UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TREVOR MILLER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

SYRACUSE UNIVERSITY,

Defendant.

Case No. 5:21-cv-1073-LEK-TWD

Class Action

NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, Declaration of Todd S. Garber, and Exhibits, Plaintiff Trevor Miller, though his attorneys Finkelstein, Blankinship, Frei-Pearson, & Garber and Keller Postman LLC, will and does hereby move this Court before the Honorable Lawrence E. Kahn, Senior United States District Court Judge, at the James T. Foley United States Courthouse, 445 Broadway, Albany, New York 12207, at a date and time to be set by the Court, for an Order Approving Class Action Settlement, and granting such other and further relief as the Court may deem just and proper.

Dated: December 14, 2023

/s/

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TREVOR MILLER, individually and on behalf of all others similarly situated, Plaintiff, v. **SYRACUSE UNIVERSITY,** Defendant.	Case No. 5:21-cv-1073-LEK-TWD Class Action

MEMORANDUM OF LAW IN SUPPORT OF UNCONTESTED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Subject to Court approval, Plaintiff Trevor Miller ("Plaintiff") and Defendant Syracuse University ("Defendant" or "SU," collectively with Plaintiff, the "Parties") have settled this putative class action arising out of Plaintiff's allegations with respect to a data breach incident that occurred between approximately September 24 and September 28, 2020 (the "Data Incident"). This proposed settlement, as embodied in the agreement attached to the Declaration of Todd S. Garber ("Garber Decl.") as Exhibit A (the "Settlement Agreement" or "Settlement") and described in greater detail herein, resolves Plaintiff's claims on a class-wide basis, provides relief to a putative class of approximately 9,800 individuals (collectively, the "Class," "Settlement Class," or "Class Members"), and satisfies all of the criteria for preliminary settlement approval and certification of a settlement class under New York and federal law. Plaintiff respectfully submits this memorandum in support of his motion for preliminary approval of the Settlement to resolve this case pursuant to Federal Rule of Civil Procedure 23 ("Rule 23").

With this motion, Plaintiff respectfully requests that the Court (1) grant preliminary approval of the Settlement Agreement; (2) for settlement purposes, conditionally certify the proposed Settlement Class under Rule 23; (3) appoint Plaintiff Trevor Miller as Class Representative and Finkelstein, Blankinship Frei-Pearson and Garber, LLP ("FBFG") and Keller Postman LLC ("KP") as Class Counsel for the conditionally certified Settlement Class; (4) appoint Postlethwaite & Netterville, APAC ("P&N") as Claims Administrator consistent with the terms of the Settlement Agreement; (5) approve the provision of the proposed Notice to the Settlement Class; and (6) set a hearing date for the final approval of the proposed Settlement and an award of attorneys' fees and costs.

II. BACKGROUND

A. Factual History

Plaintiff is a former student at Syracuse University. Class Action Complaint, ECF No. 2 ¶ 2 ("Compl."). As a condition of Plaintiff's attendance, Plaintiff was required to and did supply Sensitive Information[1] to Defendant. *Id.*

Plaintiff alleges that Defendant had insufficient cybersecurity measures in place to safeguard the Sensitive Information that Plaintiff and Class Members provided to Defendant. *Id.* ¶ 3. As a result, cybercriminals were able to gain access to – or "hack" – at least one of Defendant's employee's email accounts between approximately September 24, 2020 and September 28, 2020, following a successful "phishing" attempt that Defendant's employees failed to identify or adequately safeguard against, thereby gaining access to an employee e-mail account which contained potentially Sensitive Information of approximately 9,800 Class Members, including Plaintiff. *Id.* Defendant has denied the allegation of wrongdoing or negligence on its part or that it failed to properly protect any Sensitive Information.

After the Data Incident compromised Plaintiff's Sensitive Information, including his Social Security Number, Plaintiff learned of an unauthorized charge on his Chase Bank checking account on or about July 13, 2021, after the Data Incident occurred. *Id.* ¶ 4. Addressing this apparent fraudulent charge on his account and preventing further bank fraud required Plaintiff to suspend and cancel his debit card and to take the time to personally go to a Chase Bank branch location to have a replacement card issued. *Id.* For over a week, Plaintiff did not have access to a functional debit card, as a replacement card was not issued and received until on or about July 22, 2021. *Id.*

[1] "Sensitive Information", as used herein, refers to financial information (including payment information), health insurance numbers, and other private health insurance information, medical information (including private diagnosis information and treatment information), and other protected health information (such as Social Security number and date of birth) as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). *See* Compl.

Syracuse notified the affected individuals in February 2021, more than four months after it learned that the Data Incident occurred. *Id.* ¶ 28-29; Notice letter dated Feb. 4, 2021, ECF No. 22-3 ("Notice Letter"). The notification suggested that Plaintiff and Class Members review account statements, monitor credit reports, and perhaps institute security freezes of their financial accounts to safeguard their financial well-being from harm arising from the disclosure of their Sensitive Information. Notice Letter, ECF No. 22-3.[2] The notification also offered only a single year of credit monitoring through Experian IdentityWorks, and only for individuals who signed up for such monitoring by April 14, 2021. Compl., ECF No. 2 ¶ 29; Notice Letter, ECF No. 22-3.

Plaintiff brought this action on behalf of himself and all other similarly situated current and former students of Syracuse University with personally identifying information that may have been compromised as a result of the Data Incident, claiming (1) negligence in the handling of Plaintiff's Sensitive Information; (2) breach of express contract; (3) breach of implied contract; (4) violation of New York General Business Law ("GBL") § 899-AA; and (5) violation of GBL § 349.

B. Procedural History

On September 2, 2021, Plaintiff Trevor Miller, on behalf of himself, and on behalf of all others similarly situated, commenced this litigation in the Supreme Court of the State of New York, County of Onondaga. On September 29, 2021, Defendant removed the Lawsuit to the United States District

[2] Defendant's letter notification explained to Plaintiff and Class Members its investigation reviewed the emails and attachments contained in the email account to identify individuals whose information may have been accessible to the unauthorized party. *See* Notice Letter, ECF No. 22-3. Defendant notified Plaintiff that on January 4, 2021, it determined that an email and/or attachment contained his name and Social Security number. *Id.* The letter notification also offered one year of credit monitoring and identity theft resolution services to those individuals whose Sensitive Information was accessed by the cybercriminals but only if they accepted this offer by April 14, 2021. *Id.* Further, Defendant instructed all individuals to monitor their accounts and credit reports and explained that federal law entitled individuals to one free credit report per year, that individuals have a right to place a security freeze on their credit reports, and that individuals have the option of placing fraud alerts on their credit files. *Id.*

Court for the Northern District of New York, asserting federal jurisdiction under the Class Action Fairness Act of 2005 ("CAFA"). *See* Notice of Removal, ECF No. 1.

On February 3, 2022, Defendant filed a Motion to Dismiss for failure to state a claim upon which relief may be granted under Rule 12(b)(6). *See* Mot. to Dismiss, ECF No. 22. On March 20, 2023, the Court granted in part and denied in part Defendant's Motion to Dismiss, dismissing only Plaintiff's causes of action under GBL 899-aa and N.Y. C.P.L.R. 6301. *See* Memorandum-Decision and Order, ECF No. 34, at 44.

Throughout this litigation, the Parties participated in an informal exchange of documents and settlement negotiations. *See* Order, ECF No. 38. On July 28, 2023, the Parties notified the Court that they had reached a tentative settlement in principle. *See* Status Report, ECF No. 42 ¶ 2.

On July 31, 2023, the Court stayed the above-captioned caption to allow the Parties to continue finalizing the terms of the settlement and drafting the settlement agreement, including negotiating and drafting settlement notices and the claim form and selecting a settlement administrator. *See id.* ¶ 4; Text Order, ECF No. 43. The Court has extended the stay to December 14, 2023. ECF No. 52. In that time, the Parties have finalized the terms of the Settlement, prepared the necessary documents, and selected a settlement administrator—P&N—to administer the Settlement.

C. The Settlement

As described in further detail below and in the Settlement Agreement, this Settlement provides immediate benefits to the Settlement Class, including a cash payment reimbursement for documented Ordinary Losses, documented Extraordinary Losses, and Attested Lost Time spent attributable to the Data Incident. Settlement Agreement ("SA") § 2.1. Specifically, Class Members may submit claims to receive a payment of up to $1,000 for documented Ordinary Losses that were incurred as a result of the Data Incident. *Id.* § 2.1.1(a). Class Members are also entitled to claim payment for up to five

hours of Attested Lost Time spent dealing with the Data Incident, at a rate of $20.00 per hour. *Id.* § 2.1.1(b). Attested Lost Time claims need only include a brief description of (1) the action taken in response to the Data Incident (either in checkbox style or written if no checkbox is applicable); (2) the time associated with each action; and (3) an attestation that the time was spent responding to or addressing issues relating to the Data Incident.[3] *Id.* Class Members are also eligible to receive reimbursement of up to $10,000 for Extraordinary Losses reasonably traceable to the Data Incident upon submitting reasonable documentation. *Id.* § 2.1.2.

The Settlement provides Class Members further benefits in the form of meaningful information security improvements by Defendant. Considering the Data Incident and Plaintiff's allegations, Defendant agreed to provide sufficient documentation to demonstrate that it either implemented or will implement various security related measures. *Id.* § 2.3. As part of the Settlement, Defendant will also separately pay all costs and expenses relating to notice and settlement administration. *Id.* § 2.5.

The Parties have selected P&N as the Claims Administrator. *Id.* § 1.3. P&N is a company experienced in administering class action claims generally and specifically those of the type provided for and made in data-breach litigation. *Id.* P&N shall receive, review, and approve or reject Claim Forms (*see* Exhibit C to the Settlement Agreement) pursuant to the standards and procedures set forth in the Settlement Agreement. *Id.* § 2.4.

The Proposed Settlement Class consists of:

> All persons who were sent written notification by Syracuse that their Private Information was potentially compromised as a result of the Data Incident discovered by Syracuse in September 2020. The Settlement Class specifically excludes: (i) Syracuse, the Related Parties, and their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other Person found

[3] Time spent claims are included in the $1,000 maximum for documented Ordinary Losses. SA § 2.1.1(b).

> by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

Id. § 1.25. Plaintiff estimates that the Class contains approximately 9,800 members who would be entitled to receive payment under the Settlement. Garber Decl. ¶ 8.

III. ARGUMENT

A. Legal Standards

"Preliminary approval requires only an 'initial evaluation' of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties." *Hadel et al. v. Gauco, LLC*, No. 15-3706, 2016 U.S. Dist. LEXIS 33085 at *1 (S.D.N.Y. Mar. 14, 2016) (citation omitted). Compromise and settlement of class actions is also encouraged by the courts and favored by public policy. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (emphasizing the "strong judicial policy in favor of settlements, particularly in the class action context" (internal quotation marks omitted)). District courts have the discretion to approve proposed class action settlements, and preliminarily approve such settlements to allow notice to be issued to the class and for class members to either object to or opt-out of the settlement. *See Kelen v. World Fin. Network Nat'l Bank*, 302 F.R.D. 56, 58 (S.D.N.Y. 2014). After the notice period, the Court will be able to evaluate the Settlement with the benefit of the class members' input. *Flynn v. New York Dolls Gentlemen's Club*, No. 13-6350, 2014 U.S. Dist. LEXIS 142588, at *1 (S.D.N.Y. Oct. 6, 2014).

The first step in settling a class action is preliminary approval, through which the court must "determine that a class action settlement is fair, adequate, and reasonable, and not a product of collusion." *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000). Courts in this Circuit evaluate fairness, adequacy, and reasonableness according to the nine "*Grinnell* factors," which are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the 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."

Wal-Mart Stores, Inc., 396 F.3d 96 at 117 (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) ("*Grinnell*") (citation omitted)), abrogated on other grounds by *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

The Court must also consider the factors enumerated in Rule 23(e)(2), which "adds to, rather than displace[s] the *Grinnell* factors." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019). Rule 23(e)(2) "focus[es] the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *See* Fed. R. Civ. P. 23(e)(2), Advisory Committee Note. These "core concerns" are stated in Rule 23(e)(2):

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> i. the costs, risks, and delay of trial and appeal;
> ii. the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims, if required;
> iii. the terms of any proposed award of attorney's fees,
> iv. including timing of payment; and
> v. any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Finally, pursuant to Federal Rule of Civil Procedure 23(e)(1)(B), before a court directs notice to the class, a court must be satisfied that it will likely be able to certify the class for settlement purposes. Fed. R. Civ. P. 23(e)(1)(B). Where a class is proposed in connection with a motion for preliminary approval, "a court must ensure that the requirements of Rule 23(a) and (b) have been met." *Denney v. Deutsche Bank AG,* 443 F.3d 253, 270 (2d Cir. 2006). Class certification is appropriate

under Rule 23(a) if:

> (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 . . . of the representative parties are typical of the claims . . . of the class; and (4) the representative parties will fairly and adequately protect the interests of the class."

Fed. R. Civ. P. 23(a)(1)-(4). Here, as argued *infra*, the Court should preliminarily approve the proposed Settlement Agreement, as it is substantively fair, adequate, and reasonable, and the Court should direct notice to the Class, as the Court will be able to certify the Class for settlement purposes.

B. <u>The Proposed Class Action Settlement Should Be Preliminarily Approved.</u>

1. The Proposed Settlement Terms Are Substantively Fair, Adequate, And Reasonable.

i. Complexity, Expense, And Likely Litigation Duration (Grinnell Factor 1)

"Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff'd sub. nom. D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001); *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) ("There are weighty justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation."). Further, courts consistently hold that unless the proposed settlement is clearly inadequate, its acceptance and approval are preferable to the continuation of lengthy and expensive litigation with uncertain results. *TBK Partners, Ltd. v. Western Union Corp.*, 517 F. Supp. 380, 389 (S.D.N.Y. 1981), *aff'd,* 675 F.2d 456 (2d Cir. 1982).

The Settlement Agreement provides substantial monetary benefits to the Settlement Class while avoiding the significant expenses and delays associated with trial. The resolution of this action affords the Class concrete relief now rather than the potential for relief in the future. While Plaintiff's Counsel is confident that Plaintiff would succeed, further litigation entails risks and delays in relief to Plaintiff and the Class. Data breach cases, such as this, can be factually complex, requiring protracted

and costly litigation. They also typically face significant legal uncertainties, including pleading and pretrial motions, such as the granting of the motion to dismiss in this case, related appeals, obtaining class certification, and bringing and/or opposing a summary judgment motion. This would also result in significant expenses to all Parties and consumption of judicial resources. Plaintiff expects that a judgment for either party would likely be appealed, extending the costs and duration of the litigation.

In reaching their agreement, the Parties considered the uncertainty and risks in litigation and the costs each party will incur if litigation continues, and the Parties both concluded that it is in their mutual interest to resolve the litigation of the claims in the manner outlined in the Settlement Agreement. Thus, the proposed Settlement Agreement is fair, reasonable, and adequate considering the complexity and expense of litigation, and this *Grinnell* factor weighs in favor of preliminary approval of the proposed Settlement.

ii. The Reaction Of The Class (*Grinnell* Factor 2)

While the reaction of absent class members cannot be conclusively gauged until notice has been sent, the fact that Plaintiff and his experienced counsel support the Settlement Agreement is a strong indication that members of the Settlement Class will also view it positively. Plaintiff is not currently aware of any opposition to the proposed Settlement. At the stage of final approval, the Court will have additional information, including Class Members' reactions.

iii. The Stage Of The Proceedings And Amount Of Discovery Completed (*Grinnell* Factor 3)

The third *Grinnell* factor focuses on "whether counsel had an adequate appreciation of the merits of the case before negotiating." *Torres v. Gristede's Operating Corp.*, No. 04-3316, 2010 U.S. Dist. LEXIS 139144, at *5 (S.D.N.Y. Dec. 21, 2010), *aff'd*, 519 F. App'x 1 (2d Cir. 2013) (citation omitted). Prior to trial, "negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . but an aggressive effort to ferret out facts helpful to the prosecution of the suit." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 176 (internal quotation marks

and citation omitted).

Here, before agreement on the Settlement, the Parties litigated for more than two years. The legal issues have been vetted through motion practice, including a motion to dismiss, and extensive discovery, and the Parties have obtained the factual information required to evaluate the strengths and weaknesses of the claims and defenses. Garner Decl. ¶¶ 3-4. This knowledge allowed Plaintiff and his counsel to assess the value of the Class's claims and the risks of continued litigation and determine that the Settlement is fair, reasonable, adequate, and in the Settlement Class's best interest. *Id.* ¶¶ 7-10. Therefore, the decision to settle was an informed decision by the Parties, and this *Grinnell* factor weighs in favor of preliminary approval.

iv. Plaintiff Would Face Real Risks If The Case Proceeded (*Grinnell* Factors 4 And 5).

In evaluating the fourth and fifth *Grinnell* factors, the risks of establishing liability and damages, courts "must only weigh the likelihood of success by the plaintiff class against the relief offered by the settlement." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 177 (internal quotation marks and citation omitted). Here, as in all litigation, there are certainly inherent risks in continuing further litigation. *In re PaineWebber Ltd. Partnerships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997).

Defendant has vigorously litigated this case, as seen in its partially-successful Motion to Dismiss. Plaintiff could still lose entirely if, *inter alia*, the Court finds that Defendant's cyber security systems were reasonable or compliant with relevant statutes or that Plaintiff is required to prove individualized damages. Plaintiff faces numerous risks in pleading, class certification, and a likely summary judgment motion by Defendant. Moreover, while Plaintiff is confident that an experts' findings would withstand scrutiny, proving liability and damages is nonetheless a substantial and daunting undertaking. Courts recognize that "[w]hen the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured." *In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 266-7 (S.D.N.Y. 2012) (holding that such disputes "weigh in

favor of approval.").

Plaintiff is confident he would ultimately prevail at trial, but the Settlement Agreement avoids the risks inherent in further litigation. After careful consideration and arm's-length negotiations, Plaintiff and his counsel concluded the resulting Settlement alleviates these risks and provides a substantial benefit to the Settlement Class in as timely a fashion as possible. Thus, this *Grinnell* factor weighs in favor of the Settlement and favors preliminary approval.

v. The Risks Of Maintaining A Class Through Trial (*Grinnell* Factor 6)

The sixth *Grinnell* factor evaluates the risk of maintaining the class status through trial. Courts must consider the possibility of decertification, and the greater the possibility of decertification, the more this factor weighs in favor of settlement approval. *Charron v. Pinnacle Grp. NY LLC*, 874 F. Supp. 2d 179, 200 (S.D.N.Y. 2012), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013).

Plaintiff and counsel are confident they could certify and maintain the matter as a class through trial. Nonetheless, they recognize the substantial hurdles before them. Indeed, "[c]lass action suits have a well-deserved reputation as being most complex." *D'Angelo v. Hunter Bus. Sch., Inc.*, No. 21-3334, 2023 U.S. Dist. LEXIS 131029, at *13 (E.D.N.Y. July 28, 2023) (internal quotation marks and citation omitted).

Obtaining a ruling on class certification by the Court could only be reached after additional discovery and full briefing. Were Plaintiff's claims to survive to the class certification stage, Defendant would oppose any motion for class certification, for various possible reasons, including its contention that individualized issues predominate over common issues and that this action would not be manageable as a class action. Even if the Court certified a class, Defendant would likely challenge certification through a Rule 23(f) petition and/or move to decertify the class after further discovery and motion practice—necessitating additional briefing and time, with an uncertain result. The proposed Settlement eliminates these risks and their accompanying expenses and delays. Therefore,

this *Grinnell* factor also weighs in favor of preliminary approval.

vi. SU's Ability To Withstand A Greater Judgment (*Grinnell* Factor 7)

Although Defendant could likely withstand a greater judgment, this factor, "standing alone, does not suggest that the settlement is unfair." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d at 178 n.9. Where the settlement is otherwise fair and the defendant could with likely withstand a greater judgment, "this factor is neutral and does not preclude final settlement approval." *Manley v. Midan Rest. Inc.*, 2017 U.S. Dist. LEXIS 44560, at *14-15 (S.D.N.Y. Mar. 27, 2017). Given the case status, strengths and weaknesses of the claims and defenses, appeals process, and protracted litigation generally, Plaintiff and his counsel believe that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. As such, this factor is neutral.

vii. The Reasonableness Of The Settlement Considering The Possible Recovery And Attendant Litigation Risks (*Grinnell* Factors 8 And 9)

Grinnell factors eight and nine, regarding the range of reasonableness of the settlement considering the best possible recovery and a possible recovery considering the litigation risks, are often combined for analytical purposes. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 47–48; *Stinson v. City of New York,* 256 F. Supp. 3d 283, 294 (S.D.N.Y. 2017). With respect to the settlement's reasonableness, there is "a range which 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." *Wal-Mart Stores, Inc.*, 396 F.3d 96 at 119 (citation omitted). Judging whether a settlement amount is reasonable "is not susceptible of a mathematical equation yielding a particularized sum." *In re Michael Milken & Assocs. Securities Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *see Grinnell*, 495 F.2d 448, 455 n.2 (2d Cir. 1974) ("There is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.").

When the Settlement benefits are weighed against the pending litigation risks and potential

alternative outcomes, the proposed Settlement is more than reasonable. For example, absent this Settlement Agreement, Defendant could prevail on its legal arguments to defeat liability entirely, resulting in no recovery for Class Members whatsoever. In light of these possibilities, the Parties found the Settlement amount to be more than reasonable. Moreover, where a settlement assures immediate payment to settlement class members—as here—and does not "sacrific[e] speculative payment of a hypothetically larger amount years down the road," the settlement is reasonable under this factor. *See Gilliam v. Addicts Rehab. Ctr. Fund*, No. 05-3452. 2008 U.S. Dist. LEXIS 23016, at *13 (S.D.N.Y. Mar. 24, 2008) (internal quotation marks and citation omitted).

Therefore, *Grinnell* factors 8 and 9 also weigh in favor of preliminary approval. Each non-neutral *Grinnell* factor weighs in favor of approval, and the Court should grant preliminary approval.

2. The Remainder Of The Rule 23(E)(2) Factors Support Preliminary Approval.

i. Plaintiff And His Counsel Have Adequately Represented The Class.

Plaintiff and his counsel adequately represented the Settlement Class, satisfying Rule 23(e)(2)(A). But for the courage and initiative of Plaintiff, the Settlement Agreement would not have been reached. Plaintiff expended considerable time and effort, recounting the facts of his experiences during discovery, reviewing factual issues in connection with his complaint, and staying informed and involved with case developments, including settlement negotiations.

With respect to Plaintiff's counsel, "the focus . . . is on the actual performance of counsel acting on behalf of the class." Fed. R. Civ. P. 23, Advisory Committee Note. Plaintiff's counsel engaged in extensive motion and discovery practice before settlement. Garber Decl. ¶ 4. Plaintiff's counsel filed the complaint, survived a motion to dismiss, and engaged in relevant technical discovery to quantify damages to the Class. *Id.* Plaintiff's counsel also prepared for and engaged in arm's-length settlement negotiations with Defendant. *Id.* ¶ 5. Thus, they fully comprehended the strengths, weaknesses, and value of the Actions before entering into the Settlement. Plaintiff and his counsel

adequately represented the Settlement Class.

ii. The Proposal Was Negotiated At Arm's Length.

"A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores, Inc.*, 396 F.3d 96 at 116 (internal quotations marks and citation omitted). Therefore, preliminary approval of a proposed settlement of a class action should be granted "where it 'appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval[.]" *In re Nasdaq Market–Makers Antitrust Litig.,* 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (citation omitted).

The Parties' Settlement Agreement is the product of serious, informed, non-collusive negotiations. While the Parties scheduled a session with an experienced neutral mediator, Bennett G. Picker of Stradley Ronon, for July 20, 2023, they reached a tentative settlement on their own in advance of that date and therefore advised Mr. Picker that they would be canceling the mediation. Garber Decl. ¶ 5. The Parties continued negotiation through counsel and came to agree upon the instant settlement terms. *Id.* ¶ 6. In doing so, the Parties engaged in meaningful discovery, which "put the parties in a unique position to weigh the strengths and weaknesses of the case and thus addressed whether settlement was the better option as opposed to proceeding to trial." *See D'Angelo v. Hunter Bus. Sch., Inc.*, 2023 U.S. Dist. LEXIS 131029, at *16-17 (citation omitted); Garber Decl. ¶ 4. The Settlement Agreement was negotiated at arms-length, and thus, the presumption of fairness, adequacy, and reasonableness should apply.

iii. The Allocation Plan Is Fair And Adequate.

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized — namely, it must be fair and adequate . . . . An allocation formula

need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re WorldCom, Inc. Sec. Litig.*, 388 F.Supp.2d 319, 344 (S.D.N.Y. 2005) (internal quotation marks and citations omitted).

Here, the allocation plan is fair and adequate because each Class Member is eligible to receive the same benefits, specifically a cash payment for documented Ordinary Losses, documented Extraordinary Losses, and Attested Lost Time attributable to the Data Incident, as well as the information security improvements to be taken or already taken by Defendant, described *supra*. SA § 2.3. The Settlement treats each Class Member equally, while still accounting for potential differences in ordinary and extraordinary expenses each Class Member potentially incurred. Proposed Class Counsel recommends this allocation formula. *See* Garber Decl. ¶ 12.

iv. The Proposed Form And Method Of Providing Notice To The Proposed Class Are Appropriate.

Rule 23(e)(1)(B) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(b). As shown, approval of the settlement under Rule 23(e)(2) and certification of the Class for settlement purposes are both appropriate (and hopefully likely). Thus, the Court should direct notice to Class Members.

Rule 23(c)(2)(B) further requires that class members receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). While there are no rigid rules in determining compliance with Rule 23 or constitutional requirements, the settlement notice needs to "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d at 113 (internal quotation marks and citation omitted).

Here, the proposed notice program does just that. As recited in the Settlement Agreement and described herein, the proposed notice will inform Class Members of the Settlement's substantive terms and their options—including remaining part of the Settlement Class, objecting to the Settlement, or opting out of the Settlement; how to submit claims to receive benefits; and how to obtain additional information and/or answers to frequently asked questions about the Settlement. SA § 3.2. As detailed further in the Settlement Agreement, the proposed notice program consists of (1) Long Notice to be available on the Settlement Website (*see* Exhibit B to the Settlement Agreement), and (2) Short Notice via individual postcard notice for those Class Members for whom a physical address can be identified with reasonable effort (*see* Exhibit A to the Settlement Agreement). *Id.* The proposed notice program is designed to directly reach a very high percentage of Class Members. Therefore, the Court should approve the notice program and the form and content of the proposed notices.

v. The Proposed Attorneys' Fees And Expenses, And Service Awards Are Fair And Adequate.

Plaintiff will apply to the Court for an award of reasonable attorneys' fees and reimbursement of litigation costs in an amount not to exceed $295,000. SA § 7.2. Plaintiff will also request a service award not exceeding $5,000 for Plaintiff Trevor Miller in recognition of the time and efforts prosecuting this matter and assisting with mediation, and risks taken by him in commencing the Action. *Id.* § 7.3. As set forth in the Settlement Agreement, subject to Court approval, Defendant agreed not to oppose requests by Plaintiff in these amounts. *Id.* §§ 7.2-3. Plaintiff worked diligently and extensively with Plaintiff's counsel throughout this litigation, including gathering information pertaining to the factual allegations of the Complaint and other putative Class Members' experiences, responding to attorney inquiries, participating in the discovery process, and representing the Class's interests in reviewing and approving the Settlement Agreement. Garber Decl. ¶ 13. Absent these efforts, the significant Settlement awards paid to Settlement Class would not be possible. The $5,000 service award requested here is also consistent with awards authorized in numerous reported case

decisions in this Circuit. *See, e.g.*, *Moses v. N.Y. Times Co.*, 79 F.4th 235, 253-56 (2d Cir. 2023) (affirming approval of a $5,000 incentive award); *James v. China Grill Mgmt.*, No. 18-455, 2019 U.S. Dist. LEXIS 72759, at *10 (S.D.N.Y. Apr. 30, 2019) (authorizing incentive awards of $5,000) (collecting cases); *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 124-125 (S.D.N.Y. 2001). The Settlement Agreement provides that court approval of Plaintiff's attorneys' fees, costs, and expenses, and the service award to Plaintiff, are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. *Id.* § 7.5.

vi. The Parties Have No Additional Agreements.

The only agreement related to this litigation is the proposed Settlement Agreement, attached as Exhibit A to the Garber Declaration, and there are no side agreements regarding attorneys' fees or costs related to this proposed Settlement. Garber Decl. ¶ 7.

vii. Proposed Settlement Class Members Are Treated Equitably.

Rule 23(e)(2)(D) instructs the court to consider whether the settlement agreement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Here, the proposed Settlement treats Class Members equally because they all have the option to make a claim for any of the applicable benefits. SA § 2.1.

C. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS.

Pursuant to Rule 23(e)(1)(B), before a court directs notice to the class, the court must be satisfied that it will likely be able to certify the class for settlement purposes. Fed. R. Civ. P. 23(e)(1)(B). To obtain class certification, the plaintiff must demonstrate the Rule 23(a) elements of numerosity, commonality, typicality, and adequacy of representation. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011). "Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." *Id.* Rule 23(b)(3)'s requirements are met upon demonstration "that questions of law or fact common to the members of the proposed class 'predominate over any questions affecting only

individual members,' and that a class resolution is 'superior to other available methods for the fair and efficient adjudication of the controversy.'" *Seaman v. Nat'l Collegiate Student Loan Tr. 2007-2*, No. 18-1781, 2023 U.S. Dist. LEXIS 43041, at *71 (S.D.N.Y. Mar. 13, 2023) (citation omitted). There are also practical purposes for conditional settlement class certification and appointment of class counsel, "including avoiding the costs of litigating class status while facilitating a global settlement, ensuring all Class members are notified of the terms of the proposed Agreement, and setting the date and time of the final approval hearing." *Carrasco v. Endurance U.S. Holdings Corp.*, No. 17-7319, 2020 U.S. Dist. LEXIS 46905, at *2 (S.D.N.Y. Mar. 17, 2020).

Courts routinely certify Rule 23 classes in data breach cases for settlement and trial purposes. *See, e.g., In re Solara Med. Supplies Data Breach Litig.,* No. 19-2284, 2022 U.S. Dist. LEXIS 72834, at *30 (S.D. Cal. Apr. 20, 2022); *In re Capital One Consumer Data Sec. Breach Litig.*, No. 19-2915, 2022 U.S. Dist. LEXIS 234943, at *38 (E.D. Va. Sep. 13, 2022); *Fero v. Excellus Health Plan, Inc.*, 502 F. Supp. 3d 724, 752 (W.D.N.Y. 2020); *In re Sonic Corp. Customer Data Breach Litig.*, No. 17-02807, 2020 U.S. Dist. LEXIS 204169, at *17 (N.D. Ohio Nov. 2, 2020).

As discussed *infra*, the settlement class certification requirements are met and Defendant consents to provisional certification of the Settlement Class for settlement purposes. SA § 2.6; *see* Newberg § 11.27 ("[T]he parties may stipulate that it be maintained as a class action for the purpose of settlement only."); *County of Suffolk v. Long Island Lighting Co.*, 710 F. Supp. 1422, 1424 (E.D.N.Y. 1989), aff'd in part, rev'd in part on other grounds, 907 F.2d 1295 (2d Cir. 1990).

1. The Proposed Settlement Class Meets The Requirements Of Rule 23(A).

i. The Settlement Class Is Sufficiently Numerous.

The members of a proposed class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Courts do not require 'evidence of exact class size or identity of class members.'" *Sykes v. Mel Harris & Assocs. LLC*, 285 F.R.D. 279, 286 (S.D.N.Y. 2012) (citation

omitted). Numerosity is satisfied if the proposed class consists of forty or more members. *See Consol. Rail Corp. v. Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). Here, there are approximately 9,800 Class Members, making joinder impracticable and satisfying numerosity. *See* Garber Decl. ¶ 8.

ii. Commonality Is Satisfied.

Commonality requires the parties seeking class certification to show that there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(a)(2) is a "low hurdle." *Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.*, 301 F.R.D. 116, 131 (S.D.N.Y. 2014). This factor is satisfied if there is a question "'capable of classwide resolution,' meaning that 'determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.'" *Seaman*, 2023 U.S. Dist. LEXIS 43041 at *71 (quoting *Wal-Mart Stores*, 564 U.S. at 350). "[C]ommonality does not mandate that all class members make identical claims and arguments, only that common issues of fact or law affect all class members." *Stinson v. City of N.Y.*, 282 F.R.D. 360, 369 (S.D.N.Y. 2012) (internal quotation marks and citation omitted).

Here, Plaintiff's claims easily satisfy the "commonality" prong because all Class Members were victims of the same Data Incident, and there are multiple questions of law and fact common to Plaintiff and the Settlement Class stemming from the Data Incident. Questions pertaining to Defendant's failure to adequately protect Plaintiff's and Class Members' Private Information and whether this failure was lawful, apply to all individuals in the class and are classic common questions of the type contemplated by Rule 23(a)(2). *See Seaman*, 2023 U.S. Dist. LEXIS 43041, at *73 ("[B]ecause plaintiffs are 'challenging a practice of defendants,' not merely defendants' 'conduct with respect to the individual plaintiff[s],' the commonality requirement is met." (citations omitted)). Plaintiff and the Settlement Class have demonstrated the same course of conduct by Defendant leading to the injuries suffered resulting from the Data Incident, namely, its failure to maintain sufficient cyber-security procedures and policies in place to safeguard the Sensitive Information it

possessed and their failure to promptly notify the victim of the Data Incident.

iii. Typicality Is Satisfied.

The claims of the Plaintiff must be "typical of the claims of . . . the class." Fed. R. Civ. P. 23(a)(3). Typicality is satisfied "when each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993). Where "alleged injuries derive from a unitary course of conduct by a single system, typicality is generally found." *Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 290 F.R.D. 490, 419 (S.D.N.Y. 2012); *see Ebin v. Kangadis Food, Inc.*, 297 F.R.D. 561, 565-66 (S.D.N.Y. 2014) (finding typicality because the "claims ar[o]se out of the same course of conduct by the defendant and [were] based on the same legal theories").

Plaintiff presents claims typical of the Settlement Class, as they were all victimized in the same manner by the Data Incident. Plaintiff and Class Members also all suffered substantially the same injuries arising from the loss of their PII, occurring in "the same course of events" from September 24 to September 28, 2020. There is no material variation between Plaintiff's claim and the claims of Class Members, and their claims depend on the same legal theory. Plaintiff and Class Members assert the same forms of relief and share the same interest in the information security measures Defendant will implement or has already implemented to protect the PII remaining in Defendant's possession. Thus, Rule 23(a)(3)'s typicality requirement is met.

2. The Adequacy Requirement Is Met And Plaintiff Should Be Provisionally Appointed As Settlement Class Representative.

Class representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To determine adequacy, the Court considers whether "(1) plaintiff's interests are antagonistic to the interest of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Basso v. New York Univ.*, 363 F. Supp. 3d 413, 423 (S.D.N.Y. 2019). "[A]dequacy is satisfied unless plaintiff's interests are antagonistic to the interest of

other members of the class." *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 90 (2d Cir. 2015).

Here, Plaintiff has no antagonistic interests in relation to other Class Members. Plaintiff and Class Members are current and/or former employees of Defendant whose personal information was potentially compromised because of the Data Incident. All seek to recover damages resulting from the Data Incident. Plaintiff is sufficiently interested in the outcome of this case to ensure his vigorous advocacy. Plaintiff is not subject to unique defenses and he and his counsel have and continue to vigorously prosecute this case on behalf of the class. Plaintiff's interests align with those of the other Class Members. Likewise, Plaintiff's counsel, Finkelstein, Blankinship, Frei-Pearson, & Garber, LLP ("FBFG") and Keller Postman LLC ("KP") are experienced in prosecuting complex class actions nationwide, including data breach class actions, in both state and federal courts. *See* FBFG Firm Resume, Exhibit C to Garber Decl.; KP's Firm Resume, Exhibit D to Garber Decl.. Thus, Plaintiff and his counsel can fairly and adequately represent the class.

Plaintiff actively participated in litigation and helped in representing the interests of the Settlement Class. Specifically, Plaintiff provided Class Counsel with information necessary to draft the complaint and represented the Settlement Class in settlement discussions. Plaintiff provided all information needed by counsel to pursue this result, ending up with a Settlement that is fair, adequate, and reasonable. As such, the Court should provisionally appoint Plaintiff as the Settlement Class representative. *See Baffa v. Donaldson, Lufkin Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000).

i. Class Members Are Readily Identifiable And Ascertainable.

Ascertainability requires that the class is "readily identifiable, such that the court can determine who is in the class and, thus, bound by the ruling." *In re Scotts EZ Seed Litig.*, 304 F.R.D. 397, 407 (S.D.N.Y. 2015) (internal quotation marks and citation omitted). "The standard for ascertainability is not demanding and is designed only to prevent the certification of a class whose membership is truly indeterminable." *Id.* (citation omitted). A class is ascertainable when it is "defined by objective criteria

that are administratively feasible . . . and identifying its members would not require a mini-hearing on the merits of each case." *Charrons v. Pinnacle Grp., NY LLC*, 269 F.R.D. 221, 229 (S.D.N.Y. 2010) (internal quotation marks and citations omitted).

Here, the Settlement Class is ascertainable. It is defined by objective criteria; namely, whether they were sent written notification by Defendant that their Private Information was potentially compromised as a result of the Data Incident. *See* SA § 1.25. Defendant has records identifying Class Members and their addresses, which further makes Class Members ascertainable.

D. The Proposed Settlement Class Meets The Requirements of Rule 23(b)(3).

1. Common Issues Predominate Over Any Individual Questions.

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997) (citing Fed. R. Civ. P. 23(b)(3)). Predominance thus requires 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 Visa Check MasterMoney Antitrust Litig.*, 280 F.3d 124, 136 (2d Cir. 2001). Therefore, where the plaintiff and class members are unified by common facts and a common legal theory, the predominance requirement is satisfied. *McBean v. City of New York*, 228 F.R.D. 487, 502 (S.D.N.Y. 2005).

In this case, the predominance requirement is satisfied because Defendant's liability turns on common questions, as discussed *supra*, such as the effectiveness of their data security systems and the lawfulness of their actions and omissions, and the legal issues faced by the Settlement Class arise from the same set of facts related to the Data Incident. Because these common questions will predominate over any individual questions, class certification for settlement purposes is appropriate.

2. A Class Action Is Superior To Other Available Methods Of Adjudication.

A class action must be "superior to other available methods for fairly and effectively

adjudicating the controversy." Fed R. Civ. P. 23(b)(3). The Court must consider several relevant factors including class members' interest in bringing individual actions, the extent of existing litigation by class members, the desirability of concentrating the litigation in one forum, and potential issues with managing a class action. *Id.* In this case, each of these enumerated factors weighs in favor of finding that superiority is satisfied.

First, given the per-resident recovery in this case, bringing an individual action against Syracuse is not economically rational in light of attorneys' fees and other litigation costs. It is well settled that a class action is the superior method of adjudication where, as here, "the proposed class members are sufficiently numerous and seem to possess relatively small claims unworthy of individual adjudication due to the amount at issue . . . [and] there [is] reason to believe that class members may lack familiarity with the legal system, discouraging them from pursuing individual claims." *Gomez v. Lace Ent., Inc.,* No. 15-3326, 2017 U.S. Dist. LEXIS 5770, at *27-28 (S.D.N.Y. Jan. 6, 2017) (internal quotation marks and citation omitted). Certification of the Settlement Class will allow for efficient adjudication of claims that would likely not be brought due to prohibitive legal expenses, while also preserving scarce judicial resources. Plaintiff is unaware of any ongoing litigation against Syracuse regarding this Data Incident. Further, this forum is an appropriate and convenient forum for Plaintiff's claims to be litigated in because Defendant is a New York university. Lastly, "the [C]ourt need not consider the manageability" for a settlement-only class because the matter is not going to trial. *In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 88 (S.D.N.Y. 2009). Therefore, for these reasons set forth, a class action is a superior method of adjudicating the controversy.

E. Proposed Class Counsel Should Be Provisionally Appointed As Class Counsel.

The proposed class counsel must be "competent, willing and able to protect the interests of the absent class members." *Feder v. Elec. Data, Sys. Corp.*, 429 F.3d 125, 130 (5th Cir. 2005). Rule 23(g) enumerates four factors for evaluating the adequacy of proposed counsel:

1. the work counsel has done in identifying or investigating potential claims in the action;
2. counsel's experience in handling class actions, other complex litigation, and types of claims of the type asserted in the action;
3. counsel's knowledge of the applicable law; and
4. the resources counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(C)(i). All of these factors militate in favor of appointing FBFG and KP as Class Counsel. Both firms have adequately represented the Settlement Class and have extensive experience in litigating class actions, including data breach actions of similar size, scope, and complexity. *See* Garber Decl. ¶¶ 14-20, 23-24. Proposed Class Counsel have devoted significant resources towards prosecuting this action, including investigating Plaintiff's claims, pursuing those claims aggressively through motion practice, conducting informal discovery, participating in private mediation sessions, and negotiating the proposed Settlement over an extended period of time. Accordingly, Plaintiff respectfully requests that the Court provisionally appoint Todd S. Garber and Andrew C. White, of FBFG, and Alex J. Dravillas, of KP, as Class Counsel.

F. The Proposed Notice Is The Best Practicable.

The Court must direct the "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The Court must also "direct notice in a reasonable manner to all class members who would be bound by the proposal" prior to approving a settlement. Fed. R. Civ. P. 23(e)(1).

Here, the proposed notice to absent Class Members comports with the Federal Rules of Civil Procedure. The notice program is comprised of two primary components: (1) Long Notice to be available on the Settlement Website, and (2) Short Notice via individual postcard notice for those Class Members for whom a physical address can be identified with reasonable effort. SA § 3.2. A toll-free help line will also be made available to provide Class Members with additional information about the Settlement and to respond to Class Members' questions. *Id.* The notice contains a description of the material terms of the Settlement, relevant dates, and the address of the Settlement

Website. *Id.* § 3.2. Class Members will have 60 days from commencement of the notice program to object or exclude themselves from the Settlement. *Id.* §§ 4.1, 5.1. This notice program provides the best practicable way of reaching the greatest number of Class Members.

IV. SCHEDULING AND FINAL FAIRNESS HEARING

The last step in the settlement approval process is the Final Fairness Hearing—when Settlement proponents may explain and describe in terms and conditions and offer argument in support of settlement approval, and Class Members may be heard in support of or in opposition to the Settlement. The following sets forth the proposed schedule of events to occur to effectuate the Settlement Agreement.

Event	Date
Notice program begins (Settlement Admin. to complete postcard notice, establish website, and toll-free phone line)	Within 45 days after entry of Preliminary Approval Order and to be substantially completed not later than 60 days after entry of Preliminary Approval Order.
Objection and Opt-Out Date	60 days after notice program begins.
Claims Deadline (submit claim form)	90 days after notice program begins.
Plaintiff's deadline to file motion for attorneys' fees and expenses and service award	53 days after notice program begins.
Final Fairness Hearing	

V. CONCLUSION

Accordingly, Plaintiff respectfully requests the Court enter an order substantially in the form as attached as Exhibit B to the Garber Declaration and Exhibit D to the Settlement, which: (1) grants certification of the Settlement Class for settlement purposes only; (2) grants preliminary approval of the proposed Settlement; (3) appoints Todd S. Garber and Andrew C. White of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Alex Dravillas of Keller Postman, LLC as Class Counsel; (4) appoints Trevor Miller as Class Representative; (5) approves the Parties' proposed notice packet to the Settlement Class; (6) appoints Postlethwaite & Netterville, APAC as the Claims Administrator.

Dated: December 14, 2023

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Counsel for Plaintiff Trevor Miller and the Putative Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TREVOR MILLER, individually and on behalf of all others similarly situated, Plaintiff, v. **SYRACUSE UNIVERSITY,** Defendant.	Case No. 5:21-cv-1073-LEK-TWD Class Action

DECLARATION OF TODD S. GARBER IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

TODD S. GARBER, ESQ., an attorney admitted to the practice of law in the State of New York, affirms the following under penalty of perjury:

1. I am a founding partner in the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG"), counsel for Plaintiff in the above-captioned action. In such capacity, I am familiar with all of the facts and prior proceedings had herein based upon my personal knowledge and my review of the file that is maintained in connection with this matter.

2. This Affirmation is made in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.

3. Prior to filing the present lawsuit, Plaintiff's counsel conducted a thorough investigation into the merits of the class claims and the likelihood of class certification.

4. Plaintiff's counsel engaged in extensive motion and discovery practice before settlement. Plaintiff's counsel filed the complaint, survived a motion to dismiss, and engaged in relevant technical discovery to quantify damages to the Class.

5. The Parties engaged in settlement negotiations and scheduled a session with an experienced mediator, Bennett G. Picker of Stradley Ronon, for July 20, 2023. The Parties reached a tentative settlement on their own in advance of that date and therefore advised Mr. Picker that they would be canceling the meditation.

6. The Parties continued negotiation through counsel and came to agree upon the instant settlement terms. At all times, settlement negotiations were conducted on an arm's-length basis. The Settlement Agreement was fully executed on December 13, 2023.

7. The only agreement related to this litigation is the proposed Settlement Agreement, and there are no side agreements regarding attorneys' fees or costs related to this proposed Settlement.

8. The Parties recognize and acknowledge the benefits of settling this case. Absent settlement, Plaintiff is confident that he will prevail in certifying the Class of approximately 9,800

individuals. Likewise, Defendant and its counsel remain confident that they will prevail if the lawsuit is litigated based on a variety of legal and factual defenses to the Claims. Nonetheless, Plaintiff recognizes that all litigation has risks, that discovery, class certification proceedings, and trial will be time consuming and expensive for both Parties, and there are potential benefits of early resolution, not the least being that Class Members will receive compensation far sooner.

9. Defendant strongly disputes Plaintiff's claims and, absent settlement, will continue to mount an aggressive litigation defense.

10. Plaintiff recognizes and acknowledges that litigating this matter would take a considerable amount of time and the uncertain outcome and risks of the litigation, as well as the difficulties and delays inherent in such litigation. Plaintiff and his counsel, therefore, determined that the Settlement agreed to by the Parties is fair, reasonable, and adequate, conferring substantial benefits upon the Class, and is in the best interests of Plaintiff and the Class.

11. Defendant maintains that it has a number of defenses to the claims asserted in this action and denies any and all liability. Nevertheless, Defendant recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of any appeals, and the disruption to its business operations. Defendant also recognizes that a trial on class-wide claims would pose litigation risk. Accordingly, Defendant believes that the settlement set forth in the Settlement Agreement is likewise in its best interests.

12. Plaintiff's counsel recommends the Settlement Agreement's allocation formula, as the allocation plan is fair and adequate.

13. Plaintiff worked diligently and extensively with Plaintiff's counsel throughout this litigation, including gathering information pertaining to the factual allegations of the Complaint and other putative Class Members' experiences, responding to attorney inquiries, participating in the

discovery process, and representing the Class's interests in reviewing and approving the Settlement Agreement.

14. Class Counsel are highly experienced in the field of class actions and consumer law in particular.

15. The lawyers of FBFG have successfully litigated complex class actions in federal and state courts across the country, and have obtained successful results for clients against some of the world's largest corporations. A sampling of the Firm's more significant cases includes:

- *Hamlen v. Gateway Energy Services, Corp.*, No. 18-10244 (S.D.N.Y). Nationwide class action alleging that Gateway overcharged consumers for gas and electric supply. On September 18, 2019, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $9 million.
- *McLauglin v. IDT Energy* No. 14-4107 (E.D.N.Y.). Nationwide class action alleging that IDT overcharged consumers for gas and electric supply. On October 18, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $54 million.
- *Edwards v. North American Power & Gas, LLC*, No. 14-1714 (D. Conn.). Nationwide class action alleging that North American Power charged electricity and gas rates far in excess of what it promised to charge variable rate customers. On August 2, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $19 million.
- *Wise v. Energy Plus Holdings, LLC*, No. 11-7345 (S.D.N.Y.). Nationwide class action alleging that Energy Plus falsely claimed to offer competitive electricity rates when its prices are substantially higher than market rates in violation of New York Gen. Bus. L. § 349 and other consumer protection laws. On September 17, 2013, the Court certified the class, appointed the lawyers of FBFG as lead class counsel, and approved the settlement valued at over $11 million.
- *Chen v. Hiko Energy, LLC*, No. 14-1771 (S.D.N.Y.). Multistate class action alleging that Hiko falsely claimed to offer competitive electricity rates when its prices are substantially higher than market rates in violation of New York Gen. Bus. L. § 349 and other consumer protection laws. On May 9, 2016, the Court certified the class, appointed the lawyers of FBFG as class counsel, and approved the settlement valued at over $10 million.
- *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup. Ct.). Complex class action on behalf of approximately 31,800 patients who were victimized by a data breach. An FBFG lawyer was appointed co-lead class counsel. The Court denied Saint Joseph's demurrer and the Court of Appeals upheld that ruling. The Court certified the class and denied Saint Joseph's summary judgment motion; the Court of Appeals upheld those rulings as well. On the eve of trial the

parties reached a settlement valued at approximately $39 million and the Court granted final approval of that settlement on February 3, 2016. This settlement provides the more money per capita to individual class members than any other known data breach settlement on record.

- *Castillo v. Seagate Technology LLC*, No. 16-1958 (N.D. Cal.). Class action on behalf of over 12,000 individuals victimized by a data breach. On September 19, 2016, the Court denied Seagate's motion to dismiss in part. The Court appointed an FBFG attorney as co-lead class counsel and, on March 14, 2018, finally approved settlement valued at up to $42 million.
- *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y. 2017). Class action on behalf of over 4,000 individuals victimized by a data breach. On June 15, 2017, the Court entirely denied Transperfect's motion to dismiss. On March 13, 2018, the Court appointed FBFG as class counsel and preliminarily approved a settlement valued at over $40 million.
- *Bellino v. JPMorgan Chase Bank, N.A.*, No. 14-3139 (S.D.N.Y.). Statewide class action on behalf of mortgagors alleging Chase's failure to comply with mortgage recording requirements. On November 9, 2017, the Court approved a settlement valued at $10,808,630, certifying the settlement class and appointing FBFG attorneys as class counsel.
- *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report, and obtained class certification and an appointment as Co-Lead Class Counsel. On November 1, 2017, the Court approved a proposed settlement valued at $6.75 million.
- *Adler v. Bank of America, N.A,* No. 13-4866 (S.D.N.Y.). Class action alleging that Bank of America failed to timely present certificates of discharge for mortgages that were satisfied in New York State. On July 20, 2016, the Court certified the class, appointed the lawyers of FBFG as class counsel, and approved the settlement valued at over $7 million.
- *In re Michaels Stores, Inc. Zip Code Litigation*, No. 11-10920 (D. Mass.). State-wide class action alleging that Michaels Stores unlawfully collected consumers' private information. After securing a groundbreaking decision by the Massachusetts Supreme Judicial Court, establishing that consumers whose privacy has been violated may bring consumer protection claims against companies that unlawfully collect personal identification information, the lawyers of FBFG were appointed as co-lead class counsel and negotiated a class-wide settlement, which the Court approved.
- *Reed v. Friendly's Ice Cream, LLC*, No. 15-0298 (M.D. Pa.). Nationwide class and collective minimum wage and overtime claim on behalf of approximately 10,000 servers. On January 31, 2017, the Court certified the class, appointed an FBFG lawyer as co-lead class counsel, and approved the settlement valued at over $4.6 million.
- *Quinn v. Walgreen*, No. 12-8187 (S.D.N.Y.). Nationwide settlement valued at $2.8 million to resolve Plaintiffs' claim that Defendant's glucosamine products did not perform as represented. On March 24, 2015, the Court certified the class, appointed

FBFG lawyers as Co-Lead Class Counsel and approved a nationwide $2.8 million settlement.

- *Al Fata v. Pizza Hut of America, Inc.*, No. 14-376 (M.D. Fla.). Statewide minimum wage claim on behalf of approximately 2,000 Pizza Hut delivery drivers. On June 21, 2017, the Court certified the class and approved a settlement valued at $3.1 million that provided the then-highest per-person recovery in any delivery driver under-reimbursement class action.

16. FBFG is also counsel of record in numerous class actions throughout the country, including cases pending in United States District Courts in New York, California, Massachusetts, Nevada, New Jersey, Maryland, New Mexico, Colorado, Arkansas, and Pennsylvania, as well as actions pending in the state courts of New York, California, Nebraska, and New Jersey.

17. FBFG also has an accomplished and successful appellate practice, having obtained numerous groundbreaking decisions from federal and state appellate courts. Examples include: *In Re Zappos.Com, Inc., Customer Data Security Breach Litigation*, No. 16-16860, 2018 WL 1189643 (9th Cir. Mar. 8, 2018) (reversing dismissal by district court and holding that consumers whose personal identification information was stolen in a data breach have Article III standing); *Zahn v. N. Am. Power & Gas, LLC*, 2016 IL 120526, 72 N.E.3d 333 reh'g denied (Jan. 23, 2017) (on certified question from the 7th Circuit, holding that the Illinois Commerce Commission does not have exclusive jurisdiction to hear consumer claims against alternative retail electricity suppliers); *Zahn v. N. Am. Power & Gas, LLC*, 847 F.3d 875 (7th Cir. 2017) (reversing dismissal of consumer's putative class action seeking redress for excessive electricity charges by alternative retail electricity supplier); *John v. Whole Foods Mkt. Grp., Inc.*, 858 F.3d 732, 738 (2d Cir. 2017) (reversing dismissal of consumer's putative class action seeking redress for Whole Foods' alleged practice of representing the weight of prepackaged foods); *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 984 N.E.2d 737 (2013) (on certified question from U.S. District Court for Massachusetts, finding that the collection of ZIP codes from consumers using credit cards violates Massachusetts consumer protection law).

18. Keller Postman LLC is a national plaintiffs' law firm representing a broad array of clients in class and mass actions, individual arbitrations, and multidistrict litigation matters at the trial and appellate levels across federal and state courts. Serving hundreds of thousands of clients in litigation and arbitration, it has prosecuted high-profile antitrust, employment, privacy, consumer-rights, and product liability cases (involving medical devices, pharmaceutical products, and a wide variety of other consumer products). KP also acts as plaintiffs' counsel in high-stakes public-enforcement actions.

19. KP's Data Breach Practice currently represents several certified and putative classes of individuals whose information has been compromised through one or more data breaches.

20. KP has significant class action and multidistrict litigation experience. Notable examples of this experience include:

- *West et al v. Amazon.com Inc.*, Case No. 2:21-cv-00694, United States District Court for the Western District of Washington
- *C.O., a minor, v. Amazon.com Inc. et al*, Case No. 2:19-cv-00910, United States District court for the Western District of Washington
- *Fishon et al v. Peloton Interactive, Inc.*, Case No. 1:19-cv-11711, United States District Court for the Southern District of New York
- *Olivia Van Iderstine et al v. Live Nation Entertainment, Inc. et al*, Case No. 2:20-cv-03888, United States District Court for the Central District of California
- *TopDevs, LLC et al v. LinkedIn Corporation*, Case No. 5:20-cv-08324, U.S. District for the Northern District of California
- *The State of Texas et al v. Google, LLC*, Case No. 4:20-cv-00957, U.S. District Court for the Eastern District of Texas
- *Richard A. Ross and Fieldstone Ventures, LLC v. EQT Corporation et al.,* No. GD-21-011948, Fifth Judicial District of Pennsylvania, County of Allegheny
- *Hestrup & Peiss v. DuPage Medical Group. Ltd. d/b/a DuPage Medical Group,* Case No. 2021L000937, 18th Judicial Court, DuPage County
- *Alexander v. Otis Bowen*, Case No. No. 43D04-2104-CT-000019, Kosciusko Superior Court 4
- *Gilbert v. AFTRA Retirement Fund et al*, Case No. 1:20-cv-10834-ALC, U.S. District Court for the Southern District of New York

- *Hackerott v. Central Kansas Orthopedic Group, Inc., et al*, Case No. 2020-cv-000120, District Court of Barton County
- *In re: 3M Combat Arms Earplug Prods. Liab. Litig.*, MDL 2885
- *In re: Zantac (Ranitidine) Prods. Liab. Litig.,* MDL 2924
- *In re: Paragard IUD Prods. Liab. Litig.,* MDL 2974
- *In re: Onglyza (Saxagliptin) and Kombiglyze XR (Saxagliptin and Metformin) Prods. Liab. Litig.*, MDL 2809

EXHIBITS

21. Attached as Exhibit A is a true and correct copy of the proposed Settlement Agreement with internal Exhibits A-E.

22. Attached as Exhibit B is a true and correct copy of the proposed Order (contemporaneously attached as internal Exhibit D to the Settlement Agreement).

23. Attached as Exhibit C is a copy of FBFG's firm resume.

24. Attached as Exhibit D is a copy of Keller Postman, LLC's firm resume.

Dated: December 14, 2023
White Plains, New York

/s/ Todd S. Garber
Todd S. Garber

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TREVOR MILLER, individually and on behalf of all others similarly situated, Plaintiff, v. SYRACUSE UNIVERSITY, Defendant.	CASE NO. 5:21-CV-01073-LEK-TWD

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of this 13th day of December, 2023, is made and entered into by and among the following Settling Parties (as defined below): (i) Trevor Miller ("Plaintiff"), individually and on behalf of the Settlement Class (as defined below), by and through his counsel of record FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP ("Plaintiff's Counsel"); and (ii) Syracuse University ("Defendant" or "Syracuse," and together with Plaintiff, the "Settling Parties"), by and through its counsel of record, BAKER & HOSTETLER LLP. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, release, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. THE LITIGATION

Plaintiff, a former student at Syracuse, alleges that between September 24 and September 28, 2020, Syracuse experienced a "phishing" attempt whereby unauthorized user(s) were able to gain access to a Syracuse employee's e-mail account and thereby access personal information of certain individuals (the "Data Incident"). [Compl., ¶¶ 1 & 3.] Plaintiff further alleges that the

personal information allegedly impacted in the Data Incident included Social Security numbers and other sensitive, personal information. [*Id.* at ¶¶ 1, 19.] Plaintiff further alleges that he received notice of the Data Incident from Syracuse on or about February 4, 2021. [*Id.* at ¶ 29.] Following this notification, and after Plaintiff claims he learned of an unauthorized charge on his bank checking account, Plaintiff filed this lawsuit asserting various claims against Syracuse relating to the Data Incident as defined below (the "Litigation"). The Litigation was instituted by the filing of a Class Action Complaint (the "Complaint") in Onondaga County, New York with Index No. 007718/2021 and was subsequently removed to the United States District Court for the Northern District of New York, Case No. 5:21-cv-01073-LEK-TWD, where the Litigation is currently pending.

Pursuant to the terms set out below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Syracuse and the Released Persons (as defined below) relating to the Data Incident, by and on behalf of Plaintiff and Settlement Class Members (as defined below), and any other such actions by and on behalf of any other individuals originating, or that may originate, in jurisdictions in the United States of America ("United States," as defined below) against Syracuse and the Released Persons relating to the Data Incident.

II. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLING

Plaintiff believes that the claims asserted in the Litigation, as set forth in the Complaint, have merit. Plaintiff and Class Counsel (as defined below) recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Syracuse through further discovery, motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays

inherent in such litigation. Class Counsel are highly experienced in class-action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue in data-breach litigation in general and in this Litigation in particular. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

III. DENIAL OF WRONGDOING AND LIABILITY

Syracuse denies each and all of the claims and contentions alleged against it in the Litigation. Syracuse denies all allegations of wrongdoing or liability that are alleged, or which could be alleged, in the Litigation. Nonetheless, Syracuse has concluded that further litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Syracuse has considered the uncertainty and risks inherent in any litigation. Syracuse has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff, individually and on behalf of the Settlement Class, Class Counsel, and Syracuse that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except as to those Settlement Class Members who lawfully opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 "Agreement" or "Settlement Agreement" means this Agreement.

1.2 "Claims Administration" means the processing and payment of claims received from Settlement Class Members by the Claims Administrator (as defined below).

1.3 "Claims Administrator" means Postlethwaite & Netterville, APAC, a company experienced in administering class action claims generally and specifically those of the type provided for and made in data-breach litigation.

1.4 "Claims Deadline" means the postmark and/or online submission deadline for Valid Claims (as defined below) pursuant to ¶ 2.1.3.

1.5 "Claim Form" means the form that the Settlement Class Member must complete and submit on or before the Claims Deadline to be eligible for the benefits described herein. The Claim Form shall require a sworn signature or electronic verification under penalty of perjury, but shall not require notarization. The Claim Form will be substantially in a form as shown in the template attached hereto as **Exhibit C** and will be available on both the Settlement Website (as defined below) and in paper format if specifically requested by a Settlement Class Member.

1.6 "Costs of Claims Administration" means all actual costs associated with or arising from Claims Administration.

1.7 "Court" means the United States District Court for the Northern District of New York.

1.8 "Data Incident" means the unauthorized "phishing" e-mail event as alleged in the Complaint, whereby unauthorized user(s) gained access to a Syracuse employee's e-mail account

after the employee clicked on a "phishing" e-mail between September 24, 2020 and September 28, 2020, and that e-mail account contained certain data, including Social Security numbers, driver's license numbers, financial account numbers, and/or health care information of approximately 9,865 individuals. While Syracuse found no evidence which confirms that any of the information was viewed or misused, Syracuse provided notification of the Data Incident to all potentially impacted individuals.

1.9 "Defendant" means Syracuse University, also referred to as "Defendant" or "Syracuse" throughout.

1.10 "Effective Date" means the first date by which all of the events and conditions specified in ¶ 1.11 herein have occurred and been met.

1.11 "Final" means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is finally approved by the Court; (ii) the Court has entered a Judgment (as defined below); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys' fee award or service award made in this case shall not affect whether the Judgment is "Final" as defined herein or any other aspect of the Judgment.

1.12 "Judgment" means a judgment rendered by the Court, substantially in the form as shown in **Exhibit E**.

1.13 "Long Notice" means the long form notice of settlement posted on the Settlement Website, substantially in the form as shown in the template attached as **Exhibit B** hereto.

1.14 "Objection Date" means the date by which Settlement Class Members must be filed with the Clerk of the Court for that objection to be timely and effective.

1.15 "Opt-Out Date" means the date by which requests for exclusion from settlement must be postmarked in order to be effective and timely.

1.16 "Person" means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.17 "Private Information" means, but is not limited to, individual names, Social Security numbers, driver's license numbers, financial account numbers, health care information, and any other types of personally identifiable information collected or maintained by Syracuse leading to notification regarding the Data Incident.

1.18 "Plaintiff" or "Class Representative" means Trevor Miller.

1.19 "Preliminary Approval Order" means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class, substantially in the form as shown in **Exhibit D** hereto. The Settling Parties will prepare a mutually agreeable Preliminary Approval Order.

1.20 "Settlement Class Counsel" and/or "Class Counsel" means Todd S. Garber and Andrew C. White of the law firm FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP.

1.21 "Related Parties" means Defendant Syracuse University's respective past or present subsidiaries, divisions, and related or affiliated entities, and each of Defendant's and their

respective predecessors, successors, trustees, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in this Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.22 "Released Claims" shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect; violations of any New York and similar state consumer protection statutes, including, but not limited to, the New York General Business Law; California Consumer Privacy Act and California Unfair Competition Law; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any

of the Released Persons based on, relating to, concerning or arising out of the Data Incident. Released Claims shall not include the right of any Settlement Class Member, Class Counsel, or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.23 "Released Persons" means Defendant and the Related Parties.

1.24 "Settlement Claim" means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.25 "Settlement Class" means all persons who were sent written notification by Syracuse that their Private Information was potentially compromised as a result of the Data Incident discovered by Syracuse in September 2020. The Settlement Class specifically excludes: (i) Syracuse, the Related Parties, and their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; 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 criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.26 "Settlement Class Member(s)" or "Member(s)" means a Person(s) who falls within the definition of the Settlement Class.

1.27 "Settlement Website" means the website described in ¶ 3.2(c).

1.28 "Settling Parties" means, collectively, Syracuse and Plaintiff, individually and on behalf of the Settlement Class.

1.29 "Short Notice" means the content of the mailed notice to the proposed Settlement Class Members, substantially in the form as shown in the template attached as **Exhibit A** hereto.

The Short Notice will direct recipients to the Settlement Website and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys' fees, and the date of the Final Fairness Hearing (as defined below).

1.30 "Unknown Claims" means any of the Released Claims that any Settlement Class Member, including Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiff intends to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq*., Montana Code § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class Members, including Plaintiff, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiff expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the

Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.31 "United States" as used in this Settlement Agreement includes all 50 states, the District of Columbia and all territories.

1.32 "Valid Claims" means settlement claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or dispute resolution process described in ¶ 2.4.

2. Settlement Benefits

2.1 Expense Reimbursement.

2.1.1. *Documented Ordinary Losses.*

a) *Documented Out-Of-Pocket Expenses*. All Settlement Class Members who submit a Valid Claim using the Claim Form, including necessary supporting documentation, are eligible for reimbursement of the following documented out-of-pocket expenses, not to exceed $1,000 per Settlement Class Member, that were incurred as a result of the Data Incident: (i) unreimbursed bank or credit card fees; (ii) long distance phone charges (only if charged by the minute); (iii) long distance or cell phone charges (only if charged by the minute); (iv) data charges (only if charged based on the amount of data used); (v) postage; and/or (vi) gasoline for local travel purchased by Settlement Class Members between September 20, 2020 and the Claims Deadline. Claims for documented out-of-pocket expenses may be combined with claims for documented fees for credit reports, credit monitoring or other identity theft insurance products purchased

between September 20, 2020 and the Claims Deadline and reimbursement of lost time and are subject to the same $1,000 cap. To receive reimbursement for documented out-of-pocket expenses, Settlement Class Members must submit a Valid Claim, including documentation supporting their claims, to the Claims Administrator. To receive reimbursement for documented fees for credit reports, credit monitoring, or other theft insurance products, Settlement Class Members must submit a Valid Claim, including documentation supporting their claims, to the Claims Administrator.

b) *Reimbursement for Attested Lost Time.* Settlement Class Members are also eligible to receive reimbursement for up to five (5) hours of lost time spent dealing with the Data Incident (calculated at the rate of $20 per hour), but only if at least one (1) full hour was spent dealing with the Data Incident. Settlement Class Members may receive up to five (5) hours of lost time if the Settlement Class Member (i) attests that any claimed lost time was spent responding to issues raised by the Data Incident; and (ii) provides a checkbox style description, or written description if no checkbox is applicable, of how the claimed lost time was spent related to the Data Incident. Claims for reimbursement of lost time may be combined with claims for documented out-of-pocket expenses and documented fees for credit reports, credit monitoring, or other identity theft insurance products and are subject to the same $1,000 cap.

c) *$1,000 Cap for all Cumulative Documented Ordinary Loss.* Reimbursement for all Valid Claims for documented Ordinary Losses may not exceed, cumulatively, $1,000.

2.1.2 *Documented Extraordinary Losses.* Settlement Class Members are also eligible to receive reimbursement for documented Extraordinary Losses, not to exceed $10,000 per Settlement Class Member for documented monetary losses if the loss: (i) is actual, documented,

and unreimbursed; (ii) was more likely than not caused by the Data Incident; (iii) occurred between September 20, 2020 and the Claims Deadline; and (iv) is not already covered by one or more of the above-referenced reimbursable expense categories under documented Ordinary Losses. Settlement Class Members must also have made reasonable efforts to avoid, or seek reimbursement for, such Extraordinary Losses, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. Settlement Class Members with Extraordinary Losses must submit substantial and plausible documentation supporting their claims. This can include receipts or other documentation not "self-prepared" by the claimant that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement for Extraordinary Losses, but can be considered to add clarity or support other submitted documentation and a description of how the time was spent. Settlement Class Members may only submit one claim for benefits under paragraph ¶ 2.1.2 and the total of all amounts recovered under this paragraph shall not exceed $10,000 per Settlement Class Member.

2.1.3 Settlement Class Members seeking reimbursement under ¶ 2.1 must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the 90th day after the deadline for the commencement of notice to Settlement Class Members as set forth in ¶ 3.2(d) (the "Claims Deadline"). The notice to the Settlement Class will specify this deadline and other relevant dates described herein. Failure to provide supporting documentation for Ordinary Losses (other than reimbursement of lost time) and Extraordinary Losses, referenced above, as requested on the Claim Form, shall result in denial of a claim. For the reimbursement of up to five (5) hours of lost time claimed by Settlement Class Members, the Settlement Class

Member must provide an attestation that the time claimed was spent responding to issues raised by the Data Incident and a description of how the time was spent.

2.2 Limitation on Reimbursable Expenses. Nothing in this Settlement Agreement shall be construed as requiring Syracuse to provide, and Syracuse shall not be required to provide, for a double payment for the same loss or injury that was reimbursed or compensated by any other source. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement.

2.3 Information Security Improvements. Upon request, Syracuse has agreed to provide sufficient documentation to demonstrate that it either has implemented or will implement various security related measures. Costs associated with these information security improvements will be paid by Syracuse separate and apart from other settlement benefits. Upon request by Plaintiff's Counsel, Syracuse agrees to provide confirmatory discovery regarding changes and improvements made to protect Settlement Class Members' Private Information.

2.4 Dispute Resolution for Claims.

2.4.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the expenses described in ¶ 2.1; and (iii) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Incident. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the claim, *e.g.,* documentation requested on the Claim Form, and

required documentation regarding the claimed losses. The Claims Administrator's initial review will be limited to a determination of whether the claim is complete and plausible. For any claims that the Claims Administrator determines to be implausible, the Claims Administrator will submit those claims to the Settling Parties (one lawyer shall be designated to fill this role for Class Counsel). If the Settling Parties do not agree with the claimant's claim, after meeting and conferring, then the claim shall be referred to a claims referee for resolution. The Settling Parties will mutually agree on the claims referee should one be required.

2.4.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Claims Administrator shall request additional information ("Claim Supplementation") and give the claimant twenty-one (21) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the twenty-one (21) day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the twenty-one (21) day deadline in which to comply; however, in no event shall the deadline be extended to later than six (6) months from the Effective Date. If the defect is not timely cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.4.3 Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have ten (10) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the

Claims Administrator determines that such a claim is facially valid, then the claim shall be paid. If the Claim Administrator determines that such a claim is not facially valid because the claimant has not provided all information needed to complete the Claim Form and enable the Claim Administrator to evaluate the claim, then the Claim Administrator may reject the claim without any further action. If the claim is rejected in whole or in part, for other reasons, then the claim shall be referred to the claims referee.

2.4.4 If any dispute is submitted to the claims referee, the claims referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days of the claims referee's receipt of the submitted dispute. The claims referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days of the claims referee's receipt of the submitted dispute. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Data Incident. The claims referee shall have the power to approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall make a final decision within thirty (30) days of the latter of the following events: its receipt of the submitted dispute and receipt of all supplemental information requested.

2.5 Settlement Expenses. All costs for notice to the Settlement Class as required under ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of dispute resolution described in ¶ 2.4, shall be paid by Syracuse.

2.6 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

3. Order of Preliminary Approval and Publishing of Notice of Final Fairness Hearing

3.1. As soon as practicable after the execution of the Settlement Agreement, Plaintiff's Counsel shall submit this Settlement Agreement to the Court as part of a motion for preliminary approval of the Settlement Agreement requesting entry of a mutually agreeable Preliminary Approval Order requesting, *inter alia:*

a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.6;

b) preliminary approval of the Settlement Agreement as set forth herein;

c) appointment of Todd S. Garber and Andrew C. White of the law firm FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP as Class Counsel;

d) appointment of Plaintiff as Class Representative;

e) approval of a customary form of Short Notice to be mailed by first-class United States Postal Service ("USPS") mail to Settlement Class Members in a form substantially similar to the template attached as **Exhibit A** hereto;

f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the template attached as **Exhibit B** hereto, which, together with the Short Notice, shall include a fair summary of the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt out of the settlement, the process and instructions for making claims to the extent contemplated herein, the requested attorneys' fees, and the date, time and place of the Final Fairness Hearing;

g) approval of the Claim Form to be available on the Settlement Website for submitting claims and available in .pdf format on the Settlement Website for or if specifically requested by the Settlement Class Member, in a form substantially similar to the template attached as **Exhibit C** hereto; and

h) appointment of Postlethwaite & Netterville, APAC, as the Claims Administrator.

3.2 Syracuse shall pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Any attorneys' fees, costs, and expenses of Plaintiff's Counsel, and any service award to the Class Representative, as approved by the Court, shall be paid by Syracuse as set forth in ¶ 7 below. Notice shall be provided to Settlement Class Members by the Claims Administrator as follows:

a) *Class Member Information*: Within fourteen (14) days of entry of the Preliminary Approval Order, Syracuse shall provide the Claims Administrator with the name, physical address, and e-mail, if available, of each Settlement Class Member (collectively, "Class Member Information") that Syracuse and/or the Related Parties possess.

b) The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Agreement, or to provide all data and information in its possession to the Settling Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

c) *Settlement Website:* Prior to the dissemination of the Short Notice, the Claims Administrator shall establish the Settlement Website, that will inform Settlement Class Members of the terms of this Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Agreement; (v) the Complaint; (vi) Class Counsel's application for attorneys' fees and expenses and the service award for Class Representative; and (viii) any other materials agreed upon by the Settling Parties and/or required by the Court. The Settlement Website shall provide Settlement Class Members with the ability to complete and submit the Claim Form, and supporting documentation, electronically.

d) *Short Notice:* Within forty-five (45) days of entry of the Preliminary Approval Order and to be substantially completed not later than sixty (60) days after entry of the Preliminary Approval Order, subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class members as follows:

- Via postcard to the postal address provided to Syracuse and/or the Related Parties by the Settlement Class Members. Before any mailing under this paragraph occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the USPS National Change of Address database to update any change of address on file with the USPS within thirty (30) days of entry of the Preliminary Approval Order.
- In the event that a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is not valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice.
- In the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out Date and the Objection Date, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender" and

does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- The date of the first-mailing of the Short Notice shall be deemed the "notice commencement date" for purposes of calculating the opt-out and objection deadlines, and all other deadlines that flow from the notice commencement date.

e) Publishing, on or before the date of mailing the Short Notice, the Claim Form and the Long Notice on the Settlement Website as specified in the Preliminary Approval Order, and maintaining and updating the Settlement Website throughout the claim period;

f) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement and to respond to Settlement Class Members' questions. The Claims Administrator also will provide copies of the Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request to Settlement Class Members; and

g) Contemporaneously with seeking Final approval of the settlement, Class Counsel and Syracuse shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The notice program shall commence within forty-five (45) days after entry of the Preliminary Approval Order and shall be completed within sixty (60) days after entry of the Preliminary Approval Order.

3.4 Class Counsel and Syracuse counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant Final approval of the settlement set forth herein.

3.5 Syracuse will serve or cause to be served the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, no later than ten (10) days after this Settlement Agreement is filed with the Court.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. Persons wishing to opt-out of the Settlement Class will only be able to submit an opt-out request on their own behalf; mass or class opt-outs will not be permitted. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than sixty (60) days after the date on which the notice program commences pursuant to ¶ 3.2(d).

4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as "Opt-Outs," shall not receive any cash benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the Court, there have been more than twenty (20) timely and valid Opt-Outs (exclusions) submitted, Syracuse may, by notifying Class Counsel and the Court in writing, void this Settlement Agreement. If Syracuse voids the Settlement Agreement pursuant to this paragraph, Syracuse shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Class Counsel and any service award and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection to the Court by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's

signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court and contain the case name and docket number *Miller v. Syracuse University,* Case No. 5:21-CV-01073-LEK-TWD (the "*Miller* Action"), no later than sixty (60) days from the date on which notice program commences pursuant to ¶ 3.2(d), and served concurrently therewith upon Class Counsel, Todd S. Garber and Andrew C. White of the law firm FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP, One North Broadway, Suite 900, White Plains, NY 10111; and counsel for Syracuse, Eric R. Fish, Baker & Hostetler, LLP, 45 Rockefeller Plaza New York, NY 10111.

Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final order approving this Settlement Agreement, or the Judgment to be entered upon Final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

6. Releases

6.1 Upon the Effective Date, each Settlement Class Member (who has not timely and validly excluded himself or herself from the settlement), including Plaintiff, shall be deemed to

have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member (who has not timely and validly excluded himself or herself from the settlement), including Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.2 Upon the Effective Date, Syracuse shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Plaintiff, each and all of the Settlement Class Members, Class Counsel and Plaintiff's Counsel, of all claims, including, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims. Any other claims or defenses Syracuse may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither Syracuse nor its Related Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Plaintiff, each and all of the Settlement Class Members, Class Counsel and Plaintiff's Counsel.

6.4 Nothing in this ¶ 6 shall preclude any action to enforce the terms of this Settlement Agreement by Plaintiff, Settlement Class Members, Class Counsel, and/or Syracuse.

7. Plaintiff's Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Plaintiff

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or any service award to Plaintiff, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that Syracuse would not object to a request for reasonable attorneys' fees, costs, expenses, and a service award to Plaintiff as may be ordered by the Court. Syracuse and Class Counsel then negotiated and agreed to the provisions described in ¶¶ 7.2 and 7.3. Syracuse shall pay any attorneys' fees, costs, expenses and/or any service award to Plaintiff, as provided for in ¶¶ 7.2 and 7.3 and as ordered by the Court, separate and apart from any benefits provided to Settlement Class Members and the costs of notice and Claims Administration.

7.2 Subject to Court approval, Syracuse has agreed not to object to a request by Class Counsel for attorneys' fees, inclusive of any costs and expenses of the Litigation in an amount not to exceed $295,000, to Plaintiff's Counsel for reimbursement of costs incurred. Class Counsel, in their sole discretion, shall allocate and distribute any amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiff's Counsel.

7.3 Subject to Court approval, Syracuse has agreed not to object to a request for a service award in the amount of $5,000 to the named Plaintiff (for a total payment of $5,000).

7.4 If awarded by the Court, Syracuse shall pay the attorneys' fees, costs, expenses, and/or service award to Plaintiff, as set forth above in ¶¶ 7.2 and 7.3, within twenty-one (21) days after the Effective Date. Class Counsel shall thereafter distribute the award of attorneys' fees,

costs, and expenses among Plaintiff's Counsel and the service award to Plaintiff consistent with ¶¶ 7.2 and 7.3.

7.5 The amount(s) of any award of attorneys' fees, costs, and expenses, and the service award to Plaintiff, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will not in any way reduce the consideration being made available to the Settlement Class as described herein. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service award ordered by the Court to Class Counsel or Plaintiff shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Administration of Claims

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2.1. Class Counsel and Syracuse shall be given reports as to both claims and distribution and have the right to review and obtain supporting documentation to the extent necessary to resolve claims administration issues. The Claims Administrator's and claims referee's, as applicable, determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the dispute resolution process set forth in ¶ 2.4. All claims agreed to be paid in full by Syracuse shall be deemed a Valid Claim.

8.2 Checks for Valid Claims shall be mailed and postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later.

8.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the

Court, or otherwise expressly allowed by law or the Settling Parties' written agreement, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4 No Person shall have any claim against the Claims Administrator, claims referee, Syracuse, Released Persons, Class Counsel, Plaintiff, Plaintiff's Counsel, and/or Syracuse counsel based on distributions of benefits to Settlement Class Members.

8.5 Information submitted by Settlement Class Members in connection with submitted claims under this Settlement Agreement shall be deemed confidential and protected as such by the Claims Administrator, claims referee, Class Counsel, and counsel for Syracuse.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 3.1;

b) Syracuse has not exercised its option to void the Settlement Agreement pursuant to ¶ 4.3;

c) the Court has entered the Judgment granting Final approval to the settlement as set forth herein; and

d) the Judgment has become Final, as defined in ¶ 1.11.

9.2 If all conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 9.4 unless Class Counsel and counsel for Syracuse mutually agree in writing to proceed with the Settlement Agreement.

9.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Class Counsel and to counsel for Syracuse a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.4 In the event that the Settlement Agreement or the releases set forth in ¶¶ 6.1, 6.2, and 6.3 above are not approved by the Court, either preliminarily or finally, or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms: (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel; (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and (iii) any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc.* Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service award shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Syracuse shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, and Claims Administration, and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

10. Miscellaneous Provisions

10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement; (ii) agree to cooperate to the extent necessary to effectuate and implement

all terms and conditions of this Settlement Agreement; and (iii) agree to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth in the Settlement Agreement.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) 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 Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action related to the Data Incident that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata,* collateral estoppel, release, good faith settlement, judgment

bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.5 The Settlement Agreement contains the entire understanding between Syracuse and Plaintiff regarding the payment of the Litigation and supersedes all previous negotiations, agreements, commitments, understandings, and writings between Syracuse and Plaintiff in connection with the payment of the Litigation. Except as otherwise provided herein, each party shall bear its own costs. This Agreement supersedes all previous agreements made between Syracuse and Plaintiff. Any agreements reached between Syracuse, Plaintiff, and any third party, are expressly excluded from this provision.

10.6 Class Counsel, on behalf of the Settlement Class, are expressly authorized by Plaintiff to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.8 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

10.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. No assignment of this Settlement Agreement will be valid without the other party's prior, written permission.

10.10 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

10.11 As used herein, "he" means "he, she, or it"; "his" means "his, hers, or its"; and "him" means "him, her, or it."

10.12 All dollar amounts are in United States dollars (USD).

10.13 Cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive monetary settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until six (6) months after the Effective Date to request re-issuance by the Claims Administrator.

10.14 If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and Syracuse shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶ 2.1 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one

hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

10.15 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed by their duly authorized attorneys.

[*Signature blocks on next page*]

AGREED TO BY:

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP

By: /s/ Todd S. Garber

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Counsel for Plaintiff Trevor Miller and the Putative Class

By: /s/ Trevor Miller

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Counsel for Defendant Syracuse University

EXHIBIT A

Who Is Included? The Court decided that Settlement Class Members include all persons who were sent written notification by Syracuse that their personal information was potentially compromised as a result of the Data Incident discovered by Syracuse in September 2020. If you received this notice by mail or e-mail, records indicate you are included in this settlement.

What Does The Settlement Provide? The settlement will provide benefits to people who submit Valid Claims. Settlement Class Members can claim up to $1,000 (in total) for documented Ordinary Losses: (1) documented out-of-pocket expenses and/or (2) attested lost time. You may submit a claim for either or both types of payments. In order to claim reimbursement for Documented Out-Of-Pocket Expenses, you must provide related documentation with the Claim Form. Settlement Class Members can also claim up to $10,000 for Documented Extraordinary Losses. In order to claim this payment, you must provide related documentation with the Claim Form.

The settlement also provides that Defendant has agreed to provide sufficient documentation to demonstrate that it either has implemented or will implement various security related measures.

More information about the benefits provided by this settlement can be found in the Long Notice and Settlement Agreement available on the website or by calling 1-877-716-6889.

How To Get Benefits. The only way to receive a benefit is to file a claim. To file your claim online, or to get a paper Claim Form, visit the website at www.SyrNYdataincident.com or call 1-877-716-6889. To be eligible, you must complete and submit a valid Claim Form, postmarked or submitted online, on or before **Month DD, 2024**.

Your 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 Defendant 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 DD, 2024**. If you stay in the settlement, you may object to it by **Month DD, 2024**. A more detailed notice is available to explain how to exclude yourself or object. Please visit the website or call 1-877-716-6889 for a copy of the more detailed notice.

The Final Fairness Hearing. The Court has scheduled a hearing in this case (*Miller v. Syracuse University*, Case No. 5:21-cv-01073-LEK-TWD (N.D.N.Y.)) for **Month DD, 2024**, to consider: whether to approve the settlement, service award, attorneys' fees and expenses, as well as any objections. You or your attorney may attend and ask to appear at the hearing, but you are not required to do so.

More Information. Complete information about your rights and options, as well as the Claim Form, the Long Notice, and Settlement Agreement are available at www.SyrNYdataincident.com, or by calling toll free 1-877-716-6889.

If you received notice by Syracuse University of the September 2020 Data Incident, you may be eligible for a payment from a class action settlement.

A federal court has authorized this notice. It is not a solicitation from a lawyer.

Para una notificación en Español, visitar www.SyrNYdataincident.com.

A settlement has been reached in a class action lawsuit against Syracuse University ("Defendant" or "Syracuse") relating to a data security event as alleged in the Complaint, whereby unauthorized user(s) gained access to a Syracuse employee's e-mail account that contained certain data, including Social Security numbers, driver's license numbers, financial account numbers, and/or health care information of approximately 9,865 individuals (the "Data Incident"). While Syracuse found no evidence which confirms that any of the information was viewed or misused, Syracuse provided notification of the Data Incident to all potentially impacted individuals.

Visit www.SyrNYdataincident.com or call 1-877-716-6889 for more information.

Syracuse Data Incident Claims Administrator
P.O. Box XXX
Baton Rouge, LA 70821

ELECTRONIC SERVICE REQUESTED

CLAIM ID: []
[FIRST NAME] [LAST NAME]
[ADDRESS]
[ADDRESS]
[CITY] [STATE] [ZIP]

Postal Service: Do Not Mark or Cover Barcode

EXHIBIT B

Miller v. Syracuse University
Case No. 5:21-cv-01073-LEK-TWD (U.S. District Court for the Northern District of New York)

If you received notice from Syracuse University of the September 2020 Data Incident, you may be eligible for a payment from a class action settlement.

A federal court has authorized this notice. This is not a solicitation from a lawyer. Please read this notice carefully and completely.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

Para una notificación en Español, visitar www.SyrNYdataincident.com.

- A settlement has been reached in a class action lawsuit against Syracuse University ("Defendant" or "Syracuse") relating to a data security event as alleged in the Complaint, whereby unauthorized user(s) gained access to a Syracuse employee's e-mail account that contained certain data, including Social Security numbers, driver's license numbers, financial account numbers, and/or health care information of approximately 9,865 individuals (the "Data Incident"). While Syracuse found no evidence which confirms that any of the information was viewed or misused, Syracuse provided notification of the Data Incident to all potentially impacted individuals.

- If you received a notification from Syracuse of the Data Incident, you are included in this settlement as a "Settlement Class Member."

- The settlement provides payments to people who submit Valid Claims for documented Ordinary Losses, *i.e.*, documented out-of-pocket expenses and attested lost time relating to the Data Incident, and Documented Extraordinary Losses.

- Your legal rights are affected regardless of whether you do or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM **DEADLINE: MONTH, DD YEAR**	Submitting a Claim Form is the only way that you can receive any of the settlement benefits provided by this settlement, including, reimbursement for attested lost time, payment for documented Ordinary Losses, or payment for documented Extraordinary Losses. If you submit a Claim Form, you will give up the right to sue Syracuse in a separate lawsuit about the legal claims this settlement resolves.
EXCLUDE YOURSELF FROM THE SETTLEMENT **DEADLINE: MONTH, DD YEAR**	This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against Syracuse for the claims this settlement resolves. If you exclude yourself, you will give up the right to receive any settlement benefits from this settlement.
OBJECT TO THE SETTLEMENT **DEADLINE: MONTH, DD YEAR**	You may object to the settlement by writing to the Court and informing it why you do not think the settlement should be approved. If you object, you may also file a Claim Form to receive settlement benefits, but you will give up the right to sue Syracuse in a separate lawsuit about the legal claims this settlement resolves.
GO TO THE FINAL FAIRNESS HEARING **DATE: MONTH, DD YEAR**	You may attend the Final Fairness Hearing where the Court may hear arguments concerning approval of the settlement. If you wish to speak at the Final Fairness Hearing, you must make a request to do so in your written objection or comment. You are not required to attend the Final Fairness Hearing.
DO NOTHING	If you do nothing, you will not receive any of the monetary settlement benefits and you will give up your rights to sue Syracuse and certain Released Persons for the claims this settlement resolves.

- These rights and options—and the deadlines to exercise them—are explained in this notice. For complete details, view the Settlement Agreement, available at www.SyrNYdataincident.com, or call 1-877-716-6889.

- The Court in charge of this case still has to decide whether to grant final approval of the settlement. Payments will only be made after the Court grants final approval of the settlement and after any appeals are resolved.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why is this notice being provided?

A federal court authorized this notice because you have a right to know about a proposed settlement that has been reached in this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the settlement. If the Court approves the settlement, and after objections or appeals, if any, are resolved, the Claims Administrator appointed by the Court will distribute the payments that the settlement allows. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for the Northern District of New York. The case is known as *Trevor Miller, individually and on behalf of all others similarly situated v. Syracuse University*, Case No. 5:21-CV-01073-LEK-TWD (the "*Miller* Action"). The person who filed the lawsuit is called the Plaintiff and the entity he sued is called the Defendant. Plaintiff and Defendant agreed to this settlement.

2. What is this lawsuit about?

The lawsuit claims that the Defendant was responsible for the Data Incident. Plaintiff, a former student at Syracuse, alleges that between September 24 and September 28, 2020, Syracuse experienced a "phishing" attempt whereby unauthorized user(s) were able to gain access to a Syracuse employee's e-mail account, and that e-mail account contained personal information of certain individuals. Plaintiff further alleges that the personal information impacted in the Data Incident included Social Security numbers and other sensitive, personal information. Plaintiff further alleges that he received notice of the Data Incident from Syracuse on or about February 4, 2021. Following this notification, and after Plaintiff claims he learned of an unauthorized charge on his bank checking account, Plaintiff filed this lawsuit asserting various claims against Syracuse relating to the Data Incident as defined below (the "Litigation").

Syracuse denies each and all of the claims and contentions alleged against it in the Litigation. Syracuse denies all allegations of wrongdoing or liability that are alleged, or which could be alleged, in the Litigation.

3. What is a class action?

In a class action, one or more people called Class Representatives (in this case, Trevor Miller) sue on behalf of people who have similar claims. Together, all these people are called a Settlement Class Members or Members. One court and one judge resolves the issues for all class members, except for those who exclude themselves from the Settlement Class.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, Plaintiff negotiated a settlement with Defendant that allows both Plaintiff and Defendant to avoid the risks and costs of lengthy and uncertain litigation and the uncertainty of a trial and appeals. It also allows Settlement Class Members to obtain settlement benefits without further delay. The Class Representative and his attorneys think the settlement is best for all Settlement Class Members. This settlement does not mean that Defendant did anything wrong.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the settlement?

You are part of this settlement as a Settlement Class Member if you previously received a written notification from Syracuse that your personal information was potentially compromised as a result of the Data Incident discovered by Syracuse in September 2020.

If you received notice of this settlement by mail or e-mail, you are a Settlement Class Member, and your legal rights are affected by this settlement. If you did not receive notice by mail or e-mail, or if you have any questions as to whether you are a Settlement Class Member, you may contact the Settlement Administrator.

6. Are there exceptions to being included in the settlement?

Yes. Specifically excluded from the Settlement Class are: (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (ii) the judge assigned to evaluate the fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the settlement provide?

The settlement will provide payments to people who submit Valid Claims.

Settlement Class Members can claim up to $1,000 (in total) for documented Ordinary Losses (Question 8, below): (1) documented out-of-pocket expenses; and/or (2) attested lost time. You may submit a claim for either or both types of payments. In order to claim reimbursement for documented out-of-pocket expenses, you must provide related documentation with the Claim Form.

Settlement Class Members can also claim up to $10,000 for documented Extraordinary Losses (Question 9, below). In order to claim this payment, you must provide related documentation with the Claim Form.

The settlement also provides that Defendant has agreed to provide sufficient documentation to demonstrate that it either has implemented or will implement various security-related measures.

8. What payments are available for documented Ordinary Losses?

Settlement Class Members are eligible to receive reimbursement of up to $1,000 (in total) for the following categories of documented out-of-pocket expenses resulting from the Data Incident, including, but not limited to: (i) unreimbursed bank or credit card fees; (ii) long distance phone charges (only if charged by the minute); (iii) long distance or cell phone charges (only if charged by the minute); (iv) data charges (only if charged based on the amount of data used); (v) postage; and/or (vi) gasoline for local travel purchased by Settlement Class Members between September 20, 2020 and the Claims Deadline.

Included within the $1,000 cap, Settlement Class Members are also eligible to receive reimbursement for up to five (5) hours of lost time spent dealing with the Data Incident (calculated at the rate of $20 per hour), but only if at least one (1) full hour was spent dealing with the Data Incident. Settlement Class Members may receive up to five (5) hours of lost time if the Settlement Class Member: (i) attests that any claimed lost time was spent responding to issues raised by the Data Incident; and (ii) provides a checkbox style description, or written description if no checkbox is applicable, of how the claimed lost time was spent related to the Data Incident.

9. What payments are available for documented Extraordinary Losses?

Settlement Class Members may make a claim for reimbursement of up to $10,000 for documented Extraordinary Losses resulting from the Data Incident. Settlement Class Members are eligible for reimbursement under this category if the loss: (i) is actual, documented, and unreimbursed; (ii) more likely than not caused by the Data Incident; (iii) occurred between September 20, 2020 and the Claims Deadline; and (iv) is not already covered by one or more of the above-referenced reimbursable expense categories under documented Ordinary Losses.

Settlement Class Members must also have made reasonable efforts to avoid, or seek reimbursement for, such documented Extraordinary Losses, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

10. How do I get benefits from the settlement?

To ask for a payment, you must complete and submit a Claim Form. Claim Forms are available at www.SyrNYdataincident.com, or you may request one by mail by calling 1-877-716-6889. Read the instructions carefully, fill out the Claim Form, and mail it **postmarked no later than [Claims Deadline]** to:

Syracuse Data Incident Claims Administrator
P.O. Box XXXX
Baton Rouge, LA 70821

11. How will claims be decided?

The Claims Administrator will initially decide whether the information provided on a Claim Form is complete and valid. The Claims Administrator may require additional information from any claimant. If the required information is not timely provided, the claim will be considered invalid and will not be paid.

If the claim is complete and the Claims Administrator denies the claim entirely or partially, the claimant will be provided an opportunity to have their claim reviewed by an impartial claims referee. Additional information regarding the claims process can be found in Sections IV.2 and IV.8 of the Settlement Agreement, available at www.SyrNYdataincident.com.

12. When will I get my payment?

The Court will hold a Final Fairness Hearing at **XX:XX am** on **Month, Day, 2024** to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether any appeals can be resolved favorably, and resolving them can take time. It also takes time for all the Claim Forms to be processed, depending on the number of claims submitted and whether any appeals are filed. Please be patient.

REMAINING IN THE SETTLEMENT

13. Do I need to do anything to remain in the settlement?

You do not have to do anything to remain in the settlement, but if you want a payment, you must submit a Claim Form postmarked by **Month Day, 2024**.

14. What am I giving up as part of the settlement?

If the settlement becomes final, you will give up your right to sue Syracuse for the claims being resolved by this settlement. The specific claims you are giving up against Syracuse are defined in Section 1.22 of the Settlement Agreement. You will be "releasing" Syracuse and all related people or entities (collectively, "Released Persons") as described in Section 6 of the Settlement Agreement. The Settlement Agreement is available at www.SyrNYdataincident.com.

The Settlement Agreement describes the Released Claims with specific descriptions, so read it carefully. If you have any questions about what this means you can talk to the law firms listed in Question 18 for free or you can, of course, talk to your own lawyer at your own expense.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue Syracuse about issues in the Litigation, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as "opting out" of – the Settlement Class.

15. If I exclude myself, can I still get payment from the settlement?

No. If you exclude yourself from the settlement, you will not be entitled to any benefits of the settlement, but you will not be bound by any judgment in this case.

16. If I do not exclude myself, can I sue Syracuse for the same thing later?

No. Unless you exclude yourself from the settlement, you give up any right to sue Syracuse for the claims that this settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

17. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail stating that you want to be excluded from the settlement in the *Miller* Action. Your letter must include your name, address, telephone number and signature. Your letter must state the words "*Request for Exclusion*" at the top of the document and contain a declaration stating "I request that I be excluded from the Settlement Class in *Miller v. Syracuse University*, and do not wish to participate in the settlement. I understand that by requesting to be excluded from the Settlement Class, I will not receive any benefits under the settlement." You must mail your exclusion request postmarked no later than **Month Day, 2024** to:

Syracuse Data Incident Exclusions
P.O. Box XXXX
Baton Rouge, LA 70821

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

Yes. The Court appointed Todd S. Garber and Andrew C. White of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, One North Broadway, Suite 900, White Plains, NY 10111, to represent you and other Settlement

Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

19. How will Class Counsel be paid?

Subject to Court approval, Syracuse has agreed not to object to a request by Class Counsel for attorneys' fees, inclusive of any costs and expenses of the Litigation, in an amount not to exceed $295,000, to Plaintiff's Counsel for reimbursement of costs incurred. Subject to Court approval, Syracuse has agreed not to object to a request for a service award in the amount of $5,000 to the named Plaintiff (for a total payment of $5,000). These payments will not in any way reduce the consideration being made available to the Settlement Class as described herein.

Class Counsel's application for attorneys' fees and expenses, and Plaintiff's service award, will be made available on the Settlement Website at www.SyrNYdataincident.com before the deadline for you to object to the settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

20. How do I tell the Court that I do not like the settlement?

If you are a Settlement Class Member, you can object to the settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve the settlement. The Court will consider your views before making a decision. To object, you must file with the Court and mail copies to Class Counsel and Defendant's Counsel a written notice stating that you object to the settlement in *Miller v. Syracuse University*.

Your objection must include:

(a) the name of the proceedings ("*Miller v. Syracuse University*");
(b) your full name, current mailing address, and telephone number;
(c) a statement of the specific grounds for the objection, as well as any documents supporting the objection;
(d) the identity of any attorneys representing you; and
(e) your signature or your attorney's signature.

You must mail your objection postmarked no later than **Month, Day, 2024** to:

Syracuse Data Incident Objections
P.O. Box XXXX
Baton Rouge, LA 70821

You must also mail copies of your objection to Class Counsel and Defendant's Counsel postmarked no later than **Month Day, 2024**, at all of the addresses below.

CLASS COUNSEL	SYRACUSE'S COUNSEL
Todd S. Garber Andrew C. White **Finkelstein, Blankinship, Frei-Pearson & Garber, LLP** One North Broadway Suite 900, White Plains, NY 10111	Eric R. Fish **Baker & Hostetler, LLP** 45 Rockefeller Plaza New York, NY 10111

21. What is the difference between objecting to and excluding myself from the settlement?

Objecting is telling the Court that you do not like something about the settlement. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class in this settlement. If you exclude yourself from the settlement, you have no basis to object or submit a Claim Form because the settlement no longer affects you.

THE COURT'S FINAL FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to. You cannot speak at the hearing if you exclude yourself from the settlement.

22. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Fairness Hearing at XX a.m. on Month Day, 2024, in the United States District Court, Northern District of New York, Address, City, State, Zip. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will take into consideration any properly-filed written objections and may also listen to people who have asked to speak at the hearing (*see* Question 20). The Court will also decide whether to approve fees and costs to Class Counsel, and the service award to the Class Representative.

23. Do I have to come to the Final Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to come to Court to talk about it. You may also hire your own lawyer to attend, at your own expense, but you are not required to do so.

24. May I speak at the Final Fairness Hearing?

Yes, you may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must follow the instructions provided in Question 20 above. You cannot speak at the hearing if you exclude yourself from the settlement.

IF YOU DO NOTHING

25. What happens if I do nothing?

If you do nothing, you will not receive any benefit from this settlement. If the Court approves the settlement, you will be bound by the Settlement Agreement and the release. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or related parties about the issues involved in the Litigation, resolved by this settlement, and released by the Settlement Agreement.

GETTING MORE INFORMATION

26. Are more details about the settlement available?

Yes. This notice summarizes the proposed settlement. More details are in the Settlement Agreement, which is available at www.SyrNYdataincident.com, or by writing to the Syracuse Data Incident Settlement Administrator, P.O. Box XXXX, Baton Rouge, LA 70821.

27. How do I get more information?

Go to www.SyrNYdataincident.com, call 1-877-716-6889, or write to Syracuse Data Incident Settlement Administrator, PO Box XXXX, Baton Rouge, LA 70821.

Please do not call the Court or the Clerk of the Court for additional information. They cannot answer any questions regarding the settlement or the Litigation.

EXHIBIT C

Syracuse Data Incident Claims Administrator
PO Box XXXX
Baton Rouge, LA 70821

Your Claim Form Must Be Submitted On or Before MONTH DAY, 2024

Trevor Miller v. Syracuse University

In the United States District Court, Northern District of New York (Case No. 5:21-CV-01073-LEK-TWD)

Claim Form

Si necesita ayuda en español, visitar www.SyrNYdataincident.com.

This Claim Form should be filled out online or submitted by mail if you were notified by Syracuse University regarding the September 2020 Data Incident, and you had out-of-pocket expenses or lost time spent dealing with the Data Incident. Settlement Class Members may make a claim for reimbursement for documented extraordinary losses resulting from the Data Incident. You may get a check if you fill out this Claim Form, if the settlement is approved, and if you are found to be eligible for a payment.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website at www.SyrNYdataincident.com, or call 1-877-716-6889 for more information or to file a claim online.

If you wish to submit a claim for a settlement payment, you need to provide the information requested below. Please print clearly in blue or black ink. This Claim Form must be mailed and postmarked or submitted online **on or before MONTH DAY, 2024.**

TO RECEIVE BENEFITS FROM THIS SETTLEMENT, YOU MUST PROVIDE ALL OF THE REQUIRED (*) INFORMATION BELOW AND YOU MUST SIGN THIS CLAIM FORM. THIS CLAIM FORM SHOULD ONLY BE USED IF A CLAIM IS BEING MAILED IN AND IS NOT BEING FILED ONLINE. YOU MAY ALSO FILE YOUR CLAIM ONLINE AT WWW.SYRNYDATAINCIDENT.COM.

1. CLASS MEMBER INFORMATION.

*First Name | Middle Initial

*Last Name | Suffix

*Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)

*City | *State | *Zip Code

Current Email Address (Optional)

*Current Phone Number | *Settlement Clam ID (Required)

Settlement Claim ID: Your Settlement Claim ID can be found on the postcard notice you received in the mail informing you about this Settlement. If you need additional help locating this ID, please contact the Claims Administrator at 1-877-716-6889 or email at info@SyrNYdataincident.com.

2. PAYMENT ELIGIBILITY INFORMATION.

Please review the notice and Section 2 of the Settlement Agreement (available at www.SyrNYdataincident.com) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed.

Please provide as much information as you can to help us figure out if you are entitled to a settlement payment.

PLEASE PROVIDE THE INFORMATION LISTED BELOW:

Check the box for each category of benefits you would like to claim. Categories include: out-of-pocket expenses that you had to pay as a result of the Data Incident and time you had to spend dealing with the effects of the Data Incident. Please be sure to fill in the total amount you are claiming for each category and to attach documentation of the charges as described in bold type (if you are asked to provide account statements as part of proof required for any part of your claim, you may mark out any unrelated transactions if you wish).

A. Documented Ordinary Losses resulting from the Data Incident.

☐ I incurred documented out-of-pocket expenses as a result of the Data Incident.

Examples include: (i) unreimbursed bank or credit card fees; (ii) long distance phone charges (only if charged by the minute); (iii) long distance or cell phone charges (only if charged by the minute); (iv) data charges (only if charged based on the amount of data used); (v) postage; and (vi) gasoline for local travel purchased. You may all claim fees for credit reports, credit monitoring or other identity theft insurance products that were incurred on or after September 20, 2020 through [CLAIMS DEADLINE].

Total amount for this category: **$** ☐☐☐☐ . ☐☐

Briefly describe the charges you have claimed below:

_____

_____

_____

If you are seeking reimbursement for fees, expenses, or charges, please attach a copy of a statement from the company that charged you, or a receipt for the amount you incurred.

If you are seeking reimbursement for credit reports, credit monitoring, or other identity theft insurance product purchased between September 20, 2020 through CLAIMS DEADLINE, please attach a copy of a receipt or other proof of purchase for each credit report or product purchased. (Note: By claiming reimbursement in this category, you certify that you purchased the credit monitoring or identity theft insurance product primarily because of the Data Incident and not for any other purpose).

Supporting documentation must be provided. You may mark out any transactions that are not relevant to your claim before sending in the documentation.

☐ I spent between one and five hours of documented time spent dealing with the Data Incident.

☐ I certify that the following amount of time in response to the Data incident:

☐ 1 Hour ☐ 2 Hours ☐ 3 Hours ☐ 4 Hours ☐ 5 Hours

To recover for lost time under this section, you must select one of the boxes above or provide a narrative description of the activities performed during the claimed time.

Check all activities, below, which apply

☐ Time spent obtaining credit reports.

☐ Time spent dealing with a credit freeze.

☐ Time spent dealing with bank or credit card fee issues.

☐ Time spent monitoring accounts.

☐ Time spent updating automatic payment programs because your card number changed.

☐ Other. (Please provide description(s) below.)

_____

_____

B. Documented Extraordinary Losses Resulting from the Data Incident.

☐ I incurred documented monetary losses that: (i) are actual, documented, and unreimbursed; (ii) were more likely than not caused by the Data Incident; (iii) occurred between September 20, 2020 and [Claims Deadline]; and (iv) are not already covered by Ordinary Loss categories above.

Total amount for this category: **$** ☐☐☐☐☐ . ☐☐

You must provide substantial and plausible documentation that you experienced and unreimbursed monetary loss as result of the Data Incident, including, but, not limited to, receipts, account statements or invoices. Note that "self-prepared documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement for Extraordinary Losses, but can be considered to add clarity or support other submitted documentation

You may mark out any information that is not relevant to your claim before sending in the documentation.

Description the loss and the documents provided to demonstrate that identity theft or fraud occurred.

_____

_____

_____

_____

☐ **Check this box to confirm that you have exhausted all applicable insurance policies, including credit monitoring insurance and identity theft insurance, and that you have no insurance coverage for these fraudulent charges.**

3. SIGN AND DATE YOUR CLAIM FORM.

I declare that the information supplied in this Claim Form by the undersigned is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that I may be asked to provide supplemental information by the Claims Administrator before my claim will be considered complete and valid.

Signature	**Print Name**	**Date**

4. REMINDER CHECKLIST.

5. Keep copies of the completed Claim Form and documentation for your own records.

6. If your address changes or you need to make a correction to the address on this Claim Form, please visit the Settlement website at www.SyrNYdataincident.com and complete the Update Contact Information form or send written notification of your new address. Make sure to include your Settlement Claim ID and your phone number in case we need to contact you in order to complete your request.

7. For more information, please visit the settlement website at www.SyrNYdataincident.com or call the Claims Administrator at 1-877-716-6889. Please do not call the Court or the Clerk of the Court for additional information.

8. This Claim Form must be postmarked by **MONTH DAY, 2024** and mailed to: P.O. Box XXXX, Baton Rouge, LA 70821.

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TREVOR MILLER, individually and on behalf of all others similarly situated, Plaintiff, v. **SYRACUSE UNIVERSITY,** Defendant.	Case No. 5:21-cv-1073-LEK-TWD Class Action

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

THIS CAUSE is before the Court on Plaintiff's Uncontested Motion for Preliminary Approval of Class Action Settlement. Having considered the Motion, the Settlement Agreement, all materials submitted in support thereof, and the record in this case, and for good cause shown:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Preliminary Approval of Settlement Agreement

1. The Court finds for the purposes of preliminary approval, that the proposed settlement in the above-captioned case as set forth in the Parties' Settlement Agreement, is fair, reasonable, adequate, and in the best interest of the Class. The Court further finds that the Settlement was entered into at arm's length by highly experienced counsel providing excellent representation. The Court therefore preliminarily approves the proposed Settlement.

Class Certification

2. Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), and for the purposes of this Settlement, the Court conditionally certifies a Class defined as: "All persons who were sent

written notification by Syracuse that their Private Information was potentially compromised as a result of the Data Incident discovered by Syracuse in September 2020."

3. Pursuant to the Settlement Agreement, and for Settlement purposes only, the Court finds as to the Class that:

a. the Class is so numerous that joinder of all members is impracticable;

b. there are questions of law or fact common to the Class;

c. the claims of the named Plaintiff and proposed Class Representative are typical of the claims of the Class;

d. the named Plaintiff and Class Representative and his counsel will fairly and adequately protect the interests of the Class;

e. questions of law and fact common to class members predominate over any questions affecting only individual Class members; and,

f. a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. The Court appoints Trevor Miller as Representative of the Class.

5. The Court appoints Todd S. Garber and Andrew C. White of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Alex J. Dravillas, of Keller Postman LLC, to act as Class Counsel to the Class.

Notice To Potential Class Members

6. The Court approves the form and content of the Class Notice and approves the Parties' proposal to distribute the Class Notice to the Class as set forth in the Settlement Agreement. The Court finds that the Parties' proposal regarding class notice to potential class members constitutes the best notice practicable under the circumstances, and complies fully with the notice requirements of due process and Fed. R. Civ. P. 23.

Claims Administration

7. The Court approves Postlethwaite & Netterville, APAC as the Settlement Administrator, with the responsibilities set forth in the Settlement Agreement.

8. Any Class Member may request to be excluded (or "opt-out") from the Class. A Class Member who wishes to opt-out of the Class must give written notice to the Settlement Administrator. Opt-Out requests must be signed by the Class Member who is requesting exclusion and clearly manifest a Person's intent to be excluded from the Settlement Class. Requests for Exclusion that are not timely will be considered invalid and of no effect, and the Class Member who untimely submits a Request for Exclusion will remain a Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order and the Releases contemplated thereby. Except for those Class Members who have properly and timely submitted Requests for Exclusion, all Class Members will be bound by the Settlement Agreement and the Final Approval Order, including the Releases, regardless of whether they file a Claim or receive any monetary relief. Any Class Member who timely and properly submits a Request for Exclusion shall not: (a) be bound by any orders or the Final Approval Order nor by the Releases contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Person requesting exclusion from the Class must personally sign his or her own individual Request for Exclusion. No Person may opt-out of the Class for any other Class Member, or be opted-out by any other Person, and no Class Member shall be deemed opted-out of the Class through any purported "mass" or "class" opt-outs.

9. Any Class Member who intends to object to the Settlement must do so by the Objection Deadline. In order to object, the Class Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendant's Counsel also prior to the

Objection Deadline, a document that:

i. the objector's full name, address, telephone number, and e-mail address (if any);

ii. information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident);

iii. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;

iv. the identity of any and all counsel representing the objector in connection with the objection;

v. a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing;

vi. the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and

vii. a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years.

Any Class Member who fails to file and serve timely: (a) a written objection containing all of the information listed in items (i) through (vii) of the previous paragraph; and, (b) notice of his/her intent to appear at the Final Approval Hearing pursuant to this paragraph, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal.

Upon the filing of an objection, Class Counsel and Defendant's Counsel may take the deposition of the objecting Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

Fairness Hearing

10. A Fairness Hearing is hereby scheduled to be held before the undersigned on _____, 2024 at ____ am/pm, to consider the fairness, reasonableness and adequacy of the Settlement, the entry of a Final Order and Judgment in the case, any petition for attorneys' fees and costs and Service Awards to named Plaintiff, and any other related matters that are brought to the Court's attention in a timely fashion.

11. Any Class Member who has not filed a Request for Exclusion may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness, and adequacy of the Settlement; provided, however, that no person shall be heard in opposition to the Settlement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, in accordance with the deadlines above, such person: (a) timely files with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the Settlement, and any documentation in support of such opposition; and (b) timely serves copies of such notice, statement and documentation upon all counsel.

12. The date and time of the Fairness Hearing shall be set forth in the Notice but shall be subject to adjournment by the Court without further notice to the members of the Class other than which may be posted on the Court's Electronic Case Filing (ECF) system and/or the website created pursuant to the Settlement Agreement, as set forth in the Class Notice.

13. If Final Approval of the Settlement is not granted, or if the Settlement is terminated for any reason, the Settlement and all proceedings had in connection therewith shall be without prejudice to the parties' rights and the parties shall return to the *status quo ante*, and all Orders issued pursuant to the Settlement and Preliminary and Final Approval process shall be vacated. In such event, the Settlement Agreement and all negotiations concerning it shall not be used or referred to in

this action (or any other action) for any purpose whatsoever.

Miscellaneous Relief

14. The Court hereby stays all proceedings in this Court other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred.

15. Additionally, the Court hereby prohibits and/or enjoins any other person or counsel from representing or prosecuting any claims on behalf of this Class in any other Court.

Dated: _____, 2023
White Plains, New York

SO ORDERED:

_____
Hon., Lawrence E. Kahn, Senior Judge

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TREVOR MILLER, individually and on behalf of all others similarly situated, Plaintiff, v. **SYRACUSE UNIVERSITY,** Defendant.	Case No. 5:21-cv-1073-LEK-TWD Class Action

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

Plaintiff Trevor Miller ("Plaintiff"), individually and on behalf of others allegedly similarly situated, and Defendant Syracuse University ("Defendant," or together with Plaintiff, "the Parties"), have moved for final approval of the proposed class action and collective action settlement.

AND NOW, this ____ day of _____, 2024, upon consideration of Plaintiff's Unopposed Motion for Final Collective Action Settlement Approval, the accompanying Memorandum of Law and all exhibits thereto, the representations of counsel during the _____ Final Approval Hearing, and all other papers and proceedings herein, it is hereby ORDERED as follows:

1. The provisions of the Settlement Agreement, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein;

2. The settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant; and

3. The Court entered its Order Preliminarily Approving Settlement and Providing for Notice on _____, said notice has been made, and the Final Fairness Hearing has been held.

NOW, THEREFORE, based upon the Settlement Agreement and all of the filings, records, and proceedings herein, and it appearing to the Court upon examination that the Settlement Agreement is fair, reasonable, and adequate, and upon a settlement Final Fairness Hearing having been held after Notice to the Class of the proposed settlement to determine if the settlement is fair, reasonable, and adequate and whether a Final Judgment of Dismissal with Prejudice ("Final Judgment") should be entered in the Action based upon the terms of the Settlement Agreement.

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES:

1. The Settlement Agreement is procedurally fair because: 1) the Parties engaged in arm's-length negotiations to reach the proposed settlement; 2) the benefits of the settlement are more than reasonable, considering, *inter alia*, the immediate benefits it provides to the Settlement Class Members and the risks of further litigation; 3) there was sufficient discovery for both sides to evaluate liability and calculate possible damages; 4) the proponents of the settlement are highly experienced and able attorneys who are familiar with class action litigation, including data breach actions of similar size, scope, and complexity; and 5) the Class responded favorably to the proposed settlement;

2. The Court appoints Trevor Miller as Class Representative;

3. The Court finally certifies the Class for the reasons set forth in its order preliminarily certifying the Class, and appoints Todd S. Garber and Andrew C. White of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Alex Dravillas of Keller Postman, LLC as Class Counsel;

4. The Court finds that the requested Service Award is reasonable to compensate the Service Award recipient for his service to the Class. *See, e.g.*, *Moses v. N.Y. Times Co.*, 79 F.4th 235, 253-56 (2d Cir. 2023). Accordingly, the Court hereby approves payment of a Service Award of $5,000.00 for Plaintiff Trevor Miller;

5. The Court hereby approves Plaintiff's counsel's request for $295,000 in attorneys' fees and litigation expenses as fully justified in light of the substantial recovery, the hours expended, the reasonable hourly rates charged by Plaintiff's counsel, and the excellent quality of Plaintiff's counsel's work;

6. The Court hereby approves payment to Postlethwaite & Netterville, APAC, the Settlement Administrator, of $_____ for its work in this litigation;

7. The Settlement Administrator shall make all required payments pursuant to the Settlement Agreement;

8. The claims of any Class Member who did not opt-out of the Class are hereby released pursuant to the terms of the Settlement Agreement;

9. The Clerk shall mark the above-captioned case DISMISSED WITH PREJUDICE; and

10. Without affecting the finality of this Order, the Court retains jurisdiction for the purposes of enabling the settling Parties to apply to this Court for such further orders or guidance as may be necessary for the construction, modification, or enforcement of the Settlement Agreement or this Final Approval Order and Judgment.

IT IS SO ORDERED on this ____ day of _____, 2024.

_____

Hon., Lawrence E. Kahn, Senior Judge

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TREVOR MILLER, individually and on behalf of all others similarly situated, Plaintiff, v. **SYRACUSE UNIVERSITY,** Defendant.	Case No. 5:21-cv-1073-LEK-TWD Class Action

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

THIS CAUSE is before the Court on Plaintiff's Uncontested Motion for Preliminary Approval of Class Action Settlement. Having considered the Motion, the Settlement Agreement, all materials submitted in support thereof, and the record in this case, and for good cause shown:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Preliminary Approval of Settlement Agreement

1. The Court finds for the purposes of preliminary approval, that the proposed settlement in the above-captioned case as set forth in the Parties' Settlement Agreement, is fair, reasonable, adequate, and in the best interest of the Class. The Court further finds that the Settlement was entered into at arm's length by highly experienced counsel providing excellent representation. The Court therefore preliminarily approves the proposed Settlement.

Class Certification

2. Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), and for the purposes of this Settlement, the Court conditionally certifies a Class defined as: "All persons who were sent

written notification by Syracuse that their Private Information was potentially compromised as a result of the Data Incident discovered by Syracuse in September 2020."

3. Pursuant to the Settlement Agreement, and for Settlement purposes only, the Court finds as to the Class that:

a. the Class is so numerous that joinder of all members is impracticable;

b. there are questions of law or fact common to the Class;

c. the claims of the named Plaintiff and proposed Class Representative are typical of the claims of the Class;

d. the named Plaintiff and Class Representative and his counsel will fairly and adequately protect the interests of the Class;

e. questions of law and fact common to class members predominate over any questions affecting only individual Class members; and,

f. a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. The Court appoints Trevor Miller as Representative of the Class.

5. The Court appoints Todd S. Garber and Andrew C. White of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Alex J. Dravillas, of Keller Postman LLC, to act as Class Counsel to the Class.

Notice To Potential Class Members

6. The Court approves the form and content of the Class Notice and approves the Parties' proposal to distribute the Class Notice to the Class as set forth in the Settlement Agreement. The Court finds that the Parties' proposal regarding class notice to potential class members constitutes the best notice practicable under the circumstances, and complies fully with the notice requirements of due process and Fed. R. Civ. P. 23.

Claims Administration

7. The Court approves Postlethwaite & Netterville, APAC as the Settlement Administrator, with the responsibilities set forth in the Settlement Agreement.

8. Any Class Member may request to be excluded (or "opt-out") from the Class. A Class Member who wishes to opt-out of the Class must give written notice to the Settlement Administrator. Opt-Out requests must be signed by the Class Member who is requesting exclusion and clearly manifest a Person's intent to be excluded from the Settlement Class. Requests for Exclusion that are not timely will be considered invalid and of no effect, and the Class Member who untimely submits a Request for Exclusion will remain a Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order and the Releases contemplated thereby. Except for those Class Members who have properly and timely submitted Requests for Exclusion, all Class Members will be bound by the Settlement Agreement and the Final Approval Order, including the Releases, regardless of whether they file a Claim or receive any monetary relief. Any Class Member who timely and properly submits a Request for Exclusion shall not: (a) be bound by any orders or the Final Approval Order nor by the Releases contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Person requesting exclusion from the Class must personally sign his or her own individual Request for Exclusion. No Person may opt-out of the Class for any other Class Member, or be opted-out by any other Person, and no Class Member shall be deemed opted-out of the Class through any purported "mass" or "class" opt-outs.

9. Any Class Member who intends to object to the Settlement must do so by the Objection Deadline. In order to object, the Class Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendant's Counsel also prior to the

Objection Deadline, a document that:

i. the objector's full name, address, telephone number, and e-mail address (if any);

ii. information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident);

iii. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;

iv. the identity of any and all counsel representing the objector in connection with the objection;

v. a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing;

vi. the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and

vii. a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years.

Any Class Member who fails to file and serve timely: (a) a written objection containing all of the information listed in items (i) through (vii) of the previous paragraph; and, (b) notice of his/her intent to appear at the Final Approval Hearing pursuant to this paragraph, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal.

Upon the filing of an objection, Class Counsel and Defendant's Counsel may take the deposition of the objecting Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

Fairness Hearing

10. A Fairness Hearing is hereby scheduled to be held before the undersigned on _____, 2024 at ____ am/pm, to consider the fairness, reasonableness and adequacy of the Settlement, the entry of a Final Order and Judgment in the case, any petition for attorneys' fees and costs and Service Awards to named Plaintiff, and any other related matters that are brought to the Court's attention in a timely fashion.

11. Any Class Member who has not filed a Request for Exclusion may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness, and adequacy of the Settlement; provided, however, that no person shall be heard in opposition to the Settlement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, in accordance with the deadlines above, such person: (a) timely files with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the Settlement, and any documentation in support of such opposition; and (b) timely serves copies of such notice, statement and documentation upon all counsel.

12. The date and time of the Fairness Hearing shall be set forth in the Notice but shall be subject to adjournment by the Court without further notice to the members of the Class other than which may be posted on the Court's Electronic Case Filing (ECF) system and/or the website created pursuant to the Settlement Agreement, as set forth in the Class Notice.

13. If Final Approval of the Settlement is not granted, or if the Settlement is terminated for any reason, the Settlement and all proceedings had in connection therewith shall be without prejudice to the parties' rights and the parties shall return to the *status quo ante*, and all Orders issued pursuant to the Settlement and Preliminary and Final Approval process shall be vacated. In such event, the Settlement Agreement and all negotiations concerning it shall not be used or referred to in

this action (or any other action) for any purpose whatsoever.

Miscellaneous Relief

14. The Court hereby stays all proceedings in this Court other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred.

15. Additionally, the Court hereby prohibits and/or enjoins any other person or counsel from representing or prosecuting any claims on behalf of this Class in any other Court.

Dated: _____, 2023
White Plains, New York

SO ORDERED:

_____
Hon., Lawrence E. Kahn, Senior Judge

EXHIBIT C

FBFG | Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

FIRM RESUME

Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

The lawyers of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG") have successfully litigated complex class actions in federal and state courts across the country and have obtained successful results for clients against some of the world's largest corporations. A sampling of FBFG's more significant cases includes:

- *Farruggio v. 918 James Receiver, LLC*, No. 3831/2017 (Onondaga Cty. Com. Div.). Class action on behalf of approximately 4,000 residents of an unsafe nursing home. On July 5, 2018, the Court granted Plaintiffs' contested motion to certify a class of all nursing home residents and appointed a FBFG attorney as class counsel. On December 18, 2018, the Court finally approved a settlement with the current owners valued at over $4 million that required the home to provide substantial injunctive relief to make the home safe. On April 22, 2021, the Court has finally approved a settlement with the former owners that provided approximately $6 million in cash to class members, a settlement that is easily the highest nursing home class action settlement ever in New York.

- *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup.Ct.). Complex class action on behalf of approximately 31,800 patients who were victimized by a data breach. A FBFG lawyer was appointed co-lead class counsel. The Court denied Saint Joseph's demurrer and the Court of Appeals upheld that ruling. The Court certified the class and denied Saint Joseph's summary judgment motion; the Court of Appeals upheld those rulings as well. On the eve of trial, the parties reached a settlement valued at approximately $39 million and the Court finally approved the settlement on February 3, 2016. This settlement provides the more money per capita to individual class members than any other known data breach settlement.

- *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately $12 million, on September 13, 2019.

- *Lowell v. Lyft, Inc.*, No. 17-6521 (S.D.N.Y.). Nationwide class action on behalf of millions of people with disabilities who are denied services by Lyft. On November 29, 2018, the Court denied Lyft's motion to compel arbitration, calling Lyft's arguments "supremely unjust," and denied in part Lyft's motion to dismiss. On March 24, 2023, the Court certified a nationwide class and appointed FBFG as co-lead class counsel.

- *Durling v. Papa John's International Inc.*, No. 16-03592 (S.D.N.Y.). Nationwide class and collective action on behalf of tens of thousands of Papa John's delivery

drivers who were paid wages below the minimum. On August 3, 2018, the Court conditionally certified a nationwide collective of all corporate Papa John's delivery drivers. On December 29, 2022, the Court preliminarily approved a $20 million nationwide settlement and appointed FBFG lawyers as co-lead class counsel.

- *Wise v. Energy Plus Holdings, LLC*, No. 11-7345 (S.D.N.Y.). Nationwide class action alleging that Energy Plus falsely claimed to offer competitive electricity rates when its prices were substantially higher than market rates in violation of New York Gen. Bus. L. § 349 and other consumer protection laws. On September 17, 2013, the Court certified the class, appointed the lawyers of FBFG as lead class counsel, and approved the settlement valued at over $11 million.

- *Thompson v. Parts Authority¸LLC,* No. 500141/2022 (Kings Cty.). Nationwide class action on behalf of thousands of Parts Authority delivery drivers that were paid wages below the minimum. On August 31, 2022, the Court appointed FBFG as co-lead class counsel and approved a $5.6 million nationwide settlement.

- *Chen v. Hiko Energy, LLC*, No. 14-1771 (S.D.N.Y.). Multistate class action alleging that Hiko falsely claimed to offer competitive electricity rates when its prices are substantially higher than market rates in violation of New York Gen. Bus. L. §§ 349 and 349-d, and common law. On May 9, 2016, the Court certified the class, appointed the lawyers of FBFG as class counsel, and approved the settlement valued at over $10 million.

- *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report and obtained class certification and an appointment as co-lead class counsel. On November 1, 2017, the Court approved a proposed settlement valued at $6.75 million.

- *Collins v. NPC Int'l Inc.*, No. 17-00312 (S.D. Ill.). Class action on behalf of under-reimbursed delivery drivers, with FBFG serving as co-lead counsel and Jeremiah Frei-Pearson serving as lead trial counsel. NPC successfully compelled this matter to individual arbitration, but FBFG and co-counsel filed a series of individual arbitrations, forcing NPC to abandon its arbitration defense. After NPC declared bankruptcy to reorganize, FBFG persisted in litigating the case, which settled for $10.5 million one week before the scheduled trial date.

- *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y. 2017). Class action on behalf of over 4,800 individuals victimized by a data breach. On June 15, 2017, the Court entirely denied Transperfect's motion to dismiss. The Court appointed

FBFG as class counsel and, on December 14, 2018, finally approved a settlement valued at over $40 million.

- *Castillo v. Seagate Technology LLC*, No. 16-1958 (N.D. Cal.). Class action on behalf of over 12,000 individuals victimized by a data breach. On September 19, 2016, the Court denied Seagate's motion to dismiss in part. The Court appointed a FBFG attorney as co-lead class counsel and, on March 14, 2018, finally approved settlement valued at over $40 million.

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[1] Three of the founding partners of FBFG were formerly partners in the firm of Meiselman, Packman, Nealon, Scialabba & Baker, P.C. ("MPNSB"). References in this resume to "lawyers of FBFG" includes instances involving current FBFG lawyers while they were at MPNSB.

- *McLaughlin v. IDT Energy*, No. 14-4107 (E.D.N.Y.). Nationwide class action alleging that IDT overcharged consumers for gas and electric supply. On October 18, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $54 million.

- *Edwards v. North American Power & Gas, LLC*, No. 14-1714 (D. Conn.). Nationwide class action alleging that North American Power charged electricity and gas rates far in excess of what it promised to charge variable rate customers. On August 2, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $19 million.

- *Bellino v. JPMorgan Chase Bank, N.A.*, No. 14-3139 (S.D.N.Y.). Statewide class action on behalf of mortgagors alleging Chase's failure to comply with mortgage recording requirements. On November 9, 2017, the Court approved a settlement valued at $10,808,630, certifying the settlement class and appointing FBFG attorneys as class counsel.

- *Reed v. Friendly's Ice Cream, LLC*, No. 15-0298 (M.D. Pa.). Nationwide class and collective minimum wage and overtime claim on behalf of approximately 10,000 servers. On January 31, 2017, the Court certified the class, appointed a FBFG lawyer as co-lead class counsel, and approved the settlement valued at over $4.6 million.

- *Quinn v. Walgreens*, No. 12-8187 (S.D.N.Y.). Nationwide settlement valued at $2.8 million to resolve Plaintiffs' claim that Defendant's glucosamine products did not perform as represented. On March 24, 2015, the Court certified the class, appointed FBFG lawyers as Co-Lead Class Counsel and approved a nationwide $2.8 million settlement.

- *Al Fata v. Pizza Hut of America, Inc.*, No. 14-376 (M.D. Fla.). Statewide minimum wage claim on behalf of approximately 2,000 Pizza Hut delivery drivers. On June 21, 2017, the Court certified the class and approved a settlement valued at $3.1 million that provided the then-highest per-person recovery in any delivery driver under-reimbursement class action.

- *Adler v. Bank of America, N.A.*, No. 13-4866 (S.D.N.Y.). Class action alleging that Bank of America failed to timely present certificates of discharge for mortgages that were satisfied in New York State. On July 20, 2016, the Court certified the class, appointed the lawyers of FBFG as class counsel, and approved the settlement valued at over $7 million.

- *In re Michaels Stores, Inc. Zip Code Litigation*, No. 11-10920 (D. Mass.). State-wide class action alleging that Michaels Stores unlawfully collected consumers' private information. After securing a groundbreaking decision by the Massachusetts Supreme Judicial Court, establishing that consumers whose privacy has been violated may bring consumer protection claims against companies that unlawfully collect personal identification information, the lawyers of FBFG were appointed as co-lead class counsel and negotiated a class wide settlement, which the Court approved.

FBFG is also counsel of record in numerous class actions throughout the country, including cases pending in United States District Courts in New York, California, Massachusetts, Nevada, New Jersey, Maryland, New Mexico, Colorado, Arkansas, and Pennsylvania, as well as actions pending in the state courts of New York, California, and New Jersey.

FBFG also has an accomplished appellate practice, having obtained numerous groundbreaking decisions from federal and state appellate courts. Examples include: *In re Zappos.com, Inc.*, 888 F.3d 1020, 1027-28 (9th Cir. 2018), *cert. denied*, 18-225, 2019 WL 1318579 (U.S. Mar. 25, 2019) (reversing dismissal by district court and holding that consumers whose personal identification information was stolen in a data breach have Article III standing); *Zahn v. N. Am. Power & Gas, LLC*, 2016 IL 120526, 72 N.E.3d 333, *reh'g denied* (Jan. 23, 2017) (on certified question from the Seventh Circuit, holding that the Illinois Commerce Commission does not have exclusive jurisdiction to hear consumer claims against alternative retail electricity suppliers); *Zahn v. N. Am. Power & Gas, LLC*, 847 F.3d 875 (7th Cir. 2017) (reversing dismissal of consumer's putative class action seeking redress for excessive electricity charges by alternative retail electricity supplier); *John v. Whole Foods Mkt. Grp., Inc.*, 858 F.3d 732, 738 (2d Cir. 2017) (reversing dismissal of consumer's putative class action seeking redress for Whole Foods' alleged practice of representing the weight of prepackaged foods); *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 984 N.E.2d 737 (2013) (on certified question from U.S. District Court for the District of Massachusetts, finding that the collecting personal identification information from unwitting consumers violates Massachusetts consumer protection law).

Attorney Profiles

Todd S. Garber

Todd S. Garber is a founding partner of FBFG. Mr. Garber is an experienced litigator, who practices in state and federal courts. His areas of experience include class actions, consumer fraud, securities fraud, complex commercial disputes, business torts, antitrust, and general litigation. Mr. Garber was designated a New York Super Lawyer every year since 2013, a distinction earned by only five percent of the lawyers in the New York metro area.

Prior to joining FBFG, Mr. Garber worked at Lowey Dannenberg Cohen & Hart, P.C., where he prosecuted and defended complex commercial litigation matters and class actions.

Mr. Garber's career achievements include:

- Appointed co-class counsel in *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately $12 million, on September 13, 2019.

- Appointed Class Counsel in *Brenner v. J.C. Penney Company, Inc.*, No. 13- 11212 (D. Mass.). Plaintiff alleged that J.C. Penney requested and recorded customers' ZIP codes, which it then used to identify consumers' mailing addresses to send them junk mail, in violation of Massachusetts law. The Court granted final approval of a settlement valued at more than $3.5 million.

- Appointed Class Counsel in *Brenner v. Kohl's Corporation*, No. 13-10935 (D. Mass). State-wide class action alleging that Kohl's unlawfully collected consumers' personal identification information. On March 12, 2014, the Court granted final approval to a settlement valued at $425,000 and appointed lawyers of FBFG class counsel.

- Appointed Co-Lead Class Counsel in *Quinn v. Walgreen*, No. 12-8187 (S.D.N.Y.). Nationwide settlement valued at $2.8 million to resolve Plaintiffs' claim that Defendant's glucosamine products did not perform as represented. On March 24, 2015, the Court finally approved the settlement and certified the class.

- Appointed Interim Co-Lead Class Counsel in Chen *v. Hiko Energy, LLC*, No. 14-cv-01771 (S.D.N.Y.). State-wide class action alleging that Hiko charged deceptively high electricity and natural gas rates. On May 9, 2016, the Court certified the class and approved a settlement valued at over $10 million.

- Appointed Interim Co-Lead Class Counsel in *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report and won class certification. On November 1, 2017, the Court approved a proposed settlement valued at $6.75 million.

- Appointed Co-Lead Class Counsel in *Tyler v. Bed Bath & Beyond, Inc.*, No. 13-10639 (D. Mass.). Plaintiff alleged that Bed, Bath & Beyond illegally requested and recorded customers' ZIP codes.

- Class Counsel in *Wise v. Energy Plus Holdings LLC*, No. 11-7345 (S.D.N.Y.). Plaintiffs alleged that Energy Plus, an independent electricity supplier, misrepresented that its rates were reflective of the market when they were much higher. The Court granted final approval of a settlement covering more than 400,000 consumers in eight states and valued at more than $11,000,000.

- As counsel for the New York City Pension Funds, Lead Plaintiff in *In re Juniper Networks, Inc. Sec. Litig.*, No. C-06-04327 JW (N.D. Cal 2010), helped achieve a settlement of $169.5 million, one of the largest settlements in an options backdating case, after more than three years of hard-fought litigation.

- Involvement in the prosecution of a number of high-profile cases, which have resulted in hundreds of millions of dollars in recoveries for investors, including *In re WorldCom Securities Litigation*, *In re HealthSouth Securities Litigation*, *In re DaimlerChrysler AG Securities Litigation*, and *In re Bayer AG Securities Litigation*.

- Representation of institutional investors in stockholder voting rights and corporate governance cases, including *Gabelli Global Multimedia v. Western Investment LLC*, 700 F. Supp. 2d 748 (D. Md. 2010); *Delcath Systems, Inc. v. Ladd*, 466 F.3d 257 (2d. Cir. 2006); *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006); *meVC Draper Fisher Jurvetson Fund I, Inc. v. Millennium Partners*, 260 F. Supp. 2d 616 (S.D.N.Y. 2003); and *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.*, 824 A.2d 11 (Del. Ch. 2002).

Mr. Garber received his B.A. from Cornell University in 1999 and his J.D. from the Benjamin N. Cardozo School of Law in 2002, where he was articles editor for the Cardozo Journal of International and Comparative Law and was competitively selected to work for the New York City Law Department's Corporation Counsel in its Appellate Division.

Mr. Garber co-authored "Morrison v. National Australia Bank: The Potential Impact on Public Pension Fund Fiduciaries," The NAPPA Report, Vol. 24, Number 3, August 2010, and "Loss Causation in the Ninth Circuit," New York Law Journal, September 2, 2008.

Mr. Garber is admitted to practice in New York and Connecticut and is a member of the bars of the U.S. District Courts for the Eastern, Western, and Southern Districts of New York and the Second Circuit Court of Appeals.

Andrew Finkelstein

Andrew Finkelstein is the Managing Partner of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP. He has become a noted consumer activist through his representation of injured individuals against corporate wrong doers and other irresponsible parties.

Mr. Finkelstein served as Captain of the 9/11 Victim Compensation Fund in a pro bono capacity, where he helped obtain over $10 million for victims and waived all legal fees associated with this representation. Mr. Finkelstein is also the Chairman of the Plaintiff Personal Injury Steering committee for the Neurontin Liability Multidistrict Litigation in Boston, Massachusetts. He has worked closely with the FDA regarding the adverse effects associated with Neurontin, having filed a Citizens Petition seeking enhanced warning of the side effects of this drug, specifically increased suicidal tendencies. Additionally, Mr. Finkelstein is a member of the Executive Steering Committee of the Hormone Replacement Therapy Multidistrict Litigation in both Philadelphia, Pennsylvania and Little Rock, Arkansas. He is a member of the Plaintiff Steering Committee of the Ortho Evra Birth Control Patch New Jersey Coordinated Litigation, and the Plaintiff Steering Committee of the Viagra Multidistrict Litigation in Minneapolis, Minnesota.

Mr. Finkelstein is a frequent lecturer at Continuing Legal Education courses. His topics include “Science in the Courtroom”, “Technology in the Courtroom”, “Prosecution of a Pharmaceutical Case”, “The Ethics of On-line Advertising”, and “Structured Settlements and the Personal Injury Settlement.”

In addition to these presentations, Mr. Finkelstein volunteers his time to present his “Commit to Quit Texting While Driving” seminar to area high school students.

Greg Blankinship

Greg Blankinship is a founding partner of FBFG, and he specializes in class actions in state and federal courts. Mr. Blankinship has worked on substantial class action matters representing both defendants and plaintiffs in numerous state, federal, and multidistrict class actions, including wage and hour and consumer fraud matters. Mr. Blankinship has been designated a New York Super Lawyer every year since 2014, a distinction earned by only five percent of the lawyers in the New York metro area.

Prior to joining FBFG, Mr. Blankinship was an associate with Skadden, Arps, Slate, Meagher & Flom LLP and Greenber Traurig, LLP. Mr. Blankinship received his B.A. from Emory University in 1991 and his M.A. from the University of North Carolina in 1995. He attended law school at the University of Washing, where he earned his J.D. in 2003. While in law school, Mr. Blankinship was a member of the University of Washington Law Review.

A sampling of Mr. Blankinship's successful cases includes:

- Appointed Interim Co-Lead Class Counsel in *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report and won class certification. On November 1, 2017, the Court approved a proposed settlement valued at $6.75 million.

- Appointed to the Plaintiffs' Executive committee in *In Re: Santa Fe Natural Tobacco Company Marketing and Sales Practices Litigation*, No. 16-md-2695 (D. N.M.). Plaintiffs in this multidistrict litigation contend that Santa Fe Natural Tobacco mislead consumers into believing their cigarettes were less harmful than others because they are natural and organic. Litigation is on-going.

- Appointed co-class counsel in *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately $12 million, on September 13, 2019.

- Class counsel in *McLaughlin v. IDT Energy*, No. 14-4107 (E.D.N.Y.). Nationwide class action alleging that IDT overcharged consumers for gas and electric supply. On October

18, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $54 million.

- Class counsel in *Edwards v. North American Power & Gas, LLC*, No. 14-1714 (D. Conn.). Nationwide class action alleging that North American Power charged electricity and gas rates far in excess of what it promised to charge variable rate customers. On August 2, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over $19 million.

- Counsel in *Wise v. Energy Plus Holdings LLC*, No. 11-7345 (S.D.N.Y.). Plaintiffs alleged that Energy Plus, an independent electricity supplier, misrepresented that its rates were reflective of the market when they were much higher. The Court granted final approval of a settlement covering more than 400,000 consumers in eight states and valued at more than $11,000,000.

- Appointed Class Counsel in *Brenner v. J.C. Penney Company, Inc.*, No. 13- 11212 (D. Mass.). Plaintiff alleged that J.C. Penney requested and recorded customers' ZIP codes, which it then used to identify consumers' mailing addresses to send them junk mail, in violation of Massachusetts law. The Court granted final approval of a settlement valued at more than $3.5 million.

- Appointed Class Counsel in *Brenner v. Kohl's Corporation*, No. 13-10935 (D. Mass). State-wide class action alleging that Kohl's unlawfully collected consumers' personal identification information. On December 5, 2013, the Court granted preliminary approval to a settlement valued at $435,000 and appointed lawyers of FBFG class counsel.

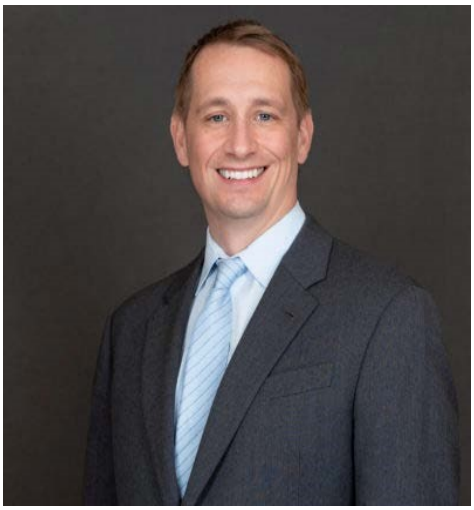
- Appointed Interim Co-Lead Class Counsel in *Chen v. Hiko Energy, LLC*, No. 4- 01771 (S.D.N.Y.). State-wide class action alleging that Hiko charged deceptively high electricity and natural gas rates.

- Appointed Interim Co-Lead Class Counsel in *Tyler v. Bed Bath & Beyond, Inc.*, No. 13-10639 (D. Mass.). Plaintiff alleged that Bed, Bath & Beyond illegally requested and recorded customers' ZIP codes.

Mr. Blankinship's broad experience as a litigator has also exposed him to a wide variety of substantive business and consumer issues. He also has substantial experience with the issues and procedural aspects of large class action and complex cases.

Mr. Blankinship is admitted to practice in New York and Massachusetts and is a member of the bars of the U.S. District Courts for the Eastern, Western, Northern, and Southern Districts of New York, the District of Connecticut, the District of Massachusetts, and the First, Second, Third, Seventh, and Ninth Circuit Courts of Appeals.

Jeremiah Frei-Pearson



Jeremiah Frei-Pearson is a founding partner of FBFG. He is a passionate advocate and an experienced litigator who represents consumers and employees in complex class actions. The National Trial Lawyers Association selected Mr. Frei- Pearson as a member of the Top 100 Trial Lawyers every year since 2014. Mr. Frei-Pearson is a member of the Best Attorneys of America, a distinction that is limited to less than 1% of attorneys, and he is also designated as a Super Lawyer, a distinction awarded to only 5% of the New York Metro Area. Mr. Frei-Pearson practices in federal and state courts throughout the country and his areas of expertise include class actions, privacy, consumer fraud, employment law, and civil rights. Prior to joining FBFG, Mr. Frei-Pearson was an associate with Kaye Scholer LLP, a multinational law firm, and a staff attorney with Children's Rights, a national public interest law firm representing children in foster care reform class action lawsuits. Mr. Frei-Pearson received his B.A. from Skidmore College, *Magna Cum Laude*, Phi Beta Kappa in 2000 and he earned his in 2003 from Stanford Law School. While in law school, Mr. Frei-Pearson was a Public Interest Fellow and served as Senior Symposium Editor of the Stanford Law & Policy Review.

A sampling of Mr. Frei-Pearson's significant cases includes:

- Appointed class counsel in Farruggio *v. 918 James Receiver, LLC*, No. 3831/2017 (Onondaga Cty. Com. Div, a class action on behalf of approximately 4,000 residents of an unsafe nursing home. On July 5, 2018, the Court granted Plaintiffs' contested motion to certify a class of all nursing home residents and appointed a FBFG attorney as class counsel. On December 18, 2018, the Court finally approved a settlement with the current owners valued at over $4 million that required the home to provide substantial injunctive relief to make the home safe. On April 22, 2021, the Court has finally approved a settlement with the former owners that provided approximately $6 million in cash to class members, a settlement that is easily the highest nursing home class action settlement ever in New York.

- Appointed co-class counsel in *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup. Ct.). The Court denied Saint Joseph's demurrer and the Court of Appeals upheld that ruling. After more than two years of litigation, the Court granted Plaintiffs' motion to certify a class of approximately 31,800 data breach victims. On January 14, 2015, the Court denied Saint Joseph's motion for summary judgment. The Court of Appeals upheld the Court's summary judgment and class certification decisions. The case was set for trial on August 24, 2015, but the parties reached a settlement valued at approximately $39 million, which the Court finally approved on February 3, 2016. This

settlement provides the more money *per capita* to individual class members than any other known data breach settlement on record.

- Lead counsel to Plaintiffs and the certified collective in *Durling v. Papa John's International Inc.*, No. 16-03592 (S.D.N.Y.). Nationwide class and collective action on behalf of tens of thousands of Papa John's delivery drivers who were paid wages below the minimum. On August 3, 2018, the Court conditionally certified a nationwide collective of all corporate Papa John's delivery drivers. On December 29, 2022, the Court preliminarily approved a $20 million nationwide settlement and appointed FBFG lawyers as co-lead class counsel.

- Co-lead counsel and lead trial counsel in *Collins v. NPC Int'l Inc.*, No. 17-00312 (S.D. Ill.), a class action on behalf of under-reimbursed delivery drivers. NPC successfully compelled this matter to individual arbitration, but FBFG and co- counsel filed a series of individual arbitrations, forcing NPC to abandon its arbitration defense. After NPC declared bankruptcy to reorganize, FBFG persisted in litigating the case, which settled for $10.5 million one week before the scheduled trial date.

- Appointed co-lead class counsel in *Al Fata v. Pizza Hut of America, Inc.*, No. 14- 376 (M.D. Fla.). The Court denied defendant's motion to compel arbitration. While Plaintiffs' class certification motion was sub *judice*, the parties reached a class settlement on behalf of a Florida class of delivery drivers alleging minimum wage violations. The Court granted final approval of the settlement, which is valued at $3.1 million, on June 21, 2017.

- Appointed class counsel in *Beebe v. V&J Nat'l Enterp., LLC*, No. 17-6075 (W.D.N.Y.). The Court denied defendants' motion for judgment on the pleadings and certified a FLSA collective of all delivery driver employees at one of the largest Pizza Hut franchisees in the country. On June 1, 2020, the Court granted final approval of a class and collective settlement valued at $2.35 million.

- Appointed class counsel in *Hanna v. CFL Pizza, LLC*, No. 05-2011-CA-52949 (Fl. Cir. Court). On September 3, 2013, the Court granted final approval of a settlement that created a substantial settlement fund for under-reimbursed Pizza Hut franchisee delivery drivers who alleged violations of Florida minimum wage law.

- Appointed co-class counsel in *Bellaspica v. PJPA, LLC*, No. 13-3014 (E.D. Pa.). On June 22, 2016, the Court granted final approval of a FLSA collective action settlement, providing a settlement fund for under-reimbursed Papa John's franchisee pizza delivery drivers.

- Appointed co-lead class counsel in *Reed v. Friendly's Ice Cream, LLC*, No. 15- 00298 (M.D. Pa.). The Court denied motions to dismiss and ruled for plaintiffs on several other

motions in this wage and hour class action. On January 31, 2017, the Court certified the class and finally approved a settlement valued at over $4.6 million.

- Appointed class counsel in *Yoeckel v. Marriott*, No. 703387 (Queens Cty. Com. Div.). Class action alleging that Marriott violated New York wage and hour laws. On May 3, 2017, the Court certified a class and finally approved a settlement that provided class members with 100% of their maximum compensatory damages alleged.

- Appointed co-lead class counsel in *Castillo v. Seagate Technology LLC*, No. 16- 02136 (N.D. Cal.). Class action on behalf of over 12,000 individuals victimized by a data breach. On September 19, 2016, the Court denied Seagate's motion to dismiss in part. On March 14, 2018, the Court finally approved a settlement valued at over $40 million.

- Appointed class counsel in *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y. 2017). Class action on behalf of over 4,800 individuals victimized by a data breach. On June 15, 2017, the Court entirely denied Transperfect's motion to dismiss. On December 14, 2018, the Court finally approved a settlement valued at over $40 million.
- Appointed co-liaison class counsel in *Yahoo! Inc. Private Information Disclosure Cases*, JCCP No. 4895 (Cal Sup. Ct.). Complex class action involving one of the largest data breaches in U.S history. The Court denied Yahoo's demurrer, and, after Plaintiffs' class certification motion was fully briefed, the parties reached a settlement valued at over $85 million. Plaintiffs moved for preliminary approval in federal court.

- Appointed co-lead class counsel in *In Re Zappos.Com, Inc., Customer Data Security Breach Litigation*, No. 16-16860 (D. Nev. 2012). Multidistrict class action on behalf of approximately 23 million consumers victimized by a data breach. The Ninth Circuit reversed the District Court' decision dismissing the case and issued a significant decision holding that data breach victims whose personal identification information was stolen in a data breach have standing. On March 25, 2019, the Supreme Court denied Zappos' request for certiorari. The court granted preliminary approval of the settlement on September 19, 2019.

- *Lowell v. Lyft, Inc.*, No. 17-6521 (S.D.N.Y.). Nationwide class action on behalf of millions of people with disabilities who are denied services by Lyft. On November 29, 2018, the Court denied Lyft's motion to compel arbitration, calling Lyft's arguments "supremely unjust," and denied in part Lyft's motion to dismiss. On March 24, 2023, the Court certified a nationwide class and appointed FBFG as co-lead class counsel.

- Appointed co-class counsel in *Miller v. Fresh*, No. 14-0880 (Mass. Suffolk Cty.). State-wide class action alleging that Fresh unlawfully collected consumers' personal identification information. On July 15, 2015, the Court certified a class and granted final approval to a settlement.

- Counsel to the Plaintiffs in *D.G. ex rel. Stricklin v. Henry*, No. 08-074 (N.D. Okl.). In this class action to reform Oklahoma's foster care system, the Court certified a statewide class of Oklahoma's foster children (an opinion that was affirmed by the Tenth Circuit). As a result of this litigation, Oklahoma has committed to restructuring its state foster care agency to eliminate dangerous practices (such as an unsafe shelter where babies in state custody disproportionately suffered fractured skulls) and improve measurable outcomes for children in state custody.

- As counsel in *Charlie and Nadine H. v. Christie*, No. 99-3678 (D.N.J.), worked with the state agencies, a federally appointed monitor, and the Court to help ensure implementation of a consent decree to reform New Jersey's foster care system. Among many other significant achievements under the consent decree, New Jersey broke a record for adoptions achieved, significantly reformed supervision procedures that were inadequate, and substantially increased the percentage of foster children who subsequently attended college. Mr. Frei- Pearson continues to be involved in this litigation in a *pro bono* capacity.

Mr. Frei-Pearson has received numerous awards for his legal work, including the New York City Bar Association's Thurgood Marshall Award for his work on death penalty cases, a citation from the New York City Council for his child advocacy work, and the 2010 Palomountain Award from Skidmore College. Mr. Frei-Pearson regularly speaks on panels, including speaking engagements at Stanford Law School and Harvard Law School.

Mr. Frei-Pearson is also active in his community; he is a district leader in White Plains, where he serves as Chair of the Mayor's Sustainability Committee, as a member (and former Chair) of the Mayor's Committee For People With Disabilities; he also serves on the Board of the Legal Services of the Hudson Valley; and he was recently elected as Vice Chair of both the Westchester County Democratic Party and the White Plains Democratic City Committee.

Mr. Frei-Pearson is admitted to practice in New York and is a member of the bars of the U.S. District Courts for the Eastern, Northern, Western, and Southern Districts of New York.

Olena Ball

Olena Ball is an associate at FBFG, where she specializes in prosecuting class actions in state and federal courts. Mrs. Ball joined the firm after working at several prominent law firms. She received her J.D. from Benjamin N. Cardozo School of Law and her B.A., cum laude, from the City College of New York. During law school, Mrs. Ball served on the Cardozo Women's Law Journal.

Emma Bruder

Emma Bruder is an associate pending admission at FBFG. Ms. Bruder received her J.D. from Benjamin N. Cardozo School of Law and her B.A., with honors, from the University of Michigan. Prior to law school, Ms. Bruder interned at the Special Litigation Unit at the City of New York Law Department, and while at Cardozo, she gained valuable litigation experience through internships at the Legal Aid Society, the Manhattan District Attorney's Office the Bronx Public Defenders the Queens District Attorney's Office, and Simon Lesser, P.C.

Panning Cui

Panning Cui is an associate at FBFG. She received her LLM from Boston University School and her B.S. from the University of International Business and Economics.

Emily Fisher

Emily Fisher is an associate at FBFG. Emily joined the firm in 2022. She received her J.D. from St. John's University School of Law and her B.A. and B.S. from St. Lawrence University.

Erin Kelley

Erin Kelley is an associate at FBFG, where she specializes in prosecuting class actions in state and federal courts. Prior to joining the firm in 2023, Ms. Kelley represented numerous individuals who had experienced discrimination. She received her J.D. from the University of Southern California Gould School of Law. She graduated with Distinction from the University of Wisconsin-Madison, receiving both her B.A. and membership to Phi Beta Kappa in 2015. While in law school, Ms. Kelley served as a Senior Production Editor on the Southern California Review of Law and Social Justice. Ms. Kelley is the author of "'Certain Minimum Requirements': An Unaccompanied Minor Child's Right to Education in Federal Immigration Facilities."

Yaneike Mckenzie-Coley

Yaneike McKenzie-Coley is an associate at FBFG, she received her J.D. from Hofstra University School of Law and her B.A., cum laude, from the Stony Brook University. After Law School, Mrs. Coley volunteered assisting consumers with consumer debt related issues in the Bronx County Court.

Chantel Mills

Chantel Mills is an associate at FBFG, where she specializes in prosecuting class actions in state and federal courts. Ms. Mills joined the firm after working at several prominent law firms. She received her J.D. from William and Mary School of Law and her B.A., with honors, from the University of Pennsylvania. During law school, Ms. Mills received various awards for her commitment to academic excellence and community service.

Keir Negron

Keir Negron is an associate at FBFG. Mr. Negron received his J.D. from Harvard Law School and conducted his undergraduate studies at the University of California, Santa Cruz. At Harvard Law, Mr. Negron was a student attorney at the Cyberlaw and Environmental Law and Policy clinics and the president of the Harvard Asia Law Society.

John Sardesai-Grant

Mr. Sardesai-Grant is a highly experienced litigator who specializes in class actions in state and federal courts.

Before joining FBFG, John was an associate at Baritz & Colman LLP, where he represented clients in employment discrimination and commercial disputes. As of counsel to Reese Richman LLP, John brought cases against the New York Police Department on behalf of victims of police misconduct. As an associate at Brower Piven, P.C., he prosecuted complex securities fraud class actions on behalf of shareholders. And as an associate at Bickel & Brewer, a premier commercial litigation boutique, he represented clients in a variety of regulatory and commercial matters.

John earned his B.S. in Economics from The Wharton School at the University of Pennsylvania, as well as an M.A. in Chinese from the University of Pennsylvania's Graduate School of Arts and Sciences. John received his J.D. from New York University School of Law.

John is admitted to practice in New York and the United States District Courts for the Southern and Eastern Districts of New York and the District of Colorado. He is an active member of the New York County Lawyers Association

Bradley Silverman

Mr. Silverman is a highly experienced litigator. He has represented individuals and public and private companies in courts throughout the country. He has broad experience handling numerous types of disputes. This experience includes the representation of plaintiffs and defendants in: class actions; contract disputes; employment matters; disputes relating to the management and control of closely held businesses; intellectual property and trade secret disputes; RICO actions; antitrust and unfair competition matters; real estate disputes; Title IX and other claims relating to college disciplinary actions; challenges to local and state laws that are either unconstitutional or preempted by federal law; and actions to enforce First Amendment Rights.

At FBFG, Mr. Silverman's practice focuses on class actions in which he represents individuals across the country who have been harmed by the unlawful acts of companies. Past class actions in which he has been involved include *In re: Coca-Coca Products Marketing and Sales Practices Litigation*, a multidistrict litigation where Mr. Silverman's prior firm served as co-lead counsel for all plaintiffs. In that case and in other cases, he has asserted claims against some of the largest food manufacturers in the world for placing illegal, deceptive, and false statements on product labels.

Prior to joining FBFG, Mr. Silverman practiced at several of the leading litigation firms in New York City, including the international law firm of Kaye Scholer LLP (now Arnold & Porter Kaye Scholer LLP). He received his undergraduate degree, *Magna Cum Laude*, from Brandeis University. He received his law degree from the University of Pennsylvania Law School where he served as a member of the Moot Court Board and as Senior Editor of the Journal of International Economic Law. Born and raised in Brooklyn, New York, he and his family now reside in Westchester County.

Andrew White

Mr. White is an associate at FBFG, where he specializes in class actions in state and federal courts. Mr. White received his J.D. from New York University School of Law and his B.A. from State University of New York, College at Potsdam. During law school, Mr. White served as an editor for the Journal of Law and Liberty. Mr. White is admitted to practice in New York and in the United States District Court for the Southern District of New York.

EXHIBIT D

Keller | Postman

Firm Resume

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About Keller Postman

Keller Postman is a leading complex litigation firm for plaintiffs, specializing in mass actions. We represent consumers, employees, and veterans in class actions, mass torts, and mass arbitrations, at the trial and appellate levels, in federal and state courts.

Our Mission

To aggressively pursue our clients' claims, en masse, against the entities that have harmed them by driving innovation in the practice of law, devising cutting-edge strategies that don't follow the standard playbook, conceiving novel arguments, and pursuing unparalleled excellence in everything we do.

Our Approach

Serving hundreds of thousands of clients in litigation and arbitration, Keller Postman has prosecuted high-profile antitrust, privacy, product-liability, employment, and consumer-rights cases and secured substantial settlements for our clients. Our firm also acts as plaintiffs' counsel in high-stakes public-enforcement actions.

Keller Postman seeks out complicated cases and takes on groundbreaking legal challenges where our legal and strategic counsel can add significant value. Our innovative approach combines high-end legal expertise with best practices in business operations and technology to deliver superlative representation for plaintiffs.

Our greatest asset is our team of smart, dedicated professionals. Keller Postman lawyers honed their skills at AmLaw 100 law firms, national trial boutiques, corporate in-house legal departments, prestigious government posts, and successful business startups. Every member of our team shares a commitment to client service and a spirit of determination, dedication, creativity, and excellence.

OUR TEAM

8 PARTNERS

22 ASSOCIATES

40 STAFF ATTORNEYS & COUNSEL

45 LEGAL SUPPORT TEAM MEMBERS

40 CLIENT SERVICES TEAM MEMBERS

45 CASE MANAGEMENT TEAM MEMBERS

111 BUSINESS, OPERATIONS & IT TEAM MEMBERS

OUR OFFICES

CHICAGO, IL

WASHINGTON, D.C.

AUSTIN, TX

About Our Team

Keller Postman is home to one of the most exceptional teams representing plaintiffs in the United States.

We're powered by a talented team with top-notch credentials and real-world experience. Our lawyers have litigated "bet the company" cases for plaintiffs and defendants, studied and taught at some of the top law schools in the country, served at the highest levels of government, and managed more than $1 billion of litigation-related investments.

THE FIRM COMPRISES OVER
FIVE DOZEN LAWYERS
AND MORE THAN
200 PROFESSIONAL STAFF MEMBERS.

CLIENT SERVICES & CASE MANAGEMENT TEAM

We have established large, in-house client-services and case-management teams to serve our clients from the early stages of litigation to the final moments of settlement distributions. We expertly and efficiently cover all aspects of our cases, including client intake, case workup, and litigation at all levels of the judiciary.

TECHNOLOGY, DATA & ANALYTICS TEAM

Keller Postman operates a dedicated, in-house technology, data, and analytics team, led by an accomplished graduate of the Massachusetts Institute of Technology. Our firm utilizes cutting-edge technology and processes to ensure successful litigation for thousands of claims at once.

OF KELLER POSTMAN'S PARTNERS AND ASSOCIATES:

80%

hail from **national defense-oriented law firms**, and 73% from AmLaw 100 firms and elite trial boutiques.

63%

were **law clerks** at a federal court of appeals or district court.

70%

attended a **Top 15 U.S. News ranked law school.**

4

of Keller Postman's partners were **law clerks at the Supreme Court of the United States.**

Why Keller Postman

CLIENTS FIRST APPROACH

Our primary goal is always to achieve exceptional results for our clients—we are tireless in our pursuit of justice on their behalf. We move with speed and efficacy. We genuinely care about each individual client, and we demonstrate that by providing outstanding client service.

FEARLESS INNOVATION

We drive innovation in the practice of law, sharing an ambition to do things differently—and to do them better. It is not enough merely to advocate for our clients. We prize creativity, develop and harness our own technology, and commit the resources necessary to succeed.

COMMITTED TO EXCELLENCE

We pursue unparalleled excellence in everything we do. We challenge ourselves to perform at the highest level and deliver outstanding results. At every level of the firm, we take pride in serving as trusted advisors and provide exceptional client service.

STRENGTH TO WIN

Our team has the skills and resources to go head-to-head with the largest, most well-resourced corporations in the country. Plus, our lawyers have experience on both sides of the courtroom and the negotiating table, allowing us the unique ability to anticipate our opponents' moves.

Industry Recognition

THE NEW YORK TIMES

Keller Postman is driven "by a legal reformist spirit and entrepreneurial zeal."

WALL STREET JOURNAL

"[Keller Postman is calling] companies on their bluff and saying, 'You think you're going to get out of liability by going to arbitration? We'll show you what the arbitration system can do when you face tens of thousands of claims.'"

THE AMERICAN LAWYER

"Part of the vision was to make plaintiff-side work attractive to folks with clerkship and Big Law experience like [Keller Postman's] founders. So far, the approach seems to be working."

LAWDRAGON MAGAZINE

"Accelerated by a well-curated culture of excellence, innovation, and service, Keller Postman [leads] litigation across some of the biggest product liability MDLs in history."

Awards

We're proud of the recognition we've received as leaders of the plaintiffs' bar.

ELITE TRIAL LAWYERS LAW FIRM OF THE YEAR

In 2021, the *National Law Journal* named Keller Postman the Trial Strategy Innovation Law Firm of the Year. And in 2022, Keller Postman was named the Privacy & Data Breach Law Firm of the Year.

ELITE TRIAL LAWYERS RISING STARS & ELITE WOMEN

Our lawyers have been named 2021 & 2022 Elite Trial Lawyers' Rising Stars of the Plaintiffs' Bar and 2022 Elite Trial Lawyers' Elite Women of the Plaintiffs' Bar.

NATIONAL LAW JOURNAL & AMERICAN LAWYER TRAILBLAZERS

Our team has been named 2021 and 2022 Plaintiffs' Lawyers Trailblazers and 2022 Employment Law Trailblazers by the *National Law Journal*. Our lawyers have also been named 2022 Midwest Trailblazers and South Trailblazers by *American Lawyer.*

LAW360 MVP

Managing Partner **Warren Postman** was named the 2022 Law360 Technology MVP of the Year and the 2021 Law360 Employment MVP of the year.

WOMEN WORTH WATCHING IN LEADERSHIP

Partner **Zina Bash** is named to the 2022 Women Worth Watching in Leadership by *Profiles in Diversity Journal*.

SUPER LAWYERS®

Thirteen of Keller Postman's Attorney's were recognized by Illinois Super Lawyer for 2023. Four Partners as Super Lawyers and nine as Rising Stars.

KELLER POSTMAN ATTORNEYS NAMED TO MANY EXCLUSIVE LEGAL DIRECTORIES,

including Chambers & Partners, National Trial Lawyers Top 100 and Top 40 under 40, Super Lawyers, Best Lawyers, and Lawdragon's 500 Leading Lawyers in America, 500 Leading Plaintiff Consumer Lawyers, and Leading Plaintiff Financial Lawyers.

Practice Areas

Practice Areas

At Keller Postman, we represent plaintiffs in complex litigation matters. Our diverse team has experience litigating cases across a wide variety of practice areas, which allows us to be flexible and responsive to our clients' needs. Regardless of the substantive claims involved, one thing is true about all our cases: they give us the opportunity to use our unique skills and resources to help our clients solve problems and vindicate their rights.

Antitrust

We believe competition stimulates innovation, sparks improvements of products and services, and leads to more efficient means of delivery and production. We fight anti-competitive conduct through bringing antitrust claims against some of the largest and best-known corporations in the world—and we are confident in our team's vast experience, knowledge and capabilities to successfully litigate these cases.

Arbitration

We help our clients level the playing field when contracts written by defendants force them into arbitration. Our team has successfully represented plaintiffs in complex arbitration proceedings throughout the United States, including wage-and-hour disputes, employee misclassification claims, consumer product disputes, and other types of contract-related disputes.

Consumer Protection

We safeguard consumers from unfair corporate practices, corporate malfeasance, and any type of deceptive business practices. We work to protect consumer rights through arbitration and class action under federal and state laws. And our work specifically focuses on regulating emerging and increasingly dominant tech-based corporations that often push boundaries to take advantage of consumers in new or developing areas of law.

Privacy

Technology continues to evolve and intertwine itself with our day-to-day. With these technological advances come a greater threat to privacy and data protection. Keller Postman is committed to protecting that fundamental right to privacy. Our attorneys' legal acumen matches our technical expertise, which allows us to skillfully litigate even the most complicated privacy claims.

Product Liability

With extensive experience handling claims associated with products (including with suppliers, manufacturers, and sellers), our attorneys play key roles in some of the most significant product liability multidistrict litigation proceedings in the country. Our team continues to be selected to lead federal and state product-liability litigation through appointments to leadership positions.

Public Institutions

We represent States, municipalities, and other government entities as plaintiffs in legal actions for the benefit of their constituents. In line with our commitment to the public good, our practice provides pivotal support—in terms of expert attorneys and resources—to public entities for the benefit of their people. We have developed the expertise to help public institutions navigate the legal landscape they face every day.

Case Highlights

Case Highlights

AMAZON ALEXA MASS ARBITRATION

As reported by *The Wall Street Journal*, Keller Postman filed roughly 75,000 individual arbitration demands on behalf of Amazon Alexa users who had been recorded without permission. Faced with arbitrating so many individual claims at once, in May 2021, Amazon eliminated its arbitration clause, allowing consumers (for the first time) to pursue their rights in court. Keller Postman's arbitration practice has caused the world's largest retailer to shift away from forced arbitration—a once-unthinkable result that significantly benefits consumers.

After individual and class-action lawsuits against Amazon became permissible, Keller Postman filed a federal antitrust lawsuit against Amazon for the same illegal conduct (the very first lawsuit filed against the company since it began including an arbitration clause into contracts with consumers). In *De Coster et al. v. Amazon.com, Inc.*, Keller Postman represents individual consumers who were charged unfairly high prices by Amazon because of the company's most favored nation clause against third-party merchants. Our firm was also named Co-Lead Class Counsel. In conjunction with the filing of this lawsuit, Keller Postman also separately filed another 75,000 individual arbitration demands for related claims.

The matters have resolved. This matter is significant because of Amazon's move to drop its arbitration clause nationwide and restore access to the courts for over 140 million Amazon consumers. The unprecedented—and astounding—rescission by Amazon of its arbitration requirement marked a significant victory for consumers and access to justice. Across all of Keller Postman's arbitration matters to date, we've secured millions in settlements for more than 500,000 individuals.

DE COSTER V. AMAZON.COM INC. & FRAME-WILSON V. AMAZON.COM INC.

Leadership Role: Keller Postman Partner Zina Bash named Interim Co-Lead Class Counsel in *De Coster v. Amazon.com Inc.*

Keller Postman filed a federal antitrust lawsuit against Amazon—*De Coster et al. v. Amazon.com Inc.*—after the company dropped its arbitration clause as a result of one of Keller Postman's largest arbitration campaigns representing more than 75,000 consumers in simultaneous individual arbitrations. In this lawsuit, Keller Postman represents a proposed class of Amazon shoppers alleging that the Amazon platform's unlawful imposition of 'most favored nation' pricing restrictions against third-party sellers blocks competition from other e-commerce marketplaces and inflates the prices paid by customers. The plaintiffs' allegation is that Amazon has exploited its market power to inflate prices on its own platform—and across the internet. Given the scale of this antitrust violation, the suit has the potential to be one of the largest antitrust cases in history.

Keller Postman later filed *Frame-Wilson v. Amazon.com Inc.* on behalf of individuals who purchased products from Amazon competitors (such as Ebay). These plaintiffs allege that because Amazon distorted market prices on competitor seller sites through its anticompetitive conduct, they paid far higher prices for their merchandise.

Case Highlights Continued:

INTUIT MASS ARBITRATION

Through deceptive web tactics, Intuit tricked thousands of lower-income Americans into paying to file taxes through TurboTax, though they were eligible to file for free. Faced with a putative consumer class action on behalf of 19 million consumers, Intuit compelled the dispute to individual arbitration. Keller Postman then filed individual arbitration demands at AAA for approximately 200,000 of those consumers.

In response, Intuit sought to send most of those consumers to small claims court and delay the arbitrations. In *Intuit, Inc. v. 9,933 Individuals*, the LA Superior Court denied Intuit's motion to force our clients' claims into small-claims court. It also rejected Intuit's argument that California's SB 707—which imposes severe penalties on companies that refuse to comply with their own arbitration agreements—is preempted. At oral argument, Judge Terry Green said Keller [Postman] deserves "a toast. Good work."

Intuit then tried to propose a settlement in the class action it had already compelled to arbitration. Our firm objected, arguing that Intuit should not be able to use a class-action settlement to frustrate individual class members' efforts to bring individual arbitrations against the company. Intuit's proposed $40 million class settlement was denied. In his opinion, Judge Charles Breyer directly addressed the significance of this matter: "This case illustrates the urgent need for Congress to reverse the U.S. Supreme Court's arbitration jurisprudence, which gives corporate defendants an unfair advantage over consumers, and undermines the class's ability to secure a more significant monetary result."

Furthermore, this is Keller Postman's largest "mass arbitration" matter to date – and an unprecedented number of simultaneous individual arbitrations against a single defendant. As litigation continued throughout 2021, the American Arbitration Association also implemented new arbitral rules for "multiple consumer filings" as a result of Keller Postman's ability to arbitrate so many matters simultaneously.

BARR V. DRIZLY, LLC F/K/A DRIZLY, INC. ET AL

This class action lawsuit was filed in August 2020 against Drizly, the largest online alcohol delivery marketplace in North America. The complaint alleged that Drizly's security measures were deficient in protecting consumers' personal information and that the company was slow to report the breach. As a result of the data breach, customers were exposed to fraud, identity theft, and other injuries.

Drizly moved to compel arbitration. However, after Keller Postman made an appearance with co-counsel, Drizly agreed to settlement terms within a week. This matter further emphasizes how Keller Postman's innovative strategy in arbitration has come to the aid of consumers whose private information was stolen. We've leveled up our arbitration strategy through making appearances with co-counsel partners after defendants compelled arbitration. We're extremely proud that our firm's reputation in mass arbitration has helped to swiftly secure favorable resolutions for both consumers and employees—and has also prevented defendants from using arbitration to evade liability.

Case Highlights Continued:

STATE OF TEXAS V. GOOGLE LLC

Leadership Role: Partner Zina Bash & Partner Ashley Keller are Co-Lead Counsel for our State clients

Keller Postman represents the States of Texas, Idaho, Indiana, Mississippi, North Dakota, South Dakota, and South Carolina in the States' antitrust litigation against Google. Filed in the U.S. District Court for the Eastern District of Texas (and subsequently centralized in the Southern District of New York with similar private cases), the suit alleges that Google monopolized products and services used by advertisers and publishers in online-display advertising. The complaint also alleges that Google engaged in false, misleading, and deceptive acts while selling, buying, and auctioning online-display ads. Google also entered into an unlawful agreement with rival Facebook to maintain control of the marketplace for header bidding. These anticompetitive and deceptive practices demonstrably diminished publishers' ability to monetize content, increased advertisers' costs to advertise, and directly harmed consumers.

Google sought dismissal of the entire case, arguing that its conduct was lawful and that its success was merely a "product of innovation," among other forced justifications. But on September 13, 2022—after Keller Postman Partner Ashley Keller delivered a momentous oral argument—the Court largely rejected those arguments, allowing the States' claims of monopolization, attempted monopolization, and tying to proceed to discovery. We are proud of this result, and eager and ready to push these claims forward on behalf of the States to discover and expose the full magnitude of Google's wrongdoing and restore free competition to the multibillion-dollar ad display marketplace.

STATE OF TEXAS V. META PLATFORMS INC.

Leadership Role: Partner Zina Bash is Lead Counsel for the State of Texas

Keller Postman represents the State of Texas in a lawsuit against Facebook parent Meta Platforms Inc. for its decade-long use of facial-recognition technology to exploit Texans' biometric information in violation of Texas law. The suit—*State of Texas v. Meta Platforms LLC, f/k/a Facebook, Inc.*—alleges that the social media giant, formerly known as Facebook, unlawfully captured Texans' biometric identifiers for a commercial purpose without informed consent, disclosed those identifiers to others, and failed to destroy them within a reasonable time—all in violation of the Texas Capture or Use of Biometric Identifier Act ("CUBI"). The State also alleges that Facebook engaged in false, misleading, and deceptive acts and practices in violation of the Texas Deceptive Trade Practices-Consumer Protection Act. The suit seeks civil penalties in the hundreds of billions of dollars.

According to the complaint, for more than a decade, Facebook built an artificial-intelligence empire on the backs of Texans by deceiving them while capturing their most intimate data, thereby putting their well-being, safety, and security at risk. Filed in the state district court in Marshall, TX, the suit seeks civil penalties in the hundreds of billions of dollars.

Attorney General Ken Paxton emphasized the significance of this matter in his statement: "Facebook has been secretly harvesting Texans' most personal information—photos and videos— for its own corporate profit… Texas law has prohibited such harvesting without informed consent for over 20 years. While ordinary Texans have been using Facebook to innocently share photos of loved ones with friends and family, we now know that Facebook has been brazenly ignoring Texas law for the last decade."

Case Highlights Continued:

TOPDEVS, LLC ET AL V. LINKEDIN CORPORATION

Keller Postman filed a class action against LinkedIn—*TopDevs, LLC et al v. LinkedIn Corporation*—on behalf of users of LinkedIn's advertising platform. LinkedIn admitted in August 2019 that it had inflated video view and ad impression metrics for more than 418,000 advertisers, who overpaid for their campaigns as a result. The suit alleges that LinkedIn was aware of these metric errors and, in fact, reports rampant non-genuine metrics that inflate the prices for all types of advertising across the LinkedIn platform. Specifically, the suit alleges that, despite aggressively marketing its platform as a premium product that allows marketers to advertise to highly engaged audiences of working professionals, LinkedIn's platform is plagued by automated, fraudulent, mistaken, and miscalculated engagement with LinkedIn ads, which inflates the prices for all types of advertising on the LinkedIn platform.

This lawsuit is intended to not only stop LinkedIn's allegedly unfair and fraudulent business practices but also increase transparency into whether LinkedIn's advertising metrics truly reflect user engagement with paid advertisements. The matter therefore raises important issues regarding overall transparency in online marketing.

FISHON ET AL V. PELOTON INTERACTIVE, INC.

To secure beneficial network effects in a nascent and growing industry of home-based studio classes, Peloton promised consumers an "ever-growing" library. But Peloton was forced to remove the majority of its content in March 2019 following a copyright infringement lawsuit by members of the National Music Publishers Association. Keller Postman filed approximately 2,700 individual arbitrations on behalf of customers who were promised an "ever-growing" class library. Several arbitrations moved forward, and decisions were issued in favor of the plaintiffs. In response, Peloton refused to abide by the terms of its own arbitration clause and ignored the American Arbitration Association's requirement that it pay filing fees for demands seeking less than $10,000.

AAA barred Peloton from using its arbitral forum and announced that "either party may choose to submit its dispute to the appropriate court for resolution." Keller Postman, in partnership with attorneys from DiCello Levitt Gutzler, filed a class-action lawsuit in the U.S. District Court for the Southern District of New York, *Fishon et al v. Peloton Interactive, Inc.*

Judge Lewis Liman denied Peloton's motion to dismiss the case. This matter is important, because Peloton affirmatively chose to disregard its own arbitration agreement and opted instead for the class action. That move reflects the company's true intention behind the arbitration clause within its Terms of Service: not as an effective method for customers to pursue claims, but as an escape route from liability. Keller Postman's ability to push forward arbitrations on a mass scale led to Peloton's decision to voluntarily submit itself to class action litigation. And now the firm can pursue consumer-protection remedies on behalf of all affected Peloton subscribers.

Case Highlights Continued:

MITCH OBERSTEIN ET AL V. LIVE NATION ENTERTAINMENT, INC. ET AL & SKOT HECKMAN ET AL V. LIVE NATION ENTERTAINMENT INC. ET AL

Quinn Emanuel Urquhart & Sullivan filed a class-action lawsuit, *Mitch Oberstein et al v. Live Nation Entertainment, Inc. et al* (formerly *Olivia Van Iderstine et al v. Live Nation Entertainment, Inc. et al*). Ticketmaster customers allege that Ticketmaster and Live Nation used their dominance to inflate ticket prices. After Ticketmaster moved to force consumers to individually arbitrate their disputes, Keller Postman joined as co-counsel with Quinn Emanuel. Later, the district court granted Ticketmaster's motion to compel arbitration, and the order compelling arbitration is on appeal to the Ninth Circuit.

Ticketmaster next published a new arbitration clause for consumers in its terms and conditions that designated a new dispute resolution forum called New Era ADR. Keller Postman filed a new class action against Ticketmaster in January 2022—*Skot Heckman et al. v. Live Nation Entertainment Inc. et al.*—on behalf of individuals subject to the new arbitration agreement. Ticketmaster moved to compel arbitration under the new arbitration agreement. We believe the new arbitration agreement is unconscionable and unfair to consumers. The court has granted our motion for discovery into whether an enforceable arbitration agreement exists, and we will work to uncover the business dealings that exist between Ticketmaster and New Era ADR to prove that this forum is unfair to consumers. Regardless of Ticketmaster's evasive tactics, we will rely on our firm's legal and operational innovation to see that corporations can't change the rules to avoid liability.

BIPA LITIGATION OVERVIEW

Keller Postman represents thousands of clients in the state of Illinois who assert violations of the Illinois Biometric Information Privacy Act (BIPA). Our clients' biometric information has been wrongfully captured without consent by employers and technology platforms. We have been litigating cases against numerous entities, including against MOD Pizza, Vonachen Service, Inc., Heartland Beef, Inc., Wireless Vision LLC, and Sydell Hostel Manager LLC, d/b/a Freehand Chicago.

BIPA is one of the country's most stringent biometric privacy laws, prohibiting private companies from capturing, obtaining, storing, transferring, and/or using the biometric identifiers and/or information (such as fingerprints) of another individual for any purpose without first providing such individual with certain written disclosures and obtaining written consent. BIPA requires anyone who records biometric information to get informed consent before doing so and to create a publicly available retention policy so people can be assured that their sensitive biometric data won't be disclosed without their knowledge.

Although BIPA has existed for more than a decade, companies are still capturing biometric information (which can easily be used to perpetrate identity fraud in the wrong hands) in Illinois without explaining the implications of that capture to their employees and customers. While corporations often loosely interpret new laws, Keller Postman is actively influencing the enforceability of these laws, setting a clear path forward for those seeking reprieve from improper collection and storage of private information.

Results:

- *Soper v. Sydell Hostel Manager LLC*: Secured $250,000 settlement for class of ~300
- *Pratz v. MOD Super Fast Pizza, LLC*: Secured $1.3 million settlement for class of ~1,134
- *Corey v. Wireless Vision, LLC.*: Secured $279,000 settlement for class of ~300

Case Highlights Continued:

DATA BREACH LITIGATION OVERVIEW

Keller Postman is leading numerous class actions on behalf of hundreds of thousands of individuals whose sensitive personal information—including social security numbers, health/medical records, and financial information—has been stolen. The lawsuits accuse defendants of negligently handling consumers' personal data and private information. Defendants failed to take appropriate precautions to protect this data, did not appropriately and speedily resolve data breach occurrences, and also failed to adequately recompense the plaintiffs.

These class actions include:

- *William Biscan v. Shields Health Care Group Inc.* (Named Interim Co-Lead Class Counsel)
- *Gilbert v. AFTRA Retirement Fund et al.*
- *Greco v. Syracuse ASC, LLC d/b/a Specialty Surgery Center of Central New York*
- *Harrington v. Elekta, Inc.*
- *Miller v. Syracuse University*
- *Valencia v. North Broward Hospital District d/b/a Broward*
- *Esposito et al v. Refuah Health Center, Inc.*
- *Garner v. Missouri Delta Medical Center*
- *Abbott et al v. Taylor County Hospital District Health Facilities Corporation d/b/a Taylor Regional Hospital*
- *Cain et al v. Lavaca Medical Center; Crawford v. Ascension Michigan*
- *Crawford v. Ascension Michigan*
- *Shepherd v. Cancer and Hematology Centers of Western Michigan, P.C.*

Results:

- *Hestrup et al. v. DuPage Medical Group. Ltd. d/b/a DuPage Medical Group*: Secured $3 million settlement; Partner Seth Meyer was named Interim Class Counsel
- *Alexander, et al. v. Otis R. Bowen Center for Human Services, Inc.:* Received preliminary approval for $1.55 million settlement
- *Hall, et al. v. AspenPointe, Inc., et al.:* Secured $1.3 million settlement

ZANTAC (RANITIDINE) MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Keller chairs the Law & Briefing Committee and is a member of the Plaintiffs' Executive Committee

In late 2019, public watchdogs discovered that ranitidine (branded as "Zantac") degrades into the cancer-causing compound NDMA. The FDA pulled it from the market. The Zantac MDL coordinates suits accusing Pfizer Inc., Sanofi SA, Boehringer Ingelheim Pharmaceuticals Inc., and GlaxoSmithKline LLC—as well as generic makers, distributors, pharmacies, and others in the supply chain—of causing thousands of plaintiffs to develop cancer. The importance of this matter lies in the severity of the plaintiffs' claims and the number of injured plaintiffs given the widespread use of these drugs before they were pulled from the shelves.

The Keller Postman team has briefed and argued four rounds of motions to dismiss; amended the master complaints; litigated three appeals through oral argument; briefed and argued key discovery fights; and briefed and argued *Daubert* motions on general causation. We have also worked up bellwethers for trial, collecting their medical records, responding to discovery, and so forth.

Case Highlights Continued:

ZANTAC STATE COURT LITIGATION

In the Zantac MDL, plaintiffs' leadership has made a conservative choice to only pursue claims for plaintiffs who suffer from at least one of five designated cancers allegedly caused by Zantac consumption (including bladder, gastric, esophageal, liver, and pancreatic cancer). But Keller Postman is leading the charge on aggressive litigation in state court, largely for plaintiffs who suffer from non-designated cancers—and have no other avenue to pursue their claims. We also represent a number of clients with designated cancers in state court. Our firm has filed claims in California, Delaware, Illinois, and Pennsylvania. No other plaintiffs' firm involved in state-side Zantac litigation has attempted to take on such a large number of claimants in this many jurisdictions.

During a hearing on August 9, 2022 in the Illinois case *Bayer v. Boehringer Ingelheim Pharm*., Keller Postman received a favorable *Frye* decision when the court denied defendants' motions to exclude Keller Postman's expert on general causation for esophageal and kidney cancer. This is the first ruling in the country on causation and is especially important in vindicating our firm's decision to bring kidney cancer cases, a non-designated cancer.

3M COMBAT ARMS EARPLUGS MULTIDISTRICT LITIGATION

Leadership Role: Partner Nicole Berg sits on the Law & Briefing Subcommittee; Partner Ashley Keller is Counsel of Record on the first two appeals

The 3M Combat Arms Earplugs MDL involves claims by military servicemembers against 3M for hearing loss and tinnitus caused by faulty earplugs. Roughly 270,000 servicemembers have lodged claims against 3M related to the earplugs, making this the largest MDL in history.

The court appointed Keller Postman Partner Nicole Berg to the plaintiffs' leadership team as a member of the Law & Briefing Subcommittee. Berg and her team represented one of the 25 bellwether plaintiffs at trial and have played an integral role in drafting responses to MDL-wide dispositive motions and in briefing key legal issues in many bellwether trials. Keller Postman is counsel of record on 3M's appeals of bellwether verdicts. With the bellwether trials complete, the Court ordered four "waves" of 500 cases each to proceed to trial. Keller Postman is currently preparing wave cases for trial.

In July 2022, several "Aearo" subsidiaries—but not 3M itself—filed for bankruptcy, seeking an injunction in favor of 3M to halt litigation in the MDL entirely. Keller Postman responded creatively and aggressively. Specifically, we won a preliminary injunction under the All Writs Act from the MDL Court preventing 3M from trying to relitigate long-settled MDL rulings in bankruptcy. We participated in the bankruptcy court, presenting an expert witness who testified that 3M was facing $100 billion in liability, arguing that if 3M obtained an injunction to halt MDL litigation, it should also be enjoined from issuing dividends and share buybacks. The bankruptcy court fully denied 3M's injunction request.

In August 2022, Keller Postman filed a bombshell fraudulent transfer complaint against 3M, asking the MDL Court to stop 3M from dissipating its assets by spinning off its healthcare business, paying dividends, and buying back stock (all violations of the Florida Uniform Fraudulent Transfer Act).

Most recently, Judge Rodgers issued a 22-page order in which she granted plaintiffs' motion for summary judgment on 3M's "full and independent liability" for earplug claims, issuing an unprecedented sanction and formally nullifying 3M's bankruptcy scheme.

Case Highlights Continued:

ACETAMINOPHEN —ASD-ADHD MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Keller is Co-Lead Counsel and a member of the Plaintiffs' Executive Committee along with Partner Ashley Barriere, who leads the Law and Briefing Subcommittee.

Studies over the last decade have shown that consuming acetaminophen while pregnant increases a child's risk for autism spectrum disorder (ASD), attention deficit hyperactivity disorder (ADHD), and other developmental disorders related to infant exposure during pregnancy. Parents on behalf of their injured children are bringing claims against makers of generic store brand acetaminophen for failing in their duty to adequately warn of the hazards of prenatal exposure to acetaminophen.

According to the complaints, acetaminophen has long been marketed as the safest, and the only appropriate, over-the-counter pain relief drug on the market for pregnant women. However, increasing experimental and epidemiological research shows that prenatal exposure to acetaminophen alters fetal development, which significantly increases the risks of neurodevelopmental disorders. For example, in a study at Johns Hopkins School of Public Health, the risk of autism was three times higher for children whose mothers took the most Acetaminophen. Since 2013, there have been six European birth cohort studies examining over 70,000 mother-child pairs, showing the association between prenatal use of acetaminophen and ASD. And numerous studies over the last decade have shown that long-term maternal use of acetaminophen during pregnancy is substantially associated with ADHD.

Given the strong science, Keller Postman has filed claims in Nevada, California, and Washington, with far more claims to be filed in the following weeks and months. This matter is significant, because more than 65% of women in the United States use acetaminophen during pregnancy and have been reassured repeatedly of its safety (despite the widespread, long-term scientific evidence showing the high risk of developmental disorders because of consuming when pregnant). We anticipate that this will be one of the largest multidistrict litigations in the history of the United States.

Keller Postman has been at the forefront of this fast-growing mass tort since our team first uncovered the Consensus Statement in *Nature* highlighting the increasing evidence linking prenatal acetaminophen exposure to autism and ADHD. Our team also recently defeated Walmart's motion to dismiss on preemption grounds, overcoming the single largest barrier to plaintiffs' ultimate recovery.

NECROTIZING ENTEROCOLITIS/INFANT-FORMULA LITIGATION

Keller Postman is leading the state-side litigation against Abbot and Mead—the makers of Enfamil and Similac infant formula and fortifiers—for their role in causing preterm infants to develop necrotizing enterocolitis (NEC), a dangerous inflammation of the intestines that can lead to rupture and death. The lawsuits allege that defendants (including Mead Johnson & Company LLC, Mead Johnson Nutrition Company, and Abbot Laboratories) falsely marketed their infant formulas as "medically endorsed" and "nutritionally equivalent" to mother's breast milk when the formulas are linked to the development of necrotizing enterocolitis.

We are bringing claims on behalf of families in state courts across the country, with cases filed in Illinois (Madison County, Cook County, and St. Clair County), as well as in state courts in California, Pennsylvania, and Missouri. This underscores the vast scope of the harm that the defendants have inflicted on these most vulnerable victims throughout the United States.

Case Highlights Continued:

This matter is significant, namely due to the obvious vulnerability of the young victims and the severity of NEC and its long-term effects. Despite mounting legal claims against the companies based on scientific evidence and research that has existed for decades, as well as safer alternatives like donor milk and human-milk based formula, these defendants continue to sell these products and encourage them to be distributed to premature infants across the country. Through this litigation and other advocacy efforts, we hope to shed more light on the dangers of these products and to equip other parents with the information they need to avoid putting their infants' health at risk.

CAMP LEJEUNE WATER CONTAMINATION LITIGATION

Leadership Role: Partner Zina Bash appointed Co-Lead Counsel and Government Liaison

Keller Postman represents thousands of veterans, military family members, and other civilians who were poisoned by the water at U.S. Marine Corps Base Camp Lejeune. As a result of consuming, bathing in, cooking with, and swimming in this contaminated water, our clients allege that they have developed diseases and chronic conditions, including cancers of the bladder, kidney, and liver, non-Hodgkin's lymphoma, Parkinson's disease, and multiple myeloma – among many other ailments.

Keller Postman also played a significant role in lobbying for the passage of The Camp Lejeune Justice Act, which was signed into law by the President on August 10, 2022. Keller Postman Partner Zina Bash played a particularly meaningful role in advancing the Justice Act. Having previously worked at the highest levels of the government, Bash leveraged her connections in Washington to help the bill make its way through Congress. And within minutes of the bill-signing, Keller Postman began filing actions against the U.S. government under the Camp Lejeune Justice Act.

This matter is significant, because over one million individuals were exposed to the toxic water at Camp Lejeune over a 30-year period, from the 1950s to the 1980s. Though the government became aware of the contamination in the early 1980s, it took years to remedy it and decades to warn individuals who had been exposed. Camp Lejeune's poisonous water has also been linked to widespread birth defects and high rates of stillborn babies. In fact, there were so many stillborn babies in Camp Lejeune during that time that a cemetery near the base became known as "Baby Heaven." What happened at Camp Lejeune is a terrible tragedy that could have been prevented. The Camp Lejeune Justice Act has been a long time coming, and it is our privilege to fight for justice on behalf of our clients.

Keller Postman has played a leading role in advocating for the passage of the Camp Lejeune Justice Act. After the Act became law, our firm helped clients sign up for claims under the Act and file them with the Navy and in Court. In fact, within minutes of the bill-signing, we filed the first actions against the government under the Justice Act to obtain compensation for victims.

PARAGARD IUD MULTIDISTRICT LITIGATION

Leadership Role: Partner Nicole Berg sits on the Plaintiffs' Executive Committee

The Paragard IUD MDL coordinates suits accusing Teva Pharmaceuticals USA, Inc., Teva Women's Health, Inc., The Cooper Companies Inc., and CooperSurgical Inc. of failing to warn users of the risks posed by the Paragard copper intrauterine device (IUD). The plaintiffs allege that their Paragard IUDs broke apart, leaving behind pieces of the device, which sometimes embedded in their uterus. The breakage

Case Highlights Continued:

caused serious complications and injuries, including surgeries to remove the broken pieces of the device, infertility, and pain.
In September 2021, Partner Nicole Berg argued against defendants' motion to dismiss the claims of plaintiffs in this MDL. Two months later, Judge Leigh Martin May sided with plaintiffs and denied defendants' motion on preemption, shotgun pleading, Rule 12, and Rule 9(b), finding that "factual underpinnings for the design defect claims and detailed allegations about the defendants' failure to warn" were sufficient to state a claim. The discovery process has begun.

ONGLYZA AND KOMBIGLYZE XR MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Barriere appointed to the Plaintiffs' Steering Committee and leads the Law & Briefing Committee

This MDL involves individuals who took Onglyza (saxagliptin) and Kombiglyze XR (saxagliptin and metformin) to treat Type 2 diabetes. The plaintiffs represented by Keller Postman allege that the drugs caused serious cardiac complications. Defendants Bristol-Myers Squibb and AstraZeneca began selling the drugs in 2009 and 2010, before completing a cardiac risk study recommended by the U.S. Food and Drug Administration. The study was completed in 2013 and showed that saxagliptin users had a significantly increased risk of hospitalization due to heart failure.

We're proud of Partner Ashley Barriere's position on plaintiffs' leadership in this MDL. Our firm values empowering both young attorneys and female leaders to take on pivotal roles.

IN RE JOHNSON & JOHNSON AEROSOL SUNSCREEN MARKETING, SALES PRACTICES & PRODUCTS LIABILITY LITIGATION

Leadership Role: Keller Postman named Interim Class Counsel

Keller Postman filed a class action against Johnson & Johnson subsidiary Johnson & Johnson Consumer, Inc. (J&J)—*Dominguez et al v. Johnson & Johnson Consumer*—on behalf of purchasers of certain Aveeno and Neutrogena sunscreens that have dangerous and unacceptable levels of the known cancer-causing chemical, benzene. Benzene, which is often found in crude oil and identified by the smell associated with gasoline, is classified as a human carcinogen by the United States Department of Health and Human Services, and a Group 1 compound (i.e. "carcinogenic to humans") by the World Health Organization and the International Agency for Research on Cancer.

In October 2021, the Judicial Panel on Multidistrict Litigation approved centralizing in Florida the federal court lawsuits accusing Johnson & Johnson of selling sunscreen products tainted with benzene. The consolidated litigation is *In re Johnson & Johnson Aerosol Sunscreen Marketing, Sales Practices & Products Liability Litigation*.

Attorney Biographies

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EDUCATION

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Alex has litigated cases as a member of both the plaintiffs' and defense bars, maintaining a focus on complex civil litigation throughout his career.

At Keller Postman, Alex represents public and private entities across the nation in trial and appellate litigation. His practice focuses on governmental, consumer-protection, and data-privacy issues.

Alex helps manage and lead litigation across pivotal privacy-related matters at Keller Postman. He drives Keller Postman's data breach claims, drafting complaints, managing mediations, and handling negotiation with opposing counsel. He represents clients throughout Illinois who assert violations of the Illinois Biometric Information Privacy Act (BIPA). Our clients' biometric information was wrongfully captured without their consent by employers and technology platforms alike. Alex manages the ongoing litigation in cases against numerous entities.

Alex also focuses on a broad range of consumer protection matters (including claims for false advertising), supports the firm's representation of state and local government entities in connection with the opioid crisis, and represents the State of Texas in its case against Meta Platforms, Inc. for its capture of biometric identifiers in violation of Texas law.

Alex is listed as a 2022 Illinois Super Lawyers Rising Star, recognized for his outstanding professional achievement.

Alex is a graduate of the University of Chicago Law School. He earned his undergraduate degrees in political science, economics, finance, and psychology *summa cum laude* from Loyola University Chicago.