

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

TOM STEEN, *individually and on behalf of all
others similarly situated*,

Plaintiff,

v.

THE NEW LONDON HOSPITAL
ASSOCIATION, INC.,

d/b/a New London Hospital and Newport Health
Center

Defendant.

Civil Action No. 217-2021-CV-00281

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

Plaintiff Tom Steen, individually and on behalf of others similarly situated ("Plaintiff"), hereby moves this Court to:

1. Preliminarily approve the settlement described in the "Settlement Agreement" between Plaintiff and Defendant The New London Hospital Association, Inc., d/b/a New London Hospital and Newport Health Center ("New London Hospital" or "Defendant"), and the attachments thereto. A true and correct copy of the Settlement Agreement ("Agreement" or "SA") is attached to the Memorandum in Support of Motion for Preliminary Approval as **Exhibit 2**. Included with the Agreement are the following sub-exhibits:

Exhibit A: Short-Form Notice

Exhibit B: Long-Form Notice

Exhibit C: Claim Form

Exhibit D: [Proposed] Preliminary Approval Order

Exhibit E: [Proposed] Final Approval Order

2. Conditionally certify the Settlement Class;
3. Appoint Plaintiff Tom Steen as Settlement Class Representative;
4. Appoint Gary M. Klinger and David K. Lietz of Milberg Coleman Bryson Phillips Grossman PLLC as Settlement Class Counsel;
5. Approve a customary Short-Form Notice to be mailed to Settlement Class Members (the “Short-Form Notice”) in a form substantially similar to that attached as Exhibit A to the Settlement Agreement;
6. Approve a customary long form notice (“Long-Form Notice”) to be posted on the Settlement Website in a form substantially similar to the one attached as Exhibit B to the Settlement Agreement;
7. Direct Notice to be sent to the Settlement Class Members in the form and manner proposed as set forth in the Settlement Agreement and Exhibits A and B thereto;
8. Appoint RG2 Settlement Administrators, LLC as Settlement Administrator;
9. Approve the use of a claim form substantially similar to that attached as Exhibit C to the Settlement Agreement; and
10. Set a hearing date and schedule for final approval of the Settlement and consideration of Settlement Class Counsel’s motion for award of fees, costs, expenses, and service awards.

This Motion is based upon: (1) this Motion; (2) the Memorandum in Support of the Unopposed Motion for Preliminary Approval of Class Action Settlement; (3) the Declaration of

Gary M. Klinger, filed herewith; (4) the Settlement Agreement; (5) the Notices of Class Action Settlement (including Long-Form and Short-Form Notices); (6) the Claim Form; (7) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (8) the [Proposed] Final Approval Order; (9) the records, pleadings, and papers filed in this action; and (10) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

DATED: July 11, 2022

Respectfully submitted,

TOM STEEN

/s/ Gary M. Klinger

Gary M. Klinger (admitted *pro hac vice*)

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Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I, Matthew V. Burrows, hereby certify that a copy of this motion was sent to counsel of record via the state court's e-filing system.

Dated: 7/11/22

By: /s/ Matthew V. Burrows
Matthew V. Burrows

STATE OF NEW HAMPSHIRE

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

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I. INTRODUCTION

This case arises from a cyber-security incident (the “Data Incident”) in which Plaintiff Tom Steen (“Plaintiff” or “Settlement Class Representative”) alleges Defendant The New London Hospital Association, Inc., d/b/a New London Hospital and Newport Health Center (“New London” or “Defendant,” and, together with Plaintiff, the “Parties”) allowed the security of his and Class Members’ personally identifiable information (“PII”) and private health information (“PHI”) to be compromised. Plaintiff alleges the compromised data included patient names, limited demographic information, Social Security numbers, and other protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). After extensive, arms’-length negotiations, Plaintiff and New London reached a Settlement¹ that provides significant relief for Plaintiff and the class members he seeks to represent (the “Settlement Class Members”). Because the Settlement is fair, reasonable, and adequate, it should be preliminarily approved by the Court and Notice should be provided to Class Members.

II. CASE SUMMARY

On May 18, 2021, Plaintiff filed a Class Action Complaint (“Complaint”) against New London. Index # 1. On July 30, 2021, New London moved to dismiss the Complaint. Index # 6. On September 20, 2021, Plaintiff filed a First Amended Class Action Complaint (the “First Amended Complaint”). Index # 19. According to the First Amended Complaint, New London experienced a targeted cyberattack and data breach, which resulted in the potential compromise of patients’ PII and PHI, including patient names, limited demographic information, Social Security numbers, and other protected health information as defined by the HIPAA. *Id.* In the First Amended Complaint, Plaintiff asserts claims for: (1) negligence; (2) breach of contract; (3) unjust

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

enrichment; (4) violation of the New Hampshire Consumer Protection Act, N.H. R.S.A §§ 358-A *et seq.*; and (5) violation of the New Hampshire Notice of Security Breach Act, N.H. R.S.A. §§ 359-C:20(I)(a) *et seq.* *Id.*

On October 25, 2021, New London filed its Answer to First Amended Complaint. ECF 22. New London denies all material allegations of the First Amended Complaint. *Id.* Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, New London has agreed to settle the Lawsuit, subject to Court approval.

This settlement came about as the result of protracted arms'-length negotiations that followed a mediation with a preeminent data breach mediator Bradley G. Picker of the firm, Stradley Ronon Stevens & Young, LLP. In the months following the execution of Proposed Settlement Terms, the Parties continued to negotiate finer points of the agreement and drafted the Settlement Agreement and accompanying Notice documents. The Settlement Agreement and the various exhibits ("SA") thereto were finalized and signed in June 2022.

III. SUMMARY OF SETTLEMENT

The Settlement negotiated on behalf of the class provides for two categories of relief for Settlement Class Members: (1) monetary compensation in the form of: (a) reimbursement of ordinary losses, including out-of-pocket expenses incurred as a result of the Data Incident and compensation for time spent mitigating the effects of the data breach, (b) a \$125.00 statutory benefit, and (c) for compensation for extraordinary losses; and (2) two (2) years of three bureau (3B) credit monitoring services. SA ¶¶ III.3.1(a) & 3.1(b). The credit monitoring offer will be included in the Notice mailed to Class Members and will allow Settlement Class Members to activate the credit monitoring after Final Approval by the Court. *Id.* ¶ III.3.3. The Settlement also

provides that New London shall provide Settlement Class Counsel information as to the security-related measures that it has implemented since the Data Incident. *Id.* ¶ III.3.3.

The Settlement Class is defined as “all persons New London identified as being among those individuals potentially impacted by the Data Incident, including all who were sent a notice of the Data Incident.” *Id.* ¶ I.1.29. The Settlement Class includes approximately 34,878 individuals.

A. Summary of Benefits

1. Monetary Compensation for Losses

Each Settlement Class Member will be eligible to receive reimbursement for documented monetary losses incurred by him or her as a result of the Data Incident. *Id.* ¶¶ III.3.1(a)-3.1(b). Specifically, each eligible Settlement Class Member may choose from all applicable claim categories below – Claim A (Compensation for Ordinary Losses), Claim B (Compensation for Statutory Losses), and Claim C (Compensation for Extraordinary Losses). *Id.* The overall compensation cap for any Settlement Class Member is \$500.00 for all amounts claimed in Claims A and B, and \$5,000.00 for all amounts claimed in Claim C. *Id.*

a. Claim A: Compensation for Ordinary Losses

Settlement Class Members will be eligible to receive compensation for unreimbursed ordinary losses for up to a total of \$500.00 per Settlement Class Member. *Id.* ¶ III.3.1(a). Ordinary losses may include: (i) out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel; (ii) fees for credit reports, credit monitoring, or other identity theft insurance product purchased between the date of the Data Incident and the close of the Claims Period; and (iii) up to 5 hours of

lost time, at \$20/hour, if at least one (1) full hour was spent dealing with the Data Incident, provided that the Settlement Class Member certifies that the lost time was spent in response to the Data Incident. *Id.*

b. Claim B: Compensation for Statutory Benefits

Settlement Class Members will be eligible to submit to receive a cash benefit in the amount of \$125.00 for settlement of the Class Members' New Hampshire statutory law claims. *Id.* ¶ III.3.1(b). This amount may be combined with a claim made under Claim A for reimbursement for lost time and ordinary out-of-pocket losses and is subject to the \$500.00 cap in Claim A. SA ¶¶ III.3.1(a)-3.1(b). The total amount of statutory benefits is capped at \$150,000.00, and payments made to Settlement Class Members shall be reduced on a pro rata basis according to the number of claims made if the total exceeds the overall \$150,000.00 cap. SA ¶ III.3.1(b).

c. Claim C: Compensation for Extraordinary Losses

Settlement Class Members will be eligible for compensation for extraordinary losses, including proven actual monetary losses where: (i) the loss is an actual, documented, and unreimbursed monetary loss arising from fraud or misuse; (ii) the loss from fraud or misuse was more likely than not caused by the Data Incident; (iii) the actual misuse or fraud loss is not already covered by one or more of the ordinary loss compensation categories under Claim A; (iv) the Settlement Class Member made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance; and (v) the actual misuse or fraud loss occurred between the date of the Data Incident and the Claims Deadline. SA ¶ III.3.1(c). The maximum amount any one claimant may recover under Claim C is \$5,000.00. *Id.*

2. Credit Monitoring

The second benefit offered to Settlement Class Members is two (2) years of three (3B) bureau credit monitoring services without requiring the filing of a Claim for monetary compensation. *Id.* ¶ III.3.2. The credit monitoring offer will be included in the Class Notice mailed to Settlement Class Members and will allow Settlement Class Members to activate the credit monitoring after Final Approval by the Court. New London will pay for the credit monitoring services separate and apart from other settlement benefits. *Id.* ¶ III.3.3.

The value of this benefit to the Settlement Class is enormous. The least expensive three-bureau credit monitoring product available in the retail marketplace today costs \$9.95 per month. Using the least expensive product available on the market, the value of this benefit is \$238.80 per class member, and every Settlement Class Member can claim this benefit. With 34,878 Class Members, this settlement benefit has a potential value of over \$8.3 million dollars.

3. Business Practice Changes

Plaintiffs also negotiated for and received commitments from New London that will ensure that the Settlement Class Members' confidential data is protected going forward. S.A. ¶ III.3.3. New London agrees to provide Settlement Class Counsel with a confidential declaration or affidavit outlining the alleged security-related issues involved in the Data Incident and attesting that security-related measures have been implemented to remediate said security-related issues. New London has paid such remedial costs separate and apart from other settlement benefits. *Id.* ¶ III.3.3.

4. Release

The release in this case is tailored to the claims that have been pleaded or could have been pleaded in this case. *Id.* ¶¶ XIII.13.1-8. Settlement Class Members who do not opt-out from the Settlement Agreement will release claims related to the Data Incident. *Id.* ¶¶ VI.6.5-7.

B. Notice and Claims Process

1. Notice

New London has agreed to pay for the cost of providing Notice, separate and apart from the benefits to the Settlement Class Members. *Id.* ¶ IV.4.1. The Parties agreed to use RG2 Settlement Administration, LLC (“Settlement Administrator”) as the Claims and Settlement Administrator. *Id.* ¶ IV.4.2.

Within thirty (30) Days of entry of the Preliminary Approval Order (the “Notice Deadline”), the Settlement Administrator shall send the Short-Form Notice to all Settlement Class Members whose addresses are known to New London via First Class U.S. Mail. *Id.* ¶ V.5.3.

No later than thirty (30) Days following the Preliminary Approval Order and engagement of RG2, and prior to the mailing of the Short-Form Notice, RG2 will establish and maintain a dedicated Settlement Website. *Id.* ¶ V.5.7. Subject to the approval of the Court, RG2 will make available the Complaint, the Short-Form Notice, the Long-Form Notice (the “Long-Form Notice”) (S.A. Exhibit B), the Claim Form (S.A. Exhibit C), and the Settlement Agreement on the Settlement Website. *Id.* The website address and the fact that the Long-Form Notice and a Claim Form (S.A. Exhibit C) are available through the Settlement Website will be included in the Notice mailed to Settlement Class Members. *Id.* The Short-Form Notice provides clear, concise information about the Settlement. *Id.* Ex. A. The Long-Form Notice explains the terms of the Settlement Agreement and provides contact information for proposed Settlement Class Counsel,

understandable information about the Settlement, including explanations for the different options available to Settlement Class Members. S.A. Ex. B. The Settlement Website will be maintained and updated until thirty (30) Days after the Claim Deadline has passed. *Id.* ¶ V.5.8.

Claim Forms shall be returned or submitted to the Settlement Administrator via U.S. Mail or through the Settlement Website by the Claim Deadline set by the court or be forever barred. *Id.* V.5.9.

2. Claims

The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim or decide whether they would like to opt-out or object. Settlement Class Members will have no more than ninety (90) Days from the date Notice is mailed to the Settlement Class Members to complete and submit a claim to the Settlement Administrator. *Id.* ¶ I.1.1; *see generally* IV.4.1-4.14. The Claim Form, attached to the Settlement Agreement as Exhibit C, is written in plain language to facilitate Settlement Class Members' ease in completing it. *Id.* Ex. C.

3. Requests for Exclusion and Objections

To be timely, Settlement Class Members will have up to and including ninety (90) Days from the Preliminary Approval Order (the "Objection Date") to decide whether to object to or exclude themselves from the Settlement. *Id.* ¶ VII.7.2. Similar to the timing of the claims process, the timing with regard to objections and exclusions is structured to give Settlement Class Members sufficient time to review the Settlement documents—including Plaintiff's Motion for Attorneys' Fees, Costs, and Service Fee, which will be filed fourteen (14) Days prior to the deadline for Settlement Class Members to object or exclude themselves from the settlement. *Id.* ¶ VIII.8.3.

a. Requests for Exclusion

Any Class Member wishing to opt out of the Settlement Class must personally sign and timely submit, complete, and mail a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address set forth in the Notice. *Id.* ¶ VII.7.2. To be effective, an Opt-Out Request must be postmarked no later than the final date of the Opt-Out Period. *Id.* The Settlement Class Member shall individually sign and timely submit written notice of such intent to the Settlement Administrator designated in the Long-Form Notice and Settlement Website. *Id.* Ex. B.

A written opt-out notice must include: (a) state his or her full name, address, and telephone number; (b) contain the Settlement Class Member’s personal and original signature (or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a power of attorney to act on behalf of the Settlement Class Member with respect to a claim or right, such as those in the Action); and (c) state unequivocally the Settlement Class Member’s intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. *Id.* ¶ VI.6.4. The Parties will recommend to the Court that the Opt-Out Period be the ninety (90) Day period beginning upon the entry of the Preliminary Approval Order. *Id.* ¶ VI.6.3. An Opt-Out Request or other request for exclusion that does not fully comply with these requirements, that is not timely postmarked, or that is sent to an address other than that set forth in the Notice, will be invalid, and the Settlement Class Member will be bound by the Settlement Agreement, including the Release, and any judgment thereon. *Id.* ¶ VI.6.6.

Settlement Class Members who opt-out of the class shall not be eligible to receive any Settlement Benefits and shall not be bound by the terms of the Settlement Agreement. *Id.* ¶ VI.6.5. They also waive and forfeit any and all rights they may have to object to the Settlement or to participate at the Final Approval Hearing. *Id.*

No Settlement Class Member may purport to exercise any exclusion rights of another or to: (a) opt out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt out more than one Settlement Class Member on a single paper, or as an agent or representative. *Id.* ¶ VI.6.7. Any such Opt-Out Requests will be deemed void and the Settlement Class Member(s) shall be treated as Settlement Class Member(s) and be bound by the Settlement Agreement and Final Order and Judgment, unless he or she submits a valid, timely Opt-Out Request. *Id.*

b. Objections

Any Settlement Class Member who wishes to object to the Settlement Agreement may submit a timely, written notice of his or her objection (“Objection”) within ninety (90) Days from the Preliminary Approval Date (the “Objection Date”). *Id.* ¶ VII.7.2.

The Objections shall (i) state the objecting Settlement Class Member’s full name, current address, telephone number, and email address (if any); (ii) contain the objecting Settlement Class Member’s original signature; (iii) set forth information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (e.g., copy of the Notice or copy of original notice of the Data Incident); (iv) set forth a statement of all grounds for the objection, including any legal support for the objection that the objector believes applicable; (v) identify all counsel representing the objector; (vi) state whether the objector and/or his or her counsel will appear at the Final Approval Hearing, and; (vii) contain the signature of the objector’s duly authorized attorney or other duly authorized representative (if any), along with documentation setting forth such representation. *Id.* ¶ VII.7.1.

In each case, the Objection must be served concurrently therewith upon Settlement Class Counsel, David Lietz, Milberg Coleman Bryson Phillips Grossman, PLLC, 5335 Wisconsin Avenue NW, Suite 440, Washington, DC 20015, dlietz@milberg.com, and counsel for New

London, Mark A. Olthoff, Esq. Polsinelli PC, 900 W. 48th Place, Suite 900, Kansas City, MO 64112, molthoff@polsinelli.com. *Id.* VII.7.2.

4. Fees, Costs, and Service Awards

New London has agreed to pay, subject to Court approval, up to \$300,000.00 to proposed Settlement Class Counsel for combined attorneys' fees and costs. *Id.* ¶ 8.2. Proposed Settlement Class Counsel will submit a separate motion seeking Plaintiff's Service Award, Attorneys' Fees, and Costs (fourteen) 14-Days prior to Settlement Class Members' deadline to exclude themselves from the Settlement Class or to object to the Settlement Agreement. *Id.* ¶ VIII.8.3. New London has agreed to pay the attorney's fees and costs to proposed Settlement Class Counsel, in addition to any benefits provided to Settlement Class Members and the costs of settlement administration. *Id.* ¶ VIII.8.3. This amount was negotiated after the primary terms of the settlement were negotiated. *See* Klinger Decl. ¶ 10.

New London has agreed to pay a reasonable Service Award not greater than \$1000.00, subject to approval of the Court. *Id.* ¶ VIII.8.1. The Service Award is meant to recognize Plaintiff for his efforts on behalf of the Settlement Class, including assisting in the investigation of the case, reviewing the pleadings, remaining available for consultation throughout the mediation and settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement. *See* Klinger Decl. ¶ 5. The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or a Service Award to Plaintiff until after the substantive terms of the settlement had been agreed upon. *See* Klinger Decl. ¶ 10. The Service Award was separate and apart from any other sums agreed under the Settlement and the amount was negotiated after the primary terms of the Settlement was negotiated. *See* Klinger Decl. ¶ 10.

IV. LEGAL AUTHORITY

The approval of a class action settlement is a two-step process. First, the Court must conduct a preliminary review to determine whether the proposed class settlement “is within the range of possible approval.” *Fresco v. Auto Data Direct, Inc.*, 2007 WL 2330895, at *4 (S.D. Fla. May 11, 2007) (internal citations omitted); *see also Scott v. First American Title Ins. Co.*, No. 06-cv-286-JD, 2008 WL 4820498, at *3 (D. N.H. Nov. 5, 2008) (citing *State Employees’ Ass’n of N.H. v. Belknap County*, 122 N.H. 614, 623-24 (1982)) (evaluating preliminary class certification issue first and fairness, adequacy, and reasonableness of proposed settlement issue second);² *Hawkins v. Commissioner of the New Hampshire Dep’t of Health & Human Services*, No. Civ. 99-143-JD, 2004 WL 166722, at *1 (D. N.H. Jan. 23, 2004) (“Prior to addressing the proposed settlement, however, the court must determine whether the plaintiff class, as agreed to by the parties, may be certified for purposes of the settlement.”); *Manual for Complex Litigation*, Sec. 30.41 (3rd ed. 1995). This first step involves both preliminary certification of the class and an initial assessment of the proposed settlement. *See Fresco*, 2007 WL 2330895, at *4. It is only after a court has preliminarily approved a settlement, and notice has been provided to the class, that the Court makes a final determination of the fairness, adequacy, and reasonableness of a settlement. *See generally Hawkins*, No. Civ. 99-143-JD, 2004 WL 166722.

There is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation. *See In re Lupron Marketing & Sales Practice Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005) (“[T]he law favors class action settlements.”); *Coella v. Univ.*

² Since Rule 27-A has been found to be “substantially similar” to Federal Rule of Civil Procedure 23 (“Rule 23”), federal case law has been used as an “analytic aid” in construing Rule 27-A. *See Cantwell v. J. & R. Properties Unlimited, Inc.*, 155 N.H. 508, 511 (2007); *see also In re Bayview Crematory, LLC*, 155 N.H. 781, 784 (2007). Federal case law has also been used as an “analytic aid” in construing Rule 16, in the absence of state law on the subject. *See Eby v. State of New Hampshire*, 166 N.H. 321, 340-41 (2014); *see generally Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Ass’n*, No. 2017-0427, 2018 WL 174987, at *2 (N.H. 2018). As such, this Memorandum of Points and Authorities will rely on federal case law construing Rule 23 as well.

of Pittsburg, 569 F. Supp. 2d 525, 530 (W.D. Penn. 2008) (“The strong public policy and high judicial favor for negotiated settlements of litigation is particularly keen ‘in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.’” (quoting *In re General Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab.*, 55 F.3d 768, 784 (3d Cir. 1995)). Class action settlements ensure class members recover a benefit, as opposed to the “mere possibility of recovery at some indefinite time in the future.” *In re Domestic Air Transp.*, 148 F.R.D. 297, 306 (N.D. Ga. 1993).

V. ARGUMENT

A. Certification of the Class Is Warranted

Plaintiff brings this motion pursuant to New Hampshire Superior Court Civil Rule 16(k), under which court approval is required to finalize a class action settlement. Prior to granting preliminary approval of a proposed settlement, the Court should first determine if the proposed settlement class is appropriate for certification. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620-32 (1997); *Manual for Complex Litigation.*, Sec. 21.632 (4th ed. 2013). Class certification is proper if the proposed class, proposed class representative, and proposed class counsel satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 16. *See* N.H. Super. Ct. R. 16(a)(1)-(4). Additionally, the class action must be “superior to other available methods for the fair and efficient adjudication of the controversy,” and Settlement Class Counsel must “adequately represent the interests of the class.” N.H. Super. Ct. R. 16 (a)(5)-(6).

“A class may be certified ‘solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.’” *Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 WL 10167232, at *1 (S.D. Fla. Oct. 7, 2013) (quoting *Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1314 (S.D. Fla. 2005); *see also In re Power Razor*

System Marketing & Sales Practice Litig., 270 F.R.D. 45, 54 (D. Mass. 2010) (“The fact that class certification is requested only for the purpose of settlement is no barrier to certification.”). When a court is considering certification only in the context of settlement, the court’s evaluation is somewhat different than in a case that has not yet settled. *See Amchem Prods., Inc.*, 521 U.S. at 620-21. In some ways, the court’s review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id.* Other certification issues, however, such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions,” require heightened scrutiny and an active role as a guardian of the interests of the absent class members. *Id.*; *see also Jean-Pierre v. J. & L. Cable Servs. Co.*, 538 F. Supp. 3d 208, 221 (D. Mass. 2021) (“When a settlement class is proposed, it is incumbent on the district court to give heightened scrutiny to the requirements of Rule 23 in order to protect absent class members.”). “Confronted with a request for settlement-only class certification, a . . . court not need to inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there would be no trial.” *Amchem Prods., Inc.*, 521 U.S. at 620. Even under the heightened scrutiny, this case meets all the Rule 16 prerequisites, and, for the reasons set forth below, certification is appropriate.

Class actions are regularly certified for settlement. In fact, similar cybersecurity incident cases have been certified—on a *national* basis. *See, e.g., In re Marriott Int’l, Inc., Customer Data Sec. Breach Litig.*, No. 19-MD-2879, 2022 WL 1396522, at *1 (D. Md. May 3, 2022) *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1274-75 (11th Cir. 2021); *In re Brinker Data Incident Litig.*, No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508, at *1 (M.D. Fla. Apr. 14, 2021); *In re Target*, 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Sys., Inc. Customer*

Data Sec. Breach Litig., 851 F. Supp. 2d 1040 (S.D. Tex. 2012). This case should be similarly certified, and the settlement similarly approved.

1. The Proposed Settlement Class Meets the Requirements of Rule 16(a)

- a. *The class is so numerous that joinder of all members is impracticable.*

Numerosity requires the members of the class to be so numerous that separate joinder of all members is impracticable. *See* N.H. Super. Ct. R. 16(a)(1). To demonstrate numerosity, “plaintiffs need not prove that joinder is impossible; rather, plaintiffs ‘need only show that it would be extremely difficult or inconvenient to join all members of the class.’” *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 557 (N.D. Ga. July 20, 2007), *quoting* *Anderson v. Garner*, 22 F. Supp. 2d 1379, 1384 (N.D. Ga.1997).

Here, the Parties have identified approximately 34,878 people in the proposed Settlement Class. Joinder of so many parties would certainly be impracticable. *See In re Puerto Rico Cabotage Antitrust Litig.*, 269 F.R.D. 125, 130 (D. Puerto Rico 2010) (holding that joinder of at least 3,000 affected customers in defendant’s alleged conspiracy would clearly be impracticable). Thus, the numerosity requirement is easily satisfied.

- b. *Questions of law and fact common to the class predominate over any questions affecting only individual members.*

Rule 16(a)(2) requires that “[t]here are questions of law or fact common to the class which predominate over any questions affecting only individual” class members. *See* N.H. Super. Ct. R. 16(a)(2). Rule 16(a)(2) is a combination of the “commonality” requirement in Federal Rule of Civil Procedure 23(a)(2) and the “predominance” requirement in Federal Rule of Civil Procedure 23(b)(3). *See In re Bayview Crematory, LLC*, 155 N.H. at 785 (interpreting Rule 27-A(a)(2)’s commonality requirement).

i. Commonality Requirement

Questions of law or fact common to the class exist. “Satisfying commonality requires meeting a relatively low threshold.” *Id.*; see also *In re M3 Power Razor Sys. Marketing & Sales Practice Litig.*, 270 F.R.D. 45, 54 (D. Mass. 2010) (“The threshold for commonality under Rule 23(a)(2) is not high.”). The requirement is satisfied if a plaintiff can demonstrate that questions of law or fact are common to the class. See *In re Hannaford Bros. Co. Customer Data Breach Litig.*, 293 F.R.D. 21, 26 (D. Maine 2013); see also Conte & H. Newberg, *Newberg on Class Actions* § 3:10, at 274, 277 (4th ed. 2002)). The claims of the class ““must depend upon a common contention . . . that it is capable of class-wide resolution—which means 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.”” *Id.* (quoting *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011)). A plaintiff can demonstrate commonality where the class members have suffered the same injury inflicted by a defendant’s conduct such that their claims can be productively litigated at once. See *Sellers v. Rushmore Loan Mgmt. Servs., LLC*, 949 F.3d 1031, 1039 (11th Cir. 2019)).

Courts have previously addressed this issue in the context of cybersecurity incident class actions and found it readily satisfied. See *In re Hannaford Bros. Co. Customer Data Breach Litig.*, 293 F.R.D. at 26; see also *In re the Home Depot, Inc., Cust. Data Sec. Breach Litig.*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding that multiple common issues center on the defendant’s conduct, satisfying the commonality requirement); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 308 (N.D. Cal. Aug. 15, 2018) (noting that the complaint contains a common contention capable of class-wide resolution—one type of injury claimed to have been inflicted by one actor in violation of one legal norm).

Here, the commonality requirement is readily satisfied, as Plaintiff and the Settlement Class Members all have common questions of law and fact that arise out of the same event—the

Data Incident. Specifically, Plaintiff has alleged that the following questions of law and fact are common to the class:

- i. Whether New London Hospital unlawfully used, maintained, lost, or disclosed Plaintiff's and the Settlement Class Members' Private Information;³
- ii. Whether New London Hospital failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the cyberattack and Data Incident;
- iii. Whether New London Hospital's data security systems prior to and during the cyberattack and Data Incident complied with applicable data security laws and regulations, e.g., HIPAA;
- iv. Whether New London Hospital's data security systems prior to and during the Data Incident were consistent with industry standards;
- v. Whether New London Hospital owed a duty to Settlement Class Members to safeguard their Private Information;
- vi. Whether New London Hospital breached its duty to Settlement Class Members to safeguard their Private Information;
- vii. Whether computer hackers and data thieves obtained Settlement Class Members' Private Information in the Data Incident;

³ "Private Information" is defined in the First Amended Class Action Complaint as information compromised in the Data Incident, which includes PII, PHI, which includes patient names, limited demographic information, Social Security numbers, other protected health information defined by HIPAA.

- viii. Whether New London Hospital knew or should have known that its data security systems and monitoring processes were deficient;
- ix. Whether New London Hospital owed a duty to provide Plaintiff and Settlement Class Members notice of the Data Incident, and whether it breached that duty to provide timely notice;
- x. Whether Plaintiff and Settlement Class Members suffered legally cognizable damages as a result of New London's misconduct;
- xi. Whether New London Hospital's conduct was negligent;
- xii. Whether New London Hospital's conduct violated federal law;
- xiii. Whether New London Hospital's conduct violated state law; and
- xiv. Whether Plaintiff and Settlement Class Members are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

As in other cybersecurity incident cases, these common issues all center on New London's conduct, or other facts and law applicable to all class members, thus, satisfying the commonality requirement. *See, e.g., In re Countrywide Fin. Corp. Cust. Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *3 (W.D. Ky. Dec. 22, 2009) ("All class members had their private information stored in Countrywide's databases at the time of the data breach"); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) ("Answering the factual and legal questions about Heartland's conduct will assist in reaching class wide resolution.").

ii. Predominance Requirement

Common issues predominate over individualized ones. "To satisfy the predominance test, the issues common to the proposed class must outweigh the issues that are particular to the individual class members." *In re Bayview Crematory, LLC*, 155 N.H. at 785. The purpose of the

predominance test is to promote the economies of time, effort, expense, and uniformity of decision as to class members. *See id.* (citing *In re Nassau County Strip Search Cases*, 461 F.3d 219, 225 (2d Cir. 2006)). To achieve these goals, the trial court must “consider how the case will be tried by identifying the substantive issues that will control the outcome of the case, assessing which issues will predominate, and determining whether those issues are common to the class.” *Id.*

Substantive issues that will control the outcome of the case which are common to the class predominate here because the central liability question in this case—whether New London failed to safeguard Plaintiff’s information, like that of every other Settlement Class Member—can be established through generalized evidence. *See Mund v. EMCC, Inc.*, 259 F.R.D. 180, 186 (D. Minn. 2009) (The requirement is satisfied “‘when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since proof obviates the need to examine each class member's individual position.’” (quoting *Sonmore v. CheckRite Recovery Servs., Inc.*, 206 F.R.D. 257, 260 (D. Minn. 2001))). Several case-dispositive questions could be resolved identically for all Settlement Class Members, such as whether New London had a duty to exercise reasonable care in safeguarding, securing, and protecting the personal information of Plaintiffs and Settlement Class Members and whether New London breached that duty. The many common questions of fact and law that arise from New London’s conduct predominate over any individualized issues.

Other courts have recognized that these types of common issues arising from a cybersecurity incident predominate over individualized issues. *See, e.g., In re Countrywide Fin. Corp.*, 2009 WL 5184352, at *6 (finding predominance where proof would focus on data breach defendant’s conduct both before and during the theft of class members’ personal information); *In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig.*, 851 F.Supp.2d 1040, 1059 (S.D.

Tex. 2012) (finding predominance where “several common questions of law and fact ar[ose] from a central issue: Heartland’s conduct before, during, and following the data breach, and the resulting injury to each class member from that conduct”).

c. The claims and defenses of Plaintiff are typical of the claims and defenses of the class.

Typicality measures whether the claim or defense of the representative party is typical of the claim or defense of each member of the class. *See* N.H. Super. Ct. R. 16(a)(3). The requirement of typicality “‘does not require that all putative class members share identical claims.’” *Natchitoches Parish Hosp. Svc. Dist. v. Tyco Int’l, Ltd.*, 247 F.R.D. 253 264 (D. Mass. 2008) (quoting *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 531 (3d Cir. 2004)). Rather, “a plaintiff” claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.” *Id.* (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1082 (6 Cir. 1996)). Like the commonality requirement, typicality does not require all putative class members share identical claims; factual differences amongst the claims will not necessarily defeat certification. *See Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004). The named representatives need only share the same “essential characteristics” of the larger class. *See id.* The typicality requirement is regularly met in data breach class actions. *See In re Equifax Inc. Cust. Data Sec. Breach Litig.*, 2020 WL 256132, at *12.

Here, the typicality requirement is satisfied for the same reasons that Plaintiff’s claims meet the commonality requirement. Specifically, Plaintiff’s claims are typical of those of other Settlement Class Members because they arise from the same Data Incident. They are also based on the same legal theory, *i.e.*, that Defendant had a legal duty to protect Plaintiff’s and Settlement

Class Members' personal information. Because Plaintiff's claims and the claims of the Settlement Class Members are the same, and Plaintiff's claim arises from the same event that gives rise to the claims of the Settlement Class Members, the typicality requirement is satisfied.

d. Plaintiff will fairly and adequately protect the interests of the class.

Plaintiff will fairly and adequately protect the interests of the class. *See* N.H. Super. Ct. R. 16(a)(4). Plaintiff is a Settlement Class Member and does not possess any interests antagonistic to the class. *See In re Hannaford Bros. Co. Customer Data Breach Litig.*, 293 F.R.D. at 29 (holding there should be no potential conflict of interest between named plaintiff and the putative class members). He provided his personal information to New London and alleges that his personal information was compromised because of the Data Incident, as the personal information of the Settlement Class Members was also allegedly compromised. Indeed, Plaintiff's claims coincide identically with the claims of the Settlement Class Members, and Plaintiff and the Settlement Class Members desire the same outcome of this litigation. Plaintiff has vigorously prosecuted this case for the benefit of all Settlement Class Members. Plaintiff has participated in the litigation, reviewed pleadings, and participated in the factual investigation of the case.

e. Class treatment is superior to individual litigation.

Class treatment is superior to other methods available for the fair and efficient adjudication of the controversy. *See* N.H. Super. Ct. R. 16(a)(5). A superiority analysis involves an examination of "the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). The focus is efficiency. *See In re Equifax, Inc. Cust. Data Sec. Breach Litig.*, 2020 WL 256132, at *14.

Here, resolution of numerous claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. Indeed, absent class treatment, each Settlement Class Member will be required to present the same or essentially the same legal and factual arguments, in separate and duplicative proceedings, the result of which would be a multiplicity of trials conducted at enormous expense to both the judiciary and the litigants. Moreover, there is no indication that Settlement Class Members have an interest in individual litigation or an incentive to pursue their claims individually, given the amount of damages likely to be recovered, relative to the resources required to prosecute such an action. *See Dickens v. GC Servs. Ltd. P'ship*, 706 F. App'x 529, 538 (11th Cir. 2017) (describing “the ways in which the high likelihood of a low per-class-member recovery militates in favor of class adjudication”).

Additionally, the proposed Settlement will give the Parties the benefit of finality, and because this case has now been settled pending Court approval, the Court need not be concerned with issues of manageability relating to trial. Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating tens of thousands of individual data breach cases arising out of the *same* Data Incident.

f. Settlement Class Counsel will adequately represent the interests of the class.

Settlement Class Counsel will adequately represent the interests of the Settlement Class Members. *See* N.H. Super. Ct. R. 16(a)(6). Counsel chosen by the named class representative must be “qualified, experienced, and able to vigorously conduct the proposed litigation.” *See In re Hannaford Bros. Co. Customer Data Breach Litig.*, 293 F.R.D. at 29-30. Settlement Class Counsel has the necessary qualifications and experience and can vigorously conduct the litigation. Settlement Class Counsel has extensive experience in class actions generally and in cybersecurity incident cases, in particular. *See* Klinger Decl., Ex. ¶¶ 17-32. Because Plaintiff and his counsel

possess substantial experience and track records in similar litigation and have vigorously prosecuted the case at hand to get the best result for Plaintiff and Settlement Class Members, the adequacy requirement is satisfied. As the adequacy of class counsel requirement is satisfied, along with all other requirements of Rule 16, the Court should certify the Settlement Class in the settlement context.

B. Plaintiff's Counsel Should Be Appointed Settlement Class Counsel

“Generally, a court must appoint class counsel when a class is certified.” *Scott*, 2008 WL 4820498, at *2. The court must determine that class counsel will “fairly and adequately represent the interests of the class.” *Id.* (quoting Fed. R. Civ. P. 23(g)(1)-(2) & (4)). As discussed above, and as fully explained in Settlement Class Counsels’ declaration, proposed Settlement Class Counsel have extensive experience prosecuting similar class actions and other complex litigation. *See Klinger Decl.*, ¶¶ 17-32. Further, proposed Settlement Class Counsel have diligently investigated and prosecuted the claims in this matter, have dedicated substantial resources to the investigation and litigation of those claims, and have successfully negotiated the Settlement of this matter to the benefit of Plaintiff and the Settlement Class Members. *See generally Klinger Decl.* Accordingly, the Court should appoint Gary M. Klinger and David K. Lietz as Settlement Class Counsel.

C. The Proposed Settlement Should Be Preliminarily Approved Because it is Fair, Reasonable, Adequate, and Free of Collusion

After determining that certification of the Class is appropriate, the court must determine whether the Settlement Agreement itself is worthy of preliminary approval and of providing notice to the class. Preliminary approval of a settlement of a class action may be given if the court determines that the settlement is “fair, reasonable, and adequate.” *Scott*, 2008 WL 4820498, at *3; *see also In re Pharmaceutical Ind. Average Wholesale Price Litig.*, 588 F.3d 24, 32 (1st Cir.

2009); *City P'ship Co. v. Atl. Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996). “If the proposed settlement appears to meet the standard of being fair, reasonable, and adequate, it may be approved, preliminarily, as within the range of possible approval.” *Scott*, 2008 WL 4820498, at *3. There is a presumption that a negotiated settlement is within the range of reasonableness “[w]hen sufficient discovery has been provided and the parties have bargained at arms-length.” *City P'ship Co.*, 100 F.3d at 1043 (citing *U.S. v. Cannons Eng'g Corp.*, 720 F. Supp. 1027, 1036 (D. Mass. 1989)).

To determine whether a proposed class action settlement is fair, reasonable, and adequate, the Court should make a “detailed assessment of the terms of the settlement, the interests of the class members[,] as well as any third parties that might be affected by the settlement, and the circumstances of the litigation and the proposed settlement.” *Hawkins*, 2004 WL 166722, at *5. The Court should consider the *Grinnell* factors when assessing whether a proposed settlement is fair, reasonable, and adequate: “(1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of defendants to withstanding a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund in light of all of the attendant risks of litigation.” See *In re StockerYale, Inc. Securities Litig.* No. 1:05-cv-00177-SM, 2007 WL 4589772, at *3 (D. N.H. Dec. 18, 2007) (quoting *Detroit v. Grinnell*, 495 F.2d 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 43 (2d Cir. 2000)); see also *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534-35 (3d Cir. 2004) (applying the *Grinnell* factors to the fairness, reasonableness, and adequacy analysis); *In re Lupron*

Marketing & Sales Practices Litig., 228 F.R.D. 75, 93 (D. Mass. 2005) (holding that, in the absence of First Circuit precedent establishing the fairness of a settlement, the district court would adopt the Second Circuit’s *Grinnell* factors for determining fairness, reasonableness, and adequacy); *but see In re Puerto Rico Cabotage Antitrust Litigation*, 269 F.R.D. at 140 (adopting the Third Circuit’s factors for determining fairness, reasonableness, and adequacy); *Hawkins*, 2004 WL 166722, at *5 (adopting different eight-factor test for determining fairness, reasonableness, and adequacy).

Here, when preliminarily considering these factors examined in depth at final approval, there is no question that the proposed Settlement is well “within the range of possible approval” as fair, reasonable, and adequate, and should be approved. While the Court cannot yet consider class approval before Notice has been provided, an initial examination of the merits of the case, risks of litigation, and the benefits obtained by the Settlement Agreement support preliminary approval.

a. The complexity, expense, and likely duration of the litigation

Cybersecurity incident litigation is lengthy, complex, and difficult, and the rapid evolution of case law in this area of the law makes outcomes uncertain. At present, cybersecurity incident cases are among the riskiest and indefinite of all class action litigation, making the expense of litigation high and settlement of these cases the more sensible course of action, if the Parties are able to reach a settlement. *See Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and complex.”).

While early settlement has allowed costs to stay modest, and the Settlement Agreement provides for such costs to be paid for separate and apart from the funds

available to the class—protracted litigation would only serve to increase costs and have a potentially negative affect on class recovery, which is itself far from certain. Continued litigation would also increase the burden on the court, without any guaranteed benefit to Plaintiff or Settlement Class Members. “Complex litigation . . . ‘can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.’” *Woodward v. NOR-AM Chem. Co.*, No. Civ-94-0870, 1996 WL 1063670 *21 (S.D. Ala. May 23, 1996) (quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992)). Where a settlement, like here, “will alleviate the need for judicial exploration of . . . complex subjects [and] reduce litigation costs” this factor weighs in favor of approval. *Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005).

b. The reaction of the class to the settlement

Plaintiff has no reason to believe there will be opposition to the Settlement. This factor, however, is better considered after Notice has been provided to the Settlement Class Members, and they are given the opportunity to object. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. at 545, 561 (N.D. Ga. 2007). Thus, at this point, this factor is neutral in the analysis.

c. The stage of proceedings and the amount of discovery completed

i. The stage of proceedings

This Settlement is the result of protracted, arms'-length negotiations between the Parties. The Parties participated in a mediation with esteemed mediator Bradley G. Picker of the firm, Stradley Ronon Stevens & Young, LLP. *See Klinger Decl.* ¶ 8. On April 7, 2022, the Parties engaged in the mediation. The Parties were able to reach an agreement on all the principal terms of settlement for this matter, subject to final mutual agreement on all necessary documentation.

See id. ¶ 8. Settlement Class Counsel has successfully negotiated the Settlement of this matter to the benefit of Plaintiff and the Settlement Class Members. *See id.* ¶ 8. In the months following the execution of Proposed Settlement Terms, the Parties continued to negotiate finer points of the agreement and drafted the Settlement Agreement and accompanying notice documents. *See id.* ¶ 8. The Settlement Agreement was finalized and signed in June 2022.

ii. The amount of discovery completed

The Parties were “sufficiently informed” by the discovery which has occurred in the case. *In re Puerto Rican Cabotage Antitrust Litig.*, 269 F.R.D. at 141. Vast formal discovery is not a requirement. *See Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977). This case, though at an early stage when settled, has been thoroughly investigated by counsel experienced in cybersecurity incident litigation, and the Parties formally and informally exchanged discovery in this matter. *See Klinger Decl.*, ¶ 4. Settlement Class Counsel has diligently investigated and prosecuted the claims in this matter, has dedicated substantial resources to the investigation and litigation of those claims, and has successfully negotiated the Settlement of this matter to the benefit of Plaintiff and the Settlement Class Members. *See id.* Klinger Decl. ¶ 6.

Counsel’s experience and investigation, combined with the informal exchange of information that occurred prior to and during negotiations, put Plaintiff in a position to proficiently evaluate the case and negotiate a settlement he views as fair, reasonable, and adequate, and worthy of preliminary approval. *See id.* ¶¶ 16, 33, 35.

d. *The risks of establishing liability*

While Plaintiff believes strongly in the merits of his case, he also understands that New London will assert a number of potentially case-dispositive defenses. As stated above, due at least in part to the cutting-edge nature and the rapidly evolving state of the law in this area, cybersecurity cases like this one generally face substantial hurdles—even just to make it past the pleading stage.

See Hammond v. The Bank of N.Y. Mellon Corp., 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide monetary judgment remains unforged, particularly in the area of damages, as set forth below. As one federal district court recently observed in finally approving a settlement with similar class relief: “Data breach litigation is evolving; there is no guarantee of the ultimate result.” *Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (citing *Gordon*, 2019 WL 697201, at *1). For now, cybersecurity incident cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached.

While Plaintiff is confident in the strength of his claims, Plaintiff is also pragmatic in his awareness of the various defenses available to New London, as well as the risks inherent to continued litigation. New London has consistently denied the allegations raised by Plaintiff and made clear at the outset that they would vigorously defend the case. Through the Settlement, Plaintiff and Settlement Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

e. The risks of establishing damages

As stated above, the damages methodologies in this cybersecurity incident litigation, while theoretically sound in Plaintiff’s view, remain unproven in a disputed class certification setting and untested in front of a jury. At least for now, given the uncertainty of establishing damages in a cybersecurity incident class action, settlement is the more practical course of action, if a reasonable one can be reached. *See, e.g., Southern Independent Bank v. Fred’s, Inc.*, No. 2:15-CV-799-WKW, 2019 WL 1179396, at *8 (M.D. Ala. Mar. 13, 2019) (holding under *Daubert* motion that causation was not met for class certification purposes in data security breach case); *In*

re TJX Cos. Sec. Breach Litig., 246 F.R.D. 389, 398 (D. Mass. Nov. 29, 2007) (“[T]he need for individualized damages decisions does not ordinarily defeat predominance where there are . . . disputed common issues as to liability.”) (quoting *Tardiff v. Knox Co.*, 365 F.3d 1, 6 (1st Cir. 2004)). Given the inherent risks of establishing damages in this case, the Settlement reached between the Parties is the more prudent course of action and should be approved by the Court. Because damages may be difficult to prove at the class action certification stage of litigation, settlement of this action will result in the best outcome for Plaintiff and the Settlement Class Members.

f. The risks of maintaining a class action

While Plaintiff feels confident that he can prove the Rule 16(a) requirements for certifying a class action in this case, he also appreciates that there are always inherent risks associated with maintaining a class action, especially in a cybersecurity incident case, which is among the riskiest and indefinite of all class action litigation. As noted above, while there are data breach cases that have been certified (*see, e.g., In re Marriott, Equifax, Brinker supra*), the cases in which classes have been certified, even on a preliminary basis, are not numerous. The risk of obtaining and maintaining class status throughout trial also weighs in favor of final approval. A motion to certify and/or decertify the class would likely require more extensive discovery and briefing, possibly followed by an appeal, which would require additional rounds of briefing. Settlement eliminates the risk, expense, and delay inherent in this process. *See generally Fleisher v. Phoenix Life Ins. Co.*, Nos. 1-cv-8405 (CM), 14-cv-8714 (CM), 2015 WL 10847814, at *10 (S.D.N.Y. Sept. 9, 2010).

g. The ability of defendants to withstanding a greater judgment

New London is a not-for-profit hospital with a single cybersecurity policy. Klinger Decl. ¶ 34. As noted above, the value of 2 years of credit monitoring is \$8.3 million dollars, and at trial,

Plaintiff would seek more years of monitoring than that, since the risks of misuse of the PII like compromised Social Security numbers lasts indefinitely. In addition, Plaintiff seeks damages under the New Hampshire Consumer Protection Act, N.H. R.S.A. 358-A, which bears with it up to \$1000 per person in statutory damages, actual damages (if greater than \$1000), and the possibility of treble damages. This means that based upon statutory damages alone, New London's exposure was almost \$35 million dollars. It is highly doubtful that New London could withstand a greater judgment than the monetary amount and non-monetary benefits provided for in the Settlement Agreement, and, as such, the Settlement should be approved as fair, reasonable, and adequate.

h. The range of reasonableness of the settlement in light of the best possible recovery and the reasonableness of the settlement fund in light of all of the attendant risks of litigation

The Settlement is within the range of reasonableness in light of the best possible recovery, as well as the settlement fund is reasonable in light of all of the attendant risks of litigation. “Courts typically combine their analysis of the final two *Grinnell* factors.” *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *10. “In analyzing these two factors, a reviewing court ‘consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.’” *Id.* (quoting *Grinnell*, 495 F.2d at 462)). “The determination of whether a settlement amount is reasonable does not involve the use of a mathematical equation yielding a particularized sum.” *Massiah v. MetroPlus Health Plan, Inc.*, No. 11-cv-05669 (BMC), 2012 WL 5874655, at *5 (E.D.N.Y. Nov. 20, 2012) (internal quotations omitted). Rather, “there is a range of reasonableness with respect to a settlement—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.” *Id.* (internal quotations omitted). Moreover, any settlement amount

should be judged “not in comparison to with the best possible recovery in the best of all worlds, but rather in light of the strengths and weaknesses of plaintiff’s case.” *Id.* (quoting *Shapiro v. JP Morgan Chase & Co.*, Nos. 11 Civ. 8331(CM)(MHD), 11 Civ. 7961(CM), WL 2014 1224666, at *11 (S.D.N.Y. Mar. 24, 2014). The overall value of the settlement is comprised of monetary and non-monetary relief. *See Fleisher*, 2015 WL 10847814, at *10; *see, e.g. Velez v. Novartis Pharm. Corp.*, No. Civ. 09294 CM, 2010 WL 4877852, at *8, *18 (S.D.N.Y. Nov. 30, 2010) (both monetary and non-monetary relief calculating settlement).

Here, as stated above, the Settlement Class Members can receive up to an aggregate of \$500.00 in cash payments for ordinary losses, \$5000 in cash payments for documented extraordinary losses, 2-years of financial asset and credit monitoring protections *and* will gain the benefit of New London’s credit monitoring services and security enhancements. And each individual Settlement Class Member is eligible to receive up to \$500.00 for ordinary losses—including up to 5 hours of lost time, at \$20/hour, if at least one (1) full hour was spent dealing with the Data Incident, provided that the Settlement Class Member certifies that the lost time was spent in response to the Data Incident. Each Settlement Class Member is also eligible to receive a \$125.00 statutory benefit. This amount may be combined with the \$500.00 claim for ordinary losses and is subject to the \$500.00 cap. The total amount of statutory benefits is capped at \$150,000.00, and payments made to Settlement Class Members shall be reduced on a pro rata basis according to the number of claims made if the total exceeds the overall \$150,000.00 cap. Finally, each Settlement Class Member is eligible to receive up to \$5,000.00 in extraordinary losses, with appropriate documentation, and this benefit is capped at this amount. These payments, combined with two (2) full years of three (3B) bureau credit monitoring services without the requirement of filing a Claim for monetary compensation, provide an enormous value for Settlement Class

Members. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. at 559 (court found settlement fair, reasonable, and adequate, and preliminary approval warranted where there was an immediate and substantial benefit to the class). Accordingly, the Settlement is eminently reasonable, especially considering that it avoids the potential contingencies of continued litigation.

The combination of monetary and non-monetary benefits to the Settlement Class Members is a sizeable recovery, especially given the inherent risks of damages and liability in this action. Indeed, the proposed Settlement is more than a favorable result for the Settlement Class Members, given the reasonableness in light of the best possible recovery and the reasonableness of the settlement fund in light of all of the attendant risks of litigation, stated above. As set forth above, the *Grinnell* factors are satisfied, and, as such, the Settlement is fair, adequate, and reasonable and free of collusion. The Settlement should be preliminarily approved, and Notice should be sent to the Settlement Class Members.

D. The Proposed Notice Program Should Be Approved

Rule 16(k) provides that a class action shall not be settled without the approval of the court. *See* N.H. Super. Ct. R. 16(a)(k). Notice of the proposed settlement “shall be given to all members of the class in such manner as the court directs.” *Id.* Due process requires provision of the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. *See, e.g.*, Fed. R. Civ. P. 23(c)(2)B). The best practicable notice is that which “is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The Notice Program provided for by the Settlement Agreement is designed to be the best practicable and to meet all the criteria set forth by the *Manual for Complex Litigation*. See Klinger Decl. ¶ 13. Here, notice shall be provided to Settlement Class Members via direct mail to the postal address in New London's records. *Id.* at ¶12. In addition to direct mailing, New London has also agreed to have the Settlement Administrator establish and maintain a Settlement Website through which Settlement Class Members can receive additional information about the Settlement. *Id.* ¶ 12.

The Notice is clear and straightforward. The Notice defines the Class; clearly describes the options available to Settlement Class Members and the deadlines for taking action; describes the essential terms of the Settlement; discloses the requested Service Award for the class representative, as well as the amount that proposed Settlement Class Counsel intends to seek in fees and costs; explains procedures for making claims, objections, or requesting exclusion; provides information that will enable Settlement Class Members to calculate their individual recovery; describes the date, time, and place of the Final Fairness Hearing; and prominently displays the address and phone number of proposed Settlement Class Counsel. SA Exs. A & B.

The Notice here is designed to be the best practicable under the circumstances, apprises Settlement Class Members of the pendency of the action, and gives Settlement Class Members an opportunity to object or exclude themselves from the Settlement. See *Agnone v. Camden County, Georgia*, No. 2:14-cv-00024-LGW-BKE, 2019 WL 1368634, at *9 (S.D. Ga. Mar. 26, 2019) (finding class notice mailed directly to settlement class members was the best practicable and satisfied concerns of due process); *Barkwell v. Sprint Communications Co. L.P.*, No. 4:09-CV-56 (CDL), 2014 WL 12704984, at *6 (M.D. Ga. Apr. 18, 2014) (finding a notice program involving

direct mail notice to satisfy due process). Accordingly, this Court should approve the Notice Program.

VI. CONCLUSION

Plaintiff has negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members significant relief in the form of direct reimbursements for expenses incurred and time spent relevant to the Data Incident and credit monitoring services, as well data security enhancements that will better protect their sensitive information in the future. For these and the above reasons, Plaintiff respectfully requests this Court grant his Motion for Preliminary Approval of Class Action Settlement.

DATED: July 11, 2022

Respectfully submitted,

TOM STEEN

/s/ Gary M. Klinger

Gary M. Klinger (admitted *pro hac vice*)

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Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I, Matthew V. Burrows, hereby certify that a copy of this motion was sent to counsel of record via the state court's e-filing system.

Dated: July 11, 2022

By: /s/ Matthew V. Burrows
Matthew V. Burrows

EXHIBIT 1

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

TOM STEEN, *individually and on behalf of all
others similarly situated*,

Plaintiff,

v.

THE NEW LONDON HOSPITAL
ASSOCIATION, INC.,
d/b/a New London Hospital and Newport Health
Center

Defendant.

Civil Action No. 217-2021-CV-00281

**DECLARATION OF GARY M. KLINGER IN SUPPORT
OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Gary M. Klinger, declare as follows:

1. I am a partner in the law firm Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”) and am counsel of record for Plaintiff Tom Steen and the putative class in this action. I am an attorney admitted to practice law in the State of Illinois, and have been admitted to practice *pro hac vice* for this matter. I make this Declaration in support of Plaintiff’s Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement. I make this Declaration based on my personal knowledge, and if called to testify, I could and would competently testify to the matters contained in this Declaration.

PROSECUTION OF THIS ACTION

2. The Settlement Agreement is the result of competent representation and vigorous arms’-length negotiations with Defendant (by and through its counsel of record) to reach the best possible outcome for the Settlement Class. Based on my experience as class counsel, and after

taking into account the disputed factual and legal issues involved, I believe the proposed Settlement is fair, reasonable, and adequate for the Settlement Class.

3. Milberg has vigorously prosecuted this litigation on behalf of Plaintiff Steen and the putative class since its inception and dedicated significant time and resources to this litigation—and will continue to do so through final approval. The prosecution of this action was done solely on a contingent fee basis, and Milberg has been completely at risk that it would not receive any compensation for prosecuting claims against the Defendant.

4. I have extensively investigated Plaintiff's claims and facts surrounding the Data Incident; reviewed and analyzed informal discovery information produced by Defendant; and made a thorough study of the legal principles applicable to the claims asserted. Defendant disclosed evidence and information under mediation privilege, and the extent of the information obtained is more extensive than the stage of proceedings alone might suggest.

5. The Plaintiff reviewed the Complaint, and the First Amended Complaint prior to its filing and understand the allegations it contains. Plaintiff Steen is willing to prosecute this matter on behalf of himself and the putative Class, and was advised of and understand his obligations as Class Representative. Plaintiff reviewed the terms of the Settlement Agreement. Plaintiff regularly communicated with Class Counsel regarding various issues pertaining to this case and will continue to do so until the Settlement is finally approved, and its administration completed. I am unaware of any conflicts of interest between Plaintiff and the putative Class Members. I have not previously represented Defendant in any matter, and am not related to the representative Plaintiff. I do not represent opposing factions within the Class in that all claims are predicated on the same facts and theories of liability, and benefit Class Members equally. On these grounds, I believe I am appropriate and qualified Class Counsel, and I will vigorously and fairly represent the interests of the putative class.

6. I, my colleague and law partner David Lietz, and my local New Hampshire counsel Matthew Burrows worked cooperatively to vigorously and successfully negotiate a settlement that in the best interests of the Class. I have diligently investigated and prosecuted the claims in this

matter, has dedicated substantial resources to the investigation and litigation of those claims, and has successfully negotiated the Settlement of this matter to the benefit of Plaintiff and the Settlement Class Members. Both I and Mr. Lietz have been appointed as class counsel in multiple class actions. Both I and Mr. Lietz are competent to serve as class counsel in this action.

7. I am not aware of any other lawsuits commenced by any other persons against Defendant regarding these claims.

8. On April 7, 2022, proposed Class Counsel and Defendant's counsel attended a mediation session with Bennett G. Picker, Esq.—a well-respected and experienced mediator. At the conclusion of the mediation, the Parties reached an agreement on all the principal terms of settlement for this matter, subject to final mutual agreement on all necessary documentation. In the months then following, the Parties negotiated the terms of the Settlement Agreement, Class Notice, Claim Form, and Notice Plan, and the Parties agreed on RG2 Settlement Administration LLC to serve as the Claims Administrator.

9. This Settlement provides the approximately 34,878 Settlement Class Members significant benefits that would not otherwise be available unless a settlement was reached. The benefits include:

- a. monetary compensation in the form of: (i) reimbursement of ordinary losses, including out-of-pocket expenses incurred as a result of the Data Incident and compensation for time spent mitigating the effects of the data breach, (ii) a \$125.00 statutory benefit, and (iii) for compensation for extraordinary losses;
- b. automatic offering of two (2) years of three bureau (3B) credit monitoring services; and
- c. New London shall provide Settlement Class Counsel information as to the security-related measures that it has implemented since the Data Incident. These measures are designed to ensure that the Plaintiff and Settlement Class are protected against future cyberattacks.

10. The Parties addressed the issue of the proposed service award, reasonable attorneys' fees, and reasonable litigation expenses only after the Parties reached an agreement on the material terms of the settlement on behalf of the Class. The modest proposed service award is in recognition of Plaintiff's service and commitment to litigate this matter on behalf of the Class, including his time and effort to responding to questions, being available during mediation, and the risks taken by Plaintiff as the Class Representatives in commencing and prosecuting the Actions—because without his willingness to serve, there would be no case or Class benefits. The attorneys' fees and service award shall be in addition to the other benefits provided by the Settlement to Class Members.

11. The settlement will be administered by RG2 Settlement Administration LLC. Defendant will securely provide the Class List directly to the Claims Administrator in electronic spreadsheet format, which maintains as much confidentiality as possible for the Settlement Class and will not impede Class Counsel's ability to discharge its fiduciary duties because Parties and the Settlement Administrator already know the estimated number of Settlement Class Members.

12. The Notice Plan includes a customary Short Notice and Long Notice, in addition to a Claim Form. The notices shall include a fair summary of the 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, and the date, time and place of the Final Fairness Hearing. The Short Notice (postcard) shall be provided to Settlement Class Members via direct mail to the postal address provided by New London or other reasonable alternative means. The Claims Administrator will establish a dedicated settlement website and maintain and update the website throughout the claim period with the Short Notice, Long Notice, and Claim Form, as approved by the Court, as well as a copy of the Settlement Agreement. A toll-free help line will also be made available to provide Settlement Class Members with additional information about the settlement. The Claims Administrator will also provide copies of the Short Notice, Long Notice, Claim Form, and Settlement Agreement upon request. Prior to the Final Fairness Hearing, the Parties will ensure an

appropriate affidavit or declaration is filed with the Court with respect to compliance with notice provision in the Settlement Agreement. The Notice Program will be completed within thirty (30) days after entry of the Preliminary Approval Order. As such, the proposed methods of notice comport with New Hampshire Rule of Civil Procedure 16(k) and exceed Due Process requirements.

13. The Notice plan is designed and intended to reach as many potential Settlement Class Members as possible, is the best notice practicable, and is designed to meet all the criteria set forth by the Manual for Complex Litigation.

14. Based on my experience, I believe this settlement is a positive resolution for the Settlement Class and falls comfortably within the range of reasonableness and represents a fair and reasonable discount from the potential recovery. It is also my considered opinion the Claim Form, Short-Form Notice, and Long-Form Notice accurately and plainly explain the settlement benefits and how to obtain them, offer clear opportunity for members of the Settlement Class to exclude themselves if they so choose, and provide a mechanism for the Settlement Class to share their opinions about the Settlement with the Court.

15. After careful consideration of the factual and legal issues, settlement benefits and risks of further litigation set forth in Plaintiff's Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement, and the injury suffered by the Settlement Class, I respectfully request this Court grant Plaintiff's motion.

QUALIFICATIONS OF CLASS COUNSEL

16. Plaintiff's counsel are well experienced in plaintiff class actions and data breach litigation, and believe this settlement represents a fair resolution of this matter, and is in the best interests of the Plaintiff and the Settlement Class.

17. I have extensive experience in class action litigation generally and data breach class actions. My experience, and that of my law partners, is described below.

18. It is noteworthy that from 2020 through present, I (either individually, or as a member of the law firms in which I have been a partner during that time) and my law partner

David K. Lietz have been appointed class counsel in a number of data breach or data privacy cases, including, but not limited to, the following:

- a. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class counsel in a data breach class action settlement; final approval granted).
- b. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action).
- c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted).
- d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over\$7 million; final approval granted).
- e. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted September 2020).
- f. *Nelson, et al. v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County, Idaho) (appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million).
- g. *In Re: Canon U.S.A. Data Breach Litigation*, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (appointed co-lead counsel).
- h. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington) (appointed class counsel in data breach case; final approval granted September 2021).
- i. *Kenney et al. v. Centerstone of America, Inc. et al.*, Case No. 3:20-cv-01007-EJR (M.D. Tenn.) (appointed lead class counsel; final approval of \$1.5 million settlement granted August 9, 2021).
- j. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021).
- k. *Suren et al. v. DSV Solutions, LLC*, Case No. 2021CH000037 (Circuit Court for the Eighteenth Judicial Circuit of DuPage County, Illinois) (appointed Settlement Class Counsel, final approval granted September 27, 2021).

- l. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.) (appointed class counsel in data breach settlement, final approval granted September 2021).
- m. *Aguallo et al v. Kemper Corporation et al.*, Case No. 1:21-cv-01883 (N.D. Ill.) (appointed Co-lead Counsel, final approval granted of \$17.1 million class settlement).
- n. *Martinez et al. v. NCH Healthcare System, Inc.*, Case No. 2020-CA-000996 (Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida) (appointed Settlement Class Counsel; final approval granted).
- o. *Carr et al. v. Beaumont Health et al.*, Case No. 2020-181002-NZ (Circuit Court for the County of Oakland, Michigan) (appointed co-class counsel in data breach case involving 112,000 people; final approval granted October 2021).
- p. *Klemm et al. v. Maryland Health Enterprises, Inc. D/B/A Lorien Health Services*, C-03-CV-20- 002899 (Circuit Court for Baltimore County, Maryland) (appointed Settlement Class Counsel, preliminary approval granted November 2021).
- q. *Cece et al. v. St. Mary's Health Care System, Inc. et al.*, Civil Action No. SU20CV0500 (Superior Court of Athens-Clarke County, Georgia) (appointed Settlement Class Counsel in data breach case involving 55,652 people; final approval granted April 2022).
- r. *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.) (appointed co-lead counsel in data breach involving over 1 million persons; preliminary approval of \$4.35 million settlement granted January 2022).
- s. *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.) (appointed co- lead counsel in data breach case involving over 2.4 million class members; preliminary approval of \$4.75 million settlement granted February 2022).
- t. *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.) (appointed co- lead counsel in data breach case involving over 3 million class members).
- u. *Heath v. Insurance Technologies Corp.*, No. 21-cv-01444 (N.D. Tex.) (\$11 million settlement for a major data breach involving more than 4 million consumers).
- v. *Powers, Sanger et al v. Filters Fast LLC*, Case 3:20-cv-00982-jdp (appointed co-lead Settlement Class Counsel; preliminary approval granted November 2021).

- w. *Garcia v. Home Medical Equipment Specialists, LLC*, Case No. D-202-cv-2021-06846 (appointed class counsel; final approval granted June 2022).
- x. *Baldwin et al. v. National Western life Insurance Company*, Case No. 2:21-cv-04066 (W.D. Mo.) (appointed co-class counsel; final approval granted June 2022 in settlement valued at approximately \$4.4 million).
- y. *Hashemi, et. al. v. Bosley, Inc.*, Case No. 21-cv-00946-PSG (RAOx) (C.D. CA) (appointed co- class counsel; preliminary approval granted February 2022).
- z. *Paras, et al v. Dental Care Alliance, LLC*, Case No. 22EV000181 (Ga. State Court Fulton Cnty.); (appointed co-lead class counsel; preliminary approval granted April 2022).
- aa. *Hough v. Navistar, Inc.*, Case No.: 2021L001161 (Circuit Court for the Eighteenth Judicial Circuit, Dupage County, Illinois); (appointed co-lead class counsel; final approval granted May 2022).
- bb. *Purvis, et al v. Aveanna Healthcare, LLC*, Case No. 1:20-cv-02277-LMM (N.D. Ga.) (appointed class counsel; preliminary approval granted June 2022).
- cc. *Clark v. Mercy Hospital, et al*, Case No. CVCV082275 (Iowa Dist. Crt, Johnson Cnty.) (appointed class counsel; preliminary approval granted February 2022).
- dd. *Myschka, et al v. Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic*, (Iowa Dist. Crt., Marshall Cnty.) (appointed class counsel; final approval granted June 2022).
- ee. *Devine, et al v. Health Aid of Ohio, Inc.*, (Ohio Court of Common Pleas, Cuyahoga Cnty.) (appointed class counsel; preliminary approval granted March 2022).
- ff. *James v. CohnReznick LLP*, Case No. 1:21-cv-06544 (S.D.N.Y.), (appointed as co-class counsel; preliminary approval granted May 2022).
- gg. *Davidson v. Healthgrades Operating Company, Inc.*, Case No. 1:21-cv-01250-RBJ (D. Colo.), (appointed class counsel; preliminary approval granted April 2022).
- hh. *Bodie v. Capitol Wholesale Meats, Inc.*, Case No. 2022CH000020 (Ill. 18th Jud. Cir. Crt., DuPage Cnty.) (appointed class counsel; preliminary approval granted March 2022).
- ii. *Culp v. Bella Elevator LLC*, Case No. 2021-CH-00014 (Ill. 10th Jud. Cir. Crt., Peoria Cnty.) (appointed class counsel; final approval granted May 2022).

19. Throughout my legal career, I, Gary M. Klinger, have personally resolved dozens of class action cases involving consumer and privacy statutes in state and federal courts across the country.

20. I have been appointed by state and federal courts to act as Class Counsel for millions of consumers and recovered hundreds of millions of dollars for consumers throughout the country. Presently, I am lead or co-lead counsel in more than thirty (30) active class action lawsuits pending in state and federal courts across the country.

21. Indeed, I recently obtained final approval of a class-wide settlement for a major data breach class action involving more than six million consumers. *See Carrera Aguallo v. Kemper Corp.*, Case No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021) (where I, as appointed co-lead counsel, obtained preliminary approval of a \$17.6 million settlement to resolve similar data breach class claims against Kemper Corporation in a case involving more than 6 million class members).

22. I presently serve as one of two Court-appointed Lead Counsel in the data breach case *In re Canon U.S.A. Data Breach Litig.*, No. 1:20-cv-06239-AMD-SJB (S.D.N.Y. filed Dec. 23, 2020).

23. I was also appointed Co-Lead Counsel in the data breach case of *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.), which involves more than one million class members and has settled on a class-wide basis.

24. I also serve as co-lead counsel in the consolidated data breach litigation styled *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.), which involves more than 2.4 million class members and has settled on a class-wide basis.

25. I was also recently as appointed co-lead counsel to represent more than 3 million class members in another major data breach class action in the Seventh Circuit. *See In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.).

26. I have successfully litigated privacy class actions through class certification. In *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at *1 (N.D. Ill. June 25,

2018), I certified, over objection, a nationwide privacy class action involving more than one million class members. *Id.*

27. In a recent nationwide privacy class settlement hearing in the U.S. District Court for the Northern District of California, Judge Richard Seeborg personally commended Mr. Klinger for “quite a substantial recovery for class members.” Judge Seeborg further stated he could not recall any class action case where “the amounts going to each class member were as substantial” as that obtained by Mr. Klinger (and his co-counsel).

28. In addition to concentrating my practice on class action litigation involving consumer, privacy, and product liability matters, I also make substantial efforts to stay apprised of the current law on these issues. In recent years, I have attended various legal training seminars and conferences such as the dri™ conference for Class Actions, The Consumer Rights Litigation Conference and Class Action Symposium, as well as attended various seminars offered by Strafford on class action issues.

29. I am also a member of the International Association of Privacy Professionals and a Certified Information Privacy Professional (CIPP/US).

30. I graduated from the University of Illinois at Urbana-Champaign in 2007 (B.A. Economics), and from the University of Illinois College of Law in 2010 (J.D., cum laude). While at the U of I College of Law, I was a member of, and ultimately appointed as the Executive Editor for, the Illinois Business Law Journal. My published work includes: The U.S. Financial Crisis: Is Legislative Action the Right Approach? Ill. Bus. L. J. (Mar. 2, 2009).

31. I am presently pursuing my Masters of Laws (LLM) in Data Privacy and Cybersecurity from the University of Southern California Gould School of Law

32. I became licensed to practice law in the State of Illinois in 2010, and am a member of the Trial Bar for the Northern District of Illinois as well as the U.S. Bankruptcy Court for the Northern District of Illinois. Additionally, I am admitted to practice in federal courts across the country, including, but not limited to, the U.S. District Courts for the District of Colorado, the

Central District of Illinois, the Northern District of Illinois, Northern District of Indiana, Southern District of Indiana, Eastern District of Michigan and the Eastern District of Texas.

33. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiff’s settlement leverage, as well as the needs of Plaintiff and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

34. Moreover, my investigation showed that New London will not likely be able to withstand a greater judgment other than what is provided in the Settlement. New London is a not-for-profit hospital with limited financial resources and a single cybersecurity policy.

35. I believe that the Settlement is fair, reasonable, and adequate, and provides substantial benefits for Plaintiff and Settlement Class Members.

36. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiff’s settlement leverage, as well as the needs of Plaintiff and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant potential risk of drawn out appeals. It is my individual opinion, and that of my co-counsel, based on our substantial experience, that the settlement provides significant relief to the Members of the Class and warrants the Court’s preliminary approval.

37. In addition to the matters listed above, my firm has extensive experience in contributing to the successful resolution of complicated class actions. Milberg Attorneys have served as Lead Counsel, Co-Counsel or Class Counsel on hundreds of class actions.

38. These cases recently include cutting edge litigation including: *In re Dealer Management Systems Antitrust Litigation*, Case No. 1:18-cv-00864 (N.D. Ill., 2018)(appointed co-lead counsel; partial settlement of \$29.5 million, case on-going); *In re Seresto Flea and Tick Collar*

Marketing, Sales Practices, and Products Liability Litigation, Case No. 1:21-cv-04447 (N.D. Ill., 2021)(appointed co-lead counsel; case on-going); and *Carder v. Graco Children's Products, Inc. et al.*, Case No. 2:20-cv-00137 (N.D. Ga., 2020)(appointed interim co-lead counsel; case on-going); .

39. With respect to privacy cases, Milberg is presently litigating more than fifty cases across the country involving violations of the TCPA, privacy violations, data breaches, and ransomware attacks. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on data breach and privacy litigations, including *In re Blackbaud, Inc. Consumer Data Security Breach Litigation MDL 2972*, Case No. 3:20-mn-02972 (D.S.C., 2020) (appointed co-lead counsel; case on-going).

40. Milberg Attorneys have also participated in other data breach and privacy litigation, recently, which includes: *Veiga , et al. v. Respondus, Inc.*, Case No. 1:21-cv-02620 (N.D. Ill., 2021). *Dickerson v. CDPQ Colonial Partners, L.P., et. al*, Case No. 1:21-cv-02098 (N.D. Ga. 2021); *In re Wawa, Inc. Data Security Litigation*, 2:19-cv-06019 (E.D.Pa. 2019); *Whalen v. Facebook, Inc.*, Case No.4:20-cv-06361 (N.D. Cal., 2020); and *K.F.C. v. Snap, Inc.*, No. 21-2247 (7th Cir., 2021).

41. Attached to this Declaration as **Exhibit 1** is Milberg's Firm Résumé.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct. Executed this 11th day of July 2022 at Chicago, Illinois.

/s/Gary M. Klinger
Gary M. Klinger

EXHIBIT 1



Firm Resume

FIRM PROFILE

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN LLP (“MILBERG”) IS A LEADING GLOBAL PLAINTIFFS’ FIRM, successfully pioneering and litigating complex litigations in the following practice areas: class actions, antitrust and competition law, securities fraud, consumer protection, cyber security and data breach litigation, financial and insurance litigation, environmental law, securities litigation, and product liability. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride themselves on providing stellar service and achieving extraordinary results for their clients.

Milberg was founded in 1965, taking the lead in landmark cases that have set groundbreaking legal precedents and prompted changes in corporate governance benefiting shareholders and consumers. For more than 50 years, the firm has protected victims’ rights, recovering over \$50 billion in verdicts and settlements. Milberg was one of the first law firms to prosecute class actions in federal courts on behalf of investors and consumers. The firm pioneered this type of litigation and became widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing.

Milberg has offices in Illinois, New York, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Kentucky, Tennessee, Puerto Rico and Washington D.C. Recently, Milberg opened offices in London, Belgium and Germany that serve clients in the European Union. In addition, Milberg has expanded in South America, with primary emphasis in Brazil. Milberg has more than 100 attorneys worldwide.

The firm’s reputation has been built by successfully taking on challenging cases across a spectrum of practice areas for the past half-century. From resolving business disputes to proving antitrust conspiracies, Milberg is equipped to handle complex, high-stakes cases at any stage of the litigation process.

The firm’s lawyers have been regularly recognized as leaders in the plaintiffs’ bar by the National Law Journal, Legal 500, Chambers USA, and Super Lawyers, among others.

Notable Class Action Cases

Antitrust

In re: TFT-LCD (Flat Panel) Antitrust Litigation, No. 3:07-cv-01827, MDL No. 1827 (N.D. Cal.) (combined settlement totaling nearly \$1.1 billion in suit alleging the illegal formation of an international cartel to restrict competition in the LCD panel market) (2012).

Apartment Fee

Stewart v. Southwood Realty Company (Cumberland Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2020).

Lewis et al. v. Bridge Property Management, LLC et al. (Wake Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2020).

Hargrove v. Grubb Management, Inc. et al. (Wake Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2020).

Rush v. The NRP Group LLC (USDC MD NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2020).

Hamilton v. Arcan Capital, LLC et al. (Forsyth Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Suarez v. Camden Development, Inc. et al. (USDC ED NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Milroy et al. v. Bell Partners Inc. et al. (USDC ED NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Davis v. RAM Partners, LLC (USDC MD NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Hampton v. KPM et al. (USDC WD NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Brogden v. Kenney Properties, Inc. et al. (Wake Co., NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Williams v. Pegasus Residential, LLC (USDC MD NC) (preliminary approval of settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Medina v. Westdale et al. (USDC ED NC) (settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Talley et al. v. Lincoln Property Company (USDC ED NC) (preliminary approval of settlement of class claims arising from apartment communities allegedly assessing improper eviction fees pending) (2021).

McCord v. PRG Real Estate Mgmt, Inc. et al. (USDC MD NC) (pending final approval of settlement of class claims arising from apartment communities allegedly assessing improper eviction fees) (2021).

Appliances

Ersler, et. al v. Toshiba America et. al, No. 07- 2304 (D.N.J.) (settlement of claims arising from allegedly defective television lamps) (2009).

Maytag Neptune Washing Machines (class action settlement for owners of Maytag Neptune washing machines).

Stalcup, et al. v. Thomson, Inc. (Ill. Cir. Ct.) (\$100 million class settlement of claims that certain GE, PROSCAN and RCA televisions may have been susceptible to temporary loss of audio when receiving broadcast data packages that were longer than reasonably anticipated or specified) (2004).

Hurkes Harris Design Associates, Inc., et al. v. Fujitsu Computer Prods. of Am., Inc. (settlement provides \$42.5 million to pay claims of all consumers and other end users who bought certain Fujitsu Desktop 3.5” IDE hard disk drives) (2003).

Turner v. General Electric Company, No. 2:05-cv-00186 (M.D. Fla.) (national settlement of claims arising from allegedly defective refrigerators) (2006).

Automobiles

In re General Motors Corp. Speedometer Prods. Liability Litig., MDL 1896 (W.D. Wash.) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective speedometers) (2007).

Baugh v. The Goodyear Tire & Rubber Company (class settlement of claims that Goodyear sold defective tires that are prone to tread separation when operated at highway speeds; Goodyear agreed to provide a combination of both monetary and non-monetary consideration to the Settlement Class in the form of an Enhanced Warranty Program and Rebate Program) (2002).

Lubitz v. Daimler Chrysler Corp., No. L-4883-04 (Bergen Cty. Super. Ct, NJ 2006) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective brake system; creation of \$12 million fund; 7th largest judgment or settlement in New Jersey) (2007).

Berman et al. v. General Motors LLC, Case No. 2:18-cv-14371 (S.D. Fla.) (Co-Lead Counsel; national settlement for repairs and reimbursement of repair costs incurred in connection with Chevrolet Equinox excessive oil consumption).

Civil Rights

In re Black Farmers Discrimination Litigation, Case No. 1:08-mc-00511 (D.D.C.) (\$1.25 billion settlement fund for black farmers who alleged U.S. Department of Agriculture discriminated against them by denying farm loans) (2013).

Bruce, et. al. v. County of Rensselaer et. al., Case No. 02-cv-0847 (N.D.N.Y.) (class settlement of claims that corrections officers and others employed at the Rensselaer County Jail (NY)

engaged in the practice of illegally strip searching all individuals charged with only misdemeanors or minor offenses) (2004).

Commercial

In re: Outer Banks Power Outage Litigation, 4:17-cv-141 (E.D.N.C) (Co-Lead Counsel; \$10.35 million settlement for residents, businesses, and vacationers on Hatteras and Ocracoke Islands who were impacted by a 9-day power outage) (2018)

Construction Materials

Cordes et al v. IPEX, Inc., No. 08-cv-02220-CMA-BNB (D. Colo.) (class action arising out of defective brass fittings; court-appointed member of Plaintiffs' Steering Committee) (2011).

Elliott et al v. KB Home North Carolina Inc. et al 08-cv-21190 (N.C. Super. Ct. Wake County) (Lead Counsel; class action settlement for those whose homes were constructed without a weather-resistant barrier)(2017)

In re: Pella Corporation Architect and Designer Series Windows Marketing, Sales Practices and Products Liability Litigation, MDL No. 2514 (D.S.C.)(class action arising from allegedly defective windows; Court-appointed Co-Lead Counsel).

In re MI Windows and Doors, Inc., Products Liability Litigation, MDL No. 2333 (D.S.C) (National class action settlement for homeowners who purchased defective windows; Court-appointed Co-Lead Counsel).

In re: Atlas Roofing Corporation Chalet Shingle Products Liability Litig., MDL No. 2495 (N.D. Ga.) (class action arising from allegedly defective shingles; Court-appointed Co-Lead Counsel).

Helmer et al. v. Goodyear Tire & Rubber Co., No. 12-cv-00685-RBJ (D. Colo. 2012) (class action arising from allegedly defective radiant heating systems; Colorado class certified, 2014 WL 3353264, July 9, 2014)).

In re: Zurn Pex Plumbing Products Liability Litigation, No. o:08-md-01958, MDL No. 1958 (D. Minn.) (class action arising from allegedly plumbing systems; member of Executive Committee; settlement) (2012).

Hobbie, et al. v. RCR Holdings II, LLC, et al., No. 10-1113 , MDL No. 2047 (E.D. La.) (\$30 million settlement for remediation of 364 unit residential high-rise constructed with Chinese drywall) (2012).

In re: Chinese Manufactured Drywall Products Liability Litigation, No. 2:09-md-02047, MDL No. 2047 (E.D. La.) (litigation arising out of defective drywall) (appointed Co-Chair, Insurance Committee) (2012).

Galanti v. Goodyear Tire & Rubber Co., No. 03-209 (D.N.J. 2003) (national settlement and creation of \$330 million fund for payment to owners of homes with defective radiant heating systems) (2003).

In re Synthetic Stucco Litig., Civ. Action No. 5:96-CV-287-BR(2) (E.D.N.C.) (member of Plaintiffs' Steering Committee; settlements with four EIFS Manufacturers for North Carolina homeowners valued at more than \$50 million).

In re Synthetic Stucco (EIFS) Prods. Liability Litig., MDL No. 1132 (E.D.N.C.) (represented over 100 individuals homeowners in lawsuits against homebuilders and EIFS manufacturers).

Posey, et al. v. Dryvit Systems, Inc., Case No. 17,715-IV (Tenn. Cir. Ct) (Co-Lead Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants) (2002).

Sutton, et al. v. The Federal Materials Company, Inc., et al, No. 07-CI-00007 (Ky. Cir. Ct) (Co-Lead Counsel; \$10.1 million class settlement for owners of residential and commercial properties constructed with defective concrete).

Staton v. IMI South, et al. (Ky. Cir. Ct.) ((Co-Lead Counsel; class settlement for approximately \$30 million for repair and purchase of houses built with defective concrete).

In re Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation, No. 15-cv-0018, MDL No. 2577 (D.N.J.) (Lead Counsel; national settlement to homeowners who purchased defective GAF decking and railings).

Bridget Smith v. Floor and Decor Outlets of America, Inc., No. 1:15-cv-4316 (N.D. Ga.) (Co-Lead Counsel; National class action settlement for homeowners who purchased unsafe laminate wood flooring).

In re Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation MDL No. 1:15-md-2627 (E.D.Va.) (Formaldehyde case; \$36 million national class action settlement for member who purchased a certain type of laminate flooring).

In re Lumber Liquidators Chinese-Manufactured Laminate Flooring Durability Marketing, Sales Practices Litigation MDL No. 1:16-md-2743 (E.D.Va.) (Co-Lead Counsel; Durability case; \$36 million national class action settlement for member who purchased a certain type of laminate flooring).

In re Windsor Wood Clad Window Products Liability Litigation MDL No. 2:16-md-02688 (E.D. Wis.) (National class action settlement for homeowners who purchased defective windows; Court-appointed Lead Counsel).

In re Allura Fiber Cement Siding Products Liability Litigation MDL No. 2:19-md-02886 (D.S.C.) (class action arising from allegedly defective cement board siding; Court-appointed Lead Counsel).

Environmental

Nnadili, et al. v. Chevron U.S.A., Inc., No. 02-cv-1620 (D.D.C.) (\$6.2 million settlement for owners and residents of 200 properties located above underground plume of petroleum from former Chevron gas station) (2008).

Fair Labor Standards Act/Wage and Hour

Craig v. Rite Aid Corporation, Civil No. 08-2317 (M.D. Pa.) (FLSA collective action and class action settled for \$20.9 million) (2013).

Stillman v. Staples, Inc., Civil No. 07-849 (D.N.J. 2009) (FLSA collective action, plaintiffs' trial verdict for \$2.5 million; national settlement approved for \$42 million) (2010).

Lew v. Pizza Hut of Maryland, Inc., Civil No. CBB-09-CV-3162 (D. Md.) (FLSA collective action, statewide settlement for managers-in-training and assistant managers, providing recompense of 100% of lost wages) (2011).

Financial

Roberts v. Fleet Bank (R.I.), N.A., Civil Action No. 00-6142 (E. D. Pa.) (\$4 million dollar settlement on claims that Fleet changed the interest rate on consumers' credit cards which had been advertised as "fixed.") (2003).

Penobscot Indian Nation et al v United States Department of Housing and Urban Development, N. 07-1282 (PLF) (D.D.C. 2008) (represented charitable organization which successfully challenged regulation barring certain kinds of down-payment assistance; Court held that HUD's promulgation of rule violated the Administrative Procedure Act) (2008).

Impact Fees

Town of Holly Springs, No. 17-cvs-6244, 17-cvs-6245, 18-cvs-1373 (Wake Co., NC) (Court appointed Class Counsel; Class action settlement with a \$7.9 million fund for builders and developers to recover improper capacity replacement and transportation fees paid to the town) (2019).

Larry Shaheen v. City of Belmont, No. 17-cvs-394 (Gaston Co., NC) (Court appointed Class Counsel; Class action settlement with a \$1.65 million fund for builders and developers to recover improper capacity replacement and transportation fees paid to the city) (2019).

Upright Builders Inc. et al. v. Town of Apex, No. 18-cvs-3720 & 18-cvs-4384, (Wake Co., NC) (Court appointed Class Counsel; Class action settlement with a \$15.3 million fund for builders and developers to recover improper capacity replacement and transportation paid fees to the town) (2019).

Mayfair Partners, LLC et al. v. City of Asheville, No. 18-cvs-04870 (Buncombe County) (Court appointed Class Counsel; Class action settlement with a \$1,850,000 million fund for builders and developers to recover improper impact fees paid to the city) (2020).

Shenandoah Homes, LLC v. Town of Clayton, No. 19-cvs-640 (Johnston County) (Court appointed Class Counsel; Class action settlement with a \$2.7 million fund for builders and developers to recover improper impact fees paid to the town) (2020).

Brookline Homes LLC v. City of Mount Holly, Gaston County file no. 19-cvs-1163 (Gaston County) (Court appointed Class Counsel; Class action settlement with a \$483,468 fund for builders and developers to recover improper impact fees paid to the city) (2020).

Eastwood Construction, LLC et. al v. City of Monroe, Union County file nos. 18-CVS-2692 (Union County) (Court appointed Class Counsel; Class action settlement with a \$1,750,000 million fund for builders and developers to recover improper impact fees paid to the city) (2020).

Insurance

Young, et al. v. Nationwide Mut. Ins. Co, et al., No. 11-5015 (E.D. Ky.) (series of class actions against multiple insurance companies arising from unlawful collection of local taxes on premium payments; class certified and affirmed on appeal, 693 F.3d 532 (6th Cir., 2012); settlements with all defendants for 100% refund of taxes collected) (2014).

Nichols v. Progressive Direct Insurance Co., et al., No. 2:06cv146 (E.D. Ky.) (Class Counsel; class action arising from unlawful taxation of insurance premiums; statewide settlement with Safe Auto Insurance Company and creation of \$2 million Settlement Fund; statewide settlement with Hartford Insurance Company and tax refunds of \$1.75 million) (2012).

Privacy/Data Breach

Baksh v. Ivy Rehab Network, Inc., Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class counsel in a data breach class action settlement; final approval granted).

In re: GE/CBPS Data Breach Litigation, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action).

Mowery et al. v. Saint Francis Healthcare System, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted);

Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted).

Bailey v. Grays Harbor County Public Hospital District et al., Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Septem 2020).

Nelson, et al. v. Idaho Central Credit Union, No. CV03-20-00831 (Bannock County, Idaho) (appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million).

In Re: Canon U.S.A. Data Breach Litigation, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (appointed co-lead counsel).

Richardson v. Overlake Hospital Medical Center et al., Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington) (appointed class counsel in data breach case; final approval granted September 2021).

Kenney et al. v. Centerstone of America, Inc. et al., Case No. 3:20-cv-01007-EJR (M.D. Tenn.) (appointed lead class counsel; final approval of \$1.5 million settlement granted August 9, 2021).

Jackson-Battle v. Navicent Health, Inc., Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);

Suren et al. v. DSV Solutions, LLC, Case No. 2021CH000037 (Circuit Court for the Eighteenth Judicial Circuit of DuPage County, Illinois) (appointed Settlement Class Counsel, final approval granted September 27, 2021).

Chacon v. Nebraska Medicine, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.) (appointed class counsel in data breach settlement, final approval granted September 2021);

Aguallo et al v. Kemper Corporation et al., Case No. 1:21-cv-01883 (N.D. Ill.) (appointed Co-lead Counsel, final approval granted of \$17.1 million class settlement).

Martinez et al. v. NCH Healthcare System, Inc., Case No. 2020-CA-000996 (Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida) (appointed Settlement Class Counsel; final approval granted).

Carr et al. v. Beaumont Health et al., Case No. 2020-181002-NZ (Circuit Court for the County of Oakland, Michigan) (appointed co-class counsel in data breach case involving 112,000 people; final approval granted October 2021).

Klemm et al. v. Maryland Health Enterprises, Inc. D/B/A Lorien Health Services, C-03-CV-20-002899 (Circuit Court for Baltimore County, Maryland) (appointed Settlement Class Counsel, preliminary approval granted November 2021).

Cece et al. v. St. Mary's Health Care System, Inc. et al., Civil Action No. SU20CV0500 (Superior Court of Athens-Clarke County, Georgia) (appointed Settlement Class Counsel in data breach case involving 55,652 people; final approval granted April 2022).

In re: Herff Jones Data Breach Litigation, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.) (appointed co-lead counsel in data breach involving over 1 million persons; preliminary approval of \$4.35 million settlement granted January 2022).

In Re: CaptureRx Data Breach Litigation, No. 5:21-cv-00523-OLG (W.D. Tex.) (appointed co-lead counsel in data breach case involving over 2.4 million class members; preliminary approval of \$4.75 million settlement granted February 2022).

In re Arthur J. Gallagher Data Breach Litigation, No. 1:21-cv-04056 (N.D. Ill.) (appointed co-lead counsel in data breach case involving over 3 million class members).

Heath v. Insurance Technologies Corp., No. 21-cv-01444 (N.D. Tex.) (\$11 million settlement for a major data breach involving more than 4 million consumers).

Powers, Sanger et al v. Filters Fast LLC, Case 3:20-cv-00982-jdp (appointed co-lead Settlement Class Counsel; preliminary approval granted November 2021).

Garcia v. Home Medical Equipment Specialists, LLC, Case No. D-202-cv-2021-06846 (appointed class counsel; final approval granted June 2022).

Baldwin et al. v. National Western life Insurance Company, Case No. 2:21-cv-04066 (W.D. Mo.) (appointed co-class counsel; final approval granted June 2022 in settlement valued at approximately \$4.4 million).

Hashemi, et. al. v. Bosley, Inc., Case No. 21-cv-00946-PSG (RAOx) (C.D. CA) (appointed co-class counsel; preliminary approval granted February 2022).

In re: Blaukbaud, Inc. Customer Data Security Breach Litigation (MDL 2972) (Milberg attorneys appointed co-lead counsel).

Paras, et al v. Dental Care Alliance, LLC, Case No. 22EV000181 (Ga. State Court Fulton Cnty.); (appointed co-lead class counsel; preliminary approval granted April 2022).

Hough v. Navistar, Inc., Case No.: 2021L001161 (Circuit Court for the Eighteenth Judicial Circuit, Dupage County, Illinois); (appointed co-lead class counsel; final approval granted May 2022).

Purvis, et al v. Aveanna Healthcare, LLC, Case No. 1:20-cv-02277-LMM (N.D. Ga.) (appointed class counsel; preliminary approval granted June 2022).

Clark v. Mercy Hospital, et al, Case No. CVCV082275 (Iowa Dist. Crt, Johnson Cnty.) (appointed class counsel; preliminary approval granted February 2022).

Myschka, et al v. Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic, (Iowa Dist. Crt., Marshall Cnty.) (appointed class counsel; final approval granted June 2022).

Devine, et al v. Health Aid of Ohio, Inc., (Ohio Court of Common Pleas, Cuyahoga Cnty.) (appointed class counsel; preliminary approval granted March 2022).

James v. CohnReznick LLP, Case No. 1:21-cv-06544 (S.D.N.Y.), (appointed as co-class counsel; preliminary approval granted May 2022).

Davidson v. Healthgrades Operating Company, Inc., Case No. 1:21-cv-01250-RBJ (D. Colo.), (appointed class counsel; preliminary approval granted April 2022).

Bodie v. Capitol Wholesale Meats, Inc., Case No. 2022CH000020 (Ill. 18th Jud. Cir. Crt., DuPage Cnty.) (appointed class counsel; preliminary approval granted March 2022).

Culp v. Bella Elevator LLC, Case No. 2021-CH-00014 (Ill. 10th Jud. Cir. Crt., Peoria Cnty.) (appointed class counsel; final approval granted May 2022).

EXHIBIT 2

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

TOM STEEN, *individually and on behalf of all
others similarly situated*,

Plaintiff,

v.

THE NEW LONDON HOSPITAL
ASSOCIATION, INC.,
d/b/a New London Hospital and Newport Health
Center

Defendant.

Civil Action No. 217-2021-CV-00281

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Tom Steen (“Plaintiff”), individually and on behalf of the Settlement Class (as defined below), by and through Settlement Class Counsel (as defined below), and Defendant The New London Hospital Association, Inc. (“New London Hospital”) in order to effect a full and final settlement and dismissal with prejudice of all claims against New London Hospital alleged in the above-captioned litigation on the terms set forth below and to the full extent reflected herein. Capitalized terms shall have the meaning ascribed to them in Section II.1 of this Settlement Agreement.

I. RECITALS

1. The Litigation.

On or about July 30, 2020, New London Hospital discovered that an unauthorized third party had gained access to a file on New London Hospital’s network. New London Hospital immediately launched an investigation and subsequently provided notice of this data incident to all individuals whose information may have been involved.

On May 18, 2021, Plaintiff, individually and on behalf of a putative class, filed an action against New London Hospital in New Hampshire’s Merrimack County Superior Court, styled *Tom Steen, individually and on behalf of all others similarly situated, v. The New London Hospital Association*, Case No. 217-2021-CV-00281, alleging claims arising from the aforementioned data incident. Specifically, Plaintiff asserted five causes of action against New London Hospital: (1) negligence; (2) breach of implied contract; (3) unjust enrichment; (4) violation of the New Hampshire Consumer Protection Act (“NHCPA”); and (5) violation of the New Hampshire Notice of Security Breach Act.

New London Hospital responded by filing a motion to dismiss. In turn, Plaintiff filed an amended complaint. New London Hospital thereafter filed an answer. The parties have exchanged their initial disclosures but have not engaged in further reciprocal discovery.

On April 6, 2022, the Parties engaged in mediation with Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP. The Parties were able to reach an agreement on all the principal terms of settlement for this matter, subject to final mutual agreement on all necessary documentation.

2. Claims of Plaintiff and Benefits of Settling.

Plaintiff believes that the claims asserted in the Lawsuit, as set forth in the Complaint, have merit. Plaintiff and Settlement Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Lawsuit against New London Hospital through motion practice, trial, and potential appeals. They have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Settlement Class Counsel are experienced in class action litigation and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such

litigation and in this Lawsuit. 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.

3. Denial of Wrongdoing and Liability.

New London Hospital denies each and all of the claims and contentions alleged against it in the Lawsuit. New London Hospital denies all allegations of wrongdoing or liability as alleged, or which could be alleged, in the Lawsuit. New London Hospital denies that the New Hampshire Consumer Protection Act applies or creates liability on the part of New London Hospital, denies it breached any contract (express or implied), denies it has been unjustly enriched, and denies it violated any statutes. Nonetheless, New London Hospital has concluded that further defense of the Lawsuit would be protracted and expensive, and that it is desirable that the Lawsuit be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. New London Hospital has taken into account the uncertainty and risks inherent in any litigation. New London Hospital has, therefore, determined that it is desirable and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

II. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff, individually and on behalf of the Settlement Class, Settlement Class Counsel, and New London Hospital that, subject to the approval of the Court, the Lawsuit and the Released Claims shall be finally and fully compromised, settled, and released, and the Lawsuit shall be dismissed with prejudice as to the Parties, the Settlement Class, and the Settlement Class Members, except 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 this Settlement Agreement and its exhibits, the following terms have the meanings specified below:

1.1 “*Claim Deadline*” means a date certain, which is to be set forth in the Notice and which shall be no more than ninety (90) Days from the date Notice is mailed to the Settlement Class Members.

1.2 “*Claim Form*” means the form, attached as **Exhibit C** to this Settlement Agreement, which Settlement Class Members must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall require an actual or electronic sworn signature under penalty of perjury but shall not require a notarization or any other form of verification.

1.3 “*Claims Administration*” means the processing and payment of claims received from Settlement Class Members by the Settlement Administrator.

1.4 “*Complaint*” means the Class Action Complaint filed by Plaintiff on May 18, 2021 in the Lawsuit as well as the First Amended Class Action Complaint filed by Plaintiff on September 20, 2021 in the Lawsuit.

1.5 “*Court*” means the New Hampshire’s Merrimack County Superior Court.

1.6 “*Data Incident*” means cyber-attack incident allegedly involving private information in or about July 30, 2020.

1.7 “*Days*” means calendar days; provided, however, when computing any period of time prescribed or allowed by this Settlement Agreement, does not include the day of the act, event, or default from which the designated period of time begins to run. Further, when computing any period of time prescribed or allowed by this Settlement Agreement, include the last day of the

period, unless it is a Saturday, a Sunday, or a Federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday.

1.8 “*Effective Date*” means the date defined in Paragraph 14.1 of this Settlement Agreement.

1.9 “*Final*” means that all of the following events have occurred: (a) the settlement pursuant to this Settlement Agreement is approved by the Court; (b) the Court has entered the Final Order and Judgment; and (c) either (i) no appeal has been taken from the judgment as of the date on which all times to appeal or seek permission to appeal therefrom have expired, or (ii) if an appeal or other review proceeding of the judgment has been commenced, such appeal or other review is finally concluded and no longer is subject to further review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects. Notwithstanding the above, any order modifying or reversing any Service Award or award of attorneys’ fees or expenses shall not affect whether a judgment in this matter is Final or any other aspect of the judgment.

1.10 “*Final Approval Hearing*” means the hearing in the Lawsuit at which the Court considers final approval of this Settlement and the entry of the Final Order and Judgment.

1.11 “*Final Order and Judgment*” means the final judgment and order of dismissal with prejudice to be entered in the Lawsuit in connection with the approval of the Settlement after the Final Approval Hearing.

1.12 “*New London Hospital*” means New London Hospital Association, Inc.

1.13 “*New London Hospital Counsel*” means Hinckley, Allen & Snyder, LLP and Polsinelli PC and their attorneys.

1.14 “*Lawsuit*” means the lawsuit, styled *Tom Steen, individually and on behalf of all others similarly situated, v. The New London Hospital Association, Inc.*, Case No. 217-2021-CV-00281 pending in New Hampshire’s Merrimack County Superior Court.

1.15 “*Notice*” means the written notice to be sent or published to Settlement Class Members pursuant to the Preliminary Approval Order, attached as **Exhibits A and B**.

1.16 “*Notice and Claims Administration Costs*” means actual costs associated with or arising from providing notice to Settlement Class Members and performing Claims Administration in connection with the Settlement.

1.17 “*Notice Program*” means the notice program described in Section 5.

1.18 “*Parties*” means Plaintiff, individually and on behalf of the Settlement Class (as defined below), and Defendant The New London Hospital Association, Inc., d/b/a New London Hospital and Newport Health Center.

1.19 “*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.

1.20 “*Private Information*” shall mean “*Personally Identifiable Information*” and/or “*Protected Health Information*” and includes, but is not limited to, name, date of birth, Social Security number, medical record or patient account number, health insurance information, and/or limited treatment or clinical information such as diagnosis, provider name and date(s) of service.

1.21 “*Plaintiff*” means Tom Steen.

1.22 “*Preliminary Approval Date*” means the date on which the Preliminary Approval Order has been entered by the Court.

1.23 “*Preliminary Approval Order*” means the order preliminarily approving the Settlement and providing for Notice to the Settlement Class, attached as **Exhibit D**.

1.24 “*Related Entities*” means New London Hospital’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of New London Hospital’s and their respective predecessors, successors, 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 the Lawsuit, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, or aiding or abetting the criminal activity associated with the Data Incident or who pleads *nolo contendere* to any such charge.

1.25 “*Released Claims*” means any and all past, present, and future claims, causes of action, counterclaims, lawsuits, rights, demands, charges, complaints, actions, obligations, or liabilities under any legal or equitable theory, whether known, unknown, suspected, or unsuspected or capable of being known or suspected, and whether, accrued, unaccrued, matured, or not matured, including, but not limited to, negligence; negligence *per se*; negligent training and supervision; breach of fiduciary duty; breach of confidence; invasion of privacy; breach of contract; unjust enrichment; breach of implied contract; violations of the New Hampshire Consumer Protection Act, New Hampshire Notice of Security Breach Act, and any other state or federal consumer protection statute; misrepresentation (whether fraudulent, negligent, or innocent); bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute, regulation, or common law duty; and any causes of action under 18 U.S.C. §§

2701 *et seq.*, and all similar statutes in effect in any states in the United States as defined herein; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees, costs and expenses, set-offs, losses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been 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 and alleged exposure and compromise of any Settlement Class Member's private information, personally identifiable information and/or protected health information or any other allegations, facts, or circumstances described in the Lawsuit or the Complaint. Released Claims shall not include the right of any Settlement Class Member 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 Persons who have timely and validly requested exclusion from the Settlement Class pursuant to the opt-out procedures set forth in this Settlement Agreement.

1.26 “*Released Persons*” means New London Hospital, the Related Entities, and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, assigns, owners, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

1.27 “*Settlement*” means the settlement of the Lawsuit upon the terms and conditions set forth in this Settlement Agreement.

1.28 “*Settlement Administrator*” means RG2 Claims Administration, LLC or another company experienced in administering class action claims generally and specifically those of the

type provided for and made in Lawsuit, if jointly agreed upon by the parties and approved by the Court.

1.29 “*Settlement Agreement*” means this Settlement Agreement, including all exhibits hereto.

1.30 “*Settlement Class*” means all persons New London Hospital identified as being among those individuals potentially impacted by the Data Incident, including all who were sent a notice of the Data Incident.

1.31 “*Settlement Class Counsel*” shall mean Gary M. Klinger and David K. Leitz, Milberg Coleman Bryson Phillips Grossman, PLLC.

1.32 “*Settlement Class Member[s]*” means all persons who fall within the definition of the Settlement Class.

1.33 “*Settlement Website*” means a dedicated website, www.NLHdatasettlement.com, created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, Notice, and Claim Form, among other things.

2. CLASS CERTIFICATION

2.1 Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, New London Hospital agrees to stipulate to the certification of the Settlement Class and will not oppose Plaintiff’s request for certification.

2.2 Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, New London Hospital stipulates that Plaintiff is an adequate representative of the Settlement Class, and that Settlement Class Counsel are adequate counsel for the Settlement Class.

2.3 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, shall be vacated, and the Lawsuit shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Party's position on the issue of class certification or any other issue. The Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved. In the event of non-approval, termination or cancellation of this Settlement Agreement, New London Hospital or its insurer shall be responsible for administration and notification costs incurred, if any, but shall have no other payment, reimbursement, or other financial obligation of any kind as a result of this Settlement Agreement.

3. SETTLEMENT BENEFITS.

Subject to the terms of this Settlement Agreement, New London Hospital or its insurer shall make available the following compensation to Settlement Class Members:

3.1 Monetary Compensation for Losses: Settlement Class Members who submit a valid and timely Claim Form may choose all applicable claim categories below. The overall compensation cap for any individual claimant is \$500.00 for all amounts claimed in Claims A and B, and \$5,000.00 for all amounts claimed in Claim C. Claims will be subject to review for completeness and plausibility by the Settlement Administrator, and Claimants will have the opportunity to seek review by a third-party Claims Referee, at Defendant's expense, if they dispute the Settlement Administrator's initial determination.

(a) Claim A: Compensation for Ordinary Losses. Settlement Class Members will be eligible for compensation for unreimbursed ordinary losses, as defined below, up to a total of \$500.00 per claimant, upon submission of a valid Claim Form and supporting documentation, if applicable. Ordinary losses may include (i) out of pocket expenses

incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel; (ii) fees for credit reports, credit monitoring, or other identity theft insurance product purchased between the date of the Data Incident and the close of the Claims Period; and (iii) up to 5 hours of lost time, at \$20/hour, if at least one (1) full hour was spent dealing with the Data Incident, provided that the claimant certifies that the lost time was spent in response to the Data Incident. The maximum amount any one claimant may recover under Claim A is \$500.00.

(b) Claim B: Compensation for Statutory Benefits. Class Members will also be eligible to submit a claim for a statutory benefit. All Class Members who submit a claim shall be awarded \$125.00. This additional amount may be combined with a claim for reimbursement for lost time, with reimbursement for ordinary out-of-pocket losses, and shall be subject to the \$500.00 cap in Claim A for ordinary loss and lost time.

The total amount of statutory benefits shall be capped at \$150,000.00, and payments to the Class Members who make claims shall be reduced on a pro rata basis according to the number of claims made if the total exceeds the overall \$150,000.00 cap.

(c) Claim C: Compensation for Extraordinary Losses. Settlement Class Members will be eligible for compensation for extraordinary losses, including proven actual monetary losses, upon submission of a valid Claim Form provided that (i) the loss is an actual, documented, and unreimbursed monetary loss arising from fraud or misuse; (ii) the loss from fraud or misuse was more likely than not caused by the Data Incident; (iii) the actual misuse or fraud loss is not already covered by one or more of the ordinary loss compensation categories under Claim A; (iv) the claimant made reasonable efforts to

avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance; and (v) the actual misuse or fraud loss occurred between the date of the Data Incident (July 30, 2020) and the Claims Deadline. The maximum amount any one claimant may recover under Claim B is \$5,000.00.

3.2 Credit Monitoring. All Class Members will be offered two (2) years of three bureau (3B) credit monitoring without the requirement of filing a Claim for monetary compensation. The credit monitoring offer will be included in the Class Notice mailed to Class Members and will require Class Members to activate the credit monitoring after Final Approval by the Court.

3.3 New London Hospital agrees to continue to provide security for patient private information and personal health information. New London Hospital agrees to provide Plaintiff's Counsel with a confidential declaration or affidavit outlining the alleged security-related issues involved in the Data Incident and attesting that security-related measures have been implemented to remediate said security-related issues. New London Hospital has paid such remedial costs separate and apart from other settlement benefits.

3.4 New London Hospital agrees not to oppose an application by Plaintiff's counsel to request the Court for approval of attorney's fees and expenses not to exceed three hundred thousand and No/100 Dollars (\$300,000.00). Plaintiff also will seek the Court's approval of a class representative Service Award not to exceed one thousand and No/100 dollars (\$1,000), which shall be separate and apart from any other sums as stated in this Section.

3.5 Payment of compensation to Class Members and payment of the Service Award are understood and agreed by the Parties to be payments in compromise of disputed claims and not payments of contractually based obligations of New London Hospital, such as, for example,

refunds of amounts paid or payable to New London Hospital for medical care. New London Hospital further denies that any payments claimed for statutory benefits are a result of any statutory violations on the part of New London Hospital. It is also understood and agreed by the Parties that payment of compensation to Class Members and payment of a Service Award are not subject to set-off or recoupment in the event unpaid bills or other amounts are due New London Hospital from the payee of such compensation or award.

4. SETTLEMENT ADMINISTRATION.

4.1 All Notice and Claims Administration Costs will be paid by New London Hospital or its insurer.

4.2 The Parties have agreed to request that the Court appoint RG2 Settlement Administration, LLC as Settlement Administrator. Once approved by the Court, the Settlement Administrator will be an agent of the Court and will be subject to the Court's supervision and direction as circumstances may require.

4.3 The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of this Settlement Agreement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing notice and to accomplish such other purposes as may be approved by New London Hospital Counsel and Settlement Class Counsel. The Parties shall reasonably cooperate with such requests.

4.4 The Settlement Administrator will administer and update the Settlement Website in accordance with the terms of this Settlement Agreement. Settlement Class Counsel and New London Hospital Counsel shall agree on all information and documents to be posted on the Settlement Website.

4.5 The Settlement Administrator will conduct Claim Administration in accordance with the terms of the Settlement Agreement, any additional processes agreed to by Settlement

Class Counsel and New London Hospital Counsel, and subject to the Court's supervision and direction as circumstances may require.

4.6 To make a claim for monetary compensation, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. Claim Forms shall be submitted by U.S. mail or electronically through the Settlement Website and must be postmarked or submitted no later than the Claim Deadline.

4.7 The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for timeliness, completeness, and validity.

4.8 The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all documentation or information needed to complete the Claim Form, including any documentation required to support claims for compensation under Paragraph 3.1 above; and (3) when applicable, the information submitted could lead a reasonable person to conclude that the claimant is eligible for the category and/or amount for which a claim is submitted (collectively, "Facially Valid"). The Settlement Administrator may, at any time, request from the claimant, in writing, additional information ("Claim Supplementation") as the Settlement Administrator may reasonably require in order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information regarding the claimed losses, available insurance or other sources of reimbursement, the status of any claims made for insurance benefits or other reimbursement, and claims previously made for identity theft and the resolution thereof.

4.9 The Settlement Administrator will maintain records of all Claim Forms submitted until the later of (a) one hundred and eighty (180) Days after the Effective Date or (b) the date all Claim Forms have been fully processed. Claim Forms and supporting documentation may be

provided to the Court upon request and to Settlement Class Counsel and/or New London Hospital Counsel to the extent requested or necessary to resolve Claims Administration issues pursuant to this Settlement Agreement. New London Hospital or the Settlement Administrator will provide other reports or information as requested by the Court.

4.10 Subject to the terms and conditions of this Settlement Agreement, New London Hospital or its insurer shall transmit needed claimant compensation funds to the Settlement Administrator, and the Settlement Administrator shall mail or otherwise provide checks for approved claims within sixty (60) Days of the Effective Date, or within sixty (60) Days of the date that the Claim is approved, whichever is later.

4.11 Checks for approved Claims shall be mailed to the address provided by the Settlement Class Member on his or her Claim Form.

4.12 Cashing a check for an approved Claim is a condition precedent to any Settlement Class Member's right to receive benefits under this Settlement Agreement. All checks issued under this section shall be void if not negotiated within ninety (90) Days of their date of issue and shall bear the language "This check must be cashed within 90 days, after which time it is void." Checks issued pursuant to this section that are not negotiated within ninety (90) Days of their date of issue shall not be reissued. If a Settlement Class Member fails to cash a check issued under this section before it becomes void, 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 under the Settlement shall be extinguished, and New London Hospital shall have no obligation to make payments to the Settlement Class Member for compensation or loss reimbursement under Paragraph 3.1 or to make any other type of monetary relief to the Settlement

Class Member. Such Settlement Class Member remains bound by all terms of the Settlement Agreement.

4.13 The settlement funds and benefits that New London Hospital shall create or provide will not be subject to any non-claim statutes or any possible rights of forfeiture or escheat. All monies that might be paid are not vested, contingently due, or otherwise monies in which a Settlement Class Member has an enforceable right and shall remain the property of New London Hospital and its insurer until all conditions for payment have been met. No interest shall accrue or be payable in connection with any payment due under this Settlement Agreement.

4.14 Information submitted by Settlement Class Members in connection with submitted claims for benefits under this Settlement Agreement shall be deemed confidential and protected as such by the Settlement Administrator, Claims Referee, Settlement Class Counsel, and New London Hospital Counsel.

5. NOTICE TO SETTLEMENT CLASS MEMBERS.

5.1 The Parties agree that the following Notice Program provides reasonable notice to the Settlement Class.

5.2 Notice shall be provided to Settlement Class Members via (1) direct notice; and (2) notice on the Settlement Website.

5.3 Within seven (7) Days of the entry of the Preliminary Approval Order and engagement of a Settlement Administrator, New London Hospital shall provide the Settlement Administrator with the names and mailing addresses of the Settlement Class Members whose mailing addresses are known to New London Hospital. The Settlement Administrator shall, by using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“Postal Service”), obtain updates, if any, to the mailing addresses.

5.4 Within thirty (30) Days of the entry of the Preliminary Approval Order (the “Notice Deadline”), the Settlement Administrator shall send the Notice in **Exhibit A** to all Settlement Class Members whose addresses are known to New London Hospital by First Class U.S. Mail.

5.5 If any Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall remail the Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. Where the undeliverable Notice is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to ascertain the correct address of the Settlement Class Member whose Notice was returned undeliverable and remail the Notice. Other than as set forth in the preceding sentence, neither the Parties nor the Settlement Administrator shall have any obligation to remail a Notice to a Settlement Class Member.

5.6 The Notice mailed to Settlement Class Members will consist of a Short-Form Notice in a form substantially similar to that attached hereto as **Exhibit A**. The Settlement Administrator shall have discretion to format this Short-Form Notice in a reasonable manner to minimize mailing and administrative costs. Before Notices are mailed, Settlement Class Counsel and New London Hospital Counsel shall first be provided with a proof copy (reflecting what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and any orders of the Court.

5.7 No later than thirty (30) Days following entry of the Preliminary Approval Order and engagement of a Settlement Administrator, and prior to the mailing of the Notice to Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the Complaint, Short-Form Notice, Long-Form Notice (substantially in the form of **Exhibit B** hereto), and Claim Form (**Exhibit C**), as approved by the

Court, as well as this Settlement Agreement, to be made available on the Settlement Website. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by Settlement Class Counsel and New London Hospital Counsel, which approval shall not be unreasonably withheld. The website address and the fact that the Long-Form Notice and a Claim Form are available through the website shall be included in the Notice mailed to Settlement Class Members.

5.8 The Settlement Website shall be maintained and updated until thirty (30) Days after the Claim Deadline has passed.

5.9 Claim Forms shall be returned or submitted to the Settlement Administrator via U.S. Mail or submitted through the Settlement Website by the Claim Deadline set by the Court or be forever barred.

5.10 Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Settlement Class Counsel and New London Hospital Counsel to file with the Court an appropriate affidavit or declaration from the Settlement Administrator with respect to its compliance with the Court-approved Notice Program.

6. OPT-OUT PROCEDURE.

6.1 Each Settlement Class Member shall have the right to opt-out and not participate in the Settlement Agreement, as provided for in the Preliminary Approval Order.

6.2 The Notice shall inform each Settlement Class Member of his or her right to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement, if, within such time as is ordered by the Court (“Opt-Out Period”), the Settlement Class Member personally signs and timely submits, completes, and mails a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address set forth in the Notice. To be effective, an Opt-Out Request must be postmarked no later than the final date of the Opt-Out Period.

6.3 The Parties will recommend to the Court that the Opt-Out Period be the ninety (90) Day period beginning upon the entry of the Preliminary Approval Order.

6.4 For a Settlement Class Member's Opt-Out Request to be valid, it must (a) state his or her full name, address, and telephone number; (b) contain the Settlement Class Member's personal and original signature (or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a power of attorney to act on behalf of the Settlement Class Member with respect to a claim or right, such as those in the Action); and (c) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. The Settlement Administrator shall promptly inform Settlement Class Counsel and New London Hospital Counsel of any Opt-Out Requests.

6.5 All Settlement Class Members who submit timely and valid Opt-Out Requests in the manner set forth in Paragraph 6.4, above, referred to herein as "Opt-Outs," shall receive no benefits or compensation under this Settlement Agreement, shall gain no rights from the Settlement Agreement, shall not be bound by the Settlement Agreement, and shall have no right to object to the Settlement or proposed Settlement Agreement or to participate at the Final Approval Hearing. All Settlement Class Members who do not request to be excluded from the Settlement Class in the manner set forth in Paragraph 6.4, above, shall be bound by the terms of this Settlement Agreement, including the Release contained herein, and any judgment entered thereon, regardless of whether he or she files a Claim Form or receives any monetary benefits from the Settlement.

6.6 An Opt-Out Request or other request for exclusion that does not fully comply with the requirements set forth in Paragraph 6.4, above, or that is not timely submitted or postmarked,

or that is sent to an address other than that set forth in the Notice, shall be invalid, and the person submitting such request shall be treated as a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and any judgment entered thereon.

6.7 No person shall purport to exercise any exclusion rights of any other person, or purport (a) to opt-out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt-out more than one Settlement Class Member on a single paper, or as an agent or representative. Any such purported Opt-Out Requests shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Opt-Out Requests shall be treated as a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and judgment entered thereon, unless he or she submits a valid and timely Opt-Out Request.

6.8 Within fourteen (14) Days after the last Day of the Opt-Out Period, the Settlement Administrator shall furnish to Settlement Class Counsel and to New London Hospital Counsel a complete list of all timely and valid Opt-Out Requests (the “Opt-Out List”).

7. OBJECTIONS TO THE SETTLEMENT.

7.1 Any Settlement Class Member who wishes to object to the Settlement Agreement must submit a timely written notice of his or her objection (“Objection”) by the Objection Date. Such notice shall (i) state the objecting Settlement Class Member’s full name, current address, telephone number, and email address (if any); (ii) contain the objecting Settlement Class Member’s original signature; (iii) set forth information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (e.g., copy of the Notice or copy of original notice of the Data Incident); (iv) set forth a statement of all grounds for the objection, including any legal support for the objection that the objector believes applicable; (v) identify all counsel representing the objector; (vi) state whether the objector and/or his or her counsel will

appear at the Final Approval Hearing, and; (vii) contain the signature of the objector's duly authorized attorney or other duly authorized representative (if any), along with documentation setting forth such representation.

7.2 To be timely, an Objection in the appropriate form must be filed with the Clerk of the Court no later than ninety (90) Days from the Preliminary Approval Date (the "Objection Date") and mailed or hand delivered concurrently upon Settlement Class Counsel and New London Hospital Counsel at addresses set forth in the Notice. The deadline for filing Objections shall be included in the Notice.

7.3 An objector is not required to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file with the Court, and mail or hand-deliver to Settlement Class Counsel and New London Hospital Counsel, a notice of appearance no later than ninety (90) Days after the Preliminary Approval Date.

7.4 If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, the notice of appearance filed with the Court must also identify the attorney(s) representing the objector who will appear at the Final Approval Hearing and include each such attorney's name, address, phone number, email address, state bar(s) to which counsel is admitted, as well as associated state bar numbers, and a list identifying all objections such counsel has filed to class action settlements in the past three (3) years, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney.

7.5 If the objecting Settlement Class Member intends to request permission from the Court to call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must

provide a list of any such witnesses together with a brief summary of each witness's expected testimony at least thirty (30) Days before the Final Approval Hearing.

7.6 Any Settlement Class Member who fails to comply in full with the requirements for objecting set forth in this Settlement Agreement, the Notice, and any applicable orders of the Court shall forever waive and forfeit any and all rights he or she may have to raise any objection to the Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and shall be bound by the Settlement Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Section. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final Order and Judgment approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the New Hampshire Rules of Civil Procedure and not through a collateral attack. Any objecting Settlement Class Member who appeals final approval of the Settlement Agreement will be required to post an appeal bond.

8. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD.

8.1 Settlement Class Counsel will petition the Court on notice to New London Hospital for a Service Award not to exceed \$1,000.00 for the named Plaintiff, which award is intended to recognize Plaintiff for his efforts in the litigation and commitment on behalf of the Settlement Class ("Service Award"). If approved by the Court, New London Hospital or its insurer will pay the Service Award to an account established by Settlement Class Counsel no later than twenty-one (21) Days after the Effective Date.

8.2 Settlement Class Counsel will petition the Court on notice to New London Hospital for an award of attorneys' fees and expenses in an amount not to exceed \$300,000.00. If approved

by the Court, New London Hospital or its insurer will pay the Court-approved amount for attorneys' fees and expenses to an account established by Settlement Class Counsel no later than twenty-one (21) Days after the Effective Date.

8.3 Settlement Class Counsel will file the applications with the Court for a Service Award and attorneys' fees and expenses no less than fourteen (14) Days prior to the opt-out and objection deadlines, unless otherwise ordered by the Court.

8.4 The Parties agree that New London Hospital will not in any event or circumstance be required to pay any amounts to Plaintiff or Settlement Class Counsel for a Service Award or attorneys' fees and expenses in excess of the amounts identified above in Paragraphs 8.1 and 8.2.

8.5 The Parties agree that the Court's approval or denial of any request for a Service Award and/or attorneys' fees and expenses are not conditions to this Settlement Agreement. The Parties further agree that the amount(s) of a Service Award, and of any award of attorneys' fees or expenses, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No order of the Court, or modification, reversal, or appeal of any order of the Court, concerning the amount of a Service Award or any attorneys' fees or expenses, ordered by the Court to be paid to Settlement Class Counsel or Plaintiff shall affect whether the Final Order and Judgment is Final, cancel or terminate this Settlement Agreement, or constitute grounds for cancellation or termination of this Settlement Agreement.

9. NOTICES.

9.1 All notices (other than the Notice) required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All Notices to Settlement Class Counsel or Plaintiff shall be sent to:

Gary M. Klinger
Milberg Coleman Bryson Phillips Grossman, PLLC
227 W. Monroe Street, Suite 2100
Chicago, IL 60606

David K. Lietz
Milberg Coleman Bryson Phillips Grossman, PLLC
5335 Wisconsin Avenue NW, Suite 440
Washington, DC 20015

All Notices to New London Hospital Counsel or New London Hospital shall be sent to:

Daniel M. Deschenes
Owen R. Graham
Hinckley, Allen & Snyder LLP
650 Elm Street, Suite 500
Manchester, NH 03101

John C. Cleary, Esq.
Polsinelli PC
600 Third Avenue, 42nd Floor
New York, NY 10016

Mark A. Olthoff, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112

9.2 Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of comments, Objections, requests for exclusion, or other documents, communications, or filings received as a result of the Notice.

10. SETTLEMENT APPROVAL PROCESS.

10.1 As soon as practicable after execution of this Settlement Agreement, the Parties shall jointly submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement, requesting entry of a Preliminary Approval Order in the form attached hereto as **Exhibit D**, or an order substantially similar to such form in both terms and cost, which:

- (a) Preliminarily approves this Settlement Agreement;
- (b) Certifies the Settlement Class for settlement purposes only pursuant to

Section 2;

(c) Finds that the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to Settlement Class Members;

(d) Appoints the Settlement Administrator in accordance with the provisions of Paragraph 4.2;

(e) Approves the Notice Program and directs the Settlement Administrator and New London Hospital to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;

(f) Approves a customary form of short notice to be mailed to Settlement Class Members (the “Short-Form Notice”) in a form substantially similar to the one attached hereto as **Exhibit A** and a customary long form of notice (“Long-Form Notice”) in a form substantially similar to the one attached hereto as **Exhibit B**, which together shall include a fair summary of the Parties’ respective litigation positions, the general terms of the Settlement set forth in this 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, and the date, time, and place of the Final Approval Hearing;

(g) Approves a Claim Form substantially similar to that attached hereto as **Exhibit C**, and directs the Settlement Administrator to conduct Claims Administration in accordance with the provisions of this Settlement Agreement;

(h) Approves the Opt-Out and Objection procedures as outlined in this Settlement Agreement;

(i) Schedules a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court;

- (j) Appoints Settlement Class Counsel;
- (k) Appoints Plaintiff as the Settlement Class Representative;
- (l) Appoints a Person proposed by the Parties to serve as Claims Referee; and
- (m) Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement.

11. FINAL APPROVAL HEARING.

11.1 Settlement Class Counsel and New London Hospital Counsel shall request that after Notice is completed, the Court hold a Final Approval Hearing and grant final approval of the Settlement set forth herein. The Parties will recommend that the Final Approval Hearing be scheduled no earlier than one hundred twenty (120) Days after the entry of the Preliminary Approval Order.

11.2 The Parties will file with the Court their briefs in support of final approval, attorneys' fees and expenses, and Service Award, no later than thirty (30) Days before the Final Approval Hearing, or as directed by the Court.

11.3 The Parties shall ask the Court to enter a Final Order and Judgment in substantially the same form as **Exhibit E**.

11.4 If and when the Final Order and Judgment becomes Final, the Lawsuit shall be dismissed with prejudice, with the Parties to bear their own attorneys' fees, costs, and expenses not otherwise provided in accordance with this Settlement Agreement.

12. TERMINATION OF THIS SETTLEMENT AGREEMENT.

12.1 Each Party shall have the right to terminate this Settlement Agreement if:

- (a) The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that is not substantially similar in form and substance to **Exhibit D** hereto);

(b) The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from **Exhibit E** hereto);
or

(c) The Final Order and Judgment do not become Final because a higher court reverses final approval by the Court.

12.2 New London Hospital shall have the right to terminate this Settlement Agreement if the total number of Opt-Outs exceeds one hundred (100) members of the Settlement Class. The date for purposes of calculating the occurrence of the condition permitting termination under this Paragraph shall be the date of delivery of the Opt-Out List.

12.3 If a Party elects to terminate this Settlement Agreement under this Section 12, that Party must provide written notice to the other Party's counsel, by hand delivery, mail, or email within ten (10) Days of the occurrence of the condition permitting termination.

12.4 Nothing shall prevent Plaintiff or New London Hospital from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement. In the event such appellate proceedings result, by order of the appellate court or by an order after remand or a combination thereof, in the entry of an order(s) whereby the Settlement is approved in a manner substantially consistent with the substantive terms and intent of this Settlement Agreement, and dismissing all claims in the Lawsuit with prejudice, and otherwise meeting the substantive criteria of this Settlement Agreement for approval of the Settlement, such order shall be treated as a Final Order and Judgment.

12.5 If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement and all orders entered in connection therewith shall be rendered null and void; (ii) the terms and provisions of the Settlement

Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Lawsuit or in any other proceeding for any purpose, and 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*; (iii) New London Hospital shall be responsible for all notice and claims administration costs incurred prior to the termination or disapproval; (iv) all Parties shall be deemed to have reverted to their respective positions and status in the Lawsuit as of the date this Settlement Agreement was executed and shall jointly request that a new case schedule be entered by the Court; and (v) New London Hospital or its insurer shall have no payment, reimbursement, or other financial obligation of any kind as a result of this Settlement Agreement, other than as stated in Sub-Part (iii) above.

13. RELEASE.

13.1 On the Effective Date, the Parties and each and every Settlement Class Member shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim may be pursued against New London Hospital or any Released Persons with respect to the Released Claims.

13.2 Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, 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, pursuing, 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.

13.3 On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) Plaintiff and each Settlement Class Member, and each of their respective spouses and children with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the “Releasing Persons”), and (ii) Settlement Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the Released Claims. The release set forth in the preceding sentence (the “Release”) shall be included as part of any judgment, so that all Released Claims shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.

13.4 Without in any way limiting the scope of the Release, the Release covers, without limitation, any and all claims for attorneys’ fees, costs, and expenses incurred by Settlement Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the Lawsuit, the Settlement, the administration of such Settlement and/or the Released Claims as well as any and all claims for the Service Award to Plaintiff.

13.5 Subject to Court approval, as of the Effective Date, all Settlement Class Members shall be bound by this Settlement Agreement and the Release and all of their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the

Lawsuit or this Settlement.

13.6 As of the Effective Date, the Released Persons are deemed, by operation of the entry of the Final Order and Judgment, to have fully released and forever discharged Plaintiff, the Settlement Class Members, Settlement Class Counsel, or any other counsel representing Plaintiff or Settlement Class Members, or any of them, of and from any claims arising out of the Lawsuit or the Settlement. Any other claims or defenses New London Hospital or other Released Persons may have against Plaintiff, the Settlement Class Members, Settlement Class Counsel, or any other counsel representing Plaintiff or Settlement Class Members, including, without limitation, any claims based upon or arising out of any employment, debtor-creditor, contractual, or other business relationship that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Lawsuit or the Released Claims are not released, are specifically preserved and shall not be affected by the preceding sentence.

13.7 As of the Effective Date, the Released Persons are deemed, by operation of entry of the Final Order and Judgment, to have fully released and forever discharged each other of and from any claims they may have against each other arising from the claims asserted in the Lawsuit, including any claims arising out of the investigation, defense, or Settlement of the Lawsuit.

13.8 Nothing in the Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

14. EFFECTIVE DATE.

14.1 The “Effective Date” of this Settlement Agreement shall be ten (10) Days after the date when each and all of the following conditions have occurred:

- (a) This Settlement Agreement has been fully executed by all Parties and their counsel;

(b) Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement and approving the Notice Program and Claim Form, all as provided above;

(c) The Court-approved Notice has been sent and the Settlement Website has been duly created and maintained as ordered by the Court;

(d) The Court has entered a Final Order and Judgment finally approving this Settlement Agreement, as provided above;

(e) The Final Order and Judgment has become Final; and

(f) The time for any appeal of the Final Order and Judgment has expired.

15. MISCELLANEOUS PROVISIONS.

15.1 The recitals and exhibits to this Settlement Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

15.2 The Parties (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

15.3 This Settlement Agreement is for settlement purposes only. No provision contained in this Settlement Agreement or any action taken hereunder shall constitute or be construed as an admission of the merit or validity of any claim or any fact alleged in the Lawsuit or of any wrongdoing, fault, violation of law, or liability of any kind on the part of New London Hospital or the Released Persons or any admission by New London Hospital or the Released Persons with respect to any claim or allegation made in any action or proceeding or any concession as to the merit of any of the claims asserted by Plaintiff in the Lawsuit. This Settlement Agreement shall not be offered or be admissible in evidence against either Party or the Released Persons or cited or

referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by New London Hospital or the Released Persons that Plaintiff's claims or any similar claims are suitable for class treatment outside of this Settlement.

15.4 In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing such agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Settlement Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Settlement Agreement in order to give this Settlement Agreement full force and effect.

15.5 No Person shall have any claim against Plaintiff, Settlement Class Counsel, New London Hospital, New London Hospital Counsel, the Settlement Administrator, the Claims Referee, the Released Persons, or their agents based on administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any court order.

15.6 This Settlement Agreement constitutes the entire agreement between the Parties with respect to the settlement of the Lawsuit. This Settlement Agreement supersedes all prior negotiations and agreements with respect to the settlement of the Lawsuit and may not be modified or amended, except by a writing signed by or on behalf of the Parties or their respective successors-in-interest. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on, except as expressly set forth in this Settlement Agreement.

15.7 There shall be no waiver of any term or condition absent an express writing to that effect by the waiving Party. No waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

15.8 In the event a third party, such as a bankruptcy trustee, former spouse, or other third party, has or claims to have a claim against any payment made or to be made to a Settlement Class Member, it is the sole responsibility of the Settlement Class Member to transmit the funds to such third party in satisfaction of such claims.

15.9 The Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Lawsuit. The Settlement compromises and releases claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim or defense. The Parties each agree that the Settlement was negotiated in good faith by the Parties and was reached voluntarily after consultation with competent legal counsel. The 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 Lawsuit was brought or defended in bad faith or without a reasonable basis. It is agreed that neither Party shall have any liability to one another as it relates to the Lawsuit, except as set forth herein.

15.10 This Settlement Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions, and exhibits are material and

necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

15.11 The Court shall retain jurisdiction, after entry of the Final Order and Judgment, with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties and Settlement Class Members submit to the exclusive jurisdiction of the Court for purposes of the implementation and enforcement of the Settlement embodied in this Settlement Agreement and any dispute with respect thereto.

15.12 This Settlement Agreement shall be construed under and governed by the laws of the state of New Hampshire without regard to its choice of law provisions.

15.13 In the event that any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision had never been a part of this Settlement Agreement, as long as the benefits to New London Hospital or the Settlement Class Members are not materially altered as the result of the invalid, illegal, or unenforceable provision.

15.14 This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

15.15 The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

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

15.17 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement.

15.18 Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her, or its independent judgment and the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

15.19 Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

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

Dated: July 7, 2022

/s/ Daniel M. Deschenes
Daniel M. Deschenes (#14889)
Owen R. Graham (#266701)
HINCKLEY, ALLEN & SNYDER LLP
650 Elm Street, Suite 500
Manchester, NH 03101
Tel: (603) 225-4334
ddechenes@hinckleyallen.com
ograham@hinckleyallen.com

Dated: July 7, 2022

/s/ Gary M. Klinger
Gary M. Klinger
**MILBERG COLEMAN BRYSON
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227 W. Monroe Street, Suite 2100
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Attorneys for Plaintiff and the Class

EXHIBIT A

Tom Steen, individually and on behalf of all others similarly situated, v. The New London Hospital Association, Inc., Case No. 217-2021-CV-00281.

If you were mailed a notice by New London Hospital regarding a data incident that occurred on or about July 30, 2020, you may be eligible for compensation and credit monitoring.

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

A settlement has been reached in a class action lawsuit against New London Hospital Association, Inc. d/b/a New London Hospital and Newport Health Center (“New London Hospital”) relating to the potential compromise of private information of current and/or former patients of New London Hospital on or about July 30, 2020 (the “Data Incident”). New London Hospital denies all of the claims and says it did not do anything wrong. This class settlement has been preliminarily approved by the court.

WHO IS INCLUDED? New London Hospital records show you received a notification from New London Hospital of the Data Incident, and, therefore, you are included in this Settlement as a “Settlement Class Member.”

SETTLEMENT BENEFITS. All Settlement Class Members will be provided access to three bureau (3B) credit monitoring services for a period of two years from the Effective Date of the Settlement without the need to submit a Claim Form. A link with a redeemable code to be used after the court grants final approval of the settlement is provided below.

Link: [Link]

Redemption Code: [Redemption Code]

The Settlement also provides two types of payments to people who submit valid claims: 1) reimbursement of up to \$500.00 for documented out-of-pocket losses, a statutory benefit of \$125.00 and/or up to five hours of attested to lost time at \$20 per hour that resulted from the Data Incident; and 2) reimbursement of up to \$5,000.00 for documented extraordinary losses arising from misuse or fraud which were more likely than not caused by the Data Incident.

THE ONLY WAY TO RECEIVE MONETARY COMPENSATION IS TO FILE A CLAIM. To file online or to get a Claim Form, visit the website at www._____.com. The claim deadline is _____, 2022. Your unique ID on this Notice will be required to file a claim.

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 New London Hospital for the claims resolved by this Settlement. If you do not want to be legally bound by the Settlement, you must exclude yourself by _____, 2022. If you stay in the Settlement, you may object to it by _____, 2022. A more detailed notice is available to explain how to exclude yourself or object. Please visit the website at www._____.com for a copy of the more detailed notice. On _____, 2022, the Court will hold a Final Approval Hearing to determine whether to approve the Settlement, Settlement Class Counsel’s request for payment of attorneys’ fees and expenses and a named representative incentive award for the Representative Plaintiff.

www._____.com

EXHIBIT B

IN THE MERRIMACK COUNTY NEW HAMPSHIRE SUPERIOR COURT

If you were mailed a notice by The New London Hospital Association, Inc. regarding a data incident that occurred on or about July 30, 2020, you may be eligible for compensation and credit monitoring.

A state superior court authorized this Notice. This is not junk mail, an advertisement, or a solicitation from a lawyer.

A settlement has been proposed in a class action lawsuit against New London Hospital Association, Inc. d/b/a New London Hospital and Newport Health Center (“New London Hospital”) for the potential compromise of private information of current and/or former patients of New London Hospital on or about July 30, 2020 (the “Data Incident”). The information involved in the Data Incident potentially included names and Social Security numbers relating to New London Hospital patients.

If you received notice of the class action, you may be included in this Settlement as a “Settlement Class Member.”

- The Settlement provides payments to people who submit valid claims for lost time, out-of-pocket expenses, statutory benefits, and/or charges that were incurred and plausibly arose from the Data Incident, and for other extraordinary unreimbursed monetary losses. The Settlement also provides for two years of credit monitoring services. 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	This is the only way you can get payment.
EXCLUDE YOURSELF FROM THE SETTLEMENT	You will not get any payment from the Settlement, but you also will not release your claims against New London Hospital. This is the only option that allows you to be part of any other lawsuit against New London Hospital or related parties for the legal claims resolved by this Settlement.
OBJECT TO THE SETTLEMENT	Write to the Court with reasons why you do not agree with the Settlement.
GO TO THE FINAL FAIRNESS HEARING	You may ask the Court for permission for you or your attorney to speak about your objection at the Final Fairness Hearing.
DO NOTHING	You will not get any payment from this Settlement and you will give up certain legal rights. Submitting a Claim Form is the only way to obtain payment under this Settlement.

- 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._____.com. 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.

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BASIC INFORMATION

1. Why is this Notice being provided?

The Court directed that this Notice be provided 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 Settlement Administrator appointed by the Court will distribute the payments that the Settlement allows. This Notice explains the lawsuit, the Settlement, your legal rights, what payments are available, who is eligible for them, and how to get them.

The Court in charge of this case is New Hampshire's Merrimack County Superior Court. The case is styled as *Tom Steen, individually and on behalf of all others similarly situated, v. The New London Hospital Association, Inc., d/b/a New London Hospital and Newport Health Center* ("New London Hospital") Case No. 217-2021-CV-00281 (the "Lawsuit"). The person who filed the Lawsuit is called the Plaintiff, and the company they sued, New London Hospital, is called the Defendant.

2. What is this lawsuit about?

The Lawsuit claims that New London Hospital was responsible for the Data Incident and asserts claims such as: (1) negligence; (2) breach of implied contract; (3) unjust enrichment; (4) violation of the New Hampshire Consumer Protection Act ("NHCPA"); and (5) violation of New Hampshire Notice of Security Breach Act. The Lawsuit seeks, among other things, payment for persons who were injured by the Data Incident. New London Hospital denies each and all of the claims and contentions alleged against it in the Lawsuit. New London Hospital denies all allegations of wrongdoing or liability as alleged, or which could be alleged, in the Lawsuit. New London Hospital denies that the New Hampshire Consumer Protection Act applies or creates liability on the part of New London Hospital, denies it breached any contract (express or implied), denies it has been unjustly enriched, and denies it violated any statutes.

3. What is a class action?

In a class action, one or more people called Class Representatives (in this case, Tom Steen) sue on behalf of people who have similar claims. Together, all these people are called a Class or Class Members. One Court and one judge – in this case, Judge Brian T. Tucker – 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 the Plaintiff or New London Hospital. Instead, the Plaintiff negotiated a settlement with New London Hospital that allows both Plaintiff and New London Hospital 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 payment 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 New London Hospital 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 notification from New London Hospital of the Data Incident.

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

Yes. Specifically excluded from the Settlement Class are: (i) New London Hospital and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge(s) assigned to evaluate the fairness of this settlement; and (iv) other persons excluded by the terms of the Settlement Agreement.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

The Settlement will provide monetary payments to people who submit valid claims.

There are two types of payments that are available: (1) Ordinary Loss Compensation (Question 8, below); and (2) Extraordinary Loss Compensation (Question 9, below). To claim each type of payment, you must provide the information and documentation called for by the Claim Form.

New London Hospital will also provide each Settlement Class Member with a code for two (2) years of three bureau (3B) credit monitoring service to be used after the court grants final approval to the settlement.

8. What payments are available for Ordinary Loss Compensation?

Class Members are eligible to receive compensation of up to \$500.00 (in total) for the following categories of out-of-pocket expenses and lost time resulting from the Data Incident:

- Unreimbursed losses relating to fraud or identity theft; professional fees, including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after July 30, 2020, through the date of preliminary approval; and miscellaneous expenses, such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
- Reimbursement of up to five hours of lost time (at \$20 per hour) shown by the claimant, duly certified by the claimant, to have been spent dealing with issues related to the Data Incident to prevent, detect, contest, remediate, and/or repair related damages, *e.g.*, time spent dealing with obtaining credit reports, credit monitoring or other identity theft protection products, contacting credit reporting agencies, contacting public or private health insurers, contacting financial institutions, reviewing and monitoring financial accounts and credit reports for fraudulent or suspicious activity, or reversing fraudulent charges; and

- Statutory benefits of \$125.00 may be included in the total compensation of up to \$500.00 (in total).

More details are provided in the Settlement Agreement, which is available at www._____.com.

9. What payments are available for Extraordinary Loss Compensation?

Class Members who had extraordinary unreimbursed monetary losses because of information potentially compromised as part of the Data Incident are eligible to make a claim for compensation of up to \$5,000. As part of the claim, the Class Member must show that: (1) the loss is an actual, documented, and unreimbursed monetary misuse or fraud loss; (2) the misuse or fraud loss was more likely than not caused by the Data Incident; (3) the misuse or fraud loss occurred during the time period from July 30, 2020 through and including the end of the applicable claims period; (4) the loss is not already covered by one or more of the categories in Question 8; and (5) a reasonable effort was made to avoid or seek reimbursement for the loss, including but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

More details are provided in the Settlement Agreement, which is available at www._____.com.

HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

10. How do I get monetary benefits from the Settlement?

Monetary Benefits: To ask for a payment, you must complete and Submit a Claim Form. Claim Forms are available at www._____.com. Read the instructions carefully, fill out the Claim Form electronically, or mail it postmarked no later than _____, 2022 to:

New London Hospital Claims Administrator
PO Box XXXXX
City, State zip code

Credit Monitoring: After the Court has granted final approval of the Settlement. Settlement Class Members will have the opportunity to use the enrollment code included in the postcard notice that they can use to enroll in the three bureau (3B) credit monitoring services.

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 provided timely, 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 his or her claim reviewed by an impartial Claims Referee who has been appointed by the Court.

12. When will I get my payment?

The Court will hold a Final Fairness Hearing at __:__ o'clock __.m. on _____, 2022 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, perhaps more than a year. 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 _____, 2022.

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

If the Settlement becomes final, you will give up your right to sue New London Hospital for the claims being resolved by this Settlement. The specific claims you are giving up against New London Hospital are described in Section II.1.25 of the Settlement Agreement. You will be “releasing” New London Hospital and all related people or entities as described in Sections II.1.26 and XIII.13.3 of the Settlement Agreement. The Settlement Agreement is available at www._____.com.

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

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue New London Hospital about issues in the Lawsuit, 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 New London Hospital for the same thing later?

No. Unless you exclude yourself from the Settlement, you give up any right to sue New London Hospital 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 *Tom Steen, individually and on behalf of all others similarly situated, v. The New London Hospital Association*, Case No. 217-2021-CV-00281. Your letter must also include your full name, address, telephone number, and personal and original signature. You must mail your exclusion request postmarked no later than _____, 2022 to:

New London Hospital Settlement Exclusions
P.O. Box _____
[City] [ST] _____ - _____

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

Yes. The Court appointed Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman, PLLC, 227 W. Monroe Street, Suite 2100, Chicago, IL 60606; and David K. Lietz, Milberg Coleman

Bryson Phillips Grossman, PLLC, 5335 Wisconsin Avenue NW, Suite 440, Washington, DC 20015 to represent you and other Settlement Class Members. These lawyers are called Settlement 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 Settlement Class Counsel be paid?

If the Settlement is approved and becomes final, Settlement Class Counsel will ask the Court to award attorneys' fees and expenses in the total amount of \$300,000.00. Settlement Class Counsel will also request approval of a service award of \$1,000.00 for the Class Representative. If approved, these amounts, as well as the costs of notice and settlement administration, will be paid separately by New London Hospital.

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 Settlement Class Counsel and New London Hospital's Counsel a written notice stating that you object to the Settlement in *Tom Steen, individually and on behalf of all others similarly situated, v. The New London Hospital Association, Inc.*, Case No. 217-2021-CV-00281.

Your objection must include:

- 1) Your full name, address, telephone number, and e-mail address;
- 2) Information or proof showing you are a Settlement Class Member;
- 3) The reasons why you object to the Settlement, including any documents supporting your objection;
- 4) The name and address of your attorney, if you have retained one;
- 5) The name and address of any attorneys representing you that may appear at the Final Fairness Hearing;
- 6) A list of all persons who will be called to testify at the Final Fairness Hearing in support of your objection;
- 7) A statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing; and
- 8) Your signature or the signature of your attorney or other duly authorized representative (along with documentation illustrating representation).

Your objection must be filed with the Clerk of the Merrimack County Superior Court, 5 Court Street, Concord, New Hampshire 03301 no later than _____, 2022. You must also mail copies of your objection to Settlement Class Counsel and New London Hospital's Counsel postmarked no later than _____, 2022, at all of the addresses below.

SETTLEMENT CLASS COUNSEL	NEW LONDON HOSPITAL'S COUNSEL
<p>Gary M. Klinger MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC 227 W. Monroe Street, Suite 2100 Chicago, IL 60606 847-208-4585 gklinger@milberg.com</p> <p>David K Lietz MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC 5335 Wisconsin Avenue NW, Suite 440 Washington, DC 20015 866-252-0878 dlietz@milberg.com</p>	<p>Daniel M. Deschenes (# 14889) Owen R. Graham (# 266701) HINCKLEY, ALLEN & SNYDER LLP 650 Elm Street, Suite 500 Manchester, NH 03101 Phone: (603) 225-4334 ddeschenes@hinckleyallen.com ograham@hinckleyallen.com</p> <p>Mark A. Olthoff (<i>pro hac vice</i>) Brisa I.I. Wolfe (<i>pro hac vice</i>) POLSINELLI PC 900 W. 48th Place, Suite 900 Kansas City, MO 64112 Phone: (816) 753-1000 molthoff@polsinelli.com bwolfe@polsinelli.com</p> <p>John C. Cleary (<i>pro hac vice</i>) POLSINELLI PC 600 Third Avenue, 42nd Floor New York, NY 10016 Phone: (212) 413-2837 john.cleary@polsinelli.com</p>

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 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 __:__ o'clock [a.m./p.m.] on _____, 2022, in the Merrimack County Superior Court, 5 Court Street, Concord, New Hampshire 03301 ----- 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 expenses requested by Settlement Class Counsel, and the service award requested for the Class Representative.

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

No. Settlement 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 benefits 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 New London Hospital or related parties about the issues involved in the Lawsuit, 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._____.com.

27. How do I get more information?

Go to www._____.com.

***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 Lawsuit.***

EXHIBIT C

CLAIM FORM

DEADLINE TO SUBMIT: _____

ATTENTION: This Claim Form is to be used to apply for monetary benefits from the settlement of a lawsuit with The New London Hospital Association (“New London Hospital”). The lawsuit alleges that a single New London Hospital file was accessed on July 30, 2020, which resulted in the potential compromise of patients’ private information (“Data Incident”). To recover as part of this settlement, you *must* provide the information requested in this Claim Form for each applicable claim. PLEASE BE ADVISED that any documentation you provide must be submitted with this Claim Form.

You may submit claims in each applicable category below:

- (A) Compensation for ordinary losses attributable to the Data Incident, which include (1) unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after July 30, 2020, through the date of preliminary approval; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and
- (B) Up to five (5) hours of lost time (at \$20 per hour) provided that you certify the lost time was spent in response to the Data Incident; and
- (C) Statutory benefits; and
- (D) Compensation for extraordinary losses attributable to the Data Incident, including out-of-pocket costs associated with identity theft, tax fraud, other forms of fraud, and other actual misuse of personal information as a result of the Data Incident.

For further information on each, please see the Notice.

If you wish to submit a claim for a settlement payment electronically, you may go online to the Settlement Website, www._____.com, and follow the instructions on the “Submit a Claim” page.

If you wish to submit a claim for a settlement payment via standard mail, you need to provide the information requested below and mail this Claim Form to **Settlement Administrator, address**, postmarked by _____, 2022. Please print clearly in blue or black ink.

1. General Information

Required Information:

First Name: _____ MI: _____ Last Name: _____

Current Address:

City: _____ State: _____ ZIP: _____

Country: _____ Phone: _____ Date of birth: _____

Optional Information:

Email: _____

2. Claim Information

Claim A: Ordinary Losses

To obtain reimbursement under this category, you must attest to one or more, if applicable, of the following:

☐ I incurred unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after July 30, 2020, through the date of preliminary approval; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Total Amount of Ordinary Losses \$ _____

If you attested to the above, please provide a description of each expense or loss claimed, the date of loss, the dollar amount of the loss, and the type of supporting documentation you will be submitting to support the loss.

You must provide ALL of this information for this claim to be processed.

Claim A: Ordinary Losses – Out-of-Pocket Expense Reimbursement

(Settlement Class Members are eligible for compensation for up to a total of \$500.00 per person for Ordinary Losses, including expenses and lost time)

Description of the Expense	Date	Amount	Supporting Documentation
Examples: Ordered credit reports	1/5/21	\$30.00	Copy of invoice/billing statement
Mailed police reports to private provider	1/5/21	\$5.00	Copy of receipt from U.S. Post Office
TOTAL (maximum \$500.00, can be claimed, including lost time)			
List any additional expenses on a separate sheet and submit with this Claim Form.			
Failure to affirm or provide appropriate documentation will result in a delay in processing and may result in the denial of your claim.			

Claim B: Ordinary Losses – Lost Time Reimbursement

Settlement Class Members are eligible for compensation for up to a total of \$500.00 per person for Ordinary Losses, including expenses and Lost Time. Lost Time may include up to 5 hours of lost time at \$20.00 per hour, for time spent dealing with the Data Incident.

If you elect to obtain reimbursement for personal time spent addressing issues arising out of the Data Incident, complete the following:

☐ I spent personal time addressing issues arising out of the Data Incident to try to prevent, detect, contest, remediate and/or repair related damages as a result of the Data Incident.

Number of hours

☐ 1 hour

☐ 2 hours

☐ 3 hours

☐ 4 hours

☐ 5 hours

Claim C: Compensation for Statutory Benefit

To obtain a benefit under Claim C, you must submit a claim and elect the benefit by checking the applicable box below:

☐ I elect to receive the \$125.00 statutory benefit.

Note: The totals of Claim A, Claim B, and Claim C cannot exceed \$500.00.

Claim D: Extraordinary Losses

To obtain reimbursement under this category, you must attest to the following:

☐ I experienced an incident of identity theft, tax fraud, other form of fraud, and/or other actual misuse of my personal information as a result of the Data Incident; **AND** I affirm that I have documentation of the incident and my associated expenses and have submitted such documentation with this Claim Form; **AND** I affirm that none of the claimed expenses have already been reimbursed by any other source.

Please provide documentation supporting **both** your claim and your associated expenses.

An example of documentation supporting your claim would include a letter from your health insurance company, financial institution, credit reporting agency, or another source informing you that a false medical insurance claim had been filed or fraudulent financial loss had to be reversed.

An example of documentation supporting your associated expenses would include receipts, voided checks, bank statements, or other documents showing the amount of your losses and/or a detailed narrative description of what happened and what losses you incurred.

Failure to affirm or provide appropriate documentation will result in a delay in processing and may result in the denial of your claim.

Claim D: Extraordinary Losses – Out-of-Pocket Expense Reimbursement			
(Settlement Class Members are eligible for compensation for up to a total of \$5,000.00 per person for Extraordinary Losses)			
Description of the Expense	Date	Amount	Supporting Documentation
Examples: Unreimbursed fraudulent medical bills	1/5/21	\$200.00	Copy of invoice/billing statement
Unreimbursed charged from account fraudulently opened with my identity.	1/5/21	\$100.00	Copy of invoice/billing statement and report of identity theft to account company
TOTAL (maximum \$5,000.00)			
List any additional expenses on a separate sheet and submit with this Claim Form.			
Failure to affirm or provide appropriate documentation will result in a delay in processing and may result in the denial of your claim.			

In order to be eligible for compensation under Claim D, you must certify below that you have made reasonable efforts to avoid or seek reimbursement for the loss.

3. Certification

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

By submitting this Claim Form, I certify and declare that the information provided in this Claim Form is true and correct and that this form was executed on the date set forth below. I further certify that any documentation that I have submitted in support of my Claim consists of unaltered documents in my possession.

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

Claimant Signature: _____ Date: ____/____/____

Printed Name: _____

THIS CLAIM FORM MUST BE SUBMITTED OR POSTMARKED BY Month DD, 2022 IN ORDER TO BE TIMELY AND VALID.

EXHIBIT D

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

TOM STEEN, *individually and on behalf of
all others similarly situated,*

Plaintiff,

v.

THE NEW LONDON HOSPITAL
ASSOCIATION, INC., d/b/a New London
Hospital and Newport Health Center,

Defendant.

Civil Action No. 217-2021-CV-00281

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AGREEMENT**

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of Class Settlement Agreement. Plaintiff, individually, and on behalf of the proposed Settlement Class, and Defendant have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation.

Plaintiff Tom Steen ("Plaintiff" or "Settlement Class Representative") brought this class action case against The New London Hospital Association, Inc. ("New London Hospital" or "Defendant," and together with Plaintiff, "the Parties"), on May 18, 2021. In the Class Action Complaint ("Complaint"), Plaintiff asserts claims for: (1) negligence; (2) breach of implied contract; (3) unjust enrichment; (4) violation of the New Hampshire Consumer Protection Act ("NHCPA"); and (5) violation of New Hampshire Notice of Security Breach Act.

According to the Complaint, New London Hospital experienced a targeted cyberattack and data breach, which resulted in the potential compromise of patients' personally identifiable information. The information potentially compromised consisted of names and Social Security numbers relating to New London Hospital patients.

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm's-length negotiations and a mediation overseen by Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP. The Parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in dismissal of this action with prejudice.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiff's Motion for Preliminary Approval is GRANTED as set forth herein.¹

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to New Hampshire Superior Court Civil Rule 16, the Court provisionally certifies a class in this matter defined as follows:

All persons New London Hospital identified as being among those individuals potentially impacted by the Data Incident, including all who were sent a notice of the Data Incident.

The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (b) there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual members; (c) the claims or defenses of the Settlement Class Representative are typical of the claims or defenses of the Settlement Class; (d) the Settlement Class Representative will fairly and adequately protect the interests of the Settlement Class; (e) a class action is superior to other available methods for the fair and efficient

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

adjudication of the controversy; and (f) attorneys for the Settlement Class Representative will adequately represent the interests of the Settlement Class.

2. **Settlement Class Representatives and Settlement Class Counsel.**

Tom Steen is hereby provisionally designated and appointed as the Settlement Class Representative. The Court provisionally finds that the Settlement Class Representative is similarly situated to absent Class Members and therefore typical of the Class and that he will be an adequate Settlement Class Representative.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel pursuant to New Hampshire Superior Court Civil Rule 16: Gary M. Klinger and David K. Lietz, Milberg Coleman Bryson Phillips Grossman, PLLC.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing Notice of the Settlement to the Settlement Class and accordingly is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this Court.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on [REDACTED], 2022 at [REDACTED] o'clock [a.m./p.m.] in Merrimack County Superior Court, 5 Court Street, Concord, New Hampshire 03301, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to New Hampshire Superior Court Civil Rule 16; (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to New Hampshire Superior Court Civil Rule 16; (c) the action should be dismissed with prejudice

pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Settlement Class Counsel for an award of attorneys' fees and expenses (the "Fee Request") should be approved; and (f) the motion of the Settlement Class Representative for a Service Award (the "Service Award Request") should be approved.

Plaintiff's Motion for Final Approval of the Settlement, Service Award Request, and Fee Request shall be filed with the Court at least **fourteen (14) Days prior to the deadline for Settlement Class Members to opt-out or object.**

6. **Administration.** The Court appoints RG2 Settlement Administrators, LLC as the Settlement Administrator, with responsibility for class notice and claims administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. Defendant shall pay all costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Settlement Administrator's fees, as well as the costs associated with administration of the Settlement.

7. **Notice to the Class.** The proposed Notice Program, set forth in the Settlement Agreement, and the Short-Form Notice, Long-Form Notice, and Claim Form, which are attached to the Settlement Agreement as Exhibits A, B, and C, respectively, satisfy the requirements of New Hampshire Superior Court Civil Rule 16 and provide the best notice practicable under the circumstances, and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator and New London Hospital are directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within **thirty (30) days from the date of this Order** (the “Notice Deadline”), the Settlement Administrator and New London Hospital shall initiate the Notice Program, which shall be completed in the manner set forth in Section 5 of the Settlement Agreement.

8. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Paragraph 8 of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including, but not limited to, their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice. The Court concludes that the Notice Program meets all applicable requirements of law, including New Hampshire Superior Court Civil Rule 16, and the Due Process Clause(s) of the New Hampshire and United States Constitutions. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

9. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **ninety (90) Days from the date of this Order** (the “Opt-Out Period”). The written notification must include the individual’s full name, address, and telephone number; an unequivocal statement that he or she wants to be excluded from the Settlement Class; and the

original signature of the individual or a person previously authorized by law, to act on behalf of the individual with respect to the claims asserted in this Action.

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may move to file under seal with the Court no later than **ten (10) Days prior to the Final Approval Hearing**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including, but not limited to, the Release set forth in the Final Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

10. **Objections and Appearances.** A Settlement Class Member who complies with the requirements of this Paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is: (a) electronically filed with the Court by the Objection Date as set forth in the Settlement Agreement; or (b) mailed first-class postage prepaid to the Clerk of Court,

Settlement Class Counsel, and Defendant's Counsel at the addresses listed in the Notice, and postmarked by no later than the Objection Date set forth in the Settlement Agreement, and as specified in the Notice. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 7.1 of the Settlement Agreement, which is as follows:

- a. The objector's full name, current address, telephone number, and email address (if any);
- b. The Settlement Class Member's original signature;
- c. Information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (*e.g.*, copy of Notice or copy of original notice of the Data Incident);
- d. A statement of all grounds for the objection, including any legal support for the objection that the objector believes applicable;
- e. Identification of all counsel representing the objector;
- f. Whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and
- g. The signature of the objector's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation.

Any Settlement Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement, if the Final Order and Judgment is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on

the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve on Settlement Class Counsel and Defendant's Counsel) by the Objection Date. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, email address, state bar(s) to which counsel is admitted, as well as associated state bar numbers, and a list identifying all objections such counsel has filed to class action settlements in the past three (3) years, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney. If the objecting Settlement Class Member intends to request the Court for permission to call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must provide a list of any such witnesses together with a brief summary of each witness's expected testimony at least thirty (30) Days before the Final Approval Hearing.

If the Final Order and Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

11. **Claims Process and Distribution and Allocation Plan.** Settlement Class Representative and Defendant have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a

timely, valid Claim Form. The Court preliminarily approves the plan for remuneration described in Section 3 of the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement, but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form, shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

12. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. **Use of Order.** This Order shall be of no force or effect if a Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission,

concession, or declaration by or against the Settlement Class Representative or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

14. **Stay of Proceedings.** Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until further order of this Court.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

16. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include, but are not limited to:

Notice Deadline: 30 Days after Preliminary Approval

Motion for Final Approval: 30 Days before Final Approval Hearing

Motion for Service Award, Attorneys' Fees and Costs: 14 Days before the deadline for Settlement Class Members to Object to or Opt Out of the Settlement

Opt-Out Deadline: 90 Days after Preliminary Approval

Objection Deadline: 90 Days after Preliminary Approval

Claim Deadline: 90 Days after the Notice Deadline

Final Approval Hearing: Not less than 120 Days after Preliminary Approval

IT IS SO ORDERED this ____ day of _____, 2022.

Hon. Brian T. Tucker
Presiding Justice

EXHIBIT E

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

TOM STEEN, *individually and on behalf of
all others similarly situated,*

Plaintiff,

v.

THE NEW LONDON HOSPITAL
ASSOCIATION, INC., d/b/a New London
Hospital and Newport Health Center,

Defendant.

Civil Action No. 217-2021-CV-00281

**[PROPOSED] FINAL ORDER AND JUDGMENT GRANTING
FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT**

Before the Court is Plaintiff's unopposed motion requesting that the Court enter an Order granting final approval of the class action Settlement involving Plaintiff Tom Steen ("Plaintiff" or "Settlement Class Representative") and Defendant The New London Hospital Association, Inc. ("Defendant" or "New London Hospital"), as fair, reasonable, and adequate.

Having reviewed and considered the Settlement Agreement and the motion for final approval of the settlement, and having conducted a Final Approval Hearing, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

THE COURT not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

THE COURT being required under New Hampshire Superior Court Civil Rule 16 to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether

the Settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

IT IS ON THIS ____ day of _____, 2022,
ORDERED that:

1. The Settlement involves allegations in Plaintiff's Class Action Complaint that Defendant failed to safeguard and protect the personally identifiable information and/or protected health information of its patients and that this alleged failure caused injuries to Plaintiff and the Class.

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.

3. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Settlement Agreement.

4. On _____, 2022 the Court entered an Order which among other things: (a) approved the Notice to the Settlement Class, including approval of the form and manner of notice under the Notice Program set forth in the Settlement Agreement; (b) provisionally certified a class in this matter, including defining the class, appointing Plaintiff as the Settlement Class Representative, and appointing Settlement Class Counsel; (c) preliminarily approved the Settlement; (d) set deadlines for opt-outs and objections; (e) approved and appointed the Settlement Administrator; and (f) set the date for the Final Approval Hearing.

5. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement, pursuant to New Hampshire Superior Court Civil Rule 16, for settlement purposes only, the Court certified the Settlement Class, defined as follows:

All persons New London Hospital identified as being among those individuals potentially impacted by the Data Incident, including all who were sent a notice of the Data Incident.

Excluded from the Settlement Class are (i) all Persons who timely and validly request exclusion from the Settlement Class in accordance with the opt-out procedures set forth in the Settlement Agreement; and (ii) any Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity associated with the Data Incident or who pleads *nolo contendere* to any such charge.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties pursuant to New Hampshire Superior Court Civil Rule 16, grants final approval of the Settlement Agreement and defines the Settlement Class as defined therein and in the Preliminary Approval Order, and finds that the settlement is fair, reasonable, and adequate and meets the requirements of New Hampshire Superior Court Civil Rule 16.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

- a. A process for Settlement Class Members to submit claims for compensation that will be evaluated by a Claims Administrator mutually agreed upon by Settlement Class Counsel and Defendant.
- b. Defendant to pay all Notice and Claims Administration costs.
- c. Defendant to pay a Court-approved amount for attorneys' fees and expenses of Settlement Class Counsel not to exceed \$300,000.00.
- d. Defendant to pay an Service Award not to exceed \$1,000.00 to the named Plaintiff.

8. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby approved, adopted, and incorporated by the Court. The Parties, their respective attorneys, and the Settlement Administrator are hereby directed to consummate the Settlement in accordance with this Order and the terms of the Settlement Agreement.

9. Notice of the Final Approval Hearing, the proposed motion for attorneys' fees and expenses and the proposed Service Award payment to Plaintiff have been provided to Settlement

Class Members as directed by this Court's Orders, and an affidavit or declaration of the Settlement Administrator's compliance with the Notice Program has been filed with the Court.

10. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of New Hampshire Superior Court Civil Rule 16.

11. As of the final date of the Opt-Out Period, ____ potential Settlement Class Members have submitted a valid Opt-Out Request to be excluded from the Settlement. The names of those persons are set forth in Exhibit A to this Order. Those persons are not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

12. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

13. Pursuant to the Settlement Agreement, Defendant and the Settlement Administrator shall implement the Settlement in the manner and time-frame as set forth therein.

14. Pursuant to the Settlement Agreement, Plaintiff and the Settlement Class Members release claims against Defendant and all Released Persons, as defined in the Settlement Agreement, as follows:

any and all past, present, and future claims, causes of action, counterclaims, lawsuits, rights, demands, charges, complaints, actions, obligations, or liabilities under any legal or equitable theory, whether known, unknown, suspected, or unsuspected or capable of being known or suspected, and whether, accrued, unaccrued, matured, or not matured, including but not limited to, negligence; negligence per se; negligent training and supervision; breach of fiduciary duty; breach of confidence; invasion of privacy; breach of contract; unjust enrichment; breach of implied contract; violations of the New Hampshire Consumer Protection Act, New Hampshire Notice of Security Breach Protection Act, and any other

state or federal consumer protection statute; misrepresentation (whether fraudulent, negligent or innocent); bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute, regulation or common law duty; and any causes of action under 18 U.S.C. §§ 2701 et seq., and all similar statutes in effect in any states in the United States as defined herein; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees, costs and expenses, set-offs, losses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been 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 and alleged exposure and compromise of any Settlement Class Member's private information, personally identifiable information and/or protected health information or any other allegations, facts, or circumstances described in the Lawsuit or the Complaint.

Released Claims shall not include the right of any Settlement Class Member 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 those persons identified in Exhibit A to this Order, who have timely and validly requested exclusion from the Settlement Class.

15. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) Plaintiff and each Settlement Class Member, and each of their respective spouses and children with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the "Releasing Persons"), and (ii) Settlement Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation

of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the Released Claims.

16. The matter is hereby dismissed with prejudice and without costs, except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

17. In accordance with New Hampshire Superior Court Civil Rule 16, this Final Order and Judgment resolves all claims against all parties in this Action and is a final order. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

Done and ordered this _____ day of _____, 2022.

Hon. Brian T. Tucker
Presiding Justice