

**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

This Document Relates To: All Actions

**DECLARATION OF NICHOLAS A. MIGLIACCIO IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, Nicholas A. Migliaccio, declare as follows:

1. I am an attorney at law licensed to practice in the District of Columbia and the State of New York. I am also a partner at Migliaccio & Rathod LLP (“M&R”), counsel of record for Plaintiffs. I submit this declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement and Approval of Notice to Class of Settlement. Unless otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. Attached hereto as **EXHIBIT 1** is a true and correct copy of the Class Action Settlement Agreement.

3. This declaration addresses: (a) the history of the litigation, which includes a summary description of the legal services provided by M&R and co-counsel in this litigation to date; (b) evaluation of the proposed settlement; (c) the risks borne by Plaintiffs’ counsel; (d) Plaintiffs’ counsel’s continuing obligations in this litigation and under the Settlement Agreement, a true and correct copy of which is attached hereto as **EXHIBIT 1**; (e) and the Service Award request for Plaintiffs.

Initial Investigation and Communications

4. This is a putative class action brought by Plaintiffs Jason Stewart, Susan Stewart, John Bachura, Brenda Sparks, and Steven N. Esce (“Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated (the “Settlement Class”). Plaintiffs allege the failure of Practice Resources, LLC (“Defendant”) to take reasonable steps to safeguard the names, home addresses, dates of treatment, health plan numbers and/or medical record numbers (collectively, “Private Information”) that affected 942,000 individuals, on or about April 12, 2022 (“the “Data Breach”).

5. After being retained by Plaintiffs, I and my team vigorously and aggressively gathered all information available regarding the alleged data breaches, including publicly available documents concerning Notice of the Data Breach that was sent to Defendant’s current and former patients.

6. Our initial investigation into the facts and circumstances of the alleged Data Breach revealed that the Data Breach likely involved highly sensitive Private Information of nearly a million individuals, which were stored in Defendant’s computer network.

Procedural Posture

7. After an initial investigation, Plaintiffs commenced this litigation by filing a class action complaint in the Northern District of New York. Ultimately, one other suit was filed and consolidated under the caption *In re Practice Resources, LLC Data Security Breach Litigation*, No. 22-cv-890 (N.D.N.Y.). PRL moved to dismiss the consolidated complaint on January 23, 2023. Plaintiffs then filed an amended consolidated complaint and PRL moved to dismiss that pleading on March 15, 2023, arguing that Plaintiffs lack Article III standing and fail to state viable claims for relief.

8. After considerable meet and confer efforts, the Parties agreed to mediate the case, while the motion to dismiss remained pending.

9. In preparation for the scheduled mediation, 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.

10. On November 13, 2023, the Parties engaged in a mediation session before the Honorable Wayne Anderson (ret.). The mediation assisted the parties in resolving their outstanding differences, though the ultimate resolution occurred on December 14, 2023. In the time that followed the mediation session, the Parties were able to finalize all the terms of this Settlement Agreement.

The Class Settlement

History of Negotiations

11. The Parties agreed to mediate with the Honorable Wayne Andersen (ret.), a prominent mediator with significant experience handling data breach and privacy mediations.

12. Prior to the mediation, the Parties exchanged informal and confirmatory discovery to allow for meaningful evaluation of the claims and to better inform the parties in preparation of mediation. The discovery produced by Defendant included information about the scope of the Data Breach and the Class size, allowing M&R to fully evaluate the strength and weaknesses of Plaintiffs' case and to effectively conduct settlement negotiations.

13. One full-day mediation was held on November 13, 2023, but the parties did not reach a settlement on that day, with the ultimate resolution occurring on December 14, 2023.

14. Thereafter, the parties negotiated the myriad details regarding the Settlement, circulating drafts back and forth of the Settlement Agreement and its many exhibits. Specifically, in the weeks following the mediation the Parties diligently negotiated the final terms of settlement and drafted and finalized the Settlement Agreement, along with accompanying notice forms, a claim form, and other exhibits. The Settlement Agreement (which is attached hereto as **EXHIBIT 1**) and exhibits were finalized by the Parties on March 27, 2024.

15. Plaintiff also obtained competitive bids from various experienced Settlement Administrators and thereafter, with Defendant's input and approval, selected company KCC, LLC, to act as the Settlement Administrator, subject to the Court's approval.

16. The Settlement is the result of prolonged arm's length negotiations, including numerous telephone and video conferences, as well as emails directly exchanged between experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses. Moreover, the Settlement was reached only after M&R analyzed information provided by Defendant in informal discovery and performed other research and investigation related to the Data Breach.

17. While the negotiations between Plaintiffs' counsel and Defendant's counsel were always collegial, cordial, and professional, there is not doubt that they were adversarial in nature, with both sides forcefully advocating the position of their respective clients.

Evaluation of the Proposed Settlement Agreement

18. A true and correct copy of M&R's resume is attached as **EXHIBIT 2**. M&R has substantial experience in the litigation, certification, and settlement of class action cases. A true and correct copy of Weitz & Luxenberg, P.C.'s resume is attached hereto as **EXHIBIT 3**. A true and correct copy of the Almeida Law Group LLC's resume is attached hereto as **EXHIBIT 4**.

19. Based on my experience, Defendants' counsel are also highly experienced in complex civil litigation of this kind. It is my considered opinion that counsel for each side have fully evaluated the strengths, weaknesses, and equities of the parties' respective positions and believe that the proposed settlement fairly resolves their respective differences.

20. Plaintiffs maintain that the claims are meritorious; that the Court would certify the proposed Class; that they would establish liability and recover substantial damages if the case proceeded to trial; and that the final judgment entered for Plaintiffs and the classes would be affirmed on an appeal. But Plaintiffs' ultimate success would require them to clear, in whole or in part, each hurdle. Conversely, Defendant's success at any stage could or would spell defeat for Plaintiffs and the Settlement Class. Thus, continued litigation posed significant risks and countless uncertainties, as well as the time, expense and delays associated with trial and appellate proceedings.

21. The settlement offers substantial monetary relief. The settlement establishes a \$1.5 Million common fund.

22. Class Counsel will request at Final Approval, and PRL has agreed not to oppose, an award of attorneys' fees and expenses in the amount of thirty-three and one-third percent of the total \$1.5 million Settlement Amount. The Parties negotiated and reached agreement regarding fees and costs only after agreeing to all material terms of the Settlement.

23. On the basis of the investigation and evaluation by Plaintiffs' counsel, including me, and our experience with and knowledge of the law and procedure governing the claims of Plaintiffs and the Settlement Class, it is our belief that it is in the best interest of the class to enter into this Settlement. Indeed, in light of the risks, uncertainties and delays associated with continued litigation, the Settlement represents a significant achievement by providing guaranteed

benefits to class members in the form of the prospective non-monetary relief, as well as monetary relief. In addition, the allocation of benefits under the Settlement treats all Class Members fairly based on the strength of their claims. There was a substantial risk that class members would recover only nominal damages, or nothing at all. Even in the best case, it could take several years to get a judgment for class members and, even then, there would be a strong possibility that it would be a judgment in paper only. I say that after having reviewed a sworn statement by Defendant about its financial condition and receiving representations it has made about its financial outlook caused in no small part because of the Covid-19 pandemic. The Settlement provides substantial relief to the certified class now.

24. Plaintiffs and Plaintiffs' counsel appropriately determined that the Settlement outweighs the gamble of continued litigation. While I firmly believe in the merits of this litigation and that Plaintiffs would ultimately win at trial, I also believe that recovery is far from guaranteed and that the benefits of settlement in this case outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with possible interlocutory appellate review, pretrial motion practice, trial, and final appellate review. After taking into account the foregoing along with other risks and the costs of further litigation, I am satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the litigation and the prompt provision of effective relief to the Settlement Class are in the best interest of the Settlement Class Members.

The Risk Borne by Plaintiffs' Counsel, Including M&R

25. In accepting this case, Plaintiffs' Counsel bore considerable risk. M&R took this case on a fully contingent basis, meaning that we were not paid for any of our time, and that we paid all costs and out of pocket expenses without any reimbursement to date. During the

pendency of this case, M&R turned away other work. In evaluating the case at the outset, my partner and I recognized that M&R would be contributing a substantial amount of time and advancing significant costs in prosecuting a class action, with no guarantee of compensation or recovery, in the hopes of prevailing against a well-funded defense. We did take some solace, however, knowing that at least some of the statutes under which Plaintiffs would be suing authorized fee-shifting to a prevailing plaintiff who achieved a benefit for the class members and general public.

26. Because Defendant was represented by a large, highly-skilled and well-resourced litigation firm, there was increased risk that Plaintiffs would not certify a class and/or receive a verdict for the defense after a prolonged trial.

Plaintiffs' Counsel's Continuing Obligations to Class Members

27. I am aware of no conflicts between Plaintiffs' Counsel and the Class Members. If this Court grants preliminary approval to the Settlement, Plaintiffs' counsel, including M&R, will establish standardized procedures to ensure that all inquiries from Settlement Class Members are timely and accurately handled. M&R will also work with the Settlement Administrator to ensure that settlement website functions properly (i.e., is easy to use and properly designed). M&R will also work with the Settlement Administrator to ensure that notice is disseminated in accordance with the terms of the Settlement Agreement. M&R will receive updates from the Settlement Administrator regarding the administration of the settlement. M&R will continue in this capacity should the settlement be finally approved. M&R will prepare for and appear at the fairness hearing. Based on my experience with class actions, I anticipate that there will be at least another 100 hours of work before this Litigation is entirely complete and that is assuming the Court's judgment is not appealed.

Service Award to Plaintiffs

28. Plaintiffs are requesting a Representative Service Award of \$2,500 for each named Plaintiff, including to Gloria Hamilton, who passed during the pendency of this litigation, and/or her estate. To date, Plaintiffs' involvement in this litigation has been superb. For example, Plaintiffs searched their personal records for relevant documents, actively participated in multiple interviews and provided supporting documentation and personal information to support the mediation process. Plaintiffs also took on substantial risk, most importantly the risk of publicity.

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

Executed this 27th day of March 2024 at Washington D.C.

/s/ Nicholas A. Migliaccio
Nicholas A. Migliaccio