IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMISH PARIKH, individually and on behalf of all others similarly situated, *Plaintiff*, v. THE KENDAL CORPORATION, *Defendant.*	)	Case No. 2:25-CV-00129

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

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Plaintiff Amish Parikh, individually and on behalf of all others similarly situated, together with proposed Class Representative Niamh Jacobsen[1] (collectively "Class Representatives"), respectfully submit this memorandum of law in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement,[2] in which Class Representatives request an Order approving of the Parties' Class Action Settlement, as well as appointing Amish Parikh and Niamh Jacobsen as Class Representatives, appointing Leigh S. Montgomery of Ellzey Kherkher Sanford Montgomery, LLP and David K. Lietz of Milberg, PLLC as Settlement Class Counsel ("Class Counsel") and approving the Settlement Administrator and the administration of the notice program.

I. INTRODUCTION

On December 29, 2025, this Court entered its Preliminary Approval Order [DE # 24] granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") [DE # 23] and preliminarily approving of a class action settlement ("Settlement") reached between Class Representatives and Defendant The Kendal Corporation ("Kendal" or "Defendant") (collectively, the "Parties"). Class Representatives now respectfully move under Fed. R. Civ. P. 23(e), for final approval of the Settlement. The Class Action Settlement Agreement (the "Agreement" or "Settlement Agreement") reached between the Parties resolves the claims asserted by Class Representatives and the Settlement Class and provides substantial monetary and injunctive relief to Settlement Class Members whose personally

[1] Niamh Jacobsen is the named plaintiff in a related action arising from the same Data Incident styled *Niamh Jacobsen, individually and on behalf of all others similarly situated v. The Kendal Corporation*, 1:25-cv-00104-MN (D. Del.). It is the intention of the Parties to settle and resolve all claims arising from both actions by way of this Settlement.

[2] All capitalized terms herein shall have the same meanings as those defined in Section I of the Settlement Agreement, attached to Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement as **Exhibit A**.

identifiable information ("PII") was compromised in a Data Incident occurring (the "Data Incident") on Kendal's systems.

As detailed below, the Settlement provides a very favorable result for the Settlement Class with the establishment of a non-reversionary Settlement Fund in the amount of $450,000 that will be used for cash payments and credit monitoring benefits to Settlement Class Members, Notice and Administrative Expenses, attorneys' fees and litigation expenses as awarded by the Court, and Service Award payments approved by the Court. *See* Settlement Agreement ("SA") ¶¶ 8–10, 13; SA ¶¶ 2.1–2.8, 3.2, 7.1–7.3. Notably, the *pro rata* cash payments that were estimated to be $100 in the notices sent to Settlement Class Members are currently estimated to be $335.56 per valid claim. This is an outstanding result for this Settlement Class.

Additionally, Kendal has made assurances regarding improvements to the security of its systems housing Private Information. SA ¶ 2.9. The Settlement also involved a comprehensive notice program and user-friendly claims process, which have been, and are being, implemented by the Settlement Administrator. Considering the valuable benefits conveyed to members of the Settlement Class and the significant risks faced through continued litigation, Class Representatives believe the Settlement is favorable to the Settlement Class.

Moreover, the reaction of the Class to this Settlement is highly positive, with only one request for exclusion and no objections. For all these reasons, the Court should finally approve this Settlement.

II. BACKGROUND

On or about December 27, 2024, Kendal announced a Data Incident impacting the personally identifying information ("PII" or "Private Information"), including names, Social Security numbers, and checking account/routing numbers. *See* Declaration of Class Counsel

("Decl.") ¶ 2.[3] More particularly, on June 30, 2024, Kendal observed unusual activity on its computer network and immediately began an investigation with the assistance of third-party specialists. The investigation determined that certain files on the Kendal network were potentially accessed without authorization between June 26, 2024, and June 30, 2024. The files at issue included information related to current and former employees of Kendal and its affiliate care communities. Class Representatives and Class Members are current and former employees of Kendal. Approximately 10,000 individuals were potentially affected by the Data Incident.

On December 27, 2024, Kendal started sending notice letters to the impacted individuals. Class Representatives each received a notification from Kendal indicating that cybercriminals may have accessed and/or acquired their private information.

This Action, filed by Class Representative Plaintiff Parikh and captioned *Amish Parikh, individually and on behalf of all others similarly situated v. The Kendal Corporation*, 2:25-cv-00129, was filed on January 9, 2025, in the United States District Court for the Eastern District of Pennsylvania. Class Representative Plaintiff Jacobsen filed her Class Action Complaint on January 24, 2025, in the United States District Court for District of Delaware alleging claims for damages arising from the Data Incident.[4] Shortly after, the parties began exploring the possibility of early resolution. Over the next few months, the Parties engaged in informal discovery and scheduled an August 12, 2025, formal mediation with Rodney Max, Esq., a well-regarded private mediator with substantial experience mediating data breach class actions. The mediation was successful and resulted in a settlement in principle.

On August 19, 2025, the parties filed a Joint Report to Court and Notice of Settlement in

[3] Plaintiff incorporates the Declaration of Class Counsel attached to Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement as **Exhibit B**.

[4] Case No. 1:25-cv-00104-MN (D. Del. 1/24/25).

Principle [DE # 10] informing the Court that the Parties had reached a settlement in principal and proposing to file a Motion for Preliminary Approval of Class Action Settlement. Over the following weeks, the Parties diligently drafted, negotiated, and finalized the Settlement Agreement, Notices, and Claim Form, and agreed to a settlement administrator. Decl. ¶ 6. The Settlement Agreement was finalized in November 2025. *See* Agreement. Kendal denies all liability and wrongdoing. Decl. ¶ 3; SA § III.

Class Representatives filed their Motion for Preliminary Approval on December 1, 2025, which this Court granted on December 29, 2025, in its Preliminary Approval Order. As directed in the Preliminary Approval Order, Notice was sent to the Settlement Class with information on this case, the Settlement and the process for submitting a claim. Class Representatives now submit their unopposed Motion for Final Approval of the Settlement. Class Representatives and Class Counsel aver that the Settlement presented to the Court for preliminary approval is fair, reasonable, adequate, and in the best interests of the Settlement Class. *See Id.* ¶ 5, 35; Agreement § II. Therefore, Class Representatives respectfully request the Court grant final approval of the Settlement as detailed below.

III. TERMS OF THE PROPOSED SETTLEMENT.

A. Settlement Class Definition.

In its Preliminary Approval Order, the Court preliminarily certified the following Settlement Class:

> All living individuals to whom Defendant mailed notices that their private information was potentially compromised in the Data Incident discovered in December 2024.[5]

[5] The Settlement Class specifically excludes: (i) Defendant and Defendant's parents, subsidiaries, affiliates, officers, directors, and any entity in which Defendant has a controlling interest; (ii) all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; (iii) any and all federal, state, or local governments, including

B. Settlement Benefits.

The Settlement Agreement provides meaningful relief in the form of significant monetary compensation and non-monetary benefits to Settlement Class Members who choose to take advantage of the Settlement. To administer settlement benefits to the class and implement the Settlement's terms, the Court appointed Eisner Advisory Group ("EAG" or "Settlement Administrator") as the "Settlement Administrator" in its Preliminary Approval Order.

1. The Settlement Fund.

The Settlement calls for the creation of a $450,000.00 non-reversionary Settlement Fund, from which the benefits described below may be claimed by Settlement Class Members.

2. Documented Monetary Losses and Cash Payments.

Settlement Class Members may claim Compensation for Documented Monetary Losses, which includes up to a total of $5,000.00 per person for unreimbursed losses upon submission of a claim and supporting documentation. Decl. ¶ 2.5. Documented Monetary Losses may include but are not limited to; (i) out of pocket credit monitoring costs that were incurred on or after June 26, 2024, through the date of Claim submission; (ii) unreimbursed losses associated with actual fraud or identity theft; and (iii) unreimbursed bank fees, long distance phone charges, postage, or gasoline for local travel. *Id*. ¶ 2.5.

In addition to a claim for Documented Monetary Losses, all Settlement Class Members shall have the ability to claim a *Pro Rata* Cash Payment in the estimated amount of one hundred

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but not limited to their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; (iv) the attorneys representing the Parties in the Action; (v) all judges assigned to hear any aspect of the Action, as well as their immediate family members and court staff; and (vi) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the Data Breach, or who pleads nolo contendere to any such charge.

Dollars ($100.00). *Id*. ¶ 2.6. The payments shall be calculated by dividing remaining funds in the Settlement Fund, after payment of Settlement Administration Fees, Attorneys' Fees, Costs and Expenses, Credit Monitoring and Identity Restoration Services, and Documented Monetary Losses, by the number of eligible claims.

3. Credit Monitoring.

In addition to claiming the monetary benefits, each Settlement Class Member may claim three (3) year of one-bureau ("1B") credit monitoring. *Id*. ¶ 2.7.

4. Business Practice Changes.

Defendant represents that it has adopted and implemented additional data security measures following the Data Security Incident to further strengthen the security of its systems. *Id*. ¶ 2.9. Kendal will detail these business practice changes to Class Counsel in a confidential declaration. *Id*.

5. Releases.

The Releasing Parties will release the Released Parties for any and all claims, including unknown claims, relating to the Data Incident as set forth in the Settlement Agreement. Regardless of whether they submit a Claim, Settlement Class Members who do not opt-out of the Settlement will release all claims, whether known or unknown, against Defendant and the other Released Parties. *Id*. ¶¶ 1.21, 1.29, 6.1.

C. Service Awards, Attorneys' Fees, and Litigation Expenses.

Class Representatives separately applied to this Court for Attorneys' Fees, Expenses and Service Awards for Class Representatives in their Motion for Attorneys' Fees, Expenses and Service Awards ("Motion for Attorneys' Fees") [DE # 25] filed March 16, 2026.

D. The Notice and Claims Process.

The Settlement Administrator implemented the Notice Program. *See generally* Declaration of Jordan Bakondy Regarding Notice and Claims Administration ("Admin. Decl."). After receipt of contact information from Defendant's Counsel, deduplication of records and address validation, the settlement Administrator distributed Notice via U.S. Mail on January 28, 2026, to 9,785 Settlement Class Members. *Id*. ¶¶ 6–9. Of the initial Notice mailing, 923 Notices were returned undeliverable. *Id*. ¶ 14. The Settlement Administrator executed supplemental mailings to 779 Settlement Class Members, for which the initial Short Notice was not deliverable but for which the Settlement Administrator was able to obtain an alternative mailing address through (1) forwarding addresses provided by the USPS, (2) skip trace searches using a third-party vendor database, or (3) requests received directly from Settlement Class Members. *Id*. ¶ 9. Of the supplemental mailing, 120 were returned undeliverable. *Id*. ¶ 14. In sum, direct notice was received by 9,521 Settlement Class Members, representing 96.8% of the Settlement Class. *Id*. ¶ 14.

The Notice clearly and concisely summarized the Settlement and the Settlement Class members' legal rights and directed them to a dedicated Settlement Website established by the Settlement Administrator for additional information, including links to downloadable versions of the Settlement Agreement and Release, Notice, Claim Form, and the Court's Preliminary Approval Order. *Id*. ¶ 7, Ex. B. Prior to the distribution of Notice, the Settlement Administrator established the dedicated Settlement Website for Settlement Class Members to obtain detailed information about the Action as well as a toll-free number available twenty-four hours per day where Settlement Class Members could call and interact with an interactive voice response system that provides important settlement information and leave a voicemail message to address specific requests or issues. *Id.* ¶¶ 11, 12.

The Notice Program provided was reasonably calculated to apprise interested parties of

the pendency of the action and afford them an opportunity to present their objections or exclude themselves from the settlement. *See Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950). Accordingly, the Notice Program should be approved by this Court. The Notice and Notice program comply with the program approved by this Court in its Preliminary Approval Order, meet due process considerations, and weighs in favor of Final Approval.

IV. SETTLEMENT CLASS CERTIFICATION

In the Court's Preliminary Approval Order, the Court preliminarily certified the Action as a class action for settlement purposes for the Settlement Class. The Court appointed Amish Parikh and Niamh Jacobsen as Class Representatives, and Leigh S. Montgomery of Ellzey Kherkher Sanford Montgomery, LLP and David Lietz of Milberg, PLLC as Settlement Class Counsel. Because nothing has changed regarding class certification, the Court should finally certify the Settlement Class. For efficiency, Class Representatives incorporate by reference the Settlement Class certification arguments from their Motion for Preliminary Approval.

V. ARGUMENT AND AUTHORITIES

A. Applicable Standard.

Federal Rule of Civil Procedure 23(e) "explicitly discusses the requirements for class settlements." *Hall v. Accolade, Inc*., No. CV 17-3423, 2019 WL 3996621, at *2 (E.D. Pa. Aug. 23, 2019). Pursuant to Fed. R. Civ. P. 23(e)(2) the Court must determine whether the settlement is "fair, reasonable and adequate." The Rule 23(e)(2) factors are whether:

> (A) the class representative and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
> (iii) the terms of any proposed award of attorney's fees, including

timing of payment; and
(iv) any agreement required to be identified under Rule 23(e)(3); and
(D) the proposal treats class members equitably relative to each other.

Settlement approval occurs in two stages, with the first stage being the preliminary approval stage in which the Court makes a preliminary determination regarding whether the class should be certified and notice distributed, which includes a preliminary assessment of the settlement. *See In re Linerboard Antitrust Litig*., 321 F. Supp. 2d 619, 628 (E.D. Pa. 2004). As discussed above, this Court has already preliminarily approved of the Settlement Agreement and Settlement Class and notice has been distributed per the Court's Preliminary Approval Order.

This case is now at the final approval phase in which the Court must "finally decide whether the settlement agreements should be approved as fair, reasonable and adequate," and which "requires an analysis of the settlement agreements under the factors set forth in *Girsh v. Jepson,* 521 F.2d 153 (3d Cir.1975)" (the "*Girsh* factors"). *Id*. The *Girsh* factors include, (1) the complexity, expense and likely duration of the litigation ...; (2) the reaction of the class to the settlement ...; (3) the stage of the proceeding and the amount of discovery completed ...; (4) the risks of establishing liability ...; (5) the risks of establishing damages ...; (6) the risks of maintaining the class action through the trial ...; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery ...; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Id*.

"A proposed settlement agreement is entitled to a presumption of fairness where: '(1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.'" *In re CertainTeed Fiber Cement Siding Litig*., 303 F.R.D. 199, 216 (E.D. Pa.

2014) (citing *In re Cendant Corp. Litig.,* 264 F.3d 201, 232 n. 18 (3d Cir.2001). "The presumption of fairness may attach even where a class is certified for settlement purposes only, as long as the requirement of adequate representation has been satisfied." *Id*. Further, "a strong public policy exists, which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593 (3d Cir. 2010).

B. The Court Should Approve the Settlement and Authorize Notice to the Proposed Settlement Class.

As demonstrated below, the applicable factors support a finding that the Settlement Agreement is fair, reasonable, and adequate and the Court should approve of the same.

1. The Settlement was Fairly and Honestly Negotiated at Arm's Length.

The Settlement is the product of hard-fought, arm's-length negotiations following informal discovery and a full-day mediation that was overseen by an experienced mediator, Rodney A. Max. Decl. ¶ 4. Over the following weeks, the Parties diligently drafted, negotiated, and finalized the Settlement Agreement, Notices, and Claim Form, and agreed to a settlement administrator. Decl. ¶ 6. These facts support a finding that the Settlement was negotiated at arm's length, thereby evidencing the Settlement's fairness and supporting approval in this case. *See Galt v. Eagleville Hosp*., 310 F. Supp. 3d 483, 493 (E.D. Pa. 2018) (Rufe, J.) (finding arm's-length negotiations between experienced counsel, before an experienced and independent mediator, with the benefit of a pre-settlement investigation into relevant facts, were factors that weighed in favor of finding that settlement was presumptively fair).

2. The Relief Provided for the Class is Fair, Reasonable, and Adequate.

The proposed $450,000 non-reversionary common fund Settlement is the product of

significant investigation of Class Representatives' and Class Members' claims. Class Counsel conducted extensive and lengthy interviews of the two proposed Class Representatives, reviewed their documentation, and analyzed the applicable laws of Pennsylvania and other jurisdictions regarding breaches of Class Members' Personal Information. Decl. ¶ 35.

As discussed above, the Parties exchanged informal discovery as well as detailed mediation statements prior to the mediation.[6] *Id.* ¶ 4. Based on this information, Class Counsel's independent investigation of the relevant facts and applicable law, and counsels' broad experience with other data breach cases, Class Counsel determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. Decl. ¶ 35.

i. *The Settlement avoids the considerable costs, risks, and delay of litigation.*

The immediate and substantial benefits that the Settlement provides stand in stark contrast to the considerable risks, uncertainties, costs, and delays of continued litigation. Class Counsel thoroughly assessed those contingencies in considering the terms of the Settlement. Decl. ¶¶ 35, 38.

As the Court has recognized in similar settlements, Class Representatives faced "a significant risk in this case because they must prove not only that Defendant owed a duty to Plaintiff to safeguard their information, but also that their conduct was the proximate cause of that breach."

[6] The fact that the Parties have not engaged in *formal* discovery is not determinative. At an early stage, the Parties disclosed to the Court their intention to mediate after engaging in targeted informal discovery, which the Court approved. *See* Case Mgmt. Ord. No. 2 (June 15, 2020) (Dkt. 119). That is consistent with a long line of cases in which courts—including this Court—have preliminarily approved class action settlements in the early stages of litigation, especially where meaningful informal discovery has occurred. *See In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 267 (E.D. Pa. 2012) (Pratter, J.) (preliminarily approving class action settlement when "no formal discovery was conducted in this case during the time of the . . . Settlement negotiations or agreement"); *see also Fulton-Green,* 2019 WL 316722, at *3 (preliminarily approving class action settlement where "[e]ven though formal discovery has not started . . . the parties exchanged a substantial amount of information regarding the discrete issues in this case")

In re Onix Group, LLC, 2024 WL 3015528, at *10 (E.D. Pa. June 14, 2024) ("*Onix Group I*"), *granting final approval*, 2024 WL 5107594, at *1-2 (E.D. Pa. Dec. 13, 2024) ("*Onix Group II*"). Class Representatives and the Settlement Class would face many other challenges, including withstanding motions to dismiss, obtaining class certification, maintaining class certification after an interlocutory appeal under Rule 23(f), opposing summary judgment motions, defending expert opinions under *Daubert*, and ultimately prevailing at trial and on appeal. *See In re Generic Pharms. Pricing Antitrust Litig.*, 2025 WL 1550100, at *3 (E.D. Pa. May 30, 2025) (Rufe, J.) (finding that $5.2 million settlement was adequate in light of the "inherent risk to recovery involved in prolonged litigation, continuing through motions regarding class certification, the dismissal of claims, and the exclusion of evidence, as well as potential trials and appeals, [which] would only delay any recovery class members may receive."); *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) ("further proceedings would be complex, expensive and lengthy, with contested issues of law and fact. . . That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval.").

A comparison with recoveries in other finally approved data breach settlements demonstrates the strength of this Settlement. Data breach class action settlements are typically evaluated on a "per person" recovery basis. The $450,000.00 non-reversionary common fund here for approximately 10,000 Settlement Class Members equates to a per-person recovery of $45.00 per person. This far outstrips other data breach settlements that were recently given final approval by other judges of this Court. *See e.g., Onix*, 2024 WL 5107594, at *2 ($1.25 million settlement fund for 308,942 class members, or $4.04 per person); *In re Philadelphia Inquirer Data Sec. Litig.*, No. CV 24-2106-KSM, 2025 WL 845118, at *2 (E.D. Pa. Mar. 18, 2025) ($525,000 settlement fund for 25,549 class members, or $20.55 per person), *Opris v. Sincera Reproductive Medicine*,

Case No. 2:21-cv-03072-JHS (E.D. Pa), ECF Doc 69 (Sept. 8, 2023)(granting final approval of $1.2 million settlement for class of 37,989, or $31.59 per person). By every comparative measure, this is a fair, reasonable, and adequate settlement.

ii. *The Settlement provides for an Effective Method of Distributing Relief to the Class, Including Through a Simplified Claims Process.*

The Settlement creates a straightforward procedure for Class Members to submit a Claim Form. Class Members may make claims for the Pro Rata Cash payment and the credit monitoring simply by utilizing the "tear off" claim form that will be attached to the Short Form Postcard Notice. *See* Agreement, Ex. C. It also provides for effective Direct Notice to Class Members via U.S. mail, which is how most Class Members received notice of the Incident, based on available Class Member contact information provided to the Settlement Administrator by Kendal, supplemented by posting the Long Form Notice to the Settlement Website. SA ¶ 3.2. This factor supports the fairness of the Settlement. *See Barletti*, 2024 WL 1096531, at *6 (preliminarily approving settlement where class members would be notified of data breach settlement by the same means they received notice of the breach and were given a "straight-forward claims process that offers them a choice of relief"); see also *In re Canon U.S.A. Data Breach Litig*., No. 20-cv-6239, 2023 WL 7936207, at *4 (E.D.N.Y. Nov. 15, 2023) (granting preliminary approval to data breach settlement under which class members could claim ordinary losses, extraordinary losses, and credit monitoring).

iii. *The proposed attorneys' fee award is reasonable.*

As noted above, Class Representatives separately applied to this Court for Attorneys' Fees, Expenses and Service Awards for Class Representatives in their Motion for Attorneys' Fees in which they thoroughly discuss the reasonableness of the proposed attorneys' fee award. For brevity, those arguments are incorporated herein. Based on the reasonableness of the proposed

attorneys' fee award, final approval is appropriate.

iv. *There are No Additional Agreements Required to be Identified Under Rule 23(e)(3).*

Rule 23(e)(2)(C)(iv) requires courts to consider any agreement among the parties outside of the settlement agreement. Further,"[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(3). In this case, the Settlement Agreement and its exhibits contain all agreements and understandings between the Parties, and there are no "side agreements" outside of the Settlement Agreement. Decl. ¶ 44.

v. *The Settlement Treats Class Members Equitably Relative to Each Other.*

"A district court's 'principal obligation' in approving a plan of allocation 'is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (quoting *Walsh v. Great Atl. & Pac. Tea Co.,Inc.*, 726 F.2d 956, 964 (3d Cir. 1983)). Here, the Settlement treats all Class Members fairly and equally relative to each other and in relation to the strengths of their claims. All Class Members can choose to be reimbursed for up to $5,000 in documented losses reasonably attributable to the Incident and to receive a *pro rata* share of the Net Settlement Fund. SA ¶ 2. This Court and others have approved similar (but inferior) settlement allocation structures in other data breach settlements. *See, e.g., Onix Group I*, 2024 WL 3015528, at *5-11 (granting preliminary approval to settlement giving class members choice of up to $5,000 for documented losses or *pro rata* share of net settlement fund without documentation of loss); *Onix Group II,* 2024 WL 5107594, at *1-2 (granting final approval); *Barletti v. Connexin Software, Inc.*, 2024 WL 1096531, at *6 (E.D. Pa. Mar. 13, 2024) (granting preliminary approval to settlement allowing claimants to choose between credit monitoring and insurance services, reimbursement of actual out-of-pocket losses, or a cash

payment), *granting final approval*, 2024 WL 3564556 (E.D. Pa. July 24, 2024); *Bianucci, et al. v. Rite Aid Corp.*, 2025 WL 704284 (E.D. Pa. Mar. 4, 2025) (granting preliminary approval to data breach settlement with similar structure, and approving double payment to California class members electing the *pro rata* cash benefit). These comparisons are not intended to disparage the settlements achieved in those particular cases but are meant to exemplify the excellent result achieved here.

3. *The Settlement also Satisfies All the Applicable* Girsh *Factors.*

In this Circuit, courts assessing the fairness of proposed class action settlements must consider the *Girsh* factors. *Girsh*, 521 F.2d at 157. However, Rule 23(e)(2) and the *Girsh* factors overlap with each other to a significant extent, and courts need not separately address the two sets of factors or any *Girsh* factors that are not applicable to the settlement at issue. *See Dixon v. Lincoln Univ.*, 2025 WL 1373676, at *8 n.3 (E.D. Pa. May 12, 2025) (explaining that after analyzing the *Girsh* factors, the court would not separately address the Rule 23(e)(2) considerations because they "substantially overlap" with the *Girsh* factors and other guidance[7] from the Third Circuit Court of Appeals). Class Representatives have satisfied all additional *Girsh* factors that are applicable here. Had the case not resolved, the Parties would be facing significant risks in briefing and arguing class certification, summary judgment, expert reports, and maintaining class certification throughout trial. *See, e.g.*, *In re Phila. Inquirer*, 2025 WL 845118, at *9-10 (acknowledging expense and challenges of class certification, summary judgment, and trial in data breach class action).

To the extent applicable (and not already addressed above), Class Representatives have

[7] *See In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 350 (3d Cir. 2010) (noting that "when appropriate," it "may be helpful to expand the *Girsh* factors to include, when appropriate," several "non-exclusive factors" identified in *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998)) (the "*Prudential* factors")).

satisfied the *Girsh* test. Had the case not resolved, the parties here would be facing "significant expenses in briefing and arguing class certification, summary judgment, expert reports, and maintaining class certification throughout trial." *In re Wawa, Inc. Data Sec. Litig.,* No. 19-cv-6019, 2023 WL 6690705, at *7 (E.D. Pa. Oct. 12, 2023). Numerous courts have recognized the substantial risks associated with data breach class actions. *See, e.g.*, *Onix Group II*, 2024 WL 5107594, at *10 ("Plaintiff face a significant risk in this case because they must prove not only that Defendant owed a duty to Plaintiff to safeguard their information, but also that their conduct was the proximate cause of that breach."); *Gordon v. Chipotle Mexican Grill, Inc.*, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases such as the instant case are particularly risky, expensive, and complex, and they present significant challenges to Plaintiff at the class certification stage.") (internal citations omitted); *Maldini v. Marriott Int'l, Inc.*, 140 F. 4th 123 (4th Cir. 2025) (reversing class certification for second time in data breach litigation); *Theus v. Brinker Int'l Inc.* 2025 WL 1786346, at *4 (M.D. Fla. June 27, 2025) (denying class certification in data breach litigation).

Further, "courts within the Third Circuit 'regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts.'" *Kelly v. Santander Consumer USA, Inc.*, 2023 WL 8701298, at *4 (E.D. Pa. Dec. 15, 2023) (quoting *In re Flonase Antitrust Litig*., 291 F.R.D. 93, 104 (E.D. Pa. 2013)). Indeed, this *Girsh* factor "is largely irrelevant" where, as here, "there is no 'reason to believe that [d]efendants face any financial instability.'" *In re Phila. Inquirer*, 2025 WL 845118, at *10.

4. *The Settlement also Satisfies All the Applicable* Prudential *Factors.*

Although courts must examine the *Girsh* factors, courts may also examine the *Prudential* factors "where appropriate." *In re CertainTeed Fiber Cement Siding Litig*., 303 F.R.D. at 216. The

Prudential factors include the following permissive, non-exhaustive factors: "[1] the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; [2] the existence and probable outcome of claims by other classes and subclasses; [3] the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; [4] whether class or subclass members are accorded the right to opt out of the settlement; [5] whether any provisions for attorneys' fees are reasonable; and [6] whether the procedure for processing individual claims under the settlement is fair and reasonable." *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 249 (E.D. Pa. 2011).

With respect to the first factor, as previously discussed, the parties engaged in informal discovery and a full-day mediation that was overseen by an experienced mediator. Decl. ¶ 4. Further, Class Counsel are experienced in data breach litigation and have formed the opinion that the Settlement Agreement is fair, reasonable, and adequate and presents a favorable result for the Settlement Class. *Id.* ¶¶ 5, 20–35. The second factor does not appear to be relevant in this case. With respect to the third factor, Class Representatives have established that the Settlement treats all Class Members equitably compared to each other and that the Settlement compares favorably to other settlements in Section V.B.2.v., *supra*.

With respect to the fourth factor, the Settlement Agreement provided for a reasonable opt-out and objection procedures, which were effectuated in the Notice process. *See* SA ¶¶ 1.15, 1.16; Admin. Decl., generally. With respect to the fifth factor, Class Representatives incorporate the arguments made in their Motion for Attorneys' Fees. Finally, with respect to the sixth factor, Class

Representatives have established that the notice process is fair and reasonable in Section III.D, *supra*, and Section IV, *infra*. Accordingly, each relevant *Prudential* factor weighs in favor of approval of the settlement.

* * *

For these reasons and based on Class Counsel's experience in similar class litigation, Class Counsel are of the opinion that the settlement is fair, adequate, and reasonable, and should be approved by the Court.

VI. THE NOTICE PROGRAM IS ADEQUATE.

Pursuant to Rule 23(c)(2)(B), the notice must be the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Rule 23(c)(2)(B) requires that the Notice include information regarding "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. at 214.

There are three aspects to notice requirements under Rule 23 and fundamental due process: (1) notice must be disseminated in a manner "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections;" (2) the content must be of "such nature as reasonably to convey the required information;" and (3) the notice must "afford a reasonable time for those interested to make their appearance" and exercise their options to file a claim, object, or opt out of the class. *Mullane*, 339 U.S. at 314 (internal citations omitted). The objectives of Rule 23 have been met in this case.

The Notice Plan set forth in the Settlement Agreement provided the best notice practicable under the circumstances. The Settlement Notice was disseminated to 9,785 Settlement Class Members whose names and addresses could be identified with reasonable effort from Defendant's records and through efforts by the Settlement Administrator such as skip trace searches. Admin. Decl. ¶¶ 6–9, 14. Based on the Settlement Administrator's estimates, individual notice efforts have reached approximately 9,521 Settlement Class members—96.8% of the Class Members. *Id*. ¶ 14. The Notice clearly and concisely summarized the Settlement and the Settlement Class members' legal rights and directed them to the Settlement Website for additional information, including links to downloadable versions of the Settlement Agreement, Preliminary Approval Order, Notice, and Claim Form. *Id*. ¶ 7, Ex. B. Prior to the distribution of Notice, the Settlement Administrator established the dedicated Settlement Website for Settlement Class Members to obtain detailed information about the Action as well as a toll-free number available twenty-four hours per day where Settlement Class Members could call and interact with an interactive voice response system that provides important settlement information and leave a voicemail message to address specific requests or issues. *Id.* ¶¶ 11, 12.

The opt-out and objection deadlines were March 30, 2025. Preliminary Approval Order, p. 10; Admin. Decl. ¶ 16, 17. The Settlement Administrator has received one opt-out request and no objections. Admin. Decl. ¶ 16, 17. The Settlement Administrator has approved 1 claim for Documented Monetary Losses out of 12 claims submitted, 710 claims for Pro Rata Cash Payment, and 433 claims for Credit Monitoring Services. Admin Decl. ¶ 15. The Settlement Administrator will continue to intake and analyze claims postmarked by the claims filing deadline of March 30, 2026. *Id*. ¶ 15. Assuming the Court awards Class Counsel their requested fees and Administrative costs are awarded per the Settlement Administrator's Declaration, the pro rata cash payment is

currently estimated to be $335.56. *Id*.

The proposed Notice Plan was designed to reach individual Class Members and inform them of the information relevant to this case. Furthermore, the notice materials are plain and easy to understand. The notices include, *inter alia*, a description of the litigation, the essential terms of the Settlement, the deadline to submit a claim, and information regarding the Settlement Class Member's rights to opt out or object. *Id.* at Ex. B. Thus, the notice program satisfies the requirements of Rule 23(c)(2)(B). Accordingly, the Notice Program weighs in favor of Final Approval and approval of the work performed by the Settlement Administrator.

VII. CONCLUSION

Class Representatives have negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members significant relief in the form of settlement payments for real damages incurred as a potential result of the Data Incident at issue. The Settlement Agreement is well within the range of reasonable results, and an initial assessment of factors required to be considered on final approval favors approval. For these and the above reasons, Class Representatives respectfully request this Court enter the Order granting final approval of the class action Settlement, certifying the Settlement Class, and approving the form and manner of Notice and the Notice Program. A proposed Order Granting Final Approval of Class Action Settlement is attached as **Exhibit B**.

Dated: April 15, 2026 Respectfully submitted,

/s/ *Leigh S. Montgomery*
Leigh S. Montgomery (*pro hac vice*)
ELLZEY KHERKHER SANFORD MONTGOMERY, LLP
4200 Montrose Blvd., Suite 200
Houston, Texas 77006
Tel: (888) 350-3931
Email: lmontgomery@eksm.com

Jacob U. Ginsburg, Esq.
PA Bar 311908
KIMMEL & SILVERMAN P.C.
30 East Butler Ave.
Ambler, PA 19002
P: (267)468-5374
jginsburg@creditlaw.com

David K. Lietz (*pro hac vice*)
MILBERG PLLC
5335 Wisconsin Ave, NW, Ste. 440
Washington, DC 20015
Telephone: 866-252-0878
DLietz@milberg.com

Counsel for Representative Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

This is to certify that on April 15, 2026, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ *Leigh S. Montgomery*
Leigh S. Montgomery