

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

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April Term, 2021
 Month Year
 No. 02045

KATZ VS EINSTEIN HEALTHCARE NETWORK

Name of Filing Party:
NANETTE KATZ-PLF

INDICATE NATURE OF DOCUMENT FILED:
 Petition (*Attach Rule to Show Cause*) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case? Yes No
Is another petition/motion pending? Yes No
 If the answer to either question is yes, you must identify the judge(s):

TYPE OF PETITION/MOTION (see list on reverse side) MOT-PRELIMINARY STTLMNT APPROV		PETITION/MOTION CODE (see list on reverse side) MTPSA
ANSWER / RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):		
I. CASE PROGRAM OTHER PROGRAM Court Type: <u>CLASS ACTION</u> Case Type: <u>CLASS ACTION</u>	II. PARTIES (<i>required for proof of service</i>) (Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.) KEVIN CLANCY BOYLAN 2005 MARKET STREET SUITE 350 , PHILADELPHIA PA 19103 JAN P LEVINE 3000 TWO LOGAN SQUARE 18TH AND ARCH STREETS , PHILADELPHIA PA 19103	
III. OTHER		

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

 (Attorney Signature/Unrepresented Party) February 25, 2022 (Date) FRANCESCA KESTER (Print Name) _____
 (Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

FILED

25 FEB 2022 07:36 pm

Civil Administration

M. RUSSO

**IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

NANETTE KATZ; CHRISTINA KRESKI;
Britney Richardson, as parent guardian of
S.H., a minor; and NGHI TA, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

EINSTEIN HEALTHCARE NETWORK,

Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PA

APRIL TERM, 2021

NO. 02045

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

Pursuant to Rules 1702, 1708, 1709, 1710, 1712, and 1714 of the Pennsylvania Rules of Civil Procedure, Plaintiffs Nanette Katz; Christina Kreski; Britney Richardson, as parent guardian of S.H.; and Nghi Ta, and the Class they seek to represent, by and through their counsel of record, respectfully request the Court:

1. Preliminarily approve the Settlement;
2. Certify, for settlement purposes, the proposed Settlement Class,
3. Appoint Plaintiffs Nanette Katz; Christina Kreski; Britney Richardson, as parent guardian of S.H.; and Nghi Ta as the Class Representatives, and Jean S. Martin from Morgan & Morgan Complex Litigation Group; Linda P. Nussbaum from Nussbaum Law Group, P.C.; Kenneth J. Grunfeld from Golomb Spirt Grunfeld, P.C.; Gayle M. Blatt from Casey Gerry Schenk Francavilla Blatt & Penfield, LLP; and Kelly K. Iverson from Lynch Carpenter, LLP as Class Counsel;
4. Approve the Notice Program set forth in the Agreement and approve the form and content of the claim form and notices, attached to the Agreement as Exhibits A, B, and C;
5. Appoint RG/2 Claims Administration as the Notice Specialist and Claims Administrator;
6. Appoint Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP to serve as Claims Referee;
7. Approve and order the opt-out and objection procedures set forth in the Agreement, and;
8. Schedule a fairness hearing on Final Approval to occur no sooner than one hundred and ten (110) days after the date of the Preliminary Approval is entered.

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

Respectfully submitted,

This 24th day of February, 2022.

BY:

s/ Francesca Kester
Francesca Kester

s/ Jean S. Martin
Jean S. Martin

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**IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

NANETTE KATZ, CHRISTINA KRESKI,
Britney Richardson, as parent guardian of
S.H., a minor, and NGHI TA, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

EINSTEIN HEALTHCARE NETWORK,

Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PA

APRIL TERM, 2021

NO. 02045

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

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Pursuant to Rules 1702, 1708, 1709, 1710, 1712, and 1714 of the Pennsylvania Rules of Civil Procedure, Plaintiffs Nanette Katz; Christina Kreski; Britney Richardson, as parent guardian of S.H.; and Nghi Ta (collectively “Plaintiffs”) respectfully submit this Memorandum of Law in support of their Unopposed Motion for Preliminary Approval of the Class Action Settlement, and for Certification of the Settlement Class.

I. INTRODUCTION

Plaintiffs respectfully move for Preliminary Approval of the Settlement set forth in the Settlement Agreement (“Settlement” or “Agreement,” attached as **Exhibit 1**), which resolves Plaintiffs’ and the Class’s claims against Einstein Healthcare Network (“Einstein” or “Defendant”) in the above-captioned action. The Court should grant Preliminary Approval because:

- (1) the Settlement provides substantial monetary relief to the Settlement Class up to a maximum payment of \$1,500,000.00, and in addition offers one year of identity monitoring services with identity theft insurance and identity restoration services, to those who make claims. The monetary component of the Settlement provides payment to compensate Settlement Class Members for lost time, ordinary (out-of-pocket) losses, and extraordinary losses; and
- (2) the terms of the Settlement are well within the range of reasonableness, consistent with applicable statutes and case law.¹

In addition to approving the Settlement, Plaintiffs respectfully request the Court approve the Settlement’s Notice Program and the form and content of the claim form and notices, appoint the Claims Administrator and Claims Referee, certify a Settlement Class, and schedule a Final Approval Hearing.

A. Factual Background.

Plaintiffs sued on behalf of themselves and all others similarly situated whose protected identifying information (“PII”) and protected health information (“PHI”) were part of a data breach in which an unknown third party allegedly gained access to certain email accounts (the

¹ All capitalized terms used herein have the meaning assigned in the Settlement Agreement attached hereto as Exhibit 1.

“Accounts”) belonging to Einstein employees between August 5, 2020 and August 17, 2020 (the “Incident”). Plaintiffs allege Defendant failed to properly secure its computer systems—including its email system—thereby allowing an unauthorized third party to gain access to multiple email accounts belonging to its employees—email accounts containing PII and PHI belonging to Plaintiffs and Settlement Class Members. Based on Defendant’s acts, omissions, and/or practices, Plaintiffs asserted claims against Defendant for (i) negligence, (ii) breach of contract, (iii) breach of implied contract, (iv) breach of fiduciary duty, (v) breach of confidence, and (vi) declaratory judgment, warranting monetary and other relief. Defendant denies any wrongdoing and maintains its practices comply with applicable laws and industry standards.

B. Settlement.

The Settlement satisfies the criteria for preliminary approval under Pennsylvania law. One of the keystones of this Settlement is that each eligible Settlement Class Member will be able to file a Claim Form for cash reimbursement of up to \$20 per hour (for a maximum of 3 hours) as compensation for time lost dealing with the Incident, up to \$1,500 for documented “ordinary expenses” incurred in responding to the Incident, and up to \$7,500 for documented “extraordinary expenses” incurred in responding to the Incident.

Another testament to the reasonableness and fairness of the Settlement is the magnitude of the Settlement Fund. Class Counsel believe the \$1,500,000 available fund represents an excellent result for Class Members, in light of the facts surrounding this data breach case.²

This settlement is the product of substantial arm’s length negotiations occurring over several months’ time. In particular, the Parties engaged in motion practice, informal discovery, and informal and formal settlement discussions, which began in approximately mid-2021.³ During

² Declaration of Jean Martin on behalf of Proposed Class Counsel in Support of Plaintiffs’ Motion for Preliminary Approval (“Martin Decl.”), attached hereto as Exhibit 2, at ¶¶ 59-61.

³ Martin Decl. ¶ 21.

these negotiations, the Parties engaged in, pre-mediation discovery in order to fully evaluate the merits and challenges to their case.⁴ The Parties participated in mediation on October 8 and 28, 2021, with Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP. Between those formal mediation dates, much negotiating, advancing positions, and compromising was achieved. And then, only after ongoing and considerable negotiations, the Parties reached an agreement in principle. Since that time, the Parties have diligently negotiated a formal settlement agreement, according to which the Settlement Administrator will calculate each eligible Settlement Class Member's monetary award from the Settlement based on which claim categories the individual selects, and the supporting documentation, where applicable, is provided.⁵

In addition, as part of the settlement, and equally as important as the monetary benefits offered to the Class, Einstein has entered into certain business commitments that will provide greater safeguards to the Class members' PHI and PII which is still in its possession. While more fully set forth below, Einstein has been and will be taking negotiated and agreed upon steps on an ongoing basis to improve their cyber security training, testing, and monitoring protocols and increasing the safety and security of the confidential information entrusted to it by the Plaintiffs and the Class.

And lastly, each Settlement Class Member may opt to receive one year of enhanced identity monitoring services which provides fraud resolution services and insurance of up \$1,000,000.00 for covered costs and expenses arising out of identity fraud. These credit monitoring benefits are not subject to the \$1,500,000.00 cap.

With this motion, Plaintiffs respectfully request the Court take the following initial steps in the settlement approval process:

- (1) preliminarily approve the Settlement;

⁴ Martin Decl. ¶¶ 22-23.

⁵ Agreement ¶ 2.1.

- (2) certify for settlement purposes the proposed Settlement Class pursuant to Rules 1702, 1708, 1709, and 1710 of the Pennsylvania Rules of Civil Procedure;
- (3) appoint Plaintiffs Nanette Katz, Christina Kreski, Britney Richardson, as parent guardian of S.H., and Nghi Ta as Class Representatives, and Jean S. Martin from Morgan & Morgan Complex Litigation Group; Linda P. Nussbaum from Nussbaum Law Group, P.C.; Kenneth J. Grunfeld from Golomb Spirt Grunfeld, P.C.; Gayle M. Blatt from Casey Gerry Schenk Francavilla Blatt & Penfield, LLP; and Kelly K. Iverson from Lynch Carpenter, LLP as Class Counsel;
- (4) pursuant to Rules 1712 and 1714, approve the Notice Program set forth in the Agreement, and approve the form and content of the notices, attached to the Agreement as **Exhibits B and C**;
- (5) appoint RG/2 as the Notice Specialist and Claims Administrator;
- (6) appoint Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP to serve as Claims Referee;
- (7) approve and order the opt-out and objection procedures set forth in the Agreement; and
- (8) schedule a Final Approval Hearing to occur no sooner than one hundred and ten (110) days after the preliminary approval order.

II. STATEMENT OF FACTS

This class action lawsuit arises out of a breach of Einstein's information systems containing patient PII and PHI in August 2020.

On August 5, 2020, an unauthorized third party (a "hacker") initially gained access to an Einstein employee's email account. Einstein's computer forensic consultant subsequently reported finding over 100,000 items of PHI, personally identifiable information, and/or other sensitive information in just this one account. The hacker used that one compromised email account to send phishing emails to 77 other Einstein employee email accounts, which resulted in the compromise

of 77 more accounts. The Class is comprised of approximately 286,181 individuals whose PHI and/or PII was involved in the Incident and who received notice of the settlement. Nearly 8,000 of those individuals had their Social Security Number, Driver's License Number, or other personal financial information accessible in the hacked emails. The others had either a medical record, patient account number, health insurance information, and/or treatment or clinical information in the emails accessed by the unauthorized third party.

Nearly five months after Einstein first learned about the Incident, Plaintiffs received Notification Letters informing them of the Incident. Einstein offered one year of credit monitoring and identity protection only to patients whose Social Security numbers were compromised. Other patients whose sensitive medical information was compromised were offered only Einstein's advice to review their respective statements for erroneous charges.

Plaintiffs allege that in Defendant's Notice of Privacy Practices, Einstein acknowledges it is "required by law to keep [patient] PHI private."⁶ Plaintiffs further allege the Incident resulted from Defendant's failure to comply with safeguards mandated by the Health Insurance Portability and Accountability Act ("HIPAA") regulations and healthcare industry standards. Defendant's specific violations include, but are not limited to:

- (1) failing to ensure compliance with HIPAA security standard rules by Defendant's workforce, in violation of 45 CFR § 164.306(a)(94);
- (2) failing to ensure the confidentiality of electronic PHI Defendant creates, receives, maintains, and transmits, in violation of 45 CFR § 164.306(a)(1); and
- (3) failing to implement technical policies and procedures for electronic information systems maintaining electronic protected health information that allows access only to

⁶ <https://www.einstein.edu/upload/docs/Einstein/privacy%20practices%20poster%208.15.16%20final.pdf>

those persons or software programs that have been granted access rights, in violation of 45 CFR § 164.312(a)(1).

On April 23, 2021, Plaintiff Katz filed her class action in this Court, alleging claims for negligence, breach of contract, breach of implied contract, breach of fiduciary duty, and for declaratory judgment (“*Katz*” action).⁷

On April 29, 2021, Plaintiff Ta filed his class action in the United States District Court for the Eastern District of Pennsylvania (“*Ta*” action), alleging claims for negligence, negligence *per se*, breach of fiduciary duty, and declaratory judgment.⁸

On May 10, 2021, Plaintiff Kreski filed her class action in this Court, alleging claims for negligence and breach of implied contract (“*Kreski*” action).

On July 2, 2021, Defendant filed preliminary objections in the *Katz* matter.

On July 9, 2021 the *Katz* and *Kreski* actions were consolidated before Judge Nina W. Padilla.

On October 19, 2021, Plaintiff S.H., a minor, filed a class action in this Court, alleging claims for negligence, breach of fiduciary duty, breach of confidences, breach of express and implied contract, and for a declaratory judgment on behalf of all class members and a subclass of minors whose data was compromised (“*S.H.*” action). The Parties agreed to mediate this matter, and in preparation for mediation, the Parties conducted informal discovery, comprised of written questions and answers, and the production of key documents.

On October 8 and 28, 2021, the Parties engaged in formal mediation sessions with Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP. Through the mediation process, the Parties agreed to settle the Litigation without any admission of liability by Defendant. The Parties

⁷ The *Ta*, *Kreski*, and *S.H.* actions have since been consolidated into the *Katz* action.

⁸ The *Ta* action was dismissed on December 9, 2021 and Plaintiff Ta was added to the operative, consolidated amended complaint on January 11, 2022. *See infra*.

continued to work together to draft a settlement agreement. The Agreement provides that Defendant agrees to pay up to \$1,500,000.00 in damages to Settlement Class Members who make claims to fully resolve this matter. Agreement ¶ 2.1.

On November 30, 2021, the Parties notified the Court of the Parties' agreement in principle.

On December 28, 2021, the Court issued an order consolidating the *Katz*, *Kreski*, and *S.H.* actions. The Court also allowed 20 days from the date of the order for Plaintiffs to file a consolidated amended complaint.

On January 11, 2022, Plaintiffs Katz; Kreski; Britney Richardson, as parent guardian of S.H.; and Ta filed their consolidated amended complaint.

This consolidated action (the "Litigation") arises out of the previously described Incident—the data breach where an unknown third party gained access to Accounts belonging to employees of Defendant between August 5, 2020 and August 17, 2020. Generally, Plaintiffs allege Einstein failed to: (1) properly secure, safeguard, and protect their PII and/or PHI; (2) comply with industry standards governing the protection of information systems containing PHI; and (3) provide timely, accurate, and adequate notice to Plaintiffs and Settlement Class Members that their PII and/or PHI were compromised.

III. SUMMARY OF THE SETTLEMENT TERMS.

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

A. The Settlement Class.

The Settlement Class is defined as:

all individuals residing in the United States whose PHI and/or PII was potentially compromised by the Incident and who were sent notice of the settlement.

Agreement ¶ 1.24. The Settlement Class excludes:

(i) Einstein and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Incident or who pleads nolo contendere to any such charge.

Id.

B. Monetary Relief for the Benefit of the Class.

Under the Agreement:

- (1) Defendant shall pay a maximum sum of \$1,500,000.00 to compensate Plaintiffs and Class Members for claims made (Agreement ¶ 2.1);
- (2) Defendant will pay for one year of Identity Monitoring Services from Experian for all Settlement Class Members who make a claim for the benefit (Agreement ¶ 2.2);
- (3) Defendant will not object to an award of up to \$375,000 for Court-ordered attorneys' fees and reasonable costs and expenses awarded to Class Counsel to be paid separately and not subject to the maximum claim ceiling of \$1,500,000.00 (Agreement ¶ 7.2);
- (4) Defendant shall pay service awards subject to court approval in the amount of \$1,500 each to Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta, and a service award in the amount of \$1,000 to Britney Richardson as parent guardian of S.H. (Agreement ¶ 7.3); and
- (5) Defendant shall pay the settlement expenses, including the Notice to the Settlement Class, Claims Administration, and claims Dispute Resolution (Agreement ¶¶ 2.5, 3.2).

The final settlement amount will be determined after the claim submittal deadline has passed, which is 90 days after the deadline to provide Notice of settlement to Class Members. Agreement ¶ 8.1. The Settlement Administrator will disburse settlement funds to Settlement Class

Members with approved claims within forty-five (45) days of the Effective Date, or within forty-five (45) days of the date that the claim is approved, whichever is later.⁹ Agreement ¶¶ 8.2, 9.1.

The Claims Administrator and Claims Referee, as applicable, shall administer and calculate the valid claims submitted by Settlement Class Members. Agreement ¶ 8.1. The Settlement Administrator will examine each claim form submitted by the Settlement Class Members, and any associated supporting information and/or documents, for compensation under the three claims groups.

Claim A is for compensation for any lost time as a result of the Incident by the Settlement Class Members. Agreement ¶ 2.1(a). Settlement Class Members are eligible for compensation of up to 3 hours of lost time (at \$20.00 per hour) spent dealing with the Incident. *Id.* Settlement Class Members need only submit a brief description of the actions taken and an attestation to the Claims Administrator that the lost time was spent dealing with issues relating to the Incident. *Id.* The maximum amount a claimant may recover under Claim A is \$60.00. *Id.*

Claim B is for compensation of ordinary losses as a result of the Incident by the Settlement Class Members. Agreement ¶ 2.1(b). Examples of ordinary losses include:

- (i) out-of-pocket expenses incurred as result of the Incident, including but not limited to unreimbursed bank fees, unreimbursed card reissuance fees, unreimbursed overdraft fees, unreimbursed charges related to the unavailability of funds, unreimbursed late fees, unreimbursed over-limit fees, unreimbursed charges from banks or credit card companies, interest on payday loans due to a card cancelation or over-limit situation, long distance phone charges, cellphone charges if charged by the minute, data charges if charged based on data usage, text messages if charged by the message, postage, or gasoline for local travel, costs associated with freezing or unfreezing credit with any credit reporting agency, fees for credit reports between the date of the Incident and the Claims Deadline; and (ii) the cost of purchasing credit monitoring or other identity theft insurance products purchased between October 9, 2020 and the date of preliminary approval of the settlement,

⁹ The Effective Date being the first date when the settlement is finally approved and either the deadline to appeal has passed, or when the appeal is dismissed, judgement affirmed, or when such dismissal or affirmance has become no longer subject to further appeal or review. Agreement ¶ 1.10-1.11.

provided that the claimant attests that the credit monitoring or other identity theft insurance products were purchased primarily as a result of the Incident.

Id. Settlement Class Members must submit documentation to the Claims Administrator that the out-of-pocket expenses and/or charges were incurred and are fairly and reasonably traceable to the Incident. *Id.* The maximum amount a Settlement Class Member may recover under Claim B is \$1,500.00. *Id.*

Claim C is for compensation of extraordinary losses as a result of the Incident by the Settlement Class Members. Agreement ¶ 2.1(c). Examples of extraordinary losses include

losses associated with identity theft, medical fraud, tax fraud, other forms of fraud, and other actual misuse of personal information, provided that (i) the loss is an actual documented and unreimbursed monetary loss; (ii) the loss was fairly and reasonably traceable to the Incident; (iii) the loss is not already covered by one or more of the ordinary loss compensation categories under Claim B; (iv) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring or identity monitoring insurance; and (v) the loss occurred between the date of the Incident and the Claims Deadline.

Id. Settlement Class Members must submit supporting documentation to the Claims Administrator for reimbursement under this claim. *Id.* The maximum amount a claimant may recover under Claims C is \$7,500.00. *Id.*

Additionally, Settlement Class Members will receive an offer of one year of enhanced Identity Monitoring Services from Experian, that includes, at least, the following, or similar, services: (i) internet surveillance; (ii) identity theft insurance of up to \$1,000,000; and (iii) identity restoration services. Agreement ¶ 2.2.

Settlement Class Members seeking reimbursement for time or out-of-pocket expenses or Identity Monitoring Services must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the Claims Deadline, as set forth in the Notice to the class, including this deadline and other relevant dates. Agreement ¶ 2.1. Disputes

as to claims submitted are to be resolved by the Claims Administrator. Agreement ¶ 2.4. If the Settlement Class Member does not approve of the Claims Administrator's final determination, the Settlement Class Member may submit their claim to a Claims Referee for further evaluation and final determination. *Id.*

The Claims Referee's shall have the power to approve a claim in full or in part, and their determination shall be based on whether they are persuaded the claimed amounts are reasonably supported in fact, and were fairly and reasonably traceable to the Incident. *Id.* The proposed Claims Referee is Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP. *Id.* Mr. Picker already served in a neutral capacity as the mediator for this matter. The Parties believe his thorough knowledge of this matter and neutrality make him an appropriate Claims Referee.

C. Non-Monetary Relief.

A further important benefit to the class and the Settlement Class Members are the business changes Defendant has made and is committed to continue making as part of the Settlement. The business changes involve information security enhancements, which include third party security monitoring, third party logging, network monitoring, firewall enhancements, email enhancements, and equipment upgrades. Agreement ¶ 2.3. These information security enhancements are extremely beneficial to Settlement Class Members because these enhancements provide additional security to Plaintiffs' and Settlement Class Members' PII and PHI in Defendant's possession, and reduce the likelihood of future data breaches.¹⁰

D. Class Release.

In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt-out will be deemed to have released Defendant from claims relating to the subject matter of the Action. The detailed release language is narrowly tailored to release only claims on

¹⁰ Martin Decl. ¶ 59.

behalf of Settlement Class Members that were or could have been asserted in this action, and applies to claims only arising out of this Incident, the security of Settlement Class Members' PII and PHI, and the provision of notice relating to the Incident. The detailed release language can be found at Paragraphs 6.1 through 6.3 of the Agreement, with the definitions in Paragraphs 1.19 and 1.25 relating thereto.

E. The Notice Program.

The Notice Program is designed to provide the best notice practicable based on the information Defendant has available about the Settlement Class Members, and it is reasonably calculated to apprise the Settlement Class Members of the terms of the Settlement, how to file claims, their rights to opt-out of or object to the Settlement, Class Counsel's anticipated fee application, and the anticipated request for Service Awards for the Plaintiffs. *See* Agreement ¶¶ 3.1-3.2.

The Notice Program is comprised of two parts: (1) Mailed Notice to all identifiable Settlement Class Members (the "Short Notice"); and (2) a customary long-form Notice with more detail than the Mailed Notice, which will be available on the Settlement Website. Agreement ¶ 3.2.

All forms of Notice to the Settlement Class will include, among other information, a description of the material terms of the Settlement; a procedure and date by which Settlement Class Members may submit Claim Forms; a procedure and date by which Settlement Class members may exclude themselves from or "opt-out" of the Settlement Class; a procedure and date by which Settlement Class members may object to the Settlement; the date of the Final Approval Hearing; and the address of the Settlement Website where Settlement Class Members may access the Settlement Agreement and other case related documents and information. *Id.* ¶ Exs. B and C.

1. The Mailed Notice Program.

The Settlement Administrator will administer the Notice Program. Within twenty-one (21) days from the date the preliminary approval order is entered, Defendant will provide the names, email addresses, and/or last known addresses of persons within the Settlement Class (“Class Member Information”) to the Settlement Administrator. Agreement ¶ 3.5. Within 30 days from the date the preliminary approval order is entered, the Settlement Administrator shall mail the Short Notice to the postal addresses provided to Defendant when the Settlement Class Members conducted transactions with Defendant, or other reasonable alternative means. Agreement ¶ 3.2. The Settlement Administrator will prepare an affidavit confirming that the Notice Program was completed, and Class Counsel will file the affidavit with the Court in conjunction with Plaintiffs Motion for Final Approval of the Settlement. *Id.*

2. The Settlement Website and Long Form Notice.

The Settlement Administrator will establish a Settlement Website, as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. Agreement ¶ 3.2. The Settlement Website will be established within 30 days following the entry of the Preliminary Approval Order. A toll-free help line shall also be made available to provide Settlement Class Members with additional information about the settlement. *Id.* The Settlement Website will include hyperlinks to the Operative Complaint, Settlement Agreement, Short Notice, Long-Form Notice, Claim Form, Preliminary Approval Order, Class Counsel’s anticipated motion for attorneys’ fees and costs, and other important case documents. *Id.* These documents will remain on the Settlement Website for at least 6 months after Final Approval is entered.

F. Settlement Administration.

The proposed Settlement Administrator is RG/2 Claims Administration (“RG/2”) one of the leading class action settlement administrators in the United States. A resume providing RG/2’s experience in this area is attached as Exhibit 3. RG/2’s responsibilities include, among other things,

the following: (1) assisting in the preparation of the Short and Long Form Notices; (2) sending the mailed Short Notice; (3) establishing and maintaining the Settlement Website and the toll-free telephone line for Settlement Class Member inquiries; (4) receiving and processing Claim Forms; (5) receiving and processing inquiries and requests for exclusion from Settlement Class Members; and (6) mailing settlement payment checks or processing electronic payments. A more fulsome and detailed list of RG/2's duties is located at Paragraphs 3.1 and 8.1-8.3 of the Settlement Agreement. All fees and expenses related to Settlement Administration shall be paid by Defendant. Agreement ¶ 3.2.

If a Class Member submits both an opt-out request and a Claim Form, the Claims Administrator will send a letter explaining that the Class Member may not make both of these actions. Agreement ¶ 4.3. The letter will also ask the Class Member to make a final decision as to whether they want to opt-out or submit a Claim Form, and inform the Claims Administrator of that decision within 10 days. *Id.* If the Class Member does not respond to that communication within 14 days after it is mailed (or by the opt-out deadline, whichever is later), the Class Member will be treated as having opted-out of the Class. *Id.*

G. Settlement Termination.

Either Party may terminate the Settlement if the Settlement is rejected or materially modified by the Court or an appellate court. Agreement ¶ 10.2. Defendant also has the right to terminate the Settlement if the number of persons in the Settlement Class who timely opt-out is equal to or exceeds 5,000 persons in the Settlement Class. *Id.* ¶ 4.3.

H. Class Representative Service Awards.

Class Counsel will seek Service Award payments for Class Representatives in the amount of \$1,500 each to Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta, and a service award in the amount of \$1,000 to Britney Richardson as parent guardian of S.H., subject to Court approval. *Id.* ¶ 7.3. If the Court approves the Service Awards, they will be in addition to the relief Class

Representatives are entitled to under the terms of the Settlement. Such awards are meant to compensate Plaintiffs for their work in this Litigation and effort on behalf of the Class. The Settlement Agreement is not contingent upon the Court awarding the Service Awards, and the Parties negotiated the Service Award agreement only after reaching agreement on all other material terms of the Settlement. *Id.* ¶¶ 7.1, 7.5.

I. Attorneys' Fees and Costs.

Defendant has agreed to pay Class Counsel \$375,000 in attorneys' fees and reasonable costs and expenses subject to court approval. This is a payment outside of the benefits offered to the Settlement Class Members defined above. *Id.* ¶ 7.2. The Settlement Agreement is not contingent upon the Court awarding the full amount of attorneys' fees and litigation costs and expenses requested; and the Parties negotiated the agreement regarding Class Counsel's fees and costs only after reaching agreement on all other material terms of the Settlement. *Id.* ¶¶ 7.1, 7.5.

IV. ARGUMENT

A. Preliminary Approval Should Be Granted.

1. The Legal Standard for Preliminary Approval.

Rule 1714 of the Pennsylvania Rules of Civil Procedure requires judicial approval after a hearing for the compromise of claims brought on a class basis.¹¹ The Court's decision to approve or disapprove a class settlement is discretionary. *Buchanan v. Century Fed. Sav. & Loan Ass'n*, 393 A.2d 704, 709 (Pa. Super. Ct. 1978) (citing *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799 (3d Cir. 1974)). In exercising their discretion, courts are mindful of the public policy principle that "settlements are favored in class action lawsuits." *Dauphin Deposit Bank & Trust Co. v. Hess*, 727 A.2d 1076, 1078 (Pa. 1999). Class settlements conserve "substantial judicial resources . . . by

¹¹ Pennsylvania courts regularly cite to federal case law in determining whether to approve a class action settlement. *See, e.g., Buchanan v. Century Fed. Sav. & Loan Ass'n*, 393 A.2d 704, 709 n.13 (Pa. Super. Ct. 1978). Plaintiffs likewise cite federal precedent in this motion.

avoiding formal litigation.” *Krangel v. Golden Rule Res., Inc.*, 194 F.R.D. 501, 504 (E.D. Pa. 2000) (quoting *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)). And “because of the uncertainties of outcome, difficulties of proof, and length of litigation, class action suits lend themselves readily to compromise.” *Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C. 4th 502, 514 (Pa. Com. Pl. 2002) (quoting Herbert B. Newberg and Alba Conte, *Newberg on Class Actions* § 11.41 (3d ed. 1992)).

Before granting preliminary approval of a proposed class action settlement, the Court must determine whether the settlement is “within the range of possible approval.” *Brophy v. Phila. Gas Works*, 921 A.2d 80, 88 (Pa. Commw. Ct. 2007). Settlement negotiations involving arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. See MANUAL FOR COMPLEX LITIGATION (Third) § 30.42 at 240 (1995) (“[A] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms’ length negotiations between experienced, capable counsel after meaningful discovery”) (internal citation omitted).

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

- (1) the risks of establishing liability and damages,
- (2) the range of reasonableness of the settlement in light of the best possible recovery,
- (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation,
- (4) the complexity, expense and likely duration of the litigation,
- (5) the stage of the proceedings and the amount of discovery completed,
- (6) the recommendations of competent counsel, and
- (7) the reaction of the class to the settlement.¹²

Buchanan, 393 A.2d at 709, *accord Shaev v. Sidhu*, Nov. Term 2005, No. 0983, 2009 Phila. Ct. Com. Pl. LEXIS 63, at *22-23 (Pa. Com. Pl.2009). “In considering these factors, there is no exact

¹² Since Notice has not yet been approved or provided to the Class, it is premature to discuss the seventh factor regarding the reaction of the Class to the Settlement. This factor will be addressed in the Final Approval Motion.

calculus or formula for the court to use: “[i]n effect the court should conclude that the settlement secures an adequate advantage for the class in return for the surrender of litigation rights.” *Milkman*, 61 Pa. D. & C. 4th at 532 (quoting *Buchanan*, 393 A.2d at 709). A preliminary evaluation of these factors shows this Settlement falls within the range of reasonableness and should be preliminarily approved.

2. The Settlement Satisfies the Criteria for Preliminary Approval.

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

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

In negotiating this Settlement, Class Counsel had the benefit of years of experience in negotiating settlements in a number of data breach cases.¹³ As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiffs’ claims and engaged in informal discovery with Defendant.¹⁴ Before mediation, Plaintiffs and Defendant discussed the list of categories of information about which exchange was necessary to engage in any settlement discussions at all. Defendant provided Plaintiffs’ counsel answers to specific questions regarding the geographical reach of the Class, the categories of information accessed, and the number of Settlement Class Members whose Social Security numbers were exposed. Defendant provided Plaintiffs’ counsel with a summary report of their forensic expert’s analysis and investigation into the Incident. Plaintiffs’ counsel engaged their own cyber-security consultant to evaluate Defendant’s report. Plaintiffs provided information requested by Defendant about themselves. And multiple pre-mediation conferences were held with the mediator; some joint and some only with Plaintiffs or Defendant.¹⁵

¹³ Martin Decl. ¶¶ 46-51.

¹⁴ Martin Decl. ¶¶ 22, 23, and 52.

¹⁵ Martin Decl. ¶ 24.

The Parties' review of this discovery enabled them to evaluate the strengths and weaknesses of their respective claims and defenses and conduct a well-informed settlement negotiation. *See Klingensmith v. Max & Erma's Rests., Inc.*, No. 07-0318, 2007 WL 3118505, at *4 (W.D. Pa. Oct. 23, 2007) (agreeing with plaintiff's statement "that time after sufficient discovery to put parties on firm notice of strengths and weaknesses of case, but before bulk of litigation discovery has been taken, is particularly appropriate to settlement"). Class Counsel were also well positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, and the appropriate basis upon which to settle them, as a result of their roles in similar data breach class action cases against entities throughout the nation.¹⁶

Following multiple sessions of mediation and ongoing discussions regarding terms of the settlement, the Parties reached an agreement in principle.¹⁷ Thereafter, the Parties continued negotiating a formal settlement agreement, which was signed on February 24, 2022.¹⁸

These facts demonstrate the Settlement is the result of intensive, arm's length negotiations between experienced attorneys familiar with class action litigation and with the legal and factual issues of this Action. Courts properly consider the "tangible benefits derived from reaching a settlement through mediation" in determining whether to approve a settlement. *Treasurer of State v. Ballard Spahr Andrews & Ingersoll LLP*, 866 A.2d 479, 487 (Pa. Commw. Ct. 2005) (finding lower court's disapproval of a settlement to be an abuse of discretion because "the parties' submissions and the history of the pre-mediation investigations and of the protracted mediation process serve to demonstrate that relevant considerations as to various litigation options had been fully investigated and evaluated by competent counsel"). Because "the settlement was arrived at

¹⁶ Martin Decl. ¶ 53.

¹⁷ Martin Decl. ¶ 25.

¹⁸ Martin Decl. ¶ 29.

by experienced, competent counsel after arm's length negotiations" and is not the product of collusion, the Settlement should be preliminarily approved. *Id.* at 486.

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

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

Moreover, protracted litigation carries with it inherent risks that would have delayed and endangered Class Members' monetary recovery. Even if Plaintiffs did prevail at trial, recovery could be delayed for years by appeals. Under the circumstances, Plaintiffs and Class Counsel appropriately determined that the benefits to the Class in the Settlement reached with Defendant outweigh the gamble of continued litigation.¹⁹ Accordingly, the Settlement should be approved as it provides substantial relief to Settlement Class Members without further delay and without exposing Plaintiffs and absent Settlement Class Members to the risks associated with continued litigation. The Settlement is well within the range of reasonableness in light of the attendant risks of litigation.

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

¹⁹ Martin Decl. ¶ 55.

class], the Court believes that the settlement falls within the range of reasonableness.

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

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

As stated above, the availability of up to \$1,500,000.00 for claims made by Plaintiffs and the Class is an excellent recovery for the Settlement Class Members and is reasonable in light of the facts and circumstances in this case. Class Counsel has extensive experience in similar data breach cases. For example, Class Counsel Jean Martin has been appointed to lead several privacy and data breach class actions, including serving presently as co-lead counsel in *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) and *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.), both of which have received preliminary approval of settlements within the last month, and as interim co-lead counsel in *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.), *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.), and *In re Brinker Data Incident Litigation*, No. 18-cv-686 (M.D. Fla.).²⁰

Class Counsel Linda Nussbaum has been appointed to lead several privacy and data breach class actions, including presently serving as Co-Lead Counsel in *In re Morgan Stanley Data*

²⁰ Martin Decl. ¶ 47.

Security Litigation, 1:20-cv-05914 (S.D.N.Y.), *In re Wawa, Inc., Data Security Litigation*, No. 19-cv-6019 (E.D. Pa.), *In re Am. Medical Collection Agency, Inc. Customer Data Security Breach Litig.*, No. 19-md-2904 (D.N.J.).²¹

Class Counsel Gayle M. Blatt has been appointed to lead or help lead numerous privacy and data breach class actions, including *In re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 16-MD-02752 (N.D. Cal); *In re: Waste Management Data Breach Lit.*, Case No. 21-cv-06199-DLC (S.D.N.Y.) (lead counsel); *In re: Warner Music Group Data Breach*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.) (Interim Co-lead Counsel); *Pfeiffer et al. v. RadNet, Inc.*, Case No. 2:20-cv-09553-RGK-SK (C.D. Cal.) (Interim Lead Counsel); *In re: Citrix Data Breach Litigation*, Case No. 19-cv-61350-RKA (Settlement Class Counsel); and *Madrid v. Golden Valley Health Centers*, Case No. 20-cv-01484 (Settlement Class Counsel).²²

Class Counsel Kenneth Grunfeld has been appointed to lead or has helped lead several privacy and data breach class actions, including *Dzelili v. Wilderness Hotel & Resort, Inc.*, No. 3:11-00735; *Southern Independent Bank v. Fred's, Inc.*, No. 15-00799 (Co-Lead Counsel); *In re Capital One Consumer Data Security Breach Litigation*, MDL No. 19-2915; *In re Wawa, Inc. Data Security Litigation*, No. 19-6019; *Opris, et al. v. Sincera Reproductive Medicine*, No 21-03072.²³

Class Counsel Kelly Iverson has been appointed to lead or has helped lead several privacy and data breach class actions, including *In re Blackbaud, Inc. Customer Data Breach Litigation*, MDL No. 2972 (Plaintiffs' Steering Committee); *In re Solara Medical Supplies Data Breach Litigation*, No. 19-02284 (Plaintiffs' Steering Committee); *In re Marriott International Customer Data Security Breach Litigation*, MDL No. 2879 (Committee Member); *In re Equifax, Inc.*

²¹ Martin Decl. ¶ 48.

²² Martin Decl. ¶ 49.

²³ Martin Decl. ¶ 50.

Customer Data Security Breach Litigation, MDL No. 2800; *Dittman v. UPMC*, GD-14-003285 (Allegheny Cty., Pa.), (Committee Member); and *In re Arby's Restaurant Group, Inc. Data Security Litigation*, No. 17-00514 (Committee Member).²⁴

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

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

Where, as here, Class Counsel and Defendant have reached a settlement regarding “a vigorously disputed matter, the Court need not inquire as to whether the best possible recovery has been achieved but whether, in view of the stage of the proceedings, complexity, expense and likely duration of further litigation, as well as the risks of litigation, the settlement is reasonable.” *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 948 (Pa. 1986) (internal quotation omitted); see also *Gregg v. Independence Blue Cross*, Dec. Term 200, No. 3482, 2004 WL 869063, at *40 (Pa. Com. Pl. April 22, 2004) (holding that “[t]he complex nature, the high expense and the likelihood of years’ passing without final resolution weigh in favor of settlement”).

This case presents complexities not at issue in other cases. Establishing liability and damages at trial would require multiple experts’ extensive work and testimony. In addition, Defendant presented, and would continue to present, defenses it believes could bar recovery, thereby increasing Plaintiffs’ risk of no recovery while causing litigation effort and expenses to mount. Further, the traditional means for handling claims like those at issue here would tax the court system, require a massive expenditure of public and private resources, and given the relatively small value of the claims of the individual class members, would make individual resolution impracticable. Additionally, if this matter was to go to trial, it would likely take several

²⁴ Martin Decl. ¶ 51.

more years to reach a final resolution. Thus, the proposed Settlement is the best vehicle for Settlement Class Members to receive relief in a prompt and efficient manner.

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

Class Counsel’s extensive experience in similar data breach cases allowed them to efficiently seek the essential information needed to evaluate the strengths and weaknesses of the claims through informal discovery.²⁵ Defendant provided to Class Counsel essential pieces of information—including informal discovery responses to questions from Plaintiffs, and production of a summary report of the forensic analysis and investigation into the Incident—prior to the parties’ engagement of settlement negotiations.²⁶ This information ensured Plaintiffs and their counsel had the information necessary to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation. Therefore, it is “particularly appropriate to settle[]” because there has been “sufficient discovery to put parties on firm notice of strengths and weaknesses of case,” even though the “bulk of litigation discovery has [not yet] been taken.” *See Klingensmith*, 2007 WL 3118505, at *4.

vi. The recommendations of competent counsel favor settlement.

“The court must [] consider the recommendations of competent counsel in evaluating the reasonableness of the settlement, and those recommendations are given substantial weight.” *Gregg*, 2004 WL 869063, at *41 (*citing Milkman*, 61 Pa. D. & C. 4th at 545). The particular weight attributed to the counsel’s recommendation depends on factors such as competence, the length of involvement in the case, experience in the particular type of litigation, and amount of discovery completed. *Austin v. Pa. Dep’t of Corrs.*, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995). “Usually, however, an evaluation of all the criteria leads courts to conclude that the recommendation of

²⁵ Martin Decl. ¶ 52-53.

²⁶ Martin Decl. ¶ 52.

counsel is entitled to great weight following ‘arm’s length negotiations’ by counsel who have ‘the experience and ability . . . necessary [for] effective representation of the class’s interests.’” *Id.* (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982)).

Class Counsel and Plaintiffs strongly endorse this Settlement.²⁷ Since Defendant was served, the Parties have been vigorously litigating this case, and as stated above, Class Counsel are competent and experienced in class action litigation (particularly in data breach cases), the Parties have completed adequate informal discovery, engaged their own preliminary expert analyses, and the Settlement is a result of arm’s-length negotiations. Therefore, Class Counsel’s recommendations in favor of the Settlement should be afforded great weight.

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

The prerequisites for class certification under Rule 1702 are that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, (4) the representative parties will fairly and adequately assert and protect the interests of the class, under the criteria set forth in Rule 1709; and (5) a class action provides a fair and efficient method for adjudication of the controversy, under the criteria set forth in Rule 1708. For the reasons set forth below, certification is appropriate under Rules 1702, 1708, 1709, and 1710 of the Pennsylvania Rules of Civil Procedure.

1. Numerosity.

“To satisfy this criterion, the class must be both numerous and identifiable, and ‘whether the class is sufficiently numerous is not dependent upon any arbitrary limit, but upon the facts of each case.’” *Dunn v. Allegheny Cnty. Prop. Assessment Appeals & Review*, 794 A.2d 416, 423 (Pa. Commw. Ct. 2002) (quoting *Cook v. Highland Water & Sewer Auth.*, 530 A.2d 499,

²⁷ Martin Decl. ¶ 61.

503 (Pa. Commw. Ct. 1987)). And while there is no “arbitrary limit,” “[i]t has been suggested that forty or fifty is normally the number of class members required to satisfy the numerosity requirement.” *Freeport Area Sch. Dist. v. Commonwealth, Human Relations Comm’n*, 335 A.2d 873, 879 n.6 (Pa. Commw. Ct. 1975) (citing *Delle Donne and VanHom, Pennsylvania Class Actions: The Future in Light of Recent Restrictions on Federal Access?*, 78 Dick. L. Rev. 460, 501 (1974)).

Here, the numerosity requirement is satisfied because the Settlement Class consists of approximately 286,181 individuals,²⁸ and joinder of all such persons is impracticable. *See Roethlein v. Schmidt*, 2006 Phila. Ct. Com. PL LEXIS 530, at * 1 (Pa. Com. Pl. Aug. 21, 2006) (“the numerosity requirement . . . is satisfied because the number of members of the Class is in the thousands, and thus, the Class members are so numerous that their joinder before the Court would be impracticable”).

2. Commonality.

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

²⁸ Martin Decl. ¶ 13.

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

3. Typicality.

For similar reasons, Plaintiffs’ claims are reasonably coextensive with those of the absent Class Members, such that the typicality requirement is satisfied. *In re Sheriff’s Excess Proceeds Litig.*, 98 A.3d 706, 733 (Pa. Commw. Ct. 2014) (“Typicality exists if the class representative’s claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class.”) (*quoting Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 31 (Pa. 2011)). This requirement “ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented.” *In re Sheriff’s Excess Proceeds Litig.*, 98 A.3d at 733 (*quoting Samuel-Bassett*, 34 A.3d at 31). But “typicality does not require that the claims of the representative and the class be identical, and the requirement may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.” *Id.*

Here, Plaintiffs are typical of absent Settlement Class Members because they were impacted by the same Incident—a data breach in which their PII and PHI was accessed by an unauthorized third party. Moreover, the benefits available to Plaintiffs and Settlement Class

Members are the same under the Settlement. Therefore, Plaintiffs' legal theories do not conflict with those of absentee Settlement Class Members, and Plaintiffs will represent the interests of absentee Settlement Class Members fairly, because such interests parallel their own.

4. Representative Parties Will Protect the Class's Interests.

Plaintiffs have and will continue to satisfy their obligations to fairly and adequately assert and protect the interests of the Settlement Class under Rules 1702(4) and 1709. For this requirement, courts consider:

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

Pa R. Civ. Pro. 1709.

“With regard to the first factor, generally, ‘until the contrary is demonstrated, courts will assume that members of the bar are skilled in their profession.’” *Dunn*, 794 A.2d at 425 (*quoting Janicik v. Prudential Ins. Co.*, 451 A.2d 451, 458 (Pa. Super. Ct. 1982)). Plaintiffs are represented by qualified and competent counsel with extensive experience and expertise prosecuting complex class actions, including actions substantially similar to the instant case.²⁹ Therefore, the first factor is satisfied.

“Under Rule 1709(2), conflicts are interests antagonistic to other class members.” *Grajales v. Safe Haven Quality Care, LLC*, 2012 Pa. Dist. & Cnty. Dec. LEXIS 8, at *4 (Pa. Com. Pl. 2012) (*citing Samuels v. Smock*, 422 A.2d 902, 903 (Pa. Commw. Ct. 1980)). And just as with Rule 1709(1), “courts have generally presumed that here is no conflict of interest on the part of the

²⁹ Martin Decl. ¶¶ 46-51.

representative parties unless the contrary is established and ‘have relied upon the adversary system and the court’s supervisory powers to expose and mitigate any conflict.’” *Dunn*, 794 A.2d at 425-26 (quoting *Janicik*, 451 A.2d at 459). Plaintiffs’ interests are coextensive with, and not antagonistic to, the interests of the Settlement Class because the Settlement provides for the compensation of each Settlement Class Member’s lost time, ordinary losses, and extraordinary losses using the same claim form, evaluation method, and approval process to determine the recovery amount from the Settlement Fund for each Settlement Class Member that submits a claim form. Therefore, the second factor is satisfied.

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

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

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

Under Pennsylvania Rules 1702(5) and 1708 (which is similar to Rule 23(b) of the Federal Rules of Civil Procedure),³⁰ certification is appropriate if a class action is a fair and efficient method of adjudicating the controversy. In making this determination, the court considers:

- (c) Where monetary recovery alone is sought, the court shall consider:
 - (1) whether common questions of law or fact predominate over any question affecting only individual members;

³⁰ “Unlike in federal class action litigation, class actions brought under the Pennsylvania rules need not be ‘superior’ to alternative methods.” *Janicik*, 451 A.2d at 461.

- (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
 - (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
 - (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
 - (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
 - (4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
 - (5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
 - (6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
 - (7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.
- (b) Where equitable or declaratory relief alone is sought, the court shall consider:
- (1) the criteria set forth in subsections (1) through (5) of subdivision (a), and
 - (2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.
- © Where both monetary and other relief is sought, the court shall consider all the criteria in both subdivisions (a) and (b).

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

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

The second factor regarding the size of the class and the difficulties in managing the class action is also met. Here, the class is made up of approximately 286,181 Individuals, all of whom were connected to Defendant through the healthcare system, and all of whose addresses are in Defendant’s possession. In *Schall*, the court found that “[t]he class is not burdensomely large” because “its members are easily identifiable and to the extent that their damages claims are distinct, the court has at its disposal a variety of means to manage them.” 27 Pa. D. & C. 5th 471 at ¶ 49. In this case, as shown above, the Settlement Class Members are easily identifiable through Defendant’s records, and any differences in their damage claims will be accounted for by the claims process and calculation method outlined herein. Also, review of this factor is limited because when “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for

the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (internal citation omitted). Thus, the size and manageability requirement is met.

The third factor regarding the risks of prosecution of separate actions is also met here. The prosecution of separate actions by individual Settlement Class Members would create a risk of inconsistent adjudications which would impair the protection of other Members’ interests. And, dollar wise, the separate claims of individual Settlement Class Members are insufficient in amount to support such separate actions. *See Board v. SEPTA*, 14 Pa. D. & C. 5th 301, 316 (Pa. Com. Pl. 2010) (“In considering the separate effect of actions, the precedential effect of a decision is to be considered as well as the parties’ circumstances and respective ability to pursue separate actions”). Here, it would be nearly impossible for the Settlement Class Members to file their own actions—the time and expense required to initiate and pursue such litigation would be enormous in comparison with the relatively small benefit to which each Settlement Class Member is entitled. And even if these thousands of suits were to be brought, there would be a “significant risk of inconsistent adjudications if tried separately,” (*see id.*) because, for example, one claim might be dismissed in one court while a substantially similar claim might be upheld in another court. This would severely impair the rights of the non-litigating Settlement Class Members. Therefore, “because of the straightforward nature of the issues and facts involved, as a single certified class one case will determine liability and one verdict will establish all obligations.” *Id.*

Fourth, the Parties are not aware of any litigation already commenced by Settlement Class Members involving any of the same issues. And fifth, venue in the Philadelphia County Court of Common Pleas is proper under the Pennsylvania Rules of Civil Procedure for litigation of the claims of the entire Settlement Class. Therefore, these two factors are met. *See Basile v. H & R Block, Inc.*, 34 Phila. 1, 62 (Pa. Com. Pl.1997), *aff’d in part and rev’d in part on other grounds*, 729 A.2d 574 (Pa. Super. Ct., 1999) (“In their brief, plaintiffs state that they are unaware of any similar litigation currently pending in Pennsylvania. Neither defendant disputes this statement.

There is thus nothing on the record to suggest that this court would not be an appropriate forum for this class action”).

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

Seventh, it is not likely a Settlement Class Member’s individual recovery amount will be so small in relation to the expense and effort of administering the action as to not justify a class action. Here the maximum Settlement amount Defendant will pay to the Class is \$1,500,000. The Settlement Class Members are current and former patients and are easily identified and notified of the settlement and claims process to receive their portion of the Settlement Fund, up to \$9,060 per person based on eligibility. Such amounts will not be dwarfed by the expense and effort of administering the action. And here, the Defendant is paying for the Notice to each individual Settlement Class Member in addition to the maximum it will pay for claims. *See* Pa. R. Civ. P. 1708(a)(7); *see also Haft*, 451 A.2d at 450 (holding that “the amounts which may be recovered by the individual class members will be large enough in relation to the expenses and effort of

administering the action as to justify a class action” where “potential individual recoveries will be more than de minimis” and “[a]ll class members are present or former employees of appellee, and thus the costs of identifying and notifying them is unlikely to be unduly burdensome”). Therefore, a class action is justified.

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

Because all of Rule 1708’s requirements are met, a class action is a fair and efficient method of adjudicating this controversy. Additionally, Plaintiffs respectfully request the Court certify the Settlement Class defined in Paragraph 1.22 of the Agreement. Certification of the proposed Settlement Class will allow notice of the proposed Settlement to Settlement Class Members. For purposes of this Settlement only, Defendant does not oppose class certification. Agreement ¶ 2.6. For these reasons and the reasons listed above, the Court should certify the Settlement Class.

C. The Court Should Approve the Proposed Notice Program.

Rule 1714(c) of the Pennsylvania Rules of Civil Procedure requires that “[i]f an action has been certified as a class action, notice of the proposed . . . settlement . . . shall be given to all members of the class in such manner as the court may direct.” For class members who can be

identified with reasonable effort, “[t]he court may require individual notice to be given by personal service or by mail.” Pa. R. Civ. P. 1712(b).

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

The proposed Notice Program satisfies these criteria. The proposed Notice (1) describes the substantive terms of the Settlement; (2) advises Settlement Class Members of their option and deadline to opt-out or object to the Settlement, which is 90 days after the Court enters the Preliminary Approval Order; (3) indicates how Settlement Class Members may obtain additional information about the Settlement, (4) advises Settlement Class Members of the process and instructions for making claims, and the applicable deadlines, and (5) the date, time, and place of the Final Fairness Hearing. Agreement ¶¶ 3.1(e)-(f), Exhibits. B-C. Moreover, the Notice of Settlement shall be provided to Settlement Class Members via mail to the postal address provided to Defendant by Settlement Class Members when the Settlement Class Members conducted transactions with Defendant, or other reasonable alternative means. Agreement ¶ 3.2. The Notice Program is designed to reach Settlement Class Members mainly through direct mail notice, and the Long Form Notice will be available on the Settlement Website (Agreement ¶¶ 3.1(e)-(f)), which constitutes the best practicable forms of notice. *See Bradburn Parent Teacher Store, Inc. v. 3M (Minnesota Mining & Mfg. Co.)*, 513 F. Supp. 2d 322, 329 (E.D. Pa. 2007) (finding that direct

notice via first class mail satisfies the notice requirements of both Fed. R. Civ. P. 23 and the due process clause); *In re American Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 237 (E.D. Pa. 2009) (finding that direct notice via first class mail and the creation of a settlement website satisfy the notice requirements of both Fed. R. Civ. P. 23 and the due process clause). Therefore, the Court should approve the Notice Program and the form and content of the Notices attached to the Agreement as Exhibits B-C.

D. The Court Should Schedule a Final Approval Hearing.

The last step in the Settlement approval process is a Final Approval Hearing, at which the Court will hear all evidence and arguments necessary to make its final evaluation of the Settlement. The Court will determine, at or after the Final Approval Hearing, whether the Settlement should be approved and whether to approve Class Counsel's application for attorneys' fees and reimbursement of costs and expenses. Plaintiffs request the Court schedule the Final Approval Hearing to occur no sooner than one hundred and ten (110) days after the Preliminary Approval Order, at a date, time, and location convenient to the Court. Plaintiffs will file a motion for Final Approval of the Settlement, and Class Counsel will file a motion requesting attorneys' fees, expenses and Service Awards for the Plaintiffs, no later than twenty (20) days prior to the Final Approval Hearing.

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request the Court:

- (1) preliminarily approve the Settlement;
- (2) certify for settlement purposes the proposed Settlement Class,
- (3) appoint Plaintiffs Nanette Katz, Christina Kreski, Britney Richardson, as parent guardian of S.H., and Nghi Ta as the Class Representatives, and Nussbaum Law Group, P.C.; Morgan & Morgan Complex Litigation Group; Golomb Spirt Grunfeld, P.C.;

- Casey Gerry Schenk Francavilla Blatt & Penfield, LLP; and Lynch Carpenter, LLP as Class Counsel;
- (4) approve the Notice Program set forth in the Agreement and approve the form and content of the claim form and Notices, attached to the Agreement as **Exhibits A, B, and C**;
 - (5) appoint RG/2 Claims Administration as the Notice Specialist and Claims Administrator;
 - (6) appoint Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP to serve as Claims Referee;
 - (7) approve and order the opt-out and objection procedures set forth in the Agreement; and
 - (8) schedule a fairness hearing on Final Approval to occur no sooner than one hundred and ten (110) days after the date of the Preliminary Approval is entered

A proposed Preliminary Approval Order has been filed herewith.

Respectfully submitted this 25th day of February, 2022.

BY:

s/ Francesca Kester
Francesca Kester

s/ Jean S. Martin
Jean S. Martin

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WHEREAS, Class Plaintiffs further allege that the Accounts contained protected identifying information (“PII”) and protected health information (“PHI”) and that Einstein failed to adequately safeguard this information;

WHEREAS, Class Plaintiffs have asserted claims against Einstein for (i) negligence, (ii) breach of contract, (iii) breach of implied contract, (iv) breach of fiduciary duty, (v) breach of confidence, and (vi) declaratory judgment, and Class Plaintiffs have sought monetary and equitable relief;

WHEREAS, the Parties so as to explore resolution, agreed to engage in a mediation to seek to settle the Class Plaintiffs’ claims;

WHEREAS, the Parties engaged in two full days of mediation with Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP;

WHEREAS, as a result of the mediation, the Parties agreed to settle the Litigation without any admission of liability on the terms set forth herein;

WHEREAS, Class Plaintiffs and Einstein mutually desire to settle the Litigation fully, finally, and forever on behalf of the Settlement Class, including Class Plaintiffs, for the Released Claims (as defined in ¶ 1.20 below) in accordance with the terms and conditions of the Settlement Agreement, which the Parties believe constitute a fair and reasonable compromise of the claims and defenses asserted in the Litigation and upon final approval of the Court;

WHEREAS, Class Plaintiffs and Einstein agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Einstein or of the truth of any of the claims or allegations alleged in the Litigation or as a waiver of any defenses thereto;

NOW, THEREFORE, it is agreed by and among the undersigned on behalf of Class Plaintiffs, Settlement Class and Einstein that all claims asserted against Einstein in the Litigation are settled, compromised and dismissed on the merits and with prejudice and, except as hereafter provided, without costs as to Class Plaintiffs or Einstein, subject to the approval of the Court, on the following terms and conditions:

I. DEFINITIONS

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

- 1.1. “Agreement” or “Settlement Agreement” means this agreement.
- 1.2. “Approved Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the Dispute Resolution process.
- 1.3. “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Claims Administrator.
- 1.4. “Claims Administrator” means a company that is experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation, to be jointly agreed upon by the Parties and approved by the Court.
- 1.5. “Claims Deadline” means the postmark and/or online submission deadline for valid claims pursuant to ¶ 2.1.
- 1.6. “Claims Referee” means a third party designated by agreement of the Parties and approved by the Court to make final decisions about disputed claims for settlement benefits.
- 1.7. “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.8. “Court” means the Court of Common Pleas, Philadelphia County.

1.9. “Dispute Resolution” means the process for resolving disputed Settlement Claims as set forth in this Settlement Agreement.

1.10. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 1.11 herein have occurred and been met.

1.11. “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

1.12. “Judgment” means a judgment rendered by the Court, in the form attached hereto as Exhibit E, or a judgment substantially similar to such form.

1.13. “Notice” means notice of the proposed class action settlement to be provided to Settlement Class Members pursuant to the notice plan approved by the Court in connection with preliminary approval of the Settlement.

1.14. “Notice Deadline” means the deadline for the completion of providing notice to Settlement Class Members as set forth in ¶ 3.2.

1.15. “Notice Specialist” means a company or such other notice specialist with recognized expertise in class action notice generally and data security litigation specifically, to be jointly agreed upon by the Parties and approved by the Court.

1.16. “Objection Date” means the date by which Settlement Class Members must mail their objection to the Settlement in order for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.17. “Opt-Out Date” means the date by which Settlement Class Members must mail their requests to be excluded from the Settlement Class in order for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.18. “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.19. “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Parties’ proposed form of Preliminary Approval Order is attached hereto as Exhibit D.

1.20. “Related Entities” means Einstein’s respective past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing,

aiding or abetting the criminal activity occurrence of the Incident or who pleads nolo contendere to any such charge.

1.21. “Released Claims” shall collectively mean any and all claims and causes of action including, without limitation, any causes of action under or relying on Pennsylvania or other state law; Federal law; the Health Insurance Portability and Accountability Act; the Federal Trade Commission Act; negligence; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy/intrusion upon seclusion; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Incident and alleged compromise of personally identifiable information, protected health information, or other personal information or the allegations, facts, or circumstances described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.22. “Released Persons” means Einstein and its Related Entities and each of their past or present direct and indirect parents, subsidiaries, divisions, partners, affiliates, and

insurers, and their respective present and former stockholders, officers, directors, employees, managers, agents, and each of their respective predecessors, successors, heirs, executors, trustees, administrators, assigns, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers. As used in this Paragraph, “affiliates” means entities controlling, controlled by or under common control with a Released Person.

1.23. “Settlement Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.24. “Settlement Class” means all individuals residing in the United States whose PHI and/or PII was involved in the Incident that impacted Einstein in August 2020 and who received notice of the settlement. Einstein represents that the Settlement Class consists of approximately 286,181 individuals. The Settlement Class specifically excludes: (i) Einstein and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Incident or who pleads nolo contendere to any such charge.

1.25. “Settlement Class Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.26. “Settlement Class Counsel” or “Class Counsel” means Nussbaum Law Group, P.C., Morgan & Morgan Complex Litigation Group, Golomb Spirt Grunfeld, P.C., Casey Gerry Schenk Francavilla Blatt & Penfield, LLP and Lynch Carpenter, LLP.

1.27. “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including Class Plaintiffs, does not know or suspect to exist in his/her favor at the

time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Class Plaintiffs expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 et seq., Montana Code Ann. § 28- 1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class Members, including Class Plaintiffs, and any of them, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Class Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.28. “United States” as used in this Settlement Agreement includes the District of Columbia and all territories.

II. SETTLEMENT BENEFITS

Subject to the terms of this Settlement Agreement, the Settlement Class shall receive the following benefits:

2.1. Compensation for Losses: Einstein or its insurer shall make available the following benefits to Settlement Class Members who submit a valid Claim Form, a form substantially similar to that attached hereto as Exhibit A. Settlement Class Members may choose any or all applicable claim categories below. The overall amount for all payments made by Einstein or its insurer under Claims A, B, and C in this Section shall not exceed \$1,500,000.00. If the total of all Claims A, B, and C exceed \$1,500,000.00, the claims shall be reduced pro rata.

(a) Claim A: Compensation for Lost Time. Settlement Class Members will be eligible for compensation of up to 3 hours of lost time (at \$20.00 per hour) spent dealing with the Incident, provided that the claimant submits an attestation with the Claim Form that the time was spent dealing with issues relating to the Incident.

(b) Claim B: Compensation for Ordinary Losses. Settlement Class Members will be eligible for compensation for ordinary losses, as defined below, up to a total of \$1,500.00 per claimant, upon submission of a claim and supporting documentation, if applicable. Ordinary losses are: (i) out-of-pocket expenses incurred as result of the Incident, including but not limited to unreimbursed bank fees, unreimbursed card reissuance fees, unreimbursed overdraft fees, unreimbursed charges related to the unavailability of funds, unreimbursed late fees, unreimbursed over-limit fees, unreimbursed charges from banks or credit card companies, interest on payday loans due to a card cancelation or over-limit situation, long distance phone charges, cellphone charges if charged by the minute, data charges if charged

based on data usage, text messages if charged by the message, postage, or gasoline for local travel, costs associated with freezing or unfreezing credit with any credit reporting agency, fees for credit reports between the date of the Incident and the Claims Deadline; and (ii) the cost of purchasing credit monitoring or other identity theft insurance products purchased between October 9, 2020 and the date of preliminary approval of the settlement, provided that the claimant attests that the credit monitoring or other identity theft insurance products were purchased primarily as a result of the Incident. The Settlement Class Member must provide documentation to the Claims Administrator that establishes the out-of-pocket expenses and charges claimed were both actually incurred and are fairly and reasonably traceable to the Incident. Failure to provide supporting documentation as requested on the Claim Form shall result in denial of a claim. The maximum amount any one claimant may recover under Claim B is \$1,500.00.

(c) **Claim C: Compensation for Extraordinary Losses.**

Settlement Class Members will be eligible for compensation for extraordinary losses, as defined below, up to a total of \$7,500.00 per claimant, upon submission of a claim and supporting documentation. Extraordinary losses are losses associated with identity theft, medical fraud, tax fraud, other forms of fraud, and other actual misuse of personal information, provided that (i) the loss is an actual documented and unreimbursed monetary loss; (ii) the loss was fairly and reasonably traceable to the Incident; (iii) the loss is not already covered by one or more of the ordinary loss compensation categories under Claim B; (iv) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring or identity monitoring insurance; and (v) the loss occurred

between the date of the Incident and the Claims Deadline. The maximum amount any one claimant may recover under Claim C is \$7,500.00.

Settlement Class Members seeking reimbursement under this section must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the 90th day after the Notice Deadline as set forth in ¶ 3.2 (previously defined as the “Claims Deadline” in ¶ 1.5). The notice to the class will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 2.4.

2.2. Identity Monitoring Services: Settlement Class Members will receive an offer of one year of Identity Monitoring Services from Experian on a claims made basis, that includes, at least, the following, or similar, services: (i) internet surveillance; (ii) identity theft insurance of up to \$1,000,000; and (iii) identity restoration services.

2.3. Remedial Measures/Security Enhancements: Einstein has implemented information security enhancements since the Incident, and as part of this agreement Einstein will commit to continue to make additional security enhancements in the future. Nothing in this section shall create any contractual rights to any present or future equitable remedy requiring Einstein to make or maintain any particular security processes or procedures in the future.

The enhancements implemented by Einstein since the Incident or that it expects to implement in the future include but are not limited to the following:

- Implement advanced security awareness training to educate employees to recognize and avoid engagement with phishing emails and other similar social engineering attempts;

- Implement controls and technology enforcement of controls to check, warn, or block PII and PHI that is transmitted externally via unencrypted email;
- Implement multi-factor authentication for web email interface or VPN access to any Einstein systems;
- Implement enhanced password security measures for Einstein email accounts, including requirements of password reset on a regular intervals;
- Engage a reputable third-party cybersecurity company to deploy endpoint monitoring and response tools on an around-the-clock basis;
- Identify and remove inactive email accounts to reduce the number of accounts present on the network;
- Encrypt Social Security numbers and other sensitive PII or PHI, both when at rest and during movement (but not for internal emails sent by and between Einstein employees);
- Within two (2) years of the date of this Agreement, Einstein will segment all internet-facing and/or ecommerce applications from internal networks;
- Within one (1) year of the date of this Agreement, Einstein will complete a risk assessment that includes both internal and external penetration testing;
- Engage third-party security auditors/penetration testers to conduct testing, including simulated attacks, penetration tests, and audits on Einstein's systems on a periodic basis;
- Audit, test, and train its security personnel regarding any new or modified procedures;
- Purge, delete, and destroy in a reasonably secure manner data not necessary for Einstein's provision of services;
- Conduct regular computer system scanning and security checks; and
- Conduct internal training and education to inform internal security personnel how to identify and contain a breach when it occurs and what to do in response to a breach.

2.4. Dispute Resolution for Claims: The Claims Administrator, in his or her sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the

expenses described in ¶ 2.1; and (3) the information submitted could lead a reasonable person to conclude that the claimant has suffered the claimed losses as a result of the Incident (collectively, “Facially Valid”). The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the claim, e.g., documentation requested on the Claim Form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof.

Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is Facially Valid, the Claims Administrator shall request additional information (“Claim Supplementation”) and give the claimant thirty (30) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the 30-day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the 30-day deadline in which to comply; however, in no event shall the deadline be extended to later than one year from the Effective Date. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

Following receipt of additional information requested as Claim Supplementation, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is Facially Valid, then the claim shall be

paid. If the claim is not Facially Valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Settlement Administrator may reject the deficient portion of the claim without any further action. If the claim is rejected for other reasons, then the claim shall be referred to the Claims Referee.

Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination. If the claimant approves the final determination, then the approved amount shall be the amount to be paid. If the claimant does not approve the final determination within thirty (30) days, then the dispute will be submitted to the Claims Referee within an additional ten (10) days.

If any dispute is submitted to the Claims Referee, the Claims Referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days. The Claims Referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days. The Claims Referee's determination shall be based on whether the Claims Referee is persuaded that the claimed amounts are reasonably supported in fact and were fairly and reasonably traceable to the Incident. The Claims Referee shall have the power to approve a claim in full or in part. The Claims Referee's decision will be final and non-appealable. Any claimant referred to the Claims Referee shall reasonably cooperate with the Claims Referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the Claims Referee to verify the claim through third party sources, and failure to cooperate shall be grounds for denial of the

claim in full. The Claims Referee shall make a final decision within thirty (30) days of receipt of all supplemental information requested.

2.5. Settlement Expenses: All costs for notice to the Settlement Class as required under ¶ 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute Resolution described in ¶ 2.4, shall be paid by Einstein.

2.6. Settlement Class Certification: The Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Party's position on the issue of class certification or any other issue. The Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

2.7. Confidentiality of Information Submitted by Settlement Class Members: Information submitted by Settlement Class Members pursuant to ¶¶ 2.1 through 2.4 of this Settlement Agreement shall be deemed confidential and protected as such by Einstein, the Claims Administrator, and the Claims Referee.

III. ORDER OF PRELIMINARY APPROVAL AND PUBLISHING OF NOTICE OF FAIRNESS HEARING

3.1. As soon as practicable after the execution of the Settlement Agreement, Settlement Class Counsel and counsel for Einstein shall jointly submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement with the

Court requesting entry of a Preliminary Approval Order in the form attached hereto as Exhibit D, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

(a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.6;

(b) preliminary approval of the Settlement Agreement as set forth herein;

(c) appointment of Nussbaum Law Group, P.C., Morgan & Morgan Complex Litigation Group, Golomb Spirt Grunfeld, P.C., Casey Gerry Schenk Francavilla Blatt & Penfield, LLP and Lynch Carpenter, LLP as Settlement Class Counsel;

(d) appointment of Class Plaintiffs as Class Representatives;

(e) approval of a customary form of short notice to be provided to Settlement Class Members (the “Short Notice”) in a form substantially similar to the one attached hereto as Exhibit B;

(f) approval of a customary long form of notice (“Long Notice”) to be posted on the Settlement Website in a form substantially similar to the one attached hereto as Exhibit C, which, together with the Short Notice, shall include a fair summary of the parties’ respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;

(g) appointment of RG2 Claims Administration LLC as the Notice Specialist and Claims Administrator;

(h) approval of a claim form substantially similar to that attached hereto as Exhibit A; and

(i) appointment of Bennett G. Picker, or his associate, to serve as Claims Referee.

The Short Notice, Long Notice, and Claim Form have been reviewed and approved by the Notice Specialist and Claims Administrator but may be revised as agreed upon by the Parties prior to submission to the Court for approval.

3.2. Einstein or its insurer shall pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Attorneys' fees, costs, and expenses of Settlement Class Counsel and Class Plaintiffs' Counsel, and service awards to Class Representatives, shall be paid by Einstein as set forth in ¶ 7 below. Notice shall be provided to Settlement Class Members via mail to the postal address provided when the Settlement Class Members conducted transactions with Einstein. For those class members whose mailing addresses were not found or mail was returned previously, reasonable efforts will be made to identify email addresses which will be used to provide Notice. The notice plan shall be subject to approval by the Court as meeting constitutional due process requirements. The Claims Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the claim period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement and other important case documents. A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Claims Administrator also will provide copies of the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement,

upon request. At least five (5) days prior to the Final Fairness Hearing, Settlement Class Counsel and Einstein' counsel shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice. The Short Notice, Long Notice, and Claim Form approved by the Court may be adjusted by the Notice Specialist and/or Claims Administrator, respectively, in consultation and agreement with the Parties, as may be reasonable and not inconsistent with such approval. The Notice Program shall be completed within thirty (30) days after entry of the Preliminary Approval Order.

3.3. Settlement Class Counsel and Einstein's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

3.4. Einstein shall cause the Claims Administrator to provide (at Einstein's expense) notice to the relevant state and federal governmental officials as required by the Class Action Fairness Act.

3.5. No later than twenty-one (21) days after entry of the Preliminary Approval Order, Einstein shall provide the Notice Specialist and/or Claims Administrator with the name and last known physical address and email address (to the extent available) of each Settlement Class Member (collectively, "Class Member Information") that Einstein possesses.

3.6. The Class Member Information and its contents shall be used by the Notice Specialist and/or Claims Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Claims Administrator

and Notice Specialist shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

IV. OPT-OUT PROCEDURES

4.1. Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. Opt-outs must be exercised individually by a Class Member, not as or on behalf of a group, class, or subclass, except that the individual exclusion requests may be submitted by a Class Member's legal representative. To be effective, written notice must be postmarked no later than sixty (60) days after Notice Deadline.

4.2. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. A list of Class Members submitting a timely request for exclusion shall be prepared by the Claims Administrator to be submitted to the Court with the Motion for Final Approval.

4.3. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon, and their claims shall be released as provided for herein. A Class Member is not entitled to submit both an opt-out request and a Claim Form. If a Class Member submits both an opt-out request and a Claim Form, the Claims Administrator will send a letter explaining that the Class Member may not make both of these requests, and asking the Class Member to make a final decision as to whether to opt out or submit a Claim Form and inform the Claims Administrator of that decision within 10 days. If the Class Member does not respond to that communication within 14 days

after it is mailed (or by the Opt-Out deadline, whichever is later), the Class Member will be treated as having opted out of the Class.

4.4. In the event that within ten (10) days after the Opt-Out Date as approved by the Court, more than 5,000 Persons have filed Opt-Outs, then Einstein may, by notifying Settlement Class Counsel in writing, void this Settlement Agreement. If Einstein voids the Settlement Agreement pursuant to this paragraph, Einstein or its insurer shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Settlement Class Counsel and Class 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.

V. OBJECTION PROCEDURES

5.1. Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing the objector; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. To

be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court no later than sixty (60) days after Notice Deadline, and served concurrently therewith upon Settlement Class Counsel, Richard M. Golomb, Golomb Spirt Grunfeld PC, 1835 Market Street, Suite 2900, Philadelphia, Pennsylvania 19103; and counsel for Einstein, Jan P. Levine, Troutman Pepper Hamilton Sanders LLP, 3000 Two Logan Square, Philadelphia, Pennsylvania 19103 and Angelo A. Stio III, Troutman Pepper Hamilton Sanders LLP, 301 Carnegie Center, Suite 400, Princeton, New Jersey 08540.

5.2. Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 waives and forfeits any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and 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 provisions of ¶ 5.1. 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 pursuant to appeal under the Pennsylvania Rules of Appellate Procedure and not through a collateral attack.

VI. RELEASES

6.1. Upon the Effective Date, each Settlement Class Member, including Class Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Class Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other

forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.2. Upon the Effective Date, Einstein shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Class Plaintiffs, each and all of the Settlement Class Members, Settlement Class Counsel and Class Plaintiffs' Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses Einstein may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3. Notwithstanding any term herein, neither Einstein nor the Related Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Class Plaintiffs, each and all of the Settlement Class Members, Settlement Class Counsel and Class Plaintiffs' Counsel.

VII. CLASS PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES, COSTS, AND EXPENSES; SERVICE AWARD TO CLASS PLAINTIFFS

7.1. The Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Class Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that Einstein would pay reasonable attorneys' fees, costs, expenses, and service awards to Class Plaintiffs as may be agreed to by Einstein and Settlement Class Counsel and/or as ordered by the Court, or in the

event of no agreement, then as ordered by the Court. Einstein and Settlement Class Counsel then negotiated and agreed as follows:

7.2. Einstein has agreed not to object to an award of up to \$375,000 in total for attorneys' fees and the reasonable costs and expenses to Settlement Class Counsel. Settlement Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among themselves.

7.3. Subject to Court approval, Einstein has agreed to pay service awards in the amount of \$1,500 each to Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta and a service award in the amount of \$1,000 to Britney Richardson, as parent guardian of S.H.

7.4. Once paid, Settlement Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Class Plaintiffs' Counsel and service award to Class Plaintiffs consistent with ¶¶ 7.2 and 7.3.

7.5. The amount(s) of any award of attorneys' fees, costs, and expenses, and the service award to Class Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service awards ordered by the Court to Settlement Class Counsel or Class Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

VIII. CLAIMS ADMINISTRATION

8.1. The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2.1. Settlement Class Counsel and Einstein shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or

inadequate. The Claims Administrator's and Claims Referee's, as applicable, determination of the validity or invalidity of any such claims shall be binding, subject to the dispute resolution process set forth in ¶ 2.4. All claims agreed to be paid in full by Einstein or its insurer shall be deemed valid.

8.2. Checks for approved claims shall be mailed and postmarked within forty-five (45) days of the Effective Date, or within forty-five (45) days of the date that the claim is approved, whichever is later.

8.3. All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4. No Person shall have any claim against the Claims Administrator, Claims Referee, Einstein, Settlement Class Counsel, Class Plaintiffs, Class Plaintiffs' Counsel, and/or Einstein's counsel based on distributions of benefits to Settlement Class Members.

IX. PAYMENT SCHEDULE

9.1. Einstein or its insurer shall pay costs sufficient to fund the settlement as follows:

(a) Within thirty (30) days of the Court granting preliminary approval of this Settlement Agreement, Einstein or its insurer shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement in an amount estimated by the Settlement Administrator;

(b) Within thirty (30) days of the Effective Date, Einstein or its insurer shall pay to Class Counsel any attorneys' fees, costs, expenses, and service award pursuant to ¶¶ 7.2 and 7.3;

(c) Within thirty (30) days of the Effective Date, Einstein or its insurer shall pay to the Settlement Administrator an amount sufficient to satisfy the full amount of approved claims. To the extent claims are finally approved after the deadline for the initial payment, the Settlement Administrator shall send monthly statements to counsel for Einstein with additional amounts due to pay for approved claims, and Einstein or its insurer shall pay those additional amounts within thirty (30) days of each monthly statement. Within forty-five (45) days of the Effective Date or within forty-five (45) days of the date that the claim is approved, whichever is later, the Settlement Administrator shall send out payment for all valid claims.

X. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

10.1. The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

(a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 3.1;

(b) Einstein has not exercised their option to terminate the Settlement Agreement pursuant to ¶ 4.3;

(c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and

(d) the Judgment has become Final, as defined in ¶ 1.11.

10.2. If all of the conditions specified in ¶ 10.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 10.4 unless Settlement Class Counsel and Einstein’s counsel mutually agree in writing to proceed with the Settlement Agreement.

10.3. Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Settlement Class Counsel and to Einstein’s counsel a complete list of all timely and valid requests for exclusion (the “Opt-Out List”).

10.4. In the event that the Settlement Agreement is not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or its counsel, and (ii) 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. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys’ fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Einstein or its insurer shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution pursuant to ¶ 2.4 above 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. MISCELLANEOUS PROVISIONS

11.1. The Parties (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

11.2. The Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim or defense. The Parties each agree that the settlement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

11.3. Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may

be brought against them or any of them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11.4. All documents and materials, if any, provided by Einstein shall be treated as confidential and returned to Einstein and/or destroyed within sixty (60) days of the Effective Date. Such documents and materials, if any, may not be used for any purpose other than what they were provided for.

11.5. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

11.6. The Settlement Agreement, together with the Exhibits attached hereto, constitutes the entire agreement among the parties hereto, and no representations, warranties or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties and covenants contained and memorialized in such document. Except as otherwise provided herein, each party shall bear its own costs. This agreement supersedes all previous agreements made by the parties. Settlement Class Counsel, on behalf of the Settlement Class, is expressly authorized by Class Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

11.7. Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

11.8. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

11.9. The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

11.10. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

11.11. The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Pennsylvania, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Pennsylvania.

11.12. As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and “him” means “him, her, or it.”

11.13. All dollar amounts are in United States dollars (USD).

11.14. Cashing a settlement check is a condition precedent to any Settlement Class Member’s right to receive settlement benefits. All settlement checks shall be void sixty (60) days after issuance. If a check becomes void, the Settlement Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to

recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and Einstein shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶ 2.1 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for reissuance need not be honored after such checks become void.

11.15. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

Settlement Class Counsel

**MORGAN & MORGAN COMPLEX
LITIGATION GROUP**

By: _____

Dated: _____

Jean S. Martin
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
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jeanmartin@forthepeople.com

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By: _____

Dated: _____

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GOLOMB SPIRT GRUNFELD, P.C.

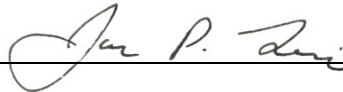
By: _____

Dated: _____

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rgolomb@GolombLegal.com
kgrunfeld@GolombLegal.com

Counsel for Einstein Healthcare Network

**TROUTMAN PEPPER HAMILTON
SANDERS LLP**

By:  _____


Dated: 02/22/2022

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Settlement Class Counsel

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Settlement Class Counsel

Counsel for Einstein Healthcare Network

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LITIGATION GROUP**

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**CASEY GERRY SCHENK FRANCAVILLA
BLATT & PENFIELD, LLP**

By: Gayle M. Blatt

Dated: 2/24/2022

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gmb@cglaw.com

LYNCH CARPENTER, LLP

By: _____

Dated: _____

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Pittsburgh, Pennsylvania 15222
Telephone: (412) 322-9243
Facsimile: (412) 231-0246
glynch@lcllp.com
kelly@lcllp.com

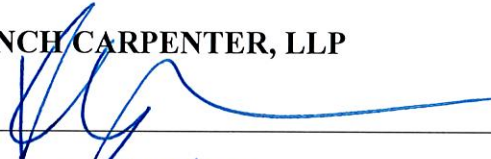
**CASEY GERRY SCHENK FRANCAVILLA
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LYNCH CARPENTER, LLP

By:  _____

Dated: 02/17/22

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kelly@lcllp.com

**EXHIBIT A
CLAIM FORM**

EINSTEIN HEALTHCARE NETWORK DATA INCIDENT

SETTLEMENT CLAIM FORM

This Claim Form should be filled out and submitted by mail if you received notice that your Personal Identifiable Information and/or Protected Health Information was potentially compromised in the Data Incident that occurred with Einstein Healthcare Network. You may enroll in complimentary identity monitoring services through Experian Identity for a period of one year from the Effective Date of the Settlement. You may also receive a cash payment of (1) \$20 per hour (a maximum of three hours) for time lost remedying the effects of the Data Incident and/or (2) up to \$1,500 for reimbursement for documented ordinary expenses and/or (3) up to \$7,500 for reimbursement for documented extraordinary expenses if you fill out this Claim Form. The total claims for lost time, ordinary expenses, and extraordinary expenses will be capped at \$1,500,000. If the total of valid claims exceeds \$1,500,000, claims will be reduced pro rata.

Please refer to the Settlement Notice posted on the settlement website, _____, for more information.

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY: DEADLINE

CLASS MEMBER INFORMATION

The Settlement Administrator will use this information for all communications regarding this Claim Form and the Settlement.

First Name: _____ M: _____ Last: _____

Address: _____

City: _____ State: _____ ZIP: _____ Country: _____

Phone: _____ Email (Optional): _____

SETTLEMENT BENEFITS

You may submit a claim for both identity monitoring services (#1) and one or more cash payments (#2).

1. Identity Theft Monitoring

You may enroll in complimentary identity monitoring services through Experian Identity for a period of one year from the Effective Date of the Settlement by submitting this form. No additional documentation is needed.

YES, please provide me with complimentary identity monitoring services

Please provide your email address above. When the Settlement becomes effective, you will receive an activation code to use to enroll directly with Experian.

2. Cash Payments

Three types of cash payments for damages are available. First, you may recover payment to compensate you for the time you spent addressing the Data Incident (#A). Second, you may recover certain “ordinary expenses”

Questions? Call _____ or visit _____

incurred as a result of the Data Incident (#B). And third, you may recover certain “extraordinary expenses” incurred as a result of the Data Incident (#C). These expenses or time must have been incurred during the applicable time period, which is from August 5, 2020 through the end of the claim deadline. Please refer to the Settlement Notice for more information.

To help us determine if you are entitled to a settlement payment, please provide as much information as possible. Only complete the sections for which you are making a claim for a cash payment. You may make a claim for any or all of the following types of damages:

A. Lost Time.

You may be eligible for reimbursement of up to three hours of time spent remedying or researching issues related to the Data Incident(s) (at \$20 per hour) with an attestation that the time was spent dealing with the Data Incident.

How much time did you spend? _____ (a maximum of 3 hours will be considered for reimbursement regardless of whether the time spent exceeded 3 hours)

Attestation (you must check this box to attest to the number of hours you are claiming)

I attest that I spent the number of hours claimed above making reasonable efforts to deal with the Data Incident.

B. Documented Ordinary Expenses.

The types of ordinary expenses that you may claim include fees or other charges (e.g., professional fees, losses related to fraud or identity theft, credit monitoring, etc.) and other incidental expenses (e.g., postage, long distance charges, etc.) you incurred addressing the Data Incident. The Settlement Notice further describes the types of available expenses in greater detail and the documentation required to support the expenses. Please refer to that document for more information.

Date	Description	Amount

Documentation is required for claimed expenses. Please be sure to include documentation to expedite the processing of your claim. For example, a bank statement showing claimed fees (you may redact unrelated transactions and all but the last four digits of any account number).

Settlement Class Members may claim up to **\$1,500 in total for ordinary expenses** under this section.

C. Documented Extraordinary Expenses

The types of extraordinary expenses that you may claim include expenses associated with identity theft, medical fraud, tax fraud, other forms of fraud, and other actual misuse of personal information, provided that (i) the loss is an actual documented and unreimbursed monetary loss; (ii) the loss was fairly traceable to the Data Incident; (iii) the loss is not already covered by one or more of the ordinary loss compensation categories under Claim B;

Questions? Call _____ or visit _____

(iv) you made reasonable efforts to avoid the loss or seek reimbursement for the loss; and (v) the loss occurred between August 5, 2020 and the Claims Deadline.

The Settlement Notice describes the types of available expenses in greater detail and the documentation required to support the expenses. Please refer to that document for more information.

Date	Description	Amount

Documentation is required for claimed extraordinary expenses. Please be sure to include documentation to expedite the processing of your claim.

Settlement Class Members may claim up to **\$7,500 in total for extraordinary expenses** under this section.

The information supplied in this Claim Form is true and correct to the best of my recollection. I understand that I may be asked to provide supplemental information by the Claims Administrator before my claim will be considered complete and valid.

Print Name: _____

Signature: _____ Date: _____

* * *

The deadline to submit this Claim Form and all required supporting documentation is _____:

This Claim Form may be submitted online at www.settlementwebsite.com or completed and mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, along with any supporting documentation, by U.S. Mail to:

Settlement Administrator

Street

City, State

DO NOT SEND THIS CLAIM FORM TO THE COURT

Questions? Call _____ or visit _____

EXHIBIT B
SHORT FORM NOTICE

SETTLEMENT ID XXXXX

PASSWORD XXXXXX

Use these codes to file a claim

Individuals who were notified by Einstein Healthcare Network that their Personal Identifiable Information (“PII”) or Protected Health information (“PHI”) was or may have been compromised in a Data Incident that occurred in August 2020 may be eligible for a payment from a class action settlement.

A Pennsylvania state court ordered this notice. This is not a solicitation from a lawyer.

A settlement has been reached with Einstein Healthcare Network (“Einstein”) in a class action lawsuit about the data security incident (“the Data Incident”) that occurred between August 5, 2020 and August 17, 2020. Einstein first announced the Data Incident on or about October 9, 2020 and began mailing notice letters to patients whose information was identified as compromised. Einstein sent an additional round of notice letters to affected individuals between January 21, 2021 and February 8, 2021. The lawsuit was filed asserting claims against Einstein relating to the Data Incident. Einstein denies all of the claims and says it did not do anything wrong.

WHAT HAPPENED? Plaintiffs allege that between August 5, 2020 and August 17, 2020, Einstein was the target of a Data Incident in which an unauthorized user accessed Einstein’s employees’ email accounts which contained your protected personally identifying information (“PII”) and protected health information (“PHI”). Plaintiffs allege that during this time an unauthorized user gained access to Plaintiffs’ and Einstein’s patients’ PII and PHI, including, names, dates of birth, medical record and patient account numbers, health insurance information, and treatment information such as diagnoses, medications, providers, types of treatment, treatment locations, and in some instances, social security numbers.

WHO IS INCLUDED? You received this notice because Einstein’s records show you are a member of the **Settlement Class**. The Settlement Class includes all residents of the United States whose PHI and/or PII was involved in the Data Incident who received notice of the settlement.

SETTLEMENT BENEFITS. All Settlement Class Members may elect to receive identity monitoring services through Experian Identity for a period of one year from the Effective Date of the settlement. You must file a Claim Form requesting services and, when the settlement becomes final, you will be provided an activation code for enrollment directly with Experian.

The settlement also provides cash reimbursement of up to \$20 per hour (for a maximum of 3 hours) as compensation for time lost dealing with the Data Incident, up to \$1,500 per person for documented “ordinary expenses” occurred in responding to the Data Incident, and up to \$7,500 per person for documented “extraordinary expenses” incurred in responding to the Data Incident. The total claims for lost time, ordinary expenses, and extraordinary expenses will be capped at \$1,500,000. If the total claims exceed the cap, the funds will be reduced and distributed proportionally.

Further detailed information about the settlement’s benefits is available on the website: _____

CLAIM FORM. You must file a Claim Form to receive the Settlement Benefits. You can file a claim online at _____, download a Claim Form at the website and mail it, or you may call _____ and ask that a Claim Form be mailed to you. You need to use the ID and Password assigned to you to file a Claim Form. The last day to postmark or file a claim online, is _____. Further instructions on how to file a claim are on the website.

OTHER OPTIONS. If you do not want to be legally bound by the settlement, you must exclude yourself by _____. If you stay in the settlement, you must object to it by _____. A more detailed notice is available to explain how to exclude yourself or object. Please visit the website _____ or call the toll-free number for a copy of the more detailed notice. On _____, the Court will hold a hearing on whether to approve the settlement, Class Counsel’s request for attorneys’ fees and reasonable costs and

Case ID: 210402045
Control No.: 22025571

expenses of up to \$375,000, and service awards for each of the four Representative Plaintiffs (up to \$1,500 each for Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta and up to \$1,000 for Britney Richardson, as parent guardian of S.H.). You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. Detailed information is available at the website and by calling the toll-free number below.

Questions? Call _____ or visit _____

EXHIBIT C
LONG FORM NOTICE

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION – CIVIL SECTION

**Individuals who were notified by Einstein Healthcare Network
that their confidential personally identifiable (“PII”) or protected health
information (“PHI”) may have been compromised in a
Data Incident that occurred in August 2020
may be eligible for a payment from a class action settlement.**

A Pennsylvania state court ordered this notice. This is not a solicitation from a lawyer.

- A settlement has been reached with Einstein Healthcare Network (“Einstein”) in a class action lawsuit about the Data Incident (the “Data Incident”) that occurred between August 5, 2020 and August 17, 2020. Einstein first announced the Data Incident on or about October 9, 2020 and began mailing notice letters to patients whose information was identified as compromised. Einstein sent an additional round of notice letters to affected individuals between January 21, 2021 and February 8, 2021. This lawsuit was filed asserting claims against Einstein relating to the Data Incident. Einstein denies all of the claims and says it did not do anything wrong.
- Plaintiffs allege that between August 5, 2020 and August 17, 2020, Einstein was the target of a Data Incident in which an unauthorized user accessed Einstein’s employees’ email accounts and which resulted in the unauthorized access of personal information. Plaintiffs allege that, as a result of the Data Incident, an unauthorized user gained access to Personally Identifiable Information (“PII”) and/or Protected Health Information (“PHI”) of Plaintiffs’ and Einstein’s patients. The PHI and PII included names, dates of birth, medical record and patient account numbers, health insurance information, treatment information such as diagnoses, medications, providers, types of treatment, treatment locations, and in some instances, social security numbers.
- The Settlement Class includes all residents of the United States whose PHI and/or PII involved in the Data Incident who were sent notice of the settlement.
- All Settlement Class Members will receive the opportunity to claim one full year from the Effective Date of the settlement of identity monitoring services through Experian. You must file a Claim Form requesting services and you will be provided an activation code for enrollment directly with Experian. The identity monitoring services include (i) identity monitoring (ii) internet surveillance; (iii) up to \$1 Million in identity theft insurance; and (iv) identity restoration services.
- The settlement also provides cash reimbursement of up to \$20 per hour (for a maximum of 3 hours) as compensation for time lost dealing with the Data Incident, up to \$1,500 per person for documented “ordinary expenses” occurred in responding to the Data Incident, and up to \$7,500 per person for documented “extraordinary expenses” incurred in responding to the Data Incident.
- You must file a Claim Form to receive Identity Monitoring or one or more of the cash payments provided by the settlement. You can file a claim online at this website, _____, download a Claim Form and mail it, or you may call _____ and ask that a Claim Form be mailed to you. The last day to postmark or file a claim online (“Claim Deadline”) is _____.

**Your legal rights are affected even if you do nothing.
Read this Notice carefully.**

Your Legal Rights & Options in this Settlement		
Submit a Claim	You must submit a claim to get a payment.	Deadline: _____
Ask to be Excluded	This allows you to sue Einstein over the claims resolved by this settlement. You will not get anything from this settlement.	Deadline: _____
Object	Write to the Court about why you do not like the settlement. You can still get a payment.	Deadline: _____
Do Nothing	You get no payment, will not be eligible to enroll for identity monitoring, and you give up rights.	

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still must decide whether to grant final approval of the settlement. Payments will only be made after the Court grants final approval of the settlement and after any appeals are resolved in favor of the settlement.

Questions? Call _____ or visit www._____

WHAT THIS NOTICE CONTAINS?

BASIC INFORMATION..... Page 4

1. Why was this Notice issued?
2. What is this lawsuit about?
3. Why is this lawsuit a class action?
4. Why is there a settlement?

WHO IS IN THE SETTLEMENT? Page 4

5. How do I know if I am included in the settlement?
6. What if I am not sure whether I am included in the settlement?

THE SETTLEMENT BENEFITS..... Page 5

7. What does the settlement provide?
8. What payments are available?

HOW TO GET BENEFITS Page 6

9. How do I get these benefits?
10. How will claims be decided?

REMAINING IN THE SETTLEMENT Page 7

11. Do I need to do anything to remain in the settlement?
12. What am I giving up as part of the settlement?

EXCLUDING YOURSELF FROM THE SETTLEMENT Page 7

13. If I exclude myself, can I get a payment from this settlement?
14. If I do not exclude myself, can I sue Einstein for the same thing later?
15. How do I exclude myself from the settlement?

THE LAWYERS REPRESENTING YOU..... Page 8

16. Do I have a lawyer in this case?
17. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT Page 8

18. How do I tell the Court that I do not like the settlement?
19. What is the difference between objecting and asking to be excluded?

THE COURT’S FAIRNESS HEARING Page 9

20. When and where will the Court decide whether to approve the settlement?
21. Do I have to attend the hearing?
22. May I speak at the hearing?

IF YOU DO NOTHING Page 10

23. What happens if I do nothing?

GETTING MORE INFORMATION..... Page 10

24. How do I get more information?

Questions? Call _____ or visit www._____

BASIC INFORMATION

1. Why was this Notice issued?

The Court authorized this notice because you have a right to know about the proposed settlement in this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the settlement. This notice explains the legal rights and options that you may exercise before the Court decides whether to approve the settlement.

Judge Nina W. Padilla of the Pennsylvania Court of Common Pleas of Philadelphia County is overseeing this case, which is captioned *Nanette Katz et al., individually and on behalf of all others similarly situated v. Einstein Healthcare Network*, Class Action Case ID No. 21040204. The people who sued are called the Plaintiffs. Einstein Healthcare Network is called the Defendant.

2. What is this lawsuit about?

The lawsuit claims that Einstein was responsible for the Data Incident that occurred in or about August 2020 and asserts claims against Defendant for negligence, breach of contract, breach of implied contract, breach of fiduciary duty, and breach of confidence. The lawsuit seeks compensation for people who had losses as a result of the Data Incident.

Einstein denies all of Plaintiffs’ claims and asserts it did not do anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called “Representative Plaintiffs” sue on behalf of all people who have similar claims. All of these people together are the “Settlement Class” or “Settlement Class Members.” In this case, the Representative Plaintiffs are Nanette Katz, Christina Kreski, Britney Richardson as parent guardian of S.H., and Nghi Ta. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

4. Why is there a Settlement?

By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will get compensation and/or identity monitoring. The Representative Plaintiffs and their attorneys believe the settlement is fair, reasonable, and adequate and, thus, in the best interests of the Settlement Class and its members. The settlement does not mean that Einstein did anything wrong.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am included in the Settlement?

You are included in the settlement if you reside in the United States and were sent a letter by Einstein notifying you that your PII and/or PHI may have been involved in the Data Incident. Specifically excluded from the Settlement Class are: (a) Einstein and its respective officers and directors; (b) Settlement Class Members who timely and validly request exclusion from the Settlement Class (for more information about requesting exclusion see questions 13–15), (c) the Judge assigned to evaluate the fairness of this settlement; and (d) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

Questions? Call _____ or visit www._____

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the settlement, or have any other questions related to the settlement, you may:

1. Call _____;
2. Email _____; or
3. Write to:

Please do not contact the Court with questions.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

Settlement Class Members will receive the opportunity to enroll in identity monitoring through Experian Identity. The identity monitoring service will be provided for a period of one year from the Effective Date of the settlement. Settlement Class Members must submit a Settlement Claim in order to receive this service. Once the Settlement is final, Settlement Class Members who submitted a Claim Form requesting identity monitoring services will be provided an activation code to enroll directly with Experian Identity.

The settlement also provides cash payments to people who submit valid claims for out-of-pocket expenses or time lost as a result of the Data Incident.

8. What payments are available?

Settlement Class Members are eligible to receive cash reimbursement (capped in the aggregate amount of \$1.5 million) for the following categories of expenses:

- *Reimbursement for Lost Time:* Settlement Class Members may file a claim to receive a cash payment for up to three hours of lost time remedying issues related to the Data Incident, at a rate of \$20 per hour with an attestation that the time was spent dealing with the Data Incident.
- *Reimbursement for Ordinary Expenses:* Settlement Class Members may file a claim to receive cash payments of up to \$1,500 per person for ordinary expenses incurred in responding to the Data Incident. Ordinary Expenses include:
 - Unreimbursed bank fees, credit card reissuance fees, overdraft fees, charges related to the unavailability of funds, late fees, over-limit fees, or other reimbursed charges from banks or credit card companies;
 - Interest on payday loans due to a credit card cancellation or over-limit situation
 - Long distance telephone charges
 - Cell minutes (if charged by the minute or the amount of data usage);
 - Internet usage charges (if charged 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; and
 - Fees associated with credit reports, credit monitoring, or other identity theft insurance products purchased between October 9, 2020 and [30 days from Preliminary Approval Order].

Questions? Call _____ or visit www._____

- *Reimbursement for Extraordinary Expenses:* Settlement Class Members may file a claim to receive cash payments of up to \$7500 per person for extraordinary expenses incurred responding to the Data Incident. Extraordinary Expenses include expenses associated with identity theft, medical fraud, tax fraud, other forms of fraud, and other actual misuse of personal information, provided that (i) the loss is an actual documented and unreimbursed monetary loss; (ii) the loss was reasonably and fairly traceable to the Data Incident; (iii) the loss is not already covered by one or more of the ordinary loss compensation categories (i.e., lost time or ordinary expenses); (iv) you made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring or identity monitoring insurance; and (v) the loss occurred between August 5, 2020 and [120 days from the Preliminary Approval Order].

Reasonable documentation must be submitted with your Claim Form showing that the Ordinary Expenses or Extraordinary Expenses are reasonably and fairly traceable to the Data Incident in order to receive reimbursement. More details are provided in the Settlement Agreement, which is available at www.settlement.com. If the total claims exceed the \$1,500,000.00 cap, the funds will be reduced and distributed proportionally.

HOW TO GET BENEFITS

9. How do I get benefits?

To get cash payment(s) from the settlement or to enroll in identity monitoring provided by Experian Identity, you must complete a Claim Form. Please read the instructions carefully, fill out the Claim Form, provide reasonable documentation (where applicable), and submit it online or mail it postmarked no later than _____, to:

Claims Administrator
Street
City State Zip

You may submit a claim online or download a copy at _____ or you may request one by mail by calling _____.

10. How will claims be decided?

The Claims Administrator will initially decide whether the information provided on a Claim Form is complete and valid. The Claims Administrator may require additional information from any claimant. If the required information is not provided timely, the claim will be considered invalid and will not be paid.

If the claim is complete and the Claims Administrator denies the claim entirely or partially, the claimant will be provided an opportunity to have their claim reviewed by an impartial Claims Referee selected by the parties.

Questions? Call _____ or visit www._____

REMAINING IN THE SETTLEMENT

11. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the settlement, but if you want to enroll in identity monitoring by Experian, or request a cash payment, you must submit a Claim Form online or mail one postmarked by _____.

12. What am I giving up as part of the Settlement?

If the settlement becomes final, you will give up your right to sue Einstein for the claims being resolved by this settlement. The specific claims you are giving up against Einstein are described in paragraph 2.1 of the Settlement Agreement. You will be releasing Einstein and all related people or entities as described in Section 1.21 of the Settlement Agreement. The Settlement Agreement is available at _____.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the law firms listed in Question 16 for free, or you can, of course, talk to your own lawyer at your own expense.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue Einstein about issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

13. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any benefits of the settlement. You will also not be bound by any judgment in this case.

14. If I do not exclude myself, can I sue Einstein for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Einstein for the claims that this settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment or the identity monitoring services.

15. How do I exclude myself from the Settlement?

To exclude yourself, send a letter that says you want to be excluded from the settlement in Class Action Case ID No. 21040204 captioned *Nanette Katz, et al., individually and on behalf of all others similarly situated v. Einstein Healthcare Network*. Include your name, address, and signature. You must mail your Exclusion Request postmarked by _____, to:

Questions? Call _____ or visit www._____

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court appointed the following lawyers as Settlement Class Counsel: Nussbaum Law Group, P.C., Morgan & Morgan Complex Litigation Group, Golomb Spirt Grunfeld, P.C., Casey Gerry Schenk Francavilla Blatt & Penfield, LLP and Lynch Carpenter, LLP to represent the class as a whole regarding this settlement.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Settlement Class Counsel will request the Court's approval of an award for attorneys' fees and reasonable costs and expenses of up to \$375,000. Settlement Class Counsel will also request approval of a service award of up to \$1,500 each for Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta and a service award of up to \$1,000 for Britney Richardson, as parent guardian of S.H. Any amount that the Court awards for attorneys' fees, costs, expenses, and incentive awards will be paid separately by Einstein and will not reduce the amount of payments to Settlement Class Members who submit valid claims.

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?

You can object to the settlement if you do not like it or some part of it. The Court will consider your views. To do so, you must file a written objection in this case, Class Action Case ID No. 21040204 captioned *Nanette Katz, et al., individually and on behalf of all others similarly situated v. Einstein Healthcare Network*, with the Clerk of the Court at the address below.

Your objection must include all of the following information: (i) your full name, address, telephone number, and e-mail address (if any); (ii) information identifying you as a Settlement Class Member; (iii) a written statement of all grounds for the objection; (iv) the identity of all counsel representing you; (v) a statement whether you and/or your counsel will appear at the Final Fairness Hearing; and, (vi) your signature and the signature of your duly authorized attorney or other duly authorized representative, if applicable.

Your objection must be **postmarked** no later than _____ to:

Clerk of Court
Court of Common Pleas of Philadelphia County
1301 Filbert Street, Suite 310 B
Philadelphia, PA 19107

Questions? Call _____ or visit www._____

In addition, you must **mail** a copy of your objection to the Claims Administrator, postmarked no later than _____:

Settlement Administrator
Street
City, State

19. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the settlement and why you do not think it should be approved. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the settlement.

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at _____ on _____. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.classsettlement.com or call 1-800-xxx-xxxx to ensure the hearing has not been moved.

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and may listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys’ fees and reasonable costs and expenses, as well as the request for service awards for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take so please be patient and continue to check the settlement website for updates.

21. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 18, the Court will consider it.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file an objection according to the instructions in Question 18, including all the information required.

Your Objection must be **filed** with the Clerk of the Court no later than _____. In addition, you must **mail** a copy of your objection to the Claims Administrator, STREET, CITY, STATE, postmarked no later than _____. See Question 18 for more information regarding objections.

Questions? Call _____ or visit www._____

IF YOU DO NOTHING

23. What happens if I do nothing?

If you do nothing, you will get no monetary benefits from this settlement and you will not have the opportunity to enroll in Experian's Identity, if the settlement is finally approved. Once the settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Einstein about the legal issues in this case, ever again.

You must exclude yourself from the settlement if you want to retain the right to sue Einstein for the claims resolved by this settlement.

GETTING MORE INFORMATION

24. How do I get more information?

This Notice only provides a summary the proposed settlement. Complete details about the settlement can be found in the Settlement Agreement available at _____.

You may also:

1. Write to:
2. Visit the settlement website at _____.
3. Call the toll-free number _____.

Questions? Call _____ or visit www._____

**EXHIBIT D
PROPOSED ORDER ON
PRELIMINARY APPROVAL**

**IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

<p>NANETTE KATZ, CHRISTINA KRESKI, Britney Richardson, as parent guardian of S.H., a minor, and NGHI TA, individually and on behalf of all others similarly situated,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>EINSTEIN HEALTHCARE NETWORK,</p> <p style="text-align:center">Defendant.</p>	<p>COURT OF COMMON PLEAS PHILADELPHIA COUNTY, PA</p> <p>APRIL TERM, 2021</p> <p>NO. 02045</p>
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**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT, CERTIFYING THE SETTLEMENT CLASS,
AND PROVIDING FOR NOTICE TO THE SETTLEMENT CLASS**

The parties to the above-captioned action (the “Action”) filed against Einstein Healthcare Network have agreed to settle the Action pursuant to the terms and conditions set forth in the executed Settlement Agreement (the “Settlement”).¹ This Action arose out of a data breach in which an unknown third party allegedly gained access to certain email accounts belonging to Defendant’s employees, which contained protected identifying information (“PII”) and protected health information (“PHI”) belonging to Plaintiffs and Settlement Class Members, between August 5, 2020 and August 17, 2020 (the “Incident”). The Parties reached the Settlement through arms’ length negotiations with the assistance of an experienced and well-respected mediator, Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP.

Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiffs and the Settlement Class Members would fully, finally, and forever resolve, discharge and release their claims in exchange for (1) Defendant paying claims made by Plaintiffs

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

and Class Members for various losses to a maximum sum of \$1,500,000.00; (2) Defendant paying up to \$375,000 in attorneys' fees and reasonable costs and expenses to Class Counsel, subject to Court approval, to be paid separately and not subject to the maximum claim ceiling of \$1,500,000.00; (3) Defendant paying service awards in the amount of \$1,500 each to Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta, and a service award in the amount of \$1,000 to Britney Richardson as parent guardian of S.H., subject to Court approval; and (4) Defendant paying the settlement administration expenses, including the notice to the Settlement Class, Claims Administration, and claims Dispute Resolution.

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

- 1) for settlement purposes only, the proposed Settlement Class meets the requirements of Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709, and should be certified;
- 2) Plaintiffs Nanette Katz; Christina Kreski; Britney Richardson, as parent guardian of S.H.; and Nghi Ta and their counsel identified below should be appointed Class Representatives and Class Counsel;
- 3) the Settlement is the result of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel; was reached with the assistance of an experienced, highly qualified mediator; and is not the result of collusion;
- 4) the Settlement is within the range of reasonableness and should be preliminarily approved;

- 5) the proposed Notice Program and proposed forms of notice satisfy Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action; class certification; the terms of the Settlement; Class Counsel's intent to request an award of attorneys' fees, litigation costs, and expenses and request Service Awards for Plaintiffs; and their rights regarding opting-out of the Settlement Class and objecting to the Settlement;
- 6) RG/2 Claims Administration should be appointed as the Notice Specialist and Claims Administrator;
- 7) Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP should be appointed to serve as Claims Referee;
- 8) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Pennsylvania Rule of Civil Procedure 1714, to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether to grant Class Counsel's Fee Application and request for Service Awards for Plaintiffs; and
- 9) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

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

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

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

all individuals residing in the United States whose PHI and/or PII was involved in the Incident and who received notice of the settlement.

Excluded from the Class are the Defendant, its parents, subsidiaries, affiliates, officers, and directors, any entity in which it has a controlling interest, all Settlement Class members who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

2. The Court preliminarily concludes that, for the purposes of approving this Settlement only and for no other effect on the Action, should the proposed Settlement not ultimately be approved or should the Effective Date not occur, the proposed Settlement Class likely meets the requirements for certification under Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709:

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

3. The Court appoints Nanette Katz; Christina Kreski; Britney Richardson, as parent guardian of S.H.; and Nghi Ta as Class Representatives for the proposed Settlement Class.

4. The Court appoints the following firms as Class Counsel:

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

Linda P. Nussbaum
NUSSBAUM LAW GROUP, P.C.
1211 Avenue of the Americas, 40th Floor
New York, NY 10036
Tel: (917) 438-9102
lnussbaum@nussbaumpc.com

Kenneth J. Grunfeld
GOLOMB SPIRT GRUNFELD, P.C.
1835 Market Street, Suite 2900
Philadelphia, Pennsylvania 19103
Tel: (215) 346-7338
kgrunfeld@GolombLegal.com

Gayle M. Blatt
**CASEY GERRY SCHENK RANCAVILLA
BLATT & PENFIELD, LLP**
110 Laurel Street
San Diego, California 92101
Tel: (619) 238-1811
gmb@cglaw.com

Kelly K. Iverson
LYNCH CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, Pennsylvania 15222
Tel: (412) 322-9243
kelly@lcllp.com

Preliminary Approval of the Settlement.

5. The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator, Bennett G. Picker, Esq. The Court further finds the Settlement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval,

such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant final approval to the Settlement and enter Final Judgment.

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

6. The Court approves the form and content of Notices and Claim Form, substantially in the forms attached as Exhibits A, B, and C to the Settlement. The Court further finds the Notice Program, described in Paragraph 3.2 of the Settlement, is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement, Class Counsel's Fee Application and request for Service Awards for Plaintiffs, and their rights regarding opting-out of the Settlement Class and objecting to the Settlement. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements.

7. The Court directs that RG/2 Claims Administration act as the Settlement Administrator.

8. The Settlement Administrator shall implement the Notice Program, as set forth below and in the Settlement, using substantially the form of Notice and Claim Form attached as Exhibits A, B, and C to the Settlement and approved by this Order. Notice shall be provided to the Settlement Class Members pursuant to the Notice Program, as specified in Paragraph 3.2 of the Settlement and approved by this Order. The Notice Program shall include the mailed Short Notice and the Long Notice posted on the Settlement Website, as set forth in the Settlement and below.

Mailed Notice Program

9. The Settlement Administrator shall administer the Mailed Notice Program. Within twenty-one (21) days from the date the preliminary approval order is entered, Defendant will provide the names, email addresses, and/or last known addresses of persons within the Settlement Class (“Class Member Information”) to the Settlement Administrator. Within thirty (30) days from the date the preliminary approval order is entered, the Settlement Administrator shall mail the Short Notice to the postal address provided to Defendant by Settlement Class Members when the Settlement Class Members conducted transactions with Defendant, or other reasonable alternative means.

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

Settlement Website and Toll-Free Settlement Line

11. The Settlement Administrator shall establish a Settlement Website as a means for persons in the Settlement Class to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Notice Program. The Settlement Website shall include hyperlinks to the Settlement, Short Notice, Long Notice, Claim Form, signed Preliminary Approval Order, and other important case documents. These documents shall remain on the Settlement Website for at least six months after Final Approval is entered.

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

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

Final Approval Hearing, Opt-Outs, and Objections

14. The Court directs that a Final Approval Hearing shall be scheduled for _____, 2022, at ____ a.m./p.m., to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether Class Counsel's Fee Application and request for Service Awards for Plaintiffs should be granted.

15. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise the right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Long Notice at any time before the Opt-Out Deadline. To be valid and timely, opt-out requests must be postmarked on or before the Opt-Out Deadline and mailed to the address indicated in the Long Notice. The Opt-Out Deadline shall be 60 days after the Notice Deadline which is 90 days after the date on which the Court entered this Preliminary Approval Order, and shall be specified in the mailed Short Notice and Long Notice on the settlement website. All persons within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by the terms of the Settlement.

16. The Court further directs that any person in the Settlement Class who does not timely and validly opt-out of the Settlement Class may object to the Settlement, Class Counsel's Fee Application and/or the request for Service Awards for Plaintiffs. Objections to the Settlement, Fee Application, and/or request for Service Awards must be filed with the Clerk of the Court, and served concurrently on Class Counsel, Richard M. Golomb, Golomb Spirt Grunfeld PC, 1835 Market Street, Suite 2900, Philadelphia, Pennsylvania 19103; and counsel for Defendant, Jan P. Levine, Troutman Pepper Hamilton Sanders LLP, 3000 Two Logan Square, Philadelphia, Pennsylvania 19103 and Angelo A. Stio III, Troutman Pepper Hamilton Sanders LLP, 301 Carnegie Center, Suite 400, Princeton, New Jersey 08540.

17. For an objection to be considered by the Court, the objection must be postmarked no later than the Objection Deadline, which shall be 90 days after the date on which the Court entered this Preliminary Approval Order, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the case name for *Katz v. Einstein Healthcare Network*, Case No. 210402045;
- b. the objector's full name, address, telephone number, and e-mail address (if any);
- c. information identifying the objector as a Settlement Class Member, including proof the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Incident);
- d. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- e. the identity of all counsel representing the objector;
- f. a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and
- g. the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and
- h. a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years.

Further Papers in Support of Settlement and Fee Application.

18. Class Counsel shall file their Fee Application and request for Service Awards for Plaintiffs no later than twenty (20) days prior to the Opt-Out/ Objection Deadline.

19. Plaintiffs shall file their Motion for Final Approval of the Settlement no later than twenty (20) days prior to the Final Approval Hearing.

Effect of Failure to Approve the Settlement.

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

- a. All orders and findings entered in connection with the Settlement shall become null and void, and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding.
- b. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant or Plaintiffs on any point of fact or law.
- c. The certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action based on the Settlement and/or certification of the Settlement Class. Defendant shall not be precluded from challenging class certification in further proceedings in the Action or in any other action. No agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiffs, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other action.
- d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders, and public statements, may be used as evidence. In addition, neither the

fact of, nor any documents relating to, either party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence.

Stay/Bar of Other Proceedings.

21. All proceedings in this Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from asserting any Released Claims against any of the Released Parties.

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

EVENT	DEADLINE
Establish the Settlement Website and toll-free telephone line.	As soon as practicable following the entry of the Preliminary Approval Order and prior to the commencement of the Notice Program.
Complete the Initial Mailed Notice.	No later than 30 days from the date of the entry of the Preliminary Approval Order.
Objection and Requests for Exclusion (Opt-Out) Deadline.	No later than 90 days from the date of the entry of the Preliminary Approval Order.
Claims Deadline	No later than 120 days after the entry of the Preliminary Approval Order.
File Class Counsel's Fee Application and Request for Service Awards for Plaintiffs	No later than 20 days before Objection/Opt-Out Deadline
File Plaintiffs' Motion for Final Approval of the Settlement	No later than 20 days before the Final Approval Hearing.
Final Approval Hearing (no earlier than 120 days from the date of the entry of the Preliminary Approval Order)	Will be held on _____, 2022, at _____, a.m./p.m., via Zoom. The Final Approval Hearing Zoom link is available on the Court's Website at: https://www.courts.phila.gov/livestreams/civil/hearings/

Dated: _____, 2022

J. Nina W. Padilla
Team Leader
Class Action Program

**EXHIBIT E
PROPOSED ORDER ON
FINAL APPROVAL**

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 Fairness Hearing, a declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as required by the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the final approval hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees and costs to Class Counsel, and the payment of Service Awards to the Representative Plaintiffs;

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

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The Court finds, for settlement purposes only, that the factors delineated in Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709 are present and that certification of the proposed Settlement Class¹ is appropriate under Rule 1710. The Court, therefore, certifies the following Settlement Class:

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

all individuals residing in the United States whose PHI and/or PII was involved in the Incident and who received notice of the settlement.

Excluded from the Class are the Defendant, its parents, subsidiaries, affiliates, officers, and directors, any entity in which it has a controlling interest, all Settlement Class members who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

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

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

3. The Court appoints Nanette Katz; Christina Kreski; Britney Richardson, as parent guardian of S.H.; and Nghi Ta as Class Representatives for the proposed Settlement Class. The Court finds that the Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and will be adequate Settlement Class Representatives.

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

Jean S. Martin
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Gayle M. Blatt
**CASEY GERRY SCHENK RANCAVILLA
BLATT & PENFIELD, LLP**
110 Laurel Street
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gmb@cglaw.com

Kelly K. Iverson
LYNCH CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, Pennsylvania 15222
Tel: (412) 322-9243
kelly@lcllp.com

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

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

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

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

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

10. Notwithstanding the certification of the foregoing Settlement Class and appointment of the Class Representatives for purposes of effecting the Settlement, if this Order is

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

11. The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Section III of the Settlement Agreement (including the exhibits thereto): (a) was the best practicable notice to the Settlement Class; (b) was reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement, including but not limited to their rights to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) was reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) met all applicable requirements of law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements.

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

13. Upon the Effective Date, Class Plaintiffs and Settlement Class Members shall be hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement and this Order, or seeking any award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever,

relating to or arising from the Litigation and/or as a result of or in addition to those provided by the Settlement Agreement. In addition, Class Plaintiffs and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a setoff or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

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

15. Upon the Effective Date, Einstein shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Class Plaintiffs, each and all of the Settlement Class Members, Settlement Class Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses Einstein may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

16. Neither Einstein nor the Related Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Class Plaintiffs, each and all of the Settlement Class Members and Class Counsel.

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

18. This Final Approval Order and Judgment, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Einstein of any fault, wrongdoing, or liability on the part of Einstein or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation. This Order and Judgment, the Settlement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Class Plaintiffs, any Settlement Class Member, or any other person has suffered any damage; *provided, however*, that the Settlement, this Order and Judgment may be filed in any action by Einstein or Settlement Class Members seeking to enforce the Settlement or the Judgment by injunctive or other relief, or to assert defenses including, but not limited to, res judicata, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

19. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims

and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

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

IT IS SO ORDERED this _____ day of _____, 2022.

J. Nina W. Padilla
Team Leader
Class Action Program

FILED

25 FEB 2022 07:36 pm

Civil Administration

M. RUSSO

**IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION**

NANETTE KATZ, CHRISTINA KRESKI,
S.H., and NGHI TA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

EINSTEIN HEALTHCARE NETWORK,

Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PA

APRIL TERM, 2021

NO. 02045

**DECLARATION OF JEAN S. MARTIN ON BEHALF OF PROPOSED CLASS
COUNSEL IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT AND
CERTIFICATION OF THE SETTLEMENT CLASS**

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

1. I submit this Declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement and Certification of the Settlement Class.¹

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

3. Myself and the proposed Class Counsel are counsel for Plaintiffs and the Class in the above-referenced matter.

4. After several months of arm's length negotiations, Plaintiffs, Class Counsel, and Defendant Einstein Healthcare Network ("Einstein" or "Defendant") entered into a Settlement Agreement ("Settlement" or "Agreement") under which Defendant (i) shall pay a maximum sum of \$1,500,000 to compensate Plaintiffs and Settlement Class Members for claims made; (ii) will not object to an award of up to \$375,000 for Court-ordered attorneys' fees and reasonable costs awarded to Class Counsel—to be paid separately and not subject to the maximum claim ceiling of \$1,500,000; (iii) shall pay Service Awards, subject to court approval, in the amount of \$1,750 each to Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta, and a Service Award in the amount of \$1,250 to Britney Richardson as parent guardian of S.H; and (iv) shall pay the settlement expenses, including the Notice to the Settlement Class, Claims Administration, and claims Dispute Resolution. Agreement ¶¶ 2.1, 2.5, 7.2, 7.3, 9.1.

5. The Action involved sharply opposed positions on several fundamental legal questions, including: (i) whether Plaintiffs stated valid claims; (ii) whether the Class was certifiable; (iii) whether Defendant's acts and/or omissions constituted negligence; (iv) whether Defendant's acts and/or omissions constituted a breach of contract and/or breach of implied contract; (v) whether Defendant's acts and/or omissions constituted a breach of fiduciary duty;

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

(vi) whether declaratory relief was appropriate; and (vii) the appropriate methodology for establishing damages on a class-wide basis and the amount of damages to be recovered.

6. We continue to believe the claims asserted in the Action are meritorious; that Plaintiffs would establish liability and recover substantial damages if the Action proceeded to trial; and that the final judgment and this Court's certification of the Class would be affirmed on appeal. Plaintiffs' ultimate success in the litigation, however, requires them to prevail, in whole or in part, at all of these junctures. Conversely, Defendant's success at any one of these junctures could or would have defeated Plaintiffs' claims. Thus, continued litigation posed significant risks and countless uncertainties, as well as the time, expense, and delays associated with trial and appellate proceedings—particularly in the context of complex litigation. In light of the foregoing, the Settlement is fair and reasonable, providing significant benefits to the Settlement Class Members in the form of monetary and non-monetary relief, as discussed in further detail herein.

Theory of the Case.

7. Plaintiffs sued Defendant on behalf of themselves and all others similarly situated whose protected identifying information (“PII”) and protected health information (“PHI”) were part of a data breach in which an unknown third party allegedly gained access to certain email accounts (the “Accounts”) belonging to Defendant's employees between August 5, 2020, and August 17, 2020 (the “Incident”).

8. Plaintiffs allege Defendant failed to properly secure its computer systems—including its email system—thereby allowing an unauthorized third party to gain access to multiple email accounts belonging to its employees—email accounts containing PII and PHI belonging to Plaintiffs and Settlement Class Members.

9. Plaintiffs allege Einstein failed to: (1) properly secure and safeguard protected their PII and/or PHI; (2) comply with industry standards governing the protection of information

systems containing PII and/or PHI; and (3) provide timely, accurate, and adequate notice to Plaintiffs and Settlement Class Members that their PII and/or PHI were compromised.

10. Plaintiffs further allege Defendant's acts, omissions, and/or practices constitute (i) negligence, (ii) breach of contract, (iii) breach of implied contract, (iv) breach of fiduciary duty, and (v) declaratory judgment—warranting monetary and other relief.

11. Plaintiffs claim Settlement Class Members should be compensated for lost time, ordinary (out-of-pocket) losses, and extraordinary losses resulting from the Incident.

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

13. The Class is comprised of approximately 286,181 individuals who were provided notice of the Incident. Defendant began providing notice on or about October 9, 2020, and sent additional notices between January 21, 2021, and February 8, 2021.

Background.

14. On April 23, 2021, Plaintiff Katz filed her class action in this Court, alleging claims for negligence, breach of contract, breach of implied contract, breach of fiduciary duty, and for declaratory judgment (“*Katz*” action).²

15. On April 29, 2021, Plaintiff Ta filed his class action in the United States District Court for the Eastern District of Pennsylvania (“*Ta*” action), alleging claims for negligence, negligence *per se*, breach of fiduciary duty, and declaratory judgment.³

16. On May 10, 2021, Plaintiff Kreski filed her class action in this Court, alleging claims for negligence and breach of implied contract (“*Kreski*” action).

17. On July 2, 2021, Defendant filed preliminary objections in the *Katz* matter.

² The *Ta*, *Kreski*, and *S.H.* actions have since been consolidated into the *Katz* action.

³ The *Ta* action was dismissed and Plaintiff Ta was added to the operative, consolidated, complaint. *See infra*.

18. On July 9, 2021 the *Katz* and *Kreski* actions were consolidated before Judge Nina W. Padilla.

19. On October 19, 2021, Plaintiff S.H., a minor, filed a class action in this Court, alleging claims for negligence, breach of fiduciary duty, breach of confidences, breach of express and implied contract, and for a declaratory judgment on behalf of all class members and a subclass of minors whose data was compromised (“S.H.” action).

20. The Parties agreed to mediate this matter, and in preparation for mediation, the Parties conducted informal discovery, comprised of written questions and answers, and the production of key documents. The Court also agreed to postpone the due date for Plaintiff Katz to respond to Defendant’s initial objections.

Settlement Negotiations.

21. Settlement discussions began in approximately mid 2021, and included informal and formal negotiations.

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

23. The Defense provided Plaintiffs’ counsel answers to specific questions regarding the geographical reach of the Class, the categories of information accessed, and the number of Settlement Class Members whose Social Security numbers were exposed. Defendant also provided Plaintiffs’ counsel with a summary report of their forensic expert’s analysis and investigation into the Incident. Plaintiffs’ counsel engaged their own cyber-security consultant to evaluate the Defense report. Plaintiffs provided information requested by Defendant about themselves.

24. Multiple pre-mediation conferences were held with the mediator Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP; some joint and some only with Plaintiffs or Defendant.

25. On October 8 and 28, 2021, the Parties participated in formal mediation with Mr. Picker. Between those formal mediation dates, Parties continued negotiating and advancing their positions and making some compromises. And then, only after ongoing and considerable negotiations, the Parties reached an agreement in principle, subject to the preparation and execution of a formal settlement agreement, and subject to Preliminary Approval and Final Approval (as defined below) by the Court as required by Rules 1702, 1708, 1709, 1710, and 1714 of the Pennsylvania Rules of Civil Procedure.

26. Pursuant to the agreement in principle and as set forth below, Plaintiffs and the Settlement Class Members agreed to fully, finally, and forever resolve, discharge, and release only claims on behalf of Settlement Class Members that were or could have been asserted in this action, and applies to claims only arising out of this Incident, in exchange for the Defendant's agreement to pay up to \$1,500,000 in damages to Settlement Class Members.

27. Since reaching an agreement in principle, the Parties have diligently negotiated a formal settlement agreement, according to which the Settlement Administrator will calculate each eligible Settlement Class Member's monetary award from the Settlement based on which claim categories the individual selects, and the supporting documentation provided.⁴

28. On November 30, 2021, the Parties notified the Court of the Parties' agreement in principle at the status conference. The Court provided its preferred procedure to consolidate the cases and file the preliminary approval papers.

29. On January 22, 2022, Plaintiffs filed a consolidated complaint in the *Katz* action.

⁴ Agreement ¶ 2.1.

30. On February 25, 2022, after additional negotiations on the details of the formal agreement, the Parties signed the Settlement Agreement.

Settlement Terms.

31. The Settlement requires Defendant pay (1) a maximum sum of \$1,500,000 to compensate Plaintiffs and Class Members for claims made; (2) Court-ordered attorneys' fees and reasonable costs awarded to Class Counsel, to be paid separately and not subject to the maximum claim ceiling of \$1,500,000; (3) Service Awards to Plaintiffs subject to court approval; and (4) settlement expenses, including the Notice to the Settlement Class, Claims Administration, and claims Dispute Resolution. Agreement ¶¶ 2.1, 2.5, 7.2, 7.3, 9.1.

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

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

34. Claim A is for compensation for any lost time as a result of the Incident by the Settlement Class Members. Agreement ¶ 2.1(a). Settlement Class Members are eligible for compensation of up to 3 hours of lost time (at \$20.00 per hour) spent dealing with the Incident. *Id.* Settlement Class Members need only submit a brief description of the actions taken and an attestation to the Claims Administrator that the lost time was spent dealing with issues relating to the Incident. *Id.* The maximum amount a claimant may recover under Claim A \$60.00. *Id.*

35. Claim B is for compensation of ordinary losses as a result of the Incident by the Settlement Class Members. Agreement ¶ 2.1(b). Examples of ordinary losses include:

- (i) out-of-pocket expenses incurred as result of the Incident, including but not limited to unreimbursed bank fees, unreimbursed card reissuance fees, unreimbursed overdraft fees, unreimbursed

charges related to the unavailability of funds, unreimbursed late fees, unreimbursed over-limit fees, unreimbursed charges from banks or credit card companies, interest on payday loans due to a card cancellation or over-limit situation, long distance phone charges, cellphone charges if charged by the minute, data charges if charged based on data usage, text messages if charged by the message, postage, or gasoline for local travel, costs associated with freezing or unfreezing credit with any credit reporting agency, fees for credit reports between the date of the Incident and the Claims Deadline; and (ii) the cost of purchasing credit monitoring or other identity theft insurance products purchased between October 9, 2020 and the date of preliminary approval of the settlement, provided that the claimant attests that the credit monitoring or other identity theft insurance products were purchased primarily as a result of the Incident.

Id. Settlement Class Members must submit documentation to the Claims Administrator that the out-of-pocket expenses and/or charges were incurred and are fairly and reasonably traceable to the Incident. *Id.* The maximum amount a claimant may recover under Claim B is \$1,500.00. *Id.*

36. Claim C is for compensation of extraordinary losses as a result of the Incident by the Settlement Class Members. Agreement ¶ 2.1(c). Examples of extraordinary losses include

losses associated with identity theft, medical fraud, tax fraud, other forms of fraud, and other actual misuse of personal information, provided that (i) the loss is an actual documented and unreimbursed monetary loss; (ii) the loss was fairly and reasonably traceable to the Incident; (iii) the loss is not already covered by one or more of the ordinary loss compensation categories under Claim B; (iv) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring or identity monitoring insurance; and (v) the loss occurred between the date of the Incident and the Claims Deadline.

Id. Settlement Class Members must submit supporting documentation to the Claims Administrator for reimbursement under this claim. *Id.* The maximum amount a claimant may recover under Claims C is \$7,500.00. *Id.*

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

Agreement ¶ 2.1 Disputes as to claims submitted are to be resolved by the Claims Administrator. Agreement ¶ 2.4. If the Settlement Class Member does not approve of the Claims Administrator's final determination, the Settlement Class Member may submit their claim to a Claims Referee for further evaluation and final determination. *Id.*

38. The final settlement amount will be determined after the claim submittal deadline has passed, which is 90 days after deadline to provide Notice of settlement to Class Members. Agreement ¶ 8.1. The Settlement Administrator will disburse settlement funds to Settlement Class Members with approved claims within forty-five (45) days of the Effective Date, or within forty-five (45) days of the date that the claim is approved, whichever is later.⁵ Agreement ¶¶ 8.2, 9.1.

39. A further important benefit to the class and the Settlement Class Members are the business changes Defendant has made and is committed to continue making as part of the Settlement. The business changes involve information security enhancements, which include third party security monitoring, third party logging, network monitoring, firewall enhancements, email enhancements, and equipment upgrades. Agreement ¶ 2.3. These information security enhancements are extremely beneficial to Settlement Class Members because these enhancements provide additional security to Plaintiffs' and Settlement Class Members' PII and PHI in Defendant's possession, and reduce the likelihood of future data breaches.

40. In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt-out will be deemed to have released Defendant from claims relating to the subject matter of the Action. The detailed release language is narrowly tailored to release only claims on behalf of Settlement Class Members that were or could have been asserted in this action, and applies only to claims arising out of this Incident, the security of Settlement Class Members'

⁵ The Effective Date being the first date when the settlement is finally approved and either the deadline to appeal has passed, or when the appeal is dismissed, judgement affirmed, or when such dismissal or affirmance has become no longer subject to further appeal or review. Agreement ¶ 1.10-1.11.

PII and PHI, and the notice provision relating to the Incident. The detailed release language can be found at Paragraphs 6.1 through 6.3 of the Agreement, with the definitions in Paragraphs 1.19 and 1.25 relating thereto.

Notice Program.

41. The Notice Program is designed to provide the best notice practicable based on the information Defendant has available about the Settlement Class Members, and it is reasonably calculated to apprise the Settlement Class Members of the terms of the Settlement, how to file claims, their right to opt-out of or object to the Settlement, Class Counsel's anticipated fee application, and the anticipated request for Service Awards for the Plaintiffs. Agreement ¶¶ 3.1-3.2. The Notices and Notice Program constitute sufficient notice to all persons entitled to notice and satisfy all applicable requirements of law, including, but not limited to, Pennsylvania law and the constitutional due process requirement.

42. The Notice Program is comprised of two parts: (1) Mailed Notice to all identifiable Settlement Class Members (the "Short Notice"); and (2) a customary long-form Notice with more detail than the Mailed Notice, which will be available on the Settlement Website where Settlement Class Members may access the Settlement Agreement and other important case related documents and information. Agreement ¶ 3.2.

43. All fees and expenses related to Settlement Administration shall be paid by Defendant. Agreement ¶ 2.5

Service Awards and Attorneys' Fees and Costs.

44. Class Counsel will seek, and Defendant agreed not to oppose, Service Awards in the amount of \$1,750 each to Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta, and a service award in the amount of \$1,250 to Britney Richardson as parent guardian of S.H. These awards will compensate Plaintiffs for their time and effort in this Action.

45. Class Counsel will seek, and Defendant agreed not to oppose, an award of up to \$375,000 for Court-ordered attorneys' fees and reasonable costs awarded to Class Counsel, to be paid separately and not subject to the maximum claim ceiling of \$1,500,000;

Considerations Supporting Settlement.

46. In negotiating this Settlement, proposed Class Counsel had the benefit of years of experience litigating and negotiating settlements in a number of data breach cases. I have work with these lawyers and know them to be highly experienced in class action litigation, and also in the area of data breach cases.

47. I have been appointed to lead or help lead several privacy and data breach class actions, including presently serving as co-lead counsel in *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) and *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.), both of which have received preliminary approval of settlements within the last month, and as interim co-lead counsel in *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.), *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.), and *In re Brinker Data Incident Litigation*, No. 18-cv-686 (M.D. Fla.).

48. Linda Nussbaum has been appointed to lead or help lead several privacy and data breach class actions, including presently serving as Co-Lead Counsel in *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.), *In re Wawa, Inc., Data Security Litigation*, No. 19-cv-6019 (E.D. Pa.), *In re Am. Medical Collection Agency, Inc. Customer Data Security Breach Litig.*, No. 19-md-2904 (D.N.J.).

49. Gayle M. Blatt has been appointed to lead or help lead numerous privacy and data breach class actions, including *In re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 16-MD-02752, the largest data breach in the world resulting in a common fund settlement of \$117,500,000; *In re: Waste Management Data Breach Lit.*, Case No. 21-cv-06199-DLC (S.D. N.Y.) (lead counsel); *In re: Warner Music Group Data Breach*, Case No. 1:20-cv-07473-PGG

(S.D.N.Y.) (Interim Co-lead Counsel); *Pfeiffer et al. v. RadNet, Inc.*, Case No. 2:20-cv-09553-RGK-SK (C.D. Cal.) (Interim Lead Counsel); *In re: Citrix Data Breach Litigation*, Case No. 19-cv-61350-RKA (Settlement Class Counsel); and *Madrid v. Golden Valley Health Centers*, Case No. 20-cv-01484 (Settlement Class Counsel).

50. Kenneth Grunfeld has been appointed to lead or has helped lead several privacy and data breach class actions, including *Dzelili v. Wilderness Hotel & Resort, Inc.*, No. 3:11-00735; *Southern Independent Bank v. Fred's, Inc.*, No. 15-00799 (Co-Lead Counsel); *In re Capital One Consumer Data Security Breach Litigation*, MDL No. 19-2915; *In re Wawa, Inc. Data Security Litigation*, No. 19-6019; *Opris, et al. v. Sincera Reproductive Medicine*, No 21-03072.

51. Kelly Iverson has been appointed to lead or has helped lead several privacy and data breach class actions, including *In re Blackbaud, Inc. Customer Data Breach Litigation*, MDL No. 2972 (Plaintiffs' Steering Committee); *In re Solara Medical Supplies Data Breach Litigation*, No. 19-02284 (Plaintiffs' Steering Committee); *In re Marriott International Customer Data Security Breach Litigation*, MDL No. 2879 (Committee Member); *In re Equifax, Inc. Customer Data Security Breach Litigation*, MDL No. 2800; *Dittman v. UPMC*, GD-14-003285 (Allegheny Cty., Pa.), (Committee Member); and *In re Arby's Restaurant Group, Inc. Data Security Litigation*, No. 17-00514 (Committee Member).

52. Proposed Class Counsel conducted a thorough and efficient investigation and analysis of Plaintiffs' claims and Einstein's defenses—including informal discovery and engaging a cyber-security consultant to evaluate Defendant's summary report of the forensic analysis and investigation into the Incident. This investigation enabled us to gain an understanding of the evidence related to central legal and factual issues in the Action as they relate to class certification and the merits of Plaintiffs' and the Class's claims, and prepared counsel for well-informed, arm's length settlement negotiations.

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

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

55. Moreover, protracted litigation carries with it inherent risks that would have delayed and endangered Class Members' monetary recovery. Even if Plaintiffs did prevail at trial, recovery could be delayed for years by appeals. Under the circumstances, Plaintiffs and Class Counsel appropriately determined that the Settlement reached with Defendant outweighs the gamble of continued litigation.

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

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

58. The \$1,500,000 cap for claims-made is an excellent recovery for the Settlement Class Members and is reasonable in light of the facts and circumstances in this case. Typically, individuals who had their PII and/or PHI accessed by unauthorized parties only get a year of credit monitoring. Here, Settlement Class Members can submit a claim form to get an additional year of Identity Monitoring Services and receive compensation for lost time, ordinary (out-of-pocket) losses, and extraordinary losses resulting from the Incident—with a maximum potential recovery of \$9,060 per individual claimant.

59. In addition to monetary relief, benefits to the Settlement Class Members include significant business changes Defendant has made, and is committed to continue making, as part of the Settlement. The business changes involve information security enhancements, which include third party security monitoring, third party logging, network monitoring, firewall enhancements, email enhancements, and equipment upgrades. Agreement ¶ 2.3. These information security enhancements are extremely beneficial to Settlement Class Members because these enhancements provide additional security to Plaintiffs' and Settlement Class Members' PII and PHI in Defendant's possession, and reduce the likelihood of future data breaches.

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

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

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

Executed on February 25, 2022, in Tampa, Florida.

s/ Jean Sutton Martin
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Civil Administration

M. RUSSO



Claims
Administration LLC



SETTING A NEW STANDARD IN CLASS ACTION CLAIMS ADMINISTRATION

PHILADELPHIA • NEW YORK • ATLANTA • SAN DIEGO • SAN FRANCISCO

Case ID: 210402045
Control No.: 22025571

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Class Action Experience

High-Quality Service at Competitive Rates

RG/2 Claims seasoned professionals utilize their vast class action experience, tax and financial management resources to deliver high-quality service at competitive rates.

RG/2 Claims is a boutique class action claims administration firm with a nationwide presence founded by seasoned class action practitioners and highly credentialed tax professionals. Our leadership team has a collective 100 years' experience working in the field of class action litigation and settlement administration to leverage for the benefit of counsel. Our team of driven class action attorneys, *highly credentialed CPAs and forensic accountants* approach each matter with a personal goal to shepherd the settlement through the process from settlement negotiations through final approval. Our personal attention and care ensures that the administration is handled in a seamless matter that allows counsel to proceed with the knowledge and confidence that their settlement will receive the attention and care that they demand. In addition, our operations and IT personnel bring individualized innovations to each engagement, driving the notice and settlement administration to conclusion. We have the experience to handle large settlements with the personal attention and care expected from a boutique firm.

RG/2 Claims recognizes that cutting-edge technology is the key to efficient and reliable claim processing. Our IT Group, including an experienced web design team, enables RG/2 Claims to employ technologies used to enhance accuracy, efficiency and interaction of all participants in the claims process. Our approach focuses on analysis of case needs, development of solutions to maximize resources and reduce costs through accurate and efficient data collection and entry, and ongoing maintenance and support. Throughout the entire claims process, our goal is to (1) optimize completeness, accuracy and efficiency of the data management system, including online integration; (2) validate critical fields and data; and (3) track opt-outs and claimant responses. RG/2 Claims' proprietary database application provides a *single source for managing the entire claims administration process and expediting decision making and resource management*. From the initial mailing through distribution of settlement funds and reconciliation of distributed payments, RG/2 Claims' CLEVerPay® system centralizes data, facilitating information sharing and efficient communication.



Cutting-Edge Technology and Skilled Resources

The CLEVerPay® System: A proprietary and revolutionary application developed exclusively by RG/2 Claims.

At RG/2 Claims, we developed a proprietary and customizable database with the goal of providing single-source management throughout the claims administration process, expediting decision making and resource management.

From the initial mailing through distribution of settlement funds and reconciliation of payments, RG/2 Claims' CLEVerPay® system centralizes the entire process while providing information sharing and communications solutions.

Our CLEVerPay® system is a robust and user-friendly resource that can be easily customized to meet your administration and distribution needs. We recognize how essential it is for data to be clean, centralized and readily accessible. RG/2 Claims' CLEVerPay® system has the capacity to assimilate and analyze large amounts of raw data from multiple inputs, to convert that raw data into useful information and to distribute the useful information in a variety of formats.

The integration of these elements results in timely and accurate distribution of secure payments generated from RG/2 Claims' single-source CLEVerPay® system.

For more information, please visit our website to download our CLEVerPay® System Datasheet at: <http://www.rg2claims.com/pdf/cleverPayDatasheet.pdf>.

Experienced Professionals Always There When You Need Us

RG/2 Claims principals have hands-on experience in both class action practice and settlement administration. Our combined access to resources and institutions allows us to deliver superior value-added service in all aspects of settlement administration.



GRANT RAWDIN, Esq., CFP®, CEO and co-founder, is an attorney, an accountant and a Certified Financial Planner™ practitioner. *Worth* magazine named him one of the “Best Financial Advisors in America.” Mr. Rawdin’s professional background includes more than 25 years of legal and accounting experience focused in tax, business, investment analysis, legal claims and class action settlement administration. Mr. Rawdin has a juris doctor degree from Temple University Beasley School of Law and a B.A. in English from Temple University, and he is admitted to practice law in Pennsylvania and New Jersey.

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MICHAEL A. GILLEN, CPA, CFE, CFF, President and co-founder, has more than 25 years of experience in many facets of litigation consulting services, with particular emphasis on criminal and civil controversies, damage measurement, fraud and embezzlement detection, forensic and investigative accounting, legal claims and class action settlement administration and taxation. He assists numerous attorneys and law firms in a variety of litigation matters. Mr. Gillen graduated from La Salle University with a B.S. in Accounting.

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MICHAEL J. LEE, CFA, COO, the chief architect of our proprietary CLEVerPay® system is a Chartered Financial Analyst with extensive experience in litigation consulting services, including damage assessment, measurement, evaluation, legal claims and class action settlement administration. Additionally, Mr. Lee has about a decade of experience in the financial services industry, with particular emphasis on securities valuation, securities research and analysis, investment management policies and procedures, compliance investigations and portfolio management in global equity markets. Mr. Lee has a B.S. in Business Administration with a dual major in Finance and Management from La Salle University and an M.B.A. in Finance from the NYU Stern School of Business.

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MELISSA BALDWIN, Director of Claims Administration—Employment and Consumer, has over 18 years of experience in the administration of class action matters, with focuses on project management, client communication, notice coordination, claims processing and auditing, and distribution in the class action practice areas of antitrust, consumer and labor and employment. As Notice and Correspondence Coordinator, Ms. Baldwin assisted in the administration of an antitrust matter involving nine defendant banks, which included over 47 million class members and the subsequent distribution of the \$330 million Settlement Fund to the valid class members. Ms. Baldwin has a B.S. in Business Administration from Drexel University.

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TINA M. CHIANGO, Director of Claims Administration—Securities and Antitrust, has over 20 years of experience in the administration of class action matters. Ms. Chiango focuses on project management; this includes establishing procedures and case workflow, client communications, notice coordination, overseeing the processing and auditing of claims, distribution to the class and preparing reports and filings for the court. Over the last 20 years, Ms. Chiango has worked on a broad spectrum of class action settlements including securities, antitrust, consumer and mass tort, among others. Ms. Chiango has a B.S. in Business Administration with a major in Accounting from Drexel University.

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WILLIAM W. WICKERSHAM, Esq., Senior Vice President, Business Development and Client Relations, focuses his practice on assisting clients in navigation of the claims administration process from pre-settlement consultation through disbursement in all class action practice areas, including, but not limited to, antitrust, consumer, labor and employment, and securities. As a seasoned director of client relations, he advises counsel on settlement administration plans and manages many large and complex class action settlements. Mr. Wickersham has also appeared in federal court on several occasions to successfully support counsel in the settlement approval process including complex securities, environmental and wage and hour matters. As a former securities class action attorney, he brings over a decade's worth of experience in the class action bar as a litigator and as a claims administrator. As a litigator, Mr. Wickersham was involved in several high profile litigations which resulted in recoveries for investors totaling over \$2.5 billion. Mr. Wickersham has a juris doctor degree from Fordham University School of Law, a B.A. from Skidmore College and is admitted to practice law in New York.

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CHRISTOPHER J. TUCCI, Esq., Vice President, Business Development and Client Relations, focuses on guiding clients through the class action claims administration process from pre-settlement consultation to innovative notice campaigns, to quality and cost-effective administration, to the ultimate distribution of funds. He advises clients on the administrative solutions for consumer, employment, securities, and antitrust class action. Mr. Tucci is recognized as an expert in the financial services legal community and is a sought after national speaker on litigation management, financial services laws, data security breaches, corporate investigations, and in-house counsel best practices. As a former senior in-house litigator for nearly two decades, he has extensive experience managing litigation for global financial services corporations, including dozens of securities, wage & hour, and consumer class actions matters. Mr. Tucci brings a unique perspective to class action matters with his deep practical experience in the management of litigation including selecting and managing outside counsel, handling internal investigations, communicating with state and federal regulators, and managing litigation from inception through settlement or dismissal. Mr. Tucci has a juris doctor degree from Widener University School of Law, a B.A. from the University of Delaware, and is admitted to practice in Pennsylvania and New Jersey.

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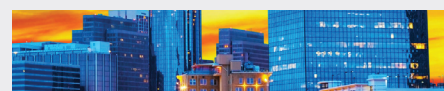
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Full Life-Cycle Support for Your Class Action With You Every Step of the Way

Whether engaged as a court-appointed settlement administrator, claims agent or disbursing agent, RG/2 Claims offers a complete range of claims, settlement administration and investment management services, including but not limited to:

PROFESSIONAL CASE MANAGEMENT CONSULTING

RG/2 Claims provides custom pre-settlement consultation and highly personalized attention throughout the life cycle of settlement administration. Each retention begins with an in-depth consultation concerning the specific needs of the case. Our professionals routinely and proactively identify administrative concerns and identify and propose solutions that avoid delay and remove unpredictability from the equation. We work through a coordinated approach involving a core of specialists that are intimately familiar with the case entrusted to our care. Our retentions result in effective and efficient solutions and greater peace of mind for busy lawyers.

NOTIFICATION PLANNING AND CAMPAIGNS

Whether routine or innovative, RG/2 Claims designs cost-effective and thorough notification plans that will suit your budget whether the settlement is national in scope or highly localized. RG/2 Claims guides you through the array of notice publication options at your disposal in a variety of media formats.

WEBSITE DESIGN

RG/2 Claims can assist in the design and hosting of a website specific to the client's needs to allow for document posting, as well as pertinent information and deadlines about the case. RG/2 Claims can also provide various options for claims filing, which includes an online portal that allows claimants to submit their claims and supporting documentation through the website.

CLAIMS PROCESSING

RG/2 Claims utilizes a proprietary and customizable database that provides a single-source management tool throughout the claims administration process, expediting decision making and resource management. RG/2 Claims' proprietary and sophisticated CLEVerPay® system centralizes the entire process while providing information sharing and communications solutions, from the initial mailing through distribution of settlement funds and reconciliation of payments.

DISTRIBUTION AND TAX SERVICES

RG/2 Claims' in-house tax, accounting and financial services professionals provide disbursement services, including management of checking, sweep, escrow and related cash accounts, as well as non-cash assets, such as credits, gift cards, warrants and stock certificates. RG/2 Claims' in-house CPAs provide a broad array of accounting services, including securing private letter rulings from the IRS regarding the tax reporting consequences of settlement payments, the preparation of settlement fund tax returns and the preparation and issuance of IRS Forms 1099 and W-2.

Range of Services

Offering Unparalleled Value

RG/2 offers a range of quality value-added services for your class action administration.

SECURITIES

RG/2 Claims' highly experienced team uses its various resources to locate beneficial holders of securities, including working with the Depository Trust Company and a proprietary list of nominee firms to identify and mail notices to the class. With RG/2 Claims' CLEVerPay system, claims are processed efficiently and accurately using our proprietary damage grid that calculates class member damages in accordance with a broad array of complex plans of allocation. Claims are automatically flagged through a validation process so RG/2 Claims can communicate with class members concerning their claims and can assist them in filing claims that are complete and properly documented. Once ready for distribution, RG/2 Claims conducts an audit of the claims to insure against calculation errors and possible fraudulent claims. Once the audit is completed, RG/2 Claims calculates distribution amounts for eligible class members in accordance with the plan of allocation and issues checks and any applicable tax documents. RG/2 Claims is also often called upon to act as the Escrow Agent for the Settlement Fund, investing the funds and filing all required tax returns.

ANTITRUST

Because of the high-dollar settlements involved in most antitrust cases and potential large recoveries on behalf of class members, RG/2 Claims understands the importance of accuracy and attention to detail for these cases. RG/2 Claims works with counsel to arrive at the best possible plan to provide notice to the class. With RG/2 Claims' CLEVerPay system, claims filed with a large volume of data, which is common in an antitrust case, can be quickly and easily uploaded into our database for proper auditing. Our highly-trained staff consults with counsel to apply an audit plan to process claims in an efficient manner while ensuring that all claims meet class guidelines. Once ready for distribution, RG/2 Claims calculates check amounts for eligible class members in accordance with the plan of allocation and will issue checks (including wire transfers for large distributions) as well as any necessary tax documents. RG/2 Claims is also available to act as the Escrow Agent for the Settlement Fund, investing the funds and filing all required tax returns.

EMPLOYMENT

With an experienced team of attorneys, CPAs, damage experts and settlement administrators, RG/2 Claims handles all aspects of complex employment settlements, including collective actions, FLSA, gender discrimination, wage-and-hour and, in particular, California state court class and PAGA settlements. RG/2 Claims utilizes technological solutions to securely receive and store class data, parse data for applicable employment information, personalize consents forms or claim forms, collect consents or claims electronically, calculate settlement amounts and make payments through our proprietary CLEVerPay system. Our proprietary database also allows for up-to-the-minute statistical reporting for returned mail, consents or claims received and exclusions submitted. Our CPAs concentrate on withholding and payroll issues and IRC section 468(B) compliance and reporting. Customizable case-specific websites allow for online notification and claims filing capabilities. With Spanish/English bilingual call center representatives on-staff, class members are provided immediate attention to their needs.

CONSUMER

RG/2 Claims handles a wide range of complex consumer matters with notice dissemination to millions of class members and with settlements involving cash, coupons, credits and gift cards. Our experienced claims administrators are available to provide guidance on media, notice and distribution plans that are compliant with the Class Action Fairness Act and the state federal rules governing notice, and that are most beneficial to the class. Our proprietary CLEVerPay system provides a secure and efficient way to track class member data, claims and payments. Integrated with our database, we can provide a user-friendly claims filing portal that will allow class members to complete a static claim form or log-in using user-specific credentials to view and submit a claim personalized just for that user. A similar online portal can be provided as a highly cost-effective method for distribution where the class member can log in to obtain coupons, vouchers or credits as their settlement award.

Effective administration requires proactive planning and precise execution. Before we undertake any matter, we work with you to develop a specific plan for the administration of your case. The service plan is comprehensive, complete and tailored to your specific needs.

RG/2 CLAIMS PROVIDES THE SERVICES SUMMARIZED BELOW:

- Technical consultation during formulation of settlement agreement, including data collection criteria and tax consequences
- Design and development of notice and administration plan, including claim form design and layout
- Claim form and notice printing and mailing services
- Dedicated claimant email address with monitoring and reply service
- Calculation and allocation of class member payments
- Claim form follow-up, including issuing notices to deficient and rejected claims
- Mail forwarding
- Claimant locator services
- Live phone support for claimant inquiries and requests
- Claim form processing
- Claim form review and audit
- Check printing and issuance
- Design and hosting of website access portals
- Online claim receipt confirmation portal
- Ongoing technical consultation throughout the life cycle of the case
- Check and claim form replacement upon request

WE ALSO PROVIDE THE FOLLOWING OPTIONAL SERVICES:

- Periodic status reporting
- Customized rapid reporting on demand
- Issue reminder postcards
- Consultation on damage analyses, calculation and valuation
- Interpretation of raw data to conform to plan of allocation
- Issue claim receipt notification postcards
- Online portal to provide claims forms, status and contact information
- Dedicated toll-free claimant assistance line
- Evaluation and determination of claimant disputes
- Opt-out/Objection processing
- Notice translation
- Integrated notice campaigns, including broadcast, print and e-campaigns
- Pre-paid claim return mail envelope service
- Web-based claim filing
- 24/7 call center support
- Damage measurement and development of an equitable plan of allocation

WE ALSO PROVIDE CALCULATION AND WITHHOLDING OF ALL REQUIRED FEDERAL AND STATE TAX PAYMENTS, INCLUDING:

- Individual class member payments
- Qualified Settlement Fund (QSF) tax filings
- Employment tax filings and remittance
- Generation and issuance of W-2s and 1099s
- Integrated reporting and remittance services, as well as client-friendly data reports for self-filing

**Don't see the service you are looking for?
Ask us. We will make it happen.**



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BOUTIQUE ADMINISTRATOR WITH WORLD-CLASS CAPABILITIES

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