**IN THE CIRCUIT COURT OF COMMON PLEAS OF PHILADELPHIA CITY**
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**
**TRIAL DIVISION - CIVIL**

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| **KYLE RETORICK**, on behalf of himself and all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>**RESTEK CORPORATION**,<br><br>Defendant. | Case No. 240101443<br><br>Judge Paula A. Patrick |

**PLAINTIFF'S MEMORANDUM**
**IN SUPPORT OF THE UNOPPOSED MOTION FOR**
**FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

## I. INTRODUCTION

On September 9, 2025, the Court granted preliminary approval of the class action settlement (the "Settlement") between Plaintiff Kyle Retorick ("Plaintiff") and Defendant Restek Corporation ("Defendant") (together the "Parties"). Pursuant to that order, the Settlement Administrator Analytics Consulting, LLC (the "Settlement Administrator" or "Analytics") issued notice to the Settlement Class on October 9, 2025.

Since then, formal notice has reached 92.2% of the Settlement Class. Settlement Class Members have filed 170 valid claims—which equates to a high claims rate of 7.72%. Notably, zero (0) Settlement Class Members have objected to the Settlement, and only five (5) Settlement Class Members have opted-out of the Settlement. In other words, the Settlement satisfies Pa. R. Civ. P. 1702, 1708, 1709, and the *Dauphin* factors—thus, the Court should grant final approval.[1]

[1] A proposed final approval order is attached as Exhibit A.

## II. BACKGROUND

### A. Litigation History

Defendant is a "developer and manufacturer of chromatography columns, sample preparation and collection products, reference standards, and instrument accessories[.]" *See* Complaint ("Compl."), ¶ 15. To run its business, Defendant collects and maintains the personal information ("Personal Information") of its current and former employees. *Id*. ¶ 3. Plaintiff is a former employee of Defendant. *Id*. ¶ 38.

On or around June 2, 2023, Defendant experienced a cybersecurity incident (the "Data Security Incident") which allegedly impacted the Personal Information of the current and former employees of Defendant. *See* Settlement Agreement ("S.A."), ¶ 31. In total, the Data Security Incident allegedly impacted 2,201 people (the "Settlement Class" or "Settlement Class Members"). *See* Declaration of Settlement Administrator Regarding Notice ("Analytics Decl.") ¶ 5.

On January 11, 2024, Plaintiff filed his class action complaint in this Court—and brought claims for negligence, negligence *per se*, breach of implied contract, invasion of privacy, unjust enrichment, breach of fiduciary duty, and breach of confidence. Compl. ¶¶ 91–178. Before filing suit, Class Counsel conducted extensive pre-suit discovery to ascertain all publicly available details about the Data Security Incident and the damages of Plaintiff and the Settlement Class. *See* Declaration of Raina C. Borrelli in Support of Motion for Final Approval ("Borrelli Decl."), ¶ 2.

On March 15, 2024, Defendant filed its preliminary objections to the complaint. *Id*. ¶ 3. In the alternative, Defendant petitioned the Court to transfer the venue based on *forum non conveniens*. *Id*. Therein, Defendant argued for dismissal because, *inter alia*: Plaintiff failed to allege an actual and compensable injury; Plaintiff failed to state a claim for negligence *per se* under Pennsylvania law; Plaintiff failed to sufficiently plead the existence of an implied contract;

Plaintiff failed to sufficiently plead a fiduciary relationship; Plaintiff failed to sufficiently plead an intentional intrusion; Plaintiff failed to show that the conferral of any benefit was inequitable; and because Pennsylvania does not recognize a claim for breach of confidence. *Id*. ¶ 4.

Thereafter, the Parties stipulated to the extend the time for Plaintiff to file an opposition to the preliminary objections (so that the Parties could exchange discovery related to venue). *Id*. ¶ 5. On April 10, 2024, Plaintiff issued venue related discovery. *Id*. ¶ 6. And on May 31, 2024, Defendant provided its responses. *Id*.

**B. Arm's Length Negotiations and Preliminary Approval**

In May 2024, the Parties began discussing the possibility of early resolution to conserve party and judicial resources. *Id*. ¶ 7. To that end, the Parties agreed to exchange informal discovery—including information regarding the timing and causes of the Data Security Incident, the extent of the Data Security Incident, the types of Personal Information impacted, and the approximate number of individuals affected. *Id*. ¶ 8. By exchanging informal discovery, the Parties obtained an objective understanding of the underlying facts. *Id*. ¶ 9. Thus, the Parties were able to carefully evaluate the strengths and weaknesses of the claims and defenses. *Id*.

Over the next six (6) months, the Parties engaged in extensive arm's length negotiations—wherein the Parties evaluated and discussed the relevant facts and law and carefully weighed the risks and uncertainties of continued litigation. *Id*. ¶ 10. Throughout the entire process, the Parties agreed to not negotiate attorney fees or service awards until the core terms of a settlement were finalized (i.e., to avoid any conflicts). *Id*. ¶ 11. After numerous rounds of back-and-forth negotiations, the Parties eventually reached an agreement on the core terms of the Settlement in November 2024. *Id*. ¶ 12. Thereafter, the Parties continued to negotiate the finer terms of the Settlement—and on January 30, 2025, the Settlement Agreement was signed and executed. *Id*.

On January 31, 2025, Plaintiff moved the Court for preliminary approval. *Id*. ¶ 13. Thereafter, the Court scheduled oral argument regarding the length of the claim form and the necessity of the claims process. *Id*. ¶ 14. On June 5, 2025, the Court held a hearing, and Plaintiff submitted a Praecipe to Add Exhibits. *Id*. Thereafter, on June 20, 2025, Plaintiff submitted a Praecipe to Supplement Exhibits which provided updated notice documents. *Id*. ¶ 15. Then, on September 9, 2025, the Court granted preliminary approval. *Id*. ¶ 16.

**C. The Settlement Class**

The Settlement Class is defined as "All individuals residing in the United States whose Personal Information, as defined in the Settlement Agreement, was compromised in the Data Security Incident, as defined in the Settlement Agreement, experienced by Restek Corporation which began on or around June 2, 2023, including all those who received notice of the Data Security Incident." *See* Order Granting Preliminary Approval, ¶ 1. In total, there are 2,201 Settlement Class Members. *See* Analytics Decl. ¶ 5.

**D. Settlement Benefits**

The Settlement provides substantial and timely relief to the Settlement Class—including both monetary relief and injunctive relief. S.A. ¶¶ 42–44. ***First***, the Settlement provides up to $425.00 per person for ordinary losses (including $80.00 for lost time at a rate of $20.00 per hour for up to four hours). *Id*. ¶ 43. ***Second***, the Settlement provides up to $3,500.00 per person for extraordinary losses. *Id*. ***Third***, the Settlement provides an alternative cash payment of $50.00 per person. *Id*. The total value of claims for monetary relief is subject to an aggregate cap of $210,00.00. *Id*. ***Fourth***, the Settlement provides credit monitoring services through IDX—which includes two (2) years of one-bureau credit monitoring and $1 million in identity theft protection insurance, among other features,. *Id*. ¶ 42. ***Fifth***, the Settlement provides injunctive relief whereby

Defendant has significantly invested in strengthening its cybersecurity systems. *Id*. ¶ 44. ***Sixth***, the Settlement also provides that Defendant shall pay for all notice costs, settlement administration costs, attorney fees and costs, and a service award. *Id*. ¶¶ 54, 69, 71.

**E. The Notice Program**

Pursuant to the preliminary approval order, Analytics issued notice to the Settlement Class—which was successful and reached 92.2% of the Settlement Class. *See* Analytics Decl. ¶ 10. On September 12, 2025, Analytics received a data file containing 2,205 records of the names and addresses of Settlement Class Members. *Id*. ¶ 5. Analytics removed four (4) duplicate entries (which resulted in a final class list of 2,201 Settlement Class Members). *Id*. Then, Analytics updated the address data by using the United States Postal Service ("USPS") National Change of Address ("NCOA") database. *Id*. ¶ 6.

On October 9, 2025, Analytics issued direct notice to the Settlement Class by sending the Postcard Notice of Class Action Settlement ("Postcard Notice") by U.S. Mail. *Id*. ¶ 7. Thereafter, five (5) notices were returned with forwarding addresses (and Analytics re-mailed the notices to those new addresses). *Id*. ¶ 8. In total, 398 notices were returned as undeliverable. *Id*. ¶ 9. Thereafter, Analytics performed an advanced address search (i.e. skip tracing) to obtain updated addresses—and Analytics succeeded in obtaining 226 updated addresses. *Id*. Analytics then re-mailed the notices to those new addresses. *Id*. In sum, Analytics estimates that at least 2,029 Settlement Class Members (i.e., 92.2% of the Settlement Class) received direct notice by U.S. Mail. *Id*. ¶ 10.

Analytics provided further notice by creating (1) a Settlement-specific website, (2) a Settlement-specific toll-free phone number 1-866-291-7983, and (3) a Settlement-specific email box at "info@RestekDataSettlement.com." *Id*. ¶¶ 11–16.

***First***, Analytics launched the website "www. RestekDataSettlement.com" which provided easy access to the Settlement Agreement and Release, Long Form Notice, Postcard Notice, Claim Form, and the Court's Preliminary Approval Order. *Id*. ¶¶ 11–12. In total, the website received 2,405 page views by 1,537 unique visitors. *Id* Additionally, the website enabled Settlement Class Members to submit a claim online. *Id*.

***Second***, the toll-free phone number 1-866-291-7983 provided Settlement Class Members with an easy way to ask questions and receive answers about the Settlement. *Id*. ¶¶ 13–14. Specifically, the toll-free phone line provided callers with an Interactive Voice Response (IVR) system to receive answers to frequently asked questions. *Id*. Furthermore, the toll-free phone number provided Settlement Class Members with the option to speak to a live agent. *Id*. In total, the toll-free telephone number received twenty-five (25) calls and twelve (12) of those callers spoke to a live agent. *Id*.

***Third***, the email box at "info@RestekDataSettlement.com" also provided Settlement Class Members with an easy way to ask questions and receive answers. *Id*. ¶¶ 15–16. In total, the email account received fourteen (14) emails—which Analytics promptly responded to and resolved. *Id*.

**F. Opt-Outs & Objections**

The deadline for Settlement Class Members to opt-out or object was December 9, 2025. *Id*. ¶¶ 17–18. In total, zero (0) Settlement Class Members objected to the Settlement, and only five (5) Settlement Class Members opted-out (i.e., excluded themselves) from the Settlement. *Id*.

**G. Claims Administration**

The deadline to submit a claim was January 9, 2026. *Id*. ¶ 19. In total, Analytics received two hundred and sixty-four (264) claims. *Id*. Analytics received sixty-three (63) claims using the "Credit Monitoring Request Form" that was included in the Postcard Notice. *Id*. ¶ 20. However,

six (6) of those claims were duplicative, so the total number of valid claims was fifty-seven (57). *Id*. Analytics also received two hundred and one (201) claims using the full-length "Claim Form." *Id*. ¶ 19. However, eighty-six (86) of those claims were submitted by non-Class Members, so the total number of valid claims was one hundred and fifteen (115). *Id*.

In total, Analytics received one hundred and seventy-two (172) claims from Settlement Class Members. *Id*. ¶ 21. Thus far, one hundred and seventy (170) claims have been deemed valid in whole or in part—which results in a valid claims rate of 7.72%. *Id*. ¶ 22. In terms of credit monitoring, Settlement Class Members submitted one hundred and forty (140) valid claims. *Id*. ¶ 23. However, three (3) claims are partially deficient due to insufficient supporting documentation for their ordinary out-of-pocket losses (but each claim is valid for at least one other Settlement Benefit). *Id*. ¶ 24. Also, two (2) claims are wholly deficient (wherein the claims were either unsigned or signed using an incorrect name). *Id*.

All five (5) of the deficient claims are going through the deficiency process. *Id*. ¶ 25. Specifically, each claimant was sent a deficiency letter detailing what information was needed to cure their claim and was provided twenty-one (21) days to respond. *Id*. Thus far, Analytics has not received any responses from these claimants. *Id*. However, Analytics will continue to receive and review any forthcoming responses to the deficiency letters. *Id*.

Notably, the claims rate of 7.72% meets—and even exceeds—the standard rate in analogous data breach class actions. *See, e.g., Lara v. Lubbock Heat Hospital, LLC*, No. 5:23-cv-00036 (N.D. Tex. July 31, 2024) (granting final approval of a claims-made settlement with a claims rate of 0.4%); *Brent v. Advanced Med. Mgmt., LLC*, No. 23-3254, 2024 U.S. Dist. LEXIS 227423, *11 (D. Md. Dec. 13, 2024) ("The Court finds the claims rate of 3.27% to be modest, although it compares favorably to those breach-related class actions[.]"); *Weisenberger v. Ameritas Mut.*

*Holding Co*., No. 4:21-CV-3156, 2024 U.S. Dist. LEXIS 149359, at *7 (D. Neb. Aug. 21, 2024) (granting final approval of a data breach class action settlement with a claims rate of approximately 1.25% and stating "[w]hile low, the claims rate is not unusual for data breach cases").

In the preliminary approval order, the Court requested the Class Counsel provide "proposed *cy pres* beneficiaries under Pa. R. Civ. P. 1716 for any residual funds resulting from checks uncashed by class members." *See* Preliminary Approval Order, ¶ 10(g). However, the Settlement provides monetary relief on a claims-made basis, and the Settlement Agreement provides that uncashed checks will expire within "ninety (90) days of their issue date." *See* S.A. ¶ 48. Thus, the Settlement will not create "residual funds" and a *cy pres* distribution is inapplicable.

## III. LEGAL STANDARD

The Pennsylvania Supreme Court is clear that "settlements are favored in class action lawsuits." *Dauphin Deposit Bank & Tr. Co. v. Hess*, 556 Pa. 190, 197, 727 A.2d 1076, 1080 (1999); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("There is an overriding public interest in settling class action litigation, and it should therefore be encouraged."). Rule 1714(a) provides that "[n]o class action shall be compromised, settled or discontinued without the approval of the court after hearing." Pa. R. Civ. P. 1714(a).

At the final approval stage, the court must apply the "five criteria for the certification of a class" provided by Rule 1702. *Shaev v. Sidhu*, No. 0983, 2009 Phila. Ct. Com. Pl. LEXIS 63, at *8 (Philadelphia County, Mar. 5, 2009) (quoting Pa. R. Civ. P. 1702). Additionally, the court must apply the seven *Dauphin* factors to determine whether the Settlement is fair, reasonable, and adequate. *See Ayala v. Complete Healthcare Res.-E., Inc*., No. 2022-03416, 2025 Pa. Dist. & Cnty. Dec. LEXIS 52, *5 (Montgomery County, July 29, 2025) (granting final approval of a class action settlement) (citing *Dauphin*, 556 Pa. at 197, 727 A.2d at 1080).

## IV. ARGUMENT

Final approval is proper because the Settlement is procedurally and substantively fair, reasonable, and adequate. *See* Borrelli Decl. ¶ 17. Notably, Pennsylvania courts readily final grant approval of analogous data breach class action settlements.[2] *See, e.g., Heflin v. York County School of Technology*, No. 2024-SU-001254 (York County, Jan. 9, 2026) (granting final approval of a data breach class action settlement); *In re NCB Mgmt. Servs., Inc. Data Breach Litig*., No. 2:23-cv-01236, Dkt. No. 141 (E.D. Pa. Sept. 29, 2025) (same); *Bianucci v. Rite Aid Corp*., No. 24-3356, 2025 U.S. Dist. LEXIS 145571, at *26 (E.D. Pa. July 30, 2025) (same); *Gravley v. Fresenius Vascular Care, Inc*., No. 24-1148, 2025 U.S. Dist. LEXIS 142268, at *28 (E.D. Pa. July 24, 2025) (same); *Braun v. Phila. Inquirer, LLC*, No. 22-cv-4185, 2025 U.S. Dist. LEXIS 85786, at *51 (E.D. Pa. May 6, 2025) (same); *Currie v. Joy Cone Co.*, No. 2:23-cv-00764, Dkt. No 50 (W.D. Pa. Dec. 5, 2024) (same). Here too, the Court should grant final approval.

As explained below, final approval is warranted—and the Settlement satisfies Rule 1702, Rule 1708, Rule 1709, and the *Dauphin* factors. Borrelli Decl. ¶ 18. Thus, the Court should grant final approval.

### A. The Settlement Class satisfies Rule 1702, Rule 1708, and Rule 1709.

Previously, the Court impliedly found that the Settlement Class satisfied Rule 1702, Rule 1708, and Rule 1709. *See generally* Preliminary Approval Order. Since then, there has been no intervening change in law or fact to disturb that initial finding. Borrelli Decl. ¶ 19. As explained

[2] Herein, Plaintiff cites federal case law when instructive. *See Ventura v. Farmers Pride, Inc*., No. 2023-00836, 2024 Pa. Dist. & Cnty. Dec. LEXIS 22, at *6 (Lebanon County, Feb. 5, 2024) (quoting *Janicik v. Prudential Insurance Company of America*, 305 Pa. Super. 120, 451 A.2d 451 (Pa. Super. 1982)) ("Pennsylvania's Rules governing class action lawsuits are deliberately patterned after the Federal Rules . . . Pennsylvania Courts have treated Federal precedent as 'instructive' as it relates to class action practice.").

below, the Settlement Class still satisfies numerosity, commonality, typicality, and adequacy. *Id.* ¶ 20. And the Settlement still provides a fair and efficient method for adjudication of the controversy. *Id.*

**1. Numerosity is satisfied.**

Numerosity is satisfied when "the class is so numerous that joinder of all members is impracticable[.]" Pa. R. Civ. P. 1702(1). Generally, numerosity is satisfied by forty (40) or more potential class members. *Farrell v. Phila. Firefighters' & Paramedics' Union*, No. 02999, 2025 Phila. Ct. Com. Pl. LEXIS 26, *7 (Philadelphia County, Aug. 1, 2025). Here, numerosity is satisfied because there are 2,201 people in the Settlement Class. *See* Analytics Decl. ¶ 5.

**2. Commonality is satisfied.**

Commonality is satisfied when "there are questions of law or fact common to the class[.]" Pa. R. Civ. P. 1702(2). Notably, data breach cases readily satisfy commonality. *Bianucci*, 2025 U.S. Dist. LEXIS 145571, at *17 (E.D. Pa. July 30, 2025) ("There are common questions of law and fact that must be answered regarding the class. Significantly, to establish liability a factfinder must determine whether [defendant] had a duty to protect plaintiffs' information from unauthorized disclosure and theft. Whereas here plaintiffs suffer from the same data breach, commonality has been satisfied."). Thus, a data breach case is distinguishable from *Farrell* wherein individualized questions—such as "knowledge and reliance"—predominated over common questions. *See* 2025 Phila. Ct. Com. Pl. LEXIS 26, at *2.

Here, commonality is satisfied because there are many common questions of law or fact—including, *inter alia*, whether Defendant had a duty to protect the Personal Information of Plaintiff and the Settlement Class, whether Defendant failed protect the Personal Information of Plaintiff and the Settlement Class, and whether Plaintiff and the Settlement Class suffered cognizable

damages. Borrelli Decl. ¶ 21. Thus, the alleged "legal grievances are directly traceable to the same practice or course of conduct on the part of [defendant]." *Farrell*, 2025 Phila. Ct. Com. Pl. LEXIS 26, *8 (quoting *Sommers v. UPMC*, 2018 PA Super 108, 185 A.3d 1065, 1076 (Pa. Super. 2018)).

**3. Typicality is satisfied.**

Typicality is satisfied when "the claims or defenses of the representative parties are typical of the claims or defenses of the class[.]" Pa. R. Civ. P. 1702(3). Notably, data breach cases readily satisfy typicality. *Bianucci*, 2025 U.S. Dist. LEXIS 145571, at *18 (E.D. Pa. July 30, 2025) ("The claims of the named plaintiffs are typical of the class—like the class members, the security of their data was compromised as a result of the data breach[.]"). Here, typicality exists because the claims of Plaintiff and the Settlement Class all "arise out of the same course of conduct and involve the same legal theories[.]" *Farrell*, 2025 Phila. Ct. Com. Pl. LEXIS 26, *13 (quoting *Samuel-Bassett v. Kia Motors Am., Inc*., 613 Pa. 371, 421, 34 A.3d 1, 30 (2011)). Specifically, the claims of Plaintiff and the Settlement Class all arise from the same Data Security Incident that impacted Defendant on or around June 2, 2023. *See* S.A. ¶ 31.

**4. Adequacy is satisfied.**

Adequacy is satisfied when "the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709." Pa. R. Civ. P. 1702(4). The criteria set forth in Rule 1709 are "(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. P. 1709. Here, all three criteria are satisfied.

***First***, Plaintiff and Class Counsel have "adequately represent[ed] the interests of the class[.]" *See* Pa. R. Civ. P. 1709(1). After all, Class Counsel negotiated and secured the Settlement which provides timely and tailored relief to the Settlement Class. *See* Borrelli Decl. ¶ 22. Additionally, Plaintiff adequately represented the Settlement Class because he spent time reviewing the complaint for accuracy, meeting with Class Counsel to answer numerous questions, providing information to assist in settlement negotiations, remaining available throughout the litigation process, and reviewing the settlement. *Id*. ¶ 23.

Moreover, Class Counsel has significant experience in complex class action litigation—and is currently litigating over one-hundred data breach cases in courts across the country. *Id*. ¶ 24; *see also Currie*, 2024 U.S. Dist. LEXIS 111294, at *9 (W.D. Pa.) (granting preliminary approval and noting that "Raina C. Borrelli, Esq. has significant experience in complex class actions, including in data breach class actions"); *Merrell v. 1st Lake Props*., No. 23-1450, 2025 U.S. Dist. LEXIS 229174, at *11 (E.D. La. Nov. 21, 2025) (granting final approval and noting that "Raina Borrelli of Strauss Borrelli PLLC [has] sufficient experience in class actions and complex litigation, including data breach litigation, and [] fairly and adequately represented the interests of the settlement class members").

***Second***, there is no "conflict of interest" between Plaintiff, Class Counsel, and the Settlement Class. *See* Pa. R. Civ. P. 1709(1). For one, the interests of Plaintiff and the Settlement Class align because they suffered the same injuries (which all arise from the Data Security Incident). Borrelli Decl. ¶ 25. Moreover, Class Counsel did not negotiate attorney fees or service awards until the core terms of a settlement were finalized (i.e., to avoid any conflicts). *Id*. ¶ 26.

***Third***, Class Counsel had the "financial resources" necessary to investigate, litigate, and negotiate this class action on a wholly contingent basis for the past two (2) years. *See* Pa. R. Civ. P. 1709(1); *see also* Borrelli Decl. ¶ 27. Thus, the "interests of the class" were not harmed. *Id*.

In sum, adequacy is satisfied because Plaintiff and Class Counsel meet the criteria set forth in Rule 1709.

**5. The class action is a fair and efficient method for adjudication.**

Rule 1702(5) requires that the "class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708." Pa. R. Civ. P. 1702(5). As explained below, all seven criteria in Rule 1708 support final approval—and the class action is a fair and efficient method for adjudication.

***First***, "common questions of law or fact predominate over any question affecting only individual members[.]" *See* Pa. R. Civ. P. 1708(a)(1). Notably, data breach cases readily satisfy predominance. *Bianucci*, 2025 U.S. Dist. LEXIS 145571, at *19–20 (E.D. Pa. July 30, 2025) ("Questions as to [defendant's] obligations to safeguard the class members' personal information and as to its duty to the class can be answered in the aggregate. Individualized questions of injury do not predominate over these common liability questions[.]"). Here, predominance is satisfied because common questions—including, *inter alia*, whether Defendant had a duty to use reasonable data security and whether Defendant failed to use reasonable data security—predominate over any individualized questions. Borrelli Decl. ¶ 28.

***Second***, "the size of the class and the difficulties likely to be encountered in the management of the action as a class action" support regarding final approval. *See* Pa. R. Civ. P. 1708(a)(2). Here, the size of the Settlement Class and the management of the Settlement did not present any "difficulties[.]" Borrelli Decl. ¶ 29. Indeed, Analytics succeeded in providing direct

formal notice to 92.2% of the Settlement Class. *See* Analytics Decl. ¶ 10. Moreover, Analytics successfully managed the claims administration process—as evidenced by the high claims rate of 7.72%. *Id*. ¶ 22.

***Third***, "whether the prosecution of separate actions . . . would create a risk of (i) inconsistent or varying adjudications . . . (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members" support final approval. *See* Pa. R. Civ. P. 1708(a)(2). Here, separate actions would risk "inconsistent or varying adjudications" because all claims (and all defenses) arise from the same Data Security Incident. Borrelli Decl. ¶ 30. For example, if Settlement Class Members brought separate actions—and each action included claims for, *inter alia*, negligence, breach of implied contract, unjust enrichment—courts could rule differently on those claims. *Id*. Likewise, adjudicating the claims of one Settlement Class Member would be "dispositive" for the entire Settlement Class because they share the same claims. *Id*. ¶ 31. For example, an order finding that Defendant owed a duty to use reasonable data security would be "dispositive" for all Settlement Class Members. *Id*.

***Fourth***, "the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues" support final approval. *See* Pa. R. Civ. P. 1708(a)(2). Here, Class Counsel is unaware of any litigation in any venue that involves Defendant and the Data Security Incident. *Id*. ¶ 32. The absence of any overlapping litigation supports final approval of the Settlement. *Id*.

***Fifth***, "whether the particular forum is appropriate for the litigation of the claims of the entire class" support final approval. *See* Pa. R. Civ. P. 1708(a)(2). For one, Defendant is based in Pennsylvania, and this case arises from events (i.e., the Data Security Incident) that occurred in

Pennsylvania. Borrelli Decl. ¶ 33. Moreover, the Settlement Agreement provides that Defendant, Plaintiff, and the Settlement Class are subject to the jurisdiction of this Court. *See* S.A. ¶ 61.

***Sixth***, "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" support final approval. *See* Pa. R. Civ. P. 1708(a)(2). For one person, litigating an individualized data breach case would be complex and expensive—whereas the potential recovery per-person would be minimal. Borrelli Decl. ¶ 34; *see also In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1057 (S.D. Tex. 2012) (explaining that in a data breach class action "no single class member here has a sufficient stake to be closely involved in the litigation").

***Seventh***, "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" support final approval. *See* Pa. R. Civ. P. 1708(a)(2). Here, the Settlement provides meaningful relief—including up to $3,500.00 per person for extraordinary losses, $80.00 for lost time, and a $50.00 alternative cash payment. S.A. ¶ 43. Such monetary relief is sufficient to "justify a class action[.]"

In sum, all seven criteria in Rule 1708 support final approval—and the class action is a fair and efficient method for adjudication.

**B. The *Dauphin* factors support final approval.**

Here, final approval is supported by the *Dauphin* factors—which are "(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." *In re Bridgeport Fire Litig.*, 2010 PA Super 213, 8 A.3d 1270, 1285 (Pa. Super. 2010) (citing *Buchanan v. Century Federal Savings and Loan Ass'n*, 259 PA Super. 37, 393 A.2d 704, 709 (Pa. Super. 1978) and *Dauphin*, 556 Pa. at 197, 727 A.2d at 1079).

***First***, the "risks of establishing liability and damages" strongly support final approval. *See Dauphin*, 556 Pa. at 197, 727 A.2d at 1079. Critically, establishing liability and damages is acutely difficult in data breach class actions. *See In re Onix Grp., LLC Data Breach Litig.*, No. 23-2288, 2024 U.S. Dist. LEXIS 225686, *27 (E.D. Pa. Dec. 13, 2024) ("[T]here is a risk of establishing liability, and in turn, damages, because this case involves a number of open questions, including whether Defendant owed a duty to the class to safeguard sensitive information, whether Defendant breached that duty, whether the compromised information was actually viewed by bad actors . . . whether Defendant's conduct was the proximate cause of the breach, and the extent to which the class is entitled to recovery."). Thus, the first *Dauphin* factor supports final approval.

***Second***, the "range of reasonableness of the settlement in light of the best possible recovery" supports final approval. *See Dauphin*, 556 Pa. at 197, 727 A.2d at 1079. Notably, "no data breach class action has reached the trial stage" and "the trial risk is difficult to quantify and raises the uncertainty involved in the case[.]" *In re Canon United States Data Breach Litig.*, No. 20-CV-6239, 2024 U.S. Dist. LEXIS 138499, *30 (E.D.N.Y. Aug. 5, 2024); *Maldini v. Marriott Int'l, Inc.*, 140 F.4th 123 (4th Cir. 2025) (decertifying a class in data breach class action); *Gravley*, 2025 U.S. Dist. LEXIS 142268, at *16 (E.D. Pa.) ("Recoverable damages in a data breach class action are speculative because . . . a class action has never proceeded to trial.").

For example, in *In re Hudson's Bay*, the court granted final approval of a data breach settlement that provided compensation for out-of-pocket losses or an alternative cash payment.

No. 18-cv-8472, 2022 U.S. Dist. LEXIS 102805, at *28 (S.D.N.Y. June 8, 2022). In doing so, the court noted "the difficulties of estimating a maximum range of likely recovery in a data breach case, given that no such claims have proceeded to jury verdict." *Id*. at *64. Thus, the court held that compensation for out-of-pocket losses or an alternative cash payment was "consistent with similar data-breach class action settlements that have been brought throughout the country" and "fair, reasonable and adequate from the standpoint of the individual class members." *Id*. Likewise, this Settlement also provides compensation for out-of-pocket losses or an alternative cash payment. *See* S.A. ¶ 43. Thus, the second *Dauphin* factor supports final approval.

***Third***, the "range of reasonableness of the settlement in light of all the attendant risks of litigation" supports final approval. *See Dauphin*, 556 Pa. at 197, 727 A.2d at 1079. As explained above, "no data breach class action has reached the trial stage" and the "risk is difficult to quantify[.]" *In re Canon*, 2024 U.S. Dist. LEXIS 138499, *30. And in data breach cases, plaintiffs "likely would have encountered obstacles to establishing class-wide damages, particularly due to the inherent uncertainty of quantifying injury in a data breach case." *Id*. Given these substantial risks, the Settlement is well within the "range of reasonableness," and the third *Dauphin* factor supports final approval.

***Fourth***, the "complexity, expense and likely duration of the litigation" support final approval. *See Dauphin*, 556 Pa. at 197, 727 A.2d at 1079. For example, in the data breach case *Gravley*, the court held that the "complexity, expense and likely duration of the litigation" supported final approval because the case "allege[d] damages arising from a data breach incident and raise[d] claims that involve complex and novel legal questions." 2025 U.S. Dist. LEXIS 142268, at *12 (E.D. Pa.). There, the court concluded that the "parties would likely face significant expenses in briefing and arguing summary judgment, resolving complex choice of law questions,

and preparing dueling expert reports." *Id*. Those concerns are likewise present here, and the fourth *Dauphin* factor supports final approval.

***Fifth***, the "stage of the proceedings and the amount of discovery completed" support final approval. *See Dauphin*, 556 Pa. at 197, 727 A.2d at 1079. For example, in the data breach case *Gravley*, this factor supported final approval because "[a]lthough the case settled at an early stage before formal discovery commenced, the Court is satisfied based on Class Counsel's pre-suit evaluation of the claims, the exchange of pre-mediation discovery, and experience litigating these types of cases[.]" 2025 U.S. Dist. LEXIS 142268, at *13 (E.D. Pa.). Here, Plaintiff and Class Counsel engaged in substantial pre-suit discovery, Defendant filed its preliminary objections to the complaint, the Parties exchanged informal discovery, and the Parties negotiated the terms of the Settlement for over six (6) months. Borrelli Decl. ¶¶ 2–12. Thus, compared to *Graveley*, this case was more developed, and the fifth *Dauphin* factor supports final approval.

***Sixth***, the "recommendations of competent counsel" support final approval. *See Dauphin*, 556 Pa. at 197, 727 A.2d at 1079. As explained above, Class Counsel has substantial experience in complex litigation and data breach class actions. *See also Currie*, 2024 U.S. Dist. LEXIS 111294, at *9 (W.D. Pa.) (stating that "Raina C. Borrelli, Esq. has significant experience in complex class actions, including in data breach class actions"). Based on this experience, Class Counsel recommends the Settlement as fair, reasonable, and adequate. Borrelli Decl. ¶ 17. Thus, the sixth *Dauphin* factor supports final approval.

***Seventh***, the "reaction of the class to the settlement" strongly supports final approval. *See Dauphin*, 556 Pa. at 197, 727 A.2d at 1079. For example, in *Gravley*, the court held that the "reaction of the class to the settlement" supported final approval because "over 90% of class members [] were notified, only four class members opted out . . . and none objected" and the

claims rate was "3.83% . . . a relatively high response rate in data breach class actions[.]" 2025 U.S. Dist. LEXIS 142268, at *12 (E.D. Pa.). Similarly, approximately 92.2% of the Settlement Class here received direct notice, zero (0) Settlement Class Members objected, and only five (5) Settlement Class Members opted-out. Analytics Decl. ¶¶ 17–18. However, the claims rate here was 7.72%, which is ***over double*** the claims rate in *Gravley*. *Id*. ¶ 22. Thus, the seventh *Dauphin* factor strongly supports final approval.

In sum, all seven *Dauphin* factors support final approval—and the Settlement is fair, reasonable, and adequate as a matter of Pennsylvania law.

### C. The notice program satisfied due process.

The Court should approve the notice program—which was successful and provided direct notice to 92.2% of the Settlement Class. Analytics Decl. ¶ 10; *see also In re Emulsion (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 527 F. Supp. 3d 269, 273 (E.D.N.Y. Mar. 15, 2021) (noting that "a notice plan that reaches between 70 and 95 percent of the class is reasonable"). Moreover, as evidenced by the Analytics Declaration and attached exhibits, the Notice Program provided Settlement Class Members with all the information required by due process, Pennsylvania law, and the Court's Preliminary Approval Order. *See* Analytics Decl. ¶¶ 7–11. Thus, the Court should find that the Notice Program was sufficient and reasonable.

## V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant final approval, finally certify the Settlement Class for purposes of settlement, and enter the proposed final approval order.

DATE: January 30, 2026

Respectfully submitted,

By: /s/ *Patrick Howard*

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2026, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send notification of such filing to all counsel of record.

DATE: January 30, 2026

Respectfully submitted,

By: /s/ *Patrick Howard*

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