

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: MOVEIT CUSTOMER DATA  
SECURITY BREACH LITIGATION

MDL No. 1:23-md-03083-ADB-PGL

[Leave to File Granted on Sept. 15, 2026,  
ECF No. 2088]

This Document Relates To:  
C.A. No. 1:24-cv-11807-ADB

BEN MORRIS, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

PROGRESS SOFTWARE  
CORPORATION; ERNST & YOUNG  
LLP; and BANK OF AMERICA  
CORPORATION,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION  
FOR FINAL APPROVAL OF PROPOSED ERNST & YOUNG LLP / BANK OF  
AMERICA CORPORATION CLASS ACTION SETTLEMENT**

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## **INTRODUCTION**

Plaintiff Ben Morris (“Plaintiff” or “Settlement Class Representative”) individually and on behalf of all others similarly situated, and pursuant to Rule 23(e), respectfully moves this Court for final approval of the proposed Class Action Settlement Agreement (“Settlement” or “SAR”) with Defendants Bank of America Corporation (“BOA”) and Ernst & Young LLP (“EY”) (collectively, “Defendants”).<sup>1</sup> Final Approval should be granted because the Settlement provides substantial relief for the Settlement Class, including the payment of \$2.5 million by Defendants into a non-reversionary Settlement Fund to: (1) be allocated to the Settlement Class according to the proposed Settlement Benefits Plan;<sup>2</sup> (2) pay for attorneys’ fees and expenses and a Service Award to the Settlement Class Representative, as approved by the Court; and (3) cover the costs of settlement administration and the issuance of notice. According to the proposed Settlement Benefits Plan, the Net Settlement Fund (after deducting Court-approved attorneys’ fees and expenses, any Court-approved Service Award, and notice and administration costs) will be used to pay for Settlement Class Members’ claims for two (2) years of credit monitoring and identity theft protection, and either (1) reimbursement of ordinary losses up to \$2,500.00 (including lost time of up to four (4) hours at \$25.00 per hour) and reimbursement of extraordinary losses up to \$10,000.00; or (2) an alternative cash payment of \$100.00.

On April 29, 2026, the Court granted preliminary approval of the Settlement. ECF No. 1804. Pursuant to the Court’s Preliminary Approval Order, Notice was effectuated to the Settlement Class, notifying them of the proposed Settlement, as well as CAFA Notice to the Attorney General of the U.S., the Attorneys General of each of the 50 states, and all other required

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the proposed Class Action Settlement Agreement and Release, ECF No. 1796-1.

<sup>2</sup> The proposed Settlement Benefits Plan is found at ECF No. 1796-2.

recipients. *See* Declaration of Jessie T. Montague (“RG/2 Decl.”) ¶¶ 6, 9–14 filed concurrently herewith; *see also* Declaration of Shruti Kannan filed concurrently herewith. The Notice results have been overwhelmingly positive. To date, 196,236 of the 198,422 unique, identified Settlement Class Members have received direct notice of the Settlement, a notice rate of approximately 98%. RG/2 Decl. ¶¶ 9–14, 22. No Settlement Class Members have objected to the Settlement, and no Settlement Class Member requested exclusion. *Id.* ¶¶ 19–20. As detailed below, the Settlement is an excellent result for the Settlement Class; the Court should find that the Settlement is fair, reasonable, and adequate; and the Court should grant final approval.

## **BACKGROUND**

### **I. History of the Litigation.**

Plaintiff’s claims against Defendants arise out of a security incident stemming from a vulnerability in MOVEit Transfer. *See, e.g.,* Compl., ¶ 19; ECF No. 908.<sup>3</sup> MOVEit Transfer is a subscription-based managed file transfer application developed and licensed by Progress Software Corporation (“Progress”) and used by numerous commercial and government entities, including Defendants, to store and transfer large data files. *See* Compl., ¶ 19; ECF No. 908, ¶¶ 11–12. Between May 27, 2023 and May 31, 2023, CL0P Ransomware Gang, exploited a vulnerability in the MOVEit Transfer application. *See* ECF No. 908, ¶¶ 90–155. CL0P used the MOVEit vulnerability to escalate user privileges, gain unauthorized access to customers’ MOVEit Transfer environments, and access, copy, and exfiltrate the sensitive information stored therein (the “MOVEit Security Incident”). *See* ECF No. 908, ¶¶ 96–153. Shortly after exploiting the MOVEit Transfer vulnerability, CL0P threatened to name and publish the leaked data of any organizations that did not respond to its ransom demands. *See* ECF No. 908, ¶¶ 175–179, 207–208.

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<sup>3</sup> Citations to “Compl.” are citations to the Amended Class Action Complaint (ECF No. 1785).

On or about May 31, 2023, Progress informed EY of a recently discovered vulnerability in MOVEit Transfer.<sup>4</sup> Specifically, Progress warned of an unauthenticated SQL vulnerability that could allow unauthorized actors to escalate user privileges and access EY’s MOVEit Transfer environment. Following Progress’s notification, EY conducted an investigation and concluded that the PII of approximately 198,000 people had been taken from EY’s MOVEit Transfer environment due to an exploit of the MOVEit vulnerability. The compromised information related to services provided by EY to BOA, including Personally Identifying Information (“PII”) in documents provided by BOA to EY.<sup>5</sup>

Although the Security Incident involved an exploit of the MOVEit Transfer application, Plaintiff alleges that Defendants’ negligence contributed to the breach and theft of Plaintiff’s and Settlement Class Members’ PII. *See* Compl., ¶¶ 59–60; ECF No. 908, ¶¶ 427–57. Plaintiff further alleges Defendants could have prevented or mitigated the Security Incident by implementing reasonable data security measures when exchanging PII via MOVEit Transfer. *See* Compl., ¶ 19; ECF No. 908, ¶¶ 427–31. Defendants deny these allegations and any fault or liability in this matter. Among other defenses, Defendants argue that they cannot be negligent in using a trusted software product used by thousands of businesses and government entities worldwide.

#### **A. Procedural Posture.**

After the appointment of Co-Lead Counsel, Liaison & Coordinating Counsel, and the Committee Chairs, the Court entered MDL Order No. 13 on April 25, 2024, which set deadlines

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<sup>4</sup> *Data Breach Notifications*, OFFICE OF THE MAINE ATTORNEY GENERAL, <https://www.maine.gov/agviewer/content/ag/985235c7-cb95-4be2-8792-a1252b4f8318/c43aee1c-dbc4-4a6d-b0d1-147ad3b23c37.shtml> (last visited April 21, 2026).

<sup>5</sup> The PII included any of the following: (1) first and last names; (2) addresses; (3) date of birth; (4) financial or financial account information; (5) debit or credit card numbers; (6) usernames, PINs, or passwords; (7) personal health information; (8) Social Security Numbers; or (9) other unique government-issued identification numbers.

for the parties to brief certain threshold issues in this MDL relating to Article III standing, arbitration, and jurisdiction under the Class Action Fairness Act. MDL Order No. 13. On July 23, 2024, all defendants in the MDL filed an omnibus motion to dismiss pursuant to Rule 12(b)(1), asserting that the underlying actions should be dismissed for lack of Article III standing. *See* ECF No. 1114. After briefing and argument by the parties, on December 12, 2024, the Court issued an opinion denying the defendants' omnibus motion to dismiss in large part finding that "(most) Plaintiffs have standing to pursue their claims." MDL Order No. 19 (as amended by MDL Order No. 32 and ECF No. 1798).

During the pendency of the omnibus motion to dismiss briefing, Plaintiffs' Co-Lead Counsel and Defendants' Liaison Counsel negotiated a proposed structure for litigating claims asserted in the MDL, with the Court ordering Plaintiffs to file a consolidated bellwether complaint against Progress and certain other defendants. Plaintiffs later filed a Bellwether Complaint against Progress and other representative defendants. *See* ECF No. 1543. BOA and EY were not named as bellwether defendants.

The Bellwether Defendants filed Rule 12(b)(6) challenges to the Bellwether Complaint on February 4, 2025. ECF Nos. 1359, 1367, 1370–71, & 1377. Bellwether Plaintiffs filed their oppositions on April 7, 2025 and the motions were fully briefed as of April 28, 2025. ECF Nos. 1437–38, 1440–42, 1465, 1467–70. Following argument by the parties, on July 31, 2025, the Court entered MDL Order Nos. 22 and 23 resolving the Bellwether Defendants' Rule 12(b)(6) motions and holding, in part, that Bellwether Plaintiffs stated claims for common law negligence under the laws of California, Florida, Illinois, Indiana, Michigan, Minnesota, Nebraska, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, Washington, and Wisconsin, as to all Bellwether Defendants (as well as other state-law claims). MDL Order Nos. 22 & 23.

## **B. Negotiations of the Proposed Settlement.**

At an early procedural phase of this MDL, Co-Lead Counsel, the Settlement Committee, and Defendants' counsel began discussing the possible resolution of the Litigation, which culminated in the Parties participating in an arm's-length settlement negotiation on May 13, 2024.<sup>6</sup> See ECF No. 2051, ¶ 14. During the settlement negotiations, the Parties reached an impasse and thereafter agreed to continue their settlement discussions via the mediation process. *Id.* ¶ 15. Following the arm's-length settlement negotiation and the Court's order denying defendants' omnibus 12(b)(1) motion in large part (MDL Order No. 19), the Parties then engaged in a full-day mediation session conducted on March 20, 2025 by the Honorable Diane M. Welsh (Ret.), a retired federal magistrate judge now with JAMS in Philadelphia, Pennsylvania. *Id.* ¶¶ 15–18. In preparation for the mediation, the Parties engaged in informal discovery, wherein Defendants provided confidential information related to the issues in the lawsuit and the Settlement Class Representative. *Id.* ¶ 17. As a result of the Parties' informal exchange of information, along with the Co-Lead Counsel's detailed fact investigation in conjunction with the filing of the Omnibus set of Pleading Facts, the Settlement Committee was therefore well-informed regarding the facts of the case, and the strengths and weaknesses of Plaintiff's claims and Defendants' defenses leading into the mediation. *Id.*

During the mediation, the Parties reached an agreement in principle regarding the material terms of a classwide settlement. *Id.* ¶ 18. Thereafter, the Parties engaged in a series of further arm's-length negotiations resulting in the culmination of the Settlement Agreement, which if finally approved by the Court, will resolve all claims against Defendants in the Litigation. *Id.* ¶ 19.

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<sup>6</sup> The May 13, 2024 settlement negotiation concerned *Jacobs v. Ernst & Young Investment Advisers LLP, et al.*, No. 1:23-cv-13021-ADB (D. Mass.)—which was filed by a different plaintiff but raised similar allegations against EY and BOA and was coordinated with the *MOVEit* MDL. The *Jacobs* plaintiff voluntarily dismissed his lawsuit on July 2, 2024. *In re: MOVEit* MDL, ECF No. 1027.

The finalized Settlement Agreement was fully executed as of April 14, 2026. *Id.* To effectuate the Settlement Agreement, Plaintiff filed an Amended Complaint on April 17, 2026. ECF No. 1784.

Plaintiff thereafter moved for preliminary approval of the Settlement, which this Court granted on April 29, 2026. ECF No. 1804. Following entry of the Court's Preliminary Approval Order, the Parties worked with the Court-appointed Settlement Administrator to effectuate notice to the Settlement Class. ECF No. 2051, ¶ 20.

## **II. The Settlement Provides Significant Benefits to the Settlement Class.**

Under the Settlement Agreement, Defendants have agreed to pay \$2.5 million into a non-reversionary Settlement Fund to resolve Plaintiff's and Settlement Class Members' claims against the Defendant Released Parties. *See* SAR § 3.1. The Settlement Fund will pay for (1) costs of Notice and Settlement Administration; (2) any Court-approved Service Award for the Settlement Class Representative; (3) any Court-approved attorneys' fees and expenses; and (4) Settlement Payments for the Settlement Class pursuant to the Settlement and the proposed Settlement Benefits Plan, as approved by the Court. *See id.* § 3.2.

### **A. The Proposed Settlement Benefits Plan.**

The Settlement requires that the Net Settlement Fund (after deducting for notice and administration costs, the Settlement Class Representative's Service Award and attorneys' fees and expenses, as awarded and approved by the Court) be distributed via the Settlement Benefits Plan proposed by Class Counsel and the Settlement Committee. SAR § 3.2; ECF No. 1796-2. Pursuant to the Settlement Benefits Plan, Settlement Class Members are afforded the opportunity to file claims by October 8, 2026 for two (2) years of credit monitoring and identity theft protection and either (1) reimbursement of ordinary losses up to \$2,500.00 (including lost time of up to four (4) hours at \$25.00 per hour) and reimbursement of extraordinary losses up to \$10,000.00; or (2) an

alternative cash payment of \$100.00 (subject to *pro rata* reduction or increase based on total claim submission). ECF No. 1796-2, § 2.

To the extent the Net Settlement Fund is not exhausted by the payment of Approved Claims, the value of the Alternative Cash Payments will be increased *pro rata*, up to \$1,000.00, or until the Net Settlement Fund is exhausted. *Id.*, § 4(b). If the total value of Approved Claims exceeds the value of the Net Settlement Fund, the value of the cash payments will be decreased *pro rata* to the highest amount that will allow the Approved Claims to be paid using the Net Settlement Fund. *See id.*, § 4(a). If any funds remain one hundred and eighty (180) days after the Effective Date, any monies remaining in the Net Settlement Fund will be used to extend all Approved Claims for credit monitoring and identity theft protection services for as long as possible until the Net Settlement Fund is completely exhausted. *See id.*, § 4(c).

**B. Dismissal and Release of Claims.**

Upon the Effective Date of the Settlement, the Plaintiff Released Parties shall be deemed to have released any and all liabilities, rights, claims, actions, causes of action, damages, penalties, costs, attorneys' fees, losses or demands, whether known or unknown, liquidated or unliquidated, existing or potential, suspected or unsuspected, legal, statutory, or equitable, based on contract, tort, or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties, or matters that were or reasonably could have been asserted against Defendant Released Parties related to BOA's provision of PII to EY that was compromised or potentially compromised in the Security Incident or to Defendants' conduct alleged in the operative Complaint. *See id.*, SAR §§ 1.16, 1.32, 1.36, 14.1. However, the Settlement does not release claim against Progress. *See id.*, § 1.16. These releases were described in the Court-approved Long Form Notice that was posted on the Settlement Website. RG/2 Decl. ¶ 15(d).

### III. Results of Settlement Administration and Notice Plan.

Following the Court's issuance of the Preliminary Approval Order, the Settlement Administrator completed the Notice plan set forth in the Settlement and approved by the Court. RG/2 Decl. ¶¶ 6, 9–15. The Notice plan was designed to reach as many Settlement Class Members as possible. The Notice included the required description of the material terms of the Settlement; the date by which Settlement Class Members could opt out of the Settlement; the date by which Settlement Class Members could object to the Settlement; the Final Approval Hearing date and time; and the Settlement Website address at which Settlement Class Members could access the Long Form Notice, Settlement Agreement, Claim Form, and other related documents and information. RG/2 Decl. ¶ 15; Ex. C.

Pursuant to the Preliminary Approval Order, Defendants provided the Settlement Administrator with the Class List containing information sufficient to provide Settlement Class Members with direct notice. RG/2 Decl. ¶ 6. The Settlement Class List contained the names and last known mailing addresses of members of the Settlement Class. *Id.* The Settlement Administrator then de-duplicated the records, identifying 198,422 unique Settlement Class Members. *Id.* The Settlement Administrator engaged a third-party vendor to utilize the information provided in the Class List to conduct a reverse append process in order to obtain email addresses and further processed the Class List through the United States Postal Service National Change of Address database. *Id.* ¶¶ 6, 9. Thereafter, beginning July 10, 2026, the Settlement Administrator implemented the Notice Plan, disseminating the Notice via email to 140,424 members of the Settlement Class and via mail to 64,926 members of the Settlement Class. *Id.* ¶¶ 7–9. For the 6,928 Email Notices returned as undeliverable, the Settlement Administrator subsequently sent Notice via mail on July 17, 2026. *Id.* ¶ 6. For mail Notices returned as undeliverable, the Settlement Administrator searched for available addresses and promptly remailed the returned mail Notices.

*Id.* ¶ 10. A customary Long-Form Notice with more detail than the Short Form Notice was also made available on the Settlement Website. *Id.* ¶ 15(d).

Further, following Preliminary Approval, the Settlement Administrator established an informational Settlement Website, <https://www.moveitsettlementeyboa.com/>, which included a toll-free number, 888-295-3216, and email address, that allowed Settlement Class Members to obtain detailed information about the Settlement, file claims, and to review important documents, including the Long Form Notice, Claim Form, Settlement Agreement, Preliminary Approval, and Motion for Attorneys' Fees. *Id.* ¶¶ 15–16. The Final Approval Motion will also be posted to the website. *Id.* ¶ 15.

The Settlement Agreement required that RG/2 send Reminder Notice Emails to Class Members who had not yet filed a claim at least twenty-five days before the Claims Deadline. SAR § 9.3. On September 15, 2026, RG/2 sent reminder notices via email to Settlement Class Members and after consultation with counsel for the Parties, will mail additional reminder notices no later than September 16, 2026 via mail where no email address was available for Settlement Class members. RG/2 Decl. ¶¶ 11–12. RG/2 will provide a supplemental declaration in advance of the final approval hearing with the results of the Reminder Notice. *Id.* ¶ 13.

The reaction of the Settlement Class has been overwhelmingly positive. The deadline for Settlement Class Members to file claims will occur on October 8, 2026, and, as of the date of this filing, 4,064 Settlement Class Members have submitted claims, resulting in a claims rate of 2.04%. *Id.* ¶ 21. This claims data is preliminary, and RG/2 will submit a supplemental declaration with updated claims information in advance of the final approval hearing. *Id.* The deadline to submit an objection or opt out of the Settlement occurred on September 8, 2026. *Id.* ¶¶ 19–20. As of

September 14, 2026, no Settlement Class Members have objected to the Settlement, and no Settlement Class Members requested exclusion from the Settlement. *Id.*

As a result of the Notice Plan, at least 98% of the identifiable Settlement Class Members received direct notice of the Settlement. *Id.* ¶ 22. The Notice here was the best practicable under the circumstances and fully complied with all requirements of due process under the United States Constitution. *Id.*

### **ARGUMENT**

#### **I. The Proposed Settlement is Fair, Reasonable, and Adequate and Should Be Finally Approved.**

“Settlement agreements enjoy great favor with the courts as a preferred alternative to costly, time-consuming litigation.” *Fid. & Guar. Ins. Co. v. Star Equip. Corp.*, 541 F.3d 1, 5 (1st Cir. 2008) (internal citation and quotations omitted); *see also In re Lupron Mktg. & Sales Pracs. Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005) (“[T]he law favors class action settlements.”). Federal Rule of Civil Procedure 23(e) provides that a proposed settlement in a class action must be approved by the court. Fed. R. Civ. P. 23(e). “The approval of a class-action settlement agreement is a ‘two-step process, which first requires the court to make a preliminary determination regarding the fairness, reasonableness, and adequacy of the settlement terms.’” *Meaden v. HarborOne Bank*, No. 23-CV-10467-AK, 2023 WL 3529762, at \*1 (D. Mass. May 18, 2023) (citation omitted). “The second step in the settlement approval process requires a fairness hearing, after which the court may give final approval of the proposed settlement agreement.” *Id.* (citation omitted).

Under Rule 23, a court may approve a class action settlement if it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). While the First Circuit has not established a fixed test for evaluating the fairness of a class action settlement, courts within this Circuit look to those set forth by the Second Circuit when reviewing a motion for final approval. *See, e.g., Bezdek v. Vibram*

*USA Inc.*, 79 F. Supp. 3d 324, 343 (D. Mass.), *aff'd*, 809 F.3d 78 (1st Cir. 2015); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 258 (D.N.H. 2007). These factors, commonly referred to as the “*Grinnell*” factors, 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.

*Roberts v. TJX Companies, Inc.*, No. 13-CV-13142-ADB, 2016 WL 8677312, at \*6 (D. Mass. Sept. 30, 2016) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000)). Importantly, a court need not find all the *Grinnell* factors satisfied to grant final approval, rather the court should conduct a holistic assessment that involves “balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement.” *Nat’l Ass’n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009). A review of the relevant *Grinnell* factors supports a finding that the Settlement is fair, reasonable, and adequate, and should be finally approved.

#### **A. The Complexity, Expense, and Likely Duration of the Litigation.**

The first *Grinnell* factor is the complexity, expense, and likely duration of the litigation. Here, the costs, complexity, and likely duration of this case strongly favor settlement. As courts recognize, data breach class actions are inherently complex and “involve[ ] thorny issues regarding the emerging field of data breach litigation.” *Holden v. Guardian Analytics, Inc.*, No. 2:23-CV-2115, 2024 WL 2845392, at \*5 (D.N.J. June 5, 2024); *see also Fulton-Green v. Accolade, Inc.*,

No. 18-274, 2019 WL 4677954, at \*8 (E.D. Pa. Sept. 24, 2019) (similar). Because the “legal issues involved in [data breach litigation] are cutting-edge and unsettled ... many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-md- 2522 (PAM) (JJK), 2015 WL 7253765, at \*2 (D. Minn. Nov. 17, 2015), *rev’d and remanded on other grounds*, 847 F.3d 608 (8th Cir. 2017), *amended*, 855 F.3d 913 (8th Cir. 2017), *and aff’d*, 892 F.3d 968 (8th Cir. 2018).

Another issue attendant in continued litigation is the expense of conducting further discovery. In complex cases, such as data breach and privacy cases, these costs can be especially extensive. *See Carter v. Vivendi Ticketing US LLC*, No. SACV2201981CJCDFMX, 2023 WL 8153712, at \*5 (C.D. Cal. Oct. 30, 2023) (early resolution of data breach action favored final approval where “[s]ubstantial discovery, including document discovery and depositions, would be required” along with “[e]xtensive and expensive expert analysis [that also] would be needed.”); *In re Yahoo! Inc. Customer Data Security Breach Litig.*, No. 16-MD-02752, 2020 WL 4212811, at \*9 (N.D. Cal. July 22, 2020) (noting that discovery is one of the significant expenses for continuing a data breach litigation). Given the highly technical nature of data breach litigation, it is very likely that discovery costs in the EY / BOA action would be substantial. Such costs would have been amplified by the involvement of experts to further analyze and explain the data and their relevance to the case. *See Bezdek*, 79 F. Supp. 3d at 344 (noting that potential expenses stemming from further discovery can “decreas[e] the net benefit of any damages awarded obtained at trial”).

While Plaintiff is confident in the strength of his case, by reaching a favorable settlement at this stage of the litigation the Parties will avoid significant expense and delay and instead, provide immediate and tangible relief to the Settlement Class. *See Holden*, 2024 WL 2845392, at \*5 (“[L]itigation of this matter through trial would be complex, costly, and time-consuming. The

Settlement eliminates the costs and risks associated with further litigation. The Settlement Class would also receive prompt compensation.”). Accordingly, this factor strongly supports final approval of the Settlement.

**B. The Reaction of the Settlement Class to the Settlement.**

The second *Grinnell* factor is the reaction of the Settlement Class to the Settlement. It is important to note that the existence of an objection to a settlement does not by itself prevent the court from approving the agreement. Rather, this factor weighs in favor of granting final approval so long as the reaction of the class is “positive.” *In re Tyco*, 535 F. Supp. 2d at 261 (noting that “only a small number” of class members had raised objections and that their objections were “without merit”); *accord Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999) (“[The low] number of requests for exclusion from the settlement, as well as the number and substance of objections filed ... constitutes strong evidence of fairness of proposed settlement and supports judicial approval.”). In cases where a small portion of class members respond to the notice of settlement, this factor weighs in favor of approval where the responding class members react positively and offer little to no objection. *See Roberts*, 2016 WL 8677312, at \*6; *Holden*, 2024 WL 2845392, at \*5.

Here, the positive reaction of the Settlement Class weighs in favor of final approval. The Notice advised Settlement Class Members of their ability to file a claim until October 8, 2026, and, as of September 14, 2026, 4,064 Settlement Class Members have filed claims, resulting in a preliminary claims rate of 2.04 %. RG/2 Decl. ¶ 21. This claims rate compares favorably to claims rates in other consumer data breach settlements that have been finally approved. *See, e.g., In re Wawa, Inc. Data Sec. Litig.*, No. CV 19-6019, 2024 WL 1557366, at \*17 (E.D. Pa. Apr. 9, 2024), *aff’d*, 141 F.4th 456 (3d Cir. 2025) (claims rate of 2.56%); *Carter*, 2023 WL 8153712, at \*9 (C.D. Cal. Oct. 30, 2023) (claims rate of 1.6%); *In re Forefront Data Breach Litig.*, No. 21-CV-887,

2023 WL 6215366, at \*4 (E.D. Wis. Mar. 22, 2023) (claims rate of 1.46%); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 (N.D. Cal. 2018) (claims rate of 1.8%).

The Notice also advised Settlement Class Members of their right to object to the Settlement and to otherwise opt out of the Settlement. RG/2 Decl. ¶ 15, Ex. C. Settlement Class Members had until September 8, 2026, to object or opt out of the Settlement, and, as of September 14, 2026, no Settlement Class Members have filed an objection, and no Settlement Class Members requested exclusion from the Settlement. *Id.* ¶¶ 19–20. This supports a finding the Settlement is reasonable and should be finally approved. *See Roberts*, 2016 WL 8677312, at \*6 (approving final settlement where, out of 4,018 class members, none objected to the settlement and three class members asked to be excluded from the settlement); *Holden*, 2024 WL 2845392, at \*5 (no objections and few requests for exclusion favored final approval).

### **C. The Stage of the Proceedings and Amount of Discovery.**

The third *Grinnell* factor considers the stage of the proceedings and amount of discovery. In evaluating the stage of the case and the discovery taken, courts do not require that discovery be complete, rather the relevant inquiry is whether “sufficient discovery” was conducted “to make an intelligent judgment about settlement.” *Hochstadt v. Bos. Sci. Corp.*, 708 F. Supp. 2d 95, 107 (D. Mass. 2010). Put differently, while the parties need not engage in extensive discovery, they must have conducted “a sufficient factual investigation . . . to afford the Court the opportunity to ‘intelligently make . . . an appraisal’ of the Settlement.” *Diaz v. FCI Lender Servs., Inc.*, No. 17-CV-8686 (AJN), 2020 WL 4570460, at \*4 (S.D.N.Y. Aug. 7, 2020) (citation omitted).

Here, the Parties reached the proposed Settlement after engaging in a sufficiently adequate amount of informal discovery via the mediation process. Declaration of Gary F. Lynch (“Lynch Decl.”) ¶ 17, filed concurrently herewith. The information uncovered and reviewed by Co-Lead Counsel and Settlement Committee provided them with the information needed to objectively

evaluate the strengths and weaknesses of Plaintiff's and Settlement Class Members' claims. *Id.* ¶¶ 17, 28. Additionally, EY / BOA Security Incident is part of the larger MOVEit Security Incident that spawned hundreds of cases consolidated in the MDL. Co-Lead Counsel, who the Court appointed to manage the related actions in the MDL, has been informed by their investigations and litigation of those centralized actions. *Id.* ¶ 18. Co-Lead Counsel's and the Settlement Committee's experience representing plaintiffs and other data breach victims in the MDL provided further knowledge and background to guide their assessment of the reasonableness of the Settlement. *See, e.g., id.* ¶¶ 3–4, 17–18, 28.

The information received from Defendants and obtained in overseeing plaintiffs in the MDL, along with Settlement Committee's experience litigating data breach actions, provided counsel with sufficient information to evaluate the strengths and weaknesses of the claims and defenses in this case, and to assess the reasonableness of the Settlement. *Id.* ¶¶ 17–18. Based on the information available to the Parties, their respective experience in data breach litigation generally, and their experience in the MDL specifically, Co-Lead Counsel and the Settlement Committee believe the Settlement to be fair, reasonable, and adequate. *Id.* ¶ 29. Because the information shared via the mediation process informed the Parties about their respective litigation positions, this factor weighs in favor of final approval. *See, e.g., Holden*, 2024 WL 2845392, at \*5 (in a data breach settlement, recognizing that the parties adequately appreciated the merits of the case through their factual investigation and the mediation process even though the case settled prior to the parties engaging in formal discovery).

#### **D. The Risks of Establishing Liability and Damages.**

The fourth and fifth *Grinnell* factors evaluate the risks of establishing liability and damages. In assessing these factors, a court “need not decide the merits of the case, resolve unsettled legal questions, or attempt to predict the outcome.” *In re Namenda Direct Purchaser*

*Antitrust Litig.*, 462 F. Supp. 3d 307, 313 (S.D.N.Y. 2020). Rather, the Court should balance the benefits afforded to the Class, including the immediacy and certainty of recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463.

Here, while Plaintiff is confident that he has a strong case against Defendants, winning a judgment would require surmounting several legal hurdles, with a recovery at the end of the day being far from certain. *See In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at \*7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts”). This is especially so where, as here, Defendants categorically deny all allegations of wrongdoing and would have vigorously litigated the case had a settlement not been reached. Specifically, while the Court issued favorable rulings on the omnibus Rule 12(b)(1) motions (MDL Order No. 19 as amended by MDL Order No. 32 and ECF No. 1798) and later on the Rule 12(b)(6) motions filed by the Bellwether Defendants (MDL Order Nos. 22 & 23), had the Parties proceeded with litigation, Defendants would have likely argued that the Court’s 12(b)(6) orders are not applicable or instructive to the claims asserted against Defendants or Defendants likely would have raised additional arguments that the Court did not address in MDL Orders Nos. 22 and 23. In addition, there is the possibility that the Court would not certify a nationwide class. *See, e.g., In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389 (D. Mass. 2007) (denying class certification because necessity of individualized inquiries regarding causation, comparative negligence, and damages precluded a finding of predominance). And even if Plaintiff was successful in having a class certified, he risked a jury finding against himself and the Settlement Class on liability and/or damages. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at

\*10 (N.D. Ga. Mar. 17, 2020), *aff'd in part, rev'd in part and remanded*, 999 F.3d 1247 (11th Cir. 2021) (“The likelihood of success at trial is uncertain at best.”).

In addition, had the litigation continued, proving damages and liability would have likely required significant expert testimony and analysis. *See Carter*, 2023 WL 8153712, at \*5 (recognizing at final approval that had data breach case proceeded, “[e]xtensive and expensive expert analysis would be needed.”). Although Plaintiff believes that expert testimony would provide evidence sufficient to establish the measure of damages in this case, it is possible that, in the unavoidable “battle of experts,” a jury might disagree with Plaintiff’s expert, find Defendant’s expert more persuasive, or agree with the Plaintiff’s expert but award a reduced amount of damages to the Settlement Class. *In re Tyco*, 535 F. Supp. 2d at 260–61 (“[E]ven if the jury agreed to impose liability, the trial would likely involve a confusing ‘battle of the experts’ over damages. If, faced with conflicting expert testimony, the jury chose to embrace the most conservative estimate of damages, then the ultimate award might turn out to be less than the proposed settlement.”). As such, Plaintiff faced the risk of a non-monetary recovery for members of the Settlement Class even if he established Defendants’ liability.

In the face of these risks, and in Class Counsel’s experienced and realistic opinion, the Settlement provides immediate and substantial benefits to the Settlement Class. Lynch Decl. ¶¶ 22–26. As such, these factors favor final approval.

#### **E. The Risks of Maintaining the Class Action Through Trial.**

The sixth *Grinnell* factor considers the risks of maintaining the class action through trial. This factor weighs in favor of settlement where “it is likely that defendants would oppose class certification if the case were to be litigated.” *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019). Here, had litigation proceeded, Defendants would likely have opposed class certification, arguing that individual issues predominate over common issues or that the class

action device is not a superior form of adjudication. Further, even assuming that Plaintiff was successful in certifying a class, there is a risk that Defendants would ask the Court to reconsider or amend the certification decision, or appeal it, and the First Circuit would have discretion to consider interlocutory review under Rule 23(f). *See Roberts*, 2016 WL 8677312, at \*7. While Plaintiff is confident in the strength of his case, and that he would overcome Defendants' challenges to class certification, the opportunities where certification could fail nevertheless create a risk of delay, a risk of Plaintiff failing to prevail, and a risk that the Settlement Class would receive nothing. *See id.* This factor weighs in favor of final approval of the Settlement.

**F. The Ability of the Defendants to Withstand a Greater Judgment.**

The seventh *Grinnell* factor looks to the defendant's ability to withstand a greater judgment. Courts have found this factor is not dispositive and need not affect the conclusion that the settlement is within the range of reasonableness. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001); *see also In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 3:09CV1293 VLB, 2012 WL 3589610, at \*7 (D. Conn. Aug. 20, 2012) (a defendant is "not required to empty its coffers before a settlement can be found adequate"). This factor is relevant, however, where "judgment may risk bankruptcy or severe economic hardship." *Jermyn v. Best Buy Stores, L.P.*, No. 08 CIV. 214 CM, 2012 WL 2505644, at \*7 (S.D.N.Y. June 27, 2012).

Although Defendants may have the ability to withstand a greater judgment, the outstanding result—a \$2.5 million common fund settlement—compared to the risks and expenses attendant to conducting this litigation and the immediacy of the benefit to Settlement Class Members, weighs in favor of settlement. Accordingly, the Court should find the factor weighs in favor of approval, or, alternatively, "assign 'relatively little weight' to this factor." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 620–21 (S.D.N.Y. 2012).

**G. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation.**

The last two *Grinnell* factors are the range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation. These two factors are typically analyzed together. *See, e.g., In re Sturm*, 2012 WL 3589610, at \*7. The issue is not whether the settlement represents the best conceivable recovery, but how the settlement relates to the strengths and weaknesses of the case. *Grinnell*, 495 F.2d at 462. As such, courts consider and weigh the nature of the claims, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable. *Id.* Put differently, the focus is on whether the settlement “represents a reasonable one in light of the many uncertainties the class faces.” *Hall v. ProSource Techs., LLC*, No. 14-CV-2502 (SIL), 2016 WL 1555128, at \*8 (E.D.N.Y. Apr. 11, 2016).

As discussed above, Plaintiff faced numerous uncertainties, including certifying a class and maintaining class certification, establishing liability and damages, and ultimately receiving a recovery. On the other hand, the \$2.5 million Settlement for the approximately 198,000 Settlement Class Members provides substantial and immediate relief to compensate them for past injuries and the continued risk of harm. Such relief is similar to if not better than other data breach settlements that have received final approval. *See, e.g., Gravley v. Fresenius Vascular Care, Inc.*, No. CV 24-1148, 2025 WL 2099219, at \*1 (E.D. Pa. July 24, 2025) (granting final approval to data breach settlement that provided for reimbursement of out-of-pocket losses or an alternative cash payment); *In re Cap. One Consumer Data Sec. Breach Litig.*, No. 119MD2915AJTJFA, 2022 WL 18107626, at \*12 (E.D. Va. Sept. 13, 2022) (approving proposed allocation plan that allowed class members to submit claims for out-of-pocket losses, lost time, and credit monitoring services); *In re MOVEit Customer Data Sec. Breach Litig.*, No. 1:23-md-03083 (D. Mass.) (ECF No. 1432)

(similar); (ECF No. 1485) (similar); (ECF No. 1610) (similar); (ECF No. 1744) (similar); (ECF No. 1969) (similar); ECF No. 2037 (similar). Given the risks of continued litigation compared to the Settlement's substantial and immediate benefits, these factors also favor final approval, and, thus, the Court should find the Settlement falls within the range of reasonableness.

## **II. The Court Should Finally Certify the Settlement Class for Purpose of Settlement.**

In his motion for preliminary approval of the settlement, Plaintiff requested that the Court certify the Settlement Class for settlement purposes only so that notice of the Settlement, the Final Approval Hearing, and the rights of Settlement Class Members to object to the Settlement and request exclusion from the Settlement Class could be issued. For purposes of effectuating this Settlement, the Court should finally certify the Settlement Class. As mentioned in the Court's Preliminary Approval Order, dated April 29, 2026, the Court preliminarily certified the proposed Settlement Class (ECF No. 1804). The Settlement Class, as preliminary certified is:

All living persons in the United States whose Personally Identifying Information ("PII") was included in the files affected by the Security Incident.

*Id.* at ¶ 3. Since the Court's entry of the Preliminary Approval Order, nothing has changed to alter the propriety of the Court's preliminary certification of the Settlement Class for settlement purposes. Lynch Decl. ¶ 12. Thus, for all of the reasons stated in Plaintiff's Motion for Preliminary Approval (ECF Nos. 1794 & 1795) (incorporated herein by reference), Plaintiff respectfully requests that the Court affirm its preliminary certification and finally certify the Settlement Class for purposes of carrying out the settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and make a final appointment of Plaintiff as the class representative and Class Counsel as class counsel.

## **III. The Notice Program Satisfied Rule 23 and Due Process by Providing Settlement Class Members with Adequate Notice of the Settlement.**

Rule 23(e)(1)(B) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." Fed. R. Civ. P. 23(e)(1)(B). In addition,

“[f]or any class certified under Rule 23(b)(3) ... the court must direct to class members 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 Class Notice plan satisfied these requirements.

Here, following the Court’s approval of the Notice plan, the Settlement Administrator directed notice to the Settlement Class via direct mail and email notice. RG/2 Decl. ¶¶ 7–10. To ensure the Notice reached as many Settlement Class Members as possible, the Settlement Administrator performed reasonable email and physical address checks for the Short Form Notice. *Id.* ¶¶ 6, 9. Finally on September 14, 2026, the Settlement Administrator sent Reminder Notices via email to Settlement Class Members for whom a valid email address was available and the initial Email Notice was not returned as undeliverable, and who had not yet filed a Claim Form or requested exclusion from the Settlement. *Id.* ¶ 11. And no later than September 16, 2026, the Settlement Administrator will send Reminder Notices to Settlement Class Members for whom a valid email was not available. *Id.* ¶ 12. Courts have recognized that direct email and mail satisfy due process. *See Wright v. S. New Hampshire Univ.*, 565 F. Supp. 3d 193, 207 (D.N.H. 2021) (notice to class via direct email and mail notice “constitute[d] a reasonable manner of providing notice to those parties who would be bound by the terms of the proposed settlement agreement”); *Meaden*, 2023 WL 3529762, at \*4 (same).

Further, the Notice included important information about the Settlement, including how to opt out or object, where to find more information about the Settlement, and how to contact Class Counsel. RG/2 Decl. ¶ 15; Ex. A, C. Additionally, the Notice was designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Settlement Class Members. The design of the Notice followed principles embodied in the Federal Judicial Center’s

illustrative “model” notices posted at [www.fjc.gov](http://www.fjc.gov) and contained plain-language summaries of key information about Settlement Class Members’ rights and options. As required by Rule 23(e), the Notice generally described the Settlement in sufficient detail to alert Settlement Class Members to come forward to be heard, and contained all of the critical information required to apprise Settlement Class Members of their rights. RG/2 Decl. ¶ 21. Thus, the notice plan is adequate and provided sufficient detail to allow Settlement Class Members with adverse viewpoints to come forward and be heard. *See Hill v. State St. Corp.*, No. CIV.A. 09-12146-GAO, 2015 WL 127728, at \*14 (D. Mass. Jan. 8, 2015) (notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

The Federal Judicial Center states that a notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm.” Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges,” at 27 (3d ed. 2010).<sup>7</sup> The reach of 98% for this Notice plan far surpasses that threshold. The Notice to the Settlement Class here was the best notice that is practicable and is equivalent or superior to notice campaigns approved in similar class action settlements and in this MDL.

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court enter the proposed Final Approval Order and Final Judgement, filed herewith: (i) granting Final Approval of the Settlement; (ii) finally certifying the Settlement Class for purposes of settlement; and (iii) providing other such relief required to effectuate the Settlement.

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<sup>7</sup> This document is available at <https://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf>.

Dated: September 15, 2026

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, the foregoing document was filed electronically via the Court's CM/ECF system, which will send notice of the filing to all counsel of record.

Dated: September 15, 2026

/s/ Kristen A. Johnson  
Kristen A. Johnson (BBO# 667261)