least 5 days prior to the Final Fairness Hearing
Final Approval Hearing	To be set by the Court and held at the United States District Court for the Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Albany, NY 12207, in Courtroom ___ - ___ Foor and/or by virtual attendance, details of which to be provided before the Final Approval Hearing on the Settlement Website.

Accordingly, at this preliminary stage of the Settlement process, Plaintiffs and Defendant respectfully request that the Court: (i) grant preliminary approval of the proposed Settlement Agreement; (ii) certify a Settlement Class pursuant to the provisions of Fed. R. Civ. P. 23(a) and (b)(3); (iii) schedule a Final Fairness Hearing to consider final approval, pursuant to the schedule set forth above; (iv) direct that notice of the proposed Settlement and hearing be provided to absent Class Members in a manner consistent with the Settlement Agreement and the Notice Program, as set forth in the above-mentioned schedule; and (v) enter the proposed order regarding Preliminary Approval Order.

PROCEDURAL AND FACTUAL BACKGROUND OF THE CASE

PRL is a New York-based Management Service Organization ("MSO") with its principal

place of business in Syracuse, New York. Amended Consolidated Complaint ("ACC"), ¶ 69. Plaintiffs allege that on or about April 12, 2022, PRL observed that its computer network and the sensitive Private Information of Plaintiffs and the Class had been subject to a cybersecurity attack on April 12. *Id.*, ¶ 6. As noted above, the Data Breach involved roughly 942,138 individuals, including patients and employees of PRL's medical provider clients. *Id.*, ¶¶ 4, 6, 70. The information allegedly compromised in the Data Breach included Class Members' sensitive Private Information including, but not limited to: names, home addresses, dates of birth, dates of treatment, health plan numbers, including individuals' Medicare or Medicaid numbers, and medical record numbers. *Id.*, ¶ 4.

Plaintiffs allege that their Private Information was compromised due to PRL's negligent acts and omissions and failure to protect the sensitive personal data of settlement class members ("SCMs"). ACC, *e.g.*, ¶¶ 79-81. They also contend that PRL unreasonably delayed notifying them after becoming aware of the breach. *Id.* ¶¶ 71-74. PRL denies these allegations and maintains that Plaintiffs will not be able to demonstrate that any Private Information was actually taken and that any harm they allegedly suffered could not have been a result of the Data Breach.

Plaintiffs allege that they and the Class have suffered injury as a result of PRL's conduct, including, e.g.: (i) identity theft; (ii) theft of their Private Information; (iii) imminent injury from fraud; (iv) risks of having compromised confidential medical information; (iv) damages flowing from delayed notification of the Data Breach; (v) loss of privacy; (vi) out-of-pocket expenses and time-value reasonably expended to mitigate the effects of the Data Breach; (vii) improper access to their credit score, accounts, and/or funds; and (viii) increased costs related to reduced credit score, including costs of borrowing and insurance. *See* ACC, ¶ 186 (full list).

Plaintiffs James Stewart and Susan Stewart initiated this action against PRL by filing a

class action complaint on August 25, 2022. Subsequently, Plaintiff John Bachura commenced a second action on August 30, 2022. On October 17, 2022, counsel for the Stewart and Bachura Plaintiffs jointly filed a Motion seeking to consolidate the pending actions and to have their counsel's law firms—Migliaccio & Rathod LLP and Weitz & Luxenberg, P.C.—appointed as interim counsel for the class. On November 22, 2022, the Court granted the motion, and consolidated the cases under the action *In re Practice Resources, LLC Data Security Breach Litigation*, No. 6:22-cv-00890-LEK-DJS (N.D.N.Y.). Plaintiffs' counsel filed the Master Consolidated Class Action Complaint on December 22, 2022.

After the filing of PRL's Motion to Dismiss, on January 23, 2023, Plaintiffs filed an Amended Consolidated Complaint on February 22, 2023. PRL filed a Motion to Dismiss the Amended Consolidated Complaint on March 15, 2023, Plaintiffs filed an Opposition on April 5, 2023, and PRL filed a Response in support of the Motion to Dismiss on April 26, 2023. After considerable meet and confer efforts, the Parties agreed to mediate the case, while the motion to dismiss remained pending. To that end, the Parties exchanged certain information related to the Action. The Parties also prepared for mediation by laying out their respective positions on the Action, including with respect to the merits, class certification and settlement, to each other and the mediator. In the weeks prior to the mediation, the Parties maintained an open dialogue concerning the contours of a potential agreement to begin settlement negotiations.

On November 13, 2023, the Parties engaged in a mediation session before the Honorable Wayne Anderson (ret.). Migliaccio Decl., ¶ 10. The mediation assisted the parties in resolving their outstanding differences, though the ultimate resolution occurred on December 14, 2023. Since then, the Parties have negotiated the details of the S.A. and its exhibits, and executed the S.A. on March 27, 2024. Migliaccio Decl., ¶ 14.

THE PROPOSED SETTLEMENT

Plaintiffs and Defendants are pleased to present to the Court Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement of this Litigation. The parties have agreed to define the Settlement Class as: "all natural persons whose Private Information was compromised in the Data Breach, including all individuals who were sent the Notice of Data Privacy Incident on or around August 23, 2022." As described below, the Settlement Agreement provides for the creation of a Settlement Fund to compensate the Settlement Class for the Data Breach.

A. The Settlement Fund

The Settlement creates a non-reversionary Settlement Fund ("SF") in the amount of $1,500,000, which will be used to make payments to SCMs and to pay the costs of Administration, Costs, and any Fees and Service Awards. S.A. § 3.1. As noted, SCMs may submit a claim for one of the following: (1) *Documented Loss Payment*: SCMs may submit a claim for up to $5,000 and must attest to the loss and submit supporting documentation (S.A. § 3.2(a)); (2) *Credit Monitoring and Insurance Services ("CMIS")*: SCMs may elect 3 years of CMIS, and this benefit will provide at a minimum three credit bureau monitoring services and $1 million in identity theft insurance (S.A. § 3.2(b)); or (3) *Cash Fund Payment*: SCMs may submit a claim to receive a pro rata Settlement Payment in cash (S.A. § 3.2(c)). Any residual funds after payment of SC benefits, administration and other costs, and any attorneys' and service fees, shall be used to make an equal payment to all SCMs who elected a Cash Fund Payment. *See* S.A. § 3.9 for full conditions.

B. Class Notice and Settlement Administration

PRL has adopted measures to enhance its data security. S.A. § 2.1–§ 2.2. These changes will benefit SCMs whose Private Information remains in PRL's possession as these changes will

provide enhanced protection of the Class's Private Information from unauthorized access.

C. Class Notice and Settlement Administration

The Parties have selected KCC, LLC as Administrator through a competitive bidding process. KCC is experienced in administering data breach class claims. S.A. § 1.41.

Within 14 days after the issuance of the Preliminary Approval Order, PRL will provide to the Administrator a list of any and all names, addresses, telephone numbers, and email addresses of Class Members that it has in its possession, custody, or control. S.A. § 6.4. Notice will begin within thirty-five (35) days after entry of a Preliminary Approval Order. S.A. § 1.28. Using the list provided by PRL, the Administrator will run the postal addresses of SCMs through the USPS Change of Address database to update any change of address on file.

The "Summary Notice" (*see Id.*, § 1.47) will then be mailed to SCMs. If returned to KCC, LLC with a forwarding address, KCC, LLC will send it to that address within 7 days. If it is returned to KCC, LLC at least 14 days prior to the Opt-Out Date and Objection Date, and there is no new forwarding address, KCC, LLC will make attempt to ascertain the current address of the SCM and, if an address is ascertained, KCC, LLC will re-send the Short Notice within 7 days.

The Administrator also will establish and maintain a Settlement Website ("Website") that will host a traditional "Long Form" notice. S.A. § 6.7. The Notices will refer SCMs to the Website at which SCMs will be able to learn about the S.A. and their rights in relation to it. S.A. § 6.7. The Website shall contain information regarding Claim Form submission (i.e., through the Website) and downloadable documents, including the Long Form Notice, Claim Form, the S.A., the Preliminary Approval Order upon entry by the Court, and the operative ACC, and will notify the Settlement Class of the date, time, and place of the Final Approval Hearing. S.A. § 6.7. The

Website shall also provide the number and address to contact the Administrator directly. S.A. § 6.7. The Website shall also allow for submission of Requests of Exclusion through the Website.

The Notices will be clear and concise and directly apprise SCMs of claim, objection, and opt-out information. Fed. R. Civ. P. 23(c)(2)(B). The Administrator shall provide 90 days following the Notice Date for submission of Claim Forms. S.A. § 3.4. To the extent any submitted claims are incomplete or deficient, SCMs shall have 30 days to cure. S.A. § 3.5. And within 90 days after: (i) the Effective Date (the date on which all required conditions of the S.A. are satisfied prior to disbursement, *see* S.A. § 10.1); or (ii) all Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever date is later, the Administrator shall cause funds to be distributed to each SCM who is entitled to funds based on the selection made on their given Claim Form. S.A. § 3.6.

D. Attorneys' Fees and Expenses

Plaintiffs will also separately seek an award of attorneys' fees not to exceed one-third (1/3) of the SF (i.e., $500,000.00), and reimbursement of reasonable costs and litigation expenses, which shall be paid from the SF. S.A. § 9.1. Plaintiffs' motion for attorneys' fees will be filed in advance of the objection deadline, and uploaded to the Website promptly after filing.

E. Service Awards to Named Plaintiffs

Plaintiffs in this case support the S.A., have been personally involved, and have been vital in this case. Migliaccio Decl., ¶ 28. Plaintiffs assisted Counsel with their investigation, sat through multiple interviews, and provided supporting documentation and personal information. *Id*. Plaintiffs will separately petition for awards of $2,500 each, recognizing their time, effort, and expense incurred pursuing claims that benefited all SCMs. S.A. § 8.1.

F. Release and Dismissal with Prejudice

Plaintiffs and the SC, upon entry of Final Approval Order, will be deemed to have released all claims against PRL related to the Data Breach. S.A. § 4.1; *Id.* § 1.36, Released Claims definition. The parties at that time will request that the Court dismiss the action with prejudice.

LEGAL ARGUMENT

I. Preliminary Approval is Appropriate Because the Settlement is Fair, Reasonable, and Adequate

"The law favors compromise and settlement of class action suits. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc*., 396 F.3d 96, 116 (2d Cir. 2005) (noting the "strong judicial policy in favor of settlements, particularly in the class action context") (quoting *In re PaineWebber Ltd. P'ships Litig*., 147 F.3d 132, 138 (2d Cir. 1998)) *see also Alba Conte & Herbert Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002) ("The compromise of complex litigation is encouraged by the courts and favored by public policy"). Under Rule 23(e) of the Federal Rules of Civil Procedure, a court may approve a proposed class action settlement if the court determines that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

"Preliminary approval of a proposed settlement is the first in a two-step process required before a class action may be settled." *In re NASDAQ Market-Makers Antitrust Litig*., 176 F.R.D. 99, 102 (S.D.N.Y. 1997). First, the Court considers whether the fairness and adequacy of the settlement warrants preliminary approval, before the second step of providing notice to the proposed class and the scheduling of a final fairness hearing. *Id.; see also Johnson v. Brennan*, No. 10-CV-4712, 2011 U.S. Dist. LEXIS 52713, at *3-4 (S.D.N.Y. May 17, 2011) (granting preliminary approval where settlement "is within the range of possible settlement approval," and was the "result of extensive, arm's length negotiations by counsel"); *Conte & Newberg, supra*, § 11.25 ("If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness . . . and appears to fall within the range of possible

approval," the court should permit notice of the settlement to be sent to class members) (quoting *Manual for Complex Litigation* § 30.41 (3d ed. 1995)).

Plaintiffs ask the Court to conduct the initial review of the Settlement and find that it is within the range of fairness sufficient to justify Notice and a Final Fairness Hearing. Preliminary approval of a settlement is not a decision about the merits of the settlement or the case itself. Rather, the Court limits itself to determining whether the settlement agreement is sufficient to justify public notice and a hearing, at which time the class members and others may present arguments and evidence for or against the proposed agreement. Because preliminary approval is a provisional step that merely begins the settlement approval process, any doubts are resolved in favor of preliminary approval. *See In re Traffic Executive Ass'n*, 627 F.2d 631, 634 (2d Cir. 1980) (preliminary approval "is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness").

In the Second Circuit, courts look to a non-exhaustive list of factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), and more recently applied in *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005), to consider in reviewing a settlement proposal. The *Grinnell* factors are helpful in evaluating this motion. The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant

risks of litigation. 495 F.2d at 463. Here, all of the *Grinnell* factors weigh in favor of approval of the Settlement Agreement, and certainly in favor of preliminary approval.

1. Litigation Through Trial Would Be Complex, Costly, and Long (*Grinnell* Factor 1).

By reaching a favorable settlement prior to summary judgment proceedings or trial, Plaintiffs seek to avoid significant expense and delay and ensure a speedy, risk-free recovery for the class. "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig*., 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), aff'd, *D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001). This present case is no exception. Thus, trial on the merits would likely be protracted and expensive, would involve highly complex legal and factual issues related to liability and damages or other relief, and would involve substantial uncertainties, delays, and other risks inherent in litigation, with the possibility of limited to no recovery for Class Members in the end.

If the Settlement Agreement is not approved, additional costly and time-consuming litigation would ensue. Although there has been significant discovery to date, Defense Counsel has indicated they would petition the Court to re-open discovery in order to depose any Class Members Plaintiffs' Counsel plans to offer at trial that have not already been deposed. Should this case proceed to trial, it would almost certainly span several weeks and require Defense and Plaintiffs' Counsel to coordinate transporting numerous witnesses to testify. Preparing and putting on evidence at such a trial would consume tremendous amounts of time and resources and demand substantial judicial resources. Thereafter, individual trials on damages would be costly and would further defer closure. Any judgment would likely be appealed, thereby extending the duration of the litigation. This Settlement, on the other hand, makes monetary

relief available to class members in a prompt and efficient manner and provides for essentially the same type of relief that Plaintiffs would obtain if they succeeded after lengthy and costly litigation.

Further, any such decision reached on these issues would probably lead to an appeal. The continuation of the litigation in this matter would not likely result in an increased benefit to the class members, because the claims administration process is designed to provide a more timely and less costly mechanism of redress than individual federal damages trials. More litigation instead would lead to a substantial expenditure in costs by both Parties. Should this matter proceed and Plaintiffs prevail at a trial, Defendant will no doubt appeal to the Second Circuit resulting in further burden, expense, and delay to the parties.

2. The Reaction of the Class (*Grinnell* Factor 2)

Class Counsel believe this to be an overwhelmingly positive settlement that the Class will support. Plaintiffs' Counsel has not received any disapproval of the proposed Settlement Agreement to date. Though not the case here, Plaintiffs' Counsel notes courts in this circuit have regularly approved settlements even where substantial portions of the class have objected. *See, e.g.*, *County of Suffolk v. Long Island Lighting Co*., 907 F.2d 1295, 1325 (2d Cir. 1990) (affirming approval of settlement over objections of "a majority" of class); *TBK Partners, Ltd. v. W. Union Corp*., 675 F.2d 456, 462 (2d Cir. 1982) (affirming approval of settlement where between 54 and 58 percent of class objected). Therefore, this factor therefore weighs in favor of preliminary approval. Any objections from Class Members are best resolved at the Final Fairness Hearing that will follow Notice to Class Members.

3. Discovery Has Advanced Far Enough to Allow the Parties to Responsibly Resolve the Case (*Grinnell* Factor 3)

The parties have completed ample pre-mediation discovery to recommend settlement. "[T]he pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . but an aggressive effort to ferret out facts helpful to the prosecution of the suit." *See In re Austrian & German Bank Holocaust Litig*, 80 F. Supp. 2d at 176. The parties' pre-mediation discovery here meets this standard, as this outcome represents the culmination of over a year and a half of hard-fought (and well defended) litigation between the parties. The parties filed extensive motions and briefings with the Court. While actions remained pending, Class Counsel engaged in considerable meet and confer efforts, as well as exchanged materials with defense counsel to foster fruitful mediation sessions.

Toward this end, the Parties engaged in one full-day mediation session mediated by the Honorable Wayne Anderson (Ret.), during which they engaged in a vigorous exchange regarding their respective claims and defenses. Though the mediation session did not resolve the case, the Parties continued to exchange information in the following weeks, until a resolution was achieved. The Parties are fully informed of their own positions, and of those held by their adversary. As such, Class Counsel is confident the proposed Settlement Agreement will responsibly resolve this case.

4. Plaintiffs Would Face Real Risks if the Case Proceeded (*Grinnell* Factors 4 and 5)

Plaintiffs' case is strong, but it is not without risk. While Plaintiffs contend they could ultimately establish Defendants' liability, that is not guaranteed, because "[l]itigation inherently involves risks." *In re PaineWebber Ltd. P'ships Litig*., 171 F.R.D. 104, 126 (S.D.N.Y. 1997). In considering the possibility of establishing liability and damages through a trial on the merits (and mini-trials on individual damages), the Court "must only weigh the likelihood of success by the

plaintiff class against the relief offered by the settlement*." In re Austrian & German Bank Holocaust Litig*., 80 F. Supp. 2d at 177.

Trying a data breach class-action case on the merits would require significant factual development and favorable outcomes (at trial and on appeal), both of which are inherently uncertain and lengthy. The Settlement eliminates this uncertainty and provides for much the same relief as Class Members could obtain after successful litigation. This factor therefore weighs in favor of preliminary approval.

As to damages, this multiplies the potential difficulties Class Members face in terms of introducing evidence at subsequent damages trials in order to obtain individualized monetary relief. The claims process incorporated in the Settlement agreement provides individual relief without the strictures of the Federal Rules of Evidence, without lengthy appeals, and without requiring individual Class Members to appear in federal court. All of these factors indicate that this Settlement approximates the benefits of a trial on the merits while avoiding the downside risks of full-blown class-action litigation.

5. Establishing a Class and Maintaining It Through Trial (*Grinnell* Factor 6)

While Plaintiffs are confident they could obtain class certification, it is possible that a motion or appeal to decertify the class could follow, given Defendant's vigorous motion practice in this case. Such a motion, whether or not successful, add considerable delay to the final resolution of this matter.

6. Defendants' Ability to Withstand a Greater Judgment (*Grinnell* Factor 7)

Class Counsel believes the amount of the Settlement represents the present limit of Defendant's ability to pay, especially given PRL's strained financial situation and depleted insurance coverage. One of the major roadblocks in resolving this litigation has been PRL's

depleted insurance coverage in response to the Data Breach. This was an issue Class Counsel has given significant consideration. At the settlement conference mediated by the Honorable Wayne Anderson, counsel for PRL consulted with internal stakeholders for the company and was able to obtain the Settlement amount of $1,500,000.00 to provide Class Members with meaningful redress. Plaintiffs' Counsel are confident Defendants are not able to withstand a greater judgment than that reflected in the Settlement Agreement at this time.

7. The Settlement is Substantial in Light of the Possible Recovery and the Attendant Risks of Litigation (*Grinnell* Factors 8 and 9).

The Settlement Agreement provides relief for hundreds of thousands of individuals affected by the Data Breach who now will be able to obtain redress for past injuries. The Settlement is structured to provide monetary relief to individual Class Members based on individual damages, if substantiated by relevant documents, as well as on a pro rata basis, akin to what they would receive in individual damages hearings, without the cost formalities and potential delays inherent in federal court proceedings. While recovery could theoretically be greater if Plaintiffs succeeded on all claims at trial and survived an appeal, there is no guarantee of that – especially taking into consideration PRL's strained financial situation and depleted insurance coverage.

II. Certification of the Settlement Class is Appropriate

The benefits of the proposed Settlement can be realized only through the certification of the Settlement Class. The Supreme Court of the United States has confirmed the viability of such settlement classes. *See Amchem Prods. v. Windsor*, 521U.S. 591 (1997). So, too, have the federal appeals courts. *See Melito v. Experian Mktg. Sols., Inc*., 923 F.3d 85 (2d Cir. 2019); *Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013); *Prudential Ins. Co. of Am. (In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 317 (3d Cir. 1998) *("Prudential II"); Hanlon*

v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998); *Blyden v. Mancusi*, 186 F.3d 252, 270, n.9 (2d Cir. 1999). The use of such settlement classes is routine in this Circuit, so long as "district judges who decide to employ such a procedure . . . scrutinize the fairness of the settlement with even more than the usual care." *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied, 464 U.S. 818 (1983). *See also In Re Prudential Sec*., 163 F.R.D. 200, 205 (S.D.N.Y. 1995) (tentative or temporary settlement classes are favored when there is little likelihood of abuse, and the settlement is fair and reasonable and under scrutiny of the trial judge).

1. The Elements of Rule 23(a) are Satisfied.

The Settlement in this case readily meets the Rule 23(a) criteria of numerosity, commonality, typicality, and adequacy. Indeed, several other District Courts have certified data breach or privacy class actions. *See, e.g., In re Marriott Int'l Customer Data Sec. Breach Litig.*, No. 19-md-2879, 2023 U.S. Dist. LEXIS 212728 (D. Md. Nov. 29, 2023) (certifying multi-state data breach involving personal information, including names, mailing addresses, birth dates, email addresses, phone numbers, and, in some cases, passport and payment card information); *In re Brinker Data Incident Litig., No. 3:18-CV-686-TJC-MCR*, 2021 WL 1405508, at *1 (M.D. Fla. Apr. 14, 2021); *Smith v. Triad of Alabama, LLC*, 2017 U.S. Dist. LEXIS 38574, at *14 (M.D. Ala. Mar. 17, 2017) (certifying nationwide negligence class in data breach suit against hospital), *aff'd on reconsideration*, 2017 140594 (M.D. Ala. Aug. 31, 2017); *In re Sonic Corp. Customer Data Breach Litig.*, No. 1:17-md-02807-JSG, 2020 U.S. Dist. LEXIS 204169, at *13-14 (N.D. Ohio Nov. 2, 2020); *In re: Wawa, Inc. Data Security Litigation*, No. 19-6019-GEKP (E.D. Pa. Feb. 19, 2021)*; In re Target*, 309 F.R.D. 482 (D. Minn. 2015).

Thus, certification of the proposed Settlement is appropriate here to effectuate a settlement of claims against PRL. Plaintiffs contend that the Private Information of

approximately 942,138 Class Members was impacted by the Data Breach. There is no question that the numerosity requirement is met, and that the typicality and commonality requirements are also satisfied given the allegations that, but for Defendant's negligent data security practices, Class Members' Private Information would not have been exfiltrated and exposed Class Members to potential identity theft. Further, adequacy of representation is assured as the class is represented by legal counsel who have a wealth of experience in complex data breach and class action cases such as this. Class Counsel's efforts to date, combined with the excellent settlement negotiated for members of the class, demonstrates the adequacy of their efforts on behalf of the Settlement Class.

2. The Requirements of Rule 23(b)(3) Are Met in the Settlement Context.

The proposed Settlement Class also meets the requirements of Rule 23(b)(3). A district court may certify a class pursuant to Rule 23(b)(3) if "questions of law or fact common to class members predominate over any questions affecting only individual members." *In re Petrobras Sec. Litig.,* 862 F.3d 250, 260 (2d Cir. 2017)." This predominance requirement 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Langan v. Johnson & Johnson Consumer Cos.*, 897 F.3d 88, 96-97 (2d Cir. 2018) (quoting *Mazzei v. Money Store*, 829 F.3d 260, 272 (2d Cir. 2016)). In essence, "[t]he Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U. S. at 623.

Here, certification of the class under Fed. R. Civ. P. 23(b)(3) for settlement of compensatory damages claims is appropriate because Plaintiffs' claims for compensatory relief are premised on the predominating common issues in PRL's security that resulted in the Data Breach and whether Defendants are responsible for that breach. Proof of these factual issues,

with a goal to answering the core legal question, would be the undoubted focus of any trial. Thus, overarching legal and factual issues in this litigation predominate over any of the Plaintiffs' individual issues. There is no danger that individual variations in the type or magnitude of damage suffered by individual class members will affect predominance as the Class Representatives have the same type of damages and seek the same type of relief as the proposed Class Members. Moreover, resolution of this litigation by a class settlement is superior to individual adjudication of the class members' claims for compensatory relief. In particular, the Settlement provides Class Members with an ability to obtain predictable, certain and defined compensatory relief promptly, and it contains well defined administrative procedures to assure due process in the application of the Agreement to each individual claimant including the right to "opt out."

By contrast, individualized litigation carries with it great uncertainty, risk and costs, and provides no guarantee that individuals will obtain compensation at the conclusion of the litigation process. Considerations of judicial economy also underscore the superiority of the Class Action mechanism in this case. The prosecution of this case as a class action is superior to hundreds of individual cases being filed in this Court, each of which would be repetitious, possibly yield inconsistent adjudications, and would be onerous on the limited resources of the Court. *See Califano v. Yamaski*, 42 U.S. 682, 700 (1979); *Dodge*, 226 F.R.D. at 183 ("Where a single issue (such as the existence of a uniform policy) is guaranteed to come up time and time again, issues of judicial economy strongly militate in favor of resolving that issue via techniques that will bind as many persons as possible"). Moreover, it is doubtful that many of the proposed Class Members would be able to vindicate their rights because of the risk of awarding minimal damages and the costs of pursuing individual cases. Settlement also would relieve judicial

burdens that would be caused by repeated adjudication of the same issues in hundreds of individualized trials against PRL.

Further, given the nature of this action and the fact that the class membership is comprised of individuals with relatively modest claims, a class action is also the superior method by which to adjudicate claims of individual Class Members. Thus, class certification here is line with "the very purpose of Rule 23(b)(3) which seeks to vindicate 'the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.'" *Mack v. Suffolk Cty.*, 191 F.R.D. 16, 25 (D. Mass. 2000) (quoting *Amchem*, 521 U.S. at 617). *See also In re Nassau County Strip Search Cases*, 461 F.3d 219, 230 (2d Cir. 2006); *Tardiff*, 365 F.3d at 7 ("class status here is not only the superior means, but probably the only feasible one . . . to establish liability and perhaps damages"). The Class Action device is designed for a situation, like here where class representatives seek to vindicate "the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Amchem*, 521 U.S. at 617. *See also Deposit Guar. Nat. Bank v. Roper*, 445 U.S. 326, 339 (1980) (noting that in certain cases "aggrieved persons may be without any effective redress unless they may employ the class-action device").

Accordingly, the Settlement renders a class action superior to other potential avenues of recovery for the Settlement Class. Therefore, Settlement of this case presents the paradigmatic example of a dispute which can be resolved to effectuate the fundamental goals of Rule 23: (1) to promote judicial economy through the efficient resolution of multiple claims in a single action; and (2) to provide persons with smaller claims, who would otherwise be economically precluded from doing so, the opportunity to assert their rights. Moreover, unless Class Members obtain relief through the Settlement, most of them probably would not obtain any relief at all. At the

same time, the Settlement fully preserves the due process rights of each individual Class Member seeking compensatory damages. In sum, the requirements of Rule 23(b)(3) are satisfied and certification of the proposed Settlement Class is appropriate.

III. The Court Should Direct Notice to the Class.

Under Fed. R. Civ. P. 23(e), Class Members are entitled to notice of any proposed settlement before it is ultimately approved by the Court. *See* Manual for Complex Litigation Third (1995) §30.212. The Settlement Agreement provides for reasonable notice to prospective Class Members in that it requires notice to be provided by mail, newspaper, television, and the internet. Under Rule 23(e) and the relevant due process considerations, adequate notice must be given to all absent Class Members and potential Class Members to enable them to make an intelligent choice as to whether to opt-out of the class. *See Prudential II*, 148 F.3d at 326-27; *Valentino v. Carter-Wallace, Inc*., 97 F.3d 1227 (9th Cir. 1996). However, neither Rule 23 nor due process considerations require actual notice to every Class Member in every case, but "notice reasonably certain to reach most of those interested in objecting is likely to safeguard the interests of all." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Nevertheless, Plaintiffs' notice plan has been developed with the thought of providing the most comprehensive notice possible to "reach" all Class Members. *Id.*

In this case, Plaintiffs' Counsel will obtain a last known address for each Settlement Class Member. The Class Notice will be provided to the Class by direct mailing of the Class Notice and a Claim Form to all individuals at their last known or readily ascertainable address. Further, Plaintiffs' Counsel intends to use marketing efforts to provide adequate notice to all absent Class Members by way of direct mail and advertisements in local newspapers. Class Counsel also maintains, based on the advice of the Settlement Administrator, that a limited

media notice campaign and targeted advertising should also be used to facilitate notice to the Class. The Settlement Administrator also will provide a copy of the Class Notice and Claim Form to anyone who requests notice through written communication, through a dedicated internet website, and through a toll-free number to be established. Through these extensive efforts, absent Class Members will receive adequate notice of the Settlement. *See*, e.g., *Butler v. Suffolk Cty*., No. CV 11-2602 (JS)(GRB), 2016 U.S. Dist. LEXIS 78900, at *13 (E.D.N.Y. June 15, 2016) (the distribution of the notice packets by first class mail is a standard method of disseminating notice); *Kochilas v. National Merchant Servs., Inc*., No. 1:24-cv-00311, 2015 U.S. Dist. LEXIS 135553, 2015 WL 5821631, at *7 (E.D.N.Y. Oct. 2, 2015) (approving notice plan and finding dissemination of class notices "comported with constitutional requirements, including those of due process" where the notice packets were sent by first class mail at the last known address of the class members and re-mailed if returned); *see also Cayuga Indian Nation v. Carey*, 89 F.R.D. 627, 633 (N.D.N.Y. 1981) ("individual notice by first class mail, coupled with notice by publication, satisfied the requirements of due process and Rule 23").

Finally, the Class Notice will include all necessary legal requirements and provide a comprehensive explanation of the Settlement in simple, non-legalistic terms.

IV. The Court Should Schedule a Final Fairness Hearing

The Court should schedule a Final Fairness Hearing to determine that class certification is proper and to approve the Settlement. *See* Manual for Complex Litigation, Third §30.44 (1995). The fairness hearing will provide a forum to explain, describe or challenge the terms and conditions of the class certification and Settlement, including the fairness, adequacy and reasonableness of the Settlement. At that time, Class Counsel will present their application for

their fees and expenses pursuant to Rule 23(h), as well as for the award to the Representative Plaintiffs.

Accordingly, Plaintiffs request that the Court schedule the time, date, and place of the Final Approval Hearing.

Dated: March 27, 2024 Respectfully submitted,

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