UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE CONNECTONCALL.COM DATA BREACH LITIGATION	Case No. 2:24-cv-08790-SJB-JMW

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiffs,[1] individually, and on behalf of Settlement Class Members, respectfully submit this Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement. The motion is supported by the Joint Declaration of Class Counsel in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Service Awards ("Joint Decl.") and the Declaration of Cameron R. Azari, Esq. Regarding Implementation of Notice Program and Settlement Administration ("Admin. Decl."), submitted herewith.

I. INTRODUCTION

On July 27, 2026, the Court granted Preliminary Approval of the Settlement between Plaintiffs and Defendants and ordered Notice be given to the Settlement Class. ECF No. 60. Following mediation and extensive arm's-length negotiations, the Parties reached a Settlement providing substantial relief for Plaintiffs and the Settlement Class, including a $4,950,000.00 non-reversionary, all cash Settlement Fund from which Settlement Class Members may elect to receive Cash Payments and/or Dark Web and Medical Data Monitoring. Joint Decl. ¶ 13. The Settlement Fund will also be used to pay all Settlement Administration Costs, any Court-awarded attorneys' fees and costs to Class Counsel, and Service Awards to the Class Representatives. The Settlement will fully and finally resolve all claims in the Action.

Plaintiffs now move the Court for Final Approval. The Settlement satisfies all Final Approval criteria. Currently, out of 914,138 individuals in the Settlement Class, only four opted out of the Settlement, and zero Settlement Class Members have objected. Admin. Decl. ¶ 38. This overwhelmingly positive response affirms the Court's initial conclusion, outlined in the

[1] Capitalized terms herein shall have the same meanings as those defined in Section II of the Amended Settlement Agreement, attached to the Supplemental Joint Declaration in Support of Plaintiffs' Amended Motion for Preliminary Approval as Exhibit A. (ECF No. 58-1) (the "S.A.").

Preliminary Approval Order, that the Settlement is fair, reasonable, and adequate. Class Counsel fully evaluated the strengths, weaknesses, and equities of the Parties' respective positions, and believe the Settlement fairly resolves their differences. Consequently, the Court should grant Final Approval of the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants owned and operated ConnectOnCall, an after-hours answering service healthcare providers used to improve their call process and enhance patient communications. Between February 16, 2024, and May 12, 2024, the ConnectOnCall platform was the target of a cybersecurity incident that resulted in the unauthorized access of Private Information pertaining to 914,138 individuals who used the platform. On December 24, 2024, the first putative nationwide class action was filed seeking redress for those impacted in the Data Incident. Thereafter, 13 similar complaints with overlapping putative classes were filed. *See* ECF No. 21 n.1 (listing related actions).

On June 25, 2025, Plaintiffs' counsel reached an agreement and filed a stipulation to appoint Jeff Ostrow of Kopelowitz Ostrow P.A., Mariya Weekes of Milberg PLLC, John A. Yanchunis of Morgan & Morgan, and Gerald D. Wells, III of Lynch Carpenter LLP as Interim Class Counsel, and Jason P. Sultzer of Sultzer & Lipari, PLLC as Liaison Counsel, which the Court approved on June 26, 2026. *See* ECF No. 39. On July 28, 2025, Plaintiffs filed a Consolidated Class Action Complaint. *See* ECF No. 40.

In an effort to conserve the Parties' resources, the Parties agreed to pursue an early resolution of the Action, advising the Court on September 16, 2025 that, on October 6, 2025, they would mediate. ECF No. 44. The Parties participated in a full-day, in-person mediation in New York City, with the Honorable Steven M. Gold (Ret.), a former magistrate judge and well-respected

and experienced class action mediator. Joint Decl. ¶ 12. The Parties reached an agreement in principle at the mediation and memorialized the terms of the proposed Settlement over the next ten weeks, negotiating the Agreement, Notice Program, and Claims Process. *Id*.

On March 2, 2026, Plaintiffs filed an Amended Motion for Preliminary Approval of Class Action Settlement. *See* ECF No. 54. This Court held an in-person hearing on Plaintiffs' Motion for Preliminary Approval on May 6, 2026. Thereafter, the Parties conferred and revised the Settlement Agreement and certain exhibits to address issues raised by the Court during the hearing. On June 3, 2026, Plaintiffs filed a Supplemental Joint Declaration of Class Counsel in support of their Motion for Preliminary Approval. *See* ECF No. 58 (the "Supplemental Preliminary Approval Decl."). On July 27, 2026, the Court issued an Order granting Preliminary Approval of the Settlement and setting a Final Approval Hearing for November 17, 2026. *See* ECF No. 60 (the "Preliminary Approval Order").

III. SUMMARY OF THE SETTLEMENT AND BENEFITS

The following is a summary of the material Settlement terms.

A. Settlement Class

The proposed Settlement establishes the following Settlement Class: All living individuals residing in the United States whose information may have been impacted in the Data Incident. *See* Preliminary Approval Order ¶ 1. Excluded from the Settlement Class are all persons who are: (a) directors, officers, and employees of Defendants; and (b) the judges assigned to the Action, their immediate family, and Court staff. *Id.*

B. The Settlement Class Member Benefits

The Settlement provides for both monetary and non-monetary relief. Defendants have agreed to fund a non-reversionary, cash $4,950,000.00 Settlement Fund that will be used to pay:

(a) Valid Claims for Cash Payments and Dark Web and Medical Data Monitoring; (b) all Settlement Administration Costs; and (c) any Court-awarded attorneys' fees, costs, and Service Awards to Class Representatives. *Id.* ¶¶ 72, 75, 76. If the amount of Valid Claims exhausts the Settlement Fund, the amount of the Cash Payments will be reduced pro rata accordingly in the manner detailed in the Agreement. *Id.* ¶ 80. Defendants have also implemented security measures in response to the Data Incident at their own cost. *Id.* ¶ 81.

1. ***Cash Payment A – Documented Losses***

Claims for Cash Payment A – Documented Losses for up to $5,000 per Settlement Class Member require a Settlement Class Member to (i) elect Cash Payment A on the Claim Form; (ii) attest under penalty of perjury to having communicated after-hours with a healthcare provider or their office between May 12, 2014 and May 12, 2024, and incurred documented losses attributed to the Data Incident; and (iii) provide a description of the documented losses along with supporting documentation that is not self-prepared by the Settlement Class Member. *Id.* ¶ 79.a. If a Settlement Class Member does not submit reasonable documentation, or if their Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure, the Claim will be converted to Cash Payment B – Alternate Cash. *Id.*

2. ***Cash Payment B – Alternate Cash***

In lieu of electing Cash Payment A – Documented Losses, a Settlement Class Member may elect Cash Payment B – Alternate Cash on the Claim Form, which will be a pro rata amount of the Net Settlement Fund. To receive an alternate cash payment, a Settlement Class Member must (i) elect Cash Payment B on the Claim Form; and (ii) attest under penalty of perjury to having communicated after-hours with a healthcare provider or their office between May 12, 2014, and

May 12, 2024. *Id.* ¶ 79.b. The maximum payment a Settlement Class Member may receive under Cash Payment B is $75.00. *Id.*

3. ***Dark Web and Medical Data Monitoring***

In addition to electing a Cash Payment, all Settlement Class Members may elect two years of CyEx Medical Shield Complete. *Id.* ¶ 79.c. This Dark Web and Medical Data Monitoring will provide the following benefits: dark web monitoring, medical identity monitoring, real-time alerts, and insurance coverage for up to $1,000,000 for medical identity theft. *Id.* The Dark Web and Medical Data Monitoring has an estimated retail cost of $360.00 per two years per Settlement Class Member who opts in to it. *Id.*

4. ***Attestation Regarding Security Measures***

In addition to monetary relief, Defendants have agreed to provide a written attestation regarding the security measures implemented following the Data Incident, which will include an estimate of the costs Defendants have incurred or will incur in connection with such measures. *Id.* ¶ 81. These costs will not reduce the Settlement Fund. *Id.*

C. Residual Funds

Residual funds remaining 30 days after the Check-Negotiation Period shall be distributed to an appropriate mutually agreeable *cy pres* recipient approved by the Court. *Id.* ¶¶ 116-117. The Parties have agreed to propose the International Association of Privacy Professionals and Future of Privacy Forum as the *cy pres* recipients. *Id.* In their Supplemental Declaration in support of Preliminary Approval, Class Counsel provided the Court with information regarding each of the proposed *cy pres* recipients. *See* Supplemental Preliminary Approval Decl. ¶¶ 33-34.

D. Releases

Plaintiffs and Settlement Class Members (i.e., those who did not timely and validly opt-out of the Settlement) will be bound by the Settlement, including the Releases that discharge the Released Claims against the Released Parties. *Id.* § XIII. The Released Claims are narrowly tailored and are only claims arising out of or relating to the Data Incident. *See* S.A. ¶ 63.

E. Service Awards, Attorneys' Fees, and Costs

Per the Settlement Agreement, Plaintiffs' Counsel has applied to the Court for a Service Award of up to $2,500.00 for each Class Representative. *Id.* ¶ 112. Class Counsel has also applied to the Court for an award of attorneys' fees of up to one-third of the Settlement Fund ($1,650,000.00), plus reimbursement of reasonable costs. *Id.* ¶ 113. This Settlement is not contingent on approval of the request for attorneys' fees, costs, or Service Awards, and if the Court denies the requests or grants amounts less than what were requested, the remaining provisions of the Agreement shall remain in force. *Id.* ¶ 114. The provision for attorneys' fees and costs was negotiated after all material terms of the Settlement. *Id.* Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards is being filed concurrently herewith.

VI. NOTICE PROGRAM, CLAIM PROCESS, OPT-OUTS, AND OBJECTIONS

A. Notice Program

The Settlement Administrator implemented the Notice Program in full compliance with the Settlement Agreement and the Preliminary Approval Order. The Settlement Administrator received data for identified individuals in the Settlement Class, including available contact information. *See* Admin. Decl. ¶ 15. The Settlement Administrator sent the Class List to a third-party reverse lookup service to perform "reverse lookups" to identify the most likely current and valid email address. *Id.* These efforts resulted in 832,239 unique identified records for individuals in the Settlement

Class. *Id.* Of these records, 516,090 identified individuals in the Settlement Class records had available contact information and were sent notice via email and/or mail. *Id.*

On August 26, 2026, the Settlement Administrator commenced sending Email Notice and Postcard Notice. *Id.* ¶¶ 16, 20. The Settlement Administrator commenced sending Email Notice to identified individuals in the Settlement Class for whom a valid email address was available. *Id.* ¶ 16. Email Notice was sent to 345,595 individuals in the Settlement Class. *Id*. If the receiving email server could not deliver the message, a "bounce code" was returned along with the unique message identifier, and at least two additional attempts were made to deliver the Notice by email. *Id.* ¶ 19. Postcard Notices were sent to identified individuals in the Settlement Class for whom associated mailing addresses were available and no valid email address was available. *Id.* ¶ 20. The Settlement Administrator also sent Postcard Notices to identified individuals in the Settlement Class for whom an Email Notice was returned as undeliverable after multiple attempts. *Id.* Postcard Notices were sent to a total of 264,822 individuals in the Settlement Class. *Id.* Prior to mailing the Postcard Notices, all mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the USPS. *Id.* ¶ 22. In addition, the addresses were certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the ZIP code and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. *Id.*

The Postcard and Email Notice included, among other information, a description of the material terms of the Settlement; a date by which individuals in the Settlement Class may exclude themselves from, or "opt out" of, the Settlement Class; a date by which individuals in the Settlement Class may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website where individuals in the Settlement Class may access the Settlement Agreement and other related documents and information. *See*

Admin. Decl. Exhibits 3-4. The Notice Program also included targeted Publication Notice on the selected advertising network *Google Display Network*, which represents thousands of digital properties across all major content categories. *Id.* ¶ 27. The Publication Notice was also placed on *Facebook*, one of the leading social media platforms in the United States. *Id.* ¶ 28. The Publication Notice and social media program began on August 26, 2026 and concluded on October 6, 2026. *Id.* ¶ 30. Combined, over 81 million targeted impressions will be generated by the digital notices, nationwide. *Id.* ¶ 31. Moreover, to facilitate locating the Settlement Website, sponsored search listings were acquired on the three most highly-visited internet search engines: *Google*, *Yahoo!*, and *Bing*. *Id.* ¶ 32.

The Settlement Administrator also maintains the Settlement Website, www.ConnectOnCallSettlement.com. Visitors to the Settlement Website can download the Settlement Agreement, Preliminary Approval Order, Long Form Notice, Claim Form, and other relevant documents. *Id.* ¶ 35(a). Visitors can submit claims electronically, find answers to frequently asked questions (FAQs), important dates and deadlines, and contact information for the Settlement Administrator. *Id.* ¶ 35(b). As of October 9, 2026, there have been 980,098 unique sessions to the Settlement Website, and 3,960,800 web pages presented. *Id.* ¶ 35(c).

On August 25, 2026, the Settlement Administrator established a toll-free telephone number (1-877-313-8735) for the Settlement. *Id.* ¶ 36. Callers can hear an introductory message, have the option to learn more about the Settlement in the form of recorded answers to FAQs, and can request that a Long Form Notice and Claim Form be mailed to them. *Id.* The toll-free telephone number is prominently displayed in all notice documents. *Id.* As of October 9, 2026, there have been 1,577 calls to the toll-free telephone number representing 3,990 minutes of call time. *Id.*

A postal mailing address and email address were established and continue to be available, allowing individuals in the Settlement Class the opportunity to request additional information or ask questions. *Id.* ¶ 37.

This Notice Program as designed and as being implemented reached the greatest practicable number of Class Members. *Id.*¶ 9. Email or Postcard Notices were successfully delivered to 498,166 of the 516,090 identified Settlement Class Members for whom contact information was reasonably available. *Id.*¶ 25. Accordingly for the Settlement Class Members whose contact information could be identified with reasonable effort, the individual notice reached 96.4%. *Id.* ¶ 9. The overall Notice Program (including to Settlement Class Members for whom individual contact information was not available) reached at least 70% of the Settlement Class with direct notice and a digital/internet notice program. *Id.*

B. Claims Process

The Claims Process was structured to give all individuals in the Settlement Class adequate time to review the Settlement terms, submit Claims, and decide whether to opt out of or object to the Settlement. Joint Decl. ¶ 19. The Claims Process is straightforward, and individuals in the Settlement Class can submit Claims through the Settlement Website or by mail to the Settlement Administrator. S.A. ¶ 27. The Claim Form Deadline is November 2, 2026, three weeks from the filing of this motion. Admin. Decl. ¶ 39. Because the Claims Process is ongoing, any figures reported at this stage would necessarily be preliminary and subject to change. However, to date, the Claims Process is progressing as anticipated and as compared to other similar data breach settlements Epiq has administered. *Id*. Epiq also continues analyzing the Claim Forms for indicia of fraud and anticipates providing a more detailed summary as to its fraud findings before the Final Approval Hearing. *Id.* ¶ 40. Accordingly, the Settlement Administrator will provide a supplemental

declaration in advance of the Final Approval Hearing on November 17, 2026 with updated claims and administration statistics. *Id.* ¶ 47.

C. Opt-Outs and Objections

The Opt-Out Deadline and Objection Deadline are October 19, 2026. Admin. Decl. ¶ 38. As of October 9, 2026, there have been only four opt-outs and zero objections to the Settlement. *Id*.

V. SETTLEMENT CLASS CERTIFICATION

A. The Requirements of Rule 23(a) Are Satisfied[2]

For settlement purposes only, the Court preliminarily certified the Action as a class action for the Settlement Class, finding prerequisites of numerosity, commonality, typicality, adequacy, predominance, and superiority were satisfied pursuant to Rules 23(a) and (b)(3), and that the Settlement Class should be certified. *See* Preliminary Approval Order. ¶¶ 5-6. The Court appointed Plaintiffs as Class Representatives and Jason P. Sultzer of Sultzer & Lipari, PLLC, Jeff Ostrow of Kopelowitz Ostrow P.A., Mariya Weekes of Milberg Coleman Bryson Phillips Grossman PLLC, John A. Yanchunis of Morgan & Morgan, and Gerald D. Wells, III of Lynch Carpenter, LLP as Class Counsel. The Court also appointed Epiq Class Action and Claims Solutions, Inc. as the Settlement Administrator and approved the Notice Program and Claims Process. Because nothing has changed regarding class certification, the Court should finally certify the Settlement Class. *See Sapozhnikov v. New York Cmty. Bank*, 824 F. Supp. 3d 242, 251 (E.D.N.Y. 2026) (granting final approval where "[t]he same reasoning that supported preliminary settlement class certification supports affirming class certification here").

[2] For efficiency, Plaintiffs incorporate by reference their Settlement Class certification arguments from the Motion for Preliminary Approval. ECF. No. 54 at 19-23.

VI. THE NOTICE PROGRAM COMPORTS WITH DUE PROCESS

Before Final Approval can be granted, due process and Rule 23 require that the notice provided to the Settlement Class is "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). "Such notice to class members need only be reasonably calculated under the circumstances to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections." *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *12 (S.D.N.Y. Dec. 23, 2009). Notice must clearly state essential information regarding the settlement, including the nature of the action, terms of the settlement, and class members' options. *See* Fed. R. Civ. P. 23(c)(2)(B). At its core, all that notice must do is "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (citation omitted).

"It is clear that for due process to be satisfied, not every class member need receive actual notice, as long as counsel 'acted reasonably in selecting means likely to inform persons affected.'" *In re Adelphia Commc'ns Corp. Sec. & Derivative Litigs.*, 271 F. App'x 41, 44 (2d Cir. 2008). The Federal Judicial Center notes that a notice plan is reasonable if it reaches at least 70% of the class. *See* Fed. Judicial Ctr., Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide 3 (2010). Here, the Notice Program here meets these standards. Direct notice reached 96.4% of the Settlement Class Members whose contact information could be identified with reasonable effort, and the overall Notice Program (including to Settlement Class Members

for whom individual contact information was not available) reached at least 70% of the Settlement Class with direct notice and a digital/internet notice program. *Id.* Admin. Decl. ¶ 43.

In granting Preliminary Approval, the Court approved the Parties' proposed Notice Program, finding it met the requirements of Rule 23 and due process. *See* Preliminary Approval Order ¶ 11. As detailed above, the Notice Program has now been fully carried out by the Settlement Administrator. Given the broad reach of the Notice Program, and the comprehensive information provided, the requirements of due process and Rule 23 are easily met.

VII. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE FINALLY APPROVED BY THE COURT

The Second Circuit has noted that the policy favoring settlement is strong, "particularly in the class action context." *Wal-Mart Stores*, 396 F.3d at 116. "A district court may approve a settlement proposal that binds class members only 'after a hearing and on finding that it is fair, reasonable, and adequate.'" *Moses v. N.Y. Times, Co.*, 79 F.4th 235, 242 (2d Cir. 2023) (quoting Fed. R. Civ. P. 23(e)(2)). In doing so, the Court must consider the following factors:

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

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

Common-law criteria preceded the Rule 23(e)(2) factors. *Moses*, 79 F.4th at 242. Courts in the Second Circuit also consider the factors set forth in *City of Detroit v. Grinnell Corp.* in evaluating the adequacy of a class action settlement:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). Rule 23(e)(2)'s first two procedural (Rule 23(e)(2)(A)-(B)) and last two substantive considerations (Rule 23(e)(2)(C)-(D)) were "'not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance.'" *Moses*, 79 F.4th at 242-43 (quoting Rule 23(e)(2) Advisory Committee's Note to 2018 Amendment). These factors are to be considered "holistically," with the *Grinnell* factors "remain[ing] a useful framework for considering the substantive fairness of a settlement." *Id.* at 243. Thus, the overlapping Rule 23(e)(2) and *Grinnell* factors are addressed below.

A. Plaintiffs and Class Counsel Have Adequately Represented the Settlement Class – Rule 23(a)(2)(A)

In judging the Settlement's procedural fairness, the Court should first consider and conclude the Class Representatives and Class Counsel "have adequately represented the class." Rule 23(e)(2)(A). As with Rule 23(a)(4)'s adequacy of representation requirement, to satisfy Rule 23(e)(2)(A) Plaintiffs must establish (1) there is no antagonism or conflict of interest between the Class Representatives and other members of the Settlement Class; and (2) Class Counsel and Class Representatives are competent, willing, and able to protect the interests of absent Settlement Class members. *Marisol A. by Forbes v. Giuliani*, 126 F.3d 372, 378 (2d Cir. 1997); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. at 30. Here, all Settlement Class Members and the Class Representatives are potentially affected by the same Data Incident

and thus have common interests. Joint Decl. ¶ 29. Moreover, Class Representatives have ably represented the Settlement Class, maintaining contact with Class Counsel and answering questions, reviewing and approving pleadings, assisting in the Action's investigation, and reviewing and approving the Settlement documents. *Id.*

Class Counsel have also vigorously pursued the Settlement Class's interests in securing a Settlement bringing immediate, valuable benefits, while avoiding the risks of continued litigation. Joint Decl. ¶¶ 24-35. To do so, they relied on their extensive class action experience, including in analogous data breach cases, their detailed investigation of this Action, and informal discovery exchanged in connection with Settlement negotiations, and ultimately negotiated a favorable recovery for the Settlement Class. *Id.* Class Representatives and Settlement Class Members are all eligible to elect Settlement Class Member Benefits. *Id.* Moreover, their Private Information will be better protected by Defendants' implementation of security measures, at Defendants' separate costs. S.A. ¶ 81. This weighs in favor of Final Approval. *See Berryman*, 2024 WL 2108824, at *5 (noting the "considerable experience" of class counsel as supporting adequacy of representation). As such, Rule 23(e)(2)(A) supports Final Approval.

B. The Settlement Was Negotiated at Arm's Length and Aided by a Respected and Experienced Mediator – Rule 23(e)(2)(B)

The next procedural consideration is whether the Settlement was "negotiated at arm's length." Rule 23(e)(2)(B). Recognizing the benefits of early resolution, the Parties began discussing the possibility of settlement. Joint Decl. ¶ 9. The Parties scheduled a mediation session with the Honorable Steven M. Gold (Ret.), a former magistrate judge and well-respected and experienced class action mediator. *Id.* Before mediation, the Parties engaged in informal discovery and exchanged mediation briefs, enabling them to better evaluate the merits of Plaintiffs' claims and the strengths of Defendants' defenses. *Id.* ¶¶ 10-11. On October 6, 2025, the Parties engaged

in a full-day mediation session. *Id.* ¶ 12. With Judge Gold's guidance, the Parties ultimately agreed on the material Settlement terms at arm's length. *Id.* Judge Gold's involvement further supports the finding of procedural fairness via arm's length negotiations. *See, e.g.*, *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 699 (S.D.N.Y. 2019) (Rule 23(e)(2)(B) satisfied because of mediator's involvement and parties' sophisticated and capable counsel); 4 Alba Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS § 13:50 (4th ed. 2002).

C. The Settlement Benefits Provided Are Adequate Relief Given the Complexity of the Case and Risks of Continued Litigation – Rule 23(e)(2)(C) and *Grinnell* Factors 1, 4, 5, 6, 8, and 9.

Under Rule 23(e)(2)(C), courts consider whether the class relief is adequate to assess the settlement's substantive fairness. This factor overlaps with the first, fourth, fifth, sixth, eighth, and ninth *Grinnell* factors, addressing the complexity, expense, and likely duration of the litigation and the range of reasonableness of the settlement fund in light of the best possible recovery and to a possible recovery in light of all the attendant risks of litigation. 495 F.2d at 463. In assessing this factor, "the Court should balance the benefits afforded the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation." *Flores v. Mamma Lombardi's of Holbrook, Inc.*, 104 F. Supp. 3d 290, 303 (E.D.N.Y. 2015). There is "a range of reasonableness with respect to a settlement" that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). The settlement amount's adequacy should not be judged on the best of all possible worlds, but rather in light of the action's strengths and weaknesses. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 665-66 (S.D.N.Y. 2015). "The greater the 'complexity, expense and likely duration of the litigation,' the stronger the basis for approving a settlement." *Id.* at 663 (citations omitted). Consumer class action lawsuits by their very nature are complex, expensive, and lengthy. *See, e.g.*, *Dupler v. Costco*

Wholesale Corp., 705 F. Supp. 2d 231, 239 (E.D.N.Y. 2010).

Rule 23(e)(2)(C)(i) and the first, fourth, fifth, and sixth *Grinnell* factors support Final Approval. The costs, risks, and delay of trial and appeal are significant in all data security cases, but particularly in cases involving facts such as these. Joint Decl. ¶¶ 30-31. While Plaintiffs are confident in the merits of their claims, the risks involved in prosecuting a class action through trial cannot be disregarded. *Id*. Due at least in part to their cutting-edge nature and the rapidly evolving law, data security cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See, e.g.*, *Logan v. Marker Group, Inc.*, No. 4:22-CV-00174, 2024 WL 3489208 (S.D. Tex. July 18, 2024) (dismissing all but one claim); *Dougherty, et al. v. Bojangles Restaurants, Inc.*, No. 25-CV-00065, DE 34 (W.D.N.C. Sep. 30, 2025) (dismissing case in its entirety at pleading stage); *see also In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015) (legal issues involved in data breach litigation "are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues"). Plaintiffs also anticipate substantial additional costs should litigation continue, including expert fees and discovery. Joint Decl. ¶ 31. Plaintiffs would need to defeat a motion to dismiss, counter a later motion for summary judgement, and both gain and maintain certification of a class, with a near inevitable interlocutory appeal attempt. *Id*.

Class certification itself is a hurdle. *See, e.g.*, *Maldini v. Marriott Int'l, Inc.*, 140 F.4th 123 (4th Cir. 2025) (reversing reinstated class certification); *Marriott Int'l, Inc. v. Accenture LLP*, 78 F.4th 677, 688 (4th Cir. 2023) (vacating class certification in data breach case); *Theus v. Brinker Int'l, Inc.*, No. 3:18-cv-686-TJC-MCR, 2025 WL 1786346, at *4 (M.D. Fla. June 27, 2025) (denying class certification in a data breach case); *In re Blackbaud, Inc., Customer Data Breach*

Litig., No.: 3:20-mn-02972-JFA, 2024 WL 2155221 (D.S.C. May 14, 2024) (same). To date, to Class Counsel's knowledge, no data breach class action has been tried. Joint Decl. ¶ 49.

Through the Settlement, Plaintiffs and Settlement Class Members avoid these and other risks, including potentially losing at trial, and gain significant benefits for the Settlement Class while avoiding the risk of receiving nothing, if the case continued. The Settlement provides immediate and substantial value, including a $4,950,000.00 non-reversionary all-cash Settlement Fund for the benefit of 914,138 potential Settlement Class Members. Indeed, this Settlement compares very favorably, and in fact exceeds, many similar common fund data breach settlements. *See, e.g*., *In re CaptureRx Data Breach Litig.,* No. 5:21-cv-00523-OLG (W.D. Tex.) ($4,750,000 common fund for 2,400,000 class members); *Heath, et al. v. Insurance Technologies Corp., et al*., No. 3:21-cv-01444-N (N.D. Tex.) ($11,000,000 common fund for 4,000,000 class members); *Kostka v. Dickey's Barbecue Restaurants, Inc*., No. 3:20-cv-3424 (N.D. Tex.) ($2,350,000 common fund for 725,000 class members); *In re: Berry, Dunn, McNeil & Parker Data Security Incident Litig*., No. 2:24-cv-00146-JAW (D. Me. June 6, 2025) ($7.25 million fund for 2,204,639 class members); *In re Mednax Services, Inc*., *Customer Data Sec. Breach Litig*., No. 2021-MD-02994 (S.D. Fla.) ($6,000,000 for 2,700,000 class members).

Additionally, given the substantial litigation risks described above, all Settlement Class Members are entitled to claim a Cash Payment (up to $5,000.00 for documented losses or up to $75.00 in alternate cash, both subject to *pro rata* adjustments based on the number of Valid Claims) and Dark Web and Medical Data Monitoring.[3] Those amounts are well within the range of reasonableness of a settlement fund in light of the best possible recovery. *Grinnell*, 495 F.2d at

[3] Additionally, Defendants' security enhancements, paid separately from the Settlement Fund, add substantial non-monetary benefits to protect the Settlement Class Members' Private Information.

463 (eighth and ninth factors). These dollar amounts are on par with or exceed those approved in other data breach class action settlements. *See, e.g.*, *In re Arthur J. Gallagher Data Breach Litig.*, No. 22-CV-00137 (N.D. Ill.) (final approval of a settlement where class members received $6,000 for documented losses or $100.00 alternate cash and credit monitoring); *Sherwood, et al. v. Horizon Actuarial Services LLC*, Case No. 1:22-CV-01495-ELR (N.D. Ga.) (final approval of a settlement where class members received $5,000 for documented losses or $50.00 alternate cash with no credit monitoring offered).

In applying the eighth *Grinnell* factor, "the settlement must be judged 'not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case.'" *Shapiro v. JPMorgan Chase & Co.*, No. 11-cv-8331-MHD, 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014) (quoting *In re Agent Orange Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd* 818 F.2d 145 (2d Cir. 1987)). Indeed, as the Second Circuit recognized, because of the riskiness of litigation, "[i]n fact there is no reason . . . why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Grinnell*, 495 F.2d at 455 n.2.

Settlement Class Member Benefitss will be effectively distributed through the robust Claims Process through which the experienced Settlement Administrator will approve Valid Claims. Fed. R. Civ. P. 23(e)(2)(C)(ii); S.A. ¶¶ 97-109. Cash Payments will be made by electronic means or paper check, and emails will be sent with instructions to enroll in Dark Web and Medical Data Monitoring. Agreement. *Id.* ¶¶ 108-109.

In *Moses*, the Second Circuit addressed Rule 23(e)(2)(C)(iii)'s requirement that district courts must take into account "the terms of any proposed award of attorneys' fees." 79 F.4th at 244. "The symbiotic review of proposed relief and attorneys' fees aligns with '[t]he express goal

of [our] *Grinnell* opinions [which] was to prevent unwarranted windfalls for attorneys.'" *Id.* (quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2d Cir. 2000)). Thus, the settlement's terms and class counsel's attorneys' fee award are required to be reviewed "in tandem." *Id.* In 2025, the Second Circuit went further to "clarify that this tandem analysis of class relief and attorney's fees requires courts to compare the proportion of total recovery allocated to the class to the proportion of total recovery allocated to class counsel." *Kurtz v. Kimberly-Clark Corp.*, 142 F.45 112, 115 (2d Cir. 2025). Neither *Moses* nor *Kurtz* involved an attorneys' fee request from a non-reversionary, common settlement fund. Here, Class Counsel's requested attorneys' fee of one-third of the non-reversionary, common Settlement Fund does *not* reveal an "imbalance as to cast doubt on the settlement's fairness." *Kurtz*, 142 F.45th at 119. As detailed in Plaintiffs' concurrently filed Motion for Attorneys' Fees, Costs, and Service Awards, a one-third award is regularly granted in this Circuit, including in this District.

Accordingly, the Settlement adequately addresses the complexity, expense, and likely duration of the Action.[4]

D. The Settlement Treats Settlement Class Members Equitably - Rule 23(e)(2)(D)

The Settlement does not discriminate between any segments of the Settlement Class. Joint Decl. ¶ 36. All Settlement Class Members are eligible to submit Claims for Cash Payments and Dark Web and Medical Data Monitoring. *Id.* This equitable treatment includes the reasonable Service Awards to the Class Representatives. *Moses*, 79 F.4th at 244-45 (requiring consideration of incentive awards a/k/a service awards when analyzing Rule 23(e)(2)(D)). Service/incentive awards are permitted in the Second Circuit: "Incentive awards encourage class representatives to

[4] Rule 23(e)(2)(C)(iv) is also satisfied because all Settlement terms are stated in the Agreement.

participate in class action lawsuits, which are 'designed to provide a mechanism by which persons, whose injuries are not large enough to make pursuing their individual claims in the court system cost efficient, are able to bind together with persons suffering the same harm and seek redress for their injuries.'" *Id.* at 253, 256. For their commitment to the Action, Plaintiffs may reasonably request Services Awards of $2,500.00 each ($10,000.00 total). *See, e.g.*, *McLaughlin v. IDT Energy*, No. 14-cv-417 (ENV) (RML), 2018 WL 3642627, at *20 (E.D.N.Y. July 30, 2018) ("Courts in this circuit regularly approve service awards, ranging from as low as $1,000 to as high as $25,000, in consumer class action settlements; generally, however, awards between $1,000 and $10,000 are more typical." (collecting cases)).

Plaintiffs have been instrumental in assisting Class Counsel as Class Representatives. Joint Decl. ¶ 54. They initiated and remained in contact with Class Counsel, considered and reviewed the pleadings and Agreement, supervised and monitored Class Counsel, provided background documents, and followed the litigation's progress to ensure the Settlement Class receive the best recovery possible, given the risks of the Action. *Id.* The Class Representatives were prepared to complete their responsibilities, including being deposed and testifying at trial, if needed. *Id.*

Accordingly, Rule 23(e)(2)(D) weighs in favor of Final Approval.

E. The Remaining Grinnell Factors (2, 3, and 7) Support Final Approval

The second *Grinnell* factor addresses the Settlement Class's reaction to the proposed settlement. "A positive reaction of the class to the proposed settlement favors its approval by the Court." *Meredith*, 87 F. Supp. 3d at 663. "'It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.'" *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720 (MKB) (JO), 2019 WL 6875472, at *16 E.D.N.Y. Dec. 16, 2019) (citation omitted).

Here, the reaction of the Settlement Class has been overwhelmingly positive. Class Notice has been provided in accordance with the requirements of Rule 23(c)(2)(B) and the Preliminary Approval Order. *See generally* Admin. Decl. While the Objection Deadline and Opt-Out Deadline has not yet passed, so far, zero Settlement Class Members have objected to the Settlement, and only four individuals have opted out. *Id.* at ¶ 38.

This reaction and lack of objections from the Settlement Class leave no question that the Settlement Class views the Settlement favorably, which weighs heavily in favor of final approval and further supports the "presumption of fairness." *See, e.g.*, *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *4 (E.D.N.Y. 2012) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.").

The third *Grinnell* factor considers the stage of the proceedings and amount of discovery completed, with a "'focus[ ] on whether the plaintiffs obtained sufficient information through discovery to properly evaluate their case and to assess the adequacy of any settlement proposal.'" *Schutter v. Tarena Int'l, Inc.*, No. 21-CV-3502 (PKC) (RML), 2024 WL 4118465, at *11 (E.D.N.Y. Sept. 9, 2024) (citation omitted). While the Action settled early, the Parties' negotiations included an exchange of informal discovery before mediation. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 190 (S.D.N.Y. 2012) ("[F]ormal discovery need not have necessarily been undertaken yet by the parties.").

In addition to Class Counsel's extensive legal and factual research into the merits of Plaintiffs' claims (and likelihood of protracted litigation), they filed a detailed consolidated complaint; retained and conferred with experts; obtained pre-mediation discovery; exchanged mediation statements; and mediated before Judge Gold. Joint Decl. ¶ 42. Due to this work, the depth of Plaintiffs' and Class Counsel's knowledge of the claims' strengths and potential

weaknesses is more than adequate to support the Settlement. Class settlements are routinely approved early in litigation because it allows the class to recover without the delay such complex cases usually entail, especially where, as here, the settlements were brought about by the skill and diligence of Class Counsel in evaluating the claims and damages. Early settlement where, as here, the Parties are adequately informed to negotiate is to be commended. *See*, *e.g.*, *Hernandez v. Merrill Lynch & Co.,* 2013 U.S. Dist. LEXIS 42681, *14 (S.D.N.Y. Mar. 21, 2013) ("courts encourage early settlement of class actions, when warranted, because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere"); *Castagna v. Madison Square Garden, L.P.*, No. 09-cv-10211 (LTS)(HP), 2011 WL 2208614, at *6 (S.D.N.Y. June 7, 2011) (commending Plaintiffs' attorneys for negotiating early settlement and avoiding hundreds of hours of legal fees).[5]

Finally, for the seventh *Grinnell* factor, the Defendants' financial obligations under the Settlement are substantial given the creation of the Settlement Fund. A "defendant's ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair." *Viafara v. MCIZ Corp.*, No. 12-cv-7452-RLE, 2014 WL 1777438, at *7 (S.D.N.Y. Apr. 30, 2014)

[5] *See also* Tr. of Final Approval Hearing, at 9:11-20, *Bangoura v. Beiersdorf, Inc. and Bayer Healthcare, LLC,* No. 1:22-cv-00291-BMC (S.D.N.Y. Jan. 5, 2023) ("***I think there is definitely a premium to be taken for the fact that the case was settled at an early stage***. It is very often the case in these kinds of consumer fraud cases, whether it's marketing or potential personal injury or lack of value, that the case can drag on, you know, despite my best efforts I've had them drag on for four or five years. ***And the fact that I'm looking at 2022 index number on this case is, in itself, a testament to the efficiency of plaintiffs' counsel's efforts***.") (emphasis added); *Karpus v. Borelli (In re Interpublic Sec. Litig.)*, 20-cv-6527, 2004 WL 2397190 at *12, 2004 U.S. Dist. LEXIS 21429, at *35-37 (S.D.N.Y. Oct. 26, 2004) (Cote, J.) ("Any award of attorneys' fees therefore should recognize this risk and should not penalize counsel for settling at an early stage of the litigation when it appeared appropriate to do so.").

(citation omitted). "Courts have recognized that a [defendant's] ability to pay is much less important than the other *Grinnell* factors, especially where the other factors weigh in favor of approving the settlement." *In re Sinus Buster Prods. Consumer Litig.*, No. 12–CV–2429 (ADS)(AKT), 2014 WL 5819921, at *11 (E.D.N.Y. Nov. 10, 2014) (citations omitted).

Based on the foregoing analysis, the Court should conclude the Settlement is fair, reasonable, and adequate. Thus, Final Approval should be granted.

VIII. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Motion for Final Approval of the Settlement.

Dated: October 12, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Judge Bulsara's Individual Practices (Civil), § VI(E) and Local Rule 7.1(c), I hereby certify that the foregoing Memorandum of Law contains 6,961words, excluding the parts of the Memorandum exempted by the Local Rules.

/s/ Jason Sultzer
Jason Sultzer

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Jason Sultzer
Jason Sultzer