

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CHARLES MILLIKEN, JR., and MARY
KAY MILLIKEN, individually and all
others similarly situated,

Plaintiff,

v.

BAYER HERITAGE FEDERAL CREDIT
UNION

Defendants.

CASE NO. 5:24-cv-00057-JPB

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND TO DIRECT NOTICE OF PROPOSED SETTLEMENT
TO THE CLASS AND MEMORANDUM IN SUPPORT**

Plaintiffs move for entry of an order granting preliminary approval of this proposed class action settlement, directing notice of the proposed class action settlement to the Settlement Class, and scheduling a hearing to consider final approval of the settlement. For the reasons set forth below, Plaintiffs respectfully request that the Court enter the proposed order granting this motion.

I. INTRODUCTION

Following hard-fought settlement negotiations, the Parties¹ have reached a settlement to resolve claims arising from the Security Incident announced by Bayer Heritage Federal Credit Union in January. The settlement creates substantial benefit for the Settlement Class Members,

¹ The parties to the settlement are the Plaintiffs, who are also the proposed Settlement Class Representatives, on behalf of the proposed Settlement Class, and Defendant Bayer Heritage Federal Credit Union (“Bayer Heritage” or “Defendant”). Capitalized terms used in this memorandum have the same meaning as in the Settlement Agreement (“S.A.”), attached hereto as Exhibit 1 to the Declaration of David K. Lietz in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Lietz Declaration”).

benefits targeted at the injuries sustained in this data Security Incident. From this Settlement, Settlement Class Members will be able to claim substantial monetary benefits, including: A) compensation for documented out-of-pocket losses as a result of the Security Incident of up to \$5,000; B) up to four (4) hours of time spent responding to issues raised by the Security Incident, at a rate of \$20 per hour; and C) two years of three-bureau credit monitoring with at least \$1,000,000.00 in identity theft/fraud insurance, and a retail value of not less than \$216 per Class Member. The Settlement benefits are uncapped in the aggregate, meaning that all Class Members may claim the full measure of all these benefits, with no reduction.

The Settlement also obligates Defendant to pay additional necessary benefits, including for a state-of-the-art notice and administration program, and as approved by the Court, service awards to the Settlement Class Representatives and attorneys' fees and expenses. All of these additional benefits will be paid separately from the Class relief. Further, as part of the settlement, Bayer Heritage agrees to provide written confirmation to Class Counsel of business practices changes taken after the Security Incident to protect the data security of the Class Representatives and the Settlement Class during the term of the claims administration process.

The settlement is a favorable result for the Settlement Class, securing valuable benefits tailored to the facts of the case. The settlement is fair, reasonable, and adequate and meets the requirements of Rule 23(e). Plaintiffs thus move for an order preliminarily approving the settlement, directing that notice issue to the Settlement Class, and scheduling a Final Approval Hearing. In support of their motion, Plaintiffs submit the Settlement Agreement attached as Exhibit 1 to the Lietz Declaration.² Plaintiffs also submit a proposed preliminary approval order.

² The Parties have confirmed the Settlement Agreement in writing and will supplement this filing with a fully executed Settlement Agreement within 7 days.

II. FACTUAL BACKGROUND

A. Overview of the Litigation

On or about October 31, 2023, Defendant became aware that an unauthorized party gained access to Defendant's computer systems. Defendant took steps to secure its systems and investigate the nature and scope of the incident on the network. Through its investigation, Defendant determined that its network and servers were subject to a cyber-attack that impacted its network where information on its network was accessed and acquired without authorization. The investigation determined that files on Defendant's network were accessed by an unauthorized user from October 31, 2023, through November 1, 2023.

Defendant took steps to secure the network, and launched an investigation to determine the nature and scope of the incident. The investigation revealed that approximately 61,000 individuals, including Plaintiffs, were potentially impacted by the Security Incident. Defendant began notifying persons impacted (including Plaintiffs) in late January 2024, by sending a notice of data breach letter.

Upon receipt of their notice letters, Plaintiffs retained counsel to investigate this incident. After an initial investigation, Plaintiffs filed this action on March 20, 2024. ECF 1. Plaintiffs allege that their Private Information, and that of Class Members, was encrypted, exfiltrated, and stolen in the cyber-attack. Plaintiffs asserted claims of negligence, breach of implied contract, and unjust enrichment.

After service of the Complaint, the Parties began a period of intensive informal discovery and mutual exchange of information. This informal discovery provided Plaintiffs and their counsel with the necessary information to evaluate the facts and circumstances of this Security Incident,

the size of this potential class, and the fact and legal issues that would face Plaintiffs and the Class in the litigation.

During this same timeframe, the Parties began settlement discussions, and ultimately agreed to participate in a private mediation before experienced data breach mediator Bruce Friedman, Esq. of JAMS. Mediation was scheduled for July 2024, and the Parties moved the Court to stay this action pending the mediation (a request granted by this Court). In the lead up to the mediation, the Parties engaged in additional intensive informal discovery, designed to fully inform both Parties of the facts of this case. The Parties also both prepared fulsome mediation statements. Just prior to mediation, on July 29, 2024, the Parties reached agreement on the material terms of this proposed Settlement, and the mediation was canceled. The Parties thereafter negotiated the granular terms of the Settlement, and finalized the Settlement Agreement and its exhibits on January 7, 2025.

While the negotiations were professional throughout, they were marked by significant factual and legal disputes impacting the value of the case. At all times the negotiations were at arm's-length, and free of collusion of any kind. Attorneys' fees were not discussed in any manner prior to reaching agreement on Class Relief.

B. The Terms of the Proposed Settlement

The following are the material terms of the settlement:

1. The Settlement Class

The proposed Settlement Class is defined as: "All persons residing in the United States whose PII was compromised in the October 2023 Security Incident announced by Bayer Heritage Federal Credit Union Property Management in 2024." Excluded from the Class are: (1) any entity in which Bayer Heritage has a controlling interest and (2) the affiliates, legal representatives,

attorneys, successors, heirs, and assigns of Bayer. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

The Settlement Class consists of approximately 61,000 individuals. S.A. ¶ 47.

2. The Settlement Benefits

The Settlement negotiated on behalf of the Settlement Class provides for three separate forms of Class Relief: (1) reimbursement for up to \$4000 in documented out-of-pocket expenses (such as fees for credit reports, unreimbursed bank fees, credit monitoring, or other identity theft insurance product, etc.); (2) lost time (up to 4 hours at \$20 per hour), which is also subject to the \$4,000 per Class Member cap; and; (3) two-years of three-bureau credit monitoring. S.A. ¶¶ 50. These benefits are uncapped in the aggregate, meaning that every Settlement Class Member may claim the full measure of all the relief offered. The benefits are described more fully below:

3. Monetary Payments

i. Compensation of Out-of-Pocket Expenses

Bayer Heritage will provide compensation for unreimbursed losses, up to a total of \$4,000.00 per person who is a member of the Settlement Class, upon submission of a claim and supporting documentation, such as the following losses:

- i. *Out-of-pocket expenses incurred* as a result of the Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
- ii. *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between October 31, 2023, and the date of the close of the Claims Period.

Settlement Class Members with out-of-pocket losses set forth above must submit adequate documentation establishing the full extent of their claims

ii. Lost Time

Settlement Class Members may submit claims for up to 4 hours of lost time, reimbursed at a rate of \$20 per hour, by submitting an attestation that they spent the claimed time responding to issues raised by the Incident. This attestation may be completed by checking a box next to the sentence: “I swear and affirm that I spent the amount of time noted in response to Bayer’s October 2023 data security incident.” No other documentation is needed for a lost time claim. Lost time claims are subject to the \$4000 per person cap on Out-of-Pocket Expenses.

iii. Credit Monitoring

All Settlement Class Members shall be offered a two-year membership of three-bureau (“3B”) credit monitoring with at least \$1,000,000.00 in identity theft/fraud insurance. The additional credit monitoring services noted in (i) are in addition to any credit monitoring services Bayer Heritage initially offered related to the October 2023 Incident

4. Business Practice Commitments

Bayer Heritage also agrees to provide written confirmation to Class Counsel of business practices changes taken after the Security Incident to protect the data security of the Class Representatives and the Settlement Class during the term of the claims administration process.

5. Proposed Notice and Claims Program

The Parties have agreed upon, and request that the Court appoint Verita Global, LLC as Settlement Administrator to provide notice to Settlement Class Members and to process claims. The forms of notice (the Long and Short Forms, attached to the Settlement Agreement as Exhibits A and B) clear and concise and directly apprise Settlement Class Members of all the information they need to know to make a claim or to opt-out or object to the Settlement. Fed. R. Civ. P. 23(c)(2)(B). The Notice Plan here also requires the establishment of a Settlement website and a toll-free helpline. The Notice Plan satisfies the “best notice practicable” standard pursuant to Rule

23 of the Federal Rules of Civil Procedure by giving direct summary postcard by U.S. Mail or email notice to the 61,000 Settlement Class Members. *See Smith v. Res-Care, Inc.*, No. 3:13-5211, 2015 WL 6479658, at *2 (S.D.W. Va. Oct. 27, 2015) (approving notice program consisting of mailed individual notices, settlement website, and toll-free number). The Parties have also agreed that a reminder notice will be sent to Class Members if the claims rate is less than 2% thirty (30) days after the initial notice is sent. S.A. ¶ 33. Contact information is available for virtually all Settlement Class members. Moreover, the Long Form Notice will be posted on the Settlement Website, along with other important documents such as the Settlement Agreement, and a toll-free help line will be available to answer Settlement Class Members' questions. The individual notice effort alone is likely to reach at least 90% of the Settlement Class (and likely higher). Lietz Decl. ¶ 38. In proposed Class Counsel's experience, the reach of the Notice Plan meets that of other court-approved notice programs, and has been designed to meet due process requirements, including the "desire to actually inform" requirement. The Notice Plan is thus the best notice practicable under the circumstance of this case.

The claims process similarly draws upon the most up-to-date techniques to facilitate participation, including the ability to submit claims electronically on the Settlement Website or by mail. The cost of notice and administration will be paid by Defendant separately from the Class Relief, and is another benefit to the Class. S.A. ¶ 50(b). Notice is estimated to cost between \$72,000 to \$87,000, depending upon how many email addresses Defendant has for Settlement Class Members (as email notices are less expensive than notices sent by U.S. Mail). Lietz Decl. ¶ 49.

6. Attorneys' Fees and Expenses and Service Award

Proposed Class Counsel may request a combined fee and expense award of up to \$175,000.

S.A. ¶ 20. Class Counsel may also request service awards of up to \$2,500 each Settlement Class Representative. *Id.* ¶ 37. Any fees, expenses, or service awards will be paid by Defendant separately from the Class Relief. Proposed Class Counsel will move for fees, expenses and service awards at least 14 days before the Objection Deadline and Opt-Out Date.

7. Releases

The Settlement Class will release Bayer Heritage from claims that were or could have been asserted in this case. The releases are detailed in the Settlement Agreement. S.A. ¶ 55. The release here is limited to only those claims that arise from the Security Incident. Claims arising from any other materially distinct factual predicates are not released. *In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 91 F.4th 174 (4th Cir. 2024)

III. ARGUMENT

The Fourth Circuit has recognized that courts strongly favor and encourage settlements. *See, e.g., United States v. Manning Coal Corp.*, 977 F.2d 117, 120 (4th Cir. 1992) (“It has long been clear that the law favors settlement.”). “This is particularly true in class actions” and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See, e.g., Six v. Loancare, LLC*, No. 5:21-cv-00451, 2022 WL 16747291, at *3 (S.D. W. Va. Nov. 7, 2022) (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 311 (3d Cir. 2011) and citing *In re PaineWebber Ltd. P’ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)) (noting the “strong judicial policy in factor of settlements, particularly in the class action context”). Here, this Court should follow this strong preference towards settlement, and grant preliminary approval to this proposed Settlement.

A. Legal Standards

1. Preliminary Approval of Settlement

In the event of a settlement and proposal to certify a class for settlement purposes, the Court must determine whether to issue notice to the class. Fed. R. Civ. P. 23(e)(1). The parties are obligated to provide sufficient information to enable the Court to determine whether notice is appropriate, and the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” *Id.*

Moreover, Rule 23(e)(2) provides that a proposed settlement may be approved only after a hearing and on a “finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Approval of a proposed settlement is committed to the sound discretion of the court. *See Berry v. Schulman*, 807 F.3d 600, 608 (4th Cir. 2015). In determining whether a settlement is fair, reasonable, and adequate, the Court must consider whether:

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

Fed. R. Civ. P. 23(e)(2).

The Court’s Rule 23(e) obligations are addressed with a “two-level analysis.” *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009). To determine whether a settlement is fair, the Court considers the four factors set forth by the Fourth Circuit in *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991): “(1) the posture of the case at the time settlement was

proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel” To determine whether a settlement is adequate, the courts also look to: “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *Id.* There is a “strong presumption in favor of finding a settlement fair.” *Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 1:08cv1310, 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009) (internal quotation omitted).

In making the determination of preliminary approval, the Court does not answer the ultimate question of whether the proposed Settlement is fair, reasonable, and adequate; this analysis is reserved for the second stage of the settlement approval process. Instead, the first stage of the settlement approval process is focused on whether the settlement is sufficiently adequate to permit notice to be sent to the class. *See Hall v. Higher One Machines, Inc.*, No. 5-15-CV-670-F, 2016 WL 5416582, at *5 (E.D.N.C. Sept. 26, 2016) (“If the proposed settlement is preliminarily acceptable, the court then directs that notice be provided to all class members who would be bound by the proposed settlement in order to afford them an opportunity to be heard on, object to and opt out of the settlement.”).

For purposes of preliminary approval, evaluation under these enumerated factors confirms that the proposed settlement is fair, adequate, and reasonable; accordingly, the Court should direct that notice of the Settlement issue to the Settlement Class.

2. Rule 23 Settlement Class Certification

“When a settlement is reached prior to Rule 23 certification, the law permits a class to be certified solely for the purposes of settlement.” *Gamas v. Scott Farms, Inc.*, No. 5:13-CV-447-FL, 2014 WL 12546373, at *2 (E.D.N.C. Dec. 24, 2014). A district court faced with a settlement-only class need not inquire whether the class would present intractable problems with trial management, but must analyze whether the other requirements for certification must have been satisfied. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). To approve a class settlement, the Court must still consider the requirements for class certification under Rule 23. *In re NeuStar, Inc. Sec. Litig.*, No. 1:14-CV-885(JCC/TRJ), 2015 WL 5674798, at *2 (E.D. Va. Sept. 23, 2015). The Settlement Class must also satisfy one of the categories of Rule 23(b). *Id.* However, the Court may disregard the manageability concerns of Rule 23(b)(3) because the Court may properly consider that there will be no trial. *See Amchem*, 521 U.S. at 620.

3. Notice Form Approval

As part of the preliminary approval process, the district court must also approve the notice of the settlement that the Parties propose be sent to Class Members. *See* Fed. R. Civ. P. 23(c)(2)(B). The notice must comport with due process and provide the “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” *Id.*; *accord Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Rule 23 leaves the form of the notice to the Court’s discretion. *See Fisher v. Va. Elec. & Power Co.*, 217 F.R.D. 201, 227 (E.D. Va. 2003) (“a court may exercise its discretion to provide the best notice practicable under the circumstances.”); *see also* Fed. R. Civ. P. 23(c)(2)(B).

B. The Rule 23 and Jiffy Lube Factors Confirm Preliminary Approval is Warranted.

1. The Class Was Adequately Represented.

“[T]he adequacy requirement is met when: (1) the named plaintiff does not have interests antagonistic to those of the class; and (2) plaintiff’s attorneys are ‘qualified, experienced, and generally able to conduct the litigation.’” *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 567 (E.D. Va. 2016). Here, the Settlement Class Representatives have the same interests as other class members as they are asserting the same claims and share the same injuries. Further, Proposed Class Counsel’s experience and qualifications warrant their appointment as Class Counsel in this litigation, and the record shows proposed Class Counsel worked diligently to litigate and ultimately bring this case to resolution. Lietz Decl. ¶¶ 3-23; see also *In re: Lumber Liquidators*, 952 F.3d at 485 (finding counsel’s experience in complex civil litigation supported fairness of settlement).

2. The Proposed Settlement Was Negotiated at Arm’s Length.

The Court can safely conclude this settlement was negotiated at arm’s length, without collusion, based on the terms of the settlement itself; the length and difficulty of the negotiations. See *In re NeuStar*, 2015 WL 5674798, at *10 (adversarial encounters support a finding of arms’ length negotiations). This factor supports a finding that the Court will likely be able to approve the settlement.

3. The Relief is Fair, Reasonable, and Adequate.

The relief offered to Class Members in the Proposed Settlement is more than adequate under the factors outlined in Rule 23(e)(2)(c). The relief compares very favorably to dozens of other court-approved data breach settlements with similar facts, including at least one that was finally approved by a federal district court in the neighboring jurisdiction of Virginia. See *Pagan et al. v. Faneuil*, Civil Action No. 3:22-cv-297 (E.D. Va.), ECF 53 (final approval order approving settlement with similar class relief, consisting of up to \$5000 in documented out-of-pocket

expenses, 3 hours of lost time at \$20 per hour, a \$50 cash payment for California Subclass members only, and 24 months of Financial Shield identity theft protection services).

The amount offered in settlement here is completely consistent with the scale of this litigation, which is similar to the scale of the *Pagan* case (a settlement class of approximately 53,000 persons).

Proposed Class Counsel, with their considerable experience in data breach class actions, strongly believes that the relief is fair, reasonable, and adequate. Lietz Decl., ¶¶ 35, 38. Proposed Class Counsel bring decades of experience with data privacy litigation to bear on Plaintiffs' behalf. The Court may rely upon such experienced counsel's judgment. *See, e.g., Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012) ("Absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel.")

That the relief is fair, reasonable, and adequate is further confirmed by considering the four specific factors enumerated in Rule 23(e)(2).

i. The Costs, Risks and Delay of Trial and Appeal.

Plaintiffs face significant risks and costs should they continue to litigate the case due to the potential expense and length of continued proceedings necessary to prosecute the litigation against Bayer Heritage through motion practice, trial, and potential appeals. Even at the pleadings stage, this is a hotly contested case with no assurance of success. Further, if Plaintiffs prevailed on their intended motion for class certification and successfully defeated Defendant's intended motions thus proceeding to trial, Plaintiffs would have faced significant risk, cost, and delay. Plaintiffs face the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. As courts have remarked, this field of litigation is evolving and risky; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-

CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases ... are particularly risky, expensive, and complex.”).

While Plaintiffs strongly believe in the merits of their case, they also understand that Bayer Heritage asserts a number of potentially case-dispositive defenses. In fact, should litigation continue, Plaintiffs would likely have to immediately survive a motion to dismiss in order to proceed with litigation. Due at least in part to their cutting-edge nature and the rapidly evolving law, data incident cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that been denied in other incident cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). Plaintiffs dispute the defenses Bayer Heritage asserts—but it is obvious that their success at trial is far from certain. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

Although nearly all class actions involve a high level of risk, expense, and complexity, this is a particularly complex class. Data security incident cases of wide-spread notoriety and implicating data far more sensitive than the data alleged here have been found wanting at the federal district court level. *See, e.g., In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual allegations in the complaints are sufficient to establish . . . standing.”), reversed in part, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing to bring a data breach lawsuit). Moreover, these cases

can take years to litigate to final resolution. Settlement in the same *In re OPM* litigation was announced in June 2022, after five full years of litigation.

To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide monetary judgment remains unforged, particularly in the area of damages. For now, these types of cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. The damages methodologies, while theoretically sound in Plaintiffs' view, remain untested in a disputed class certification setting and unproven in front of a jury. And as in any data security incident case, establishing causation on a class-wide basis is rife with uncertainty.

Another significant risk faced by Plaintiffs here is the risk of maintaining class action status through trial. The class has not yet been certified, and Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiffs "necessarily risk losing class action status." *Grimm v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014). *In re Marriott International Customer Data Securities Breach Litigation*, 341 F.R.D. 128 (D. Md. 2022), was recently decertified on appeal. See *In re Marriott Int'l, Inc.*, 78 F.4th 677, 680 (4th Cir. 2023). The *Marriott* case has now been pending since 2019, providing a stark example about how long these data breach cases drag on. And no data breach class action – in any jurisdiction – has gone to trial and achieved a plaintiffs' verdict. This overarching risk simply puts a point on what is true in all class actions – class certification through trial is never a settled issue, and is always a risk for the Plaintiffs.

Each risk, by itself, could impede the successful prosecution of these claims at trial and in an eventual appeal—which would result in zero recovery to the class. "Regardless of the risk, litigation is always expensive, and both sides would bear those costs if the litigation continued."

Paz v. AG Adriano Goldschmeid, Inc., No. 14CV1372DMS(DHB), 2016 WL 4427439, at *5 (S.D. Cal. Feb. 29, 2016). In contrast to the risks, costs, and delay posed by continued litigation and potential trial, the proposed Settlement provides certain, substantial, and immediate relief to the proposed Settlement Class without delay. It ensures that Settlement Class Members who submit valid claims for Document Out-of-Pocket Losses, Attested Time or credit monitoring will receive guaranteed compensation now. The substantial costs, risks, and delay of a trial and appeal support a finding that the proposed Settlement is adequate.

ii. The Method of Distributing Relief is Effective.

The distribution process will be efficient and effective. The available relief is detailed clearly in the Notice, which will be provided to all Settlement Class Members, and lays out the benefits to which they are entitled through submission of an approved claim.

As an initial matter, the proposed Notice Plan includes dissemination of direct, individual summary notice by postcard. The total potential Settlement Class size is approximately 61,000 people and contact information (to provide individual notice) is available. It is expected that the individual notice effort alone will reach at least 90% of the Settlement Class (and likely higher). Lietz Decl., ¶ 48.

Therefore, Settlement Class Members will receive effective and efficient notice of the three categories of relief, which will be distributed as follows. *First*, Settlement Class Members are entitled to make Document Out-of-Pocket loss claims online via the Settlement Website or by mail. Settlement Class Members need only submit a Claim Form on the Settlement Website or by mail accompanied by reasonable documentation showing the claimed expenses to establish Documented Out-of-Pocket Losses. S.A. ¶ . If a claim is rejected for any reason, there is also a

consumer-friendly appeals process whereby claimants will have the opportunity to cure any deficiencies in their submission. *Id.* ¶ .

Second, Settlement Class Members seeking compensation for time spent dealing with the effects of the Security Incident need only provide an attestation that the time was spent reasonably responding to the effects of the Security Incident. S.A. ¶ . No other documentation is needed, and it is thus a very low bar to clear in order to make a valid claim for lost time.

Third, Settlement Class Members may claim two-years of valuable three-bureau credit monitoring without needing to have suffered any actual misuse of their potentially compromised data to date. S.A. ¶ . Credit monitoring may be claimed by essentially just “checking a box.” Where the injury sustained by many, many Settlement Class Members is the in impending risk of fraud or identity theft, this form of prophylactic benefit is specifically tailored to the facts and circumstances of this case.

Because Settlement Class Members may make claims through an easy to use online form or by mail, the method of distributing the relief is both efficient and effective, and the proposed Settlement is adequate under this factor.

iii. The Terms Relating to Attorneys’ Fees are Reasonable.

Proposed Class Counsel will request a combined fee and expense award of up to \$175,000. S.A. ¶ . Under the Settlement Agreement, Plaintiffs’ request for Attorneys’ Fees and Expenses will be filed with the Court at least 14 days before the Objection and Opt-Out deadlines. In the settlement negotiations, attorneys’ fees were not discussed in any manner until the Class Relief was fully negotiated. Lietz Decl. ¶ 52. The ultimate fee award will be based on an application to the Court based on Fourth Circuit law with the opportunity for comment from Settlement Class

Members. The fees and expenses here are commensurate with those awarded in similar matters. *See Pagan*, ECF 53 (awarding \$225,000 in combined fees and expenses).

Importantly, the Settlement Agreement is not conditioned upon the Court's approval of the fee award. S.A. ¶. Accordingly, at this stage, the Court can and should conclude that it is likely to approve the Settlement for purposes of sending notice to the Settlement Class, even if it has not yet concluded whether and in what amount it would award attorneys' fees and expenses. The proposed Settlement is adequate under this factor.

iv. Any Agreement Required to be Identified under Rule 23(e)(3).

Rule 23(e) mandates that “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal,” and that the Court must then take into account any such agreements when determining whether the relief provided in the settlement is adequate. *See* Fed. R. Civ. P. 23(e)(2)-(3). Here, there are no such agreements.

v. The Proposed Settlement Treats Class Members Equitably.

Finally, the proposal treats all class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(D). All Settlement Class Members will have the same opportunity to file a claim for Documented Out-of-Pocket Losses, Lost Time, and Credit Monitoring. Because the Settlement is uncapped in the aggregate, all Settlement Class Members may claim the full measure of all the Settlement Benefits offered, with no class members obtaining any greater relative benefit over another. The factor likewise supports a finding that the Court will be able to approve the Proposed Settlement, and that class notice is appropriate.

C. The Proposed Settlement Class Meets the Requirements for Conditional Certification

To issue notice, the Court should decide it will “likely be able to . . . certify the class for purposes of judgment.” Fed. R. Civ. P. 23(e)(1)(B); *Amchem*, 521 U.S. at 620. Such a decision

should not be difficult. Settlement classes are routinely certified in similar consumer data breach cases. *See, e.g., In re Capital One Consumer Data Sec. Breach Litig.*, No. 1:19md2915 (AJT/JFA), Doc. 118 (E.D. Va. Feb. 7, 2022); *Abubaker v. Dominion Dental USA, Inc.*, No. 1:19-cv-01050, 2021 WL 6750844 (E.D. Va. Nov. 19, 2021) (Brinkema, J.); *Hutton v. Nat’l Bd. of Examiners in Optometry, Inc.*, No. 1:16-c-03025, 2019 WL 3183651 (D. Md. July 15, 2019). There is nothing different about this case, which is demonstrated by examining the requirements of Rule 23(a) and (b).

1. The Rule 23(a) Requirements Are Satisfied.

Numerosity: The proposed class consists of approximately 61,000 U.S. residents, indisputably rendering individual joinder impracticable. *See Jeffreys v. Commc’ns Workers of Am. AFL–CIO*, 212 F.R.D. 320, 322 (E.D. Va. 2003) (noting that “where the class numbers twenty-five or more, joinder is generally presumed to be impracticable”).

Commonality: “Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury, such that all their claims can productively be litigated at once.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350 (2011) (internal citations omitted). This requires that the determination of the common question “will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 350 “Even a single common question will do.” *Id.* at 359.

Rule 23(a)(2)’s commonality requirement is met where, as here, the defendant engaged in a common course of conduct. *Fisher v. Virginia Elec. & Power Co.*, 217 F.R.D. 201, 223 (E.D. Va. 2003). All Settlement Class Members are alleged to have suffered the same injury—theft of their personal data in the Security Incident—and are asserting the same legal claims. Accordingly, common questions of law and fact abound. *See, e.g., Abubaker*, 2021 WL 6750844, at * 3.

Typicality: Typicality under Rule 23(a)(3) requires an inquiry into the “representative parties’ ability to represent a class” *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006). “The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class.” *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir. 1998). In other words, the “plaintiff’s claim cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff’s proof of his own individual claim.” *Deiter*, 436 F.3d at 466-67. This requirement is readily satisfied in data breach cases. The Settlement Class Representatives’ claims are typical of other class members because they arise from the same Security Incident and involve the same overarching legal theories, including the theories that Bayer Heritage breached implied contracts with Settlement Class Representatives and Settlement Class Members and failed in its common-law duty to protect their personal information. *See, e.g., Abubaker*, 2021 WL 6750844, at *3.

Ascertainability: Rule 23 also contains the implied requirement that the court be able to “readily identify the class members in reference to objective criteria.” *EQT Production Co. v. Adair*, 764 F.3d 247, 358 (4th Cir. 2014). A proposed class representative “need not be able to identify every class member at the time of certification.” *Id.* “[E]xtensive and individualized fact-finding” or “mini-trials” render certification inappropriate. *Id.* (quoting *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 593 (3d Cir. 2012)). Here, Defendant identified each member of the Class and sent them notice of the Security Incident. This Settlement Class is easily ascertained.

Adequacy of Representation: “The adequacy inquiry . . . serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Amchem*, 521 U.S. at 625. Settlement Class Representatives do not have any interests antagonistic to other class members

and have retained lawyers who are abundantly qualified and experienced, satisfying the adequacy requirement. Lietz Decl, ¶¶ 3-23.

2. The Rule 23(b)(3) Requirements Are Satisfied.

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members,” and that class treatment is “superior to other available methods for fairly and efficiently adjudicating the controversy.” One part of the superiority analysis—manageability—is irrelevant for purposes of certifying a settlement class. *Transurban*, 318 F.R.D. at 569.

Predominance: Rule 23(b)(3)’s predominance requirement tests whether a proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. The predominance inquiry measures the relative weight of the common questions as against individual ones. *Amchem*, 521 U.S. at 624. “If the ‘qualitatively overarching issue’ in the litigation is common, a class may be certified notwithstanding the need to resolve individualized issues.” *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D 183, 214 (E.D. Va. 2015) (citing *Ealy v. Pinkerton Gov’t Servs.*, 514 F. App’x 299, 305 (4th Cir. 2013)). Common liability issues often predominate where class members “all assert injury from the same action.” *Gray v. Hearst Commc’ns, Inc.*, 444 F. App’x 698, 701–02 (4th Cir. 2011); *see also Stillmock v. Weis Markets, Inc.*, 385 F. App’x 267, 273 (4th Cir. 2010) (finding common issues predominated where class members were exposed to “the identical risk of identity theft in the identical manner by the repeated identical conduct of the same defendant.”).

Here, as in other data breach cases, common questions predominate because all claims arise out of a common course of alleged conduct by Bayer Heritage. *See, e.g., Abubaker*, 2021 WL 6750844, at *3; *Equifax*, 2020 WL 256132, at *13; *Anthem*, 327 F.R.D. at 311-16. The focus on a

defendant's security measures in a data breach class action "is the precise type of predominant question that makes class-wide adjudication worthwhile." *Anthem*, 327 F.R.D. at 312.

Superiority: "[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy . . ." 7A Charles Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1779 (3d ed. 2005). Litigating the same claims of 61,000 persons through individual litigation would obviously be inefficient. The superiority requirement thus is satisfied. *See Equifax*, 2020 WL 256132, at *14; *Anthem*, 327 F.R.D. at 315-16.

D. The Court Should Approve the Notice Plan, Notices, and Claim Form, and Appoint the Settlement Administration.

To satisfy the requirements of both Rule 23 and due process, Rule 23(c)(2)(B) provides that, "[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Rule 23(e)(1) similarly requires that notice be reasonably disseminated to those who would be bound by the court's judgment. Fed. R. Civ. P. 23(e)(1). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Plaintiffs request that the Court appoint ADMIN as the Settlement Administrator and approve the Notice Plan. The Notice Plan is uncomplicated. Bayer Heritage will generate and provide to ADMIN a Class List within 14 days of the preliminary approval order directing class notice. S.A. Settlement Timeline. Using the information in that list, ADMIN will provide individual direct notice by mailed postcard or email. Plaintiffs and Proposed Class Counsel

anticipate that such notice will reach a minimum of approximately 90% of Settlement Class Members, easily meeting the requirements of Rule 23 and due process. *See, e.g.*, Federal Judicial Center, “Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide” (2010) (recognizing the effectiveness of notice that reaches between 70 and 95 percent of the class). When implemented, the Notice Plan will provide the best notice practicable under the circumstances. Lietz Decl., ¶ 50.

The Court should also approve the proposed forms of notice attached to the Settlement Agreement (Exhibit 1) as Exhibits A and B (“Notices”), which satisfy all of the criteria of Rule 23. The Notices are clear, straightforward, and provide persons in the proposed Settlement Class with enough information to evaluate whether to participate in the settlement. The Notices also advise the proposed Settlement Class how to exclude themselves from the settlement, and how to object to the settlement, including the requested attorney fees and costs. Thus, the Notices satisfy the requirements of Rule 23. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 808 (1985) (explaining a settlement notice must provide settlement class members with an opportunity to present their objections to the settlement).

Finally, the Court should approve the Claim Form attached to the Settlement Agreement (Exhibit 1) as Exhibit C. The Claim Form is written in plain language and can be submitted online or printed and mailed to the Settlement Administrator.

E. The Court Should Appoint Settlement Class Counsel

When certifying a class, Rule 23 requires a court to appoint class counsel that will fairly and adequately represent the class members. Fed. R. Civ. P. 23(g)(1)(B). In making this determination, the Court considers counsel’s work in identifying or investigating potential claims; experience in handling class actions or other complex litigation and the types of claims asserted in

the case; knowledge of the applicable law; and resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i-iv).

The Court should approve proposed Class Counsel David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC and Philip J. Krzeski of Chestnut Cambronne, PA. Throughout this case, Proposed Class Counsel has demonstrated the hard work, legal scholarship, experience, and resources they bring to bear, ultimately resulting in the settlement now before the Court. The Court should thus appoint Mr. Lietz and Mr. Krzeski as Class Counsel under Rule 23(g).

F. Timeline of Settlement Events

For the Court's convenience, Plaintiffs propose the following dates and deadlines leading to a final approval hearing.

ACTION	DATE
Defendants Provide Class Member List	Within 14 days following entry of Order Granting Preliminary Approval
Notice Date	37 days following entry of Order Granting Preliminary Approval
Motion for Attorneys' Fees, Expenses, and Service Awards to the Plaintiffs	14 days prior to the Objection Deadline and Opt-Out Date
Exclusion / Opt-Out Deadline	60 days after Notice Date
Objection Deadline	60 days after Notice Date
Deadline to Submit Claims	90 days after Notice Date
Final Approval Brief and Response to Objections Due	At least 14 days prior to the Final Approval Hearing
Final Approval Hearing	(To be scheduled approximately 150 days after entry of Preliminary Approval Order)

IV. CONCLUSION

For the reasons set forth set forth above, Plaintiffs request the Court enter the order proposed by the Parties granting preliminary approval, directing the Settlement Class be notified of the proposed settlement in the manner set forth in the Notice Plan, and scheduling a Final Approval Hearing.

Dated: January 8, 2025

Respectfully submitted,

/s/ Ryan McCune Donovan _____
Ryan McCune Donovan (WVSB #11660)
HISSAM FORMAN DONOVAN
RITCHIE PLLC
P.O. Box 3983
Charleston, WV 25339
(681) 265-3802
(304) 982-8056
zritchie@hfdrlaw.com

David K. Lietz (pro hac vice)
MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, LLC
5335 Wisconsin Avenue NW
Washington, D.C. 20015-2052
Telephone: (866) 252-0878
Facsimile: (202) 686-2877
dlietz@milberg.com

Philip J. Krzeski
CHESTNUT CAMBRONNE PA
100 Washington Ave., Ste. 1700
Minneapolis, MN 55401-2138
Pkrzeski@chestnutcambronne.com

Counsel for the Plaintiffs and the Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 8, 2025, the foregoing was filed electronically with the Clerk of the Court using the CM/ECF System and was thereby served on all counsel of record.

/s/ Ryan McCune Donovan _____
Ryan McCune Donovan (WVSB #11660)

Exhibit 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between (i) Bayer Heritage Federal Credit Union (“Bayer”) and (ii) Charles Milliken Jr., and Mary Kay Milliken, individually and on behalf of all others similarly situated (“Plaintiffs”) both individually and on behalf of the Settlement Class, in the case of *Milliken, et al., v. Bayer Heritage Federal Credit Union*; Case No. 5:24-cv-00057; United States District Court, Northern District of West Virginia, Wheeling Division. Bayer and Plaintiffs are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

I. FACTUAL BACKGROUND AND RECITALS

1. On March 08, 2024, Plaintiffs filed a class action lawsuit against Bayer premised on a third-party cyberattack perpetrated against Bayer’s network in October 2023 (the “Incident” or “Security Incident”), alleging claims of negligence, breach of implied contract, and unjust enrichment (the “Litigation”). The Parties agreed to stay the case to allow the Parties to mediate.

2. Following arms-length negotiations over the course of several weeks, the Parties negotiated a settlement by which the Parties agree and hereby wish to resolve all matters pertaining to, arising from, or associated with the Litigation, including all claims Plaintiffs and Settlement Class Members have or may have had against Bayer and its related persons and entities, as set forth herein.

3. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through the Litigation would require substantial additional risk, uncertainty, discovery, time, and expense for both of the Parties.

4. Bayer has denied and continues to deny(a) all allegations and claims of wrongdoing or liability that Plaintiffs, Settlement Class Members, or anyone else of any kind whatsoever that have or could have been asserted in this Litigation or may be asserted in the future concerning the Incident; (b) that the Representative Plaintiffs in the Litigation and the class they purport to represent have suffered any damage, and (c) that the Litigation satisfies the requirements to be tried as a class action. Despite Bayer’s position that it is not liable for, and has good defenses to, the claims alleged in the Litigation, Bayer desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation of any action relating to the matters being fully settled and finally resolved and released in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed or document created in relation to the Settlement Agreement or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability by Bayer and any related persons or entities, nor shall it constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs in this action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Bayer or admission by any of the parties of the validity or lack thereof of any claim, allegation, or defense asserted in this Litigation or in any other action.

5. The Parties now enter into this Settlement Agreement. Plaintiffs and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class, recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Plaintiffs' determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

6. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

7. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasers release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiffs, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

8. “**Administrative Expenses**” shall mean expenses associated with the Settlement Administrator, including but not limited to actual costs in providing notice, communicating with Settlement Class Members, and disbursing payments to the proposed Settlement Class Members.

9. “**Approved Claims**” shall mean complete and timely Claim Forms submitted by Settlement Class Members that have been approved by the Settlement Administrator.

10. “**Claim Form**” shall mean the form that Settlement Class Members may submit to obtain compensation under this Settlement Agreement, which is attached as **Exhibit C**.

11. “**Claims Deadline**” shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set as a date ninety days after the Notice Date is entered. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

12. “**Class**,” “**Settlement Class**,” “**Class Member**,” or “**Settlement Class Member**” shall mean each member of the Settlement Class, as defined in Section III of this Settlement Agreement, who does not timely elect to be excluded from the Settlement Class or Settlement Subclass.

13. “**Class Counsel**” shall mean David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC and Philip J. Krzeski of Chestnut Cambronne, PA.

14. “**Counsel**” or “**Counsel for the Parties**” means both Class Counsel and Defendant’s Counsel, collectively.

15. “**Court**” shall mean Judge John Preston Bailey of the United States District Court for the Northern District of West Virginia, or any other judge who shall have jurisdiction over the pending Litigation.

16. “**Defendant**” or “**Bayer**” shall mean Bayer Heritage Federal Credit Union.

17. “**Defendant’s Counsel**” shall mean Daniel Rohner of Shook, Hardy & Bacon.

18. “**Effective Date**” shall mean the date when the Settlement Agreement becomes Final, which is 30 days after the Court’s grant of the Final Approval Order assuming no appeals have been filed. If an appeal is filed, the Effective Date will become 30 days from when the appeal is finalized and a final judgment is entered in this case.

19. “**Fee and Expense Application**” shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys’ fees, as well as a Service Award for the Class Representatives.

20. “**Fee Award**” means the amount of attorneys’ fees awarded by the Court to Class Counsel that along with Class Counsel’s expenses shall not exceed \$175,000.

21. “**Final**” means the Final Approval Order has been entered on the docket, and (1) the time to appeal from such order has expired and no appeal has been timely filed; (2) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (3) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

22. “**Final Approval Hearing**” means the hearing before the Court where the Plaintiffs will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving a Service Award to the Class Representatives.

23. “**Final Approval Order**” shall mean an order entered by the Court that:

- i. Certifies the Settlement Class pursuant to the Federal Rules of Civil Procedure;
- ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;

- iii. Dismisses Plaintiffs' claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
- iv. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties;
- v. Reserves jurisdiction over the Settlement and this Settlement Agreement; and
- vi. Finds that there is no just reason for delay of entry of final judgment with respect to the foregoing.

A draft of the Final Approval Order is attached as **Exhibit E**.

24. "**Frequently Asked Questions**" or "**FAQs**" are questions and answers to those questions that are frequently posed by Class Members about class action settlements and specifically about this Settlement.

25. "**Litigation**" shall mean the action captioned of *Milliken, et al., v. Bayer Heritage Federal Credit Union*; Case No. 5:24-cv-00057; United States District Court, Northern District of West Virginia.

26. "**Long Form Notice**" is the content of the notice substantially in the form as **Exhibit A** is the detailed, long form notice that will be posted on the Settlement Website that will include robust details about the Settlement.

27. "**Notice**" means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement and **Exhibits A and B**, and is consistent with the requirements of Due Process. The Notice Date in this case will be 37 days after the Court enters the Preliminary Approval Order.

28. "**Objection/Exclusion Deadline**" means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as a date approximately 60 days after Notice Date, or such other date as ordered by the Court. This Deadline will also be known as the Objection Date and/or Exclusion Date.

29. "**Parties**" shall mean Plaintiffs and Bayer, collectively.

30. "**Plaintiffs**" or "**Class Representatives**" shall mean the named class representatives, Charles Milliken Jr., and Mary Kay Milliken.

31. "**Preliminary Approval Order**" shall mean the Court's Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and

directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Settlement Agreement. Attached as **Exhibit D**.

32. “**PII**” means names, Social Security numbers, driver’s license numbers, financial information, and any other personally identifiable information that Defendant may have collected and maintained, as those terms are defined by applicable data breach notification laws.

33. “**Reminder Notice**” means the reminder notice that the Settlement Administrator will send to Class Members for whom there is a valid email address with 30 days before the Claims Deadline. The Reminder Notice shall be issued only in the event that the claims rate is less than 2% as of thirty (30) days after Notice has been issued to the Settlement Class.

34. “**Released Claims**” shall have the meaning ascribed to it as set forth in Section VII of this Settlement Agreement.

35. “**Released Parties**” shall have the meaning ascribed to it as set forth in Section VII of this Settlement Agreement.

36. “**Releasors**” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

37. “**Service Award**” shall have the meaning ascribed to it as set forth in Section XV of this Settlement Agreement. The Service Award requested in this matter will be \$2,500.00, subject to court approval.

38. “**Settlement Administrator**” means, subject to Court approval, Verita Global, LLC, an entity jointly selected and supervised by Class Counsel and Bayer to administer the settlement.

39. “**Settlement Payment**” means an amount up to a maximum of Five Thousand Dollars per person (\$5,000.00). In no event shall Bayer be required to pay more than this amount for claims made under the terms of this Settlement Agreement. The actual amount of the Settlement Payment paid for Approved Claims will be determined on a “claims made” basis such that only those individual Approved Claims will be funded up to the maximum amount. The Service Award to Plaintiffs is in addition to any Settlement Payment he may receive.

40. “**Settlement Website**” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of **Exhibits A, C, D, and E** (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. The Settlement Website, www.BayerHeritageDataSettlement.com, will be publicly viewable and contain broad information about the Settlement, including but not limited to, copies of the Complaint filed in this matter, a copy of the Long Form Notice, Short Form Notice, FAQs, Claim Form that may be submitted online through the Settlement Website or mailed to the Settlement Administrator, and the deadlines for filing a Claim, Objection, Exclusion requests, and the date of the Fairness

Hearing. The Settlement Website is viewed as an important piece of the notice plan to Class Members. The Settlement Website will remain active until 90 days after the Effective Date.

41. “**Short Form Notice**” is the postcard notice that will be mailed to each available Settlement Class Member and/or emailed to the Settlement Class Members. Short Form Notice will include a copy of the Claim Form, in the same or substantially similar form as **Exhibit B** hereto.

III. SETTLEMENT CLASS CERTIFICATION

42. For the purposes of the Settlement only, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained in Paragraph 45; (2) Plaintiffs shall represent the Class for settlement purposes and shall be the Class Representatives; and (3) Plaintiffs’ Counsel shall be appointed as Class Counsel.

43. Bayer does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Settlement Agreement had not been entered into. In the event that Final Approval of the Settlement is not achieved: (1) any Court orders preliminarily or finally approving the certification of any class contemplated by this Settlement Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (2) the fact of the settlement reflected in this Settlement Agreement, that Bayer did not oppose the certification of a Class under this Settlement Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

44. The settlement shall be administered on a wholly claims-made basis. To receive any relief, Settlement Class Members, as defined below, must submit a valid and timely claim to the Claims Administrator.

45. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes:

All persons residing in the United States whose PII was compromised in the October 2023 Security Incident announced by Bayer Heritage Federal Credit Union Property Management in 2024.

46. Excluded from the Class are: (1) any entity in which Bayer has a controlling interest and (2) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Bayer. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

47. It is estimated that the Class is comprised of approximately 61,000 individuals.

48. These individuals constitute the “Settlement Class” solely for purposes of certifying a settlement class in this Litigation. If for any reason the Settlement is not granted preliminary and/or final approval, Bayer’s agreement to certification of the Settlement Class shall not be used for any purpose, including in any request for class certification in the Litigation or any other proceeding.

IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST RELEASED PARTIES

49. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of the Plaintiffs and the Settlement Class, the Litigation and the Released Claims, as described in Section VII.

V. SETTLEMENT BENEFIT ALLOCATION

50. Monetary Payments

- a. **Compensation of Out-of-Pocket Expenses and Lost Time:** Bayer will agree to make available the following compensation to Settlement Class Members who submit valid and timely claim forms. Claims will be subject to review for completeness and validity by a Settlement Administrator.

Bayer will provide compensation for unreimbursed losses, up to a total of \$5,000.00 per person who is a member of the Settlement Class, upon submission of a claim and supporting documentation, such as the following losses:

- i. *Out-of-pocket expenses incurred* as a result of the Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
- ii. *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between October 31, 2023, and the date of the close of the Claims Period;
- iii. *Up to four hours of lost time*, at \$20.00/hour of time spent mitigating the effects of the Incident.¹ Class and Subclass members may submit claims for up to 4 hours of lost time by submitting an attestation that they spent the claimed time responding to issues raised by the Incident. This attestation may be completed by checking a box next to the sentence: “I swear and affirm that I spent

¹ Claims for lost time are included within the \$5,000.00 cap on out-of-pocket losses.

the amount of time noted in response to Bayer's October 2023 data security incident.”

In order to be an out-of-pocket loss for which compensation can be claimed, the following conditions must be met:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was caused by the Incident;
- iii. The loss occurred after the date of the Incident and before the Claims Deadline; and
- iv. The Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

Settlement Class Members with out-of-pocket losses set forth above must submit adequate documentation establishing the full extent of their claims. This can include receipts or other documentation as long as it is not “self-prepared” by the claimant that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation. No documentation is required to claim lost time. Claims for lost time can be combined with claims for out-of-pocket loss but are subject to the \$5,000.00 cap.

- b. **Credit Monitoring**: Bayer will pay for additional credit monitoring services as follows:
 - i. All Settlement Class Members shall be offered a two-year membership of three-bureau (“3B”) credit monitoring with at least \$1,000,000.00 in identity theft/fraud insurance.
 - ii. The additional credit monitoring services noted in (i) are in addition to any credit monitoring services Bayer initially offered related to the October 2023 Incident.
- c. **Release**: The relief stated above will be provided to Settlement Class Members as consideration for a general release of Bayer and Released Parties set forth in Section VII below.
- d. **Settlement Administration Fees**: Bayer will pay the entirety of the settlement administration fees, including without limitation the actual cost of notice to the class and claims administration.

- e. **Settlement Administration Process:** Once a Settlement Administrator is reasonably agreed to by the Parties and after the settlement is preliminarily approved by the Court, the Settlement Administrator will provide notice in a manner reasonably agreed upon by the Parties.

After the Court enters an order approving the final Settlement Agreement, the Settlement Administrator shall provide the requested relief to all Settlement Class Members that made a valid and timely claim, subject to the individual caps on settlement class payout set forth in Paragraph 50 above.

- f. **Settlement Payments:** Within thirty days from when the appeals deadline has run or, if there are appeals, thirty days from whenever there is a final, non-appealable order and receipt of payee instructions and a Form W-9 for the payee, Bayer or its insurer shall pay to the Settlement Administrator the Settlement Payment to satisfy the payments in Section 50(a) and 50(b). Provided that Final Approval of this Settlement Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Payment will be used to satisfy Approved Claims for Settlement Class Members in exchange for a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Litigation with prejudice.
- g. **Escrow Agent:** The funds provided by Bayer to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Payment pursuant to Section 1.468B-1, et seq., of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.
- h. **Total Extent of Obligations:** The Settlement Payment represents the total extent of Bayer's monetary obligations under the Settlement Agreement, plus any outstanding Court costs that exist after the entry of the Final Approval Order is filed with the Northern District of West Virginia Wheeling Division Clerk of Court. Bayer's contribution to the Settlement Payment shall be fixed under this Section and shall be final. Bayer shall have no obligation to make further payments into the Settlement Payment and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Payment, except insofar as such obligations are explicitly provided for in this Settlement Agreement.

51. **Procedure for Approving Settlement**

- a. **Unopposed Motion for Preliminary Approval of the Settlement by the Court.** Plaintiffs will file an unopposed motion for an order conditionally certifying the Settlement Class, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Claim Form (the "Unopposed Motion for Preliminary Approval").

- i. At any hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing the Class Representatives and Class Counsel; approving the Claim Form and the forms of notice to the Settlement Class; and setting the Final Approval Hearing.
- ii. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition contained above, that Plaintiffs shall be conditionally appointed class representatives for the Class, and that Class Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any material aspect of the Settlement, the Settlement will be null and void, the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

52. **Submission and Evaluation of Claims**

- a. **Claims Period**: The Parties agree that the period for filing claims shall be set at a date certain at no more than 90 days from the date that notice is mailed to the Settlement Class.
- b. **Claim Form**: All claims must be submitted on a Claim Form. The Claim Form will require the Settlement Class Member to provide his or her full name, home mailing address, and telephone number; an affirmation that he/she has received services from Bayer; and a signature affirming the accuracy of the included information.
- c. The Claim Form shall provide Settlement Class Members with the ability to receive up to \$5,000.00 in value and shall state that this value is comprised of a triple-bureau credit-monitoring, and the ability to claim up to \$5,000.00 for reimbursement of out-of-pocket expenses or time expended mitigating the effects of the Incident, upon provision of appropriate documentation, as discussed below.
- d. The Claim Form must be submitted (either electronically submitted or postmarked) on or before the Claims Deadline. The Claim Form shall be substantially in the form attached hereto as **Exhibit C**.
- e. Completed Claim Forms shall be submitted directly to the Settlement Administrator either electronically via the Settlement Website, via electronic mail, or via U.S. Mail for processing, assessment, and payment (when properly submitted).

- f. Any Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment.
- g. A Settlement Class Member is not entitled to any compensation or to enrollment in the credit-monitoring services if he or she submits a Claim Form after the Claims Deadline, and/or if the Claim Form is incomplete after an opportunity to cure any error(s) and/or omission(s) or contains false information.
- h. Within twenty-one days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which claims are valid and initially approved and which claims are initially rejected. The Settlement Administrator may accept or reject any Claim Form submitted upon its sole discretion, and may request additional information prior to initially accepting or rejecting any Claim Form submitted. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse and/or fraud and shall deny Claim Forms which are materially incomplete, where there is evidence of abuse and/or fraud, or where the Claim Form does not meet the requirements set forth in this Agreement, including paragraph 50.
- i. Within thirty-five days of the Claims Deadline, the Settlement Administrator will submit to Counsel for the Parties a report listing all initially approved Claims (“Initially Approved Claims List”), and shall include an electronic PDF copy of all such initially approved Claim Forms. Within forty-five days after the Claims Deadline, the Settlement Administrator will also submit to the Parties a report listing all initially rejected Claims (“Initially Rejected Claims List”), and shall include an electronic PDF copy of all such initially rejected Claim Forms.
- j. Counsel for the Parties shall have thirty days after the date they receive the Initially Approved Claims List and related Claim Forms to audit and challenge any initially approved claims. Within thirty days after Counsel for the Parties receive the Initially Approved Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially approved claim they wish to challenge and the reasons for the challenge.
- k. Similarly, Counsel for the Parties may challenge any claim initially rejected by the Settlement Administrator. Counsel for the Parties shall have thirty days after the date they receive the Initially Rejected Claims List and related Claim Forms to audit and challenge any initially rejected claims. Within thirty days after Counsel for the Parties receive the Initially Rejected Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially rejected claim they wish to challenge and the reasons for the challenge.

- l. Counsel for the Parties shall meet and confer in an effort to resolve any disputes over any challenged claims. If the challenges are not withdrawn or resolved, the decision of the Settlement Administrator will be upheld. The date all claims are finalized without any further dispute shall be referred to as the “**Claims Finalization Date**.” If neither Class Counsel nor Bayer’s Counsel have any challenges to the initial claims determination reached by the Settlement Administrator, then the Claims Finalization Date shall be the date both Class Counsel and Bayer’s Counsel inform each other by email that the Parties do not have any objection to the claims determination made by the Settlement Administrator or the time for informing each other of such challenges has lapsed.
- m. So long as the Final Approval Order has been entered, within twenty-one days of the Claims Finalization Date, the Settlement Administrator shall provide Counsel for the Parties a spreadsheet setting forth the claim number, claimant name, and claimant address, and totaling the amount to be paid for each claimant under ¶ 51(a) and (b) above (the “Final Claims List”). Within thirty days of the Claims Finalization Date, the Settlement Administrator shall send a check by First Class U.S. Mail to each Settlement Class Member on the Final Claims List.
- n. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within five business days of the last such payment.
- o. In the event that checks sent to Settlement Class Members are not cashed within ninety days after their date of issuance, those checks will become null and void, and will revert to Bayer or its insurer.
- p. The ability to enroll in the credit-monitoring product will be delivered to each claimant after the claimant’s claim has been approved. Within ten days of the Claims Finalization Date, the settlement administrator will send to each claimant who has filed an approved claim an email or direct mail, which will provide an activation code and instructions on how to enroll in and use the product. The activation code will be active for 90 days and once enrolled in the credit-monitoring, claimants are entitled to remain enrolled for the applicable term at no cost to them.

VI. PROSPECTIVE RELIEF

53. Bayer agrees to implement and/or to keep in place the following (or better) security-related measures through December 31, 2026:

- a. Expand the use of multi-factor authentication;;
- b. Force a global password reset;;

- c. Implement network-monitoring tools;
- d. Implement additional security to all administrator accounts for accessing any server; and
- e. Ongoing security awareness training for its employees, which will include awareness training specifically regarding phishing attacks.

54. Costs associated with these business practice commitments will be Bayer's responsibility separate and apart from other Settlement benefits.

VII. RELEASE

55. Upon Final Approval of this Settlement Agreement, Settlement Class members release, acquit, and forever discharge Bayer and all of its agents, predecessors, successors, parents, subsidiaries, and related or affiliated entities; and its and their respective assigns, representatives, directors, officers, employees, shareholders, members, partners, principals, attorneys, insurers and reinsurers ("**Released Parties**") from any and all past, present and future claims, demands, actions, causes of action, costs, expenses, attorneys' fees, losses, rights, demands, charges, complaints, suits, petitions, obligations, debts, penalties, damages, or liabilities of any nature whatsoever, known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, matured or unmatured, in law or equity, and any other form of legal or equitable relief that has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Parties reasonably related to the operative facts alleged in or otherwise described by the Litigation or arising out of or in any way related to the Incident and/or Released Parties' recordkeeping or data security policies and practices, whether or not pleaded or otherwise asserted in the Litigation, including any and all damages, losses, or consequences thereof ("**Released Claims**").

56. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement.

VIII. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

57. This Settlement Agreement shall be subject to approval of the Court. As set forth in Section V, Bayer shall have the right to withdraw from the Settlement Agreement if the Court does not approve any material aspect of the Settlement Agreement.

58. Plaintiffs, through Class Counsel, shall submit this Settlement Agreement, together with its exhibits, to the Court and shall move the Court for Preliminary Approval of the Settlement set forth in this Settlement Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representatives, and entry of the Preliminary Approval Order, substantially in the form of **Exhibit D**, which order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the Notice Plan.

59. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final

Approval Hearing at least 120 days after entry of the Preliminary Approval Order and approve the settlement of the Litigation as set forth herein.

60. At least fourteen days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiffs will move for (1) final approval of the Settlement; (2) final appointment of the Class Representatives and Class Counsel; and (3) final certification of the Settlement Class, including for the entry of a Final Approval Order identical in all material respects to the proposed Final Approval Order, and file a memorandum in support of the motion for final approval.

IX. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS

61. Settlement Administrator

- a. The Parties have jointly selected the Settlement Administrator, who shall be jointly supervised by Class Counsel and Bayer to administer the settlement.
- b. Costs of Settlement Administration shall be borne by Bayer, outside of and separate from the Settlement Payment.

62. Class List

- a. Bayer, with the assistance of the Settlement Administrator as appropriate, shall create a "Class List," based on information already within its possession.
- b. The Class List shall include the names and last known mailing addresses of potential Settlement Class Members that Bayer used to notify Settlement Class Members of the Incident, to the extent such information is readily available.
- c. Bayer shall provide the Class List to the Settlement Administrator and Class Counsel within fourteen (14) days after entry of the Preliminary Approval Order.

63. Type of Notice Required

- a. The Notice, which shall be substantially in the form of **Exhibits A and B** attached hereto, shall be used to inform proposed Settlement Class Members, prior to the Final Approval Hearing, that there is a pending settlement and to further inform Settlement Class Members how they may: (1) obtain a copy of the Claim Form; (2) protect their rights regarding the settlement; (3) request exclusion from the Settlement Class and the proposed settlement, if desired; (4) object to any aspect of the proposed settlement, if desired; and (5) participate in the Final Approval Hearing, if desired. The Notice shall provide that Settlement Class Members may submit Claims Forms and be eligible for (1) two-year membership of triple-bureau ("3B") credit monitoring with at least \$1,000,000.00 in identity theft/fraud insurance, and (2) the ability to claim up to \$5,000.00 for reimbursement of out-of-pocket expenses or lost time mitigating the effects of the Incident, upon provision of appropriate documentation.

Additionally, the Notice shall make clear the binding effect of the Settlement on all persons who do not timely request exclusion from the Settlement Class.

- b. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the forms attached as **Exhibits A and B** hereto.
- c. Notice of the settlement (substantially in the form of **Exhibit A**) shall be posted on the Settlement Website within thirty (30) days of the entry of the Preliminary Approval Order.

64. Notice Deadline

- a. Within thirty days of entry of the Preliminary Approval Order, the Settlement Administrator shall:
 - disseminate by U.S. Mail the Short Form Notice in the form of **Exhibit B** to Settlement Class Members identified on the Class List; and,
 - post the Long Form Notice on the Settlement Website.

X. EXCLUSIONS

65. Exclusion Period

- a. Settlement Class Members will have up to and including sixty days following Notice Deadline to exclude themselves from the Settlement in accordance with this Section.
- b. If the Settlement is finally approved by the Court, all Settlement Class Members who have not excluded themselves by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

66. Exclusion Process

- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline.
- b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall

be bound as Settlement Class Members by the Settlement Agreement, if approved.

- c. Any member of the Settlement Class who elects to be excluded shall not: (1) be bound by any order or judgment; (2) be entitled to relief under this Settlement Agreement; (3) gain any rights by virtue of this Settlement Agreement; or (4) be entitled to object to any aspect of this Settlement Agreement.
- d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.
- e. Within ten days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel a written list reflecting all timely and valid exclusions from the Settlement Class. If the number of persons making a timely and valid exclusion from the Settlement Class exceeds 30, Defendant may elect to terminate this Agreement on the ground that exclusion at that level threatens to frustrate the essential purpose of this Agreement. Defendant may exercise its right to terminate this Agreement under this subsection by notifying Class Counsel by email of its election within seven (7) days of receiving the list of persons making a timely and valid exclusion from the Settlement Class.
- f. A list reflecting all individuals who timely and validly excluded themselves from the Settlement shall also be filed with the Court at the time of the motion for final approval of the Settlement.
- g. In the event that within ten (10) days after the Objection/Exclusion Deadline, as approved by the Court, more than 2% of the Class List submit timely and valid notices of exclusion, Defendant may, by notifying Settlement Class Counsel and the Court in writing, within five (5) business days from the date the Claims Administrator provides written notice to Defendant of the number of opt-outs, void this Settlement Agreement. If Defendant voids the Settlement Agreement, Defendant shall be obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs, and expenses of Class Counsel and Plaintiffs’ Counsel and service awards and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

XI. OBJECTIONS

67. Objection Period

- a. Settlement Class Members will have up to and including sixty days following the Notice Deadline to object to the Settlement in accordance with this Section. If the Settlement is finally approved by the Court, all Settlement Class Members who have not excluded themselves by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be

deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

68. Objection Process

- a. The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of his/her intention to do so and at the same time: (1) file copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (2) send copies of such papers to the Settlement Administrator. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.
- b. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (1) his/her full name, address, and current telephone number; (2) the name and number of this case; (3) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (4) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; (5) whether the objector intends to appear at the Final Approval Hearing; and (6) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.
- c. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

XII. FINAL APPROVAL HEARING

69. The Parties will jointly request that the Court hold a Final Approval Hearing no earlier than one hundred twenty days after entry of the Preliminary Approval Order. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to the Federal Rules of Civil Procedure for settlement and, if so, (1) consider any properly filed objections; (2) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith; and (3) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

XIII. FINAL APPROVAL ORDER

70. The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waive any rights of appeal.

71. The Parties shall jointly submit to the Court a proposed Final Approval Order, that, without limitation:

- a. Approves finally this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members and directing its consummation according to its terms;
- b. Dismisses with prejudice all claims of the Settlement Class against Bayer in the Litigation, without costs and fees except as explicitly provided for in this Settlement Agreement; and
- c. Reserves continuing and exclusive jurisdiction over the Settlement and this Settlement Agreement, including but not limited to the Litigation, the Settlement Class, the Settlement Class Members, Bayer, and the Settlement for the purposes of administering, consummating, supervising, construing, and enforcing the Settlement Agreement and the Settlement Payment.

72. Class Counsel shall use their best efforts to assist Bayer in obtaining dismissal with prejudice of the Litigation and take all steps necessary and appropriate to otherwise effectuate all aspects of this Settlement Agreement.

XIV. TERMINATION OF THE SETTLEMENT

73. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement.

74. Either Party may elect to terminate and cancel this Settlement Agreement within ten days of any of the following events:

- a. The Court refuses to grant preliminary approval of this Settlement Agreement;
- b. The Court refuses to grant final approval of this Settlement Agreement in any material respect; or
- c. The Court refuses to enter a final judgment in this Litigation in any material respect.

75. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Litigation.

XV. ATTORNEYS' FEES, COSTS AND EXPENSES, AND SERVICE AWARD

76. **Attorneys' Fees:** At least fourteen days before the Objection/Exclusion Deadline, Class Counsel will move the Court for an award of attorneys' fees and costs in an amount not to exceed \$175,000 (One Hundred Seventy-Five Thousand Dollars). Attorneys' fees and expenses awarded by the Court shall be provided outside of and separate from the Settlement Payment. This amount was negotiated after the primary terms of the settlement were negotiated.

77. Notwithstanding any contrary provision of this Settlement Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Settlement Agreement or be deemed material thereto.

78. **Service Award to Plaintiffs:** Before or at the same time as Plaintiffs seek final approval of the Settlement Agreement, Class Counsel shall move the Court for a Service Award for Plaintiffs in an amount not to exceed \$2,500.00. Service Awards approved by the Court will be provided outside of and separate from the Settlement Payment. This amount was negotiated after the primary terms of the settlement were negotiated.

79. The Service Award and Fee Award shall be paid by wire transfer written by Defendant or its insurer no later than fourteen (14) days after the later of (1) the Effective Date or (2) the date Class Counsel provides and independently confirms payee account information and a Form W-9.

80. In no event will Bayer's liability hereunder for the Fee Award, Administration Expenses, and/or a Service Award or any other fees, costs or expenses exceed its funding obligations set out in this Settlement Agreement. Bayer shall have no financial responsibility for this Settlement Agreement except as explicitly set out in this Settlement Agreement. Bayer shall have no further obligation for attorneys' fees or expenses to any counsel representing or working

on behalf of either one or more individual Settlement Class Members, the Settlement Class, and/or the Settlement Subclass. Bayer will have no responsibility, obligation, or liability for allocation of fees and expenses among Class Counsel.

XVI. MISCELLANEOUS REPRESENTATIONS

81. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

82. The Parties (1) acknowledge that it is their intent to consummate this Settlement Agreement, and (2) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Bayer's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

83. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs, the Settlement Class, the Settlement Subclass, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Litigation was brought by Plaintiffs or defended by Bayer in bad faith or without a reasonable basis.

84. The Parties agree not to identify, describe, disclose, testify, convey, or discuss with any individual, person, organization, corporation, or other entity the subject matter, amount, facts, terms, and conditions of this Settlement Agreement, including but not limited to any negotiations leading up to the actual resolution of this matter except where disclosure is compelled by law. In such case reasonable notice will be provided to the other Party before disclosure is made. The Parties further agree that they will not issue, nor cause to be issued, any statements to the public or media regarding the claims and allegations leading up to this Settlement Agreement or regarding the Settlement Agreement or any of its terms, including statement on any website or via social media, unless prior written consent of the other Party is given.

85. Nothing express or implied in this Settlement Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Released Parties, and Settlement Class Members any right or remedy under or by reason of this Settlement Agreement. Each of the Released Parties is an intended third-party beneficiary of this Settlement Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her, or its favor against all Releasors.

86. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its Exhibits, and have been fully

advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

87. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

88. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Settlement Agreement.

89. This Settlement Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

90. This Settlement Agreement may not be amended, modified, altered, or otherwise changed in any manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

91. The Parties agree that **Exhibits A through E** to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

92. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Settlement Agreement.

93. Except as otherwise provided herein, each Party shall bear its own costs.

94. Plaintiffs represent and warrant that Plaintiffs have not assigned any claim or right or interest therein as against the Released Parties to any other person or party.

95. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.

96. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents shall not (1) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

97. The Parties also agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement, are not intended to establish grounds for certification of any class

involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.

98. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto, shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed, offered, or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Approval Order.

99. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (1) to enforce the terms and provisions hereof or thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay, or dismiss any other action, and/or (5) to obtain Court approval of the Settlement Agreement.

100. Upon the Effective Date, Defendant and its representatives, officers, agents, directors, principals, affiliates, insurers, and attorneys shall be deemed to have released, acquitted, and forever discharged Plaintiffs and Class Counsel from any and all claims, whether known or unknown, that arise out of, are based upon, or relate to the Prosecution of the Action, Litigation, Settlement Agreement, or Settlement Claims Process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of the Settlement Agreement.)

101. This Settlement Agreement may be executed in one or more counterparts exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment. 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 Settlement Agreement all exchange signed counterparts.

102. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

103. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Parties hereby submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

104. This Settlement Agreement is deemed to have been prepared by counsel for all Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement and its Exhibits, it shall not be construed more strictly against one Party than another.

105. Unless otherwise stated herein, any notice required or provided for under this Settlement Agreement shall be in writing and shall be sent by electronic mail or hand delivery, as follows:

If to Class Counsel:

Phillip J. Krzeski
CHESTNUT CAMBRONNE, PA
100 Washington Ave. S. Suite 1700
Minneapolis, MN 55401
Telephone: (612) 339-7300
pkrzeski@chestnutcambronne.com

David K. Lietz
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN**
5335 Wisconsin Ave. NW
Suite 440
866-252-0878
Dlietz@milberg.com

If to Bayer Heritage's Counsel:

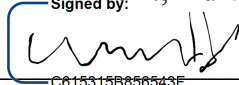
Daniel Rohner
Lindsey Knapton
SHOOK, HARDY & BACON LLP
1660 17th Street, Suite 450
Denver, CO 80202
Tele: 303-285-5302
drohner@shb.com
lknapton@shb.com

106. This Settlement Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

CHARLES MILLIKEN JR., individually and as a Class Representative

Signed by: 
Signature: _____
C615315B886643F...

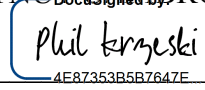
Date: _____
1/7/2025 | 9:54 AM PST

MARY KAY MILLIKEN, individually and as a Class Representative

Signature: _____

Date: _____

CHESTNUT CAMBRONNE PA, as Class Counsel

DocuSigned by: 
By: _____
4E87353B5B7647E

Print Name: _____
Phil Krzeski

Date: _____
1/7/2025 | 5:35 PM PST

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC, as Class Counsel

By: _____

Print Name: _____

Date: _____

BAYER HERITAGE FEDERAL CREDIT UNION

By: _____

Print Name: _____

Title: _____

Date: _____

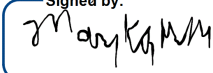
IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

CHARLES MILLIKEN JR., individually and as a Class Representative

Signature: _____

Date: _____

MARY KAY MILLIKEN, individually and as a Class Representative

Signature:  _____
Signed by: C615315B856543F...

Date: 1/7/2025 | 9:55 AM PST

CHESTNUT CAMBRONNE PA, as Class Counsel

By: _____

Print Name: _____

Date: _____

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC, as Class Counsel

By: _____

Print Name: _____

Date: _____

BAYER HERITAGE FEDERAL CREDIT UNION

By: _____

Print Name: _____

Title: _____

Date: _____

SHOOK, HARDY & BACON, LLP, as Bayer’s Counsel

By: _____

Print Name: _____

Date: _____

SETTLEMENT TIMELINE

<u>Grant of Preliminary Approval</u>	
Bayer provides list of Settlement Class Members to the Settlement Administrator	+7 days after Preliminary Approval
Long Form Notice Posted on the Settlement Website	+14 days after Preliminary Approval
Notice Deadline	+37 days after Preliminary Approval
Reminder Notice	+60 days after Notice Date
Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representatives’ Service Award	+46 days after Notice Date
Objection Deadline	+60 days after Notice Date
Exclusion Deadline	+60 days after Notice Date
Claims Deadline	+90 days after Notice Date
Settlement Administrator Provide List of Objections/Exclusions to the Court and Settlement Administrator	+70 days after Notice Date
Initially Approved Claims List	+35 days after Claims Deadline
Initially Rejected Claims List	+35 days after Claims Deadline
Parties’ Challenge to Any Claims	+ 35 days from Initially Approved Claims List
<u>Final Approval Hearing</u>	
	+120 days after Preliminary Approval Order (at minimum)
Motion for Final Approval	-14 days before Final Approval Hearing Date
Settlement Administrator Provide Notice of Opt-Outs and/or Objections	-14 days before Final Approval Hearing Date
<u>Final Approval</u>	
Settlement Administrator provides W-9 to Bayer	+15 days after Final Approval Order
Effective Date	+30 days after Final Approval Order

Payment of Attorneys' Fees and Expenses Class Representatives' Service Award	+14 days after Effective Date or upon receipt of a W-9 and payee instructions from Class Counsel, whichever is later
Settlement Website Deactivation	+180 days after Effective Date

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

**CHARLES MILLIKEN JR. and MARY
KAY MILLIKEN**, as individuals and on behalf
of all others similarly situated,

Plaintiffs,

vs.

**BAYER HERITAGE FEDERAL CREDIT
UNION,**

Defendant.

CASE NO.: 5:24-cv-00057

JUDGE JOHN P. BAILEY

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
FOR PERSONS WHOSE INFORMATION WAS POTENTIALLY
ACCESSED IN A SECURITY INCIDENT AFFECTING
BAYER HERITAGE FEDERAL CREDIT UNION IN OCTOBER 2023**

**All persons whose Private Information was compromised as a result of the Cyber-Attack
that Bayer Heritage Federal Credit Union experienced in October 2023
may benefit from this class action settlement.**

A federal court authorized this notice. This is not a solicitation from a lawyer.

**THIS IS A NOTICE OF A SETTLEMENT OF A CLASS ACTION LAWSUIT.
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.**

YOUR LEGAL RIGHTS ARE AFFECTED EVEN IF YOU DO NOTHING.

PLEASE READ THIS NOTICE CAREFULLY.

**YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT
IF YOU RECEIVED NOTICE OF THE SECURITY INCIDENT
TARGETING BAYER HERITAGE FEDERAL CREDIT UNION IN OCTOBER 2023.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

SUBMIT A CLAIM BY [REDACTED], 2025	If you submit a Claim Form, <u>included along with this Notice</u> , by [REDACTED], 2025, your Claim Form will be considered for the Settlement Benefits claimed therein and described below.
EXCLUDE YOURSELF FROM THE SETTLEMENT BY [REDACTED], 2025	You will receive no benefits, but you will retain your legal claims against the Defendant.
OBJECT BY [REDACTED], 2025	Write to the Class Counsel and/or the Court about why you do, or do not, like the settlement. You must remain in the Settlement Class to object to the Settlement.
GO TO A HEARING ON [REDACTED], 2025	Ask to speak in Court about the fairness of the settlement.

1. What is this notice?

This is a court-authorized notice of a proposed settlement (the “Settlement”) in a class action lawsuit, *Milliken et al., v. Bayer Heritage Federal Credit Union*; Case No. 5:24-cv-00057, currently pending in the United States District Court for the Northern District of West Virginia (the “Court”). The Settlement would resolve the Lawsuit brought on behalf of persons who allege that their information was impacted by the Security Incident perpetrated against Defendant Bayer Heritage Federal Credit Union (“Bayer Heritage” or “Defendant”) on or about October 2023 (the “Security Incident”). The Court has granted preliminary approval of the Settlement Agreement and has conditionally certified the Settlement Class for purposes of settlement only. This notice explains the nature of the class action lawsuit, the terms of the Settlement Agreement, and the legal rights and obligations of members of the Settlement Class. Please read the instructions and explanations below so that you can better understand your legal rights.

2. Why did I get this notice?

You are receiving this notice because you were identified by Bayer Heritage as a person whose information may have been accessed without authorization by an unknown individual on or about October 2023.

3. What is this lawsuit about?

On December 1, 2023, Bayer Heritage became aware of a Security Incident that occurred in October 2023, which resulted in the Data Breach that exposed the Private Information of certain members and account holders. Bayer Heritage notified state Attorneys General of the Security Incident then provided notice to individuals whose personal information may have been impacted. The Lawsuit alleges that Bayer Heritage failed to adequately protect the information of the potentially affected individuals, and asserts various claims, including negligence, unjust enrichment, breach of express contract, and breach of implied contract. Bayer Heritage contests these claims and denies any wrongdoing.

4. Why is this a class action?

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” When a class action is settled, the settlement, which must be approved by the court, resolves the issues for all class members, except for those who exclude themselves from the settlement.

5. Why is there a settlement?

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties reached a settlement that resolves all claims by the Class related to the Security Incident. If approved by the Court, the Settlement Agreement requires Bayer Heritage to provide, at no cost to Class Members, credit monitoring services, and compensation to certain Class members who submit valid claim forms. The Settlement is not an admission of wrongdoing by Bayer Heritage and does not imply that there has been, or would be, any finding that Bayer Heritage violated the law.

The Court already has preliminarily approved the Settlement Agreement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the Court overseeing this lawsuit must give final approval to the Settlement Agreement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice and the opportunity to exclude themselves from the Settlement Class, and to voice their support or opposition to final approval of the Settlement Agreement. If the Court does not give final approval to the Settlement Agreement, or if it is terminated by the Parties, the Settlement Agreement will be void, and the Lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

6. How do I know if I am a part of the settlement?

You are a member of the Settlement Class if you were sent a “Notice of Data Breach” notifying you of the October 2023 Security Incident because your Personal Information was maintained on Defendant Bayer Heritage’s system.

YOUR BENEFITS UNDER THE SETTLEMENT

7. What can I get from the settlement?

All Settlement Class Members are eligible for two (2) years of free credit monitoring with at least \$1,000,000.00 in identity theft/fraud insurance, which is in addition to any free credit monitoring initially provided by Bayer Heritage following the Security Incident. Class Members can also receive monetary relief including: (1) reimbursement for loss of time compensated at \$20.00 per hour for up to 4 hours (\$80 cap); and (2) reimbursement for documented out-of-pocket expenses and financial losses up to \$5,000.00 per claimant.

8. When will I receive these benefits?

If you submit a Claim for credit monitoring and identity theft/fraud insurance you will receive these benefits after the Court enters a Final Approval Order. If you submit a Claim for monetary recovery, you will receive payment after the Court enters a Final Approval Order in the amount approved by the Claims Administrator after processing your Claim.

9. I want to be a part of the settlement. What do I do?

To submit a claim for credit monitoring and identity theft/fraud insurance, and/or monetary recovery for documented unreimbursed expenses and/or lost time, you must submit the Claim Form found on the Settlement Website and included along with this Notice, along with the requisite documentation.

You must submit any Claims by [REDACTED], 2025 and there can be only one Valid and Timely Claim per Class Member.

10. What counts as an unreimbursed out-of-pocket expense and what documentation is needed?

Class Members are eligible to submit claims of up to \$5,000 (in total per class member) for the following categories of documented unreimbursed out-of-pocket expenses:

- Costs associated with obtaining credit reports;
- Costs associated with purchasing identity theft insurance products for the period after the expiration of the credit monitoring and identity theft insurance coverage offered to the Subclass Members at the time of notice;
- Credit monitoring costs that were incurred on or after October 31, 2023, through the date of the Claim submission;

- Long distance telephone charges;
- Cell minutes (if charged by the minute or the amount of data usage);
- Internet usage charges (if charge by the minute or the amount of data usage);
- Text messages (if charged by the message);
- Miscellaneous expenses such as notary, fax, postage, copying and mileage;
- unreimbursed bank fees;
- unreimbursed card reissuance fees;
- unreimbursed overdraft fees;
- unreimbursed charges related to unavailability of funds;
- unreimbursed late fees;
- unreimbursed over-limit fees;
- unreimbursed charges from banks or credit card companies
- Any other documented unreimbursed out-of-pocket losses that were caused by this Security Incident

Class Members making claims for documented unreimbursed out-of-pocket expenses must:

- a. Show that the loss is an actual, documented, and unreimbursed monetary loss;
- b. Show that the loss was caused by the Incident;
- c. Show that the loss occurred after the date of the Incident and before the Claims Deadline; and
- d. Show that the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

Reasonable documentation must be submitted with all Claims showing that the Out-Of-Pocket Expenses were caused by, or plausibly arose from, the Security Incident. More details are provided in the Settlement Agreement, which is available at www.BayerHeritageDataSettlement.com.

Class Members may also submit claims for reimbursement of up to four hours of lost time spent remedying issues related to the Security Incident (at \$20 per hour). Class Members may submit claims for up to 4 hours of lost time by submitting an attestation that they spent the claimed time responding to issues raised by the Incident. This attestation may be completed by checking a box next to the sentence: “I swear and affirm that I spent the amount of time noted in response to Bayer’s October 2023 data security incident.” No other documentation is required to make a valid claim for reimbursement of lost time spent remedying issues related to the Security Incident.

By order of: Hon. John P. Bailey, United States District Court, Northern District of West Virginia
Page 5 of 9

QUESTIONS? VISIT WWW.BAYERHERITAGEDATASETTLEMENT.COM

11. If I'm eligible for expense of loss reimbursement, when will I be paid?

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement Agreement, so please be patient. However, if the Court gives final approval to the Settlement, eligible Settlement Class Members will be paid as soon as possible after the Court order becomes final. If there is an appeal of the Settlement, payment may be delayed. Updated information about the case is available at www.BayerHeritageDataSettlement.com or contact the Claims Administrator or Class Counsel at the information provided below.

12. What am I giving up if I remain in the settlement?

By staying in the Class, all the Court's orders will apply to you, and you give Defendant a "release." A release means you cannot sue or be part of any other lawsuit against Defendant about the claims or issues in this lawsuit with respect to the unauthorized access of your information stored in Defendant's system on or about October 2023.

The precise terms of the release are in the Settlement Agreement, which is available on the Settlement Website. Unless you formally exclude yourself from this Settlement, you will release your claims. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

13. How much will the Class Representatives receive?

The Plaintiffs will seek a payment of \$2,500 each for their services to the Class Members. This payment is subject to the Court's Approval and is not included in the amount available to Class Members.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to remain in the settlement, but you want to keep your legal claims against Defendant, then you must take steps to exclude yourself from this settlement.

14. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail stating that you want to be excluded from *Milliken et al., v. Bayer Heritage Federal Credit Union*; Case No. 5:24-cv-00057. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request so that it is postmarked **no later than** [REDACTED] 2025, to:

By order of: Hon. John P. Bailey, United States District Court, Northern District of West Virginia
Page 6 of 9

QUESTIONS? VISIT WWW.BAYERHERITAGEDATASETTLEMENT.COM

[SETTLEMENT ADMIN]

Verita Global, LLC

15. If I exclude myself, do I still receive benefits from this settlement?

No, you will not receive anything resulting from the settlement, but you will have the right to sue Defendant over the claims raised in this case, either on your own or as a part of a different lawsuit. If you exclude yourself, the time you have in which to file your own lawsuit (called the “statute of limitations”) will begin to run again. You will have the same amount of time to file the suit that you had when this case was filed.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has appointed the law firms of Milberg Coleman Bryson Phillips Grossman, PLLC and Chestnut Cambronne PA to serve as Class Counsel. You will not be charged for these lawyers and if you want to be represented by your own lawyer, you may hire one at your own expense.

Philip J. Krzeski
CHESTNUT CAMBRONNE, PA
100 Washington Avenue South, Suite 1700
Minneapolis, MN 55401
Phone: (612) 339-7300
pkrzeski@chestnutcambronne.com

David K. Lietz
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
5335 Wisconsin Avenue NW
Washington, D.C. 20015-2052
Telephone: (866) 252-0878
Facsimile: (202) 686-2877
dlietz@milberg.com

17. How will the lawyers be paid?

Class Counsel will be paid reasonable attorneys’ fees and expenses up to \$175,000, subject to court approval. This amount will be paid by Bayer Heritage separately from all benefits to the Settlement Class. You will not receive a bill or invoice for attorneys’ fees or expenses.

By order of: Hon. John P. Bailey, United States District Court, Northern District of West Virginia
Page 7 of 9

QUESTIONS? VISIT WWW.BAYERHERITAGEDATASETTLEMENT.COM

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

18. How do I tell the Court that I do not like the Settlement?

If you are a Class member, you can object to the Settlement and the Court will consider your views. In order to object to the Settlement, you must provide a written objection (such as a letter or legal brief) stating that you object and the reasons why you think the Court should not approve the Settlement. Your objection should include: (1) your full name, address, and current telephone number; (2) the name and number of this case; (3) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (4) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; (5) whether the objector intends to appear at the Final Approval Hearing; and (6) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel.

To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than the Objection Date, to Proposed Settlement Class Counsel, Philip J. Krzeski at CHESTNUT CAMBRONNE, PA, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 45202 and/or David K. Lietz at MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC, 5335 Wisconsin Ave., NW, Washington, DC 20015-2052; and counsel for Defendant, Daniel E. Rohner at SHOOK, HARDY & BACON L.L.P., 1660 17th St., Ste. 450, Denver, CO 80202.

The objector or his or her counsel may also file an objection with the Court through the Clerk of Courts, with service on Proposed Settlement Class Counsel and Defendant's Counsel. For all objections mailed to Proposed Settlement Class Counsel and counsel for Defendant, Proposed Settlement Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement. You may attend if you wish, but you are not required to do so.

19. Where and when is the Final Approval Hearing?

The Court has already given preliminary approval to the Settlement Agreement. A final hearing on the settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement Agreement.

The Court will hold a hearing on [REDACTED], 2025 at [REDACTED].m. in the courtroom of the Honorable John P. Bailey, Frederick P. Stamp, Jr. Federal Building and United States Courthouse, Room [REDACTED], 1125 Chapline Street, Wheeling, WV. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable, and adequate and in the best interests of the Class and to determine the appropriate amount of compensation for Class Counsel and rule on the request for service awards for the Representative Plaintiffs. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement. After the hearing, the Court will decide whether to approve the Settlement.

YOU ARE **NOT** REQUIRED TO ATTEND THIS HEARING TO BENEFIT FROM THIS SETTLEMENT. The hearing may be postponed to a later date without notice.

GETTING MORE INFORMATION – CONTACT:

This Notice only provides a summary of the proposed Settlement. Complete details about the Settlement can be found in the Settlement Agreement available on the Settlement Website.

www.BayerHeritageDataSettlement.com

If you have any questions, you can contact the Claims Administrator or Class Counsel at the numbers or email addresses set forth above. In addition to the documents available on the Settlement Website, all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR TO THE JUDGE.

They are not permitted to answer your questions.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXHIBIT B

FIRST CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

Federal Credit Union
c/o Settlement Administrator

PO Box 8517

Philadelphia, PA 19101-8517

NOTICE OF CLASS ACTION
SETTLEMENT

If you received a notice of security incident from Bayer Heritage Federal Credit Union, you are entitled to submit a claim for monetary compensation and extended credit monitoring

www.bayerheritagedatasettlement.com

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

WHO IS A CLASS MEMBER?

In the lawsuit *Milliken et al. v. Bayer Heritage Federal Credit Union*, No. 24-cv-00057, you are a class member if your Private Information was potentially compromised as a result of the Security Incident that Bayer Heritage Federal Credit Union (“Bayer Heritage”) discovered in October 2023 (the “Settlement Class”).

WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

Settlement Class Members who timely submit a valid Claim may receive compensation for time spent responding to Bayer Heritage’s Security Incident at \$20 per hour capped at 4 hours (\$80) and up to \$5,000 for qualified out-of-pocket expenses incurred as a result of Bayer Heritage’s Security Incident. The \$80 cap for time spent is included in the \$5,000 limit per Settlement Class Member. Furthermore, all Settlement Class Members are entitled to receive extended credit monitoring through this Settlement consisting of 2 years of three-bureau credit monitoring, at no cost, with at least \$1,000,000 in credit and identity fraud insurance. In addition to these settlement benefits you may receive; Bayer has also agreed to implement a series of cybersecurity enhancements to limit the likelihood of a future cyberattack. You must timely submit a valid Claim Form to receive compensation or credit monitoring under this Settlement.

WHAT ARE YOUR RIGHTS AND OPTIONS?

Submit a Claim Form. To qualify for a settlement payment and/or extended credit monitoring, you must timely mail a Claim Form that is attached to this notice or timely complete and submit a Claim Form online at www.bayerdatasettlement.com (“Settlement Website”). Your Claim Form must be postmarked or submitted online no later than , 2025. is the Settlement Administrator.

Opt Out. You may exclude yourself from the settlement and retain your ability to sue Bayer on your own by mailing a written request for exclusion to the Settlement Administrator that is post marked no later than , 2025. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue regarding the settled claims.

Object. If you do not exclude yourself, you have the right to object to the settlement. Written objections must be signed, postmarked no later than , 2025, and provide the reasons for the objection. Please visit Settlement Website for more details.

Do Nothing. If you do nothing, you will not receive a Settlement Payment and will lose the right to sue regarding any issues relating to this action. You will be bound by the Court’s decisions because this is a conditionally certified class action.

Attend the Final Approval Hearing. The Court will hold a **Final Approval Hearing** on , 2025 at [time]. All persons who timely object to the settlement

by , 2025 may appear at the Final Approval Hearing.

Who are the Class Representatives? Charles Milliken Jr. and Mary Kay Milliken are the Plaintiffs and Class Representatives in this lawsuit. They remained engaged in representing the Class’s interests during this litigation and reviewed and approved of the terms of the proposed settlement.

Who are the attorneys for the Plaintiffs and the proposed class? Class Counsel are Philip J. Krzeski of Chestnut Cambronne, PA, 100 Washington Avenue South, Minneapolis, MN 55042, and Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman, PLLC, 227 W. Monroe Street, Suite 2100, Chicago, IL 60606. These attorneys have decades of experience handling class action lawsuits and are well known and respected by courts and counsel throughout the United States for handling data breach class actions.

Do I have any obligation to pay attorneys’ fees or expenses? No. The attorneys’ fees and expenses will be paid exclusively by the Defendant and are awarded and approved by the Court. The attorneys’ fees and expenses will be in an amount not to exceed \$175,000. The motion for attorneys’ fees and expenses will be posted on the Settlement Website after it is filed with the Court.

When is the Final Approval Hearing? The final approval hearing, where the Court will determine if the settlement is fair, reasonable, and adequate, will be conducted on 2025 at [time].

Who is the Judge overseeing this settlement? Judge John P. Bailey, United States District Court, Northern District of West Virginia.

Where may I locate a copy of the settlement agreement, learn more about the case, or find more information about submitting a Claim? www.bayerheritagedatasettlement.com.

*** *** **Please note that if you wish to submit a claim for compensation for Out-of-Pocket losses, you will need to submit your claim online or by printing and mailing the full Claim Form on the settlement website so that you may attach all information necessary to support your request for payment for such out-of-pocket losses.** If you wish to receive payment just for your lost time (up to 4 hours at \$20 per hour for a cap of \$80) and/or for credit monitoring, the attached tear off claim form should suffice. A longer version of the Claim Form may be accessed on the Settlement Website.

This Notice is a summary of the proposed settlement.

BRM

Postage

Milliken Jr. et al v. Bayer
Heritage Federal Credit Union
c/o Settlement Administrator
PO Box 8517
Philadelphia, PA 19101-8517

< < B a r c o d e > > Class

153

Member ID: <<Refnum>>

CLAIM FORM

Claims must be postmarked no later than [redacted], 2025. You may also submit a Claim Form online no later than [redacted], 2025.

NAME: _____

ADDRESS: _____

Monetary Compensation

1. **Lost Time:** Members of the Class may submit a Claim for Lost Time, which is time spent by you in response to the Security Incident. You may claim up to 4 hours of lost time at \$20 per hour (\$80 maximum) under this settlement benefit, by circling the applicable number of hours, and checking the box next to the attestation.

I spent (circle one if applicable) 1 2 3 4 hours

I swear and affirm that I spent the amount of time noted in response to Bayer's October 2023 data security incident.

2. **Documented Out-of-Pocket Expenses:** In addition to claiming Lost Time, Class Members who believe they suffered out-of-pocket losses as a result of the Security Incident may claim up to \$5,000 (subject to pro rata adjustment) for the reimbursement of sufficiently documented expenses. You may claim one or both settlement benefits. However, if you wish to make a claim for out-of-pocket losses, you must either do so by filing a claim online, or by printing the full claim form found on the settlement website and submitted via mail. This is because of the need to submit supporting documentation for this claim.

Credit Monitoring

_____ By marking an X next to the space before this sentence, I affirm that I do want to receive 2 years of credit monitoring as a settlement benefit.

By signing my name below, I swear and affirm that the information included on this Claim Form is true and accurate, and that I am completing this claim form to the best of my personal knowledge.

_____ (signature)

EXHIBIT C

CLAIM FORM

Milliken Jr. et al v. Bayer Heritage Federal Credit Union; Case No. 5:24-cv-00057

United States District Court, Northern District of West Virginia

SUBMIT BY _____, 2025

ONLINE AT WWW.BAYERHERITAGEDATASETTLEMENT.COM

OR MAIL TO:

Bayer Heritage Federal Credit Union Settlement Administrator

[INSERT Settlement Admin Contact Information]

GENERAL CLAIM FORM INFORMATION

This Claim Form should be filled out online or submitted by mail if your private information was maintained on Bayer Heritage Federal Credit Union's ("Bayer Heritage") computer systems and/or network that was compromised in the Security Incident on or about October 2023.

If you wish to submit a Claim by mail, please provide the information requested below. Please print clearly in blue or black ink. This Claim Form must be mailed and postmarked by **no later than DD,MM, 2025**.

Credit Monitoring and Identity Theft/Fraud Insurance Services

Members of the Settlement Class are eligible for credit monitoring and identity theft/fraud insurance services and are defined as: All persons residing in the United States whose PII was compromised in the October 2023 data breach announced by Bayer Heritage.

_____ By initialing here, I certify I am a Member of the Settlement Class and I request the two years of three bureau credit monitoring and identity theft/fraud insurance services with coverage of up to \$1,000,000.00.

Out-of-Pocket Monetary Loss

_____ By initialing here, I also certify that I am also a member of the Settlement Class defined as: All persons residing in the United States whose PII was compromised in the October 2023 data breach announced by Bayer Heritage in 2024.

As a member of the Class, I am submitting a claim for monetary losses in the amount of \$ _____ on account of out-of-pocket expenses incurred as a result of the Security Incident. I understand that I am required to provide documentation supporting my claims for out-of-pocket expenses and that I may not claim more than \$5,000.00.

More detailed information about Monetary Claims for the Class can be found in the Settlement Agreement.

Out-of-Pocket Expenses

Please provide copies of any receipts, bank statements, reports, or other documentation supporting your claim. This can include receipts or other documentation not “self-prepared” by you. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. The settlement administrator may contact you for additional information before processing your claim.

You may mark out any information that is not relevant to your claim before sending in the documentation. This can include receipts or other documentation not “self-prepared” by you. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. The settlement administrator may contact you for additional information before processing your claim.

Description of the unreimbursed, out-of-pocket loss occurred, and the documents attached to support this claim:

Please also sign below indicating that you are submitting this Claim for monetary losses and your representations of these losses are true and correct to the best of your knowledge and belief, and are being made under penalty of perjury

Signature

Date

Lost Time

Members of the Class may submit a Claim for Lost Time, which is time spent by you in response to the Security Incident. You may claim up to 4 hours of lost time at \$20 per hour (\$80 maximum) under this settlement benefit, by circling the applicable number of hours, and checking the box next to the attestation.

I spent (circle one if applicable) 1 2 3 4 hours

I swear and affirm that I spent the amount of time noted in response to Bayer’s October 2023 data security incident.

Claimant Information

Full Name of Class Member

Unique Identifier
(Can be found on the postcard or Email Notice you received informing you about this Settlement. If you need additional help locating this ID, please contact the Settlement Administrator.)

Street/P.O. Box City State Zip Code

Phone Number

Email Address

Signature

EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

<p>CHARLES MILLIKEN, JR. and MARY KAY MILLIKEN, individually and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BAYER HERITAGE FEDERAL CREDIT UNION,</p> <p style="text-align: center;">Defendant.</p>	<p>CASE NO. 5:24-cv-00057-JPB</p>
---	--

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT, APPROVING FORMS OF NOTICE AND NOTICE PLAN, AND
DIRECTING IMPLEMENTATION OF THE NOTICE PLAN**

The Court, having considered Plaintiffs’ Unopposed Motion for Preliminary Approval of the Class Action Settlement (the “Motion”), the supporting memorandum, the Parties’ Settlement Agreement, dated January 5, 2025, the proposed Short Notice, Long Notice, and Claim Form, and being otherwise fully advised in the premises, finds and orders as follows:

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement, attached to the Unopposed Motion for Preliminary Approval as Exhibit 1 is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over the claims at issue in this Action, Plaintiffs Charles Milliken, Jr. and Mary Kay Milliken, individually and on behalf of others similarly situated

(“Plaintiffs”), and Defendant Bayer Heritage Credit Union (“Bayer Heritage” or “Defendant”) (together with Plaintiffs, the “Parties”).

3. This Order is based on Federal Rule of Civil Procedure 23.

4. The Court finds that the Parties’ Settlement Agreement, as set forth in Exhibit 1 to the Unopposed Motion for Preliminary Approval of Class Action Settlement is fair, reasonable, and adequate and is within the range of possible approval, and was entered into after extensive, arm’s-length negotiations, such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members.

5. Plaintiffs allege that this class action arises out of a cyberattack that was discovered on October 31, 2023, and that Bayer Heritage was the target of a criminal cyberattack in which the attackers accessed and acquired certain company records that including the Private Information of Plaintiffs and other individuals. Bayer Heritage sent, in January 2024, notification of the Data Incident to approximately 61,000 individuals. Plaintiffs allege to be among the group of individuals to whom Bayer Heritage sent a notification. Plaintiffs assert claims for: 1) Negligence; 2) Breach of Implied Contract; and 3) Unjust Enrichment.

6. The relevant terms of the proposed Settlement as follows:

The Settlement negotiated on behalf of the Settlement Class provides for three separate forms of relief: (1) reimbursement for documented out-of-pocket expenses (such as fees for credit reports, unreimbursed bank fees, credit monitoring, or other identity theft insurance product, etc.) up to \$5,000 per Class Member; 2) up to 4 hours at \$20 per hour of lost time spent dealing with the effects of the Security Incident; and (3) two-years of three-bureau credit monitoring.

In addition to the foregoing settlement benefits, Bayer Heritage has agreed to implement and maintain certain cybersecurity and business practice enhancements after the Security Incident designed to protect the data security of Plaintiffs and Class Members.

CLASS CERTIFICATION

7. For the purposes of settlement only, and pursuant to Federal Rule of Civil Procedure 23, the Court provisionally certifies the class, defined as follows:

All persons residing in the United States whose PII was compromised in the October 2023 Security Incident announced by Bayer Heritage Federal Credit Union Property Management in 2024.

Excluded from the Class are: (1) any entity in which Bayer Heritage has a controlling interest and (2) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Bayer. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

8. The Settlement Class consists of approximately 61,000 individuals.

9. The Court provisionally finds, pursuant to the Federal Rules of Civil Procedure, that for purposes of this settlement only that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representatives' claims are typical of the Settlement Class's claims; (4) the Class Representatives will fairly and adequately protect the Settlement Class's interests; and (5) common issues in this Litigation predominate over individualized ones, and class treatment of this Litigation is superior.

SETTLEMENT CLASS COUNSEL AND THE CLASS REPRESENTATIVES

10. Charles Milliken, Jr. and Mary Kay Milliken are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class

Representatives are similarly situated to absent Settlement Class Members, and are typical of the Settlement Class, therefore they will be adequate Class Representatives.

11. The Court finds that David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC and Philip J. Krzeski of Chestnut Cambronne, PA are experienced and adequate counsel and are provisionally designated as Class Counsel.

NOTICE TO SETTLEMENT CLASS

12. The forms of the Long Notice, Short Notice, and Claim Form attached as Exhibits A, B, and C, respectively, to the Settlement Agreement, are constitutionally adequate, and are hereby approved. The Notice contains all essential elements required to satisfy federal statutory requirements and due process. The Court further finds that the form, content, and method of providing the Settlement Class Notice, as described in the Settlement Agreement, including the exhibits thereto: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the Settlement, their rights under the Settlement, including, but not limited to, their rights to object to or exclude themselves from the Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members.

13. The Notice program set forth in the Settlement Agreement, and described below, satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, provides the best notice practicable under the circumstances, and is hereby approved.

14. The Settlement Administrator is directed to carry out the notice program as set forth in the Settlement Agreement.

15. Within thirty-seven (37) days of this Preliminary Approval Order, the Settlement Administrator shall provide Notice to the Settlement Class Members in the manner set forth in the Settlement Agreement.

CLAIMS, EXCLUSIONS, AND OBJECTIONS

16. The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to opt-out or object.

17. Settlement Class Members will have ninety (90) days from date Notice commences pursuant to the Settlement Agreement to complete and submit a claim to the Settlement Administrator.

18. Settlement Class Members who seek to be excluded from the Settlement Class must sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator, as set forth in the Notices. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. The notice must be postmarked no later than sixty (60) days from the date Notice commences pursuant to the Settlement Agreement.

19. Settlement Class Members who comply with the requirements of this paragraph may object to the Settlement, the Attorneys' Fees Request, or the Service Award Requests. Settlement Class Members seeking to object to the Settlement must submit timely written notice of his or her objection. This Notice shall state: (1) the objector's full name, address, and current telephone number; (2) the name and number of this case – *Milliken, et al., v. Bayer Heritage Federal Credit Union*, Case No. 5:24-cv-00057-JPB; (3) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (4) the identification

of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; (5) whether the objector intends to appear at the Final Approval Hearing; and (6) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

20. To be timely, written notice of an objection in the appropriate form must be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement, postmarked on or before sixty (60) days after the Notice Date. The objector must also file copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (2) send copies of such papers to the Settlement Administrator

21. Any Settlement Class Member who fails to comply with the requirements for objecting to the Settlement shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the means described above. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered

upon final approval shall be through appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

ADMINISTRATION OF THE SETTLEMENT

22. The Class Representatives, Settlement Class Counsel, and Defendant have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement benefits to the Settlement Class, and the plan for distributing Settlement benefits as described in Section 8 of the Settlement Agreement.

23. The Court appoints Verita Global, LLC (“Verita”) as the Settlement Administrator. Bayer Heritage shall pay the entirety of contractually agreed upon and authorized Costs of Settlement Administration, and the costs of providing notice to the Settlement Class. These payments shall be made separate and apart from the Settlement benefits.

24. Settlement Class Members who qualify for Settlement benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

25. If Final Judgment is entered, all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified in the Notice, and who do not timely exclude themselves from the Settlement Class, shall be forever barred from receiving any Settlement benefit, and will in all other respects be subject to and bound by the provisions of the Settlement Agreement, including the Releases, and the Final Judgment.

26. Bayer Heritage, if it does not perform the function itself, shall cause the Settlement Administrator to provide (at Bayer Heritage's expense) notice to the relevant state and federal governmental officials as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

FINAL FAIRNESS HEARING

27. A Final Fairness Hearing shall be held on _____, 2025 at ___:___0 __.m. at the Frederick P. Stamp, Jr. Federal Building and United States Courthouse, 1125 Chapline Street, Wheeling, WV, to be noticed on the Settlement Website.

28. The Court may require or allow the Parties and any objectors to appear at the Final Fairness Hearing by telephone or videoconference.

29. At the Final Fairness Hearing, the Court will determine whether: (1) this action should be finally certified as a class action for settlement purposes pursuant to the Federal Rules of Civil Procedure; (2) the Settlement should be finally approved as fair, reasonable, and adequate; (3) Settlement Class Counsel's application for attorneys' fees, costs, expenses should be approved; (4) the Class Representatives' requests for service awards should be approved; (5) the Parties, their respective attorneys, and the Settlement Administrator should consummate the Settlement in accordance with the terms of the Settlement Agreement; (6) Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; and (7) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement.

30. Plaintiffs' Motion for attorneys' fees, costs, and expenses shall be filed with the Court no later than fourteen (14) days prior to the Opt-Out and Objection Deadline.

31. Plaintiffs' Motion for Final Approval shall be filed with the Court no later than fourteen (14) days before the Final Fairness Hearing.

TERMINATION

32. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions in the Litigation, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement

Agreement. In the event that the Settlement is terminated pursuant to the Settlement Agreement, the Parties shall jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel.

33. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

34. This Order shall have no continuing force or effect if Final Judgment is not entered and shall not be construed or used as an admission, concession, or declaration by or against Bayer Heritage of any fault, wrongdoing, breach, liability, or the certifiability of any class.

35. All proceedings and deadlines in this matter, except those necessary to implement this Order and Settlement, are hereby stayed and suspended until further order of the Court.

SUMMARY OF DEADLINES

36. The preliminarily approved Settlement shall be administered according to its terms pending the Final Fairness Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to:

ACTION	DATE
Defendants Provide Class Member List	Within 14 days following entry of Order Granting Preliminary Approval
Notice Date	37 days following entry of Order Granting Preliminary Approval
Motion for Attorneys' Fees, Expenses, and Service Awards to the Plaintiffs	14 days prior to the Objection Deadline and Opt-Out Date

Exclusion / Opt-Out Deadline	60 days after Notice Date
Objection Deadline	60 days after Notice Date
Deadline to Submit Claims	90 days after Notice Date
Final Approval Brief and Response to Objections Due	At least 14 days prior to the Final Approval Hearing
Final Approval Hearing	(To be scheduled approximately 150 days after entry of Preliminary Approval Order)

ENTERED:

DATED: January ____, 2025

By: _____

The Honorable John Preston Bailey
United States District Judge

EXHIBIT E

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

<p>CHARLES MILLIKEN, JR., and MARY KAY MILLIKEN, individually and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BAYER HERITAGE FEDERAL CREDIT UNION</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CASE NO. 5:24-cv-00057-JPB</p>
--	--

FINAL APPROVAL ORDER AND JUDGMENT

On January [REDACTED], 2025, this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) (Doc. [REDACTED]) of the settlement (the “Settlement”) between Plaintiffs Charles Milliken, Jr. and Mary Kay Milliken, individually and on behalf of others similarly situated (“Plaintiffs”), and Defendant Bayer Heritage Credit Union (“Bayer Heritage” or “Defendant”) (together with Plaintiffs, the “Parties”), as memorialized in the Settlement Agreement, which is Exhibit 1 (Doc. [REDACTED]) to Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement;¹

On [REDACTED] Month, Day, 2025, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Class was notified of the terms of the proposed Settlement Agreement, of the right of Class Members to opt-out, and the right of

¹The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Settlement Agreement, except as may otherwise be indicated.

Settlement Class Members to object to the Settlement Agreement and to be heard at a final approval hearing;

On **MONTH DAY**, 2025, 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 approving 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 Settlement 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 Preliminary Approval Order, having heard the presentation of Settlement Class Counsel and counsel for Bayer Heritage, 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 Settlement 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:

IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class.

2. The Settlement Agreement was entered into in good faith following arm's length negotiations and is non-collusive.

3. The Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and uncertainties, including as to the outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

4. This Court grants final approval of the Settlement Agreement, including, but not limited to, the releases in the Settlement Agreement, including all Released Claims, and the plans for implementation and distribution of the settlement benefits. The Court finds that the Settlement Agreement is in all respects fair, reasonable, and in the best interest of the Settlement Class. Therefore, all Class Members who have not opted out of the Settlement Class are bound by this Final Approval Order and Judgment, approving the Settlement Agreement.

5. 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 herein and shall have the full force of an Order of this Court.

OBJECTIONS AND OPT-OUTS

6. No objections were filed by Settlement Class Members. The Court has considered the absence of any objections and finds the absence of objections weighs in favor of final approval.

7. All Settlement Class Members who have not objected to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

8. A list of those putative Class Members who have timely and validly elected to opt out of the Settlement Agreement and the Settlement Class (the “Opt-Out Members”), and who therefore are not bound by the Settlement Agreement and this Final Approval Order and Judgment has been submitted to the Court in the Declaration of **NAME**, Project Managers for the duly appointed Settlement Administrator Verita Global, LLC (“Verita”), filed in advance of the final approval hearing. (Doc.). That list is attached as Exhibit **X** to the Verita Declaration. The Opt-Out Members listed in Exhibit **X** are not bound by the Settlement Agreement and this Final Approval Order and Judgment and shall not be entitled to any of the benefits afforded to the Settlement Class Members under the Settlement Agreement.

CLASS CERTIFICATION

9. For purposes of the Settlement Agreement and this Final Approval Order and Judgment only, the Court hereby finally certifies the following class (the “Settlement Class”):

All persons residing in the United States whose PII was compromised in the October 2023 Security Incident announced by Bayer Heritage Federal Credit Union Property Management in 2024.

Excluded from the Class are: (1) any entity in which Bayer Heritage has a controlling interest and (2) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Bayer. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

10. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Federal Rule of Civil Procedure 23(a) and (b)(3) set forth in the Preliminary Approval Order and notes again that because this certification of the Settlement

Class is in connection with the Settlement Agreement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement Agreement.

11. The Court grants final approval to the appointment of Plaintiffs Charles Milliken, Jr. and Mary Kay Milliken as Class Representatives. The Court concludes that the Class Representatives have fairly and adequately represented the Settlement Class and will continue to do so.

12. The Court grants final approval to the appointment of David K. Lietz of Milberg Coleman Bryson Phillips Grossman LLP and Philip J. Krzeski of Chestnut Cambronne, PA as Class Counsel. The Court concludes that Class Counsel has adequately represented the Settlement Class and will continue to do so.

NOTICE TO THE CLASS

13. 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.

14. The Court finds that Bayer Heritage has fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS

15. The Court has considered Class Counsel's Motion for service awards and for attorneys' fees and costs, and expenses. The Court awards Class Counsel the sum of \$175,000 as a combined award of attorneys' fees and costs and expenses to be paid in accordance with the Settlement Agreement, and the Court finds this amount of fees and expenses to be fair and reasonable.

16. The Court grants Class Counsel's request for service awards to the Class Representatives and awards \$2,500 each to Plaintiffs Charles Milliken, Jr. and Mary Kay Milliken. The Court finds that this payment is justified by their service to the Settlement Class. This payment shall be paid in accordance with the Settlement Agreement.

OTHER PROVISIONS

17. The Parties to the Settlement Agreement shall carry out their respective obligations thereunder.

18. Within the time period set forth in the Settlement Agreement, the benefits provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting Valid Claim Forms, on approved Claims, pursuant to the terms and conditions of the Settlement Agreement.

19. As of the Effective Date, and in consideration of the promises and covenants set forth in this Settlement Agreement, Defendant and its representatives, officers, agents, directors, principals, affiliates, insurers, and attorneys shall be deemed to have released, acquitted, and forever discharged Plaintiffs and Class Counsel from any and all claims, whether known or unknown, that arise out of, are based upon, or relate to the Prosecution of the Action, Litigation, Settlement Agreement, or Settlement Claims Process (provided, however, that this release and

discharge shall not include claims relating to the enforcement of the terms of the Settlement Agreement.)

20. “Released Claims” shall collectively mean all past, present and future claims, demands, actions, causes of action, costs, expenses, attorneys’ fees, losses, rights, demands, charges, complaints, suits, petitions, obligations, debts, penalties, damages, or liabilities of any nature whatsoever, known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, matured or unmatured, in law or equity, and any other form of legal or equitable relief that has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Parties reasonably related to the operative facts alleged in or otherwise described by the Litigation or arising out of or in any way related to the Incident and/or Released Parties’ recordkeeping or data security policies and practices, whether or not pleaded or otherwise asserted in the Litigation, including any and all damages, losses, or consequences thereof.

21. This Final Approval Order and Judgment and the Settlement Agreement, and all acts, statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Bayer Heritage of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Bayer Heritage or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the action. This Final Approval Order and Judgment, the Settlement Agreement, and all acts, statements, documents or proceedings relating to the Settlement Agreement shall not be offered or received or be admissible 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 Plaintiffs, any Settlement Class

Member, or any other person has suffered any damage; *provided, however*, that the Settlement Agreement and this Final Approval Order and Judgment may be filed in any action by Bayer Heritage, Settlement Class Counsel, or Settlement Class Members seeking to enforce the Settlement Agreement or the Final Approval Order and Judgment (including but not limited to enforcing the releases contained herein). The Settlement Agreement and Final Approval Order and Judgment shall not be construed or admissible as an admission by Bayer Heritage that Plaintiffs' claims or any similar claims are suitable for class treatment. The Settlement Agreement'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 Final Approval Order and Judgment that are maintained by, or on behalf of, any Settlement Class Member or any other person subject to the provisions of this Final Approval Order and Judgment.

24. The Court hereby dismisses the Complaint and all claims therein with prejudice, without fees or costs to any Party, except as provided in this Final Approval Order and Judgment.

25. Consistent with Paragraphs 73, 74 and 75 of the Settlement Agreement, if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Approval Order and Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement Agreement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order and Judgment and the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated

nunc pro tunc, and the Parties shall be restored to their respective positions in the Litigation, as if the Parties never entered into the Settlement Agreement (without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue). Further, in such event, the Parties will jointly request that all scheduled Litigation deadlines be reasonably extended by the Court, so as to avoid prejudice to any Party or Party's counsel.

26. Pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 382, 114 S. Ct. 1673, 1677, 128 L. Ed. 2d 391 (1994) and the parties agreement, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

27. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes.

ENTERED:

DATED: _____, 2025

By: _____

**The Honorable John Preston Bailey
United States District Judge**

Exhibit 2

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CHARLES MILLIKEN, JR., and MARY
KAY MILLIKEN, individually and all
others similarly situated,

Plaintiff,

v.

BAYER HERITAGE FEDERAL CREDIT
UNION

Defendants.

CASE NO. 5:24-cv-00057-JPB

**DECLARATION OF DAVID K. LIETZ IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, David K. Lietz, being competent to testify, make the following declaration:

1. I am a senior partner at the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”) and am counsel of record for Plaintiffs in the above captioned action. I am admitted to practice law in the District of Columbia, and am a member in good standing with the bar of the District of Columbia. I make this Declaration in support of the motion (1) for preliminary approval of class action settlement and (2) appointing Milberg Coleman Bryson Phillips Grossman, PLLC and Chestnut Cambronne PA as Class Counsel. I make this declaration based on my personal knowledge and/or upon information and belief of the matters set forth herein and based on my active participation in all material aspects of this litigation. If called upon to do so, I could and would testify competently thereto.

2. A true and correct copy of the Settlement Agreement (“Agreement” or “S.A.”) is attached to the Motion for Preliminary Approval as **Exhibit 1**. Included with the Agreement are the following sub-exhibits:

COUNSEL QUALIFICATIONS

A. David Lietz and Milberg

3. I am a 1991 graduate of Georgetown University Law Center. I have been licensed to practice law in the District of Columbia since 1991, am a member of the bars of numerous federal district and appellate courts, and have over three decades of litigation and class action experience.

4. I have represented and am currently representing plaintiffs in more than 100 class action lawsuits in state and federal courts throughout the United States. Both I and my firm carry on a national and international class action law practice. With respect to data privacy cases, I am currently litigating more than one-hundred cases across the country involving violations of privacy violations, data breaches, and ransomware attacks.

5. Over the past four years, I (either individually or as a member of my law firm) have been appointed class counsel in a number of data breach or data privacy cases that have been either preliminarily or finally approved by federal and state courts across the country. A full list is attached to this declaration as **Exhibit A**.

6. I am also lead or co-lead counsel on the following cases that are on the cutting edge of Article III federal court jurisdiction in data breach litigation. Most recently, I briefed and argued *Webb v. Injured Workers Pharmacy, LLC*, 72 F.4th 365 (1st Cir. 2023), where the U.S. Court of Appeals for the First Circuit articulated important principles of Article III standing in data breach cases after the U.S. Supreme Court’s decision in *Ramirez v. TransUnion*. Other noteworthy data

breach decisions include *Purvis v. Aveanna Healthcare, LLC*, 563 F. Supp. 3d 1360 (N.D. Ga. 2021); *Charlie v. Rehoboth McKinley Christian Healthcare Services*, Civ. No. 21-652 SCY/KK, 2022 WL 1078553 (D.N.M. April 11, 2022); *Baldwin v. Nat'l W. Life Ins. Co.*, No. 2:21-CV-04066-WJE, 2021 WL 4206736, at *1 (W.D. Mo. Sept. 15, 2021) and *McCreary v. Filters Fast LLC*, No. 3:20-CV-595-FDW-DCK, 2021 WL 3044228 (W.D.N.C. July 19, 2021).

7. For my substantial efforts in advancing the state of the law in data breach and cybersecurity litigation, in April 2022 I was named to Law360's 2022 Cybersecurity & Privacy Editorial Board. This 12-person editorial board includes some of the most accomplished attorneys in the country in the cybersecurity and data breach legal field, and it was a high honor for me to be included on this board.

8. I frequently give public presentations about data privacy and data breach litigation, including the Harris-Martin Publishing Data Breach Conference in Nashville, Tennessee (September 25, 2024), the 8th Annual Class Action Money & Ethics Conference (May 6, 2024 in New York City), the Harris-Martin Publishing Conference in San Francisco in July 2023, a Strafford Publishing CLE panel discussion on *Webb v. Injured Workers Pharmacy* case in October 2023, and a presentation at the North Carolina Bar Association 2023 Privacy & Data Security Section Annual Program in October 2023.

9. I have been appointed as class counsel in other consumer class action cases and have tried consumer class action cases to verdict before a jury, most recently in *Baez v. LTD Financial Services*, Case No: 6:15-cv-1043-Orl-40TBS (MD Fla.).

10. My experience with class actions also includes a leadership role in a Massachusetts Walmart wage abuse class action, national HMO litigation, the Buspirone MDL, and Louisiana Norplant litigation.

11. In addition to my class action experience, I have substantial appellate experience, successfully briefing and arguing multiple cases before a number of federal appellate courts, including *Home Depot v. Jackson* at the U.S. Court of Appeals for the Fourth Circuit, and served as part of the successful brief-writing and oral advocacy team for *Home Depot v. Jackson*, 139 S. Ct. 1743, 1744, 204 L. Ed. 2d 34 (2019) at the United States Supreme Court.

12. Prior to concentrating my practice on consumer class action litigation, I litigated critical injury and wrongful death actions arising from commercial incidents, such as tractor trailer incidents, industrial explosions, a subway collision, and commercial airplane crashes. A representative list of my critical injury and wrongful death cases include:

- Represented the family of the deceased conductor of the Washington Metropolitan Area Transit Authority subway train that collided with another Metro train in 2009.
- Represented the family of a fatality victim of the 2006 Greyhound bus crash near Elizabethtown, New York.
- Represented six victims (four deceased, two injured) of a massive fog related pileup on the Pennsylvania Turnpike in 2003.
- Represented three victims (two deceased, one injured) of the 2002 Interstate 40 Bridge Collapse, where a tugboat and barge hit an interstate highway bridge near Webbers Falls, Oklahoma and caused several vehicles to plunge into the Arkansas River.
- Represented the family of one victim of the 2000 Alaska Airlines Flight 261 crash, where an MD-83 with a cracked jackscrew nosedived into the water off Point Mugu, California.
- Represented the victims (one deceased, one critically injured) of a 2000 incident where a tractor trailer rear ended a line of stopped traffic near Hopkinsville, Kentucky.
- Represented a critically burned victim of the 1998 explosion at the State Line Energy plant in Hammond, Indiana, where a massive coal dust explosion ripped through the power plant, causing power shortages all over the city of Chicago, Illinois.
- Represented the families of four victims of the 1996 ValuJet Flight 592 crash, where a DC-9 developed a cargo hold fire and crashed into the Everglades near Miami, Florida.
- Represented the family of a victim of a 1994 crane collapse in Laughlin, Nevada, when a mobile truck crane toppled across the parking lot of a casino.

13. I negotiated several million+ dollar settlements, served as lead counsel in multiple civil actions, tried a number of cases to verdict in both jury and bench trials, and argued cases

before federal district and appeals courts, and numerous state courts. I have lifetime verdicts and settlements in excess of \$100 million, and consistently achieved settlements in the highest quartile of tort and mass tort cases. I have litigated against some of the largest transportation-related companies in the US, including Greyhound, Goodyear, Cessna, Textron, and the Washington Metropolitan Area Transit Authority (WMATA).

14. I was first awarded the prestigious “AV” rating from Martindale-Hubbell in 1998, and have maintained that rating (and the concomitant listing in the Bar Register of Preeminent Lawyers) ever since.

15. My work on this matter includes: investigating the cause and effects of the Bayer Heritage Federal Credit Union (“Defendant”) Data Incident; coordinating with co-counsel and the client to prepare the Complaint; contributing to the evaluation of the merits of the case before filing the Complaint; conducting legal research; conducting substantial pre-mediation voluntary discovery and reviewing materials provided by Defendant; preparing for and participating in the formal mediation (including assisting with the drafting of a detailed mediation statement), assisting with drafting the settlement agreement, the relevant notices of settlement, and the instant Motion for Preliminary Approval; conducting extensive research into data security incidents and their causes and effects, conducting further extensive research into data security practices and standards across e-Commerce platforms and industries, communicating with defense counsel; updating and handling questions from our class representative, and engaging the settlement administrator. I conferred with my colleagues about strategy and case status while being mindful to avoid duplicative efforts within my firm.

Qualification of Milberg Coleman Bryson Phillips Grossman, PLLC

16. In addition to my personal qualifications, I bring the support and resources of Milberg to this case on behalf of the putative class. Milberg pioneered federal class action litigation and is widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing, repeatedly taking the lead in landmark cases that have set groundbreaking legal precedents, prompting changes in corporate governance, and recovering over \$50 billion in verdicts and settlements. A brief firm biography is attached to this declaration as **Exhibit B**.

17. Milberg is and has been one of the nation's most prominent class action law firms since its founding in 1965. Milberg continues to break new ground in cybersecurity and data privacy cases, including taking a co-lead counsel role in the high-profile *In re: Blackbaud, Inc. Customer Data Security Breach Litigation* (MDL 2972). Milberg has and is litigating class actions against huge technology companies like TikTok, Blackbaud, Adobe, and Google.

18. My experience and Milberg's data breach experience compare favorably with that of any law firm in the country. The firm has ample resources (both financial and personnel, with over 90+ attorneys at the firm) to fully and adequately represent the interests of the proposed class here.

19. My experience coupled with my firms' resources, allowed me to skillfully litigate this type of case in the best interests of Plaintiffs and the putative class. Not only does my law firm have the resources to effectively prosecute this case, but it is also committed to utilizing them to do so.

20. Milberg is a well-established law firm that employs numerous attorneys who represent plaintiffs in complex and class action litigation. Milberg can and will devote the necessary financial resources to this case.

Qualifications of Philip J. Krzeski and Chestnut Cambronne PA

21. Chestnut Cambronne PA's class action team has a nationwide class action practice, focusing in data privacy litigation. In the past three years, alone, attorneys from Chestnut Cambronne have been appointed to leadership positions in 15 cases, which are detailed in the firm resume attached to this declaration as **Exhibit C**.

22. By way of recent example, Attorney Philip J. Krzeski has been appointed to leadership roles in the following cases:

- *Skillings v. Access Sports Medicine and Orthopaedics, LLC*, No. 218-2024-cv-01086 (New Hampshire). A pending class action against Access Sports Medicine and Orthopaedics, PLLC on behalf of 88,000 individuals.
- *In re Weirton Medical Center Data Breach Litigation*, No. 2023-cv-03043 (N.D.W. Va.). A pending class action against Weirton Medical Center on behalf of approximately 27,000 individuals.
- *In re Peoples Bank Data Breach Litigation*, No. 2:23-cv-03043 (S.D. Ohio). A pending class action against Peoples Bank on behalf of approximately 47,000 individuals.
- *In re Cinfed Federal Credit Union Data Breach Litig.*, No. 1:23-cv-776 (S.D. Ohio). A pending class action against Cinfed Federal Credit Union on behalf of approximately 58,000 individuals. The settlement reached was preliminarily approved on September 10, 2024.
- *Phillips v. Bay Bridge Administrators, LLC*, No. 1:23-cv-022 (W.D. Tex.). A class action settlement of \$2,516,890 obtained on behalf of approximately 250,000 individuals. The settlement was approved on September 30, 2023. Philip J. Krzeski was court appointed as Executive Committee Counsel.

23. Moreover, on October 3, 2024, Chestnut Cambronne PA attorneys were appointed as co-lead counsel in *In re Change Healthcare, Inc. Customer Data Security Breach Litig.*, No. 24-md-03108 (D. Minn.), which is a pending multi-district class action against United Health Group and its subsidiary Change Health stemming from a data breach that is believed have affected over

150,000,000 individuals across the United States.

Initial Investigation and Communications

24. This class action arises out of a cyberattack and data breach (“Data Incident”) involving Defendant.

25. Plaintiffs allege in their consolidated complaint that as a result of the Data Incident, Plaintiffs and Settlement Class Members suffered ascertainable losses in the form of identity theft and fraud, the loss of the benefit of the bargain, out-of-pocket expenses, and the value of their time reasonably incurred to remedy or mitigate the effects of the attack.

26. Plaintiffs further allege that their and Settlement Class Members’ sensitive personal information—which was entrusted to Defendant—was compromised and unlawfully accessed due to the Data Incident. Information compromised in the Data Incident includes names, addresses Social Security numbers, and financial information (“Private Information”) of Plaintiffs and Settlement Class Members.

27. Co-Counsel and I vigorously and aggressively gathered all of the information that was available regarding Defendant and the Data Incident—including publicly-available documents concerning announcements of the Data Incident and notice of the Data Incident to Defendant’s current and former clients.

28. The initial investigation into the facts and circumstances of this Data Incident revealed that the cyberattack against Defendant likely involved some of Plaintiffs and Settlement Class Members Private Information that was contained in Defendant’s computer network.

29. After the initial investigation, on March 20, 2024, Plaintiffs filed a putative class action in the United States District Court for the Northern District of West Virginia, pleading claims for negligence, breach of implied contract, and unjust enrichment.

The Class Settlement

History of Negotiations

30. The settlement came about as the result of protracted arm's-length negotiations.

31. After a period of informal discovery and mutual exchanges of information, the Parties agreed to a formal mediation, and moved to suspend all deadlines pending the outcome of that mediation.

32. On July 28, 2024, following the exchange of informal discovery and a settlement demand, the Parties engaged in settlement negotiations and were able to reach the current settlement in principle.

33. While the negotiations were always collegial, cordial, and professional, there is no doubt that they were adversarial in nature, with both parties forcefully advocating the position of their respective clients.

34. I, my co-counsel, and Plaintiffs believe that the claims asserted in this case have merit. I acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Defendant through motion practice, trial, and potential appeals. I have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation.

35. It is my belief and that of my Co-Counsel, based on our extensive experience generally and my investigation and research into this case in particular, that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. The collective experience of me and my co-counsel, with experience on similar types of privacy and data protection practices provided substantive knowledge on the subject to enable us to represent Plaintiffs' and Settlement Class Members' interests without expending hundreds of hours and

substantial financial resources to come up to speed on the subject area or engaging in formal discovery.

36. Plaintiffs have been personally involved in the case and support the Settlement. Plaintiffs strongly believe the settlement is favorable to the Settlement Class.

37. Balancing the risks of continued litigation, the nature of the information involved in the Data Security Incident, the benefits of the Settlement, the difficulty of certifying class wide damages for a breach involving information of the type at issue here, the certainty of the recovery provided for by the Settlement, and the fact that the amount of the settlement is within the range of other data breach settlements, the Settlement warrants preliminary approval.

38. Based on the collective experience of Proposed Class Counsel with similar class actions and the investigation, research, and knowledge of the specific facts and legal issues in the action, it is our opinion that the settlement is in the best interest of Plaintiffs and the Settlement Class and achieves a result that is fair, reasonable, and adequate.

Release

43. The release in this case is tailored to the claims that have been pleaded or could have been pleaded in this case.

44. Settlement Class Members who do not exclude themselves from the Settlement Agreement will release claims against Defendant, related to the Data Incident.

Claims Process

45. The Parties have agreed upon, and request that the Court appoint Verita Global, LLC as Settlement Administrator to provide notice to Settlement Class Members and to process claims.

46. The forms of notice (the Long and Short Forms, attached to the Settlement Agreement as Exhibits A and B) clear and concise and directly apprise Settlement Class Members of all the information they need to know to make a claim or to opt-out or object to the Settlement

47. The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, make a claim or decide whether they would like to opt-out or object.

48. Contact information is available for virtually all Settlement Class members. Moreover, the Long Form Notice will be posted on the Settlement Website, along with other important documents such as the Settlement Agreement, and a toll-free help line will be available to answer Settlement Class Members' questions. The individual notice effort alone is likely to reach at least 90% of the Settlement Class (and likely higher).

49. Notice is estimated to cost between \$72,000 to \$87,000, depending upon how many email addresses Defendant has for Settlement Class Members (as email notices are less expensive than notices sent by U.S. Mail).

50. When implemented, the Notice Plan will provide the best notice practicable under the circumstances.

Exclusions and Objections

51. Similar to the timing of the claims process, the timing with regard to objections and exclusions is structured to give Class Members sufficient time to review the Settlement documents.

Service Award, Fees, and Costs

52. The Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service awards to Representative Plaintiffs until after the substantive terms of the settlement had been agreed upon, other than that Defendant would pay reasonable attorneys' fees, costs, expenses,

and a service award to Representative Plaintiffs as may be agreed to by Defendant and proposed Class Counsel and/or as ordered by the Court.

53. The Settlement Agreement calls for a reasonable service award to each Plaintiff, subject to approval of the Court. The Service Award are meant to recognize Plaintiffs for their efforts on behalf of the Class, including assisting in the investigation of the case, reviewing the pleadings, answering counsel's many questions, and reviewing the terms of the Settlement Agreement. The named Plaintiffs were not promised a service award, nor did they condition their representation on the expectation of a service award.

54. Settlement Class Representatives do not have any interests antagonistic to other class members and have retained lawyers who are abundantly qualified and experienced, satisfying the adequacy requirement.

55. Defendant has also agreed to pay, subject to Court approval, up to \$175,000 to proposed Settlement Class Counsel for attorneys' fees, as well as reimbursement for reasonable costs incurred in the litigation. This amount is in addition to any benefits provided to the Settlement Class Members and the cost of settlement administration, including the Claims Administrator and notice.

56. Proposed Class Counsel will submit a separate motion seeking attorneys' fees, costs, and Plaintiffs' Service Awards.

57. It is my opinion that the Settlement provides fair, adequate, and reasonable result for Representative Plaintiffs and Class Members.

* * * * *

I declare under penalty of perjury that that foregoing is true and correct.

Executed this 8th day of January, 2025 in Washington, D.C.

David K Lietz

DAVID K LIETZ

Exhibit A



**DAVID LIETZ LIST OF APPOINTMENTS 2020-2024
PRELIMINARILY OR FINALLY APPROVED DATA BREACH
CLASS ACTIONS**

1. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D. Tenn.) (appointed co-class counsel in data breach class action settlement involving over 63,000 class members; final approval granted Aug. 2021);
2. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted Dec. 2020);
3. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd Dist. Ct., Taylor Cnty., Tex.) (appointed class counsel; settlement valued at over \$7 million; final approval granted Feb. 2021);
4. *Jackson-Battle v. Navicent Health, Inc.*, Case No. 2020-CV-072287 (Super. Ct. of Bibb Cnty., Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);
5. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Super. Ct, Grays Harbor Cnty., Wash.) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Sept. 2020);
6. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.) (appointed class counsel in data breach settlement, final approval granted Sept. 2021);

7. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA (Super. Ct., King Cnty, Wash.) (appointed class counsel in data breach case, final approval granted Sept. 2021);
8. *Martinez et al. v. NCH Healthcare System, Inc.*, Case No. 2020-CA-000996 (12th Jud. Cir. Ct, Collier Cnty, Fla.) (appointed settlement class counsel; final approval granted Oct. 2021);
9. *Carr et al. v. Beaumont Health et al.*, Case No. 2020-181002-NZ (Cir. Ct., Oakland Cnty, Mich.) (appointed co-class counsel in data breach case involving 112,000 people; final approval granted Oct. 2021);
10. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899 (Cir. Ct., Baltimore Cnty., Md) (appointed class counsel; final approval granted Nov. 2021);
11. *Cece et al. v. St. Mary's Health Care System, Inc. et al.*, Case No. SU20CV0500 (Super. Ct, Athens-Clarke Cnty, Georgia) (appointed Settlement Class Counsel in data breach case involving 55,652 people; final approval granted Apr. 2022);
12. *Powers, Sanger et al v. Filters Fast LLC*, Case 3:20-cv-00982-jdp (appointed co-lead settlement class counsel; final approval granted July 2022);
13. *Garcia v. Home Medical Equipment Specialists, LLC*, Case No. D-202-cv-2021-06846 (appointed class counsel; final approval granted June 2022);
14. *Baldwin et al. v. National Western life Insurance Company*, Case No. 2:21-cv-04066 (W.D. Mo.) (appointed co-class counsel; final approval granted June 2022);

15. *Hashemi, et. al. v. Bosley, Inc.*, Case No. 21-cv-00946-PSG (C.D. Cal.) (appointed co-class counsel; final approval granted Nov. 2022);
16. *Paras et al. v. Dental Care Alliance*, Civil Action No. 22EV000181 (State Court of Fulton County, Georgia) (appointed co-class counsel; final approval granted Sept. 2022);
17. *James v. CohnReznick LLP*, Case No. 1:21-cv-06544 (S.D.N.Y.), (appointed as co-class counsel; final approval granted Sept. 2022);
18. *Purvis, et al v. Aveanna Healthcare, LLC*, Case No. 1:20-cv-02277-LMM (N.D. Ga.) (appointed class counsel; final approval granted Oct. 2022);
19. *Kolar v. CSI Financial Services LLC dba ClearBalance*, Case No. 37-2021-00030426-CU-NP-CTL (CA Super. Ct., San Diego Cnty) (appointed co-lead class counsel, final approval granted Jan. 2023);
20. *In re: California Pizza Kitchen Data Breach Litigation*, Case No.: 8:21-cv-01928-DOC-KES (C.D. Cal.) (appointed settlement class counsel; final approval granted Feb. 2023);
21. *Snyder v. Urology Center of Colorado, P.C.*, Case No. 2021CV33707 (2nd Dist. Ct., Denver Cnty, Colorado) (appointed settlement class counsel; final approval granted Oct. 2022);
22. *Steen v. The New London Hospital Association, Inc.*, Case No. 217-2021-CV-00281 (Merrimack Super. Ct., New Hampshire) (appointed class counsel; final approval granted Jan. 2023);
23. *Gonshorowski v. Spencer Gifts LLC*, Docket Number ATL-L-000311-22 (Super. Ct. of New Jersey, Law Division, Atlantic

- Cnty) (appointed class counsel; final approval granted Sept. 12, 2022);
24. *Nelson et. al v. Bansley & Kiener, LLP*, Civil Action No. 2021CH06274 (Ill. 1st Jud. Cir. Ct., Cook Cnty) (appointed class counsel; final approval granted Nov. 2022);
 25. *Henderson et al. v. San Juan Regional Medical Center*, Case No. D-1116-CV-2021-01043 (11th Jud. Dist. Court, San Juan Cnty., NM) (appointed class counsel; final approval granted Mar. 2023);
 26. *Cathy Shedd v. Sturdy Memorial Hospital, Inc.*, Civ. Action No: 2173 CV 00498 (Mass. Sup. Ct. Dept.) (appointed class counsel; final approval granted Feb. 2023);
 27. *Pagan et al. v. Faneuil, Inc.*, Case No. 3:22-cv-00297 (E.D. Va.) (appointed class counsel; final approval granted Feb. 2023);
 28. *Hawkins et al. v. Startek, Inc.*, Case No. 1:22-cv-00258-RMR-NRN (D. Colo.) (appointed class counsel; final approval granted Apr. 2023);
 29. *McManus v. Gerald O. Dry, P.A.*, Case No. 22 CVS 001776 (N.C. Super. Ct., Cabarrus Cnty.) (appointed settlement class counsel; final approval granted Mar. 2023);
 30. *McHenry v. Advent Health Partners, Inc.*, Case No. 3:22-cv-00287 (M.D.T.N.) (appointed class counsel; final approval granted Apr. 2023),
 31. *Lopez v. San Andreas Regional Center*, Case No. 21CV386748 (CA Sup. Ct., Santa Clara Cnty.) (appointed settlement class counsel; final approval granted Sept. 2023);

32. *Charlie, et al. v. Rehoboth McKinley Christian Health Care Services*, Case No. 21-00652-SCY-KK (D.N.M.) (appointed class counsel, final approval granted May 2023);
33. *Arbuthnot v. Acuity – CHS, LLC*, Case No. 6:22-cv-658-PGB-DCI (M.D. Fla.) (appointed settlement class counsel; final approval granted Aug. 2023);
34. *Bergeson v. Virginia Mason Medical Center*, Case No. 22-2-09089-8 SEA (Wash. Super. Ct., King Cnty.) (appointed settlement class counsel; final approval granted Aug. 2023);
35. *Reynolds et al. v. Marymount Manhattan College*, Case No. 1:22-CV-06846-LGS (S.D.N.Y.) (appointed settlement class counsel; final approval granted Oct. 2023);
36. *Griffey et al. v. Magellan Health, Inc.*, Case No. CV-20-01282-PHX-MTL (D. Ariz.) (appointed settlement class counsel; final approval granted Feb. 9, 2024);
37. *Connor Rowe v. Sterling Valley Systems, Inc. d/b/a/ Inntopia*, Case No.: 22-CV-04081 (Vt. Super. Ct., Civil Division, Lamoille Unit) (appointed settlement class counsel; final approval granted Jan. 9, 2024);
38. *Jones, et al v. P2ES Holdings, LLC*, Case No. 23-cv-00408-GPG-MEH (D. Colo.) (Appointed co-class counsel; final approval granted April 16, 2024);
39. *Guarino v. Radius Financial Group, Inc.*, Civ. Action No: 2283 CV 00196 (Mass. Sup. Ct. Dept., Plymouth Cnty.) (appointed class counsel; final approval granted Feb. 28, 2024);
40. *Foster et al. v. Lower, LLC*, Civil Action No. 1:22-CV-1581 (GLR) (D. Md.) (appointed class counsel; final approval granted Dec. 1, 2023);

41. *Lamie et. al v. LendingTree, LLC*, Case No. 3:22-cv-0037 (W.D.N.C.) (appointed class counsel; final approval granted Feb. 27, 2024);
42. *Tarrant v. Southland Holdings LLC*, Cause No. 067-333679-22 (67th Judicial Dist. Ct. of Tex., Tarrant Cnty.) (appointed class counsel; final approval granted April 19, 2024);
43. *May, et al v. Five Guys Enterprises, LLC*, Case No. 1:23-cv-00029 (E.D. Va.) (appointed class counsel; final approval granted July 12, 2024);
44. *Martinez, et al v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578 (2d Jud. Ct. of N.M., Cnty of Bernalillo) (appointed class counsel; final approval granted June 18, 2024);
45. *Medina v. Albertsons Companies, Inc.*, Case No. 1:23-cv-00480-MN (D. Del.) (appointed class counsel; final approval granted April 26, 2024);
46. *Prevost, et al v. Roper St. Francis Healthcare*, C.A. No. 2021-CP-10-01754 (9th Jud. Cir. Ct. of S.C., Ct. of Common Pleas) (Appointed co-class counsel; final approval granted May 2, 2024);
47. *Williams v. Monarch*, Case No. 23CVS-105, (N.C. Sup. Ct., Stanly Cnty.) (Appointed class counsel; final approval granted July 18, 2024);
48. *Webb v. Injured Workers Pharmacy, LLC*, Case No. 1:22-cv-10797-RGS (D. Mass)(appointed Class Counsel; preliminary approval granted August 9, 2024);
49. *Viruet v. Comm. Surgical Supply, Inc.*, Case No. OCN L-001215-23 (N.J. Sup. Ct., Ocean Cnty.) (Appointed co-class counsel; final approval granted Nov. 17, 2023);

50. *Kondo, et al v. Creative Services, Inc.*, Case No. 1:22-cv-10438-DJC (D. Mass.) (Appointed class counsel; final approval granted Sept. 7, 2023);
51. *Stark, et al v. Acuity Brands, Inc.*, Case No. 23EV006179H (Fulton Cnty. State Court of Ga.) (appointed class counsel; final approval granted May 21, 2024);
52. *Mendoza, et al v. Crystal Bay Casino, LLC*, Case No. 3:23-cv-00092-MMD-CLB (D. Nev.) (Appointed class counsel) (final approval granted August 6, 2024);
53. *Oche v. National Math & Science Initiative*, Index No. 510959/2023 (N.Y. Supr. Ct, Kings Cnty.) (Appointed class counsel; final approval granted June 12, 2024);
54. *Marshall v. Lamoille Health Partners, Inc.*, Case No. 2:22-cv-00166, (D. Vt.) (Appointed class counsel; final approval granted September 30, 2024);
55. *Amaral v. Stanley Street Treatment and Resources, Inc.*, Case No. 2373CV00075 (Bristol Sup. Ct. of Mass.) (Appointed class counsel; final approval granted Oct. 16, 2024);
56. *Granado, et al v. Sandridge Energy, Inc.*, Case No. 5:22-cv-00516-AMG (W.D. Okla.) (Appointed class counsel; final approval granted August 16, 2024);
57. *Stone v. Gardner Resources Consulting LLC*, Case No. 2282CV00845 (Mass. Sup. Ct. Dept. Norfolk County (appointed class counsel)(final approval granted August 28, 2024);
58. *In re Cleveland Brothers Data Incident Litigation*, Case No. 1:23-cv-00501-JPW (M.D. Penn.) (Appointed class counsel; final approval granted August 27, 2024);

59. *Sanguinetti et al. v. Nevada Restaurant Services, Inc.*, Case No. 2:21-cv-01768-RFB-DIA (appointed Class Counsel, preliminary approval May 28, 2024);
60. *Brent et al. v. Advanced Medical Management, LLC et al.*, Civil Action No. 1:23-cv-3254-JKB (D. Md.)(appointed Class Counsel, final approval granted December 12, 2024);
61. *Williams et al. v. Air Methods, LLC*, Civil Action No. 1:24-cv-00642-NRN (D. Colo.)(appointed class counsel; preliminary approval granted August 14, 2024);
62. *Baldwin v. Pepsi Bottling Ventures LLC*, 23-CV-005042-910 (N.C. Sup. Ct. Wake Cnty.)(appointed Settlement Class Counsel; preliminary approval granted September 16, 2024);
63. *Fernandez v. AUS, Inc.*, Case No. BUR-L-000674-24 (NJ Superior Ct., Burlington Cnty.) (appointed interim Settlement Class Counsel; preliminary approval granted November 1, 2024);
64. *In re: Gateway Rehabilitation Center, Data Breach Litigation*, Case No. GD-22-14713 (Crt. Common Pleas, Allegheny Cnty. PA) (appointed Co-Class Counsel; preliminary approval granted November 4, 2024);
65. *Collins et al. v. Washington College*, Case No. C-02-CV-24-001728 (Circuit Court Anne Arundel County, MD) (appointed Settlement Class Counsel; preliminary approval granted November 22, 2024);
66. *Stewart et al. v. Greensboro College, Inc.*, 24 CVS 4980 (N.C. Sup. Ct. Guilford Cnty.)(appointed Settlement Class Counsel; preliminary approval granted December 13, 2024);

Exhibit B



FIRM RESUME



Milberg Coleman Bryson Phillips Grossman (“Milberg”) is an AV-rated international law firm with more than 100 attorneys and offices across the United States, the European Union, and South America. Combining decades of experience, Milberg was established through the merger of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP.

Milberg prides itself on providing thoughtful and knowledgeable legal services to clients worldwide across multiple practice areas. The firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

For over 50 years, Milberg and its affiliates have been protecting victims’ rights. We have recovered over \$50 billion for our clients. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride ourselves on providing stellar service to our clients. We have repeatedly been recognized as leaders in the plaintiffs’ bar and appointed to numerous leadership roles in prominent national mass torts and class actions.

Milberg challenges corporate wrongdoing through class action, mass tort, consumer and shareholder right services, both domestically and globally.

In the United States, Milberg currently holds more than 100 court-appointed full- and co-leadership positions in state and federal courts across the country. Our firm has offices in California, Chicago, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, Washington, Washington D.C., and Puerto Rico. Milberg’s commitment to its clients reaches beyond the United States, litigating antitrust, securities, and consumer fraud actions in Europe and South America, with offices located in the United Kingdom, and the Netherlands. Milberg prides itself on providing excellent service worldwide.

The firm’s lawyers have been regularly recognized as leaders in the plaintiffs’ bar by the National Law Journal, Legal 500, Chambers USA, Time Magazine, Lawdragon, and Super Lawyers, among others.

“A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers.”
- THE NEW YORK TIMES

PRACTICE AREAS

SECURITIES FRAUD

Milberg pioneered the use of class action lawsuits to litigate claims involving investment products, securities, and the banking industry. Fifty years ago, the firm set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg remains among the most influential securities litigators in the United States and internationally.

Milberg and its attorneys were appointed Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases throughout its history.

ANTITRUST & COMPETITION LAW

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

FINANCIAL LITIGATION

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

CONSUMER PROTECTION

Milberg's Consumer Protection Practice Group focuses on improving product safety and protecting those who have fallen victim to deceptive marketing and advertising of goods and services and/or purchased defective products. Milberg attorneys have served as Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases alleging the sale of defective products, improper marketing of products, and violations of consumer protection statutes.

DANGEROUS DRUGS & DEVICES

Milberg is a nationally renowned firm in mass torts, fighting some of the largest, wealthiest, and most influential pharmaceutical and device companies and corporate entities in the world. Our experienced team of attorneys has led or co-led numerous multidistrict litigations of defective drugs and medical devices.

EMPLOYMENT & CIVIL RIGHTS

Milberg's Employment & Civil Rights attorneys focus on class actions and individual cases nationwide arising from discriminatory banking and housing practices, unpaid wages and sales commissions, improperly managed retirement benefits, workplace discrimination, and wrongful termination.

ENVIRONMENTAL LITIGATION & TOXIC TORTS

Milberg's Environmental Litigation & Toxic Torts Practice Group focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. Milberg and its attorneys have held leadership roles in all facets of litigation in coordinated proceedings, with a particular focus on developing the building blocks to establish general causation, which is often the most difficult obstacle in an environmental or toxic tort case.

STATE & LOCAL GOVERNMENTS

Milberg attorneys are dedicated to defending the Constitutional and statutory rights of individuals and businesses that are subjected to unlawful government exactions and fees by state and local governments or bodies.

INFORMATION TECHNOLOGY

Milberg is a leader in the fields of cyber security, data breach litigation, and biometric data collection, litigating on behalf of clients – both large and small – to change data security practices so that large corporations respect and safeguard consumers' personal data.

APPELLATE

Consisting of former appellate judges, experienced appellate advocates, and former law clerks who understand how best to present compelling arguments to judges on appeal and secure justice for our clients beyond the trial courts, Milberg's Appellate Practice Group boasts an impressive record of success on appeal in both state and federal courts.

LEADERSHIP ROLES

In re: Google Play Consumer Antitrust Litigation
In re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation
In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Products Liability Litigation
In re: Blackbaud Inc., Customer Data Breach Litigation
In re: Paragard IUD Products Liability Litigation
In re: Seresto Flea & Tick Collar, Marketing Sales Practices & Product Liability Litigation
In re: All-Clad Metalcrafters, LLC, Cookware Marketing and Sales Practices Litigation
In re: Allergan Biocell Textured Breast Implant Products Liability Litigation
In re: Zicam Cold Remedy Marketing, Sales Practices and Products Liability Litigation
In re: Guidant Corp. Implantable Defibrillators Product Liability Litigation
In re: Ortho Evra Products Liability Litigation
In re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation
In re: Kugel Mesh Hernia Patch Products Liability Litigation
In re: Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation
In re: Stand 'N Seal Products Liability Litigation
In re: Chantix (Varenicline) Products Liability Litigation
In re: Fosamax (alendronate Sodium) Products Liability Litigation
In re: Benicar (Olmesartan) Products Liability Litigation
In re: Onglyza (Saxagliptin) & Kombiglyze Xr (Saxagliptin & Metformin) Products Liability Litigation
In re: Risperdal and Invega Product Liability Cases
In re: Mirena IUS Levonorgestrel-Related Products Liability Litigation
In re: Incretin-based Therapies Product Liability Litigation
In re: Reglan/Metoclopramide
In re: Levaquin Products Liability Litigation
In re: Zimmer Nexgen Knee Implant Products Liability Litigation
In re: Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation
In re: Propecia (Finasteride) Products Liability Litigation
In re: Transvaginal Mesh (In Re C. R. Bard, Inc., Pelvic Repair System Products Liability Litigation; In Re Ethicon, Inc., Pelvic Repair System Products Liability Litigation; In Re Boston Scientific, Inc., Pelvic Repair System Products Liability; In Re American Medical Systems, Pelvic Repair System Products Liability, and others)
In re: Fluoroquinolone Product Liability Litigation
In re: Depuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation
In re: Recalled Abbott Infant Formula Products Liability Litigation
Home Depot, U.S.A., Inc. v. Jackson
Webb v. Injured Workers Pharmacy, LLC

NOTABLE RECOVERIES

\$4 Billion Settlement

In re: Prudential Insurance Co. Sales Practice Litigation

\$3.2 Billion Settlement

In re: Tyco International Ltd., Securities Litigation

\$1.14 Billion Settlement

In Re: Nortel Networks Corp. Securities Litigation

\$1 Billion-plus Trial Verdict

Vivendi Universal, S.A. Securities Litigation

\$1 Billion Settlement

NASDAQ Market-Makers Antitrust Litigation

\$1 Billion Settlement

W.R. Grace & Co.

\$1 Billion-plus Settlement

Merck & Co., Inc. Securities Litigation

\$775 Million Settlement

Washington Public Power Supply System Securities Litigation

\$586 Million Settlement

In re: Initial Public Offering Securities Litigation

LOCATIONS

PUERTO RICO

1311 Avenida Juan Ponce de León
San Juan, Puerto Rico 00907

CALIFORNIA

280 South Beverly Drive, Penthouse
Beverly Hills, California 90212

402 West Broadway, Suite 1760
San Diego, California 92101

FLORIDA

201 Sevilla Avenue, Suite 200,
Coral Gables, Florida 33134

3833 Central Avenue
St. Petersburg, Florida 33713

ILLINOIS

227 W. Monroe Street, Suite 2100
Chicago, Illinois 60606

LOUISIANA

5301 Canal Boulevard
New Orleans, Louisiana 70124

MICHIGAN

6905 Telegraph Road, Suite 115
Bloomfield Hills, Michigan 48301

NEW JERSEY

1 Bridge Plaza North, Suite 675
Fort Lee, New Jersey 07024

NEW YORK

100 Garden City Plaza, Suite 500
Garden City, New York 11530

405 E 50th Street
New York, New York 10022

NORTH CAROLINA

900 West Morgan Street
Raleigh, North Carolina 27603

5 West Hargett Street, Suite 812
Raleigh, North Carolina 27601

SOUTH CAROLINA

825 Lowcountry Blvd, Suite 101
Mount Pleasant, South Carolina 29464

TENNESSEE

800 S. Gay Street, Suite 1100
Knoxville, Tennessee 37929

WASHINGTON

1420 Fifth Ave, Suite 2200
Seattle, Washington 98101

17410 133rd Avenue, Suite 301
Woodinville, Washington 98072

WASHINGTON, D.C.

5335 Wisconsin Avenue NW, Suite 440
Washington, D.C. 20015

NETHERLANDS

UNITED KINGDOM



Exhibit C



CHESTNUT CAMBRONNE FIRM RESUME

For over 50 years, Chestnut Cambronne PA has been representing clients in class action litigation both in the Twin Cities area and at a national level. Since its inception, Chestnut Cambronne has been engaged in complex litigation throughout the country and has successfully both prosecuted and defended class litigation addressing substantive legal questions in the fields of data security breaches, securities, ERISA, banking, antitrust, and consumer protection law. Representative class action cases in which the firm and its members have been involved with over the past several years include:

In Re: Change Healthcare, Inc. Customer Data Security Breach Litig., No. 24-md-03108 (D. Minn.). A pending multi-district class action against Change Healthcare and United Healthcare, Inc. This is one of the biggest data breaches in United States history. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel over the patient track.

In re: Berry, Dunn, McNeil & Parker Data Security Incident Litigation, Case No. 2:24-cv-00146 (D. Me.). A pending class action against Berry, Dunn, McNeil & Parker, LLC, a Maine-based accounting firm, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re Signature Performance, Case No. 8:24-cv-00252-BCB-RCC (D. Neb.). A pending class action against Signature performance, a Nebraska-based health consulting firm, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re LoanCare Data Breach Litigation, Case No. 3:23-cv-01508 (M.D. Fla.). A pending class action against LoanCare, Inc., a Florida-based mortgage provider, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re ESO Solutions, Inc. Data Breach Litigation, Case No. 1:23-cv-01557 (W.D. Tex.). A pending class action against ESO Solutions, Inc., a Texas-based hospital software solutions provider, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Cahill v. Memorial Heart Institute, LLC, Case No. 1:23-cv-168 (E.D. Tenn.). A pending class action against Memorial Heart Institute, a Tennessee-based healthcare network, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Clauson v. Arrowhead Regional Computing Consortium, Case No. 24-cv-131 (D. Minn.). A pending class action against Arrowhead Regional Computing Consortium, a Minnesota-based payroll service provider. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re Peoples Bank, as a Successor to Limestone Bank, Data Breach Litig., No. 2023-cv-03043 (S.D. Ohio). A pending class action against Peoples Bank, an Ohio-headquartered bank, alleging negligence and other claims in a data security breach. Philip J. Krzeski was court appointed as Interim Co-Lead Counsel.

In re Weirton Medical Center Data Breach Litigation, No. 5:24-cv-61 (N.D.W.Va.). A pending class action against Weirton Medical Center, a West Virginia-based hospital network, alleging negligence and other claims in a data security breach. Philip J. Krzeski was court appointed as Interim Co-Lead Counsel.

In re Cinfed Data Breach Litigation, No. 23-cv-00776 (S.D. Ohio). A pending class action against Cinfed Credit Union, a Cincinnati-based credit union, alleging negligence and other claims in a data security breach. Philip J. Krzeski was court appointed as Interim Co-Lead Counsel.

In re R&B Corporation of Virginia d/b/a Credit Control Corporation, Case No. 4:23-cv-00066-JKW-RJK (E.D. Va.). A pending class action against a R&B Corporation of Virginia, a Virginia-based collections company, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re: Group Health Plan Litigation, Case No. 23-cv-00267 (D. Minn.). A pending class action against Group Health Plain, a Minnesota-based healthcare network, alleging wiretapping claims stemming from a Facebook pixel. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Hightower v. Receivables Performance Management, LLC, No. 2:22-cv-01683 (W.D. Wash.). A pending class action on behalf of a putative class of consumers against Receivables Performance Management, LLC, a Washington-based debt collection company, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re OrthoAlaska Data Breach Litigation, No. 3:23-cv-00242 (D. Alaska). A pending class action against OrthoAlaska, an Alaska-based orthopedic clinic, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re Regents of the University of Minnesota Data Litigation, Case No. 27-cv-23-14056 (Hennepin County, Minnesota). A pending class action against the University of Minnesota, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to the Interim Plaintiffs' Steering Committee.

In re DISH Network Data Breach Security Litigation, Case No. 1:23-cv-01168 (D.Col.). A pending class action against DISH Network, a Colorado-based cable company, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re Whitworth Data Breach Security Litigation, Case No. 2:23-cv-00179-SAB (E.D. Wash.). A pending class action against Whitworth University, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Rasmussen, et al., v. Uintah Health Care Basin, 2:23-cv-0322 (Dt. Ut.). A pending class action on behalf of patients against healthcare network Uintah Health Care Basin, a Utah-based healthcare network, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Johnson v. Yuma Regional Medical Center, No. 2:22-cv-01061 (D. Ariz.). A pending class action on behalf of a putative class of consumers against Yuma Regional Medical Center, an Arizona healthcare network, and related entities alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Anderson v. Fortra LLC, No. 23-cv-00533 (D. Minn.). A pending class action on behalf of a putative class of consumers against Fortra LLC, a cybersecurity vendor, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In Re: Netgain Technology, LLC, Consumer Data Breach Litigation, No. 21-cv-1210-SRN-LIB (D. Minn.). A pending class action on behalf of a putative class of consumers against Netgain Technology alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Hale, et al., v. ARcare, Inc., No. 3:22-cv-00117 (E.D. Ark.). A pending class action on behalf of a putative class of consumers against ARcare, an Arkansas healthcare network, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re CCM Health Data Security Litigation, Case No. 12-cv-24-169 (Chippewa County). A pending class action on behalf of a putative class of patients against CCM Health, a Minnesota-based healthcare network, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re Tift Regional Health System, Inc. Data Breach Litig., No. 2023cv0313 (Tift County, Georgia). A pending class action on behalf of a putative class of patients against Tift Regional Health System, a Georgia-based healthcare network, alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Rodriguez v. Mena Regional Hospital Commission d/b/a Mena Regional Health System, No. 2:23-cv-2002 (W.D. Ark.). A pending class action on behalf of a putative class action on behalf of medical patients against Mena Regional hospital Commission, an Arkansas Healthcare Network alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

DeSue v. 20/20 Eye Care Network, Inc., No. 21-cv-61275-RAR (S.D. Fla.). A settled class action on behalf of a putative class of consumers against 20/20 Eye Care Network alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Baker v. Parkmobile, LLC, No. 21-cv-2181-SCJ (N.D. Ga.). A pending class action on behalf of a putative class of consumers against Parkmobile, LLC alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to the Interim Plaintiffs' Steering Committee.

Garrett v. Herff Jones, LLC, No. 21-cv-01329-TWP-DLP (S.D. Ind.). A settled class action on behalf of a putative class of consumers against Herff Jones alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re EyeMed Vision Care, LLC Data Security Breach Litigation, No. 21-cv-00036-DRC (S.D. Ohio). A pending class action on behalf of a putative class of consumers against EyeMed alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re Luxottica of America, Inc. Data Security Breach Litigation, No. 20-cv-00908-MRB (S.D. Ohio). A pending class action on behalf of a putative class of consumers against Luxottica alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

Greenstate Credit Union v. Hy-Vee, Inc., No. 20-cv-00621-DSD-DTS (D. Minn.). A settled class action on behalf of a putative class of financial institutions against Hy-Vee alleging negligence and violations of the Minnesota Plastic Card Security Act in a data security breach. Bryan L. Bleichner served as co-counsel.

Village Bank v. Caribou Coffee Company, Inc., No. 19-cv-01640-JNE-HB (D. Minn.). A settled class action on behalf of a putative class of financial institutions against Hy-Vee alleging negligence and violations of the Minnesota Plastic Card Security Act in a data security breach. Bryan L. Bleichner served as court appointed settlement class counsel.

In re WaWa, Inc. Data Security Litig., No. 19-cv-6019-GEKP (E.D. Pa.). A pending class action on behalf of a putative class of financial institutions against WaWa, Inc. alleging negligence and other claims in a data security breach. Bryan L. Bleichner serves on the Financial Institution Track Defendant Discovery and ESI Committee

In re: Equifax, Inc., Customer Data Security Breach Litigation, No. 17-md-2800-TWT (N.D. Ga.). A settled class action on behalf of a putative class of financial institutions against Equifax alleging negligence and other claims in a data security

breach. Bryan L. Bleichner was court appointed to the Financial Institution Plaintiffs' Steering Committee.

Midwest Am. Fed. Credit Union v. Arby's Rest. Grp. Inc., No. 17-cv-00514-AT (N.D. Ga.). A settled class action on behalf of a putative class of financial institutions against Arby's alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to the Interim Plaintiffs' Executive Committee.

Bellwether Community Credit Union v. Chipotle Mexican Grill, Inc., No. 17-cv-1102 (D. Colo.). A settled class action on behalf of a putative class of financial institutions against Chipotle alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to Chair of the Executive Committee.

First Choice Fed. Credit Union et al. v. The Wendy's Company et al., No. 2:16-cv-00506 (W.D. Pa.). A resolved class action on behalf of a putative class of financial institutions against Wendy's alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed to the Executive Committee.

In re: The Home Depot, Inc., Customer Data Security Breach Litigation, No. 1:14-md-02583 (TWT) (N.D. Ga.). This is a resolved putative class action against The Home Depot alleging negligence and other claims in a data security breach affecting 56 million consumers and tens of thousands of financial institutions. Bryan L. Bleichner was court appointed to the Financial Institution Plaintiffs' Steering Committee.

In re: Target Corporation Customer Data Security Breach Litigation, No. 0:14-md-02522 (PAM/JJK) (D. Minn. December 26, 2013). This is a settled class action against Target Corporation alleging negligence and violations of the Minnesota Plastic Card Security Act in a data security breach affecting 70 million consumers and tens of thousands of financial institutions. Chestnut Cambronne served as Co-Lead Counsel for the Financial Institution Class and Coordinating Lead Counsel for Plaintiffs.

In re Pawn America Consumer Data Breach Litigation, No. 21-cv-2544-PJS-HB (D. Minn.). A pending class action on behalf of a putative class of consumers against Pawn America and related entities alleging negligence and other claims in a data security breach. Bryan L. Bleichner was court appointed as Interim Co-Lead Counsel.

In re Wasserstrom Holdings, Inc., Data Breach Litigation, Case No. 3:23-cv-2424 (S.D. Ohio). A pending class action against Wasserstrom Holdings, Inc., an Ohio-based restaurant supplier, alleging negligence and other claims in a data security breach. Philip J. Krzeski was court appointed as Interim Co-Lead Counsel.

Kobor v. Skidmore College, No. 1:23-cv-01392 (N.D.N.Y.). A pending class action against Skidmore College, alleging negligence and other claims in a data security breach. Philip J. Krzeski was court appointed as Interim Co-Lead Counsel.

In re Precision Imagining, No. 16-2023-CA-00931 (Duval County, Florida). A pending class action against Precision Imagining, a Florida-based imagining company, alleging negligence and other claims in a data security breach. Philip J. Krzeski was court appointed as Interim Co-Lead Counsel.

Phillips v. Bay Bridge Administrators, LLC, No. 1:23-cv-022 (W.D. Tex.). A pending class action on behalf of a putative class of consumers against an insurance administrator alleging negligence and other claims in a data security breach. Philip J. Krzeski was court appointed as Executive Committee Counsel.

Lutz v. Electromed, Inc., No. 21-cv-2198-SRN-DTS (D. Minn.). A settled class action on behalf of a putative class of consumers against Electromed alleging negligence and other claims in a data security breach. Chestnut Cambronne prosecuted the matter with two additional plaintiffs' law firms.

Walker v. Nautilus, Inc., No. 20-cv-3414-EAS-EPD (S.D. Ohio). A settled consumer protection class action against Nautilus, Inc. alleging Defendant materially misrepresented the horsepower produced by the electric motors in its treadmills. Chestnut Cambronne served as Plaintiffs' counsel.

In re DPP Beef Litig., No. 20-cv-1319-JRT/HB (D. Minn.). A pending class action on behalf of a putative class of direct purchasers against beef product producers alleging claims of price fixing. Chestnut Cambronne serves as Plaintiffs' Counsel.

Alicia Schaeffer v. Life Time Fitness, Inc. et al., No. 27-cv-20-10513 (Minn. 2020). A class action on behalf of a putative class of group fitness instructors against Life Time Fitness, Inc. alleging Defendants refused to compensate Plaintiff and class members for work performed for their employer's benefit. Chestnut Cambronne served as Plaintiffs' counsel.

Teeda Barclay v. Icon Health & Fitness, Inc., et al., No. 19-cv-02970-ECT-DTS (D. Minn.). A pending consumer protection class action against Icon Health & Fitness and NordicTrack alleging Defendants materially misrepresented the horsepower produced by the electric motors in its treadmills. Bryan L. Bleichner currently serves as Plaintiffs' counsel.

In re Resideo Technologies, Inc. Securities Litig., No. 19-cv-02863-WMW-KMM (D. Minn.). A settled shareholder class action against Resideo and its directors and officers for failing to disclose material information about its spin-off from Honeywell. Chestnut Cambronne served as liaison counsel on this matter.

Delamarter v. Supercuts, Inc., No. 19-3158-DSD-TNL (D. Minn.). A settled class action on behalf of a putative class of consumers against Supercuts alleging violations of the Fair and Accurate Credit Transactions Act. Bryan L. Bleichner served as Plaintiff's Counsel.

Kenneth Peterson v. JBS USA Food Company Holdings, et al., No. 19-cv-1129-JRT-HB (D. Minn.). A pending class action on behalf of a putative class of indirect purchasers against beef product producers alleging claims of price fixing. Chestnut Cambronne served as Plaintiffs' Counsel.

In re: FedLoan Student Loan Servicing Litigation, No. 2:18-md-02833-CDJ (E.D. Pa.). A pending class action on behalf of a putative class of student loan borrowers against FedLoan Servicing / Pennsylvania Higher Education Assistance Agency alleging consumer fraud violations and other claims. Bryan L. Bleichner was court appointed to the Executive Committee.

ASEA/AFSCME Local 52 Health Benefits Trust v. St. Jude Medical, LLC, et al., No. 18-cv-02124-DSD-HB (D. Minn.). A class action on behalf of a putative class of third party health benefits payors against St. Jude Medical and Abbott Laboratories alleging product liability and other claims. Chestnut Cambronne served as Plaintiffs' Counsel.

In Re Pork Antitrust Litigation, No. 18-cv-1776-JRT-HB (D. Minn.). A pending class action on behalf of a putative class of direct purchasers against pork product producers alleging claims of price fixing. Chestnut Cambronne currently serves as Plaintiffs' Counsel.

James Bruner, et al. v. Polaris Industries Inc. et al., No. 18-cv-00939-WMW-DTS (D. Minn.). A class action on behalf of a putative class of consumers against Polaris

Industries alleging product liability claims. Chestnut Cambronne was court appointed as Plaintiffs' Liaison Counsel.

Marie Travis v. Navient Corp. et al., No. 17-cv-04885-JFB-GRB (E.D.N.Y.). A class action on behalf of a putative class of student loan borrowers against Navient Corp. alleging consumer fraud act violations and other claims. Bryan L. Bleichner served as Plaintiffs' Counsel.

Gordon v. Amadeus IT Group, S.A., No. 1:15-cv-05457 (S.D.N.Y. July 14, 2015). A resolved putative class action alleging collusion and anticompetitive behavior among the companies that provide the systems used by travel agents to link to airline flight and fare information known as global distribution systems (GDS). Chestnut Cambronne served as Plaintiffs' Counsel in this litigation.

In re: Anthem, Inc. Data Breach Litigation, No. 5:15-md-02617 (LHK) (N.D. Cal. March 13, 2015). A settled class action against Anthem alleging negligence and other claims in a data security breach affecting in excess of 80 million consumers. Chestnut Cambronne served as Plaintiffs' Counsel in the litigation.

Gassoway v. Benchmark Energy Transport Services, Inc., (S.D. Tex. February 23, 2015). A certified and settled class action case alleging Benchmark Energy Transport Services deducted and withheld an undisclosed surcharge from trucking owner-operators in violation of Federal Regulations. Chestnut Cambronne served as co-lead counsel for the certified class.

Christian v. National Hockey League, No. 0:14-md-02551 (SRN/JSM) (D. Minn. April 15, 2014). Chestnut Cambronne was court appointed to the Plaintiffs' Executive Committee.

Puerta v. Tile Shop Holdings, Inc., No. 0:14-cv-00786 (ADM/TNL) (D. Minn. March 21, 2014). A settled shareholder class action against Tile Shop Holdings and its directors and officers for failing to disclose material information about a supplier relationship. Chestnut Cambronne served as liaison counsel on this matter.

In re: Domestic Drywall Antitrust Litig., No. 2:13-md-2437; 939 F. Supp. 2d 1371 (E.D. Pa. 2013). A settled antitrust putative class action against domestic manufacturers of drywall alleging price-fixing. Chestnut Cambronne served as Plaintiffs' Counsel in this matter.

Lucas v. SCANA Energy Marketing, Inc., No. 1:12-cv-02356 (SCJ) (N.D. Ga. Feb. 8, 2013). A settled consumer protection class action in which Chestnut Cambronne served as co-lead counsel.

In re: Imprelis Herbicide Mktg., Sales Practices and Products Liability Litig., No. 2:11-md-02284 (GP) (E.D. Pa. Oct. 20, 2011). This is a settled products liability class action against the manufacturer of Imprelis Herbicide, DuPont. The class recovered over \$378 million to date. Chestnut Cambronne served as Plaintiffs' Counsel.

Minneapolis Firefighters' Relief Ass'n v. Medtronic, Inc., No. 08-6324 (PAM/AJB) (D. Minn. 2009); 618 F. Supp. 1016 (D. Minn. 2009); 278 F.R.D. 454 (D. Minn. 2011). This is a settled securities fraud class action in which Chestnut Cambronne was lead and liaison counsel. The class recovered \$80 million.

In re: American Express Anti-Steering Rules Antitrust Litig. (No. II), MDL No. 2221, 764 F. Supp. 2d 1343 (E.D.N.Y. 2010). This is a settled class action alleging that Defendant American Express' policies prohibiting merchants from offering customers incentives to use a particular card or type of payment violated antitrust laws. The case is currently under appellate review before the United States Court of Appeals for the Second Circuit.

Mooney v. Allianz Life Ins. Co. of North America, No. 06-545 (ADM/FLN); 2010 WL 419962 (D. Minn. Jan. 29, 2010). This was a certified class action in which Chestnut Cambronne was co-lead counsel seeking damages of \$2 billion. After a three-week trial, the jury concluded Allianz made false and misleading statements intentionally in violation of the statute, but did not award damages.

In re United Healthcare, Inc. Shareholder Derivative Litig., 631 F.3d 913 (8th Cir. 2011), *affirming* 631 F. Supp. 2d 1151 (D. Minn. 2009). This is a settled shareholder derivative case involving the backdating of stock options. Chestnut Cambronne served as lead counsel and recovered on behalf of the company a settlement valued at \$922 million. Today, it remains the largest recovery in a shareholder derivative case in United States history.

San Francisco Health Plan v. McKesson Corp., No. 1:08-cv-10843 (D. Mass. May 20, 2008). A settled RICO and Clayton Act class action challenging the pricing of pharmaceutical drugs. The class recovered \$82 million. Chestnut Cambronne represented Plaintiff Anoka County.

In re MoneyGram Int'l, Inc. Securities Litig., No. 08-cv-883 (DSD/JJG) (D. Minn. July 22, 2008); 626 F. Supp. 2d 947 (D. Minn. 2009). This is a settled securities fraud class action in which Chestnut Cambronne was co-lead counsel and recovered \$80 million for the class.

Avritt v. Reliastar Life Ins. Co., No. 0:07-cv-01817 (JNE/JJG) (D. Minn. April 9, 2007). This is a settled class action that alleged Defendant defrauded consumers in the sale of its Fixed Annuities. Chestnut Cambronne served as local counsel and recovered \$31 million for the class.

In re: Air Cargo Shipping Services Antitrust Litig., No. 1:06-md-01775 (JG/VVP) (E.D.N.Y. June 27, 2006). This is a settled class action alleging a price-fixing conspiracy by dozens of international air cargo carriers. Over \$500 million was recovered for the class.

In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litig., MDL No. 1720, 398 F. Supp. 2d 1356 (E.D.N.Y. 2005). A settled class action alleging that the rules Defendants Visa and MasterCard impose upon merchants violate antitrust laws.

In re Xcel Energy, Inc. Sec, Derivative & "ERISA" Litig., 364 F. Supp. 980, 995-996 (D. Minn. 2005); *In re Xcel Energy Securities, Derivative & "ERISA" Litigation*, 286 F. Supp. 2d 1047 (D. Minn. 2003). This was a securities fraud class action in which Chestnut Cambronne was co-lead counsel. The class recovered \$80 million.

Cooper v. Miller, Johnson, Steichen & Kinnard, No. 0:02-cv-01236 (RHK/AJB) (D. Minn. June 5, 2002) This is a settled securities fraud class action in which Chestnut Cambronne served as lead counsel. The class recovered \$5.6 million.

In Re E.W. Blanch Holdings, Inc. Securities Litig., No. 0:01-cv-00258 (JNE/JGL) (D. Minn. Feb. 12, 2001) This is a settled securities fraud class action in which Chestnut Cambronne served as lead counsel. The class recovered \$20 million.

In re Blue Cross Subscriber Litig., No. 19-C3-98-7780 (Minn. Dist. Ct. 1st Dist.) This was a consumer protection class action on behalf of Blue Cross subscribers. Over \$41 million was recovered for Blue Cross policy holders. Chestnut Cambronne served as lead counsel.

Alford v. Mego Mortgage Home Loan Owner Trust 1997-1; Mazur v. Empire Funding Home Loan Owner Trust 1997-1; and Banks, et al. v. FirstPlus Home Loan Trust 1996-

2 (Minn. Dist. Ct. 4th Dist.). These are settled consumer-lending cases in which Chestnut Cambronne acted as co-lead counsel.

Chestnut Cambronne also has experience successfully defending class litigation. *See, e.g., In re K-Tel*, 300 F.3d 881 (8th Cir. 2002); *Wylde v. Champps of New Brighton*, No. 10-cv-4953 (ADM/JJK) (D. Minn. 2011); *Johnson v. BP America, Inc.* No. 12-cv-00417 (RHK/JSM) (D. Minn. 2012). Not only do the results obtained in the above cases attest to the skill and competence of Chestnut Cambronne lawyers in shareholder litigation, various courts have publicly commended Chestnut Cambronne for its efforts:

Plaintiffs' co-lead counsel have significant experience in representing shareholders and shareholder classes in federal securities actions around the country and in this district in particular. Counsel-both the lawyers representing lead plaintiffs and defendants-conducted themselves in an exemplary manner. ... Thus, the effort of counsel in efficiently bringing this case to fair, reasonable and adequate resolution is the best indicator of the experience and ability of the attorneys involved, and this factor supports the court's award of 25%.

In re Xcel Energy, Inc. Sec. Derivative & "ERISA" Litig, 364 F. Supp. 980, 995 (D. Minn. 2005).