James E. Cecchi
**CARELLA BYRNE CECCHI**
**BRODY & AGNELLO P.C.**
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700

Linda P. Nussbaum
**NUSSBAUM LAW GROUP, P.C.**
1133 Avenue of the Americas, 31st floor
New York, NY 10036
Telephone: (917) 438-9189

Todd Garber
**FINKELSTEIN, BLANKINSHIP**
**FREI-PEARSON & GARBER, LLP**
One North Broadway, Suite 900
White Plains, NY 10601
Telephone: (844) 431-0695

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| ----------X | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION: OCEAN COUNTY |
| IN RE CENTRASTATE HEALTHCARE DATA SECURITY INCIDENT LITIGATION | MASTER FILE: OCN-L-002002-24<br>CBLP |
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF A SETTLEMENT CLASS AND APPROVAL OF REQUEST FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS**

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## I. INTRODUCTION

Pursuant to Rule 4:32 of Rules Governing the Courts of the State of New Jersey and the Preliminary Approval Order previously entered in this Action (Trans Id: LCV20241443501), Plaintiffs Frederick Dawes, Ricardo Cubides, and Laura Kanthal-Cubides, by and through their attorneys (collectively, "Plaintiffs"), on behalf of themselves and a class of similarly situated individuals, hereby submit this Motion for Final Approval of Class Action Settlement, Approval of Attorneys' Fees and Expenses, and Incentive Awards, and Memorandum in Support thereof.

On June 7, 2024, the Court preliminarily approved the Settlement between Plaintiffs and Defendants CentraState Healthcare System, Inc. ("CentraState") and Atlantic Health System, Inc. ("Atlantic", collectively with CentraState, "Defendants"), and ordered that notice be given to the class. The Settlement negotiated on behalf of the Settlement Class provides for various categories of relief for Settlement Class Members: [1] (1) establishes a non-reversionary Settlement Fund of $3,000,000 for the benefit of the Settlement Class, which will fund an automatic *pro rata* payment to all Settlement Class Members for their time spent in addressing the data breach; (2) a cash payment of approximately $50.00, subject to a *pro rata* increase or decrease based on the number of claimants; (3) establishes a reversionary, supplemental cash settlement fund of $300,000 for the benefit of the Settlement Class (the "Out-of-Pocket Loss Fund") that will fund out-of-pocket losses suffered by Settlement Class members up to a maximum of $15,000 per class member; (4) to the extent valid claims for Out-of-Pocket Loss exceed $3,000 individually or $300,000 collectively, those claims will be funded from the Common Benefit Fund; (5) Defendants will separately fund Medical Shield Complete coverage for the benefit of all class members who elect to enroll in the service (the "Medical Shield Fund"); and (6) Defendants will change their business practices to

[1] Unless otherwise stated, all capitalized words are defined the same as in the Settlement Agreement.

address cybersecurity issues that led to the breach and to protect against future breaches.

Settlement Class Counsel zealously prosecuted Plaintiffs' claims, achieving the Settlement Agreement only after an extensive investigation, consolidating multiple cases before this Court, exchanging both jurisdictional and fact discovery, mediation before the Honorable Diane M. Welsh (Ret.), and prolonged arms'-length negotiations. *See* Declaration of James E. Cecchi ("Cecchi Decl.") ¶ 9. This Settlement represents an excellent result for the Settlement Class in this litigation and was obtained against a stout defense mounted by CentraState, which was represented by well-regarded lawyers with considerable experience defending data breach cases. Indeed, this result significantly increased the value of a prior proposed settlement, including increasing a the common fund from $2.1 million to the current $3 million common fund, data monitoring specifically tailored to the affected data, as well as Defendants' undertaking of payment of such monitoring thereby increasing the cash distribution to the Settlement Class Members, and Defendants separate payment for "Out-of-Pocket" losses. Although Plaintiffs believe in the merits of their claims, this litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and Plaintiffs would face risks at each stage of litigation. Against these risks, it was through the hard-fought negotiations and the skill and hard work of Settlement Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of the Settlement Class.

After the Court granted preliminary approval, the Settlement Administrator—with the help of the Parties—successfully disseminated Notice to the Settlement Class. *See* Declaration of Ryan McNamee, executed August 16, 2024 ("McNamee Decl.") (*see Cecchi* Decl. at Exhibit A). Individual Notice was provided directly to Settlement Class Members via first class mail. Class Notice reached 90% of the Class, easily meeting the due process standard. *See* McNamee Decl. ¶¶ 4-7. The Notices were written in plain language, providing each Settlement Class Member with

information regarding how to reach the Settlement Website, make a Claim, and how to opt-out or object to the Settlement. *Id*. at ¶ 6, McNamee Decl at Ex. A. Out of 569,961 Settlement Class Members who were mailed notice of the Settlement, only 5 Class Members have sought to be excluded from the Settlement, and **none** have objected. *See Id*. ¶¶ 14-15.

Plaintiffs now move the Court for final approval. The Settlement is fair, adequate and reasonable, and meets all the criteria for final approval. The Court should grant final approval, and also grant the Plaintiffs' request for attorneys' fees, expenses, and service awards. Plaintiffs respectfully request that the Court (1) grant final approval of the proposed Settlement; (2) certify a Settlement Class pursuant to Rule 4:32-2(e), (3) designate the moving Plaintiffs as Class Representatives, (4) designate Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. ("Carella Byrne"), Nussbaum Law Group, P.C. ("Nussbaum Law Group"), and Finkelstein, Blankenship, Frei-Pearson & Garber, LLP ("Finkelstein Blankenship"), as Class Counsel; (5) approve the requested Incentive Awards; and (6) approve Class Counsel's request for reimbursement of fees and expenses.

## II. INCORPORATION BY REFERENCE

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiffs refer this Court to and hereby incorporate Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion") filed on April 24, 2024 and the accompanying Exhibits, including the proposed Settlement Agreement, filed in conjunction therewith**.**

## III. KEY TERMS OF THE SETTLEMENT

The key terms of the Class Action Settlement Agreement ("Settlement"), previously submitted as Exhibit A to the Declaration of James E. Cecchi as filed with the Preliminary Approval Motion, are briefly summarized:

**A. Class Definition**

The "Settlement Class" is defined as:

> the 569,984 persons who are identified on the Settlement Class List, including Plaintiffs, who were notified that their Personal Information may have been disclosed in the Security Incident announced by CentraState on or around February 10, 2023 (as defined in Plaintiffs' operative Complaint).

Order Granting Preliminary Approval of Proposed Settlement filed 6/7/2024 at 3.

> Excluded from the definitions of "Settlement Class Members" or "Class Members" are a) CentraState; b) Any entity in which CentraState has a controlling interest; c) Any parent or subsidiary of CentraState; d) Any entity that is controlled by CentraState; e) The officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns of CentraState; f) All judges and court personnel involved in this Action, along with their immediate family members.

*Id.*

**B. Settlement Consideration: Monetary Relief and Medical Data Monitoring with Insurance Component**

As detailed in the Settlement Agreement, Defendants will fund a non-reversionary Settlement Fund with $3,000,000 which will be used for *pro rata* compensation to Settlement Class Members, Class Notice and Administration Costs, Attorneys' Fees and Expenses, as well as for any additional Out-Of-Pocket Losses not covered by Defendants' payment of such claims. Defendants will also pay on a claims-made basis for out-of-pocket losses of up to $3,000 per individual and $300,000 in the aggregate for the benefit of the Settlement Class.

Additionally, Defendants will separately pay for medical data monitoring for every claimant that elects to receive such coverage. The Medical Data Monitoring Services will be for the provision of the Medical Shield Complete product from CyEx and will include one bureau credit monitoring and provide certain services to each Participating Settlement Class Member, including, but not limited to: monitoring medical and healthcare data to determine whether consumers' private medical information is at risk or has been exposed to medical fraud; real-time alerts when suspicious activity is detected; a dedicated case manager to assist in recovering the

personal information if fraud is detected; and up to $1,000,000 in fraud and medical identity theft insurance.

### C. Settlement Consideration: Corporate Practices

CentraState will also address cybersecurity issues that led to the Security Incident and implement certain reasonable steps to further secure its systems and environments.

### D. Release

In exchange for the relief described above, the parties have entered into a release of all of Plaintiffs' claims or causes of action, including causes of action in law, claims in equity, complaints, suits or petitions, and allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, breach of contract, breach of the duty to settle or indemnify, breach of the covenant of good faith and fair dealing, punitive damages, attorneys' fees, costs, interest, expenses, or other potential claim), regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or another source, that the Plaintiffs (and Settlement Class Members) had or have (including, but not limited to, assigned claims) that arise out of or relate to the Security Incident (the "Released Claims"). Plaintiffs (and Settlement Class Members) also agree to be permanently barred and enjoined from initiating, assertion and/or prosecuting any Released Claim(s) against any of the Released Parties in any court, arbitration, tribunal, forum, or proceeding.

### E. Notice and Administration Expenses

In order to efficiently and effectively administer the Settlement, Plaintiffs hired, and the Court approved, A.B. Data (the "Settlement Administrator"), to create a Notice Plan, coordinate notice, and to generally administer the settlement by evaluating the claims and working with

Settlement Class members.[2] The Settlement Administrator has created a Notice Plan and sent individual notice to Class Members by U.S. mail (the "Summary Notice").[3] The Settlement Administrator established a settlement website that informs Class Members of the terms of the Settlement Agreement, their rights, and important dates (www.CentraStateSettlement.com).[4] The Settlement website includes the Long Notice, the Claim Form (available to download or submit electronically),[5] the Preliminary Approval Order, and the Settlement Agreement, and shall contain the instant motion for a Fee Award and Costs and Service Awards after it is filed. The settlement website also informs Class Members of the changed venue of the action. Class Members are able to submit Claim Forms through the Settlement Website.[6] Finally, the Settlement Administrator has made a toll-free number available to provide Class Members with information about the Settlement.[7]

**F. Incentive Awards**

Plaintiffs move the Court for service award payments of $500 per class representative and $250 for each named plaintiff.[8] This service award payments are in recognition for the efforts taken on behalf of the Settlement Class, including reviewing their files and responding to counsel's

[2] The Settlement Administrator will be paid from the Settlement Fund.

[3] McNamee Decl. at ¶¶4-6.

[4] *Id.* at ¶¶8-11.

[5] *Id.* at ¶10.

[6] *Id.* at ¶11.

[7] *Id.* at ¶8.

[8] The Named Plaintiffs are all of the individuals that came forth and sought to represent the class through litigation: Natalie Tornese, Rita Sorrentino-Poggi, JoAnn McCloskey, Barbara Corrente, Anthony Corrente, Lisa Surowiec, Melissa Connolly, Dhalia Valle, Lewis Chewning, David Healey, Belle Rosenbloom, Maria Caro, Lisa Frohlich, John Frohlich, Rena Pudder, M.Z., Albert Raguseo, Robert Grun, Joshua Grun, Zachary Grun, Jill Grun, Christina Aiello, Attilio Aiello, Kimberly Aiello, Alyssa Sblendorio, Miriam Belanger, Kaitlin Stroud, Thomas Sanitate, and Katelyn Grabinsky.

requests for confidential discovery, and for their time and effort serving as Class Representatives and as parties to the actions filed relating to the Security Incident.

### G. Attorneys' Fees and Expenses

Plaintiffs also move the Court for an order awarding attorneys' fees. Class counsel moves for an award of attorneys' fees of 33.33% of the Settlement Fund[9] amounting to $999,900.00 plus litigation expenses and costs of $14,269.37. All attorneys' fees, costs, and expenses shall be paid from the Settlement Fund and appropriately allocated amongst Class Counsel and the other counsel who worked on this matter under Class Counsel's direction to achieve the relief on behalf of the Class.

## III. ARGUMENT

### A. THE COURT SHOULD GRANT THE MOTION FOR FINAL APPROVAL OF THE PROPOSED SETTLEMENT CLASS BECAUSE IT IS FAIR AND REASONABLE

#### 1. General Standards

"The basic test for court approval of a settlement of a class action is whether it is fair and reasonable to the members of the class." *Chattin v. Cape May Greene, Inc.*, 216 N.J. Super. 618, 627 (App. Div. 1987). In making this assessment, "the Court should be careful not to substitute its image of an ideal settlement for the compromising parties' views . . . . Thus, the issue is whether the settlement is adequate and reasonable, not whether one could conceive of a better settlement." *In re Prudential Ins. Co. Sales Practices Litig.*, 962 F. Supp. 450, 534 (D.N.J.1997), *rev'd on other grounds,* 133 F.3d 225 (3d Cir. 1998).

New Jersey has a strong and clear policy in favor of encouraging settlements. *See Educ.*

[9] Class Counsel's percentage of the total relief obtained on behalf of the Class will be less than 33.33% as the Class is receiving more value than just the Settlement Fund, with Defendants' paying separately for the Medical Data Monitoring Services and Out-of-Pocket losses. The final amount of the total recovery for the Class will not be able to be ascertained until after the Claims Deadline of October 7, 2024.

*Station Day Care Ctr., Inc. v. Yellow Book USA, Inc.*, 2007 WL 1245971, at *4 (N.J. Super. Ct. App. Div. May 1, 2007) (noting "courts' endorsement of the policy of encouraging the settlement of litigation") (citing cases); *Strougo v. Ocean Shore Holding Co*., 457 N.J. Super. 138, 157 (Ch. Div. 2017) ("Settlement has long been preferred to litigation, and public policy suggests upholding good faith settlements, even without strong regard to the underlying consideration.") (citing *Pascarella v. Bruck*, 190 N.J. Super. 118, 125 (1983)); *see also Jannarone v. W. T. Co.*, 65 N.J. Super. 472, 476 (App. Div. 1961) ("The settlement of litigation ranks high in our public policy."). This policy is particularly encouraged in the class action context. *See Educ. Station Day Care Ctr., Inc.*, 2007 WL 1245971, at *4; *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."). "The settlement of lawsuits is favored not because of the salutary consequence of relieving overburdened judicial and administrative calendars but because of the notion that the parties to a dispute are in the best position to determine how to resolve a contested matter in a way that is least disadvantageous to everyone. In recognition of this principle, courts will strain to give effect to the terms of a settlement wherever possible." *Cerbo v. Ford of Englewood, Inc*., No. BER-L-2871-03, 2006 WL 177586, at *10-11 (N.J. Super. Ct. Law Div. Jan. 26, 2006).

Approval of a class action settlement requires satisfaction of the class certification requirements. Rule 4:32(a) of the Rules Governing the Courts of the State of New Jersey provides that a class action may be maintained if: (1) "the class is so numerous that joinder of all members is impracticable;" (2) "there are questions of law or fact that are common to the class;" (3) "the claims or defenses of the representative parties are typical of the claims or defenses of the class;" and (4) "the representative parties will fairly and adequately protect the interests of the rest of the

class." R. 4:32-1(a); *see also In re Cadillac V8-6-4 Class Action*, 93 N.J. 412, 425 (1983).

"[A] class action 'should be permitted unless there is a clear showing that it is inappropriate or improper.'" *Delgozzo v. Kenny*, 266 N.J. Super. 169, at 180 (App. Div. 1993) (citation omitted). Indeed, certain hurdles that have prevented the certification of various federal class actions have been lowered by many New Jersey courts in order to conform to the liberal interpretation of the class action rules. *Gallano v. Running*, 139 N.J. Super. 239, 245 (Law. Div. 1976); *Carroll v. Cellco P'ship*, 313 N.J. Super. 488, 498 (App. Div. 1998). Thus, courts should be slow to hold that an action cannot proceed as a class action. *Riley v. New Raid Carpet Ctr.*, 61 N.J. 218, 227-28 (1972).[10]

"A class action, generally, permits one or more individuals to act as plaintiff or plaintiffs in representing the interests of a larger group or persons with similar claims." *Lee v. Carter-Reed Co., L.L.C.*, 203 N.J. 496, 518 (2010). A class action serves "numerous practical purposes, including judicial economy, cost-effectiveness, convenience, consistent treatment of class members, protection of defendants from inconsistent obligations, and allocation of litigation costs among numerous similarly situated litigants." *Cameron v. South Jersey Pubs, Inc.*, 460 N.J. Super 156 (App. Div. 2019) (quoting *Iliadis v. Wal-Mart Stores, Inc.*, 191 N.J. 88, 104 (2007)). "A class action permits claimants to band together and, in doing so, gives them a measure of equality against a corporate adversary, thus providing a procedure to remedy a wrong that might otherwise go unredressed." *Id*. (internal quotation marks omitted). "The whole point of a class action is to provide a diffuse group of persons, whose claims are too small to litigate individually, the

[10] As the New Jersey Supreme Court stated, "'a court should be slow to hold that a suit may not proceed as a class action' and should rarely deny a class action based on the face of the complaint." *Baskin v. P.C. Richard & Son, LLC*, 246 N.J. 157, 172 (2021) (quoting *Riley v. New Rapids Carpet Ctr*., 61 N.J. 218, 228 (1972)). Moreover, "New Jersey courts, as well as federal courts construing the federal class action rule after which [the New Jersey] rule is modelled, have consistently held that the class action rule should be liberally construed." *Delgozzo v. Kenny,* 266 N.J. Super. 169, 179 (App. Div. 1993) (collecting cases).

opportunity to engage in collective action and to balance the scales of power between the putative class members and a corporate entity." *Id.* at 528-29.

The class action rule should be liberally construed. *Lee*, 203 N.J. at 518; *Baskin*, 246 N.J. at 181 (Rule 4:32-1 must be liberally construed, and a class action is the favored means of adjudicating numerous claims involving a common nucleus of facts for which each individual's recovery will be small.") (quotation omitted). New Jersey courts generally certify a class unless there is a clear showing that certification is inappropriate. *Delgozzo,* 266 N.J. Super. at 179 (highlighting New Jersey cases that have "consistently held that the class action rule should be liberally construed").

The Court need not make a determination of the merits of the underlying claims when deciding whether to certify a class. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974); *see also Delgozzo*, 266 N.J. Super. at 180-81. Accordingly, the court's examination of the legal and factual issues underlying a class certification motion should be "less penetrating" than "a motion for summary judgment or at trial." *In re Cadillac*, 93 N.J. at 435; *see also* 4 NEWBERG ON CLASS ACTIONS § 13:18 (5th ed.) ("The obvious implication . . . is that the standards for certification are laxer at settlement, as that is the only reading that makes sense of the sentence's second clause noting the need for a suitable record.").

**2. Rule 4:32-1(a) Is Satisfied**

Plaintiffs have satisfied the class certification requirements for settlement approval. Rule 4:32-1(a) states that "[o]ne or more members of the class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impractical; (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; and (4) the representative parties will fairly and adequately protect the interests of the class." *Id.*

a. **Numerosity Is Satisfied**

"There is no precise number that distinguishes between a class that satisfies the condition of numerosity and one that does not." *Fink v. Ricoh Corp*., 365 N.J. Super. 520, 557 (Law Div. 2003). In fact, courts may certify potential classes of less than 100 members. *See, e.g.*, *Saldana v. City of Camden*, 252 N.J. Super. 188, 193 (App. Div. 1991) (certifying a potential class of only 81 members). Here the class is comprised of approximately 569,961 individuals. *See Cerbo*, 2006 WL 177586, at *5 (noting that the numerosity requirement "does not demand that joinder be impossible, but rather that joinder would be extremely difficult or inconvenient"). Numerosity is satisfied.

b. **Commonality Is Satisfied**

Rule 4:32-1(a)(2) further requires that there be questions of law or fact common to the Class. *See Gross v. Johnson & Johnson*, 303 N.J. Super. 336, 342 (Law Div. 1997). However, "a single common question is sufficient." *Delgozzo*, 266 N.J. Super. at 185 (citation omitted). "If there is a common question, and judicial time will be saved by disposing of a number of cases simultaneously if the question is litigated as a class action, the class action is likely to be certified." Philip Stephen Fuoco & Robert F. Williams, *Class Actions in New Jersey State Courts*, 24 Rutgers L.J. 737, 752 (1993) (footnote omitted).

The proposed Class meets the commonality standard because Plaintiffs' injuries originate from the same Security Incident and the same alleged misconduct by Defendants. There are common legal issues, including whether Defendants owed Plaintiffs a duty to implement and maintain reasonable security procedures and practices to secure Plaintiffs' Personal Information from unauthorized access and disclosure; and whether Defendants breached this duty. For these reasons, the commonality requirement under Rule 4:32-1(a)(2) is satisfied.

c. **The Class Representatives' Claims Are Typical Of The Class**

Pursuant to Rule 4:32-1(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. "When the same unlawful conduct was directed at or affected both the named plaintiff and the members of the putative class, the typicality requirement is usually met, irrespective of varying fact patterns that may underline individual claims." *Cerbo*, 2006 WL 177586, at *6; *Cannon v. Cherry Hill Toyota, Inc.*, 184 F.R.D. 540, 544 (D.N.J. 1999). "The court must ask whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members to assure that the absentees' interests will be fairly represented." *Cerbo*, 2006 WL 177586, at *7; *Lubitz v. DaimlerChrysler Corp.*, 2006 WL 3780789, at *7 (N.J. Super. Ct. Law Div. Dec. 21, 2006) ("ensuring that the class representative's claims are similar to those of the class, the typicality requirement, like commonality, promotes efficient case management and fair representation").

Here, CentraState's alleged unlawful conduct was directed at and affected both the named plaintiffs and the members of the putative class. All of the class' Personal Information was in CentraState's possession and was compromised by the Security Incident. Plaintiffs advance a legal theory that, if successful, would benefit all Class Members. Accordingly, the typicality requirement is satisfied.

d. **Adequacy is Satisfied**

"The adequacy requirement mandates an inquiry into the zeal and competence of the representatives' counsel and the willingness and ability of the representatives to take an active role in and control the litigation and to protect the interests of absentees." *Cerbo*, 2006 WL 177586, at *7. To satisfy the adequacy requirement, set forth by Rule 4:32-1(a)(4), the named plaintiffs must meet two criteria: (1) "the interest of the named representatives(s)…must be coextensive with the interest of the other members of the class," and (2) the named representatives must be able to

"vigorously prosecute or defend that interest, and this will usually require the assistance of responsible and able counsel." *Gallano*, 139 N.J. Super. at 246 (citation omitted); *see also Delgozzo*, 266 N.J. Super. at 188 ("[T]he plaintiff must not have interests that are antagonistic to those of the class."). Plaintiffs and Class Counsel have fairly and adequately represented the Class under Rule 4:32-1(a)(4).

First, there are no conflicts between the Class Representatives and the Class. Throughout the pendency of this action, the Class Representatives have adequately and vigorously represented their fellow Class Members. They have spent significant time assisting their counsel, providing information, providing pertinent documents, and assisting in settlement negotiations. Cecchi Decl. ¶ 38.

Second, Class Counsel is highly experienced and well-versed in complex class action litigation. *See* Cecchi Decl. ¶ 16; Nussbaum Decl. ¶ 8; Garber Decl. ¶ 8. Courts across the country have recognized the experience of Carella Byrne, Nussbaum Law Group, and Finkelstein Blankenship, in complex class litigation and their skilled and effective representation. *Id.* The Court appointed three firms with significant experience in class action litigation, and specifically data breach cases. Order on Motion to Consolidate Cases and Appoint Interim Class Counsel (Trans Id: LCV20232435788). These firms engaged in mediation with Defendants, which resulted in an outstanding result for the Class, significantly improving on the previously presented settlement by a different set of counsel. Thus, Class Counsel is "qualified, experienced, and generally able to conduct the proposed litigation." *Delgozzo*, 266 N.J. Super. at 188 (citation omitted). Accordingly, Rule 4:32-1(a)(4) is satisfied.

### 3. The Requirements of Rule 4:32-1(b) Are Satisfied

#### a. Common Issues Predominate

Besides satisfying the requirements of class certification under Rule 4:32-1(a), Plaintiffs

must also satisfy three additional prerequisites in Rule 4:32-1(b). Particularly, under Rule 4:32-1(b)(3), a class action may be maintained when common questions of law or fact "*predominate* over any questions affecting only individual members," and the class action mechanism must be "superior to other available methods for the fair and efficient adjudication of the controversy." (emphasis added). An important consideration in determining predominance is whether there is a "common nucleus of operative facts." *In re Cadillac*, 93 N.J. at 431 (citation omitted). "Ordinarily, the merits of a complaint are not involved in the determination as to whether a class action may be maintained[.]" *Olive v. Graceland Sales Corp.*, 61 N.J. 182, 189 (1972). However, in determining whether Rule 4:32-1(b)(3) requirements are met, courts must look "beyond the pleadings [to] ... understand the claims, defenses, relevant facts, and applicable substantive law." *Iliadis,* 191 N.J. at 107 (citation omitted). "Predominance does not require that all issues be identical among class members or that each class member be affected in precisely the same manner." *Iliadis*, 191 N.J. at 108-09 (citing *Fiore v. Hudson County Employees Pension Comm'n*, 151 N.J. Super. 524, 528 (App. Div. 1977)).[11]

To establish predominance, a "plaintiff does not have to show that there is an absence of individual issues or that the common issues dispose of the entire dispute, or that all issues [are] identical among class members or that each class member [is] affected in precisely the same manner." *Lee*, 203 N.J. at 520 (internal quotation marks omitted); *Baskin*, 246 N.J. at 175 (quotation omitted); *Iliadis*, 191 N.J. at 108-109. "In a class action, individual questions of law or fact may remain following resolution of common questions." *Lee*, 203 N.J. at 520.

"To determine predominance under Rule 4:32-1(b)(3), the court decides 'whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *Baskin*, 246 N.J.

[11] As a settlement class is at issue here, manageability does not apply. *Cerbo*, 2006 WL 177586, at *10; *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

at 174 (quoting *Iliadis*, 191 N.J. at 108); *Cerbo*, 2006 WL 177586, at *9 (predominance satisfied when "the potential class, including absent class members, seeks to remedy a common legal grievance").

"Trial of the liability issues would involve substantial attorney and expert time, the introduction of voluminous documentary and deposition evidence, vigorously contested motions, and the considerable expenditure of judicial resources. . . A result that avoids an unnecessary and unwarranted expenditure of time and resources benefits everyone." *Lubitz*, 2006 WL 3780789, at *13.

The common legal grievance in this case that Plaintiffs seek to remedy is the Security Incident. Because the class-wide determination of this issue will be the same for all Class Members – demonstrating cohesiveness -- and will determine whether Class Members have a right to recovery, the predominance requirement is readily satisfied.

b. **Class Settlement Is Superior to Alternate Methods of Adjudication**

"A class action plaintiff must also demonstrate that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *Baskin*, 246 N.J. at 175-76; *Iliadis*, 191 N.J. at 115. "Whether a class action is superior to thousands of minor individual actions or some other 'alternative procedure' involves considerations of fairness to the putative class member and the defendant, and the 'efficiency' of one adjudication method over another." *Lee*, 203 N.J. at 520. "One factor in the assessment is whether one individual who has suffered a wrong will have the financial wherewithal or incentive to prosecute a claim that might cost more that its worth." *Id.* Where individual damages are small, "individual class members are unlikely to have the financial wherewithal or incentive to bring a claim. *Baskin*, 246 N.J. at 181. Without a class action, individual class members would likely not pursue their claims at all, demonstrating the superiority of the class action device.

Here, class treatment is superior to other methods of adjudication. The maintenance of individual lawsuits by Class Members would be unmanageable, costly, and an inefficient use of judicial resources. Moreover, Class Members' claims involve "modest individual claims that are unlikely to be brought in an alternative forum." *Dugan v. TGI Fridays, Inc*., 231 N.J. 24, 66, 171 A.3d 620, 654 (2017) (citing *Iliadis*, 191 N.J. at 104). Thus, both fairness and efficiency support class certification. *Id.*

Class certification therefore will permit a large number of Class Members to adjudicate their common claims in a single forum simultaneously, effectively and efficiently, without the duplication of effort and expense that numerous individual actions would involve. Moreover, the class action vehicle provides class members with the opportunity for an expeditious resolution as opposed to protracted litigation that might result in no benefit at all. The Court should grant certification for settlement purposes.

c. **The Court Should Appoint Plaintiffs As Class Representatives And Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Nussbaum Law Group, and Finkelstein, Blankenship, Frei-Pearson & Garber, LLP, As Class Counsel Pursuant to Rule 4:32-2(g)**

The Court should also appoint Plaintiffs Frederick Dawes, Ricardo Cubides, and Laura Kanthal-Cubides as Class Representatives. These Plaintiffs have actively represented the interests of the Class. They have provided Counsel with information to help prepare and advance the case, responded to information requests, and represented the Class in settlement discussions.

The Court should also appoint Carella Byrne, Nussbaum Law Group, and Finkelstein Blankenship as Class Counsel under Rule 4:32-2(g). All three firms have substantial experience in successfully prosecuting class actions throughout the country. *See* Cecchi Decl. ¶¶ 16; Nussbaum Decl. ¶ 8; Garber Decl. ¶ 8. Both before and throughout this litigation, Class Counsel have conducted a full and thorough investigation of the claims at issue. *See* Cecchi Decl. ¶ 9. Class

Counsel have zealously represented the interests of the Class and committed substantial resources to resolving the class claims.

Accordingly, the Court should grant certification for settlement purposes.

## IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND SHOULD BE FINALLY APPROVED UNDER RULE 4:32-2(E)(1)(C)

Under Rule 4:32-2(e)(1)(C), the court "may approve a settlement…only after a hearing and on finding that the settlement…is fair, reasonable, and adequate." The Court therefore must determine "whether the settlement is fair and reasonable, that is, whether it adequately protects the interests of the persons on whose behalf the action was brought." *Morris County Fair Hous. Council v. Booton Twp*., 197 N.J. Super. 359, 369-371 (Law Div. 1984) (internal citation and quotations omitted). In making this assessment, "the Court should be careful not to substitute its image of an ideal settlement for the compromising parties' views…Thus, the issue is whether the settlement is adequate and reasonable, not whether one could conceive of a better settlement." *In re Prudential,* 962 F. Supp. at 534.

Here, the proposed settlement fairly resolves the claims and adequately compensates Class Members for the Security Incident at issue. The proposed settlement also establishes a fair, equitable, and manageable basis for determining each Class Member's share. It is well within the range of reasonableness such that notice of it should issue to the Settlement Class. At the preliminarily approval stage, this Court held that, "[t]he Court preliminarily finds that the Settlement set forth in the Settlement Agreement raises no obvious reasons to doubt its fairness and raises a reasonable basis for presuming that it satisfies the requirements under Rule 4:32 of the Rules Governing the Courts of the State of New Jersey and due process so that notice of the Settlement should be given as provided in this Order." Preliminary Approval Order, at 2-3. For the reasons discussed below, this Court should grant final approval pursuant to Rule 4:32-

2(e)(1)(C).

### A. The Settlement Is Based On Arm's-Length Negotiations Conducted After Extensive Investigation And The Exchange Of Ample Information

The Parties engaged in a private mediation with the Honorable Diane M. Welsh (Ret.), an experienced mediator and retired United States Magistrate Judge, to assist them in reaching the proposed Settlement. Following this mediation session, the Parties finalized the Settlement after several weeks of additional negotiations and other extensive communications. *See* Cecchi Decl. ¶ 9. Where, as here, the Settlement is the product of mediation with an experienced and neutral mediator, the "long involvement of the neutral mediator during settlement negotiations lends support to the parties' claim that they bargained as adversaries and at arm's length." *Lubitz v. DaimlerChrysler Corp*., 2006 WL 3780789, at *14 (N.J. Super. Ct. Law Div. Dec. 21, 2006); *see also Cerbo*, 2006 WL 177586 at *15(same); *Hall v. Accolade Inc.*, 2019 WL 3996621, at *4 (E.D. Pa. Aug. 23, 2019) ("The participation of an independent mediator in settlement negotiations virtually ensures that the negotiations were conducted at arm's length and without collusion between the parties") (internal quotation marks and citation omitted). Additionally, the Parties have exchanged sufficient information to make an informed judgment about settlement. Indeed, the parties exhaustively investigated the facts underlying Plaintiffs' allegations before and during this litigation. *See* Cecchi Decl. ¶ 9. Plaintiffs' counsel also consulted with potential merits and damages experts about the strengths and weakness of Plaintiffs' claims, and the strengths and weaknesses of Defendant's arguments and defenses. *Id*. ¶ 9. The parties exchanged further information through written correspondence; phone calls; detailed mediation statements and exhibits submitted by the parties; and a full-day mediation. Accordingly, the Settlement is based on extensive investigation of the facts and law, the exchange of ample information, and on arm's length negotiations between the Parties. *See, e.g.*, *Educ. Station Day Care Ctr., Inc.*, 2007 WL

1245971, at *6 (noting that "the trial court's sole function was to ascertain that the counsel fee settlement was reached as a result of arms-length negotiations, with the assistance of a highly-respected mediator, following an agreement on the substantive terms of the class settlement, and was free of taint or collusion.").

### B. Counsel Is Highly Experienced In Similar Litigation and Its Considered Opinion Regarding the Settlement Is Entitled To Significant Weight

Carella Byrne, Nussbaum Law Group, and Finkelstein Blankenship have extensive expertise litigating and settling complex class actions. Thus, Counsel's recommendation that the Settlement is favorable to the Class is entitled to significant weight and further supports a presumption of fairness. *See, e.g.*, *New York Career Guidance Servs., Inc. v. Wells Fargo Fin. Leasing, Inc.*, 2006 WL 224000, at *10 (N.J. Super. Ct. Law Div. Jan. 27, 2006) (court approved settlement as fair and reasonable after class counsel "engaged in careful and extensive research, investigation, and analysis of the facts and circumstances surrounding the conduct of [Defendant]'s business practices" and therefore had "a sufficient basis upon which to assess the strengths and weaknesses of the claims and the terms of the settlement.").

### C. The Settlement Falls Well Within The Range Of Possible Approval

The Court should conclude that the settlement benefits are sufficiently robust to warrant final approval. *See, e.g.*, *Strougo*, 457 N.J. Super. at 168-69 (approving class settlement as "fair, reasonable and adequate pursuant to Rule 4:32" after reviewing settlement benefits).

As detailed above, the Settlement provides for substantial monetary relief to Class Members through a $3,000,000 non-reversionary common benefit fund for the Class and separate claims-made payments from Defendants for medical data monitoring and out-of-pocket losses. Plaintiffs believe the benefits presented are a substantial increase to those presented by prior counsel, with the increase of the common benefit fund and the removal of the out-of-pocket losses

and medical data monitoring from that fund, with those costs being borne by the Defendant instead. Moreover, the medical data monitoring product is tailored to the data affected in this case and provide a substantial $1 million in additional insurance against fraud for claimants who choose to enroll in the product.

Absent settlement, the complexity of this case and the legal theories would make continued litigation an inherently risky, costly, and timely undertaking. Because the proposed Settlement was negotiated at arm's-length by experienced counsel, is neither illegal nor collusive nor obviously deficient, falls within the range of final approval, and is fair, adequate, and reasonable, it should be granted final approval.

### D. Class Members Overwhelmingly Support the Settlement

"Since court approval is a substitute for the usual right of litigants to determine their own best interests, the reaction of class members is a significant element that [courts] must consider." *New York Career Guidance Servs.*, 2006 WL 224000, at *9. Here, the Class Members have overwhelmingly endorsed the Court's judgment at preliminary approval that the Settlement is fair, reasonable, and adequate. Direct notice was delivered to 90% of the Class Members.[12] There were zero objections and 5 requests for exclusion.[13] In endorsing the Settlement, Class Members had easy access to information regarding the Settlement, including important documents such as the Settlement Agreement and the maximum amount sought by counsel in fees, and a summary of the settlement terms and the claims being released.[14] Class Members' responses to the Notice demonstrate their support for the Settlement, including the benefits to the Class, the incentive award, and proposed attorneys' fees, costs, and expenses.

[12] McNamee Decl. at ¶¶ 4-7.
[13] *Id*. at ¶¶ 4-7; 14-15.
[14] *Id.* at ¶10.

## V. THE COURT SHOULD GRANT APPROVAL OF CLASS COUNSEL'S MOTION FOR AN AWARD FOR ATTORNEYS' FEES, COSTS AND EXPENSES, AND GRANT CLASS COUNSEL'S REQUEST FOR INCENTIVE AWARDS

The law firms of Carella Byrne, Nussbaum Law Group, and Finkelstein Blankenship, were appointed Interim Class Counsel upon consolidation of the related matters (Trans Id: LCV20232435788) and again as Class Counsel in the Preliminary Approval Order. Preliminary Approval Order, ¶ 5 (Trans Id: LCV20241443501). As such, Class Counsel now seek an award of attorneys' fees of 33.33% of the Settlement Fund ($999,900.00) and costs of $14,269.37 incurred up to August 15, 2024.[15]

The propriety of awarding attorneys' fees from a common fund is well established. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *9 (D.N.J. July 29, 2013) ("[W]e agree with the long line of common fund cases that hold that attorneys whose efforts create, discover, increase, or preserve a common fund are entitled to compensation." (alteration in original)).

Further, as courts recognize, in addition to providing just compensation, an award of attorneys' fees from a common fund ensures that "competent counsel continue[s] to be willing to undertake risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000); *see also In re WorldCom, Inc. Sec. Litig.,* 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate

[15] Given that Class Counsel seeks fees based on a percentage of the recovery, instead of time-spent, and that Class Counsel's time-spent is in-line with the percentage of the recovery—even without considering the time of any other counsel—only the time of Class Counsel is detailed herein. Class Counsel's efforts were bolstered by the other Plaintiffs' firms involved in the Action, and under the direction of Class Counsel these efforts benefitted the Class.

financial incentives.").

### A. Class Counsel Is Entitled To A Percentage of the Settlement Fund as a Fee

An award of attorneys' fees and the method used to determine that award are "within the discretion of the court." *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *6 (D.N.J. Feb. 9, 2010). In the Third Circuit, the percentage-of-recovery method for evaluating fees is "generally favored" in cases, such as this one, involving a settlement that creates a common fund. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) (favoring percentage of recovery method "because it allows courts to award fees from the [common] fund in a manner that rewards counsel for success and penalizes it for failure"); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006). The percentage-of-recovery method is almost universally preferred in common fund cases because it closely aligns the interests of counsel and the class. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005); *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *24 (D.N.J. Nov. 15, 2016). The Third Circuit recommends that the percentage award be "cross-check[ed]" against the lodestar method to ensure its reasonableness. *See Sullivan*, 667 F.3d at 330; *Harshbarger v. Penn Mut. Life Ins. Co.*, 2017 WL 6525783, at *2 (E.D. Pa. Dec. 20, 2017) ("The reasonableness of attorneys' fee awards in common fund cases . . . is generally evaluated using a [percentage of recovery] approach followed by a lodestar cross-check.").

Here, the requested 33.33% fee is reasonable under the percentage-of-recovery method. Although there is no absolute rule, courts have observed that fee awards generally range from 19% to 45% of the settlement fund. *See In re GMC*, 55 F.3d at 822; *Demmick v. Cellco P'ship*, 2015 WL 13646311, at *3 (D.N.J. May 1, 2015). A 33.33% fee is thus well within the range of fees typically approved as reasonable. *See, e.g., In re Suboxone (Bonprenorphine Hydrochloride and Naloxone) Antitrust Litig.*, 2023 WL 8437034, at *14 (E.D. Pa. Dec. 4, 2023) ("Class Counsels'

requested fees in this case represent 33 1/3 % of the total recovery—a percentage which is well within the range of reasonable fees, on a percentage basis, in the Third Circuit."); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd's, London Members*, 2019 WL 4877563, at *6 (D.N.J. Oct. 3, 2019) ("Courts in the Third Circuit, including this one, have viewed fee percentages of 33% as reasonable." (citing cases)).

A review of attorneys' fees awarded in consumer class actions supports the reasonableness of a 33.33% fee. *See e.g., Lupian v. Joseph Cory Holdings*, No. 16-CV-5172, 2019 WL 3283044, at *6 (D.N.J. July 22, 2019) (one-third fee)*; In re Merck & Co., Inc. Vytorin Erisa Litig.,* No. CIV.A. 08-CV-285DMC, 2010 WL 547613, at *9 (D.N.J. Feb. 9, 2010) (one-third fee); *In re Ins. Brokerage Antitrust Litig.,* 297 F.R.D. 136, 155 (D.N.J. 2013) (33% fee); *In re Liquid Aluminum Sulfate Antitrust Litig.*, No. 16-md-2687 (JLL)(JAD), 2018 WL 7108059, at *1 (D.N.J. Dec. 3, 2018) (one-third fee); *Milliron v. T-Mobile USA, Inc.*, No. 08-4149, 2009 WL 3345762, at *14 (D.N.J. Sept. 10, 2009) (one-third fee); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 101-02 (D.N.J. 2001) (collecting cases).

Thus, it is respectfully submitted that Class Counsel's 33.33% fee request is reasonable and comparable to fees typically awarded in these types of cases.

### B. The Reasonableness of the Requested Fee is Confirmed by Lodestar Cross-Check

Courts can use counsel's lodestar a "cross-check" to determine whether a requested fee is reasonable. *Sullivan*, 667 F.3d at 330; *In re Suboxone Antitrust Litig.*, 2023 WL 8437034, at *14. "The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method." *Rite Aid*, 396 F.3d at 306. "Conversely, where the ratio of the [percentage-of-recovery] to the lodestar is relatively low, the cross-check can confirm the reasonableness of the potential award

under the [percentage] method." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *33 (D.N.J. Oct. 1, 2013)

Here, Carella Byrne has spent a total of 629.3 hours on this matter through August 15, 2024,[16] resulting in a lodestar (Time Spent x Hourly Rate) of $482,247.50 at current rates, and has also incurred costs and expenses equal to $13,524, resulting in a total of $495,771.55 as its attorneys' fees and costs incurred in this matter through August 15, 2024. *See* Cecchi Decl. ¶¶ 28-29. Nussbaum Law Group has spent a total of 287.5 hours on this matter through August 15, 2024, resulting in a lodestar (Time Spent x Hourly Rate) of $312,077.50 at current rates, and has also incurred costs and expenses equal to $730.77, resulting in a total of $312,808.27 as its attorneys' fees and costs incurred in this matter through August 15, 2024. *See* Nussbaum Decl. ¶¶ 4, 7. Finkelstein Blankship has spent a total of 190.1 hours on this matter through August 15, 2024, resulting in a lodestar (Time Spent x Hourly Rate) of $138,565.00 at current rates, and has also incurred costs and expenses equal to $14.55, resulting in a total of $138,579.55 as its attorneys' fees and costs incurred in this matter through August 15, 2024. *See* Garber Decl. ¶¶ 4, 7. Therefore, the combined attorneys' fees are $932,890.00 and combined costs are $14,269.37.[17]

Class counsel's time has been necessarily spent in the drafting, revision and preparation of the pleadings and detailed mediation briefings, confirmatory discovery and protracted negotiations needed to reach a settlement in this matter; as well as the drafting, revision and preparation of the Settlement Agreement, and the motions for preliminary approval and the instant application (with

[16] The listed amounts do not include the time and expenses after the filing of this brief, such as the time for any response brief, preparation for and attending the Final Approval Hearing, implementing and monitoring the settlement, and answering inquiries from Settlement Class members.

[17] Class Counsel's efforts were bolstered by the other Plaintiffs' firms involved in the Action, whom under the direction of Class Counsel, were able to work for benefit the Class. Class Counsel will accordingly allocate funds received to compensate for the work conducted at the direction of Class Counsel by these firms for the benefit of the Class.

their attendant briefs and declarations), and the research, review and analysis needed to prepare those pleadings, documents, motions and applications.

As revealed by the lodestar cross-check, Class Counsel's requested fee of $999,900.00 is reasonable and contains a multiplier of 1.07. *See In re Suprema Specialties Sec. Litig.*, 2008 WL 906254, at *11 (D.N.J. Mar. 31, 2008) (finding 1.1 lodestar multiplier cross-check confirmed reasonableness of requested fee and noting "Courts in the Third Circuit have approved percentage-of-recovery awards of three or four times the amount calculated by the lodestar method.") (citations omitted).

The amount requested as attorneys' fees and costs is to fair, reasonable and adequate, when weighed against the significant time invested and financial risks assumed by Class Counsel in order to achieve the results embodied in the Settlement Agreement.

### C. The Proposed Incentive Awards to Class Representatives and Named Plaintiffs are Fair and Reasonable

Incentive payments to named Plaintiffs and Class Representatives are commonly approved by the federal courts in class action settlements. *Rodriguez v. West Publishing Corp*., 563 F.3d 948, 958 (9th Cir.2009) ("Incentive awards are fairly typical in class action cases. Such awards … are intended to compensate class representatives for work done on behalf of the class."); *Perry v. FleetBoston Fin. Corp*., 229 F.R.D. 105, 118 (E.D. Pa. 2005)(reviewing cases in which courts approved incentive awards to named class action plaintiffs in settlement).

In *Machulsky v. Lilliston Ford, Inc*., No. A-2987-06T5, 2008 WL 2788073 (N.J. Super. Ct. App. Div. July 21, 2008), the Appellate Division, after a thorough review of the pertinent federal case law, found that "[i]ncentive awards to class representatives in class actions are a recognized element of agreements to resolve class actions." *Id.* at *2 (*citing In Re Compact Disc Minimum Advertised Price Antitrust Litig.*, 292 F. Supp. 2d 184, 189 (D.Me. 2003); *Lachance v. Harrington*,

965 F. Supp. 630, 652 (E.D. Pa.1997); *In re SmithKline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 535 (E.D.Pa. 1990); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.Ga. 2001)). The Appellate Division pointed to the "number of valid reasons" which courts have identified as the basis for granting incentive awards to class representatives:

> [t]he plaintiff's role in these cases is to protect the interests of the class and foot the bill for the litigation. However, the public policy favoring private civil litigation as a means to promote certain important social values often fails to provide adequate compensation or incentive for plaintiffs to take on this burden simply on principle. The representative assumes substantial risk, not just of losing the time and costs of litigation, but also of retaliation or collateral notoriety.

*Machulsky*, 2008 WL 2788073, at *3 (citing Clinton A. Krislov, SCRUTINY OF THE BOUNTY: INCENTIVE AWARDS FOR PLAINTIFFS IN CLASS LITIGATION, 78 Ill. B.J. 286 (1990)).

As one organization has described the purpose behind incentive payments to class action representatives:

> Awards to named plaintiffs are appropriate in most cases in recognition of plaintiffs' willingness to undertake the representation of class members to whom they owe nothing. Consumers who fight on behalf of an entire class should be reasonably compensated, indeed rewarded, for their commitment when those efforts are successful. The amount that is reasonable depends upon the circumstances of the case….

National Association of Consumer Advocates, Standards and Guidelines for Litigating and Settling Consumer Class Actions, available at https://casetext.com/case/standards-guidelines-for-lit-settling-consumer-class-actions (last visited August 12, 2024).[18]

Here, as in other cases where incentive awards have been granted, named Plaintiffs and Class Representatives took action which "protected the interests of the Class Members and which

[18] Although not binding, "Courts have found the [National Association of Consumer Advocates] guidelines to be instructive, *State v. Homeside Lending, Inc.*, 175 Vt. 239, 826 A.2d 997, 1009-11 (Vt. 2003), and useful, *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1028-30 (N.D. Ill. 2000), and have referred to them in evaluating settlements." *Machulsky*, at *11, n.1.

have resulted in a Settlement that provides substantial economic and non-economic benefits for the Class Members." *Enter. Energy Corp. v. Columbia Gas Transmission Corp.,* 137 F.R.D. 240, 251 (S.D. Ohio 1991).

The factors which the Appellate Division restated in *Machulsky* as those commonly considered by courts when determining whether to approve an incentive award to a class action plaintiff -- (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation – have been fully met in this matter. *Machulsky*, 2008 WL 2788073, at *4 (quoting *Van Vraken v. Atl. Richfield Co*., 901 F. Supp. 294, 299 (N.D. Cal. 1995)).

Named Plaintiffs agreed to proceed as representatives of the putative class. By agreeing to serve as representative of the putative class, named Plaintiffs ran the risk that their names would appear in the publicly-available documents and would be publicly associated with this lawsuit, a potential source of embarrassment and notoriety to otherwise private individuals.

Named Plaintiffs and Class Representatives actively participated in the class action lawsuit, which has spanned over a year and a half of litigation. They aided Class Counsel in drafting the Complaint, and were kept informed of the litigation throughout its entire course. Named Plaintiffs and Class Representatives were prepared to – if necessary –appear for depositions and attend trial, had this matter not resolved through settlement negotiations.

Named Plaintiffs and Class Representatives could have pursued their claim on an individual basis, but instead agreed to forestall relief on their individual claims in order to ensure that relief was provided to the settlement class. The benefits to the Settlement Class (as set forth above) are significant, and are the result of protracted settlement negotiations which most likely

would not have occurred had named Plaintiffs and Class Representatives merely pursued their individual claims.

Given the significant contributions made by named Plaintiffs and Class Representatives to the successful resolution of this case and the magnitude of the benefits to the Settlement Class, the proposed award to Class Representatives of $500 each and to named Plaintiffs of $250 each, as service awards and to resolve their individual claims is appropriate and warranted.

## VI. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court (1) grant their Motion for Final Approval of the Settlement and enter Final Judgment with the proposed order form submitted herewith; (2) grant Class Counsel's motion for attorneys' fees of $999,900.00, costs and expenses in the amount of $14,269.37; and (3) grant Plaintiffs' request for incentive awards of $500 for each of the Class Representatives and $250 for each the named Plaintiffs.

Date: August 21, 2024

/s/ JAMES E. CECCHI
James E. Cecchi
**CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.**
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700

Linda P. Nussbaum
**NUSSBAUM LAW GROUP, P.C.**
1133 Avenue of the Americas, 31st floor
New York, NY 10036
Telephone: (917) 438-9189

Todd Garber
**FINKELSTEIN, BLANKINSHIP FREI-PEARSON & GARBER, LLP**
One North Broadway, Suite 900
White Plains, NY 10601
Telephone: (844) 431-0695

*Attorneys for Plaintiffs, individually and on behalf of all others similarly situated*