UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BRUCE GRAYCAR, BRENDA L. CRAWFORD, JERMAINE B. CRAWFORD, and KATRINA BOWENS, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. CAPITAL HEALTH SYSTEMS, INC., Defendant.	Case No. 3:23-CV-23234-MAS-JTQ District Judge Michael A. Shipp Magistrate Judge Justin T. Quinn Motion Day: July 14, 2026

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

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Pursuant to Fed. R. Civ. P. 23, Plaintiffs[1] respectfully submit this Unopposed Motion for Final Approval of Class Action Settlement, supported by a Joint Declaration of Class Counsel ("Joint Decl."), attached as ***Exhibit B***, and the Declaration of Cameron R. Azari of Epiq, regarding implementation and Adequacy of Notice Program ("Admin. Decl."), attached as ***Exhibit C***.

On November 10, 2025, this Court preliminarily approved the Settlement, which provides for substantial Settlement Class Member Benefits, including a non-reversionary, all cash $4,500,000.00 Settlement Fund, from which Settlement Class Members may elect to receive cash payments and Credit Monitoring. The Settlement Fund will be used to pay for (i) Notice and Settlement Administration Costs; (ii) Service Awards approved by the Court; (iii) attorneys' fees and costs approved by the Court; (iv) Settlement benefits for the Settlement Class Members as provided for in the Settlement Benefits Plan, and (v) any expenses, taxes and tax-related expenses related to maintenance of the Escrow Account. S.A., ¶ 45.

Plaintiffs and Class Counsel now move the Court for Final Approval and apply for an award of attorneys' fees and costs.[2] The Settlement satisfies all the criteria for Final Approval and satisfies each of the factors under Rule 23(e)(2) and *Girsh v. Jepson,* 521 F.2d 153 (3d Cir. 1975), and there has been an overwhelmingly positive reaction from the Settlement Class, with no objections and only four opt-outs (out of 500,535 Settlement Class Members). *See* Admin Decl., ¶¶ 11, 20. The response of the Settlement Class affirms the Court's initial conclusion that the Settlement is fair, reasonable, and adequate. *See* Dkt. No. 66. Class Counsel has fully evaluated the strengths, weaknesses, and equities of the Parties' respective positions and believe the

[1] All capitalized terms used herein shall have the same meanings as those defined in Section II of the Settlement Agreement, ("S.A."), attached as ***Exhibit A***.

[2] Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Plaintiffs' Service Awards is being filed contemporaneously with this Motion for Final Approval.

Settlement fairly resolves their respective differences. For all the reasons set forth herein, the Court should grant Final Approval of the Settlement and Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards and enter the forthcoming [Proposed] Final Approval Order and Judgment.

I. INTRODUCTION AND PROCEDURAL HISTORY

A. Factual Background

Defendant Capital Health System, Inc. is a healthcare provider with a number of locations in New Jersey and Pennsylvania, operating two major hospitals and dozens of satellite and specialty care clinics offering medical services to patients. Joint Decl., ¶ 5. The members of the Settlement Class include patients, former patients, guarantors and employees of Defendant who provided it with their personal information as a necessary part of their business relationship. *Id.*, ¶ 6.

From November 11 through 26, 2023, Defendant experienced an IT systems outage following a cyberattack on its network. *Id.*, ¶ 7. In response, Defendant launched an investigation which revealed that a cybercriminal organization may have accessed certain personal information within its computer systems and network in connection with the Data Incident. *Id.* On January 7, 2024, the notorious cybercrime group, LockBit, claimed responsibility for the Data Incident, claiming it stole over ten million files amounting to over seven terabytes of medically confidential data and threatened to publicly release the data on January 9, 2024, unless Defendant paid a ransom. *Id.*

Based on its forensic investigation, Private Information may have been stolen in the Data Incident, including for some persons: names, addresses, Social Security numbers, dates

of birth, email addresses, telephone numbers, clinical information, and/or potentially other medical information provided by Plaintiffs and Class Members to Defendant. *Id.*, ¶ 8.

The first class action case asserting claims arising out of the Data Incident (*Graycar*) was filed on December 19, 2023. Dkt. No. 1. On May 24, 2025, a Consolidated Amended Complaint ("CAC") was filed, alleging claims for negligence, negligence *per se*, breach of implied contract, breach of fiduciary duty, unjust enrichment, declaratory judgment, and violation of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8, *et seq.* Dkt. No. 22. Defendant filed an Answer to the CAC on August 7, 2024. Dkt. No. 25.

Shortly thereafter, the Parties began discussing settlement and scheduled an in-person settlement conference for February 20, 2025, which Defendant requested be postponed until March 31, 2025. Joint Decl., ¶ 11. In advance of the settlement conference, the Parties exchanged informal discovery requests on, among other things, the nature and cause of the Data Incident, the number and geographic location of individuals impacted, the specific type of information accessed, and the injuries and damages alleged by Plaintiffs. *Id.* The Parties also submitted comprehensive settlement conference statements. *Id.*

The settlement conference was conducted in person in Trenton before Magistrate Judge Justin T. Quinn on March 31, 2025, and lasted all day. *Id.*, ¶ 12. Ultimately, the Parties reached an agreement on the material terms of a class-wide settlement. *Id.* The Parties have therefore agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through a trial and likely appeals would require substantial additional risk, uncertainty, discovery, time, and expense for both of the Parties. *Id.*, ¶ 13.

B. Preliminary Approval

On November, 10, 2025, the Court granted Plaintiffs' Preliminary Approval Motion. Dkt. No. 66. Among other things, the Court preliminarily concluded that the Settlement was fair, reasonable, and adequate within the meaning of Rule 23, that the proceedings had afforded counsel the opportunity to assess the claims and defenses in the Action, and that the Settlement was reached following vigorous and intensive arm's-length negotiations. *Id*. The Court also provisionally certified the Settlement Class for settlement purposes. *Id*. Finally, the Court approved the Notice Program, which the Court found to have satisfied "the requirements under Rule 23 of the Federal Rules of Civil Procedure and due process." *Id*. The Final Approval Hearing is scheduled for July 14, 2026. *See* Joint Decl. at ¶ 15.

Thereafter, the Settlement Administrator commenced the Notice Program and began overseeing the Claims Process. *See generally* Admin. Decl. The Notice Program has now been completed in full compliance with the Agreement and the Preliminary Approval Order. *Id.*

II. OVERVIEW OF THE SETTLEMENT

A. Summary of the Settlement Terms

The Settlement Class is defined as "all persons whose Private Information was potentially compromised because of the Data Incident." The Settlement Class excludes: (i) Defendant and its officers and directors; (ii) the Judge and/or Magistrate assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Incident or who pleads nolo contender to any such charge. Settlement Agreement. S.A., ¶69.

Defendant agreed to create a non-reversionary Settlement Fund in the amount of $4,500,000.00 to pay Settlement Class Member Benefits to all Settlement Class Members who file a Valid Claim. *Id.,* ¶¶ 72, 76. When submitting a Claim, Settlement Class Members

may elect either (a) reimbursement for Documented Losses or (b) in lieu of reimbursement for Documented Losses, an Alternative Cash Payment, and (c) Credit Monitoring. *Id.*, ¶ 83.

Settlement Class Members who elect to submit a claim for reimbursement for Documented Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member's name and current address; (2) documentation supporting their claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) whether the Settlement Class Member has been reimbursed for the loss by another source. *Id.*, ¶ 85. Settlement Class Members shall not be reimbursed for Documented Losses if they have already been reimbursed for the same losses by another source, including compensation provided in connection with the identity protection and credit monitoring services offered as part of the notification letter provided by Defendant or otherwise. *Id.*

In lieu of a Claim for reimbursement of Documented Losses, all Settlement Class Members may submit a claim for an Alternative Cash Payment in the estimated amount of $100.00, which will be subject to a *pro rata* increase or decrease, depending on the number of Valid Claims for Alterative Cash Payments. *Id.*, ¶ 87.

Additionally, all Settlement Class Members may also elect to receive Credit Monitoring. *Id.*, ¶ 30. This benefit allows Settlement Class Members to enroll in three years of one-bureau credit monitoring that includes: (i) real time monitoring of the Settlement Class Member's credit file at one bureau; (ii) dark web scanning with immediate notification of potential misuse; (iii) comprehensive public record monitoring; (iv) identity theft insurance with no deductible; and (v) access to fraud resolution agents to help investigate and resolves instances of theft. *Id.*, ¶¶ 30, 87(c). If a Settlement Class Member does not submit a Valid Claim or opt-

out of the Settlement, the Settlement Class Member will release his or her claims against Defendants without receiving a Settlement Class Member Benefit. *Id.*, ¶ 83. Settlement Administration Costs; Taxes and Tax-Related Expenses; Service Awards as approved by the Court; and Fee Award and Costs as approved by the Court will also be paid out of the Settlement Fund. *Id.*, ¶ 45.

B. Scope of the Release

Plaintiffs and Settlement Class Members who do not opt-out of the settlement agree to release Defendant and its Related Entities from all claims arising out of or relating to the Incident. *Id.*, ¶¶ 136-139.

C. Attorneys' Fees and Costs

Pursuant to the Agreement and consistent with the Notice to the Settlement Class, Plaintiffs have requested an attorneys' fee award of one-third of the Settlement Fund ($1,500,000.00), and expenses not to exceed $50,000.00. Plaintiffs' request and authority supporting its reasonableness is detailed in the Unopposed Application for Attorneys' Fees, Costs and Service Awards, filed contemporaneously. The Notices clearly advised the Settlement Class of the amount of attorneys' fees Class Counsel intended to request at the Final Approval Hearing, and currently no Settlement Class Member has objected to the amount requested. *See* Admin Decl., ¶ 20.

III. NOTICE PROGRAM, CLAIMS, OPT-OUTS AND OJECTIONS

The Settlement Administrator, Epiq, sent the CAFA Notices required by 28 U.S.C. § 1715. *Id.*, ¶ 8. On November 21, 2025, Epiq received from Defendant's Counsel four data files containing 566,399 records for the identified Settlement Class Members, which include names and postal addresses. *Id.*, ¶ 11. Epiq deduplicated and rolled-up the records and loaded the

unique, identified Settlement Class Member records into its database. *Id.* These efforts resulted in 500,535 unique, identified Settlement Class Member records. *Id.* A Postcard Notice was sent via USPS to identified Settlement Class Members with an associated physical address. *Id.*

Prior to sending the Postcard Notice, mailing addresses were checked against the National Change of Address (NCOA) database maintained by the USPS to ensure the Settlement Class Member address information is up-to-date and accurately formatted for mailing. *Id.*, ¶13. In addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code, and were verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. *Id.* This address updating process is standard for the industry and for the majority of promotional mailings that occur today. *Id.*

On January 6, 2026, Epiq commenced sending 500,535 Postcard Notices to identified Settlement Class Members with an associated physical address. *Id.*, ¶ 12. The Postcard Notice was sent via USPS first class mail. *Id.* In addition, the Postcard Notice also directed the recipients to the Settlement Website where they could access the Long Form Notice and additional information about the Settlement. *Id.* The Postcard Notice included a QR code that linked directly to the Claim Form on the Settlement Website. *Id.*

The return address on the Postcard Notices is a post office box that Epiq maintains for this Settlement. *Id.*, ¶ 14. The USPS automatically forwarded Postcard Notices with an available forwarding address order that has not expired (Postal Forwards). *Id.* Postcard Notices returned as undeliverable were re-mailed to any new address available through USPS information, (for example, to the address provided by the USPS on returned mail pieces for which the automatic forwarding order has expired, but is still within the time period in which the USPS returns the piece with the address indicated), and to better addresses that may be found using a third-party

lookup service. *Id.* Upon successfully locating better addresses, Postcard Notices were promptly remailed. *Id.* As of March 17, 2026, Epiq has remailed 719 Postcard Notices. *Id.*

Additionally, a Long Form Notice and Claim Form ("Claim Package") were mailed to all persons who requested one via the toll-free telephone number or other means. *Id.*, ¶ 15. As of March 17, 2026, Epiq has mailed 911 Claim Packages as a result of such requests. *Id.*

As of March 17,2026, a Postcard Notice was delivered to 499,098 of the 500,535 unique, identified Settlement Class Members. *Id.*, ¶ 16. This means the individual notice efforts reached approximately 99% of the identified Settlement Class. *Id.*

On January 5, 2026, Epiq established a dedicated website for the Settlement with an easy to remember domain name (www.CapitalHealthDataBreachSettlement.com). *Id.*, ¶ 17. Relevant documents are posted on the Settlement Website, including the Long Form Notice, Settlement Agreement, Preliminary Approval Order, Claim Form, and other case-related documents. *Id.* In addition, the Settlement Website includes relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Settlement Class Members can opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and how to obtain other case-related information. *Id.* Settlement Class Members are also able to file a Claim Form on the Settlement Website. *Id.* The Settlement Website address was prominently displayed in all notice documents. *Id.* As of March 17, 2026, there have been 38,216 unique visitor sessions to the Settlement Website, and 144,508 web pages have been presented. *Id.*

On January 5, 2026, Epiq established a toll-free telephone number (1-888-873-4996) for the Settlement. *Id.*, ¶ 18. Callers are able to hear an introductory message and have the option to learn more about the Settlement in the form of recorded answers to FAQs, and to request that a Claim

Package be mailed to them. *Id.* This automated telephone system is available 24 hours per day, 7 days per week. *Id.* The toll-free telephone number was prominently displayed in all notice documents. *Id.* As of March 17, 2026, there have been 2,913 calls to the toll-free telephone number representing 6,614 minutes of use. *Id.*

The deadline for Settlement Class Members to file a Claim Form is April 6, 2026. *Id.*, ¶ 22. As of March 17, 2026, Epiq has received 20,539 Claim Forms (20,106 online and 433 paper). *Id.* Since the Claim Form Deadline has not yet passed, these numbers are preliminary. *Id.* As standard practice, Epiq is in the process of conducting a complete quality control review of Claim Forms received. *Id.* There is a likelihood that after detailed review, the total number of Claim Forms received will change due to duplicate and denied Claim Forms. *Id.*

The deadline to submit a request for opt-out from the Settlement was March 9, 2026. Id., ¶ 20. As of March 17, 206, Epiq has received four opt-out requests. *Id*. The deadline to submit an objection to the Settlement is April 3, 2026. *Id*. Epiq is aware of no objections to the Settlement.

Epiq will provide a supplemental declaration detailing the number of Valid Claims, average payout to Settlement Class Members, and the number of opt-outs and objections by before the Final Approval Hearing.

IV. ARGUMENT

A. The Settlement Is Fair, Reasonable, and Adequate

The Third Circuit has a "strong judicial policy in favor of class action settlement." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010). It has repeatedly stressed that "we favor the parties reaching an amicable agreement and avoiding protracted litigation. We do not wish to intrude overly on the parties' hard-fought bargain." *In re: Google Inc. Cookie Placement*

Consumer Priv. Litig., 934 F.3d 316, 326 (3d Cir. 2019) (internal citation omitted). "[T]he settlement of class actions is preferred to protracted litigation: 'there is an overriding public interest in settling class action litigation, and it should therefore be encouraged.'" *Murphy v. Le Sportsac, Inc.*, 2023 WL 375903, at *9 (W.D. Pa. Jan. 24, 2023) (quoting *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004)).

For purposes of determining whether a proposed class action settlement is fair, reasonable, and adequate, Rule 23(e)(2) directs the Court to consider whether "the class representatives and class counsel have adequately represented the class"; "the proposal was negotiated at arm's length"; "the relief provided for the class is adequate" taking into account certain relevant factors; and "the proposal treats class members equitably relative to each other." *See id.*

The Advisory Committee Notes make clear that these factors do not displace the "lists of factors" courts have traditionally applied to assess proposed class settlements. Instead, the enumerated factors under Rule 23(e)(2) "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) (advisory committee's note to 2018 amendment).

Courts in the Third Circuit also evaluate whether a settlement is "fair, reasonable, and adequate" using the nine *Girsh* approval factors:

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

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975); *see also Udeen v. Subaru of Am., Inc.*, 2019 WL 4894568, at *3 (D.N.J. Oct. 4, 2019*)* (applying *Girsh* factors). Application of the Rule 23(e)(2) and traditional factors clearly demonstrates that the settlement is fair, reasonable, and adequate, and in the best interests of the class.

B. The Settlement Satisfies the Rule 23(e)(2) and the *Girsh* Factors

1. The Class Representatives and Class Counsel Have Adequately Represented the Class and the Settlement Is the Product of Arm's-Length Negotiations Among Experienced Counsel

Under Rule 23(e)(2)(A) and (B), the Court considers whether the class representatives and class counsel adequately represented the class and whether the settlement proposal was negotiated at arm's length. *See In re Payment Card Interchange Fee*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) (quoting Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment) ("Paragraphs (A) and (B) constitute the 'procedural' analysis factors, and examine 'the conduct of the litigation and of the negotiations leading up to the proposed settlement.'"). These factors overlap with the third *Girsh* factor: "the stage of the proceedings and the amount of discovery completed." *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 537 (citation omitted) ("The third Girsh factor captures the degree of case development that class counsel [had] accomplished prior to settlement.").

Plaintiffs and their counsel have adequately represented the Settlement Class as required by Rule 23(e)(2)(A) by diligently and zealously prosecuting this Action on behalf of the Settlement Class, including, *inter alia,* by drafting detailed complaints, engaging in extensive pre-mediation document discovery of Defendants, and engaging in extensive settlement negotiations, including thorough pre-mediation briefing and extensive argument in connection with the mediation. Joint Decl., ¶ 23. *See In re Vivopharma Inc. Sec. Litig.*,

2016 WL 312108, at *11 (E.D. Pa. Jan. 25, 2016) (approving settlement after arm's-length negotiation overseen by Phillips ADR Enterprises after the parties "had fully briefed the main issues in the case and conducted merits-based . . . discovery"). The collective tenacity of Plaintiffs and Class Counsel resulted in a very favorable settlement with a substantial financial benefit to the Settlement Class. Moreover, the Third Circuit has recognized that prompt resolution benefits class members and is another factor supporting approval. *See, e.g.*, *Gotthelf v. Toyota Motor Sales, U.S.A., Inc*., 525 F. App'x 94, 102 n.12 (3d Cir. 2013) ("avoiding expensive and time-consuming discovery" favors approval) (cleaned up).

Procedural fairness can also be presumed when the settlement was negotiated by experienced and informed counsel assisted by a respected mediator. *See, e.g.*, *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 435 (3d Cir. 2016), *as amended* (May 2, 2016). "The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties." *Shapiro v. All. MMA, Inc.*, 2018 WL 3158812, at *2 (D.N.J. June 28, 2018) (citation omitted).

This presumption should apply here given that highly experienced counsel on both sides vigorously negotiated the Settlement over the course of several months after a mediation session with an experienced, professional mediator. *See* Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment (advising that "the involvement of a neutral . . . mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."); *Demmick v. Cellc' P'ship*, 2015 WL 13643682, at *6 (D.N.J. May 1, 2015) ("[T]he use of a mediator with respect to the present settlement is persuasive evidence that the negotiations were hard-fought, arms-length affairs.").

2. The Relief Under the Settlement Is Adequate

a. The Settlement Provides Substantial Benefits to the Settlement Class

Under Rule 23(e)(2)(C), the Court must determine whether the class-wide relief is adequate, taking into account: "the costs, risks, and delay of trial and appeal"; "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims"; "the terms of any proposed award of attorney's fees, including timing of payment"; and "any agreement required to be identified under Rule 23(e)(3)."[3] Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv).

Although Plaintiffs believe the claims asserted in this Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the Settlement Class uncertain. Joint Decl., ¶ 35. The Settlement's fairness is underscored by consideration of the obstacles the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the Action. *Id.*, ¶ 36. Without any of the risks involved with further litigation, the Settlement Agreement provides Settlement Class Members with the opportunity to claim significant settlement benefits. *Id.*, ¶ 37. Moreover, there are no grounds to doubt the fairness of the Settlement or other obvious deficiencies, such as unduly preferential treatment of Plaintiffs or excessive attorney compensation. *Id.*, ¶ 38. Plaintiffs, like all Settlement Class Members, will receive benefits consistent with the Settlement Agreement. *Id.* The substantial benefits afforded to Settlement Class Members here are excellent. *Id.*

Further, continued litigation would be lengthy and expensive. *Id.*, ¶ 39. Data breach litigation is often difficult and complex. *Id.* A settlement is beneficial to all parties, including

[3] There are no side agreements to disclose under Rule 23(e)(3).

the Court. *See Woodward v. NOR-AM Chem. Co.*, 1996 WL 1063670, at *21 (S.D. Ala. May 23, 1996) ("Complex litigation . . . ' can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'") (quoting *In re US. Oil & Gas Litig.,* 967 F.2d 489,493 (11th Cir. 1992)).

The adequacy of the relief also overlaps with the second, seventh, eighth, and ninth *Girsh* factors. The second *Girsh* factor considers the reaction of the class to the settlement. As noted above, the fact that the Parties have received no objections from Settlement Class Members, and only four of the approximately 500,000 Settlement Class Members requested to opt-out, shows that the Class favors the Settlement. The seventh *Girsh* factor—Defendant's ability to withstand a greater judgment—is neutral, at most, in this case, since this factor only matters "when the defendant's professed inability to pay is used to justify the amount of the settlement." *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d at 440. This is not at issue here, as the settlement relief is excellent and is in the form of a non-reversionary common fund. The eighth and ninth *Girsh* factors weigh in favor of approval because the Settlement is in the range of reasonableness in light of the best possible recovery and the attendant risks of continued litigation. *Id.* (quoting *Warfarin*, 391 F.3d at 538) ("In evaluating the eighth and ninth *Girsh* factors, we ask 'whether the settlement represents a good value for a weak case or a poor value for a strong case.'").

b. The Settlement Provides Immediate Benefits Without the Costs, Risks, and Delay of Trial and Appeal

The relief provided is also adequate considering the costs, risks, and delay of trial and appeal.[4] Fed. R. Civ. P. 23(e)(2)(C)(i). The Settlement benefits are particularly valuable because they come sooner, rather than later. Settlement Class Members do not need to wait years to receive the benefits of the Settlement. Here, the risks and delay of trial and appeal, "including (i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial," support approval of the Settlement. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 36. This is a complex case, which would have taken years and significant expense to litigate to a final judgment. Joint Decl., ¶ 36. Further, Defendants disputed Plaintiffs' claims and would have vigorously defended this action. *Id.* By virtue of their efforts and determined negotiation, Plaintiffs and Class Counsel achieved a result that is perhaps better than they could have achieved through continued litigation. *Id.*

c. The Settlement Effectively Distributes Relief to the Class

Additionally, the Settlement provides an effective means of distributing relief to the Class. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). While a Claim Form and documentary evidence is required for Settlement Class Members to seek reimbursement of Documented Losses, this is both standard and necessary to validate Claims, and Class Counsel undertook significant effort to ensure that the Claims Process is as simple and straightforward as possible. Joint Decl., ¶ 37. *See* S.A., Exhibit 3.

d. The Proposed Attorneys' Fees Award and Class Representative Service Awards Are Reasonable

"[T]he terms of [the] proposed award of attorney's fees, including timing of payment" are fair and reasonable. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). The Application for Attorneys' Fees,

[4] This factor overlaps with the first, fourth, fifth, and sixth *Girsh* factors, which are: "the complexity, expense and likely duration of the litigation"; "the risks of establishing liability"; "the risks of establishing damages"; and "the risks of maintaining the class action through the trial."

Costs, and Service Awards was filed concurrently herewith in accordance with the schedule set forth in the Preliminary Approval Order, and Class Counsel and the Settlement Administrator have received no objections to date. Moreover, the Fee Award and Costs will be paid only after the Settlement has become final, and approval of the Settlement is not conditioned upon an award of any attorneys' fees, costs, or Service Awards.[5]

3. The Settlement Treats All Class Members Equitably

The Settlement also treats Settlement Class Members equitably relative to each other, as required by Rule 23(e)(2)(D). Settlement Class Members were provided the opportunity to file claims for reimbursement of Documented Losses or an Alternative Cash Payment, and also provides a Credit Monitoring benefit to Settlement Class Members who elect that benefit, which includes three years of one-bureau credit monitoring. In sum, the Settlement ensures that all Settlement Class Members will be treated equitably relative to each other.

C. The Notice Program Is Constitutionally Sound and Has Been Fully Implemented

To protect the rights of absent Settlement Class Members, the Court must ensure everyone who would be bound by a class action settlement is provided the best practicable notice. *See* Fed. R. Civ. P. 23(e)(1)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). The best practicable notice is that which is "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." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). For Rule 23(b)(3) classes, "the court must direct to class members the best notice that is practicable under

[5] Plaintiffs incorporate by reference all arguments in the Application for Attorneys' Fees, Costs, and Service Awards filed contemporaneously with this Motion.

the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The Rule provides, "notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." *Id*.

Here, as the Court held in granting Preliminary Approval, "the proposed form of Notice to Settlement Class Members of the proposed Settlement between Plaintiffs and Defendant ("Notice"), the proposed summary form of notice ("Postcard Notice"), and the proposed methods of dissemination thereof, as set forth herein, satisfy the requirements under Rule 23 of the Federal Rules of Civil Procedure and due process, and therefore are approved." Dkt. No. 66, ¶ 7. Notice was accomplished by direct mail notice. *See id.*; *see, e.g., Goodman v. UBS Fin. Servs. Inc.*, 2023 WL 8519093, at *1 (D.N.J. Dec. 7, 2023) (finding direct mail notice supplemented by posting of the notice online to be the best notice practicable); *Udeen,* 2019 WL 4894568, at *6-7 (finding direct mail notice of postcards the "best notice that is practicable" in an automotive defect case).

The Notice Program represents the best notice practicable. It was negotiated, reviewed, and analyzed to ensure it meets the requisite due process requirements. The Claim Form and Postcard Notice are clear and concise, and directly apprised Settlement Class Members of all the information they needed to know to make a claim, opt out, or object. Fed. R. Civ. P. 23(c)(2)(B). The Notice Program is consistent with, and exceeds, other similar court-approved notice plans, the requirements of Fed. Civ. P. 23(c)(2)(B), and the Federal Judicial Center ("FJC") guidelines for adequate notice. The Settlement Administrator confirms that the Notice Program reached approximately 99% of Settlement Class Members. Admin. Decl., ¶ 16. This is an outstanding result.[6]

[6] *See* FJC, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, at 3 (2010), www.fjc.gov/sites/default/files/2012/NotCheck.pdf ("A high percentage [of the class] (e.g., between 70-95%) can often reasonably be reached by a notice campaign."); *see also In re*

The Notice Program provided the best notice practicable under the circumstances, giving Settlement Class Members a full and fair opportunity to consider the terms of the Settlement and make a fully informed decision as to whether to participate, object, or opt-out. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (noting that individual notice is preferred where addresses of class members can be ascertained through reasonable effort). The Notice fulfilled the requirements of due process and those under Rule 23(c)(2).

D. The Court Should Certify the Settlement Class

Finally, the Settlement Class should be certified for purposes of final approval. The Court preliminarily certified the Settlement Class pursuant to Rules 23, and nothing has changed to alter the propriety of that conclusion. The Rule 23 requirements are satisfied here.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) grant Plaintiffs' Motion for Final Approval; (2) find that the Settlement is fair, reasonable, and adequate, and satisfies the requirements of Fed. R. Civ. P. 23; (3) certify the Settlement Class for settlement purposes only; (4) grant final appointment of Class Counsel, the Class Representatives, and the Settlement Administrator; (5) find that the Notice was carried out in accordance with the approved Notice Program set forth in the Preliminary Approval Order, satisfies due process, and was the best notice practicable under the circumstances; (6) authorize the Settlement benefits to be distributed in accordance with the terms and conditions of the Settlement Agreement; (7) grant Plaintiffs' Application for Attorneys' Fees, Costs and Service Awards; and (7) enter a Final Approval Order and Judgment in the form to be submitted by the Parties.

Restasis Antitrust Litig., 527 F. Supp. 3d 269, 273 (E.D.N.Y. 2021) (citation omitted) (observing that "a notice plan that reaches between 70 and 95 percent of the class is reasonable," and endorsing a notice plan with 80% expected reach).

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Respectfully Submitted,

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