

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GARY ORTEGA, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

WATERFORD COUNTRY SCHOOL, INC.,

Defendant.

Case No. 3:24-cv-01334-MPS

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

This Class Action arises out of a cyberattack and data breach (the “Data Incident”) perpetrated against Defendant Waterford Country School, Inc. (“Defendant”), a Connecticut non-profit corporation that operates a school for children with special education needs and families at risk. The Data Incident occurred between September 17, 2023 and October 5, 2023, and on August 8, 2024 Defendant disclosed to Plaintiff and about 7,275 Class Members that their highly sensitive personally identifiable information (“PII”) and protected health information (“PHI”) including, without limitation: Social Security numbers, dates of birth, LINK/Family ID numbers, medical information and health insurance information was compromised. As a result of the Data Breach, Plaintiff filed a Class Action Complaint on August 20, 2024, which asserts negligence, breach of implied contract and breach of the implied covenant of good faith and fair dealing against Defendant. Defendant maintains that it is not liable for the claims asserted.

Since the inception of this case, Plaintiff and Defendant (collectively, the “Parties”), by and through their counsel, have engaged in arm’s length negotiations to finalize this agreement in principle on December 13, 2024, which was finally executed in the attached Settlement Agreement on January 15, 2025.¹ See Declaration of Laura Van Note, Esq. in Support of Plaintiff’s Motion for Preliminary Approval (“Van Note” Decl.) ¶ 8.

The Settlement Agreement provides timely and significant benefits to Settlement Class Members whose information was exposed as a result of the Data Incident and was achieved after hard-fought extensive negotiations. Notice of this Settlement may be issued as the Court should find that the Settlement is procedurally and substantively fair under Rule 23(e) of the Federal Rules of Civil Procedure and that the proposed class may be certified for settlement purposes.

¹ Please find a true and accurate copy the fully executed Settlement Agreement attached to the Van Note Decl. as **Exhibit A**.

Accordingly, pursuant to Rule 23, Plaintiff asks that the Court enter an Order that:

- (a) Preliminarily approves the Settlement, subject to final approval;
- (b) Conditionally certifies the Settlement Class with respect to the claims against Defendant;
- (c) Appoints Plaintiff as a Class Representative for the Settlement Class;
- (d) Appoints Plaintiff's Counsel in the Action, Laura Van Note from Cole & Van Note ("CVN") as Class Counsel for the Settlement Class;
- (e) Appoints Apex Class Action Administration. ("APEX") as the Settlement Administrator;
- (f) Approves the proposed Claims Form, Notice Plan and proposed forms of Class Notice (attached as Exhibits 1-4 to the Settlement Agreement);
- (g) Sets a schedule leading to the Court's evaluation of final approval the Settlement, including: (i) the date, time and place for a hearing to consider the fairness, reasonableness, and adequacy of the Settlement (the "Fairness Hearing"); (ii) the deadline for Settlement Class Members to exclude themselves (i.e., opt out) from the Settlement; (iii) the deadline for Class Counsel to submit their Motion for Final Approval, petition for attorneys' fees and expenses and application for an Incentive Award; and (iv) the deadline for Settlement Class Members to object to the Settlement and any of the related petitions; and
- (h) Stays all proceedings in the Action except those relating to approval of the Settlement.

See the [Proposed] Preliminary Approval Order, filed herewith.

II. SUMMARY OF RELEVANT FACTUAL BACKGROUND

A. Summary of Investigation and Information Exchanged

Prior to filing suit, proposed Class Counsel conducted an extensive investigation into the Data Incident. Van Note Decl. ¶ 6. First, Class Counsel had to understand Defendant's business and the way in which individuals may have been impacted by exfiltration of their information *vis-à-vis* the Data Incident. *Id.* Further, Class Counsel investigated Defendant's response to the Data Incident and whether it was sufficient to understand Plaintiff's claims, researched the duties applicable to a company like Defendant, etc. After determining litigation of this matter was expected to be protracted, expensive, and draining of both sides' resources. *Id.* at 7. The Parties reached an agreement in principle and executed the Settlement Agreement on January 15, 2025. *Id.* at 8.

B. Summary of Class Counsel's Experience and Prior Cases

Class Counsel has extensive experience prosecuting class actions, including those involving data breaches. Van Note Decl. ¶¶ 21-26. Counsel for Defendant is also experienced in defending class actions. Thus, this enabled the Parties to negotiate a fair, reasonable and adequate settlement. *Id.* at ¶ 3.

C. Summary of Risks, Expenses and Complexity of Further Litigation

The risk, expense and complexity of further litigation is significant. Defendant would likely move for summary judgment. Even if Plaintiff defeated Defendant's Motion, Defendant would certainly oppose class certification and, if it prevailed, Class Members would receive nothing, not to mention that a standard might be formed that could hurt countless future victims of cybercrime. If the case were to proceed without settlement, there would be considerable expenses such as those for retention of experts to develop numerous factual and legal arguments regarding liability,

damages and injunctive relief, without any guarantee of relief for the Class.

D. Consideration Received in Exchange for Released Claims

The consideration received in exchange for the release of Settlement Class Member claims is appropriate given the strength and weaknesses of Plaintiff's claims and the risks of continued litigation. First, the release applies only to claims related to the Data Incident. Moreover, the relief made available is significant given the risks Plaintiff and the Class faces.

Under the terms of the Settlement Agreement, Defendant has agreed to pay \$400,000.00 to a non-reversionary fund (the "Settlement Fund") to resolve all claims brought in this Action. Settlement Agreement ("S.A.") § II, ¶ 59. The Settlement Fund shall be used to pay for (i) all Administrative Costs; (ii) any Taxes; (iii) any court-approved Incentive Payment and (iv) any court-approved Class Counsel Fees and Costs. S.A. § III, ¶ 64. Class Members will be able to submit for a Settlement payment of up to \$5,000 reimbursement in the form of a Documented Loss Payment. S.A. § V, ¶ 68(a). Further, Class Members, who make a valid claim, will receive a *pro rata* share of the remaining Settlement Fund, once the above payments are distributed. S.A. § V, ¶ 68(b).

There will be no reversion of any kind to Defendant, and any left-over money in the Settlement Fund, if there is any, will be sent to a *cy pres* beneficiary that will be agreed to by the Parties and approved by the Court. S.A. § XII, ¶ 105. Finally, Defendant has agreed to equitable relief by undertaking substantial remedial measures regarding its data security process and procedures. S.A. § V, ¶ 70.

III. ARGUMENT

This Settlement Agreement satisfies all of the relevant considerations for approval. At the preliminary approval stage, courts evaluate whether a proposed settlement is likely to be approved

as fair, reasonable and adequate, and whether the Settlement Class is likely to be certified for settlement purposes at the final approval stage. FED. R. CIV. P. 23(e)(1). FED. R. CIV. P. 23(e)(2)(A) and (B) focus on procedural fairness, i.e., the “conduct of the litigation and of the negotiations leading up to the proposed settlement.” FRCP Rule 23, Advisory Committee’s Note, 2018 Amendment.

FRCP Rules 23(e)(2)(C) and (D) focus on the substantive fairness of the settlement, the “relief that the settlement is expected to provide to class members” compared with “the cost and risk involved in pursuing a litigated outcome.” *Id.* Rule 23(e) requires courts to ensure that a class settlement is “fair, reasonable, and adequate” in light of the following factors:

- (A) the class representative(s) and Plaintiff’s Counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, considering:
 - 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 the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *Moses v. New York Times Co.*, 79 F.4th 235, 242 (2d Cir. 2023).

Preliminary approval of the Settlement is warranted here. First, the Court will likely be able to finally approve the proposed Settlement—calling for substantial monetary relief and business practice changes—as fundamentally fair, reasonable, and adequate. Second, the Court will likely be able to certify the Settlement Class at the final approval stage pursuant to Rules 23(a)

and (b)(3). Third, the proposed Notice Plan satisfies the requirements of Rule 23(c)(2). Accordingly, the Court should grant Plaintiff's motion for preliminary approval of the class action settlement and direct notice to the Class.

A. The Settlement Agreement is Procedurally Fair

1. *Plaintiff and Class Counsel Adequately Represent Class Interests*

The Second Circuit recognizes a “strong judicial policy in favor of settlements, particularly in the class action context.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005); accord Newberg & Rubenstein on Class Actions § 13:44 (6th ed. 2022) (“Settlement is generally favored because it represents a compromise reached between the parties to the suit and relieves them, as well as the judicial system, of the costs and burdens of further litigation.”). Procedural fairness is satisfied, in part, because “1) plaintiff’s interests are not antagonistic to the interest of other members of the class and 2) plaintiff’s attorneys are qualified, experienced and able to conduct the litigation.” *Cordes & Co. Fin Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007). Plaintiff was a consumer whose personal information was compromised as a result of the Data Incident. Defendant’s alleged failure to implement reasonable data security measures impacted not just Plaintiff’s privacy, but the privacy of all Class Members. Van Note Decl. ¶ 4. As a result, Plaintiff and the Class seek the same relief from the same injury. *Id.* See also *Reid v. Donelan*, 297 F.R.D. 185, 191 (D. Mass. 2014) (holding plaintiff was an adequate class representative despite certain factual differences between plaintiff and class members because each sought the same relief).

Further, Class Counsel has prosecuted this Action from its inception and negotiated the proposed Settlement. Van Note Decl. ¶¶ 4-8. As reflected in Class Counsel’s Firm Resume², CVN

² See Class Counsel’s Firm Resume attached to Van Note Decl. as **Exhibit B**.

has decades of experience leading some of the most complex class actions, including data breach class actions on behalf of consumers. *Id.* at ¶¶ 21-26. Thus, Class Counsel’s extensive class action experience, combined with their extensive efforts in this litigation, provide direct evidence in favor of procedural fairness.

2. *The Settlement Agreement is the Product of Arm’s Length Negotiations*

Courts may presume that a proposed settlement is procedurally fair when it is the result of arm’s length negotiations. *In re Synchrony Fin. Sec. Litig.*, No. 18-cv-01818, 2023 WL 4992933, at *3 (D. Conn. Aug. 4, 2023). When applying the Rule 23(e)(2) factors to whether an Agreement is procedurally fair—courts determine “whether the negotiating process by which the settlement was reached shows that the compromise is the result of arm’s-length negotiations.” *Id.* That evaluation requires consideration of the nine “*Grinnell* factors” set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), which overlap with the Rule 23(e)(2). *See, e.g., Moses*, 79 F.4th at 243 (“Rule 23(e)(2) does not displace our traditional *Grinnell* factors.”).

Prior to negotiating the Settlement, Plaintiff and Class Counsel were well-informed about the strengths and weaknesses of claims made against Defendant. Van Note Decl. ¶¶ 6-7. Further, skilled and experienced counsel engaged in adversarial negotiations for each of the Parties. *Id.* at ¶ 8. Further, Defendant is represented by counsel with extensive experience in litigating technology-related actions. *Id.* at ¶ 3. Settlement negotiations took several weeks that resulted in a settlement in principle that was finalized on January 15, 2025. *Id.* at ¶¶ 8-9. When viewed in their totality, the circumstances fully support the conclusion that the Settlement Agreement is procedurally fair.

B. The Settlement Agreement is Substantively Fair

In the Second Circuit, the substantive fairness of a settlement is determined by the Court considering the nine “*Grinnell* factor” balancing test:

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

Detroit v. Grinnell Corp, 495 F.2d 448, 463 (2d Cir. 1974) (“*Grinnell*”). The *Grinnell* factors overlap with guidance provided by amended FRCP Rule 23(e)(2)(C), which focuses on whether, “the relief provided for the class is adequate.” FRCP Rule 23(e)(2)(C). The Court is also required to confirm that the Settlement “treats class members equitably relative to each other.” FRCP Rule 23(e)(2)(D). These factors are likely to weigh in favor of the Settlement’s approval.

1. *The Grinnell Factors and FRCP Rule 23 Support Approval of the Settlement Agreement*

i. The Costs, Risks and Delay of Trial and Appeal Favor Settlement

To determine whether a settlement provides adequate relief to the class, the Court must evaluate “the costs, risks, and delay of trial and appeal,” FRCP Rule 23(e)(2)(C)(i), which involves considering whether continued litigation of this case would be “complex, expensive, and lengthy.” *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 312 (S.D.N.Y. 2020); see also Fed. R. Civ. P. 23(e)(2)(C)(i) (requiring courts to consider “the costs, risks, and delay of trial and appeal”). The likelihood of success on the merits necessarily implicates other *Grinnell* factors as well, including the risks of establishing liability, the risks of establishing damages, and the risks

of maintaining the class through the trial. Therefore, it is appropriate to address Rule 23(e)(2)(C)(i) in conjunction with these *Grinnell* factors.

There are several risks in this case that could pose obstacles to achieving a favorable outcome for Plaintiff and the Settlement Class as litigation inherently involves risk. *See In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997). If not for the Settlement, Plaintiff would immediately be faced with the potential for an adverse ruling on Defendant's motion for Summary Judgement or Defendant's opposition to Class Certification.

While Plaintiff believes he would prevail, there are risks involved in data breach litigation—a relatively new area of law—including proving standing and causation. *See In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 260 (D.N.H. 2007) (noting that, because the case “involved a greater risk of non-recovery” due to “still-developing law,” this factor weighed in favor of approval); *see also In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts.”). These are just a few of the substantive hurdles to prevailing on the merits.

Plaintiff likely would incur significant costs to prove his case through fact and expert discovery. *In re Yahoo! Inc. Customer Data Security Breach Litig.*, No. 16-MD-02752, 2020 WL 4212811, at *9 (N.D. Cal. July 22, 2020) (listing “more discovery” as one of the significant expenses for continuing a data breach litigation); *see also In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 212 (D. ME. 2003) (explaining that, absent settlement, “[m]ore experts will have to be hired at great expense”).

Given the alleged misconduct, this Action would necessarily involve a battle of experts with respect to damages and other issues, likely escalating the litigation costs. The costs and risks

would only further increase as the Parties contest class certification and motions in limine and proceed through to trial and any related appeals. In this Action, achieving total success on the merits and obtaining the full measure of Plaintiff's asserted damages is by no means guaranteed. The proposed Settlement, if approved, exchanges the extensive costs and a lengthy litigation timeline with prompt financial recovery and certainty for the Class, injunctive relief, finality as to the Parties, and the preservation of Court's time and resources that can be redirected elsewhere. The Settlement—valued at \$400,000—is an appropriate balance against the strength of Plaintiff's case. *See Roberts v. TJX Companies, Inc.*, No. 13-cv13142, 2016 WL 8677312 at *8 (D. Mass. Sept. 30, 2016) (finding settlement more favorable where “claimants would be able to receive funds more immediately than if the case went to trial”). Because of the substantial costs, risks and delay in recovery associated with continued litigation, the first, fourth, fifth and sixth *Grinnell* factors and Rule 23(e)(2)(C)(i) support approval of the Settlement.

ii. The Remaining *Grinnell* Factors Support Approval of Settlement

Analyzing these factors “does not involve the use of a mathematical equation yielding a particularized sum” and instead “recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Frank v. Eastman Kodak Co.*, 228 F.R.D. at 186 (W.D.N.Y. 2005) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). Given the present posture of the Action, it is too early to evaluate the second *Grinnell* factor concerning the reaction of the proposed Settlement Class. If the Court grants preliminary approval of this Settlement, Class Notice will be issued to Settlement Class Members, advising them of their opportunities to voice their reaction to the Settlement. Notably, Plaintiff, whose interests are aligned with the Settlement Class, supports the Settlement.

As discussed above, the Settlement’s relief is substantial. And, even if Plaintiff litigates and prevails on all aspects of his claims and damages theories—there remains an uncertain prospect. Indeed, even if Plaintiff cleared the numerous hurdles leading up to trial (at the cost of years of more litigation and, most likely, hundreds of thousands of dollars), a larger recovery is not certain. See *Gilliam v. Addicts Rehab. Ctr. Fund*, No. 05-3452, 2008 WL 782596, *5 (S.D.N.Y. Mar. 24, 2008) (settlement was robust and immediate compared to some “speculative payment of a hypothetically larger amount years down the road”).

Courts recognize that in the settlement approval context, a claim’s hypothetical value must be discounted by risks and practical realities. Thus, the Second Circuit has noted that courts may approve settlements even where the recovery is a fraction of the amount recoverable at trial. See, e.g., *Grinnell*, 495 F.2d at 455 n.2 (“There is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth of a single percent of the potential recovery.”); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 428 (S.D.N.Y. 2001) (same); accord, e.g., *In re Packaged Ice Antitrust Litig.*, 322 F.R.D. 276, 294-95 (E.D. Mich. 2017) (approving settlement of 2% of total possible damages); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving settlement of 3% to 7% of total damages).

Here, Plaintiff’s counsel weighed the risks against the hypothetical value of the claims and, ultimately, secured a substantial monetary award of \$400,000.00. Van Note Decl., ¶¶ 7-9. Because the Settlement Agreement provides this immediate and significant relief without the attendant risks of continued litigation, *Grinnell* factors eight and nine weigh in favor of approval.

The fact that Defendant might be able to withstand a greater judgment does not change the analysis. See *Grinnell*, 495 F.2d at 463 (factor seven). A defendant need not “empty its coffers

before a settlement can be found adequate.” *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012); see also *In re Sinus Buster Products Consumer Litig.*, No. 12-cv-02429, 2014 WL 5819921, at *11 (E.D.N.Y. Nov. 10, 2014) (“[A]bility to pay is much less important than the other Grinnell factors, especially where the other factors weigh in favor of approving the settlement.”); *Viafara v. MCIZ Corp.*, No. 12-cv-07452, 2014 WL 1777438, at *7 (S.D.N.Y. May 1, 2014) (similar). This factor is neutral.

Therefore, as discussed above, Plaintiff faces numerous risks to prevailing, resulting in a steep discount of the present value of the case. In light of these risks, the Settlement is within the bounds of what is reasonable.

2. *The Settlement Provides an Effective Method for Distributing Relief and Treats Class Members Equitably*

The Court should find that the Settlement’s benefits are sufficiently robust to merit notice to Settlement Class Members. The \$400,000 cash, non-reversionary common fund represents a significant monetary award. In this case, the Settlement provides a simple, straight-forward method for Class Members to file a claim and receive a payment, thus incentivizing participation. *See William B. Rubenstein*, 4 NEWBERG ON CLASS ACTIONS § 13:53 (5th ed. 2020) (“the goal of any distribution method is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible”). Class Members will be required to submit a Claim Form providing their name and a unique claimant ID code (designed to deter fraudulent claims). S.A. §VII, ¶¶ 75-78.

Substantively, Class Members are able to make a Documented Cash Payment, up to \$5,000 and after payment of Claims Administration, Fees and Incentive Awards, the remaining funds will be distributed equally to authorized claimants. S.A. § V, ¶ 68(a)-(b). In similar consumer class actions, courts routinely accept allocation plans that grant pro rata relief to class members. *See*,

e.g., In re Compact Disc Minimum Advertised Price Antitrust Litig., 292 F. Supp. 2d 184, 186 (D. ME 2003) (approving a settlement granting relief in the form of equally distributed cash and retail discounts); *Giroux v. Essex Property Trust*, No. 16-cv-01722, 2019 WL 1207301, at *1 (N.D. Cal. Mar. 14, 2018) (approving a settlement granting class members a pro rata share of a settlement fund). Furthermore, Settlement Class Members are not required to submit documentary proof of losses to recover under the Settlement.

Any potential inequity in the Settlement is avoided through the use of a notice program that advises Class Members of their rights, including the impact of the releases. Should a Class Member wish not to be bound by the release, that Class Member may opt out of the Settlement. Because the distribution of the Settlement Fund and the Settlement's release wholly avoid any improper preferences, these factors weigh in favor of preliminary approval of the Settlement.

3. The Scope of Release of the Settlement Weighs in Favor of Approval

A final consideration is the scope of the Release. *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. at 42 n.41 (E.D.N.Y. 2019) (although not a *Grinnell* factor, courts may look to the scope of the release in determining proposed settlement's reasonableness). In exchange for the relief described above, Plaintiff and the Settlement Class release all claims that have or could have been asserted against Defendant and relating to the facts, transactions, or events alleged in this action. Further, the Release is limited to the exact conduct alleged in the Complaint by Plaintiff, because it pertains to claims relating to the Data Incident. See S.A. § II ¶ 28. The Release does not immunize Defendant from liability for future events. In sum, the Release is calculated to "achieve a comprehensive settlement that [will] prevent relitigation of settled questions at the core of [this] class action." *TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 460 (2d Cir. 1982). This factor weighs in favor of approval

The Rule 23(e)(2) and *Grinnell* factors strongly support a finding that the Court will likely be able to approve the Settlement as “fair, reasonable, and adequate.”

C. The Court Should Conditionally Certify the Proposed Settlement Class

For a settlement class to be certified, it must satisfy each requirement delineated in FRCP Rule 23(a), as well as at least one of the separate divisions of Rule 23(b). As explained below, the Settlement Class meets the requirements of FRCP Rule 23(a) and FRCP Rule 23(b)(3) for preliminary and final approval. Accordingly, the Court should conditionally certify the Settlement Class.

1. *The Requirements of FRCP Rule 23(a) are Satisfied*

Class certification under FRCP Rule 23(a) requires: “(1) the class is so numerous that joinder of all members is impracticable; (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.” FED. R. CIV. P. 23(a). The Settlement Class satisfies each of these requirements.

i. The Settlement Class is so Numerous the Joinder of Individual Members is Impracticable

FRCP Rule 23(a)(1) requires that the class be so numerous to make joinder of its members “impracticable.” FED. R. CIV. P. 23(a)(1). The Second Circuit has found numerosity met where a proposed class is “obviously numerous.” *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997). There are approximately 7,275 individuals within the Settlement Class. Because joinder would be impracticable, Rule 23(a)(1) is satisfied.

ii. There are Questions of Law and Fact Common to the Settlement Class

Under Rule 23(a)(2), Plaintiff must show that “questions of law or fact common to the [proposed] class” exist. FED. R. CIV. P. 23(a)(2). Commonality requires that the class claims “depend upon a common contention” that “must be of such a nature that it is capable of class wide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). “For purposes of Rule 23(a)(2) even a single common question will do.” *Id.* Plaintiff needs only show that his injuries “derive[d] from defendants’ . . . unitary course of conduct.” *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 84 (2d Cir. 2015).

Here, there are several questions of law and fact are common to all Settlement Class Members, including (i) whether Defendant violated common law duties, consumer protection laws, or other legal obligations and industry standards; (ii) whether Defendant failed to properly secure and safeguard Settlement Class Members’ personal information; (iii) whether Settlement Class Members are entitled to damages and (iv) the appropriate measure of such damages and relief. The proof required to establish Defendant’s alleged unlawful conduct is common to all members of the Settlement Class and therefore satisfies Rule 23(a)(2).

iii. Representative Plaintiff’s Claims are Typical of the Claims of the Settlement Class

FRCP Rule 23(a)(3) requires that class representatives’ claims be “typical” of Settlement Class Members’ claims. FED. R. CIV. P. 23(a)(3). That requirement is satisfied by showing that “the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented.” *Robidoux v. Celani*, 987 F.2d 931, 936–37 (2d Cir. 1993). “[D]ifferences in the degree of harm suffered, or even in the ability to prove damages, do not vitiate the typicality of a representative’s claims.” *In re Nissan Radiator/Transmission Cooler*

Litig., No. 10-cv-07493, 2013 WL 4080946, at *19 (S.D.N.Y. May 30, 2013); see also *Fogarazzao v. Lehman Bros.*, 232 F.R.D. 176, 180 (S.D.N.Y. 2005) (“The typicality requirement ‘is not demanding.’”). Here, the typicality requirement is met because (1) Plaintiff’s claims stem from the same Incident as the claims of the Settlement Class Members; and (2) such disclosure affected Plaintiff and Settlement Class Members in substantially the same way. See *Robidoux*, 987 F.2d at 936–37. Defendant’s alleged failure to adopt and maintain reasonable security measures to protect customer personal information and, as a result, rely on the same legal theories as the Settlement Class. This is sufficient to satisfy Rule 23(a)(3).

iv. The Interest of Plaintiff and Class Counsel are Aligned with the Interests of the Settlement Class

Under Rule 23(a)(4), the adequate representation requirement is satisfied when the proposed class representatives will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requires that: (1) class representatives do not have conflicting interests with other class members; and (2) class counsel is “qualified, experienced and generally able to conduct the litigation.” *Marisol A.*, 126 F.3d at 378. “[O]nly a conflict that goes to the very subject matter of the litigation will defeat a party’s claim of representative status.” *Martens v. Smith Barney Inc.*, 181 F.R.D. 243, 259 (S.D.N.Y. 1998). As described above, Plaintiff and Class Counsel satisfy the adequacy requirement.

Accordingly, Plaintiff’s Counsel satisfies Rule 23(a)(4)’s adequacy requirement. See, e.g., *In re Methyl Tertiary Butyl Ether (MTBE) Products Liab. Litig.*, 241 F.R.D. 185, 199 n.99 (S.D.N.Y. 2007) (“In the absence of proof to the contrary, courts presume that class counsel is competent and sufficiently experienced to prosecute vigorously the action on behalf of the class.”).

2. The Requirements of Rule 23(b)(3) are Satisfied

Under FRCP Rule 23(b)(3), Plaintiff must establish: (1) “that the questions of law or fact

common to class members predominate over any questions affecting only individual members;” and (2) “that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” FED. R. CIV. P. 23(b)(3). These requirements are satisfied here.

i. Questions Common to All Settlement Class Members Predominate Over Any Potential Individual Questions

Rule 23(b)(3) requires a finding that common issues of law or fact predominate over any issues unique to individual class members. The “predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc.*, 521 U.S. at 623. “[A] plaintiff must establish that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, predominate over those issues that are subject only to individualized proof.” *In re Nassau Cty. Strip Search Cases*, 461 F.3d 219, 227 (2d Cir. 2006). In the settlement context, moreover, the potential for trial manageability problems posed by individualized issues falls away because “the proposal is that there be no trial.” *Amchem Prods., Inc.*, 521 U.S. at 620; accord, e.g., *Tart v. Lions Gate Entertainment Corp.*, No. 14-8004, 2015 WL 5945846 at *4 (S.D.N.Y. Oct. 13, 2015) (“[T]he predominance inquiry will sometimes be easier to satisfy in the settlement context.”).

At the heart of Plaintiff’s claims is whether Defendant failed to adopt and maintain reasonable security measures to protect personal information, promptly detect the Data Incident, remedy and mitigate the effects of the Data Incident, and provide timely notification to affected persons. These questions are common and predominate over individualized issues.

ii. A Class Action is the Superior Method to Fairly and Efficiently Adjudicate the Matter

Rule 23(b)(3) requires a class action to be “superior to other available methods for fairly

and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Here, the class action mechanism is superior to individual actions for at least three reasons.

First, “[t]he potential class members are both significant in number and geographically dispersed” and “[t]he interest of the class as a whole in litigating the many common questions substantially outweighs any interest by individual members in bringing and prosecuting separate actions.” *Meredith Corp.*, 87 F. Supp. 3d at 661.

Second, a class action “will conserve judicial resources” and “is more efficient for Class Members, particularly those who lack the resources to bring their claims individually.” *Zeltser v. Merrill Lynch & Co., Inc.*, No. 13-1531, 2014 WL 4816134 at *3 (S.D.N.Y. Apr. 28, 2017).

Third, the expense and burden of litigating highly technical data breach claims, compared against the modest potential for individual recovery, make it impractical for the Settlement Class Members to seek redress on an individual basis. In a class action, litigation is viable because costs are spread across the entire class. See, e.g., *Tart*, 2015 WL 5945846, at *5.

Accordingly, this Court “will likely be able to” certify the class for purposes of judgment on the proposed Settlement under Rule 23(e).

D. The Notice Plan and Class Notice Should Be Approved

Before a proposed class settlement may be finally approved, the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Where seeking certification of a Rule 23(b)(3) settlement class, the notice must also comply with Rule 23(c)(2)(B), which requires “[a]t a minimum” that the notice inform class members of: (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 request

exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B). The Court is given broad power over which procedures to use for providing notice, so long as the procedures are reasonable and comport with due process. *Wal-Mart Stores*, 396 F.3d at 113; *Handschu v. Special Servs. Div.*, 787 F.2d 828, 833 (2d Cir. 1986) (“[T]he district court has virtually complete discretion as to the manner of giving notice to class members.”).

The Settlement Agreement proposes that the Court appoint Apex to oversee implementation of the Notice Plan, as well as processing Settlement Class Member claims and payments. SA § II, ¶ 55. The Parties selected Apex after reviewing competing proposals submitted by four claims and notice administrators. See Van Note Decl. ¶ 16. The proposed Notice Plan and related forms of notice³ are “reasonably calculated . . . 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). The Parties propose a robust, state-of-the-art notice program, developed with Apex’s assistance, that includes direct notice to Settlement Class Members via U.S. mail and email that will include an electronic link to the Claims Form. Plaintiff understands from Defendant that it has mailing addresses for the entire Settlement Class. See Van Note Decl. ¶ 17.

Apex will also establish a dedicated Settlement Website through which Settlement Class members can access case documents and obtain more detailed information about the Settlement, including important deadlines, such as the date for opting out or objecting to the Settlement. See Van Note Decl. ¶ 18. The Settlement Website will also permit Settlement Class Members to complete or file Claim Forms online through a simple process. *Id.*

³ The Email, Notice, Postcard Notice, Long Form Notice and Claim Form are attached to the Settlement Agreement as **Exhibits 1-4**.

Further, the proposed notice program defines the Settlement Class; explains all Settlement Class Members' rights, the Parties' releases, the applicable deadlines and describes in detail the injunctive and monetary terms of the Settlement, including the procedures for allocating and distributing Settlement funds among the Settlement Class members. *Id.* at ¶ 19. It will plainly indicate the time and place of the Fairness Hearing, and explain the methods for objecting to, or opting out of, the Settlement. *Id.* It details the provisions for payment of Attorneys' Fees and Expenses and the Class Representative Service Award, and it provides contact information for Plaintiff's Counsel. *Id.* This is a sufficient notice program. See *George v. Shamrock Saloon II, LLC*, 2021 WL 3188314, at *7 (S.D.N.Y. July 28, 2021) ("Class notice need only describe the terms of the settlement generally, which is a minimal requirement.").

IV. PROPOSED SCHEDULE

Plaintiff proposes the following schedule leading to Final Approval of the Settlement:

<u>Event</u>	<u>Date</u>
Settlement Administrator sends Notice to the Settlement Class (the "Notice Date")	Within 30 after Entry of Preliminary Approval Order
Last day for Settlement Class Members to opt out or object to the proposed Settlement	Within 90 after the Notice Date
Last day for Settlement Class Members to submit Claim Forms	120 days after the Notice Date
The Notice Program shall be completed	No later than 45 days before the Final Approval Hearing
Date by which Class Counsel is to file Motion for Final Approval of Settlement and Petition for Award of Attorneys' Fees, Expenses and Service Awards	No later than 30 days prior to the Final Approval Hearing
Final Approval Hearing	TBD

V. CONCLUSION

Plaintiff respectfully requests that the Court enter the accompanying proposed Order that: (a) preliminarily approves the Settlement, subject to later, final approval; (b) conditionally certifies a

Settlement Class on the claims against Defendant; (c) appoints Plaintiff as representative of the Settlement Class; (d) appoints Plaintiff's Counsel as Class Counsel for the Settlement Class; (e) appoints CPT as the Settlement Administrator for the Settlement; (f) approves the proposed forms of Class Notice to the Settlement Class of the Settlement and the proposed Class Notice plan and (g) sets a schedule leading to the Court's consideration of Final Approval of the Settlement.

Dated: January 23, 2025

By: /s/ Laura Van Note
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*Attorneys for Representative Plaintiff and the
Plaintiff Class*

**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that, on January 23, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served today on all counsel of record in this case via transmission of Notice of Electronic Filing generated by CM/ECF and on counsel in the related cases to their respective emails per the below service list.

/s/ Laura Van Note
Laura Van Note, Esq.

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GARY ORTEGA, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

WATERFORD COUNTRY SCHOOL, INC.,

Defendant.

Case No. 3:24-cv-01334-MPS

**DECLARATION OF LAURA VAN NOTE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

I, Laura Van Note, Esq. declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California as well as various federal courts across the country. I am a Partner of the law firm Cole & Van Note ("CVN").

2. CVN is proposed Class Counsel in these proceedings against Defendant Waterford Country School, Inc. ("Waterford" or "Defendant"). I have personal knowledge of the matters stated herein and, if called upon, we could and would competently testify regarding those matters. Thus, I submit this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

PROCEDURAL POSTURE AND HISTORY OF NEGOTIATIONS

3. I am counsel for Plaintiff Gary Ortega ("Plaintiff") and have zealously represented the interests of the Settlement Class from the inception of this litigation until the present. As Class Counsel, CVN has worked on a fully contingent basis and assumed the risk of challenging Defendant. In this litigation, Defendant was represented by a very well-respected, well-funded,

and large national law firm who vigorously defended against Plaintiff's claims throughout the course of this litigation.

4. This case arises from a cyber security incident discovered occurring between September 17, 2023 and October 5, 2023, (the "Data Incident") that Plaintiff alleges compromised his highly sensitive personally identifiable information ("PII") and protected health information ("PHI") including, without limitation: Social Security numbers, dates of birth, LINK/Family ID numbers, medical information and health insurance information was compromised. Plaintiff seeks to represent a class of individuals who seek the same relief from the same injury. Defendants discovered this intrusion and on August 8, 2024, sent notice of the Data Incident to approximately 7,275 individuals.

5. Plaintiff filed his Complaint on August 20, 2024, seeking to recover damages on behalf of himself and a class of other similarly situated ("Class Members"). In this Complaint Plaintiff asserts negligence, breach of implied contract and breach of the implied covenant of good faith and fair dealing against Defendant.

6. Prior to filing suit, CVN conducted an extensive investigation into the Data Incident, which included understanding Defendant's business and the way in which individuals may have been impacted by exfiltration of their information *vis-à-vis* the Data Incident. Further, CVN investigated Defendant's response to the Data Incident and whether it was sufficient to understand Plaintiff's claims, researched the duties applicable to a company like Defendants, etc.

7. After this extensive investigation and through many discussions with Defendant's Counsel, I determined that litigation of this matter was expected to be protracted, expensive, and draining of both sides' resources.

8. CVN began engaging in settlement negotiations with Defendant's counsel in early October 2024. Following these conversations, CVN sent an initial Settlement Term Sheet to Defendant on October 25, 2024. Through extensive arms' length negotiations from October 2024 to December 2024, CVN and Defendant's counsel worked together to reach an agreement in principle on December 13, 2024.

THE CLASS ACTION SETTLEMENT AGREEMENT

9. The Class Action Settlement Agreement and Release, attached hereto as **Exhibit A**, was entered into between the Parties to this litigation and was fully executed as of January 15, 2025.

10. The Settlement Agreement provides for the creation of a \$400,000.00 non-reversionary Settlement Fund which will also be used by the Settlement Administrator to pay: (i) Costs of Settlement Administration; (ii) Taxes and Tax-Related Expenses; (iii) a Service Award; (iv) Fee Award and Costs and (v) the Settlement Benefits elected by Settlement Class Members who submit valid and timely Settlement Claim pursuant to the terms of this Settlement.

11. Settlement Payments will be made through the Documented Loss Fund and the Non-Documented Pour-Over Fund. For the Documented Loss Fund, Class Members can make a claim, relying on either an attestation or reasonable documentation demonstrating their loss, for a settlement payment of up to \$5,000. Following the distribution of Administrative Expenses, Service Awards, Out-of-Pocket Expense Claims, Attorneys' Fees and Class Counsel's Litigation Expenses, the Settlement Administrator will make a pro rata cash payment from the remaining Settlement fund to each Class Member who submits a valid claim. Defendants have provided assurances that they have implemented or will implement reasonable steps to adequately secure its data systems.

12. Plaintiff has been personally involved in the case and support the Settlement, and proposed Class Counsel strongly believe the settlement is favorable to the Settlement Class.

13. Further litigation would subject Plaintiff to numerous risks, including the risk that he and the other Class Members obtain no recovery at all.

14. The Settlement provides significant relief to Members of the Class, and we believe that it is favorable for the Settlement Class. Thus, proposed Class Counsel believe the Court should find the Agreement is fair, reasonable, adequate, and worthy of preliminary approval.

THE NOTICE PROGRAM

15. In preparation of creating a Notice Program to inform Class Members of the Settlement, CVN requested bids from four competing Claims Administration companies. After reviewing the bids, CVN selected Apex Class Action Administration (“Apex”).

16. 10. The proposed Notice Plan includes the distribution of related forms of notice that are reasonably calculated to inform the Class Members of the Settlement. Included as attachments to the Settlement Agreement are true and correct copies of following sub-exhibits:

Exhibit 1: Email Notice

Exhibit 2: Postcard Notice

Exhibit 3: Longform Notice

Exhibit 4: Claim Form

17. Apex assisted the Parties in preparing a robust, state-of-the-art notice program, that includes direct notice to Settlement Class Members via U.S. mail and email that will include an electronic link to the Claims Form. Plaintiff understands from Defendant that it has mailing addresses for the entire Settlement Class.

18. Apex will also establish a dedicated Settlement Website through which Settlement Class members can access case documents and obtain more detailed information about the Settlement, including important deadlines, such as the date for opting out or objecting to the Settlement. The Settlement Website will also permit Settlement Class Members to complete or file Claim Forms online through a simple process.

19. Further, the proposed notice program defines the Settlement Class; explains all Settlement Class Members' rights, the Parties' releases, the applicable deadlines and describes in detail the injunctive and monetary terms of the Settlement, including the procedures for allocating and distributing Settlement funds among the Settlement Class members. It will plainly indicate the time and place of the Fairness Hearing, and explain the methods for objecting to, or opting out of, the Settlement. It details the provisions for payment of Attorneys' Fees and Expenses and a Class Representative Service Award, and it provides contact information for Plaintiff's Counsel.

20. From my experience as Class Counsel, I believe that this is a sufficient notice program.

COUNSEL QUALIFICATIONS

21. I have practiced law in Missouri and California since 2013 and have a Bachelor of Arts Degree in History from the University of Missouri, Kansas City and graduated from the University of Missouri, Kansas City School of Law. I have also been admitted to practice before all United States District Courts in California and this Court. I am also admitted to practice in and have been admitted *pro hac vice* before the courts in at least another half dozen states.

22. My firm, which was founded in 1992, is a very specialized practice, devoted almost exclusively to the prosecution of class action matters such as this. Ours was one of the first California firms to devote itself so heavily to this area of practice; indeed, in its nearly 30-year

history, CVN has prosecuted well in excess of 300 class actions, some of which are identified in the firm's professional resume attached hereto as **Exhibit "B"**. Even when most of the day-to-day work in these cases was being handled by my partner, Scott E. Cole, Esq. or one of our firm's associate attorneys, I closely supervised and established the strategies in every one of those matters. Most of these cases involved some or all of the same legal issues as are presented in the current action.

23. CVN has successfully achieved class certification, settlements and judgments in varied factual scenarios, just some of the more unique, difficult or groundbreaking situations being set forth in the firm's resume. Some better-known and/or "game changing" cases include *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 (Case No. A119697) (setting the standard for settlement approval in California state courts); *Augustus (Davis) vs. ABM Security Services.*, Supreme Court of California Case No. S224853 (establishing a new Supreme Court standard for workplace rest periods; \$110 million settlement); *Despres v. United Parcel Service, Inc.*, Case Nos. 3:03-CV-02987 (TEH) and 3:03-CV-02001 (TEH) (N.D. Cal.) (historic \$87 million settlement in meal break-only case); *Kurihara v. Best Buy Co., Inc.*, 2007 U.S. Dist. LEXIS 64224 (N.D. Cal. Aug. 29, 2007) (class cert. granted and clarifying distinction between class composition and entitlement to a recovery); *Tierno v. Rite Aid Corp.*, 2006 U.S. Dist. LEXIS 71794 (N.D. Cal. Aug. 31, 2006) (oft-cited ruling certifying a class of retail Store Managers alleging overtime misclassification; \$6.9 million settlement); *Fulton v. Sports and Fitness Clubs of America, dba 24 Hour Fitness, USA, Inc.*, Case No. GIC881669 (Super. Ct. Cal. San Diego Cnty.), (consolidated with Case No. GIC873193) (industry changing case that helped define "piece rate" standard under the law; class certification and then summary judgment granted; \$19 million resolution); *In Re Westley Tire Fire Litigation*, Case No. CV 801282 (Super. Ct. Cal. Santa Clara Cnty.) (lead counsel in toxic 7 million automobile tire fire that impacted up to one third of the State of California); *In Re: Apple Inc. Device Performance Litigation*, Case No. 5:18-md-02827-EJD (N.D. Cal.) (Steering Committee in consumer fraud case); *In Re Tosco SFR Litigation* (C97-01637 (Super. Ct.

Cal. Contra Costa Cnty.) (Lead Counsel in massive 1997 toxic airborne release over multiple towns).

24. Currently, CVN is devoted almost entirely to the prosecution of data breach class actions, with the vast bulk of its caseload being cases involving almost identical legal and factual issues to those presented in the instant case. In these matters, CVN serves in a variety of roles, oftentimes in various leadership positions. For example, CVN has served as court-appointed lead or co-lead counsel in various data breach matters, including, but not necessarily limited to: *Henderson, et al. v. Reventics, LLC*, Case No. 1:23-cv-00586-MEH (D. Colo.) (court appointed co-lead counsel); *Hinds, et al. v. Community Medical Centers, Inc.*, Case No. STK-CV-UNPI-2021-10404 (Super. Ct. Cal. San Joaquin Cnty.) (court appointed co-lead counsel); *Tsvetanova, et al. v. UCSD Health*, Case No. 37-2021-00039888-CU-PO-CTL (Super. Ct. Cal. San Diego Cnty.) (court appointed co-lead counsel); *In Re: Rackspace Data Security Litigation*, No.: SA-22-cv-01296-XR (W.D. Tex.) (court appointed lead counsel); *Fedorys, et al. v. Ethos Group Inc.*, Case No. 3:22-cv-2573-M (N.D. Tex.) (court appointed co-lead counsel); *Moreland, et al. v. 1st Franklin Financial Corporation*, Case No. 2:23-cv-00038-SCJ (N.D. Ga.) (court appointed co-lead counsel); *Domitrovich, et al. v. MC Dean, Inc.*, Case No. 1:23-cv-00210-CMH-JFA (E.D. Va) (court appointed co-lead counsel); *Deevers, et al. v. Wing Financial Services, LLC.*, Case No. 4:22-cv-00550-CVE-MTS (N.D. Okla.) (court appointed co-lead counsel); *Darrin v. Huntington Ingalls Industries, Inc.*, Case No. 4:23-cv-00053-JKW-DEM (E.D. Va.) (court appointed co-lead counsel); *Guerrero v. Merritt Healthcare Holdings, LLC*, Case No. 3:23-cv-00389-MPS (D. Conn.) (court appointed co-lead counsel); *Prutsman v. Nonstop Administration and Insurance Services, Inc.*, Case No. 3:23-Cv-01131-VC (N.D. Cal.) (court appointed co-lead counsel); *In re DISH Network Data Security Incident Litigation*, Case No. 1:23-cv-01168-RMR-SBP (D. Colo.) (court appointed co-lead counsel); *Byers v. Orthoalaska, LLC*, Case No. 3:23-cv-00243-SLG (D. Alaska) (court appointed co-lead counsel); *Tambroni v. Wellnow Urgent Care, P.C.*, Case No. 1:24-cv-01595 (N.D. Ill.) (court appointed co-lead counsel); *Dryden v. Tri Counties Bank*, Case No. 23CV03115 (Super. Ct. Cal. Butte Cnty.) (court appointed co-lead counsel); *Brett v. Valley Mountain Regional Center*, Case No. STK-CV-UPI-2024-0005025 (Super. Ct. Cal. San Joaquin

Cnty.) (court appointed co-lead counsel); *Cordell v. Patelco Credit Union*, Case No. 24CV082095 (Super. Ct. Cal. Alameda Cnty.) (court appointed co-lead counsel); *Skillings, et al., v. Access Sports Medicine and Orthopedics*, Case No. 218-2024-CV-01086 (Super. Ct. New Hampshire Rockingham Cnty.) (court appointed co-lead counsel); *Bujok v. MC2 Data, LLC*, Case No. 0:24-cv-61864-LEIBOWITZ (S.D. Fla.) (court appointed co-lead counsel); *Francisco v. Diligent Acquisitions LLC*, Case No. 4:24-cv-04468 (S.D. Tex.) (court appointed co-lead counsel); *Oliver v. Jewish Home Lifecare* (N.Y. Sup. Ct., N.Y. County, Index No. 157811/2024) (court appointed co-lead counsel).

25. CVN also serves in more informal (e.g., Executive Committee) leadership positions in numerous other data breach cases and in sole counsel roles in even dozens more—actions currently venued across well over 30 states. CVN, thus, possesses the experience and ample resources to lead the current case, and will continue to do so throughout this litigation. The combination experience with class action procedure in general, and with data breach cases in particular, makes me and my firm well-qualified to serve in a leadership position in this case.

26. As proposed Class Counsel, my firm has committed and will continue to fully commit the resources necessary to represent the Settlement Class and see this Settlement through to the end.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Oakland, CA on this 23rd day of January 2025.

/s/ Laura Van Note, Esq.
 Laura Van Note, Esq.

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GARY ORTEGA, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

WATERFORD COUNTRY SCHOOL, INC.,

Defendant.

Case No. 3:24-cv-01334-MPS

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Settlement” or “Agreement”),¹ is entered into between Plaintiff Gary Ortega (“Plaintiff”), on behalf of himself and the Settlement Class and Defendant Waterford Country School, Inc. (“Defendant”) (collectively the “Parties”). The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

I. Background

1. Defendant is a Connecticut non-profit corporation that operates a school for children with special education needs and families at risk.

2. In the course of operating its business, Defendant maintains a limited amount of personally identifiable information and personal health information pertaining to services provided.

3. Between September 17, 2023 and October 5, 2023, Defendant discovered that Private Information had been made accessible to unauthorized parties.

¹ All capitalized terms herein shall have the same meanings as those ascribed to them in Section II below.

4. The affected information varied by individual, but included Social Security numbers, dates of birth, LINK/Family ID numbers, medical information and health insurance information.

5. On August 8, 2024, Defendant began sending out notice letters to affected persons, informing them that their Private Information had been compromised in the Data Security Incident.

6. As a result of the Data Incident, commencing on August 20, 2024, Defendant was named in a putative Class Action Complaint filed by Plaintiff.

7. Thereafter, Class Counsel prepared for discovery, researched to understand how the breach occurred, the type of information involved, and whether the information was published on the Dark Web.

8. The Parties began discussing settlement and engaged in arms-length negotiations. After a month of discussions, the Parties were able to negotiate a settlement in principle on December 13, 2024, agreeing upon the material terms of a settlement.

9. The Parties now agree to settle the Action entirely, without any admission of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as

an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiff has entered into this Agreement to recover on the claims in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiff does not in any way concede that the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiff, Defendant, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficient of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

16. “Action” means the lawsuit entitled: *Ortega v. Waterford Country School, Inc.*, Case No. 3:24-cv-01334-MPS, filed in the United States District Court, in the State of Connecticut (New Haven).

17. “Application for Attorneys’ Fees, Costs, and Service Awards” means the application made with the Motion for Final Approval seeking Service Awards for Class Representatives and Class Counsel’s attorneys’ fees and reimbursement for costs.

18. “CAFA Notice” means the notice required by the Class Action Fairness Act of 2008, 28 U.S.C. § 1715 (“CAFA”).

19. “Claim” means the submission of a Claim Form by a Claimant.

20. “Claim Form” means the proof of claim, substantially in the form attached hereto as *Exhibit 4*, which may be modified, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator.

21. “Claim Form Deadline” shall be 15 days before the initial scheduled Final Approval

Hearing and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class member to be eligible for a Cash Payment.

22. “Claimant” means a Settlement Class member who submits a Claim Form.

23. “Class Counsel” means: Laura Van Note of Cole & Van Note.

24. “Class List” means a list of all individuals in the Settlement Class. Defendant shall prepare and provide the Class List to the Settlement Administrator for Notice using information in its records. Class List shall include the Settlement Class’s names, email address (if available) postal address, and telephone number (if available).

25. “Class Representative” means the Plaintiff.

26. “Complaint” means the Amended Class Action Complaint filed in the Action on September 25, 2024.

27. “Court” means the United States District Court for the District of Connecticut (New Haven) and the Judges assigned to the Action.

28. “Data Incident” means the alleged incident that occurred between September 17, 2023 and October 5, 2023, in which unauthorized third parties purportedly gained access to Settlement Class Members’ Private Information from Defendant’s systems.

29. “Defendant” means Waterford Country School, Inc.

30. “Defendant’s Counsel” means Jennifer Oliver of Buchanan Ingersoll & Rooney LLP.

31. “Effective Date” of this Agreement means the last date by which all of the following have occurred: (a) The Parties have executed this Agreement; (b) the Parties have submitted to the Court and the Court has entered the Final Approval Order without material changes to the Parties’ proposed Final Approval Order; and (c) the time for seeking rehearing,

appellate or other review of the Final Approval Order has expired, or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing review, appeal, or certiorari could be taken has finally expired.

32. “Email Notice” means the email notice of the Settlement, substantially in the form attached hereto as ***Exhibit 1***, that the Settlement Administrator shall disseminate to the Settlement Class by email to those on the Class List for which Defendant possesses an email address.

33. “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

34. “Final Approval” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order agreed to by the Parties, substantially in the form attached to the Motion for Final Approval.

35. “Final Approval Hearing” means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, and Service Awards.

36. “Final Approval Order” means the Final Order that the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be agreed to by the Parties and will be attached as an exhibit to the Motion for Final Approval. The Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded to Class Counsel.

37. “Long Form Notice” means the long form notice of the Settlement, substantially in the form attached hereto as ***Exhibit 3***, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator.

38. “Motion for Final Approval” means the motion that Plaintiff and Class Counsel shall file with the Court seeking Final Approval of the Settlement.

39. “Motion for Preliminary Approval” means the motion that Plaintiff shall file with the Court seeking Preliminary Approval of the Settlement.

40. “Notice” means the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and settlement telephone line that Plaintiff and Class Counsel will ask the Court to approve in connection with the Motion for Preliminary Approval.

41. “Notice Program” means the methods provided for in this Agreement for giving Notice and consists of the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and Settlement telephone line.

42. “Notice of Deficiency” means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

43. “Objection Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing.

44. “Opt-Out Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing.

45. “Party” means the Plaintiff and the Defendant individually, and “Parties” means Plaintiff and Defendant collectively.

46. “Plaintiff” means Gary Ortega.

47. “Postcard Notice” means the postcard notice of the Settlement, substantially in the form attached hereto as ***Exhibit 2***, that the Settlement Administrator shall disseminate to the

Settlement Class by mail.

48. “Preliminary Approval” means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form attached as an exhibit to the Motion for Preliminary Approval.

49. “Preliminary Approval Order” means the order preliminarily approving the Settlement and proposed Notice Program.

50. “Private Information” means Settlement Class Members’ information that may have been exposed in the Data Security Incident, which may include names, address, dates of birth, Social Security numbers, medical information, and health insurance information, and other personally identifiable information or personal health information.

51. “Releases” means the releases and waiver set forth in Section XIII of this Agreement.

52. “Released Claims” means the claims described in Section XIII of this Agreement. “Released Parties” means Defendant, and its past, present, and future parents, subsidiaries, divisions, departments, affiliates, predecessors, successors and assigns, and any and all of their past, present, and future directors, officers, executives, officials, principals, stockholders, heirs, agents, insurers, reinsurers, members, attorneys, accountants, actuaries, fiduciaries, advisors, consultants, representatives, partners, joint venturers, licensees, licensors, independent contractors, subrogees, trustees, executors, administrators, predecessors, successors and assigns, and any other person acting on Defendant’s behalf, in their capacity as such. It is expressly understood that to the extent a Released Party is not a party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

53. “Releasing Parties” means (i) Plaintiff and all Settlement Class Members, (ii) each

of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, affiliates, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, (iii) any entities in which a Plaintiff and/or other participating Settlement Class Member has or had a controlling interest or that has or had a controlling interest in him, her, or it, (iv) any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of a Plaintiff and/or any other Settlement Class Member, and all those who claim through them or on their behalf, and (v) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above persons or entities identified in (i)-(iv).

54. “Service Awards” shall mean the payment the Court may award the Plaintiff for serving as Class Representative.

55. “Settlement Administrator” means APEX Class Action Administration.

56. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding Notice and settlement administration.

57. “Settlement Class” means all persons in the United States who were notified that their Private Information was potentially exposed to unauthorized third parties as a result of the Waterford Country School, Inc. Data Incident allegedly discovered by Defendant on August 8, 2024. Excluded from the Settlement Class are (a) all persons who are governing board members of Defendant; (b) governmental entities; (c) the Court, the Court’s immediate family, and Court staff; and (d) any individual who timely and validly opts-out of the Settlement.

58. “Settlement Class Member” means any member of the Settlement Class.

59. “Settlement Fund” means the non-reversionary \$400,000.00 common fund that Defendant has agreed to pay under the terms of the Settlement.

60. “Settlement Website” means the website the Settlement Administrator will establish as a means for the Settlement Class Members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, Application for Attorneys’ Fees, Costs, and Service Awards, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for six months after Final Approval.

61. “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Eastern time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator’s Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

III. Settlement Fund

62. Within 30 days after Preliminary Approval and receipt of all necessary information

required to make payment (e.g., wiring instructions and a W-9 form), Defendant shall deposit or cause to be deposited the total cost of Settlement Administration, not to exceed \$21,990.00 into the Escrow Account to allow the Settlement Administrator to pay Settlement Administration Costs. Within 5 days after the Effective Date, Defendant shall deposit the remaining balance into the Escrow Account.

63. Under no circumstances shall Defendant be obligated to pay or cause to be paid more than \$400,000. No funds shall revert back to Defendant, except in the event this Agreement is voided, cancelled, or terminated, as described in Paragraphs 112-118 in this Agreement. In the event the Effective Date does not occur, no portion of the Settlement shall be returned to Defendant.

64. The Settlement Fund shall be used to pay: (1) Settlement Class Member Benefits to those Settlement Class Members who submit a Valid Claim; (2) any Service Awards awarded to Class Representatives; (3) any attorneys' fees and costs awarded to Class Counsel; and (4) all Settlement Administration Costs.

65. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise shall be paid from the Escrow Account, including any taxes or tax detriments that may be imposed on Defendant, Defendant's Counsel, Plaintiff, and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Defendant, Defendant's Counsel, Plaintiff, and Class Counsel

shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant, Defendant's Counsel, Plaintiff, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

66. Other than the payment of the Settlement Fund monies as described in this Agreement, Defendant shall have no responsibility, financial obligation, or liability whatsoever with respect to the Settlement Fund or Escrow Account, investment of the Settlement Fund or Escrow Account, payment of federal, state, and local income, employment, unemployment, excise and any other taxes, penalties, interest or other charges related to taxes imposed on the Settlement Fund or Escrow Account or its disbursement, payment of administrative, legal, accounting, or other cost occasioned by the use or administration of the Settlement Fund or the Escrow Account.

IV. Certification of the Settlement Class

67. Plaintiff shall propose and recommend to the Court that the Settlement Class be certified for Settlement purposes. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this Action shall proceed as a class action; provided however, that if a Final Approval Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

V. Settlement Consideration

68. Each Settlement Class Member who submits a valid and timely Claim Form may qualify for the following:

a. **Documented Loss Fund**

The Settlement Class Member may submit a claim for a Settlement Payment of up to \$5,000 reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Settlement Class Member must choose to do so on their given Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss; and (iii) reasonable documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement.

b. Non-Documented Pour-Over Fund

Following the distribution of Administrative Expenses, Service Awards, Documented Loss Claims, Attorneys' Fees and Class Counsel's Litigation Expenses, the Settlement Administrator will make a pro rata cash payment from the remaining Settlement fund to each Class Member who submits a valid claim, as determined by the Settlement Administrator in accordance with the Settlement Agreement or, if applicable, the dispute resolution process therein, so long as the funds are available.

69. Distribution of Settlement Payments

a. The Settlement Administrator will first apply the Net Settlement Fund to pay all Documented Loss Payments. The amount of the Net Settlement Fund remaining after all Documented Loss Payments are applied shall be referred to as the "Non-Documented Pour-Over Fund."

b. The Settlement Administrator shall utilize the Non-Documented Pour-Over Fund to make all Cash Award payments pursuant to Paragraph 69(a). The amount of each payment shall be calculated by dividing the Non-Documented Pour-Over Fund by the total number of valid and timely Claim Forms submitted by Settlement Class Members.

70. **Business Practice Changes** – Plaintiff have received assurances that Defendant either has undertaken or will undertake reasonable steps to further secure its systems and environments. Defendant has provided confidential discovery regarding the number of individuals in the Settlement Class, the facts and circumstances of the Data Incident and Defendant’s response thereto, and the changes and improvements that have been made or are being made to protect class members’ Private Information.

VI. Settlement Approval

71. Within thirty [30] days after the execution of this Agreement by all Parties and Class Counsel, Class Counsel shall file a Motion for Preliminary Approval. The proposed Preliminary Approval Order shall be attached to the motion as an exhibit and shall be in a form agreed to by Class Counsel and Defendant.

72. The Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form and Claim process; (5) approve the procedures for individuals in the Settlement Class to opt-out of or object to the Settlement; (6) stay the Action pending Final Approval of the Settlement; and (7) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Defendant’s Counsel.

VII. Settlement Administrator

73. The Parties agree that, subject to Court approval, APEX Class Action Administration shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in

the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution.

74. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims process, administering the Settlement Fund, and distributing the Cash Payments to Settlement Class Members who submit Valid Claims.

75. The Settlement Administrator's duties include to:

a. Complete the Court-approved Notice Program by noticing the Settlement Class by Postcard Notice, sending Long Form Notices and paper Claim Forms on request from individuals in the Settlement Class, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;

b. Establish and maintain the Settlement Fund in the Escrow Account approved by the Parties;

c. Establish and maintain a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class Members, and Claim Forms;

d. Establish and maintain the Settlement Website to provide important information about the Settlement and to receive electronic Claim Forms;

e. Establish and maintain an automated toll-free telephone line for the Settlement Class to call with Settlement-related inquiries, and answer frequently asked questions of individuals in the Settlement Class who call with or otherwise communicate such inquiries;

f. Respond to any mailed Settlement Class member inquiries;

- g. Process all opt-out requests from the Settlement Class;
- h. Provide weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;
- i. In advance of the Final Approval Hearing, prepare a declaration confirming the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, providing the names of each individual in the Settlement Class who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;
- j. Distribute, out of the Settlement Fund, Cash Payments by electronic means or by paper check;
- k. Pay Court-approved attorneys' fees and costs, and Service Awards out of the Settlement Fund;
- l. Pay Settlement Administration Costs out of the Settlement Fund following approval by Class Counsel;
- m. Pay any required taxes out of the Settlement Fund; and
- n. Any other Settlement Administration function at the instruction of Class Counsel and Defendant's Counsel, including, but not limited to, preparing and serving CAFA Notice according to Defendant's Counsel's instructions, verifying that the Settlement Fund has been properly administered and that the Cash Payments have been properly distributed.

76. The Notice Program and Notices will be reviewed and approved by the Settlement Administrator but may be revised as agreed upon by the Parties prior to submission to the Court for approval. Immaterial revisions to the Notices may also be made prior to dissemination.

VIII. Notice to the Settlement Class

77. The Claims Administrator will serve or cause to be served the CAFA Notice no later than 10 days after this Agreement is filed with the Court.

78. Defendant will make available to Class Counsel and the Settlement Administrator the Class List no later than 15 days after entry of the Preliminary Approval Order.

79. Within 15 days following receipt of the Class List, the Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice approved by the Court. Notice shall be provided by email for all Settlement Class Members for whom Defendant possesses and email address. Postcard Notice shall be disseminated via U.S. Mail to the Settlement Class's mailing addresses, to the extent known, for all other Settlement Class Members. Notice shall also be published on the Settlement Website.

80. The Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the last day of the Opt-Out Period for individuals in the Settlement Class to opt-out of the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs and Service Awards; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Defendant's Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time

for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

81. The Settlement Administrator shall establish the Settlement Website no later than the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claims Form that can be submitted directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

82. **Opt-Outs** – The Long Form Notice also shall include a procedure for individuals in the Settlement Class to opt-out of the Settlement; and the Postcard Notice shall direct individuals in the Settlement Class to review the Long Form Notice to obtain the opt-out instructions. Individuals in the Settlement Class may opt-out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-out request must be personally signed by the Settlement Class member and contain the name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any individual in the Settlement Class who does not timely and validly request to opt out shall be bound by the terms of this Agreement even if he or she does not submit a Valid Claim.

83. **Objections** – The Long Form Notice also shall include a procedure for the Settlement Class to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards, and the Postcard Notice shall direct the Settlement Class to review the Long Form Notice to obtain the objection instructions. Objections must be mailed to the Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be

considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

84. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of this Litigation (*Ortega v. Waterford Country School, Inc.*, Case No. 3:24-cv-01334-MPS);
- b. the objector's full name, mailing address, telephone number, and email address (if any);
- c. the specific reasons for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- d. the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
- f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections

that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector and whether they will appear and address the Court at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient).

85. Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

86. The Settlement Administrator shall perform reasonable address traces for those Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 45 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class Members whose new addresses were identified as of that time through address traces.

87. The Notice Program shall be completed no later than 45 days before the original date set for the Final Approval Hearing.

IX. Claim Form Process and Disbursement of Cash Payments

88. The Notice will explain to the Settlement Class that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

89. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

90. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

91. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of claims, and if there is, contact the Settlement Class Member in an effort to determine which Claim Form is the appropriate one for consideration.

92. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement

Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

93. Claim Forms that do not meet the terms and conditions of this Settlement, shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Claimant or Settlement Class Member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

94. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a timely and valid request to opt out of the Settlement Class;
- g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;
- h. Failure to submit a Claim Form by the Claim Form Deadline; and/or
- i. The Claim Form otherwise does not comply with the requirements of this Settlement.

95. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

- a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication.
- b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this Paragraph.
- c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants.
- d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

96. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Defendant's Counsel. Additionally, Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

97. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiff, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

98. No later than 30 days after Final Approval or 75 days after the Effective Date, whichever is later, the Settlement Administrator shall distribute the Settlement Class Member Benefits.

99. Cash Payments to Settlement Class Members will be made electronically or by paper check. Settlement Class Members with Valid Claims shall receive an email instructing them to select the type of payment they wish to receive. Upon issuance of the email, Settlement Class Members shall have 30 days to select their method of payment. Settlement Class Members who do not open their email or provide incorrect or incomplete electronic payment information shall receive a paper check in the mail. Settlement Class Members receiving payment by check shall have 90 days to negotiate the check.

X. Final Approval Order and Final Judgment

100. Plaintiff shall file their Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court may

choose to hear argument on Plaintiff's Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court also may hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service Awards, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

101. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Application for Attorneys' Fees, Costs, and Service Awards. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; bar and enjoin all Releasing Parties from pursuing any Released Claims against Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendant and the Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiff, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

XI. Service Awards, Attorneys' Fees and Costs

102. **Service Awards** – In recognition of the time and effort the Class Representative expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class Representative, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel shall request a Service Award for the Class Representative in the amount not to exceed \$5,000. If approved, the Service Awards shall be paid by the Settlement Administrator out of the Settlement Fund within 30 days of the Effective Date. The Service Award payments to the Class Representative shall be separate and apart from their entitlement to benefits from the Settlement Fund.

103. **Attorneys' Fees and Costs** – Class Counsel shall apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs. The attorneys' fees and cost awards approved by the Court shall be paid by the Settlement Administrator out of the Settlement Fund by wire transfer to an account designated by Class Counsel, within 30 days of the Effective Date.

104. This Settlement is not contingent on approval of the request for attorneys' fees and costs or Service Awards, and if the Court denies the request or grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force. The provisions for attorneys' fees and costs and the Service Awards were not negotiated until after all material terms of the Settlement.

XII. Disposition of Residual Funds

105. The Settlement is designed to exhaust the Settlement Fund. In the event there are funds remaining from uncashed checks in the Settlement Fund 20 days following the 90-day check negotiation period, all remaining funds shall be distributed to an appropriate mutually agreeable

cy pres recipient to be approved by the Court.

XIII. Releases

106. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully, finally, and irrevocably released and forever discharged the Released Parties of, and shall be forever barred from instituting, maintaining, or prosecuting, any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based upon, or relate to (a) the Data Security Incident; or (b) any of the alleged violations of laws or regulations cited in the Complaint or the Action.

107. Plaintiff and Settlement Class Members covenant and agree they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, whether on behalf of themselves or others, against any of the Released Parties in any jurisdiction.

108. Individuals in the Settlement Class who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims and will not obtain any benefits under the Settlement. With respect to the Released Claims, Plaintiff and Settlement Class Members, expressly understand and acknowledge it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiff and Settlement Class Members explicitly took that into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained herein, having been bargained for between Plaintiff and Defendant with the knowledge of the possibility of such unknown claims for

economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims.

109. Plaintiff or Settlement Class Members may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those individuals agrees and acknowledges that he or she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a Cash Payment from the Settlement.

110. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiff and Settlement Class Members; and (b) Plaintiff and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of Plaintiff, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

XIV. Termination of Settlement

111. This Agreement shall be subject to and is expressly conditioned on the occurrence

of all of the following events:

- a. Court approval of the Settlement consideration set forth in Section V and the Releases set forth in Section XIII of this Agreement;
- b. The Court has entered the Preliminary Approval Order substantially in the form attached to the Motion for Preliminary Approval;
- c. The Court has entered the Final Approval Order substantially in the form agreed to by the Parties and attached to the Motion for Final Approval, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and
- d. The Effective Date has occurred.

112. If any of the conditions specified in the preceding paragraph are not met, then this Agreement shall be cancelled and terminated.

113. Defendant shall have the option to terminate this Agreement if more than 1% of the Settlement Class opt-out of the Settlement. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this paragraph within 10 days after the end of the Opt-Out Period, or the option to terminate shall be considered waived.

114. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the parties shall jointly file a status report in the Court seeking to reopen the Action. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

115. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to Defendant. However, Defendant shall have no right to seek from Plaintiff, Class Counsel, or the Settlement Administrator the Settlement Administration Costs paid by Defendant. The Settlement Administrator all remaining amounts in the Settlement Fund to Defendant within 21 days of termination.

XV. Effect of Termination

116. The grounds upon which this Agreement may be terminated are set forth in Section XIV. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiff, Class Counsel's, Defendant, and Defendant's Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

117. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XVI. No Admission of Liability

118. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Complaint. Defendant specifically denies that a class could or should be

certified in the Action for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

119. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

120. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

121. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or the Settlement Class, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in

the Action or in any proceeding in any court, administrative agency, or other tribunal.

122. In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

XVII. Miscellaneous Provisions

123. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

124. Binding Effect. This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

125. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

126. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

127. Integration and No Reliance. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this

Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

128. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

129. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the state of Connecticut, without regard to the principles thereof regarding choice of law.

130. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required.

131. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

132. Notices. All notices provided for herein, shall be sent by email with a hard copy

sent by first class mail to:

If to Plaintiff's or Class Counsel:

Laura Van Note
COLE & VAN NOTE
555 12th Street, Ste. 2100
Oakland, CA 94607
lvn@colevannote.com

If to Defendant or Defendant's Counsel:

Jennifer Oliver
BUCHANAN INGERSOLL & ROONEY LLP
600 W. Broadway Suite 1100
San Diego, CA 92101
jennifer.oliver@bipc.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

133. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

134. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

135. Authority. Class Counsel (for Plaintiff and the Settlement Class), and Defendant's Counsel (for Defendant), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiff and Defendant to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or

she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

136. Agreement Mutually Prepared. Neither Plaintiff nor Defendant shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

137. Independent Investigation and Decision to Settle. The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

138. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein,

received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

139. Exhibits. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

140. Representations/Warranties Regarding Other Potential Plaintiff or Legal Claims. Class Counsel represent and warrant that they do not represent any clients, or have knowledge of any potential clients, with claims or potential claims against the Released Parties aside from the Released Claims. Plaintiff and Class Counsel each represent and warrant that neither of them is aware of any potential plaintiff, or any attorney other than Class Counsel, who intends to make demands or bring litigation against the Released Parties. Plaintiff and Class Counsel each further represent and warrant that neither of them has been notified or otherwise informed of any such intention or consideration thereof. Plaintiff and Class Counsel each further represent and warrant that neither of them has been referred to any other attorney or any other individual alleging to have, asserting, pursuing, or seeking to pursue any claims against the Released Parties. Class Counsel represent and warrant that they have removed all advertisements, including social media posts, soliciting potential clients to pursue claims against Defendant or any of the Released Parties. Class Counsel further represent and warrant that they have removed any other publications, including social media posts, announcing, publicizing, or describing the Released Claims, to the extent published by Class Counsel.

141. Bar to Future Suits. Upon entry of the Final Approval Order, the Releasing Parties shall be enjoined from prosecuting any Released Claim in any proceeding against the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required

by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this paragraph.

PLAINTIFF

Gary Ortega
ID pTBILxTEEqAQ7TU92inLwRq

1/13/2025

Gary Ortega


CLASS COUNSEL

Laura Van Note
ID Xw4BZadycr48C8KmuUSidJWF

1/13/2025

Laura Van Note, Esq.
COLE & VAN NOTE

DEFENDANT

 1-15-25
By: Chris Lacey
Its Chief Executive Officer

DEFENDANT'S COUNSEL


Jennifer Oliver, Esq.
BUCHANAN INGERSOLL & ROONEY LLP

EXHIBIT 1

EXHIBIT 1

Sender Email: [Settlement Administrator Email Address]
Sender Name: Settlement Administrator
Subject Line: Notice of Class Action Settlement – *Ortega v. Waterford Country School, Inc.*, Case No. 3:24-cv-01334-MPS

Notice ID: [Notice ID number]
Confirmation Code: [Confirmation code number]

NOTICE OF CLASS ACTION SETTLEMENT

You may be eligible for cash payment from a class action settlement involving Waterford Country School, Inc. but you need to act.

Si desea recibir esta notificación en español, llámenos o visite nuestra página web.

A court authorized this Notice.

This is not spam, an advertisement, or a lawyer solicitation.

A settlement has been reached in a class action lawsuit against Waterford Country School, Inc. (“Waterford”) that alleges that Waterford was negligent and breached contractual and statutory duties in connection with a Data Incident discovered by Waterford between September 17, 2023 and October 5, 2023. Waterford denies all of the claims and says it did not do anything wrong.

This notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at www._____.com; by contacting class counsel at Cole & Van Note, phone number (510) 981-9800; by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court of Connecticut, 141 Church Street New Haven, CT 06510, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

ARE YOU INCLUDED? Yes, Waterford’s records show that you are an individual whose information was accessed and that you were sent a notification of the Data Incident discovered between September 17, 2023 and October 5, 2023. Therefore, you are included in this Settlement as a “Settlement Class member.”

WHAT ARE THE SETTLEMENT BENEFITS? Waterford has agreed to establish a Settlement Fund of \$400,000. Settlement Class Members who submit a valid claim will be reimbursed for any valid documented losses fairly traceable to the Data Security Incident up to \$5,000 and will receive a *pro-rata* distribution. All attorneys’ fees and costs will also be paid from the Settlement Fund.

HOW CAN I FILE A CLAIM? The only way to file a claim is by filling out a Claim Form available if you:

- Visit the settlement website at www.XXXXXXXXXX.com or
- Call 1-XXX-XXX-XXXX.

All claims must be filed *before* **Month Day, 2025**.

WHAT ARE MY OTHER OPTIONS? If you do nothing, you will remain in the Class, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue Waterford for the claims resolved by this Settlement. If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month Day, 2025**. If you stay in the Settlement, you may object to it by **Month Day, 2025**. A more detailed notice is available to explain how to exclude yourself or object. Please visit the settlement website below or call the phone number below for a copy of the more detailed notice.

WHEN WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? On **Month Day, 2025**, the Court will hold a Final Approval Hearing to determine whether to approve the Settlement, Class Counsel's request for attorneys' fees, costs, and expenses of up to 33% of the Settlement Fund and a service award of \$5,000 for the Representative Plaintiff. The Motion for Attorney's Fees will be posted on the settlement website after it is filed. You or your own lawyer may ask to appear and speak at the hearing at your own cost, but you do not have to.

For more information, call or visit the website below.

www.XXXXXXXXXX.com

1-XXX-XXX-XXXX

[Unsubscribe](#)

EXHIBIT 2

Claims Administrator
Street Address
City, State, Zip Code

Unique ID: <<UniqueID>>

If you were notified of a Data Security Incident involving Waterford Country School, Inc., you may be entitled to benefits from a settlement.

<<MAIL ID>>
<<NAME 1>>
<<NAME 2>>
<<ADDRESS LINE 1>>
<<ADDRESS LINE 2>>
<<ADDRESS LINE 3>>
<<ADDRESS LINE 4>>
<<ADDRESS LINE 5>>
<<CITY, STATE ZIP>>
<<COUNTRY>>

A proposed settlement has been reached in class action lawsuits against Waterford Country School, Inc. ("Waterford" or "Defendant") related to a security incident that was discovered between September 17, 2023 and October 5, 2023 and about which Defendants notified potentially impacted individuals on August 8, 2024. The lawsuits claim Defendants are legally responsible for the Data Security Incident, where Social Security numbers, dates of birth, LINK/Family ID numbers, medical information and health insurance information may have been accessed and exfiltrated by unauthorized individuals. The lawsuits assert various legal claims, including negligence, breach of implied contract and the Breach of the Implied Covenant of Good Faith and Fair Dealing. Defendant denies these claims and deny that they did anything wrong.

You are receiving this notice because you may be a Settlement Class Member. The Settlement Class is defined by the Court as all individuals within the United States of America whose Private Information was exposed to unauthorized third parties as a result of the data breach allegedly discovered by Defendant on or before September 17, 2023.

Under the terms of the settlement, Waterford has agreed to establish a Settlement Fund of \$400,000. Settlement Class Members who submit a valid claim will be reimbursed for any valid documented losses fairly traceable to the Data Security Incident up to \$5,000 and will receive a *pro-rata* distribution. All attorneys' fees and costs will also be paid from the Settlement Fund.

The easiest way to submit a claim is online at www.XXXXXXXXXX.com using your Unique ID found on the front of this postcard. To be eligible, you must complete and submit a valid Claim Form, postmarked or submitted online on or before **MONTH DAY, 20XX**. You can also exclude yourself or object to the Settlement on or before **MONTH DAY, 20XX**. If you do not exclude yourself from the Settlement, you will remain in the Class and will give up the right to sue Waterford over the claims resolved in the Settlement. **A summary of your rights under the Settlement and instructions regarding how to submit a claim, exclude yourself, or object are available at www.XXXXXXXXXX.com.**

The Court will hold a Final Approval Hearing on **MONTHDAY, 20XX, at X:XX X.m.** At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also listen to people who have asked to speak at the hearing. You may attend the Hearing at your own expense, or you may also pay your own lawyer to attend, but it is not necessary. It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check www.XXXXXXXXXX.com.

This notice is a summary. The Settlement Agreement and more information about the lawsuits and Settlement are available at www.XXXXXXXXXX.com or by calling toll-free 1-XXX-XXX-XXXX.

EXHIBIT 3

EXHIBIT 3**Long Form Notice****NOTICE OF PROPOSED CLASS ACTION SETTLEMENT***Ortega v. Waterford Country School, Inc.*, Case No. 3:24-cv-01334 (U.S.D.C. CT)

You may be eligible for a cash payment from a class action settlement involving Waterford Country School, Inc., but you need to act.

This is a court-authorized Notice of a proposed settlement in a class action lawsuit, *Ortega v. Waterford Country School, Inc.*, Case No. 3:24-cv-01334, currently pending in the United States District Court of Connecticut. The proposed settlement would resolve a lawsuit that alleges that Waterford Country School, Inc. (“Waterford”) was negligent and breached contractual and statutory duties in connection with a Data Incident discovered by Waterford between September 17, 2023 and October 5, 2023. Waterford contests these claims and denies that it did anything wrong. This Notice explains the nature of the class action lawsuit, the terms of the settlement and your legal rights and obligations.

You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. To read the precise terms and conditions of the settlement, you can access a copy of the Settlement Agreement [here \[link to document on website\]](#). You may also contact the Settlement Administrator at [1-XXX-XXX-XXXX](#).

Summary of Your Legal Rights and Options in This Settlement		Deadline
Submit a Claim	The only way to be eligible to receive a Claimant Award from this Settlement is by submitting a timely and valid Claim Form. The Claim Form must be submitted no later than _____, 2025.	_____, 2025
Opt Out of the Settlement	You can choose to opt out of the Settlement and receive no payment. This option allows you to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims resolved by this Settlement. You can elect your own legal counsel at your own expense.	_____, 2025

QUESTIONS? VISIT [WWW._____.COM](#) OR CALL TOLL-FREE 1-[XXX-XXX-XXXX](#)

Object to the Settlement and/or Attend a Hearing	If you do not opt out of the Settlement, you may object to it by writing to the Court explaining why you don't like the Settlement. You may also ask the Court for permission to speak about your objection at the Final Approval Hearing. If you object, you may also file a claim for a Claimant Award.	_____, 2025
Do Nothing	Unless you opt out of the settlement, you are automatically part of the Settlement. If you do nothing, you will not receive a payment from this Settlement and you will give up the right to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims resolved by this Settlement.	No Deadline

What Is This Lawsuit About?

In a class action, one representative sued on behalf of people who have similar claims. All of the people with similar claims are class members. One court resolves the issues for all class members, except those who exclude themselves from the class.

This lawsuit began when Plaintiff Gary Ortega filed a putative class action complaint against Waterford. In the lawsuit, Plaintiff alleges that Waterford was negligent and violated contractual and statutory damages when a third party obtained unauthorized access to information such as included Social Security numbers, dates of birth, LINK/Family ID numbers, medical information and health insurance information. Waterford denies any liability or wrongdoing of any kind associated with the claims in this lawsuit.

This is just a summary of the allegations. The complaint in the lawsuit is posted at www.XXXXXXXXXX.com and contains all of the allegations.

Why Is There a Settlement?

To resolve this matter without the expense, delay, and uncertainties of litigation, the parties reached a settlement. The proposed settlement would require Waterford to pay money to the Settlement Class, and pay settlement administration costs, attorneys' fees and costs of Class Counsel, and a Service Payment to the Class Representative, as may be approved by the Court. The settlement is not an admission of wrongdoing by Waterford and does not imply that there has been, or would be, any finding that Waterford violated the law.

Am I a Class Member?

You are a member of the Settlement Class if you are a resident within the United States of America whose Private Information was exposed to unauthorized third parties as a result of the data breach allegedly discovered by Defendant on or before September 17, 2023.

QUESTIONS? VISIT WWW.XXXXXXXXXX.COM OR CALL TOLL-FREE 1-XXX-XXX-XXXX

Who Represents Me?

The Court has appointed Laura Van Note of Cole & Van Note (“CVN”) as Class Counsel. CVN is located at 555 12th Street, Suite 2100, Oakland, CA 94607.

Class Counsel will petition to be paid legal fees and to be reimbursed for their reasonable expenses from the Settlement Fund. You do not need to hire your own lawyer, but you may choose to do so at your own expense.

What Are the Settlement Benefits?

Waterford has agreed to establish a Settlement Fund, by depositing with the Settlement Administrator US \$400,000.00 in cash.

The Settlement Fund will be used to pay attorneys’ fees and costs, a Service Payment for the Class Representative and Settlement administration costs. After deducting amounts for attorneys’ fees and costs, a Service Payment for the Class Representative, and Settlement administration costs, the remaining amount (“**Net Settlement Amount**”) will be used to pay timely valid claims.

A Settlement Class Member who timely submits a valid and approved Claim Form shall be entitled to a Claimant Award:

(1) Documented Loss Fund

The Settlement Class Member may submit a claim for a Settlement Payment of up to \$5,000 reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Settlement Class Member must choose to do so on their given Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss; and (iii) reasonable documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement.

(2) Non-Documented Pour-Over Fund

Following the distribution of Administrative Expenses, Service Awards, Documented Loss Claims, Attorneys’ Fees and Class Counsel’s Litigation Expenses, the Settlement Administrator will make a *pro rata* cash payment from the remaining Settlement fund to each Class Member who submits a valid claim, as determined by the Settlement Administrator in accordance with the Settlement Agreement or, if applicable, the dispute resolution process therein, so long as the funds are available. If too little money remains to make such a payment, the money will be donated to an appropriate charity.

Waterford has also agreed to certain enhancements, including additional training and security provisions to its data security.

How Do I Get a Payment?

You must submit a completed Claim Form no later than **[Day/Month, 2025]**. You may submit a **QUESTIONS? VISIT WWW._____.COM OR CALL TOLL-FREE 1-XXX-XXX-XXXX**

Claim Form online at www.XXXXXXXXXX.com.

How Do I Exclude Myself from the Settlement?

If you want to exclude yourself from the Settlement Class, sometimes referred to as “opting out,” you will not be eligible to recover any benefits as a result of this settlement and you will not receive a payment or have any rights under the Settlement Agreement. However, you would keep the right to sue Waterford at your own expense about the legal issues raised in this lawsuit. You may exclude yourself from the settlement by mailing a written notice to the Settlement Administrator, postmarked on or before **[Day/Month, 2025]**. Your exclusion request letter must:

- Be in writing;
- State your current address;
- Contain the statement “I request that I be excluded from the Settlement Class in the case of *Ortega v. Waterford Country School, Inc.*”;
- Be signed by you; and
- Be mailed to the Settlement Administrator, **[Street Address]**, **[City, State, Zip]**, postmarked on or before **[Day/Month, 2025]**.

How Do I Object to the Settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object.

If you are a member of the Settlement Class and you do not exclude yourself from the Settlement, you can object to the Settlement. To do so, you must file your written objection with the Court no later than **[Day/Month, 2025]**, and mail a copy to Class Counsel and Waterford’s Counsel at the addresses listed below. Your written objection may include any supporting documentation you wish the Court to consider.

If your objection is submitted and overruled by the Court at the Final Approval hearing, you will remain fully bound by the terms of the Settlement Agreement and the Final Approval Order.

Mailing addresses for Class Counsel and Waterford’s Counsel are as follows:

<p>CLASS COUNSEL:</p> <p>Laura Van Note, Esq. COLE & VAN NOTE 555 12th Street, Suite 2100, Oakland, CA 94607</p>	<p>WATERFORD’S COUNSEL:</p> <p>Jennifer Oliver BUCHANAN INGERSOLL & ROONEY LLP 600 W. Broadway Suite 1100 San Diego, CA 92101</p>
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QUESTIONS? VISIT WWW.XXXXXXXXXX.COM OR CALL TOLL-FREE 1-[XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX)

What Is the Difference Between Objecting and Asking to be Excluded?

Objecting means telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

What Am I Agreeing to by Remaining in the Settlement Class?

Unless you exclude yourself, you will be part of the Settlement Class and you will be bound by the release of claims in the Settlement. This means that if the Settlement is approved, you cannot sue, continue to sue, or be part of any lawsuit against Waterford or the other Released Parties asserting a “Released Claim,” as defined below. It also means that the Court’s Order approving the settlement and the judgment in this case will apply to you and legally bind you.

“**Released Claims**” means any and all actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on federal, state, local, statutory or common law or any other law, against the Released Parties, or any of them, arising out of, or relating to, actual or alleged facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act in connection with the data security incident, and including all claims that were brought or could have been brought in the Action, belonging to any and all Settlement Class members, including but not limited to any state law or common law claims that they may have or had.

“**Released Parties**” means Waterford and its past, present, and future, direct and indirect heirs, assigns, associates, corporations, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, reinsurers, benefit plans, predecessors, successors, managers, administrators, executors and trustees.

When Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Final Approval Hearing on **[Day/Month, 2025] at XX:XX A.M./P.M. at [redacted]**. At that hearing, the Court will determine the overall fairness of the settlement, hear objections, and decide whether to approve the requested attorneys’ fees and expenses, Service Payment for the Class Representatives, and settlement administration costs. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check **www.XXXXXXXXXX.com** and the Court’s docket for updates.

How Do I Get More Information?

For more information, go to **www.XXXXXXXXXXX.com**, or call the Settlement Administrator at **1-XXX-XXX-XXXX**. You may also write to the Settlement Administrator via mail to **[address]** or via email **[email address]**.

QUESTIONS? VISIT **WWW. [redacted].COM** OR CALL TOLL-FREE 1-**XXX-XXX-XXXX**

EXHIBIT 4

ORTEGA v. WATERFORD COUNTRY SCHOOL, INC., Case No. 3:24-cv-01334
Waterford Country School Settlement

“DOCUMENTED LOSSES” AND IDENTITY THEFT
PROTECTION AND RESTORATION SERVICES CLAIM FORM

IN ORDER TO BE VALID, THIS CLAIM FORM MUST BE RECEIVED ONLINE AT [INSERT WEBSITE] NO LATER THAN [INSERT DATE].

ATTENTION: *This Claim Form is to be used to apply for relief related to the Data Incident that occurred between September 17, 2023 and October 5, 2023 and potentially affected patients, employees, and guarantors of Waterford Country School, Inc. (“Waterford”). Individuals may be eligible: 1) for all Settlement Class Members, reimbursement of actual losses that are reasonably traceable to the Data Incident, including attested time.*

*To submit a Claim, you must have been identified as a potential Settlement Class Member from Waterford’s business records and received Notice of this Settlement with a **unique Claim Number**.*

You may apply to be reimbursed for your actual documented losses, up to \$5,000.00.

PLEASE BE ADVISED that any documentation you provide must be submitted **WITH** this Claim Form.

*Note that you **MUST** separately apply for documented losses, including attested time, using this claim form.*

CLAIM VERIFICATION: *All Claims are subject to verification. You will be notified if additional information is needed to verify your Claim.*

ASSISTANCE: *If you have questions about this Claim Form, please visit the Settlement website at [INSERT] for additional information or call [INSERT PHONE NUMBER].*

PLEASE KEEP A COPY OF YOUR CLAIM FORM AND PROOF OF MAILING FOR YOUR RECORDS.

Failure to submit required documentation, or to complete all parts of the Claim Form, may result in denial of the claim, delay its processing, or otherwise adversely affect the claim.

REGISTRATION

First Name:	<input type="text"/>	MI:	<input type="text"/>	Last Name:	<input type="text"/>
Mailing Address:	<input type="text"/>				
City:	<input type="text"/>	State:	<input type="text"/>	ZIP Code:	<input type="text"/>
Telephone Number:	<input type="text"/>				

$$\begin{array}{|c|c|c|} \hline & & \\ \hline \end{array} - \begin{array}{|c|c|c|} \hline & & \\ \hline \end{array} - \begin{array}{|c|c|c|c|} \hline & & & \\ \hline \end{array}$$

Email Address:

[illegible]

Please provide the Claim Number identified in the notice that was e-mailed to you:

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Instructions. Please follow the instructions below and answer the questions as instructed.

CLAIM INFORMATION

Section A. Confirm Your Eligibility

Did you receive a unique Claim Number indicating that you may be a member of the Settlement Class?

☐ Yes ☐ No

If yes, continue to the next question. If no, you are not a member of the Settlement Class and do not qualify to file a Claim.

Did you suffer any financial expenses or other financial losses that you believe was as a result of the Data Incident or did you spend time remedying the issues related to the Data Incident? For example, did you sign up and pay for a credit monitoring service, hire and pay for a professional service to remedy identity theft, etc., or spend time monitoring credit, resolving disputes for unauthorized transactions, freezing or unfreezing your credit, remedying a falsified tax return, etc. as a direct result of or attributed to the Data Incident?

☐ Yes ☐ No

*If yes, you may be eligible to fill out **Section B** of this form and provide corroborating documentation.*

Section B. Reimbursement for Losses and Attested Lost Time

If you suffered verifiable financial losses that are reasonably traceable to the Data Incident or spent time remedying the issues related to the Data Incident, you may be eligible to receive a payment to compensate you for the losses and inconveniences suffered and lost time spent that are fairly traceable to the Data Incident.

*If it is verified that you meet all the criteria described in the Settlement Agreement, and you **submit** proof of your losses and the dollar amount of those losses, you will be eligible to receive a payment compensating you for your documented losses of up to **\$5,000.00**. Examples of what can be used to prove your losses include: receipts, account statements, etc. You may also prove losses by submitting information in the claim form that describes time spent remedying suspected identity theft, fraud, or misuse of personal information and/or other issues reasonably traceable to the Data Incident. You will be required to provide an attestation as to the time you spent remedying issues related to the Data Incident. Examples of what can be used to account for your losses related to time spent remedying issues related to the Data Incident include: time spent monitoring credit, resolving disputes for unauthorized transactions, freezing or unfreezing your credit, remedying a falsified tax return, etc.*

Providing adequate proof of your losses does not guaranty that you will be entitled to receive the full amount claimed. All Claims will also be subject to an aggregate maximum payment amount, as explained in the Settlement Agreement. If the amount of losses claimed exceeds the maximum amount of money available under the Settlement Agreement, then the payment for your Claim will be reduced on a pro rata basis. If you would like to learn more, please review the Settlement Agreement for further details.

Payment for your losses will be paid directly to you electronically, unless you request to be paid by check as indicated below.

For each loss that you believe can be traced to the Data Incident, please provide a description of the loss, the date of the loss, the dollar amount of the loss, and the type of documentation you will be submitting to support the loss. **You must provide ALL this information for this Claim to be processed.** Supporting documents must be submitted electronically. Please do so as part of this Claim Form at **[Insert Website]** and provide the additional information required below. **If you fail to provide sufficient supporting documents, the Settlement Administrator will deny Your Claim.** Please provide only copies of your supporting documents and keep all originals for your personal files. The Settlement Administrator will have no obligation to return any supporting documentation to you. A copy of the Settlement Administrator's privacy policy is available at **[Insert Website]**. With the exception of your [DEFENDANT] name, mailing address, email address, and phone number, supporting documentation will not be provided to Defendant in this action. Please do not directly communicate with [DEFENDANT] regarding this matter. All inquiries are to be sent to the Claims Administrator.

Examples of such losses include payments for identity theft protection or credit monitoring you made which are reasonably traceable to the Data Incident, financial losses due to stolen identity traceable to the Data Incident, etc. These are only examples and do not represent a complete list of losses eligible for compensation. Please provide a description of any loss that you claim was the result of the Data Incident.

Examples of documentation include receipts for identity theft protection services, etc.

Description of the Loss	Date of Loss	Amount	Type of Supporting Documentation
Example: Identity Theft Protection Service	<div> <div>0</div><div>7</div> </div> <div>MM</div> <div> <div>1</div><div>7</div> </div> <div>DD</div> <div> <div>2</div><div>0</div> </div> <div>YY</div>	\$50.00	Copy of identity theft protection service bill
Example: Fees paid to a professional to remedy a falsified tax return	<div> <div>0</div><div>2</div> </div> <div>MM</div> <div> <div>3</div><div>0</div> </div> <div>DD</div> <div> <div>2</div><div>1</div> </div> <div>YY</div>	\$25.00	Copy of the professional services bill
	<div> <div>MM</div> </div> <div> <div>DD</div> </div> <div> <div>YY</div> </div>	\$ <div> <div> <div></div><div></div><div></div><div></div> </div> <div> <div></div><div></div> </div> </div>	
	<div> <div>MM</div> </div> <div> <div>DD</div> </div> <div> <div>YY</div> </div>	\$ <div> <div> <div></div><div></div><div></div><div></div> </div> <div> <div></div><div></div> </div> </div>	
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Reimbursement for Attested Time:

Settlement Class Members may submit a claim for time spent remedying identity theft, fraud, misuse of personal information, credit monitoring or freezing credit reports, and/or other issues reasonably traceable to the Data Incident at \$30.00 per hour.

If you spent time remedying issues related to the Data Incident, including at least one (1) full hour, please list the number of hours you spent here:_____.

By checking the below box, I hereby declare under penalty of perjury that the information provided in this Claim Form to support my seeking relief for Attested Time is true and correct.

- ☐ **Yes, I understand that I am submitting this Claim Form and the affirmations it makes as to my seeking relief for Attested Time under penalty of perjury. I further understand that my failure to check this box may render my Claim for Attested Time null and void.**

Section C. Payment

You will receive payment for your losses under this Settlement electronically. If you do not wish to receive an electronic payment, payment for your losses will be paid in the form of a check sent to the mailing address you provided above.

Please check the box if you **do not** want to receive your payment electronically: ☐

If you wish to receive an electronic payment, you may receive it in the following manners:

[Settlement Administrator to provide for electronic payment manners and instructions]

Section D. Settlement Class Member Affirmation

By submitting this Claim Form and checking the box below, I declare that I received notification from Waterford that I have been identified as a potential Settlement Class Member. As I have submitted claims of losses due to the Data Incident, I declare that I suffered these losses.

I understand that my Claim and the information provided above will be subject to verification.

I also understand that I may not be entitled to recover under this Settlement if I am employed by and/or affiliated with the Judge or Magistrate presiding over this action, and/or am employed by the Defendants or anyone acting on their behalf.

By submitting this Claim Form, I certify that any documentation that I have submitted in support of my Claim consists of unaltered documents in my possession.

☐ **Yes, I understand that my failure to check this box may render my Claim null and void.**

Please include your name in both the Signature and Printed Name fields below.

Signature:

Date: – –
MM DD YY

Printed Name:

IN ORDER TO BE VALID, THIS CLAIM FORM MUST BE RECEIVED ONLINE AT [INSERT WEBSITE] NO LATER THAN [120 days after the Notice Deadline].

EXHIBIT B

An aerial photograph of a modern skyscraper with a glass facade, reflecting the surrounding city and harbor. The building is situated in a dense urban area with other buildings and streets visible. In the background, a large body of water (the harbor) is visible, with several ships and cranes. Distant hills and a city skyline are visible on the horizon under a clear blue sky.

COLE & VAN NOTE

ATTORNEYS AT LAW

"A single voice has the power to push Big Business toward big change."

FIRM RESUME

OVERVIEW OF OUR PRACTICE

Cole & Van Note (“CVN”) is a boutique class action firm known for aggressive representation and impressive results in the areas of consumer fraud, data breach, environmental and employment litigation. Founded in 1992, CVN has been devoted primarily to such matters, having litigated hundreds of class actions against businesses of all types and in nearly every industry imaginable. The members of CVN have vast experience prosecuting class/complex actions, both in a sole counsel capacity and in leadership positions, oftentimes among many firms, in California and nationwide litigation. They have published numerous scholarly articles dealing with various substantive issues as well as class action litigation/procedure, speak regularly to legal audiences, and have served as consulting experts in class action litigation. CVN’s team of skilled advocates has recovered billions of dollars for tens of millions of workers and consumers, been involved in record-setting settlements and judgments and compelled the correction of innumerable unlawful practices.



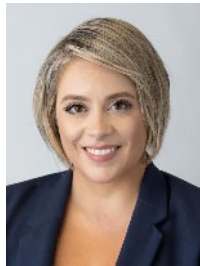
SHAREHOLDERS & ASSOCIATE ATTORNEYS



Scott Edward Cole, founder and shareholder of Cole & Van Note, has extensive leadership experience prosecuting class action cases in federal and state courts nationwide. Mr. Cole has authored numerous scholarly publications and serves as highly regarded guest lecturer on issues surrounding class action procedures and negotiation theory. Mr. Cole has been responsible for shaping the law in trial and appellate courts for decades, authored the book “Fallout” and is available to serve as a mediator of class action disputes.

Credentials: Admitted, State Bar of California, 1992; University of San Francisco School of Law, J.D., 1992; President, University of San Francisco Labor & Employment Law Society; San Francisco State University, B.A., Speech Communications (Individual Major in Rhetoric), 1989, Minor Study in Business Administration, 1989; Admitted, United States District Court for all California Districts, the District of Colorado and the Western District of Michigan; Admitted, United States Court of Appeals (6th, 9th and 10th Circuits). Additionally, Mr. Cole is a former National Association of Securities Dealers Registered Representative (Series 7) and is/has been a

member of the Association of Trial Lawyers of America, California Employment Lawyers Association, American Bar Association, Alameda County Bar Association (e.g., Vice Chair of ACBA's Labor & Employment Law Section Executive Committee), National Employment Lawyers Association and a U.S. Delegate to the InterAmerican Meeting of Labor and Trade Union Lawyers, Havana, Cuba (March 2012). Mr. Cole is also the author of "Fallout," a story based upon his experiences litigating after the 1994 airborne release of toxic chemicals by the Unocal Corporation (also used by various law schools in the curriculum for first year law students).



Laura Van Note, shareholder, is an aggressive and skilled advocate and leads the firm's hiring and career outreach efforts. A 2013 graduate of the University of Missouri, Kansas City School of Law, her practice has focused primarily on class action representation of data breach victims and underpaid workers in employment/civil rights litigation. With a near-perfect track record for results, Ms. Van Note appears in courts across the nation, is licensed in Kansas and Missouri and in numerous federal districts.

Credentials: Admitted, State Bar of California, 2016; Admitted, State Bar of Missouri, 2013; Admitted, State Bar of Kansas, 2015; Admitted, United States District Court for all California Districts, the Eastern District of Wisconsin, District of Kansas, Eastern and Western Districts of Missouri, District of New Mexico, District of Nebraska, District of Colorado and the Northern District of Illinois; University of Missouri, Kansas City School of Law, J.D., 2013 (Order of the Barrister, Dean's List, Captain of the National Trial Advocacy Team, President of the American Constitutional Society for Law and Policy, Teaching Assistant to the Directory of Advocacy); University of Missouri, Kansas City, B.A., History, Minor in French, 2010.



Alicyn Whitley, associate attorney, graduated from Golden Gate University's School of Law near the top of her class in 2018, receiving the Dean's Award for Scholarship and Leadership. While in school, Ms. Whitley worked at numerous Bay Area law firms as well as the U.S. Department of Labor on various civil litigation matters and contract disputes. With her substantial background as an insurance defense attorney handling numerous personal injury, construction defect and employment disputes, Ms. Whitley brings a unique perspective and set of skills to the firm's high profile consumer and

employment class action practice.

Credentials: Admitted, State Bar of California, 2019; Admitted, United States District Courts for Northern and Central California; Golden Gate University School of Law, J.D., 2018; University of Nevada, Las Vegas, B.A., Broadcast Journalism, 2013.



Mark T. Freeman, associate attorney, graduated from Pacific McGeorge School of Law in 2013 near the top of his class. During law school, Mr. Freeman engaged in the McGeorge Trial Advocacy Program (which he completed with Honors) and served as Chief Comment Editor for the McGeorge Law Review. A published author (“BarCram: How To Survive the Last Two Weeks Before You Take (And Pass) the California Bar”), Martindale-Hubbell “AV Preeminent” rated attorney and Certified Mediator, Mr. Freeman is also member of the Consumer Attorneys of California, the Congress of Neutrals and the Contra Costa County Bar Association. At CVN, Mr. Freeman utilizes his vast litigation experience in the areas of class action consumer, employment and data breach law.

Credentials: Admitted, State Bar of California, 2013; Admitted, United States District Courts for the Northern, Central and Eastern Districts of California; Admitted, 9th Circuit Court of Appeals; Pacific McGeorge School of Law, J.D., 2013 (Order of the Coif; McGeorge Law Review); Saint Mary’s College of California, B.A. in Economics; Minor in English & Creative Writing (Honors: Br. U. Jerome Griffin Award at Graduation (highest award in School of Econ. and Business)), 2010.

SCHOLARLY PUBLICATIONS

The following represent examples of how CVN has elected to give back and help shape the law through our own articles, opinion pieces and the like – some examples of this including:

The Quest for Class Certification, Employment Law Strategist (Sept. & Oct. 2003).

To Be or Not to Be a Penalty: Defining the Recovery Under California's Meal and Rest Period Provisions, Golden Gate U. L. Rev. (Spring 2005).

To Certify or Not to Certify: A Circuit-By-Circuit Primer of the Varying Standards for Class Certification in Actions under the Federal Labors Standards Act, B.U. Pub. Int. L.J. (Spring 2004).

Kullar v. Footlocker Retail, Inc.: A New Standard for Class Action Settlement Approval, CELA Bulletin (April 2009).

Ninth Circuit Provides Much Needed Guidance on Evidentiary Burdens in Overtime Misclassification Litigation, CELA Bulletin (May 2009).

Putting the "Rest" Back in Rest Break, Alameda County Bar Association - Labor & Employment Section News (Autumn 2009).

Barristers to Blogs: Softening Ethical Restrictions in the Digital Age, Los Angeles Daily Journal (June 14, 2010).

LEADERSHIP ROLES

CVN has held numerous court-appointed sole- and co-leadership positions in state and federal courts across the country. Recent lead counsel appointments include:

- In Re: Rackspace Data Security Litigation, No. SA-22-cv-01296-XR (W.D. Tex.) (court appointed lead counsel)
- Henderson v. Reventics, LLC, Case No. 1:23-cv-00586-MEH (D. Colo.) (court appointed co-lead counsel)
- Hinds v. Community Medical Centers, Inc., Case No. STK-CV-UNPI-2021-10404 (Super. Ct. Cal. San Joaquin Cnty.) (court appointed co-lead counsel)

- Tsvetanova v. UCSD Health, Case No. 37-2021-00039888-CU-PO-CTL (Super. Ct. Cal. San Diego Cnty.) (court appointed co-lead counsel)
- Fedorys v. Ethos Group Inc., Case No. 3:22-cv-2573-M (N.D. Tex.) (court appointed co-lead counsel)
- Moreland v. 1st Franklin Financial Corporation, Case No. 2:23-cv-00038-SCJ (N.D. Ga.) (court appointed co-lead counsel)
- Domitrovich v. MC Dean, Inc., Case No. 1:23-cv-00210-CMH-JFA (E.D. Va.) (court appointed co-lead counsel)
- Deevers v. Wing Financial Services, LLC, Case No. 4:22-cv-00550-CVE-MTS (N.D. Okla.) (court appointed co-lead counsel)
- Darrin v. Huntington Ingalls Industries, Inc., Case No. 4:23-cv-00053-JKW-DEM (E.D. Va.) (court appointed co-lead counsel)
- Guerrero v. Merritt Healthcare Holdings, LLC, Case No. 3:23-cv-00389-MPS (D. Conn.) (court appointed co-lead counsel)
- Prutsman v. Nonstop Administration and Insurance Services, Inc., Case No. 3:23-Cv-01131-VC (N.D. Cal.) (court appointed co-lead counsel)
- In re DISH Network Data Security Incident Litigation, Case No. 1:23-cv-01168-RMR-SBP (D. Colo.) (court appointed co-lead counsel)
- Byers v. OrthoAlaska, LLC, Case No. 3:23-cv-00243-SLG (D. Alaska) (court appointed co-lead counsel)
- Tambroni v. WellNow Urgent Care, P.C., Case No. 1:24-cv-01595 (N.D. Ill.) (court appointed co-lead counsel)
- Dryden v. Tri Counties Bank, Case No. 23CV03115 (Super. Ct. Cal. Butte Cnty.) (court appointed co-lead counsel)
- Brett v. Valley Mountain Regional Center, Case No. STK-CV-UPI-2024-0005025 (Super. Ct. Cal. San Joaquin Cnty.) (court appointed co-lead counsel)
- Cordell v. Patelco Credit Union, Case No. 24CV082095 (Super. Ct. Cal. Alameda Cnty.) (court appointed co-lead counsel)
- Skillings v. Access Sports Medicine and Orthopedics, Case No. 218-2024-CV-01086 (Super. Ct. New Hampshire Rockingham Cnty.) (court appointed co-lead counsel)
- Woodard v. Atlanta Women's Health Group, P.C., Case No. 24EV001838H (State Ct. Georgia Fulton Cnty.) (court appointed co-lead counsel)
- In Re: Cleveland Brothers Data Incident Litigation, Case No. 1:23-cv-00501-JPW (M.D. Penn.) (court appointed co-lead counsel)

- Hahn v. Phoenician Medical Center, Inc., Case No. CV2023-010982 (Super. Ct. Az. Maricopa Cnty.) (court appointed executive committee chair)
- Daley v. Risas Holdings LLC, Case No. CV-24-00789-PHX-SMM (D. Az.) (court appointed lead counsel)
- Shweiki v. Donor Network West, Case No. C20-00073, (Super. Ct. Cal. Contra Costa Cnty.) (court appointed lead counsel)
- Lowrey v. Community Psychiatry Mgt., LLC, Case No. 2:23-cv-00185-TLN-DB, (E.D. Cal.) (court appointed co-lead counsel)
- In Re: Blackhawk Network Data Breach Litig., Case No. 3:22-cv-07084-CRB, (N.D. Cal.) (court appointed co-lead counsel)
- In re Dropbox Sign Data Breach Litigation, Case No. 4:24-cv-02637-JSW (N.D. Cal.) (court appointed co-lead counsel)
- Bujok v. MC2 Data, LLC, Case No. 0:24-cv-61864-LEIBOWITZ (S.D. Fla.) (court appointed co-lead counsel)
- Francisco v. Diligent Acquisitions LLC, Case No. 4:24-cv-04468 (S.D. Tex.) (court appointed co-lead counsel)
- Oliver v. Jewish Home Lifecare, Index No. 157811/2024 (N.Y. Sup. Ct., N.Y. County, Index No. 157811/2024) (court appointed co-lead counsel)

EXEMPLAR COMPLEX & CLASS ACTION CASES

CVN's attorneys have represented tens of millions of individuals in legal disputes across hundreds of class action/complex litigation cases around the nation. For well over three decades, CVN's legal team has amassed extensive experience litigating data breach, wage and hour, environmental, and other personal injury and commercial cases. Today, the firm almost exclusively prosecutes multi-state data breach and other consumer-oriented class actions. Drawing from various areas of law, and by nowhere close to an exhaustive list, examples of the range of CVN's practice include matters such as:

Augustus/Davis v. ABM Security Services, Inc. (American Commercial Security Service, Inc.)

Superior Court of California, County of Los Angeles, Case No. BC336416; 2 Cal.5th 257 (2016)

Our firm filed this action for violations of California law for denial of meal and rest periods toward security guards. The action achieved class certification status in 2009. Following summary judgment proceedings, a judgment of over \$89 million was entered against the defendant(s). The judgment hinged on the issue of whether "on-duty" rest breaks were legally sufficient. After the Court of Appeal ruled against Plaintiffs on the issue, the case went to the California Supreme Court where Plaintiffs prevailed and, in so doing, created a new legal standard clarifying that "on-duty" rest breaks are invalid. After 12 years of litigation, successful summary judgment and substantial appellate work, this matter resolved for \$110 million.

Bower v. Steel River Systems LLC

Illinois Fourteenth Judicial Circuit Court (Whiteside County), Case No. 2023-LA-000006

This action arose out of Steel River Systems' 2022 data breach which affected numerous consumers and/or employees. This action settled for an undisclosed amount.

Brett v. Valley Mountain Regional Center

Superior Court of California, County of San Joaquin, Case No. STK-CV-UPI-2024-0005025

This action arose out of Valley Mountain's 2023 data breach which affected 17,000 patients of Defendant's facilities. Cole & Van Note was appointed co-lead class counsel.

Bulow v. Wells Fargo Investments, LLC

United States District Court (N.D. Cal.), Case No. 3:06-CV-7924

This matter was filed as a nation-wide class action against Wells Fargo Investments, on behalf of its Financial Consultants to recover overtime pay, compensation for denied meal and rest periods (California only) and reimbursement for business related service and supply expenses (California only). This matter settled for \$6.9 million.

Byers v. OrthoAlaska, LLC

United States District Court (D. Alaska), Case No. 3:23-cv-00243-SLG

This action arose out of OrthoAlaska's massive data breach which affected countless patients, consumers and/or employees. Cole & Van Note was court-appointed as co-lead class counsel.

Cano v. United Parcel Service, Inc.

Superior Court of California, County of Alameda, Case No. RG03089266

This wage and hour complex litigation matter involved the alleged misclassification of overtime non-exempt Operations Management Specialists, Operational Excellence Specialists and Industrial Engineering Specialist at this company's California facilities. This action settled for \$4.5 million.

Chaidez v. Odwalla, Inc.

Superior Court of California, County of San Mateo, Case No. CIV430598

This wage and hour complex litigation matter involved the alleged misclassification of overtime non-exempt California Route Sales Representatives. CVN served as primary counsel for this proposed class of employees. This action settled for \$2.2 million.

CKE Overtime Cases

Superior Court of California, County of Los Angeles, Case No. BC283274 (JCCP No. 4274)

This class action was brought against fast food chain Carl's Jr. for violations of California's overtime laws on behalf of the company's California restaurant chain Managers. The coordinated litigation provided a settlement fund of \$9.0 million.

Cordell v. Patelco Credit Union

Superior Court of California, County of Alameda, Case No. 24CV082095

This action arose out of the well-publicized 2024 data breach and denial of service impacting well over 1,000,000 Patelco customers. As a result of the event, Patelco customers were blocked access to their funds and other services for weeks, resulting in myriad damages including rejection of loan applications, damage to their credit and the inability to pay everyday life expenses. Cole & Van Note was appointed co-lead class counsel.

Darrin v. Huntington Ingalls Industries, Inc.

United States District Court (E.D. Va.), Case No. 4:23-cv-00053-JKW-DEM

This action arose out of Huntington Ingalls' massive data breach. Cole & Van Note was appointed by the court to a co-lead counsel position.

Davis v. Universal Protection Security Systems, Inc.

Superior Court of California, County of San Francisco, Case No. CGC-09-495528

Our firm filed a claim in 2009 against Universal Protection Security Systems, Inc. for violations of California law for denial of meal and rest periods toward security guards. This case settled under Cole & Van Note's sole leadership for \$4 million.

Deevers v. Wing Financial Services, LLC

United States District Court (N.D. Okla.), Case No. 4:22-cv-00550-CVE-MTS

This action arose out of Wing Financial's 2022 data breach which affected numerous loan consumers. Cole & Van Note was appointed co-lead class counsel.

Despres (Cornn) v. United Parcel Service, Inc.

United States District Court (N.D. Cal.), Case No. 3:03-CV-02001

This wage and hour class action litigation was brought to remedy violations of meal and rest period regulations on behalf of the company's California ground delivery drivers. CVN served as co-counsel for the certified class of drivers. This action settled for \$87 million, an unprecedented settlement amount at the time for such claims.

Domitrovich v. MC Dean, Inc.

United States District Court (E.D. Va.), Case No. 1:23-cv-00210-CMH-JFA

This action arose out of MC Dean's 2021 data breach which affected 45,000 employees. Cole & Van Note was appointed co-lead class counsel.

Dryden v. Tri Counties Bank

Superior Court of California, County of Butte, Case No. 23CV03115

This action arose out of Tri Counties' 2023 data breach which affected nearly 75,000 consumers. Cole & Van Note was appointed co-lead class counsel.

Escow-Fulton v. Sports and Fitness Clubs of America dba 24 Hour Fitness USA, Inc.

Superior Court of California, County of San Diego County, Case Nos. GIC881669/GIC873193)

Our firm filed this class action on behalf of the company's California "Group X" Instructors to recover regular and overtime pay, related penalties and un-reimbursed expenses. The action achieved class certification status in 2009. In 2011, the parties agreed to a partial settlement (of the expense reimbursement claims) for \$10 million. The parties then filed cross-motions for summary adjudication and, on August 2, 2011, the court issued an Order finding 24 Hour Fitness' session rate compensation scheme to be an invalid piece rate. The parties then agreed to settle the unpaid wage claims for another \$9 million, for a total judgment of \$19 million. This was an industry changing case that helped define "piece rate" standard under California law.

Fedorys v. Ethos Group, Inc.

United States District Court (N.D. Tex.), Case No. 3:22-cv-02573-M

This action arose out of Ethos Group's 2022 data breach which affected at least 267,000 consumers. Cole & Van Note was appointed co-lead class counsel.

Guerrero v. Merritt Healthcare Holdings, LLC

United States District Court (D. Conn.), Case No. 3:23-cv-00389-MPS

This action arose out of Merritt Healthcare's 2022 data breach which affected over 77,000 patients. Cole & Van Note was appointed co-lead class counsel.

Hakeem v. Universal Protection Service, LP

Superior Court of California, County of Sacramento, Case Nos. 34-2020-00286228-CU-OE-GDS; 34-201900270901-CU-OE-GDS

After an exhaustive multi-year process including venue transfer, consolidation, migration of litigants from one case to the other, multiple appeals and, generally, extremely hard-fought litigation, these two security guard class actions achieved a consolidated judgment under Cole & Van Note's sole leadership for \$10 million.

Henderson v. Reventics, LLC

United States District Court (D. Colo.), Case No. 1:23-cv-00586-MEH

This action arose out of Reventics' massive 2022 data breach which affected over four million patients, consumers and employees. Cole & Van Note was appointed co-lead class counsel.

Hinds v. Community Medical Centers

Superior Court of California, County of San Joaquin, Case No. STK-CV-UNPI-2021-0010404

This action arose out of Community Medical Centers' massive 2021 data breach which affected countless patients, consumers and/or employees. After reviewing competing requests for leadership over these consolidated actions, Cole & Van Note was appointed by the court to a co-lead counsel position. This action resulted in a multi-million-dollar judgment.

In re Apple Inc. Device Performance Litigation

United States District Court (N.D. Cal.), Case No. 5:18-md-02827-EJD

Following Apple's December 2017 admission that it throttled back performance of its iPhones (versions 6, 6 Plus, 6s, 6s Plus, SE, 7 and 7 Plus) to mask the problem of defective batteries and unexpected iPhone shut-downs, Cole & Van Note filed a class action to recover damages for consumers nationwide. Cole & Van Note served on the Plaintiffs' Steering Committee. This action settled for \$500 million.

In re DISH Network Data Security Incident Litigation

United States District Court (D. Colo.), Case No. 1:23-cv-01168-RMR-SBP

This action arose out of DISH Network's massive data breach which affected over 300,000 workers. Cole & Van Note was appointed by the court to a co-lead counsel position.

In re Dropbox Sign Data Breach Litigation

United States District Court (N.D. Cal.), Case No. 4:24-cv-02637-JSW

This action arose out of Dropbox's massive data breach. Cole & Van Note was appointed by the court to a co-lead counsel position.

In re Rackspace Security Litigation

United States District Court (W.D. Tex.), Case No. SA-22-cv-01296

This action arises out of Rackspace Technology's 2022 massive ransomware event which shut down functionality for tens of thousands of individuals and businesses across the United States

and overseas. Cole & Van Note served as court-appointed sole lead counsel for the nationwide class and representative plaintiffs from over 30 states.

In re Tosco SFR Litigation

Superior Court of California, County of Contra Costa, Case No. C97-01637

During incidents in April 1997 and January 1998, the Tosco Refinery in Rodeo, California released tons of airborne toxic chemicals. These harmful substances traveled into neighboring communities, seriously affecting the health of citizens and local workers. CVN served as Lead Counsel in this complex litigation and represented thousands of members of the community in that role. The multi-million-dollar fund created through this litigation under Cole & Van Note's sole leadership was disbursed among thousands of claimants and significantly change practices at this refinery ever since.

In re Unocal Refinery Litigation

Superior Court of California, County of Contra Costa, Case No. C94-04141

In response to Unocal's 16-day airborne release of chemicals over the County of Contra Costa in 1994, CVN filed a class action against the corporation on behalf of thousands of victims and thereafter served as one of a handful of firms (among dozens of law firms of record) on the Plaintiffs' Steering Committee. After hard-fought litigation, the matter eventually settled for \$80 million. This litigation, Mr. Cole's efforts to commence it and his grassroots work and exposure of the toxic event to the media provide the backdrop for Mr. Cole's book, "Fallout," published in 2018 (2605 Media LLC). In the end, the impact of this litigation was sweeping, substantially changing practices at this refinery and industry regulations, helping to establish a toxic release community monitoring system that spawned similar systems across the nation, establishing parks, improved roadways and an unprecedented community-industry Good Neighbor agreement.

In re Walgreen Co. Wage and Hour Litigation

United States District Court (C.D. Cal.), Case No. 2:11-CV-07664

Our firm served as court-appointed Lead Counsel after an adversarial hearing process in this consolidated action of nine lawsuits bringing a variety of wage and hour claims on behalf of California workers. The case settled under Cole & Van Note's sole leadership for \$23 million.

In re Westley Tire Fire Litigation

Superior Court of California, County of Santa Clara, Case No. CV 801282

On September 22, 1999, lightning struck and ignited a pile of approximately 7 million illegally stored waste tires in Westley, California, a town about 70 miles east of San Francisco. Over the subsequent five weeks, the fire spewed smoke and carcinogens over a large portion of the State of California. CVN served as the (sole) Lead and (shared) Liaison Counsel over a Plaintiffs' Steering/Management Committee in the consolidated actions against the owners and operators of this tire pile and related entities. These cases sought compensation for those individuals and businesses suffering personal and/or property damages as a result of these toxic substances and the fire's fall-out. In 2001, CVN reached a settlement with one defendant (CMS Generation Co.)

for \$9 million. In 2003, the Court granted final approval of the settlement. In 2005, two of the remaining defendants settled for roughly \$1.4 million (over \$10 million aggregate).

Kullar v. Foot Locker, Inc.

Superior Court of California, County of San Francisco, Case No. CGC-05-447044; 168 Cal.App.4th 116 (2008)

This class action was brought on behalf of California employees allegedly forced to purchase shoes of a distinctive color or design as a term and condition of their employment and in violation of state law. After the Court approved a multi-million settlement, two separate appeals challenged the settlement, but the Court of Appeal affirmed the trial court's judgment. This oft-cited case established in California what's now known as the "*Kullar standard*" for court approval of class action settlements.

Kurihara v. Best Buy Co., Inc.

United States District Court (N.D. Cal.), Case No. C 06-01884 MHP (EMC)

This class action was brought on behalf of Best Buy's California employees against this chain retailer for violations of California law (for denial of meal and rest periods). This case was granted class certification and Cole & Van Note then settled it for \$5 million following an oft-cited ruling which clarified the distinction between class composition and entitlement to a recovery.

Lett v. TTEC

United States District Court (N.D. Cal.), Case No. 3:22-cv-00018

This action arose out of TTEC Service Corporation's massive data breach in 2021 which affected countless patients, consumers and employees. CVN helped negotiate a \$2.5 million settlement for the class of victims.

Mambuki v. Securitas Security Services USA, Inc.

Superior Court of California, County of Santa Clara, Case No. 1-05-CV-047499 (JCCP No. 4460)

Our firm filed a claim against this defendant for violations of California law (for denial of meal and rest periods) on behalf of the company's California-based security guards. This coordinated proceeding settled in 2008 for \$15 million.

Mendoza v. CaptureRx

United States District Court (W.D. Texas), Case No. 5:21-CV-00523-OLG

This class action against NEC Networks, LLC, d/b/a CaptureRx ("CaptureRx"), as well as Rite Aid and Community Health Centers of the Central Coast arising out of the massive data breach in 2021 which affected a minimum of 1.6 million people. The hacked information included sensitive personally identifiable information and personal health information. These consolidated cases settled in 2022 for a total value of \$4.75 million.

Moreland, et al. v. 1st Franklin Financial Corporation

United States District Court (N.D. Ga.), Case No. 2:23-cv-00038-SCJ

This action arose out of 1st Franklin Financial's 2022 data breach affecting this company's loan consumers. Cole & Van Note was appointed co-lead class counsel.

O'Brien v. Edward D. Jones & Co., LP

United States District Court (N.D. Ohio), Case No. 1:08-CV-00529

We filed a nation-wide (and New York State) class action against this financial securities company on behalf of the company's financial services representatives to recover overtime pay and related penalties. CVN served on a Lead Counsel Committee in this action, which settled in 2007 for \$19 million.

Onyeige v. Union Telecard Alliance, LLC

United States District Court (N.D. Cal.), Case No. 3:05-CV-03971; MDL No. 1550

Our firm filed an action against Union Telecard Alliance, LLC alleging negligent misrepresentation and deceptive advertising practices related to its marketing of pre-paid telephone calling cards. This action settled for \$22 million.

Prutsman v. Nonstop Administration and Insurance Services, Inc.

United States District Court (N.D. Cal.), Case No. 3:23-cv-01131-VC

This action arose out of Nonstop's massive 2022 data breach which affecting consumers, employees and health care affiliates. Cole & Van Note was appointed co-lead class counsel.

Ramirez v. The Coca Cola Company

Superior Court of California, County of San Bernardino, Case No. RCV 056388 (JCCP No. 4280)

This was one of two companion actions CVN prosecuted against this soft drink giant for violations of California's overtime laws. This action was brought on behalf of over 4,000 hourly workers at the company's bottling, distribution and sales centers who were allegedly forced to work "off-the-clock" for Coca Cola and/or whose time records were ordered modified by the company. This well-publicized action resolved under Cole & Van Note's leadership for \$12 million.

Riordan v. Western Digital Corp.

United States District Court (N.D. Cal.), Case No. 5:21-CV-06074

This action arose out of the well-publicized widespread criminal data deletion of consumer hard drives in 2021. According to the lawsuit, the company knew of vulnerabilities in, at least, six of its products for years which, ultimately, led to the erasure of data for countless purchasers of these products. CVN served as sole counsel for the victims.

Roman/Toussaint v. HanesBrands, Inc.

United States District Court (M.D. N.C.), Case No. 1:22-cv-00879-LCB-LPA

This case involved a data breach of HanesBrands' network system in which worker information was accessed and/or reviewed by cybercriminals.

Tambroni v. WellNow Urgent Care, P.C.

United States District Court (N.D. Ill.), Case No. 1:24-cv-01595

This action arose out of WellNow's 2023 data breach affecting over 400,000 patients. Cole & Van Note was appointed co-lead class counsel.

Thomas v. Cal. State Auto. Assoc.

Superior Court of California, County of Alameda, Case No. CH217752

Our firm filed this class action litigation on behalf of all California claims adjusters working for CSAA after mid-January 1997. This lawsuit alleged that, during those years, CSAA mis- classified these workers as exempt "administrators" and refused to pay them for overtime hours worked. This lawsuit settled for \$8 million for nearly 1,200 workers.

Tierno v. Rite Aid Corporation

United States District Court (N.D. Cal.), Case No. 3:05-CV-02520

Our firm filed this action against Rite Aid Corporation on behalf of its salaried California Store Managers. It was alleged that defendant, purportedly the nation's third largest drug store chain, failed to pay overtime to those workers and denied them their meal and rest periods. In 2006, the federal court certified the class in this action, and approved a hard-fought settlement, achieved under Cole & Van Note's sole leadership, of \$6.9 million.

Tsvetanova v. Regents of the University of California, dba U.C. San Diego Health

Superior Court of California, County of San Diego, Case No. 37-2021-00039888-CU-PO-CTL

This action arose out of U.C. San Diego Health's massive data breach between December 2020 and April 2021 which affected countless patients, consumers and employees. After reviewing numerous requests for leadership over these consolidated actions, Cole & Van Note was appointed by the court to a co-lead class counsel position.

Witriol v. LexisNexis

United States District Court (S.D. Cal.), Case No. 3:06-CV-02360

Our firm filed an action against this company for its unlawful disclosure of private credit, financial and/or other personal information. This litigation, resolved by Cole & Van Note, provided a settlement fund of \$2.8 million.

CVN also serves in more informal (e.g., Executive Committee or Plaintiffs' Steering Committee) leadership positions in numerous other data breach cases and in sole counsel roles in many dozens more—actions currently pending across the majority of U.S. states.

APPELLATE EXPERIENCE

CVN has substantial appellate experience, merely highlighted by some examples below. For other appellate and/or unreported opinions and/or a list of matters currently on appeal, please contact our firm.

Augustus v. ABM Security Services, Inc. (2016) 2 Cal.5th 257 (Case No. S224853).

Baddie v. Berkeley Farms, Inc. (9th Cir. 1995) 64 F.3d 487 (Case No. 93-17187).

Dunbar v. Albertson's, Inc. (2006) 141 Cal.App.4th 1422 (First Dist., Division 1, Case No. A111153).

In re Certified Tire and Service Centers Wage and Hour Cases (2018)
28 Cal.App.5th 1 (Cal. Ct. of Appeals, Fourth Dist., Division 1, Case No. A086407).

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 (Case No. A119697).

Montano v. The Wet Seal Retail, Inc. (2015) 232 Cal.App.4th 1214 (Cal. Ct. App. 2015)

O'Hara v. Factory 2-U Stores, Inc., 2003 WL 22451991 (Cal. Ct. of Appeals, First District, Division 4, Case No. A101452)

Taylor v. Park Place Asset Management (1999) (Cal. Ct. of Appeals, First Dist., Division 5, Case No. A086407).

Whiteway v. Fedex Kinko's Office and Print Services (9th Cir. 2009) 319 Fed.Appx. 688 (Case No. 07-16696).

Current appeals not listed.



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**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GARY ORTEGA, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

WATERFORD COUNTRY SCHOOL, INC.,

Defendant.

Case No. 3:24-cv-01334-MPS

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT**

This matter coming before the Court on Plaintiff's Motion for, and Memorandum in Support of, Preliminary Approval of Class Action Settlement and the Declaration of Laura Van Note, Esq. in Support submitted therewith, and with the Court being fully advised on the matter, the Court hereby finds and orders as follows:

1. Unless otherwise defined herein, all defined terms in this order shall have the respective meanings ascribed to the same terms in the settlement agreement (referred to herein as the "Agreement").

2. The Court has conducted a preliminary evaluation of the settlement set forth in the Agreement. Based on this preliminary evaluation, the Court finds that the Agreement meets all applicable requirements of Federal Rule of Civil Procedure 23, for settlement purposes only, including that the Settlement Class is sufficiently numerous, that there are questions of law and fact common to members of the Settlement Class that predominate, that the representative parties fairly and adequately protect the interests of the class and that class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

3. The Court further finds that: (i) there is good cause to believe that the settlement is

fair, reasonable and adequate, (ii) the Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and (iii) the settlement warrants notice of its material terms to the Settlement Class for their consideration and reaction. Therefore, the Court grants preliminary approval of the Settlement.

4. Pursuant to Rule 23, and for settlement purposes only, the Court certifies the following Settlement Class: "all persons in the United States who were notified that their Private Information was potentially exposed to unauthorized third parties as a result of the Waterford Country School, Inc. Data Incident allegedly discovered by Defendant on August 8, 2024."

5. Excluded from the Settlement Class are (i) Defendants and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge, and (3) Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

6. For settlement purposes only, the Court hereby approves the appointment of Plaintiff Gary Ortega as a Class Representative.

7. For settlement purposes only, the Court hereby approves the appointment of (i) Laura Van Note as Class Counsel and finds that she is competent and capable of exercising the responsibilities of Class Counsel.

8. On _____, 2025 at ____ a.m./p.m., this Court will hold a final approval hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether: (a) final approval of the Agreement should be granted and (b) Class Counsel's application for attorney's

fees and expenses and an incentive award to the Class Representative should be granted.

9. No later than 30 days prior to the Final Approval Hearing, Plaintiff must file any papers in support of Class Counsel's application for attorneys' fees and Service Award to the Class Representative, and final approval of the Agreement.

10. Pursuant to the Agreement, Apex Class Action Administration is hereby appointed as the Settlement Administrator and shall be required to perform all of the duties of the Settlement Administrator as set forth in the Agreement or this Order.

11. The Court approves the proposed plan for giving notice to the Settlement Class, as fully described in the Agreement. The plan for giving notice, in form, method and content, fully complies with the requirements of the Federal Rules of Civil Procedure and due process and is due and sufficient notice to all persons entitled thereto. The Notice Program shall be completed no later than 45 days before the Final Approval Hearing.

12. The Court hereby directs the parties and Settlement Administrator to complete all aspects of the Notice Plan no later than 30 days after entry of this Order (the "Notice Date").

13. All persons who meet the definition of the Settlement Class and who wish to exclude themselves from the Settlement Class must submit their request for exclusion in writing no later than the Objection/Exclusion deadline, which is 90 days after the Notice Date. Any Settlement Class Member who fails to timely and properly exclude themselves from the Settlement through the procedure outlined in the Notice shall be deemed to remain a Settlement Class Member and shall be bound as a Settlement Class Member by the Agreement. Settlement Class Members shall be bound by all determinations and orders pertaining to the Agreement, including the release of all claims to the extent set forth in the Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as

hereinafter provided and as provided in the Agreement. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against Defendant or the Released Parties relating to the claims released under the terms of the Agreement.

14. Any member of the Settlement Class who intends to object to the Agreement must include in his or her written objection: (i) the objector's full name and address; (ii) the case name and docket number; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable and any supporting documents; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing, and; (vi) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection.

15. Any Settlement Class Member who fails to timely file a written objection with the Court in accordance with the terms of this Order and as detailed in the Notice, and at the same time provide copies to designated counsel for the parties, shall not be permitted to object to the Agreement at the final approval hearing, and shall be foreclosed from seeking any review of the Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

16. Class Members who wish to participate in the settlement and receive their share of the settlement proceeds shall complete and submit a claim form in accordance with the terms and conditions of the Agreement. The Settlement Administrator shall accept, and process claim forms in accordance with the Agreement.

17. The certification of the Settlement Class shall be binding only with respect to the

Settlement of the Action. In the event that the Agreement fails to become effective, is overturned on appeal or does not become final for any reason whatsoever, the parties shall be restored to their respective positions in the Action as of the date of the signing of the Agreement, and no reference to the Settlement Class, the Agreement or any documents, communications or negotiations related in any way thereto shall be made for any purpose.

18. Pending the final determination of the fairness, reasonableness and adequacy of the Settlement, no Settlement Class Member may prosecute, institute, commence or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

19. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Agreement and a Final Approval Order in accordance with the Agreement that adjudicates the rights of all Settlement Class Members.

20. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

21. All discovery and other proceedings in the Action as between Plaintiff and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Agreement and this Order.

22. For clarity, the deadlines set forth above and in the Agreement are as follows:

<u>Event</u>	<u>Date</u>
Settlement Administrator sends Notice to the Settlement Class (the “Notice Date”)	Within 30 after Entry of Preliminary Approval Order
Last day for Settlement Class Members to opt out or object to the proposed Settlement	Within 90 after the Notice Date

Last day for Settlement Class Members to submit Claim Forms	120 days after the Notice Date
The Notice Program shall be completed	No later than 45 days before the Final Approval Hearing
Date by which Class Counsel is to file Motion for Final Approval of Settlement and Petition for Award of Attorneys' Fees, Expenses and Service Awards	No later than 30 days prior to the Final Approval Hearing
Final Approval Hearing	_____

IT IS ORDERED.

ENTERED: _____

JUDGE: _____