

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

**IN RE: CLEVELAND BROTHERS
DATA INCIDENT LITIGATION**

Case No. 1:23-cv-00501-JPW

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

TABLE OF CONTENTS

I. INTRODUCTION1

II. FACTUAL BACKGROUND2

A. The Litigation2

B. Settlement Negotiations.....2

III. THE PROPOSED SETTLEMENT The Proposed Settlement Class2

A. The Release.....3

B. Compensation to Class Members3

1. Out-of-Pocket Losses and Attested Time3

2. Alternative Cash Payments4

C. The Notice and Claim Process4

1. Notice4

2. Claims.....5

3. Requests for exclusion and objections5

D. Residual5

E. Proposed Class Representative Service Awards.....5

F. Attorneys’ Fees and Expenses6

IV. ARGUMENT.....6

A. The Settlement is “Fair, Reasonable, and Adequate” and Satisfies the Rule 23(e)(2) and *Girsh* Factors for Preliminary Approval.7

1. The Proposed Settlement Was Negotiated at Arm’s Length8

2. The Relief Provided for the Class is Adequate.8

a. The Settlement accounts for the costs, risks, and delay of trial and appeal. 9

b. The proposed attorneys’ fee award is reasonable.....10

c. There are no additional agreements required to be identified under Rule 23(e)(3).11

3. The Settlement Treats Class Members Equitably Relative to Each Other..11

4. The Settlement Satisfies all the Applicable *Girsh* Factors.....11

B. The Proposed Settlement Class Satisfies the Criteria of Rule 23(a).....12

1. The Class is Sufficiently Numerous.....	13
2. There are Questions of Law or Fact Common to the Class.	13
3. The Class Representatives’ Claims are Typical of the Claims of the Class. 14	
4. The Class Representatives and Proposed Settlement Class Counsel Will Fairly and Adequately Represent the Class.	14
5. Common Issues Predominate over any Individual Issues and a Class Action is Superior to Other Available Methods of Adjudicating the Controversy.....	15
a. Common issues predominate.	15
b. A class action is superior to other means of adjudication.	15
C. The Class Notice Program Provides Class Members with the Best Notice Practicable Under the Circumstances.	16
1. Class Notice Will Reach Significant Number of Class Members.....	16
2. The Detailed Notice Form and Settlement Website Clearly and Concisely Inform Class Members About Their Rights and Options, Including How to File a Claim.	16
V. PLAINTIFFS’ COUNSEL SHOULD BE PROVISIONALLY APPOINTED AS CLASS COUNSEL.....	17

TABLE OF AUTHORITIES

Cases

Adkins v. Facebook, Inc.,
 No. 18-cv-05982, 2020 WL 6710086 (N.D. Cal. Nov. 15, 2020)9

Ahrendsen v. Prudent Fiduciary Servs., LLC,
 No. 21-cv-2157, 2023 WL 4139151 (E.D. Pa. June 22, 2023) 11

Amchem Prods. v. Windsor,
 521 U.S. 591 (1997).....13

Basile v. Stream Energy Pennsylvania, LLC,
 2018 WL 2441363 (M.D. Pa. May 31, 2018).....6

Checchia v. Bank of Am., N.A.,
 No. 21-cv-3585, 2023 WL 2051147 (E.D. Pa. Feb. 16, 2023).....13

Ehrheart v. Verizon Wireless,
 609 F.3d 590 (3d Cir. 2010).....6

Fulton-Green v. Accolade, Inc.,
 No. 18-cv-00274, 2019 WL 316722 (E.D. Pa. Jan. 23, 2019) 7, 8, 13, 14

Fulton-Green,
 2019 WL 467795415

Gates,
 248 F.R.D.13

Girsh v. Jepson,
 521 F.2d 153 (3d Cir. 1975).....6, 12

Gordon v. Chipotle Mexican Grill, Inc.,
 No. 17-cv-01415, 2019 WL 6972701 (D. Colo. Dec. 16, 2019).....12

Hall v. Accolade, Inc.,
 No. 17-cv-03423, 2019 WL 3996621 (E.D. Pa. Aug. 23, 2019)6, 14

In re Canon U.S.A. Data Breach Litig.,
20-cv-6239, 2023 WL 7936207 (E.D.N.Y. Nov. 15, 2023).....10

In re CertainTeed Fiber Cement Siding Litig.,
303 F.R.D. 199 (E.D. Pa. 2014).....10

In re Flonase Antitrust Litig.,
291 F.R.D. 93 (E.D. Pa. 2013).....12

In re Nat’l Football League Players’ Concussion Injury Litig.,
301 F.R.D. 191 (E.D. Pa. 2014).....8, 17

In re Prudential Ins. Co. America Sales Practice Litigation Agent A.,
148 F.3d 283 (3d. Cir. 1998).....8

In re Wawa, Inc. Data Sec. Litig.,
2023 WL 6690705 12, 14

In re Wawa,
No. 19-cv-6019, 2021 WL 3276148 (E.D. Pa. July 30, 2021)15

Kelly, v. Santander Consumer USA, Inc.,
No. 20-cv-3698, 2023 WL 8701298 (E.D. Pa. Dec. 15, 2023)12

Linnins v. Haeco Americas, Inc. (f/k/a Timco Aviation Services, Inc.),
16-cv-00486, 2018 WL 5312193 (M.D.N.C. Oct. 26, 2018)9

McIntyre v. RealPage, Inc.,
No. 18-cv-03934, 2023 WL 2643201, n.5 (E.D. Pa. Mar. 24, 2023)10

Mehling v. New York Life Ins. Co.,
246 F.R.D 467 (E.D. Pa. 2007)7

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306 (1950).....16

Processed Egg Prods.,
284 F.R.D.16

Ripley v. Sunoco, Inc.,
 287 F.R.D. 300 (E.D. Pa. 2012).....6
Rossini v. PNC Fin. Servs. Grp., Inc.,
 No. 18-cv-1370, 2020 WL 3481458 (W.D. Pa. June 26, 2020)10
Sullivan v. DB Invs., Inc.,
 667 F.3d 273 (3d Cir. 2011)11
Wallace v. Powell,
 301 F.R.D. 144 (M.D. Pa. July 7, 2014) passim
Wal-Mart Stores, Inc. v. Dukes,
 564 U.S. 338 (2011).....13
Walsh v. Great Atl. & Pac. Tea Co., Inc.,
 726 F.2d 956 (3d Cir. 1983).....11
Warfarin,
 391 F.3d.....13

RULES

Fed. R. Civ. P. § 23..... 10, 21
 Fed. R. Civ. P. § 23(a) 16, 19
 Fed. R. Civ. P. § 23(a)(1).....16
 Fed. R. Civ. P. § 23(a)(2).....17
 Fed. R. Civ. P. § 23(a)(3).....17
 Fed. R. Civ. P. § 23(a)(4).....18
 Fed. R. Civ. P. § 23(b)..... 16,19
 Fed. R. Civ. P. § 23(b)(3) 19, 20, 23
 Fed. R. Civ. P. § 23(b)(4)20

Fed. R. Civ. P. § 23(c)	22
Fed. R. Civ. P. § 23(c)(2)(B)	21
Fed. R. Civ. P. § 23(c)(3).....	22
Fed. R. Civ. P. § 23(e)	8, 15
Fed. R. Civ. P. § 23(e)(1)(A).....	8
Fed. R. Civ. P. § 23(e)(1)(B)	8, 9
Fed. R. Civ. P. § 23(e)(2).....	8, 9, 10
Fed. R. Civ. P. § 23(e)(3).....	10, 14

I. INTRODUCTION

Pursuant to the terms set forth in the Parties' Settlement Agreement (the "Settlement Agreement" or "S.A.")¹ the Parties have reached an agreement to resolve this class action for \$450,000 non-reversionary class fund. The Settlement provides that Settlement Class Members may submit a claim for one of the following settlement benefits from the \$450,000 Settlement Fund: up to \$5,000 for reimbursement of documented Out-of-Pocket Losses and Attested Time, or an Alternative Cash Payment. S.A. ¶ (V)(43).

The Settlement compares favorably with settlements in similar data breach litigation and was reached only after intensive arm's-length negotiations before a skilled and engaged mediator. *See Exhibit 2*, the Joint Declaration of Laura Grace Van Note and David K Lietz In Support of Plaintiffs' Unopposed Motion For Preliminary Approval of Class Action Settlement ("Counsel Decl."), *passim*. It represents an especially outstanding result considering some of the legal and practical hurdles Plaintiffs would have faced had the case proceeded to litigation. Furthermore, Cleveland Brothers denies liability, and Plaintiffs and Cleveland Brothers recognize the outcome of the Action and the claims asserted in the Complaint are uncertain, and that pursuing the Action to Judgment would entail substantial cost, risk and delay. Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the terms and conditions of the Settlement and permit notice to the Settlement Class.

¹ The Settlement Agreement is attached hereto as **Exhibit 1**. Unless otherwise indicated, capitalized terms herein shall have the same definition as set forth in the Settlement Agreement.

II. FACTUAL BACKGROUND

A. The Litigation

Beginning in February of 2023, several class actions were filed in this Court on behalf of consumers whose information was stolen by cybercriminals as part of a cyberattack against Cleveland Brothers. On May 8, 2023, Judge Jennifer P. Wilson entered an Order consolidating the cases relating to the Data Breach. (ECF No. 10.)

On June 7, 2023, Plaintiffs filed the operative Consolidated Class Action Complaint (ECF No. 12) (“Complaint”), which asserted claims for negligence, breach of implied contract, and unjust enrichment. Defendant filed a Motion to Dismiss the Plaintiffs Consolidated Complaint on July 7, 2023, with Supporting Memorandum of Law (ECF No. 16). Thereafter, on the same day the Parties entered into a Joint Stipulation to Stay the Proceedings Pending Settlement Discussions (ECF No. 18).

B. Settlement Negotiations

On January 25, 2024, the Parties participated in a mediation with Bennett G. Picker of Stradley Ronon Stevens & Young, LLP. The Parties engaged in informal discovery to assess the alleged claims and the potential defenses to same. Following their agreement in principle to settle the matter, on February 12, 2024, the Parties filed a Notice of Settlement (ECF No. 26). The Settlement Agreement was executed on or about March 14, 2024, and Plaintiffs now respectfully request that the Court grant this Motion for Preliminary Approval and allow Notice to be sent to the Settlement Class.

III. THE PROPOSED SETTLEMENT

The Proposed Settlement Class

The Proposed Settlement Class is defined as:

“All individuals within the United States of America whose personally identifiable information (PII) was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.” S.A. ¶ 3.

A. The Release

In exchange for the Settlement benefits provided for under the Settlement Agreement, Class Members will release any and all claims against Cleveland Brothers and its Released Parties as set forth in the Settlement Agreement. The release is tailored to cover the claims that were asserted or that could have been asserted by Class Members related to the Data Breach. S.A. ¶¶ (IX)(61-64).

B. Compensation to Class Members

As noted above, the Settlement provides for a \$450,000 non-reversionary Settlement Fund which will be used to pay for settlement administration, any Service Awards, and any Fee Award and Costs. S.A. ¶ (IV). The remaining amount, i.e., the Net Settlement Fund, will be used to pay for Approved Claims submitted by Class Members for Settlement Benefits. Class Members may submit a claim for only one of the following Settlement Benefits:

1. Out-of-Pocket Losses and Attested Time

Class Members may submit a claim for Out-of-Pocket Losses seeking up to \$5,000 per person for costs or expenditures incurred by a Class Member in response to the Data Breach that were incurred between November 3, 2022, and the Claims Deadline, as result of the Data Breach. S.A. ¶ (V)(43)(A)(i). Settlement Class Members with Ordinary Out-of-Pocket Losses may also submit a claim for up to six (6) hours of time spent remedying issues related to the Data Breach at a rate of thirty-five dollars (\$35.00) per hour. S.A.¶ (V)(43) (A)(ii). Reimbursement for Attested Time is included in the five thousand dollars (\$5,000.00) per person cap for Out-of-Pocket Losses. *Id.*

2. Alternative Cash Payments

Settlement Class Members may, in lieu of making a claim for reimbursement of Out-of-Pocket Losses and Attested Time, elect to receive a pro rata cash payment in an amount estimated to be approximately two hundred dollars (\$200.00) by submitting a timely and valid claim form. S.A. ¶ (V)(43)(B). However, the amount of this Alternative Cash Payment shall be pro rata increased or decreased based on the funds remaining in the Settlement Fund following the payment of Attorneys' Fees and Expenses Award, any Service Award, the Costs of Claims Administration, and claims for Out-of-Pocket Losses. *Id.*

C. The Notice and Claim Process

1. Notice

The Parties selected Postlethwaite & Netterville, APAC ("P&N") as the Settlement Administrator. P&N is a nationally recognized claims administrator that has handled dozens of similar data breach settlements across the country. All costs of the Class Notice and Settlement Administrator will be deducted from the Settlement Fund. S.A. ¶ (IV)(36). The Notice Plan provides for individual Notice to Class Members by direct U.S. Mail. S.A. ¶ (VI)(50). The Settlement Administrator will send the direct-mail notices after taking steps to ensure that notice reaches a percentage of the class consistent with due process.

The Settlement Administrator will also establish a dedicated Settlement Website that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines, and related information. S.A. ¶ (II)(32). The Settlement Website shall include relevant documents, including the following: (1) the Class Notice, (2) the Claim Form, (3) the Preliminary Approval Order, (4) this Settlement Agreement, (5) the Complaint, and (6) any other materials agreed upon by the Parties and/or required by the Court. *Id.* Class Members will be able to submit Claim Forms and Requests for Exclusion through the Settlement Website. *Id.* The

Settlement Administrator will also create a toll-free help line so Class Members can obtain additional Settlement information. S.A. ¶(VI)(50)(iii).

2. Claims

The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object. Class Members will have until ninety (90) days after the Class Notice is issued to complete and submit their Claim Form to the Settlement Administrator, either by mail or online. S.A. ¶ (V)(42). The Claim Form is written in plain language to facilitate Class Members' ease in completing it. S.A., at **Exhibit A** (Claim Form). The Settlement Administrator will be responsible for reviewing the Claim Forms and determining if they are complete and valid. S.A. ¶ V.

3. Requests for exclusion and objections

Class Members will have sixty (60) days from the Class Notice Date to object to or submit a request for exclusion from the Settlement. S.A. ¶¶ VII, VIII. Similar to the timing of the claims process, the timing with regard to objections and Requests for Exclusion is structured to give Class Members sufficient time to access and review the Settlement documents.

D. Residual

Should any remaining amount of the Settlement Fund be economically not distributable, the Parties shall petition the Court for permission to distribute the remaining funds to an approved non-profit recipient, providing the Court with details of the proposed non-profit recipient. S.A. ¶ (V)(47).

E. Proposed Class Representative Service Awards

Plaintiffs will separately petition the Court for approval of Service Awards in the amount of up to \$2,500 to each Plaintiff. S.A. ¶ (IV)(38). This amount is consistent with those approved in other data breach class action settlements. Service

Awards will be paid from the Settlement Fund. *Id.*

F. Attorneys' Fees and Expenses

As part of the Settlement, Plaintiffs will separately file a motion for an award of \$150,000 in attorneys' fees and reimbursement of litigation costs and expenses. S.A. ¶ (IV)(39). Any approved Fee Award and Litigation Expenses will be paid out of the Settlement Fund. *Id.*

IV. ARGUMENT

Federal Rules of Civil Procedure Rule 23(e), as amended in 2018, “explicitly discusses the requirements for class settlements.” *Hall v. Accolade, Inc.*, No. 17-cv-03423, 2019 WL 3996621, at *2 (E.D. Pa. Aug. 23, 2019). First, the parties “provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.” FED. R. CIV. P. 23(e)(1)(A). The court then decides whether “giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” FED. R. CIV. P. 23(e)(1)(B).

In conducting their preliminary review, courts are cognizant that there is a “strong public policy . . . which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593 (3d Cir. 2010).

A court’s decision to preliminarily approve a proposed class action settlement is not a commitment to approve the final settlement, but instead “is a determination that ‘there are no obvious deficiencies, and the settlement falls within the range of reason.’” *Basile v. Stream Energy Pennsylvania, LLC*, 2018 WL 2441363, at *2 (M.D. Pa. May 31, 2018) (Internal Citations Omitted). The decision to approve a settlement is ultimately “‘left to the sound discretion of the district court.’” *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975). If the district court determines that it will

“likely be able to” approve the Settlement and certify the Settlement Class, it should direct notice in a “reasonable manner to all class members who would be bound by the proposal.” FED. R. CIV. P. 23(e)(1)(B); *see Fulton-Green v. Accolade, Inc.*, No. 18-cv-00274, 2019 WL 316722, at *1, *5 (E.D. Pa. Jan. 23, 2019) (granting motion for preliminary approval of data breach settlement “because it is within the range of possible approval, the requirements of conditional class certification are met, and the notice plan is reasonably designed to notify class members of the settlement agreement”).

A. The Settlement is “Fair, Reasonable, and Adequate” and Satisfies the Rule 23(e)(2) and *Girsh* Factors for Preliminary Approval.

Rule 23(e)(2) sets forth the factors a court must consider in determining the fairness of a class action settlement. The factors include whether: “(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal, (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, (iii) the terms of any proposed award of attorney’s fees, including timing of payment, and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.” FED. R. CIV. P. 23(e)(2). Under Rule 23, a settlement falls within the “range of possible approval” if there is a conceivable basis for presuming that the standard applied for final approval—fairness, adequacy and reasonableness—will be satisfied. *Mehling v. New York Life Ins. Co.*, 246 F.R.D 467, 472 (E.D. Pa. 2007) (citations omitted).

The Settlement here, as explained below, exceeds the preliminary approval threshold. Plaintiffs, without opposition from Defendant, respectfully request that this Court preliminarily approve the proposed Settlement.

1. The Proposed Settlement Was Negotiated at Arm's Length

The Settlement resulted from arm's-length negotiations. The Parties participated in settlement discussions mediated by Bennett G. Picker. Counsel Decl. ¶¶ 8-13. Proposed Settlement Class Counsel who negotiated the Settlement are experienced and respected class action litigators with significant experience in data breach cases. *Id.*, ¶ 38. The Parties thereafter spent significant amounts of time revising drafts and negotiating details well as conducting further confirmatory discovery. Counsel Decl. ¶ 15. At all times, these negotiations were at arm's length and, while courteous and professional, were intense and hard-fought on all sides. *Id.*, ¶ 13. Whether a settlement arises from arm's-length negotiations is a key factor in assessing preliminary approval. *Wallace v. Powell*, 301 F.R.D. 144 (M.D. Pa. July 7, 2014) (stressing the importance of arm's-length negotiations and considerable weight given to the views of experienced counsel).

2. The Relief Provided for the Class is Adequate.

This case and the proposed Settlement are the product of significant investigation of Plaintiffs' and Class Members' claims.² Proposed Settlement Class Counsel conducted extensive and lengthy interviews of Plaintiffs and other class

² The fact that the Parties have not engaged in *formal* discovery is not determinative. At an early stage, the Parties disclosed to the Court their intention to mediate after engaging in targeted informal discovery, which the Court approved staying the case pending mediation. *See* (ECF No. 25). That is consistent with a long line of cases in which courts have preliminarily approved class action settlements in the early stages of litigation, especially where meaningful informal discovery has occurred. *See In re Prudential Ins. Co. America Sales Practice Litigation Agent A.*, 148 F.3d 283, at *319 (3d. Cir. 1998) (The court found class counsels' "use of informal discovery was especially appropriate in this case because the Court stayed plaintiffs' right to formal discovery for many months, and because informal discovery could provide the information that plaintiffs needed."); *see also Fulton-Green*, 2019 WL 316722, at *3 (preliminarily approving class action settlement where "[e]ven though formal discovery has not started . . . the parties exchanged a substantial amount of information regarding the discrete issues in this case").

members, reviewed the Plaintiffs’ documentation and all documents that Cleveland Brothers produced regarding the Data Breach, and analyzed the applicable laws of Pennsylvania and other jurisdictions regarding breaches of customers’ personally identifiable information (“PII”). Counsel Decl. ¶ 16. The Parties exchanged in informal discovery prior to the mediation. Counsel Decl. ¶ 9. Proposed Settlement Class Counsel analyzed the documents in advance of the mediation. *Id.* Plaintiffs’ and Proposed Settlement Class Counsel’s preparation for that proceeding further informed Plaintiffs’ assessment of the relative strengths and weaknesses of their claims. *Id.* Based on Proposed Settlement Class Counsel’s independent investigation of the relevant facts and applicable law, and broad experience with other data breach cases, Proposed Settlement Class Counsel determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. Counsel Decl. ¶ 41. Also, a comparison with consumer class plaintiffs’ monetary recoveries in other data breach settlements demonstrates the strength of this Settlement.³

a. The Settlement accounts for the costs, risks, and delay of trial and appeal.

The immediate benefits that the Settlement provides stand in contrast to the risks, uncertainties, and delays of continued litigation. Proposed Settlement Class Counsel thoroughly assessed those contingencies in considering the terms of the Settlement. Counsel Decl. ¶ 42.

If the litigation were to continue, Plaintiffs and the Settlement Class would face a number of delays and challenges, including obtaining class certification,

³ See, e.g., *Adkins v. Facebook, Inc.*, No. 18-cv-05982, 2020 WL 6710086, at *2-3 (N.D. Cal. Nov. 15, 2020) (preliminarily approving data breach settlement providing only injunctive relief); *Linnins v. Haeco Americas, Inc. (f/k/a Timco Aviation Services, Inc.)*, No. 16-cv-00486, 2018 WL 5312193, at *1 (M.D.N.C. Oct. 26, 2018) (settlement included \$312,500 claim fund for reimbursement of specified expenses to employees whose PII was allegedly disclosed in breach);

briefing motions for summary judgment, defending expert opinions, and maintaining certification through trial. *See In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) (“further proceedings would be complex, expensive and lengthy, with contested issues of law and fact That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval.”); *Wallace*, 301 F.R.D. 144 at *161 (“The more risks that Plaintiffs may face during litigation the stronger this factor favors approving a settlement”). The settlement provides for an effective method of distributing relief to the Class, including through a simplified claims process.

The Settlement creates a straight-forward procedure for Class Members to make a claim. It also provides for effective notice to Class Members using direct mailing. Counsel Decl. ¶ 22; S.A. ¶ V. This factor supports the fairness of the settlement. *See In re Canon U.S.A. Data Breach Litig.*, No. 20-cv-6239, 2023 WL 7936207, at *4 (E.D.N.Y. Nov. 15, 2023) (granting preliminary approval to data breach settlement under which class members could claim ordinary losses, extraordinary losses, and credit monitoring).

b. The proposed attorneys’ fee award is reasonable.

Proposed Settlement Class Counsel have devoted significant time and financial resources to the litigation despite the uncertainty of prevailing as to class certification and the merits and establishing damages. Proposed Settlement Class Counsel did not broach the topic of attorneys’ fees until after agreeing on substantive settlement terms with Cleveland Brothers. Counsel Decl. ¶ 39. Plaintiffs will seek attorneys’ fees not greater than one-third (33.33%) of the Settlement Fund, subject to Court approval and to be paid from the Settlement Fund. *Id.* As noted above, this amount has been found reasonable by this Court. ⁴

⁴⁴ *McIntyre v. RealPage, Inc.*, No. 18-cv-03934, 2023 WL 2643201, at *3, n.5 (E.D. Pa. Mar. 24, 2023) (finding a fee request of 1/3 of a fund to be “squarely within the

Plaintiffs will file a fulsome motion and supporting materials supporting the fee request in advance of the objection deadline and will post them on the Settlement Website so that they can be easily accessed by Class Members. Counsel Decl. ¶ 40.

c. There are no additional agreements required to be identified under Rule 23(e)(3).

Rule 23(e)(2)(C)(iv) requires courts to consider any agreement among the parties outside of the settlement agreement. “The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” FED. R. CIV. P. 23(e)(3). No such agreement exists in this case. Counsel Decl. ¶ 43.

3. The Settlement Treats Class Members Equitably Relative to Each Other.

Finally, as discussed *supra*, the Settlement treats all Class Members equitably and provides Class Members with the same convenient means to recover under the Settlement. “A district court’s ‘principal obligation’ in approving a plan of allocation ‘is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.’” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (quoting *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F.2d 956, 964 (3d Cir. 1983)). The Settlement’s two options for relief (of which all Class Members may choose one) satisfy this standard.

4. The Settlement Satisfies all the Applicable Girsh Factors.

In addition to the foregoing criteria under Rule 23(e), the Third Circuit has identified a set of factors that should be considered in assessing the fairness of a settlement. *See Wallace*, 301 F.R.D. 144, at *160. The so-called *Girsh* factors, from the first of these three cases, are:

range of awards found to be reasonable by the courts.’”) (quoting *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 18-cv-1370, 2020 WL 3481458, at *19 (W.D. Pa. June 26, 2020));

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

Id. (quoting *Girsh*, 521 F.2d at 157).

To the extent applicable (and not already addressed above), Plaintiffs have satisfied the *Girsh* test. Had the case not resolved, the parties here would be facing “significant expenses in briefing and arguing class certification, summary judgment, expert reports, and maintaining class certification throughout trial.” *In re Wawa, Inc. Data Sec. Litig.*, 2023 WL 6690705, at *7. Numerous courts have recognized the risks associated with data breach class actions. *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases such as the instant case are particularly risky, expensive, and complex, and they present significant challenges to plaintiffs at the class certification stage.”) (internal citations omitted). And even if Cleveland Brothers theoretically may have had the ability to pay for a larger settlement, “courts within the Third Circuit ‘regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts.’” *Kelly, v. Santander Consumer USA, Inc.*, No. 20-cv-3698, 2023 WL 8701298, at *4 (E.D. Pa. Dec. 15, 2023) (quoting *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 104 (E.D. Pa. 2013)).

B. The Proposed Settlement Class Satisfies the Criteria of Rule 23(a).

“In addition to reviewing the terms of settlement, a court at the preliminary approval stage may conditionally certify the class for purposes of providing notice, with the final certification decision to be made at the subsequent fairness hearing.”

Checchia v. Bank of Am., N.A., No. 21-cv-3585, 2023 WL 2051147, at *2 (E.D. Pa. Feb. 16, 2023). Courts may certify settlement classes that satisfy the requirements of Rule 23(a) and at least one provision of Rule 23(b). *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620-22 (1997). The Settlement Class meets the applicable criteria for conditional certification.

1. The Class is Sufficiently Numerous.

The Settlement Class contains approximately 8,600 Settlement Class Members. Counsel Decl. ¶ 17. Thus, the Class easily satisfies the Rule 23(a)(1) requirement that the class be “so numerous that joinder of all members is impracticable.” *See Fulton-Green*, 2019 WL 316722, at *3 (proposed class of 973 people “easily meet[s] the numerosity requirement”).

2. There are Questions of Law or Fact Common to the Class.

“Rule 23(a)(2)’s commonality element requires that the proposed class members share at least one question of fact or law in common with each other.” *Warfarin*, 391 F.3d at 527-28. The commonality threshold is low and does not require an “identity of claims or facts among class members.” *Gates*, 248 F.R.D. at 440. “[F]or purposes of Rule 23(a)(2), even a single common question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (internal quotation and alterations omitted).

Here, the facts relating to Data Breach are the key issues in the case. There are multiple common questions, including how the data breach occurred, whether Defendant had a duty to protect Settlement Class Members Private Information and whether Settlement Class Members were harmed by the alleged breach. These common issues are present in this case too.

3. The Class Representatives' Claims are Typical of the Claims of the Class.

Rule 23(a)(3) requires that the “claims or defenses of the representative parties [be] typical of the claims or defenses of the class.” This inquiry is “intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees’ interests will be fairly represented.” *Hall*, 2019 WL 3996621, at *7. Here, the claims of the Class Representatives are “not only similar to those of other class members but are virtually identical.” *Fulton-Green*, 2019 WL 316722, at *4. They all “stem[] from [defendant’s] data security measures and whether they were adequate to protect [the sensitive, compromised data].” *In re Wawa*, 2023 WL 6690705, at *4. Typicality is, therefore, satisfied.

4. The Class Representatives and Proposed Settlement Class Counsel Will Fairly and Adequately Represent the Class.

Rule 23(a)(4) tests whether the “representative parties will fairly and adequately protect the interests of the class.” *Wallace*, 301 F.R.D. 144, at *156 (citations and internal quotation marks omitted). Here, the named Plaintiffs have been actively involved in the litigation of this case, and have assisted throughout the process, answering Counsel’s many questions, providing documents pertaining to the Lawsuit when requested, and reviewing the complaint and terms of the Settlement. Counsel Decl. ¶¶ 33, 35. Their interests and those of the other Class Members are aligned: all are equally interested in proving the factual averments in the Complaint, establishing Defendant’s liability, and obtaining compensation from Defendant. As described below, the Class Representatives have retained knowledgeable and well-qualified counsel who have successfully prosecuted many class actions, including many actions arising from data breaches. Proposed Settlement Class Counsel have vigorously prosecuted the action and have devoted substantial effort and resources on behalf of the Class. *Id.* ¶ 37.

5. Common Issues Predominate over any Individual Issues and a Class Action is Superior to Other Available Methods of Adjudicating the Controversy.

In addition to satisfying the criteria under Rule 23(a), the proposed Settlement Class must meet one of the criteria under Rule 23(b). Plaintiffs seek to certify a class under Rule 23(b)(3), which requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” The proposed Settlement Class meets both requirements.

a. Common issues predominate.

“Under Fed. R. Civ. P. 23(b)(3), a class action may be maintained if common questions of law or fact predominate questions arguably affecting only individuals.” *Fulton-Green*, 2019 WL 4677954, at *6. “When examining whether certain issues predominate, a court looks to see if “common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *In re Wawa*, No. 19-cv-6019, 2021 WL 3276148, at *4 (E.D. Pa. July 30, 2021) (citation omitted).

Here, a myriad of common issues predominate, including whether the defendant owed a duty to class members to safeguard their sensitive information, whether the defendant breached that duty, whether state consumer protection laws were violated, whether the defendant complied with industry standards, whether the defendant’s conduct or failure to act was the proximate cause of the breach, and whether plaintiffs and the class members are entitled to recovery. *See id.* All these issues focus on Cleveland Brother’s common course of conduct, and predominate here.

b. A class action is superior to other means of adjudication.

“The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.” *Processed Egg Prods.*, 284 F.R.D. at 264. Here, all four considerations in Rule 23(b)(4) demonstrate superiority. There is no indication that Class Members would be interested in litigating individually or that the litigation should proceed in a non-class forum. In addition, the cost and complexity of litigation would preclude the vast majority of Class Members from filing suit individually.

C. The Class Notice Program Provides Class Members with the Best Notice Practicable Under the Circumstances.

Pursuant to Rule 23(c)(2)(B), the notice must be the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Notice “must be disseminated in a manner “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (internal citations omitted). The Notice Program achieves all of these objectives.

1. Class Notice Will Reach Significant Number of Class Members.

The Postcard Notice shall be provided to Settlement Class Members directly via U.S. Mail to the postal address provided by Cleveland Brothers. S.A. ¶ (VI)(49), **Ex. C**. Similar direct notice programs have reached well in excess of 90 percent of Class Members, and the same outcome is anticipated here.

2. The Detailed Notice Form and Settlement Website Clearly and Concisely Inform Class Members About Their Rights and Options, Including How to File a Claim.

As required by Rule 23 (c)(2)(B), the proposed Long Form Notice attached as **Exhibit B** to the Settlement Agreement “clearly and concisely state[s] in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class

certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” It also describes the terms of the Settlement, including requests for service awards for the Class Representatives and for an award of attorneys’ fees and reimbursement of expenses; informs Class Members about their right to object to the Settlement (and how to do so); provides the date, time, and place of the Final Approval hearing and the procedures for appearing at the hearing; and provides contact information for Co-Lead Counsel and the Settlement Administrator. Counsel Decl. ¶ 23.

The Notice Program will inform Class Members of the deadlines for objecting to the Settlement and excluding themselves from the Class. The deadlines themselves are reasonable. *See Nat’l Football League*, 301 F.R.D. at 203 (“It is well-settled that between 30 and 60 days is sufficient to allow class members to make their decisions to accept the settlement, object, or exclude themselves.”).

V. **PLAINTIFFS’ COUNSEL SHOULD BE PROVISIONALLY APPOINTED AS CLASS COUNSEL**

As discussed above, and as fully explained in Counsel’s declarations, Proposed Class Counsel have extensive experience prosecuting similar class actions and other complex litigation. *See* Counsel Decl. ¶ 38, **Exhibits A and B**. Further, Proposed 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 Plaintiffs and the Settlement Class. *See generally* Counsel Dec.

Accordingly, the Court should appoint David K. Lietz of Milberg, Coleman, Bryson, Phillips, Grossman PLLC and Laura Van Note of Cole & Van Note as Class Counsel.

Based on the foregoing, Plaintiffs and Plaintiffs' Counsel respectfully request that the Court: (1) grant preliminary approval to the Settlement; (2) provisionally certify for settlement purposes only the proposed Settlement Class, pursuant to Rules 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure; (3) approve the proposed Class Notice; (4) approve, set deadlines for, and order the opt out and objection procedures set forth in the Settlement Agreement; (5) appoint Plaintiffs as Class Representatives; (6) appoint as Class Counsel Laura Van Note of Cole & Van Note and David K. Lietz of Milberg Coleman Bryson Phillips Grossman; and (7) schedule a Fairness Hearing in accordance with the proposed schedule set forth above. A proposed Preliminary Approval Order is being filed herewith.

Dated: March 14, 2024

Respectfully submitted,

/s/ Laura Van Note, Esq.

Laura Van Note, Esq. (Admitted *Pro Hac Vice*)

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CERTIFICATE OF COMPLIANCE WITH LOCAL REQUIREMENTS

1. This brief complies with the word count limit of Local Rule 7.8(b)(2). The brief contains 4904 words, determined by Microsoft Word.

CERTIFICATE OF SERVICE

I hereby certify that, on March 14, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served today on all counsel of record in this case via transmission of Notice of Electronic Filing generated by CM/ECF and on counsel in the related cases to their respective emails per the below service list.

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

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs Randy Thomas, Gabrielle Thomas and Robert MacMichael (“Plaintiffs” or “Class Representatives”), on behalf of themselves and all others similarly situated, and Defendant Cleveland Brothers Equipment Company, Inc. (“Defendant” or “Cleveland Brothers”) (collectively, the “Parties”), hereby enter into this Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), subject to Court approval. As detailed below, this Settlement Agreement releases and forever discharges and bars all claims asserted (or that could have been asserted) in the class action lawsuit captioned, *In re: Cleveland Brothers Data Incident Litigation*, No. 1:23-cv-00501-JPW, currently pending in the United States District Court for the Middle District of Pennsylvania and any related actions.

I. RECITALS

WHEREAS, on June 7, 2023, Plaintiffs Randy Thomas, Gabrielle Thomas, and Robert MacMichael filed their consolidated putative class action Complaint against Cleveland Brothers in the United States District Court for the Middle District of Pennsylvania, asserting causes of action for (1) Negligence, (2) Breach of Implied Contract, and (3) Unjust Enrichment;

WHEREAS, the Parties participated in a mediation on January 25, 2024;

WHEREAS, in the consolidated class action Complaint (the “Complaint”), Class Representatives seek to certify the following classes affected by the Data Breach:

Nationwide Class:

“All individuals within the United States of America whose PII information was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.”

Florida Subclass:

“All individuals within the State of Florida whose PII information was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.”

Pennsylvania Subclass:

“All individuals within the State of Pennsylvania whose PII information was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.”

WHEREAS, Cleveland Brothers denies liability, and Plaintiffs and Cleveland Brothers recognize the outcome of the Action and the claims asserted in the Complaint are uncertain, and that pursuing the Action to judgment would entail substantial cost, risk and delay;

WHEREAS, the Parties have explored and discussed at length the factual and legal issues in the Action and participated in a mediation with Bennett G. Picker of Stradley Ronon, concerning the issues raised by Plaintiffs in the Action, and have agreed to a global, final settlement of the Action that renders the need for further litigation unnecessary;

WHEREAS, the Parties desire to compromise and settle all issues, claims, and/or facts asserted in the Action, or that could have been asserted based upon the facts alleged in the Action, by or on behalf of Class Representatives and the Classes;

WHEREAS, Class Representatives, by and through Class Counsel, have (a) made a thorough investigation of the facts and circumstances surrounding the allegations asserted in the Action, (b) engaged in investigation of the claims asserted in the Action, including informal discovery obtained by Class Representatives in connection with the Action and prior to execution of this Agreement, and (c) evaluated and considered the law applicable to the claims asserted in the Action, including the defenses that Cleveland Brothers likely would assert;

WHEREAS, Plaintiffs' counsel are experienced in this type of class litigation, recognize the costs and risks of prosecution of this Action, and believe that it is in Class Representatives' interest, and the interest of all Class Members, to resolve this Action, and any and all claims against Cleveland Brothers arising from the conduct alleged in the Action, and in this Settlement Agreement;

WHEREAS, Cleveland Brothers does not believe Class Representatives' claims are meritorious and has denied and continues to deny any and all claims alleged by Class Representatives, and has denied and continues to deny that it is legally responsible or liable to Class Representatives or any member of the Classes for any of the matters and/or claims asserted in this Action, but has concluded that settlement is desirable to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of Class Representatives and all members of the Classes relating to claims which were or could have been asserted by Class Representatives and the Classes in this Action relating to the alleged practices and Data Breach at issue;

WHEREAS, significant arm's-length settlement negotiations have taken place between the Parties, including a formal mediation presided over by a well-regarded third-party neutral, and, as a result, this Settlement Agreement has been reached without collusion, subject to the Court-approval process set forth herein;

WHEREAS, the undersigned Parties believe this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate and in the best interest of Class Members; and

WHEREAS, this Settlement Agreement is made and entered into by and between Class Representatives, individually and on behalf of the Classes, and Cleveland Brothers;

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the Parties, as follows:

II. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

1. “Action” means the case lawsuit captioned, *In re: Cleveland Brothers Data Incident Litigation*, Case No. 1:23-cv-00501-JPW, currently pending in the United States District Court for the Middle District of Pennsylvania.

2. “CAFA Notice” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. Sec. 1711, et seq. (“CAFA”), to be served upon the appropriate State official in each State where Class Member resides and the appropriate federal official. Costs for preparation and issuance of the CAFA Notice will be paid by Defendant from the Settlement Fund.

3. “Class” and “Settlement Class” means the Nationwide Class of all individuals within the United States of America whose personally identifiable information (“PII”) was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.

Excluded from the Settlement Class are: (1) the Judge and Magistrate Judge presiding over the Action, any members of the Judge’s respective staffs, and immediate members of the Judge’s respective families, (2) officers, directors, members and shareholders of Defendant, (3) persons who timely and validly request exclusion from and/or opt-out of the Settlement Class; (4) the successors and assigns of any such excluded persons, and (5) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Data Breach or who pleads nolo contendere to any such charge.

4. “Class Counsel” means Laura Van Note of Cole & Van Note, and David Lietz of Milberg Coleman Bryson Phillips Grossman PLLC.

5. “Claims Administration” means the processing of payments to Settlement Class Members by the Settlement Administrator.

6. “Claim Deadline” means ninety (90) days from the Class Notice Date, or a date otherwise ordered by the Court.

7. “Claim Form” means the form a Settlement Class Member must submit to submit a claim under this Agreement, substantially similar to **Exhibit A**.

8. “Class Members” and “Settlement Class Members” mean members of the “Class” and “Settlement Class” as set forth in Paragraph 2 above.

9. “Class Notice” means the Court-approved forms of Notice to the Class posted on the Settlement Website substantially similar to **Exhibit B** hereto, informing the Classes of, among other things, (i) the preliminary approval of the Settlement, (ii) the scheduling of the Final Approval Hearing, (iii) the Settlement benefits available to Final Settlement Class Members, and (iv) their opportunity to participate in, object to or exclude themselves from the Settlement.

10. “Class Notice Date” means thirty (30) calendar days after the Court’s entry of the Preliminary Approval Order.

11. “Class Representatives” or “Plaintiffs” means Randy Thomas, Gabrielle Thomas and Robert MacMichael.

12. “Cleveland Brothers” means Cleveland Brothers Equipment Company, Inc.

13. “Court” the United States District Court for the Middle District of Pennsylvania and the Honorable Jennifer P. Wilson or such other judge to whom the Action may hereafter be assigned.

14. “Data Breach” means the data incident first discovered by Defendant on or about November 3, 2022, and announced by Defendant on about February 17, 2023.

15. “Defendant’s Counsel” means Jill H. Fertel and Ernest F. Koschineg of Cipriani & Werner.

16. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement in the Action shall become effective and final, and occurs when the Final Approval Order, as defined in Paragraph 18 below, has been entered and all times to appeal therefrom have expired with (1) no appeal or other review proceeding having been commenced; or (2) an appeal or other review proceeding having been commenced, and such appeal or other review having been concluded such that it is no longer subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been resolved in a manner that affirms the Final Judgment in all material respects. The Effective Date shall not be altered in the event the Court declines to approve, in whole or in part, the Attorneys’ Fees and Expenses Award or the Incentive Awards. Further, the Effective Date shall not be altered in the event that an appeal is filed with the sole issue(s) on appeal being the Attorneys’ Fees and Expenses Award and/or the Incentive Award.

17. “Final Approval Hearing” means the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order and at which the Court may or may not consider and finally decide approving payment of any Service Award and Plaintiffs’ Counsel’s Fees and Expenses.

18. “Final Approval Order” means the Final Approval Order and separate Judgment of the Court that approves this Settlement Agreement and make such other final rulings as are contemplated by this Settlement Agreement.

19. “Final Settlement Class” refers to all members of the Settlement Classes who do not timely and validly exclude themselves from the Class in compliance with the exclusion procedures set forth in this Agreement.

20. “Final Settlement Class Member” refers to a member of the Final Settlement Class.

21. “Objection Date” means sixty (60) days from the Class Notice Date, or a date otherwise ordered by the Court, for members of the Classes to object to the Settlement Agreement’s terms or Plaintiffs’ Counsel’s Fees and Expenses, and to submit any required statements, proof or other materials and/or argument.

22. “Parties” means Plaintiffs and Defendant.

23. “Plaintiffs’ Counsel’s Fees and Expenses” means an amount not to exceed one third of the gross settlement amount, or one hundred and fifty thousand dollars (\$150,000), for attorneys’ fees, plus Plaintiffs’ counsel’s reasonable litigation costs, to be paid from the Settlement Fund, subject to approval of the Court.

24. “Preliminary Approval Order” means the order of the Court preliminarily approving this Settlement Agreement.

25. “Released Claims” means the claims released by this Settlement Agreement, as set forth in Section IX.

26. “Released Parties” means Cleveland Brothers, and its parents, subsidiaries, predecessors, successors, divisions, joint ventures, affiliates and related entities and all of its respective past and present directors, officers, employees, partners, principals, agents, attorneys, insurers, reinsurers, assigns and related or affiliated entities.

27. “Request for Exclusion” means a timely and valid request by any Class Member for exclusion from the Settlement. To the extent any Class Member delivers both a timely and valid Claim Form to the Settlement Administrator and a timely and valid request for exclusion, the request for exclusion will be deemed to be invalid and the Claim Form will be processed.

28. “Request for Exclusion Deadline” means sixty (60) days from the Class Notice Date, or a date otherwise ordered by the Court, for Class Members to request exclusion from the Settlement.

29. “Service Award” means the amount to be paid to the Class Representatives to compensate them for the time and effort spent pursuing the Action on behalf of the Classes, subject to approval of the Court, and which shall not exceed an amount of two thousand five hundred dollars (\$2,500) to each Class Representative. The Service Award shall to be paid from the Settlement Fund.

30. “Settlement” and “Settlement Agreement” mean the agreement by the Parties to resolve this Action, the terms of which have been memorialized herein.

31. “Settlement Administrator” means Postlethwaite & Netterville APAC (“P&N”), a company experienced in administering class action claims generally and specifically those of the type provided for in this Litigation, or, if P&N is not approved by the Court, such other company experienced in administering class action claims generally and specifically those of the type provided for in this Litigation that is jointly agreed upon by the Settling Parties and approved by the Court.

32. “Settlement Website” means the website to be established by the Settlement Administrator that will inform members of the Settlement Class of the terms of this Settlement Agreement, their rights, dates and deadlines and related information, and shall include in .pdf format and available for download the following: (1) the Class Notice, (2) the Claim Form, (3) the Preliminary Approval Order, (4) this Settlement Agreement, (5) the Complaint, and (6) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide the members of the Settlement Class with the ability to complete and submit the Claim Form electronically.

III. REQUIRED EVENTS

33. Class Counsel and Defendant’s Counsel shall take all reasonable and necessary steps to obtain entry of the Preliminary Approval Order and obtain entry of the Final Approval Order. Class Counsel shall prepare and file all documents in connection with the Motion for Preliminary Approval and the Motion for Final Approval. Defendant’s Counsel shall not oppose the Motion for Preliminary Approval and the Motion for Final Approval.

34. In the event that the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court.

35. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Agreement is essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated here.

IV. SETTLEMENT TERMS

36. Cash Payment: Cleveland Brothers agrees to pay Plaintiffs and the Classes four hundred and fifty thousand dollars (\$450,000). The cash payment of four hundred and fifty thousand dollars (\$450,000) will be referred to as the “Settlement Fund.” No later than ten (10) calendar days after entry of the Preliminary Approval Order, and upon the receipt of sufficient payment information from the Settlement Administrator, Defendant will advance to the Settlement Administrator the estimated cost of preparing and transmitting the Notice to Class Members. The balance of the amount required by Defendant to be paid to the Settlement Administrator in connection with the Final Approval Order will be due within thirty (30) days of the Effective Date.

The Settlement Administrator shall establish a Qualified Settlement Fund (QSF), as defined by 26 C.F.R. 1.468B-1, for the deposit of the payment of the balance of the Settlement Fund. Under no circumstances will Cleveland Brothers have any further monetary payment obligation other than the payment of the Settlement Fund. There will be no reversion of the Settlement Fund to Cleveland Brothers.

37. Payments from Settlement Fund: The costs of settlement administration, including notice and distributions to members of the Final Settlement Class, the costs of administering the Settlement Fund, and reasonable fees of the Settlement Administrator, Plaintiffs' Counsel's Fees and Expenses and Class Representatives' Service Awards shall be paid exclusively from the Settlement Fund. There will be no reversion of the Settlement Fund to Cleveland Brothers.

38. Service Awards to the Class Representatives: Class Counsel will move the Court for a Service Award payment from the Settlement Fund for the Class Representatives in an amount not to exceed two thousand five hundred dollars (\$2,500) for each Class Representative, in recognition of the risks taken by them as the Class Representatives in commencing the Action, both financial and otherwise. Defendant will not oppose Class Counsel's request for Service Award payments from the Settlement Fund in these amounts. If awarded by the Court, the Settlement Administrator shall pay from the Settlement Fund the Service Awards to the Class Representatives in the manner directed by Class Counsel within ten (10) days after the Effective Date.

39. Payment of Plaintiffs' Attorneys' Fees and Costs: Not less than fourteen (14) days prior to the Opt-Out and Objections deadlines, Class Counsel will move the Court for an award of Plaintiffs' Counsel's attorneys' fees to be paid from the Settlement Fund in an amount not to exceed one third of the total Settlement Fund, or one hundred and fifty thousand dollars (\$150,000), plus reasonable litigation costs and expenses. Defendant will not oppose Class Counsel's request for reasonable attorneys' fees and litigation costs from the Settlement Fund in this amount. Class Counsel, in their sole discretion, shall allocate and distribute any amounts of attorneys' fees, costs and expenses awarded by the Court among Plaintiffs' counsel. If awarded by the Court, the Settlement Administrator shall pay from the Settlement Fund any Plaintiffs' Counsel's Fees and Expenses in the amounts awarded by the Court within ten (10) business days after the Effective Date. Payment will be made as directed by Class Counsel.

40. Payment of Valid Claims to Class Members: Each member of the Final Settlement Class who submits a timely and valid Claim Form shall be paid from the Settlement Fund in the manner outlined in the Claims Administration section below. As set forth below, the Settlement Fund will be used to pay for: (1) reimbursement for Out-of-Pocket Losses and Attested Time, or (2) alternative cash payments. Claims for Ordinary and/or Extraordinary Out-of-Pocket Losses and Attested Time will be paid first. Alternative Cash Payments be paid last and will be increased or decreased pro rata to consume the remaining amount of the Settlement Fund after payment for notice and administration costs, service award payments approved by the Court, and attorney' fees and expenses awarded by the Court.

41. CAFA Notice: Within ten (10) days of the filing of the Motion for Preliminary Approval, Cleveland Brothers shall provide notice to state Attorneys General or others as required by 28 U.S.C. § 1715(b).

V. CLAIMS PROCESS

42. Members of the Final Settlement Class will be required to submit a Claim Form to receive a distribution payment from the Settlement Fund. Each Final Settlement Class Member is limited to the submission of one Claim Form and in no event shall a Final Settlement Class Member receive more than distribution. The Settlement Administrator will issue Settlement distributions only to Final Settlement Class Members who submit timely and valid Claim Forms. To be entitled to receive a distribution under this Agreement, Class Members must properly complete a Claim Form and timely deliver it to the Settlement Administrator within ninety (90) days from the Class Notice Date. The delivery date for submission of a Claim Form is deemed to be the date (a) the form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. Mail, or (b) in the case of submission electronically through the Settlement Website, the date the Settlement Administrator receives the form, as evidenced by the transmission receipt. Any Class Member who fails to submit a valid and timely Claim Form will not receive any payment under this Agreement.

43. All Settlement Class Members may make claims under the Settlement Fund as set forth below:

A. Reimbursement for Out-of-Pocket Losses and Attested Time

All Settlement Class Members may submit a claim for Out-of-Pocket Losses and Attested Time up to five thousand dollars (\$5000) per individual. Defendant will pay valid and timely submitted claims for each of the following categories:

- i. “Out-of-Pocket Losses” are unreimbursed costs or expenditures incurred by a Class Member in response to the Data Breach that were incurred between November 3, 2022 and the Claims Deadline, as result of the Data Breach. Ordinary Out-of-Pocket Losses may include, but are not limited to: unreimbursed costs, expenses or charges incurred addressing or remedying identity theft, fraud, or misuse of personal information and/or other issues reasonably traceable to the Data Breach.

Settlement Class Members who elect to submit a claim for reimbursement of Ordinary Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member’s name and current address, (2) documentation supporting their claim, or (3) an attestation and a brief description of out-of-pocket expenses and how they were incurred. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not “self-prepared” by the Settlement Class Member that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive

reimbursement, but can be considered to add clarity to or support other submitted documentation

- ii. “Attested Time” Settlement Class Members with Ordinary Out-of-Pocket Losses may also submit a claim for up to six (6) hours of time spent remedying issues related to the Data Breach at a rate of thirty-five dollars (\$35) per hour. Settlement Class Members must provide an attestation and a brief description of (1) the actions taken in response to the Data Breach and (2) the time associated with each action (“Attested Time”). Reimbursement for Attested Time is included in the five thousand dollars (\$5000) per person cap for Out-of-Pocket Losses.

Settlement Class Members seeking out-of-pocket expense reimbursement must complete and submit either a written or online claim form to the Claims Administrator, postmarked or electronically submitted on or before the Claims Deadline. The claim form must be verified by the Settlement Class Member with an attestation that the claimant believes that the losses or expenses claimed were incurred as a result of the Data Breach.

B. Alternative Cash Payments.

Settlement Class Members may, in lieu of making a claim for reimbursement of Out-of-Pocket Losses and Attested Time, elect to receive a pro rata cash payment in an amount estimated to be approximately two hundred dollars (\$200) by submitting a timely and valid claim form. . However, the amount of this alternative cash payment shall be pro rata increased or decreased based on the funds remaining in the Settlement Fund following the payment of Attorneys’ Fees and Expenses Award, any Service Award, the Costs of Settlement Administration, and claims for Out-of-Pocket Losses.

44. The Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with bi-weekly reports informing them of any and all Claim Forms received by the Settlement Administrator during each week following the Class Notice Date. The Settlement Administrator must file a Declaration reporting on the mailing of the Class Notice and identifying the number of Claim Forms, Requests for Exclusion and objections received no later than sixteen (16) court days prior to the Final Approval Hearing.

45. Disbursement of Settlement Payments and Checks: Within thirty (30) days of the Effective Date, the Settlement Administrator will disburse payments (either by electronic payment or check) for approved Claims to each Final Settlement Class Member who submits a timely and valid Claim Form. For any check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator will make reasonable efforts to find a valid address, including skip tracing, and will resend any returned Settlement check within thirty (30) days after the Settlement check is returned to the Settlement Administrator as undeliverable.

46. Failure to Cash Settlement Checks: Absent a demonstration of reasonable circumstances for excuse, any Settlement check not cashed within one-hundred twenty (120) days

of issuance (based on the date of the check) will be deemed expired. Any member of the Final Settlement Class who does not cash their Settlement check within the aforementioned time period may petition the Settlement Administrator within thirty (30) days of the expiration of their uncashed check to reissue their Settlement check, and the Settlement Administrator will issue a new check. Members of the Final Settlement Class are entitled to only one petition on this basis, and any Settlement check reissued for such reasonable circumstances will expire within thirty (30) days of issuance (based on the date of the check). Final Settlement Class Members who do not timely cash their Settlement checks and who fail to petition for a reissuance of the uncashed Settlement check will be considered as having waived any right to a cash payment under the Settlement Agreement but will still be able to obtain other benefits provided by the Settlement. In no event will a Final Settlement Class Member be permitted to cash a check once the value of uncashed checks has been paid to a *cy pres* organization.

47. Payment of Uncashed Checks to a Cy Pres Organization (if necessary): The total amount of uncashed Settlement checks will be paid to a charitable organization to be agreed upon by Cleveland Brothers and Class Counsel and approved by the Court.

VI. SETTLEMENT ADMINISTRATION

48. Engagement of Settlement Administrator: Promptly upon entry of the Preliminary Approval Order the Parties shall engage P&N as the Settlement Administrator, which shall be paid reasonable fees, exclusively from the Settlement Fund.

49. Class Member Information: No later than ten (10) days after entry of the Preliminary Approval Order, Cleveland Brothers shall provide the Settlement Administrator with Settlement Class Member information necessary for the Settlement Administrator to mail the Postcard Notice to Settlement Class Members.

50. Duties of Settlement Administrator: In addition to other duties as set forth in this Agreement, the Settlement Administrator shall be solely responsible for the following:

- i. Preparing, printing, and disseminating the Postcard Notice to Class Members;
- ii. No later than the Class Notice Date, sending by First Class Mail the Postcard Notice to all known Class Members. The Parties agree to use their best efforts and to work cooperatively to obtain the best practicable Class Member contact information prior to the date of mailing of the first Postcard Notice. For those Postcard Notices that are returned as undeliverable with a forwarding address, the Settlement Administrator will forward the Postcard Notice to the new address. For those Postcard Notices that are returned as undeliverable with no forwarding address, the Settlement Administrator will run a skip trace in an attempt to obtain a current address and re-mail Postcard Notices to any current addresses it locates;
- iii. From the date of mailing of the first Postcard Notice, and thereafter for six (6) months after the Effective Date, maintaining (i) the Settlement Website, and (ii) a toll-free number with recorded answers to commonly asked settlement

- questions, the ability to leave a message and request a call back, and reference to the Settlement Website;
- iv. Keeping track of Requests for Exclusion, including maintaining the original mailing envelope in which each request was mailed;
 - v. Keeping track of Claim Forms, including maintaining the original mailing envelope in which each form was mailed;
 - vi. Keeping track of objections, including maintaining the original mailing envelope in which each objection was mailed;
 - vii. Keeping track of all other communications from Class Members, including maintaining the original mailing envelope in which any communication was mailed;
 - viii. Maintaining adequate records of its activities, including the dates of each mailing of Class Notices, returned mail and other communications, and attempted written or electronic communications with Class Members;
 - ix. Promptly furnishing to counsel for the Parties (i) copies of any Requests for Exclusion, (ii) copies of any objections, and (iii) all other written or electronic communications received from Class Members;
 - x. Determining whether Requests for Exclusion comply with the terms of this Agreement and are timely and valid and effective to exclude the submitting Class Member from the Classes;
 - xi. Determining whether Claim Forms comply with the terms of this Agreement and are timely and valid;
 - xii. Promptly preparing and distributing any rejection of a Request for Exclusion to the submitting Class Member. Rejections shall set forth the reasons for rejection, including the reason(s) the Request for Exclusion fails to comply with the terms of this Agreement;
 - xiii. Promptly preparing and distributing notices of deficiencies to the submitting Class Member that set forth the reasons their Claim Form is deficient, including the reason(s) the Claim Form fails to comply with the terms of this Agreement;
 - xiv. Delivering to the Parties' counsel in a reasonably timely manner, but in no event later than sixteen (16) court days before the Final Approval Hearing, a written report concerning all Requests for Exclusion (valid and invalid), all Claim Forms (valid and deficient), and all objections;
 - xv. Establishing a Qualified Settlement Fund (QSF), as defined by 26 C.F.R. 1.468B-1, for the deposit of the Settlement Fund payment, ensuring that all taxes associated with the administration of the Settlement Fund are timely paid

to the appropriate tax authorities and all tax filings are timely filed, which taxes shall be paid from the Settlement Fund;

- xvi. Determining the payment to each member of the Final Settlement Class who submits a valid and timely claim in accordance with this Agreement;
- xvii. Preparing a list of Final Settlement Class Members;
- xviii. No later than thirty (30) days after the Effective Date, distributing payments to each Final Settlement Class Member who submitted a timely and valid Claim Form by sending an electronic payment or check by First Class Mail to each such member in the amount of his or her approved claim;
- xix. No later than ten (10) days after the Effective Date, distributing any Service Award approved by the Court in the amount of the award approved by the Court to their attorneys of record;
- xx. No later than ten (10) days after the Effective Date, preparing and distributing, in accordance with this Agreement and the Final Approval Order, Plaintiff's counsel's reasonable attorneys' fees and costs as directed by Class Counsel; and
- xxi. Confirming in writing its completion of the administration of the Settlement.

51. **Costs of Settlement Administration:** All expenses incurred in administering this Settlement Agreement, including, without limitation, the cost of the Postcard Notice, Settlement Website, and toll-free telephone line, the cost of distributing and administering the benefits of the Settlement Agreement, and the Settlement Administrator's reasonable fees shall be paid to the Settlement Administrator from the Settlement Fund, subject to the approval of the Court.

VII. REQUESTS FOR EXCLUSION BY CLASS MEMBERS

52. Any Class Member may make a Request for Exclusion by mailing such request in writing to the Settlement Administrator at the address set forth in the Class Notice. Any Request for Exclusion must be postmarked no later than sixty (60) days after the Class Notice Date or such other date specified in the Court's Preliminary Approval Order. The Request for Exclusion shall (i) state the Class Member's full name and current address and signature, and (ii) specifically state his or her desire to be excluded from the Settlement and from the Final Settlement Class. Failure to comply with these requirements and to timely submit the Request for Exclusion will result in the Class Member being bound by the terms of the Settlement.

53. Any Class Member who submits a timely Request for Exclusion may not make any objections to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

54. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a weekly report informing them of any Requests for Exclusion received by the Settlement Administrator during each week following the Class Notice Date. The Settlement Administrator must provide Class Counsel with a declaration identifying all Class Members who

requested exclusion from the Settlement and indicating those requests that were untimely no later than sixteen (16) court days prior to the Final Approval Hearing. Class Counsel will file with the Court and serve Cleveland Brothers with the declaration along with their motion for final approval of the Settlement.

55. No party will solicit or encourage Requests for Exclusion. Any attempt to do so by Plaintiffs or Defendant will be deemed a breach of this Settlement Agreement.

VIII. OBJECTION TO SETTLEMENT BY CLASS MEMBERS

56. Any Class Member may make an objection to the proposed Settlement by mailing a letter to the Settlement Administrator at the address set forth in the Class Notice. Any objection to be considered valid must be mailed and postmarked no later than the Objection Date, i.e., sixty (60) days from the Class Notice Date. Class Counsel must file all objections with the Court, with service to counsel for all parties, not later than fourteen (14) days after the Objection Deadline. Any Class Member who has submitted a Request for Exclusion may not submit any objections or speak at the Final Approval Hearing.

57. To state a valid objection to the Settlement, an objecting Class Member must mail a letter to the Settlement Administrator setting forth all of the following information in writing: (i) the objector's full name, current address, current telephone number, and be personally signed, (ii) the case name and case number, *In re: Cleveland Brothers Data Incident Litigation*, Case No. 1:23-cv-00501-JPW, currently pending in the United States District Court for the Middle District of Pennsylvania, (iii) documentation sufficient to establish membership in one of the Classes, such as a copy of the Postcard Notice he or she received, (iv) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position(s), (v) copies of any other documents that the objector wishes to submit in support of his/her position, (vi) whether the objecting Class Member intends to appear at the Final Approval Hearing, and (v) whether the objecting Class Member is represented by counsel and, if so, the name, address, and telephone number of his/her counsel.

58. Subject to approval of the Court, any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court. By this provision, the Parties are not waiving and are expressly preserving their right to contest any appearance by an objector on any grounds, or from asserting any and all other potential defenses and privileges to any such appearance.

59. The agreed-upon procedures and requirements for submitting objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement Agreement, in accordance with the due process rights of all Class Members. The Preliminary Approval Order and Class Notice will require all Class Members who have any objections to submit the objections to the Settlement Administrator at the address set forth in the Class Notice, by no later than the Objection Date.

60. Class Counsel will defend the Court's Final Approval Order and any related orders in the event of an appeal.

IX. RELEASE OF CLAIMS

61. Plaintiffs and Class Members who fail to timely make a Request for Exclusion from the Settlement release Defendant and Released Parties from any and all claims or causes of action which the Plaintiffs or any Class Member has against Defendant or the Released Parties as well as any and all claims, causes of action, damages, penalties, attorneys' fees, costs, and any other form of relief or remedy in law, equity, of whatever kind or nature and for any relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect for any acts that were pled or could have been pled in the Action based on the facts, subject matter, or the factual or legal allegations in the Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law ("Released Claims").

62. Upon the Effective Date, Cleveland Brothers shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, relinquished, and discharged Plaintiffs, each and all of the Settlement Class Members, and Plaintiffs' counsel of all claims based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, except for enforcement of the Settlement Agreement and except as to Class Members who submit a timely and valid Request for Exclusion from the Settlement.

63. This Settlement Agreement does not affect the rights of Class Members who submit a timely and valid Request for Exclusion from the Settlement.

64. Upon issuance of the Final Approval Order (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have opted out in accordance with the provisions hereof, (ii) Defendant and Released Parties shall not be subject to liability or expense of any kind to any Class Member(s) for reasons related to the Action except as set forth herein, and (iii) Class Members shall be permanently barred from initiating, asserting or prosecuting any and all Released Claims against Defendant and Released Parties.

X. REPRESENTATIONS, WARRANTIES, AND COVENANTS

65. Class Counsel represents and warrants that they have the authority, on behalf of Plaintiffs, to execute, deliver and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal, valid and binding obligation.

66. Cleveland Brothers, through its undersigned attorneys, represents and warrants that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Cleveland Brothers of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by Cleveland Brothers. This Settlement Agreement has been duly and validly executed and delivered by Cleveland Brothers and constitutes its legal, valid and binding obligation.

XI. MISCELLANEOUS PROVISIONS

67. This Settlement Agreement is not to be used in evidence (except in connection with obtaining approval of this Settlement Agreement and enforcing its terms) and shall not at any time be construed or deemed to be any admission or concession by Cleveland Brothers with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Cleveland Brothers specifically denies all of the allegations made in connection with the Action. Neither this Settlement Agreement nor any class certification pursuant to it shall constitute, in this or in any other proceeding, an admission by Cleveland Brothers, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Action, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' express understanding and agreement that if for any reason this Settlement is not approved by the Court, Cleveland Brothers may continue to contest and deny that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction.

68. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Final Approval Order is not entered, or a Final Approval Order is subsequently reversed on appeal, the Parties agree to use their best efforts to cure any defect(s) identified by the Court. If, despite their best efforts, the Parties cannot cure said defects, this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Action, and all Parties shall be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

69. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

70. Capitalized words, terms and phrases are used as defined in Section II, above.

71. This Settlement Agreement may not be modified or amended except in writing and signed by all of the Parties.

72. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

73. Except as otherwise provided in this Settlement Agreement, each Party shall bear his, her or its own costs of the Action.

74. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers.

75. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the release. The Final Approval Order will provide that the Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of this Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to this Settlement Agreement as provided herein, and allowing for discovery related to objectors, if any.

76. The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. The Parties were represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

77. This Settlement Agreement constitutes the entire, fully integrated agreement among the Parties and cancels and supersedes all prior written and unwritten agreements and understandings pertaining to the Settlement of the Action.

78. The Parties agree that any unresolved disputes regarding the meaning of the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or as to any disagreement regarding the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, shall be submitted to the Court for resolution.

79. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, or default, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement, and to modify or supplement any notice contemplated hereunder.

80. Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this Agreement shall not be deemed a waiver of any provision of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions herein.

81. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

For Class Counsel:

Laura Grace Van Note
Cole & Van Note
555 12th Street, Suite 2100
Oakland, CA 94607
Telephone: 510-891-9800
Email: lvn@colevannote.com

David K. Lietz
**Milberg Coleman Bryson Phillips
Grossman PLLC**
5335 Wisconsin Avenue NW, Suite 440
Washington, DC 20015
Telephone: 866-252-0878
Email: dlietz@milberg.com

For Cleveland Brothers:

Ernest F. Koschineg
Cipriani & Werner
450 Sentry Parkway, Suite 200
Blue Bell, PA 19422
Telephone: 610-567-0700
Email: ekoschineg@c-wlaw.com

Jill H. Fertel
Cipriani & Werner, P.C.
450 Sentry Parkway, Suite 200
Blue Bell, PA 19422
Telephone: 610-567-0700
Email: jfertel@c-wlaw.com

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Plaintiffs and Cleveland Brothers, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: 3/13/2024


ID gQhf2gYXSaUa1zS3269HwnZ5

Robert MacMichael
Plaintiff

Dated: 3/13/2024


ID cmVjX36VwykYmuQokuRKvZU

Laura Van Note, Esq.
Cole & Van Note
Attorneys for Robert MacMichael

Dated: _____

Randy Thomas
Plaintiff

Dated: _____

Gabrielle Thomas
Plaintiff

For Class Counsel:

Laura Grace Van Note
Cole & Van Note
555 12th Street, Suite 2100
Oakland, CA 94607
Telephone: 510-891-9800
Email: lvn@colevannote.com

David K. Lietz
**Milberg Coleman Bryson Phillips
Grossman PLLC**
5335 Wisconsin Avenue NW, Suite 440
Washington, DC 20015
Telephone: 866-252-0878
Email: dlietz@milberg.com

For Cleveland Brothers:

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Cipriani & Werner
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Telephone: 610-567-0700
Email: ekoschineg@c-wlaw.com

Jill H. Fertel
Cipriani & Werner, P.C.
450 Sentry Parkway, Suite 200
Blue Bell, PA 19422
Telephone: 610-567-0700
Email: jfertel@c-wlaw.com

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Plaintiffs and Cleveland Brothers, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.


Dated: _____

Robert MacMichael
Plaintiff

Dated: _____


Laura Van Note, Esq.
Cole & Van Note
Attorneys for Robert MacMichael

Dated: 03/13/2024


Randy & Gabrielle Thomas (Mar 13, 2024 12:27 EDT)

Randy Thomas
Plaintiff

Dated: 03/13/2024


Randy & Gabrielle Thomas (Mar 13, 2024 12:27 EDT)

Gabrielle Thomas
Plaintiff

Dated: 3/13/2024

David K. Lietz
David K. Lietz, Esq.
Milberg Coleman Bryson Phillips Grossman PLLC
Attorneys for Randy Thomas and Gabrielle Thomas

Dated: 3/14/2024

Joseph J. Lundy
Name: JOSEPH J. LUNDY
As the Duly Authorized Corporate Representative of
Defendant Cleveland Brothers Equipment Company, Inc.

Dated: 3/14/2024

Jill H. Fertel
Jill H. Fertel, Esq
Cipriani & Werner
Attorneys for Defendant Cleveland Brothers Equipment
Company, Inc.

Exhibit A

Cleveland Brothers Data Security Incident
Claims Administrator

**Your Claim Form Must Be Submitted
Electronically or Postmarked by [ADD
DATE]**

ADD ADDRESS and WEBSITE

In re: Cleveland Brothers Data Incident Litigation
No. 1:23-cv-00501, United States District Court for the Middle District of Pennsylvania

SETTLEMENT PAYMENT CLAIM FORM

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

ATTENTION: This Claim Form is to be used to apply for relief related to the Data Breach that was discovered on November 3, 2022, and potentially affected customers of Cleveland Brothers Holdings, Inc. (“Cleveland Brothers” or “Defendant”). All Settlement Class Members are eligible to receive: (i) up to five thousand (\$5000) dollars reimbursement of out-of-pocket losses that are reasonably traceable to the Data Breach, including attested time or (ii) an alternative pro rata cash payment estimated to be two hundred dollars (\$200).

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

You may apply to be reimbursed for your documented Out-of-Pocket Losses and Attested Time or, in the alternative, apply for an alternative cash payment. Out-of-Pocket Losses consist of actual out-of-pocket losses, up to five thousand dollars (\$5000), including for time spent remedying identity theft or fraud, including misuse of personal information, credit monitoring or freezing credit reports at thirty-five dollars (\$35) for up to six (6) hours. You may be reimbursed for six (6) hours of lost time by attesting it was spent remedying the issues related to the Data Breach.

In the alternative to being reimbursed for your Ordinary Losses and/or Extraordinary Losses, you may simply make a claim for a pro rata cash payment estimated to be two hundred dollars (\$200).

PLEASE BE ADVISED that any documentation you provide in support of your Out-of-Pocket Losses claim must be submitted **WITH** this Claim Form. No documentation is required for claiming Attested Time or the Alternative Cash Payment.

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

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

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

were incurred.

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

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

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

es No

I yes, you may be eligible to fill out the rest of this form and provide corroborating documentation

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

Examples of Ordinary Out-of-Pocket Losses may include, but are not limited to: unreimbursed costs, expenses or charges incurred addressing or remedying identity theft, fraud, or misuse of personal information and/or other issues reasonably traceable to the Data Breach.

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

Description of the Loss	Date of Loss	Amount	Type of Supporting Documentation
Example: Unauthorized credit card charge	07 - 17 - 20 MM DD	\$50.00	Letter from Bank
Example: Fees paid to a professional to remedy a falsified tax return	02 - 30 - 21 MM DD	\$25.00	Copy of the professional services bill

	MM - DD -	\$	
	MM - DD -	\$	
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By checking the below box, I hereby declare under penalty of perjury that the information provided in this Claim Form to support relief for Ordinary Losses is true and correct.

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

Section B. Part 2 - Reimbursement for Attested Time

If you spent time remedying the Data Breach, you may be eligible to receive a payment to compensate you for time. Up to five (5) hours of lost time may be reimbursed if you provide an attestation as to the time you spent remedying issues related to the Data Breach.

If you spent time remedying issues related to the Data Breach, please list the number of hours you spent here: _____.

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

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

Section C. Alternative Cash Payment

In the alternative to compensation for Out-of-Pocket Losses and Attested Lost Time, you may simply make a claim for a cash payment estimated to be two hundred dollars (\$200).

The amount of this cash payment may increase or decrease depending upon the number of claims made.

By checking the below box, I choose a cash payment of two hundred dollars (\$200) in the alternative to compensation for Ordinary Losses and Attested Time and/or Extraordinary Losses.

Yes, I choose a cash payment of two hundred dollars 200 in the alternative to compensation for Out-of-Pocket Losses and Attested Time.

Section D. Payment

Please select the manner in which payment will be issued for your valid Claims.

PayPal :	<input type="checkbox"/>	_____	(PayPal Email Address)
Venmo :	<input type="checkbox"/>	_____	(Venmo Email Address)
elle :	<input type="checkbox"/>	_____	(elle Email Address)
Paper Check via Mail:	<input type="checkbox"/>	_____	(Mailing Address)

If you select payment via PayPal, Venmo or elle, the email address entered on this form will be used to process the payment to your account linked to that email address.

Section E. Settlement Class Member Affirmation

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

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

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

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

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

Signature: _____

Print Name: _____

Date: _____

**IN ORDER TO BE VALID, THIS CLAIM FORM MUST BE MAILED BY OR
RECEIVED ONLINE AT [INSERT WEBSITE]
NO LATER THAN [INSERT CLAIMS DEADLINE]**

EXHIBIT B

NOTICE OF CLASS ACTION SETTLEMENT

United States District Court for the Middle District of Pennsylvania

In re: Cleveland Brothers Data Incident Litigation

Case No. 1:23-cv-00501

To: All individuals within the United States of America whose personally identifiable information (PII) was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.

A proposed settlement has been reached in the class action lawsuit titled, *In re: Cleveland Brothers Data Incident Litigation*, No. 1:23-cv-00501 (the “Lawsuit”). The Lawsuit asserts claims against Defendant Cleveland Brothers Equipment Company, Inc (“Defendant” or “Cleveland Brothers”) related to a data breach discovered on November 3, 2022, about which Defendant notified potentially impacted individuals on or about February 17, 2023 (the “Data Breach”). Defendant denies all claims asserted in the Lawsuit and denies that it did anything wrong.

The Settlement offers payments to members of the Settlement Class. Certain of the amounts paid will depend upon how many people submit valid claims but initially are set at the following amounts:

- (1) Documented Out-of-Pocket Losses and Attested Time: reimbursement of up to five thousand dollars (**\$5000**) for any documented out-of-pocket losses, including attested time spent remedying issues related to the Data Breach at a rate of thirty-five dollars (**\$35 per hour, for up to six (6) hours**); or
- (2) Alternative Cash Payment: in the alternative to payments for Documented Out-of-Pocket Losses and Attested Time, the Settlement provides for a pro rata cash payment estimated to be two hundred dollars (**\$200**).

If you are a Settlement Class Member, your options are:

SUBMIT A CLAIM FORM DEADLINE: _____	You must submit a valid claim form to receive a payment from this Settlement.
DO NOTHING	You will receive no payment and will no longer be able to sue Defendant over the claims resolved in the Settlement.
EXCLUDE YOURSELF DEADLINE: _____	You may exclude yourself from this Settlement and keep your right to sue separately. If you exclude yourself, you will receive no payment. Exclusion instructions are provided in this Notice.
OBJECT DEADLINE: _____	If you do not exclude yourself, you may write to the Court to comment on or detail why you do not like the Settlement by following the instructions in this Notice. The Court may reject your objection. You must still file a claim if you desire any monetary relief under the Settlement.

The Court must give final approval to the Settlement before it takes effect, but has not yet done so. No payments will be made until after the Court gives final approval and any appeals are resolved.

Please review this Notice carefully. You can learn more about the Settlement by visiting www._____.com or by calling 1-800-XXX-XXXX.

Further Information about this Notice and the Lawsuit

1. *Why was this Notice issued?*

Settlement Class Members are eligible to receive payment from a proposed Settlement in the Lawsuit. The Court overseeing the Lawsuit authorized this Notice to advise Settlement Class Members about the proposed Settlement that will affect their legal rights. This Notice explains certain legal rights and options Settlement Class Members have in connection with the Settlement.

2. *What is the Lawsuit about?*

The Lawsuit is a proposed class action lawsuit brought on behalf of the Nationwide Class of all individuals within the United States of America whose PII was exposed to unauthorized third parties as a result of the Data Breach discovered on November 3, 2022.

The Lawsuit claims Defendant is legally responsible for the Data Breach and asserts various legal claims including negligence, breach of implied contract, and unjust enrichment. Defendant denies these claims and denies that it did anything wrong.

3. *Why is the Lawsuit a class action?*

In a class action, one or more representative plaintiffs bring a lawsuit on behalf of others who have similar claims. Together, all these people are the “Class” and each individual is a “Class Member.” There are three Representative Plaintiffs in this case: Randy Thomas, Gabrielle Thomas, and Robert MacMichael. The Class in this case are referred to in this Notice as the “Settlement Class.”

4. *Why is there a Settlement?*

The Representative Plaintiffs in the Lawsuit, through their attorneys, investigated the facts and law relating to the issues in the Lawsuit. The Representative Plaintiffs and Class Counsel believe that the Settlement is fair, reasonable, and adequate and will provide substantial benefits to the Settlement Class. The Court has not decided whether Representative Plaintiffs’ claims or Defendant’s defenses have any merit, and it will not do so if the proposed Settlement is approved. By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will receive compensation. The Settlement does not mean that Defendant did anything wrong, or that the Representative Plaintiffs and the Settlement Class would or would not win the case if it were to go to trial.

Terms of the Proposed Settlement

5. *Who is in the Settlement Class?*

The Settlement Class is defined by the Court as “all individuals within the United States of America whose PII information was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.”

Excluded from the Settlement Class are: (i) the Judge presiding over the Lawsuit, any members of the Judge’s staff, and immediate members of the Judge’s respective family, (ii) officers, directors, members and shareholders of Defendant, (iii) persons who timely and validly request exclusion from and/or opt-out of the Settlement Class(es), (iv) the successors and assigns of any such excluded persons, and (v) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Data Breach or who pleads *nolo contendere* to any such charge.

6. *What are the terms of the Settlement?*

The proposed Settlement would create a non-reversionary Settlement Fund of four hundred and fifty thousand dollars (\$450,000) that would be used to pay all costs of the Settlement, including: (i) payments to Settlement Class Members who submit valid claims, (ii) costs of administration and notice, (iii) any attorneys’ fees and costs awarded by the Court to Class Counsel (not to exceed one third of the total Settlement Fund, or one hundred and fifty thousand dollars (\$150,000) in attorneys’ fees, plus litigation costs and expenses), and (iv) any service awards to the Representative Plaintiffs awarded by the Court (not exceed an amount of two thousand five hundred dollars (\$2,500) to each Class Representative). The Settlement also releases all claims or potential claims of Settlement Class Members against Defendant arising from or related to the Data Breach, as detailed in the Class Settlement Agreement and Release.

7. *What claims are Settlement Class Members giving up under the Settlement?*

Settlement Class Members who do not validly exclude themselves from the Settlement will be bound by the Class Settlement Agreement and Release and any final judgment entered by the Court and will give up their right to sue Defendant for the claims being resolved by the Settlement, including all claims or potential claims of Settlement Class Members against Defendant arising from or related to the Data Breach. The claims that Settlement Class Members are releasing are described in the Class Settlement Agreement and Release.

Payments to Settlement Class Members

8. *What kind of payments can Settlement Class Members receive?*

Settlement Class Members who submit valid claims and any required documentation may receive one or more of the following, to be paid from the Settlement Fund: (i) Documented Out-of-Pocket Losses and Attested Time: reimbursement of up to five hundred dollars (\$5000) for any documented out-of-pocket losses, including attested time spent remedying issues related to the Data Breach at a rate of thirty-five dollars (\$35) per hour, for up to six (6) hours, or (ii) a pro rata Cash Payment estimated to be two hundred dollars (\$200) in the alternative to awards for Documented Out-of-Pocket Losses and Attested Time.

Depending on how many valid claims are submitted, the amounts of the Alternative Cash Payment will be adjusted upward or downward proportionally among Settlement Class Members submitting valid claims for those awards, as explained further below in Question 11.

9. *What are Documented Out-of-Pocket Losses and Attested Time?*

Documented Out-of-Pocket Losses, including Attested Time: Settlement Class Members who, at any time from November 3, 2022 and the Claims Deadline, suffered from unreimbursed costs or expenditures as result of the Data Breach Incident or spent time remedying the issues related to the Data Breach, are eligible to receive up to \$5000 as reimbursement for those charges and expenses. All Settlement Class Members may submit a claim for Documented Out-of-Pocket Losses and Attested Time up to five hundred dollars (\$5000) per individual. Examples of Documented Out-of-Pocket Losses and Attested Time may include:

Unreimbursed costs, expenses or charges incurred addressing or remedying identity theft, fraud, or misuse of personal information and/or other issues reasonably traceable to the Data Breach. This can include Attested Time for up to six (6) hours, at thirty five dollars (\$35) per hour, for time spent addressing or remedying issues related to the Data Breach, including time spent monitoring credit, resolving disputes for unauthorized transactions, freezing or unfreezing your credit, remedying a falsified tax return, etc.

To make a valid claim for Documented Out-of-Pocket Losses, you must provide documentation of these unreimbursed losses.

You do not need to provide documentation for time spent remedying issues related to the Data Breach, but you must attest under oath that you actually spent this time.

10. *What is the Pro Rata Alternative Cash Payment?*

In the alternative, every Settlement Class Member is eligible to receive a cash payment estimated to be two hundred dollars (\$200) Alternative Cash Payment, regardless of whether he or she experienced any unauthorized charges or identifiable losses related to the Data Breach. Settlement Class Members seeking a pro rata Alternative Cash Payment must provide the information required on the claim form. The two hundred dollar (\$200) Alternative Cash Payment is subject to upward or downward adjustment as described below in Question 11.

Eligibility for any award and the validity of your claim, including the Alternative Cash Payment, will be determined by the Claims Administrator as outlined in Question 15.

11. *When and how will the amount of Settlement payments be adjusted?*

The amounts paid for all Alternative Cash Payments will be adjusted upward or downward from the amounts listed in Question 10 depending on how many Settlement Class Members submit valid claims.

If the total dollar value of all valid claims is less than the amount of money available in the Settlement Fund for payment of those claims, the amounts for Alternative Cash Payments will be

adjusted upward proportionally among all valid claims for those awards, until the amounts remaining in the Settlement Fund are exhausted (or as nearly as possible).

If the total dollar value of all valid claims is more than the amount of money available in the Settlement Fund for payment of those claims, the amount of the payments for Alternative Cash Payments will be adjusted downward proportionally among all Settlement Class Members who submitted valid claims for Alternative Cash Payments.

12. *What happens after all claims are processed and there are funds remaining?*

If there are any funds remaining after all valid claims are processed and the time to cash any payment checks has passed, those funds shall be distributed as directed by the Court, including potential distribution to a charitable organization. No remaining funds will be returned to Defendant.

Your Options as a Settlement Class Member

13. *If I am a Settlement Class Member, what options do I have?*

If you are a Settlement Class Member, you do not have to do anything to remain in the Settlement. In order to receive payment from the Settlement you must submit a valid Claim Form.

If you do not want to give up your right to sue Defendant about the Data Breach or the issues raised in this case, you must exclude yourself (or “opt out”) from the Settlement Class. See Question 16 below for instructions on how to exclude yourself.

If you wish to object to the Settlement, you must remain a Settlement Class Member (*i.e.*, you may not also exclude yourself from the Settlement Class by opting out) and submit a written objection. See Question 19 below for instructions on how to submit an objection.

14. *What happens if I do nothing?*

If you do nothing, you will get no award from this Settlement. Unless you exclude yourself, after the Settlement is granted final approval and the judgment becomes final, you will be bound by the judgment and you will never be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant related to the claims released by the Settlement.

15. *Who decides my Settlement claim and how do they do it?*

The Claims Administrator will decide whether a claim form is complete and valid and includes all required documentation. The Claims Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid.

16. *How do I exclude myself from the Settlement?*

To opt out of the Settlement you must make a signed, written request that includes (i) the name of the proceeding, (ii) your full name, current address and personal signature, and (iii) the words “Request for Exclusion” or a comparable unequivocal statement that you do not wish to participate in the Settlement. You must mail your request to this address:

<CLAIMS ADMINISTRATOR>
[INSERT REQUEST FOR EXCLUSION MAILING ADDRESS]

Your request must be submitted online or postmarked by **[OPT-OUT DEADLINE]**.

17. *If I exclude myself, can I receive any payment from this Settlement?*

No. If you exclude yourself, you will not be entitled to any award under the Settlement. However, you will also not be bound by any judgment in this Lawsuit.

18. *If I do not exclude myself, can I sue Defendant for the Data Breach later?*

No. Unless you exclude yourself, you give up any right to sue Defendant 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 requesting a payment.

19. *How do I object to the Settlement?*

All Settlement Class Members who do not opt-out from the Settlement Class have the right to object to the Settlement or any part of it. You can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different Settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing and it and any supporting papers must be mailed to this address:

<CLAIMS ADMINISTRATOR>
[INSERT OBJECTION MAILING ADDRESS]

Your objection must be filed or postmarked no later than the objection deadline, **[INSERT OBJECTION DEADLINE]**. Class Counsel will then file your objection with the Court.

To be considered by the Court, your objection must list the name of the Lawsuit pending in the United States District Court for the Middle District of Pennsylvania: *In re: Cleveland Brothers Data Incident Litigation*, Case No. 1:23-cv-00501, and include all of the following information: (i) your full name, address, telephone number, and email address (if any), (ii) information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class (such as the Notice you received from Cleveland Brothers or the Notice of this

Settlement), (iii) a statement as to whether your objection applies only to yourself, to a specific subset of the Settlement Class, or to the entire Class, (iv) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection you believe is applicable, (v) the identity of any counsel representing you, (vi) a statement of whether you intend to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel, (vii) a list of all persons who will be called to testify at the Final Approval Hearing in support of your objections and any documents to be presented or considered, and (viii) your signature and the signature of your duly authorized attorney or other duly authorized representative (if any).

If you submit a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

Court Approval of the Settlement

20. *How, when, and where will the Court decide whether to approve the Settlement?*

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. That hearing is scheduled for _____, 202__ at _____ a.m./p.m. at the United States District Court for the Middle District of Pennsylvania, Sylvia H. Rambo United States Courthouse, 1501 North 6th Street, Harrisburg, PA 17102, in Department XXX. Please visit the Court's website at <https://www.pamd.uscourts.gov/> for current information regarding courthouse access and court hearings. At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have properly requested to speak at the hearing. The Court may also consider Settlement Class Counsel's request for attorneys' fees and costs, and the request for a service award for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement.

It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check www._____.com or access the Court docket in this case, for a fee, through the Court's Public Access System at <https://ecf.pamd.uscourts.gov> to confirm the schedule if you wish to attend.

21. *Do I have to attend the hearing?*

No. You do not need to attend the hearing unless you object to the settlement and wish to appear in person. It is not necessary to appear in person in order to make an objection; the Court will consider any written objections properly submitted according to the instructions in Question 19. You or your own lawyer are welcome to attend the hearing at your expense, but are not required to do so.

22. *What happens if the Court approves the Settlement?*

If the Court approves the settlement and no appeal is taken, the Settlement Fund will be fully funded. The Claims Administrator will pay any attorney fees’ and costs award and any Representative Plaintiffs’ service awards from the Settlement Fund. Then, the Claims Administrator will send settlement payments to Settlement Class Members who submitted timely and valid Settlement Claims.

If any appeal is taken, it is possible the settlement could be disapproved on appeal.

23. *What happens if the Court does not approve the Settlement?*

If the Court does not approve the Settlement, there will be no Settlement payments to Settlement Class Members, Settlement Class Counsel or the Representative Plaintiffs, and the case will proceed as if no Settlement had been attempted.

Lawyers for the Settlement Class and Defendant

24. *Who represents the Settlement Class?*

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit:

Settlement Class Counsel	
<p>Laura Grace Van Note, Esq COLE & VAN NOTE 555 12th Street Suite 2100 Oakland, CA 94607</p>	<p>David K, Lietz, Esq. MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN 5335 Wisconsin Avenue NW, Suite 440 Washington, DC 20015</p>

Settlement Class Members will not be charged for the services of Settlement Class Counsel. Settlement Class Counsel will be paid out of the Settlement Fund, subject to Court approval. However, you may hire your own attorney at your own cost to advise you in this matter or represent you in making an objection or appearing at the Final Approval Hearing.

25. *How will the lawyers for the Settlement Class be paid?*

Settlement Class Counsel will request the Court’s approval of an award for attorneys’ fees up to one-third of the Settlement Fund, or one hundred fifty thousand dollars (\$150,000), plus reasonable costs and expenses. Settlement Class Counsel will also request approval of a service award of two thousand five hundred dollars (\$2,500) for the Representative Plaintiffs, which shall also be paid from the Settlement Fund.

26. *Who represents Defendant in the Lawsuit?*

Defendant is represented by the following counsel:

Defendant's Counsel
Jill H. Fertel, Esq. Ernest F. Koschineg, Esq. CIPRIANI & WERNER 450 Sentry Parkway, Suite 200 Blue Bell, PA 19422

For Further Information

27. *What if I want further information or have questions?*

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Class Settlement Agreement and Release available at **www._____ .com**, by contacting Settlement Class Counsel at the phone number provided in response to Question 19 above, by accessing the Court docket in this case, for a fee, through the Court's Public Access system at <https://www.pamd.uscourts.gov/> or by visiting The Office of the Clerk, Sylvia H. Rambo United States Courthouse, 1501 North 6th Street Harrisburg, PA 17102, between 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

<CLAIMS ADMINISTRATOR> will act as the Claims Administrator for the Settlement. You can contact the Claims Administrator at:

[INSERT CONTACT INFO FOR CLAIMS ADMINISTRATOR]

Please do not contact the Court or Defendant's Counsel.

Exhibit C

LEGAL NOTICE

If you received notice of a data breach discovered in November 2022, you may be entitled to benefits from a class action settlement.

A federal district court authorized this Notice.

(XX) XXX-XXXX
www.URL.com

*Cleveland Brothers Settlement
Administrator
P.O. Box XXXXX
XXXXXX*

First-Class
Mail
US Postage
Paid
Permit #__

«Barcode»

Postal Service: Please do not mark barcode

«ClassMemberID»
«First1» «Last1»
«co»
«Addr1» «Addr2»
«City», «St» «Zip»
«Country»

A \$450,000 settlement has been proposed in a class action lawsuit against Cleveland Brothers Equipment Company, Inc. (“Defendant” or “Cleveland Brothers”) relating to the potential unauthorized access of Personal Information to an unauthorized third party as part of a data breach, and that was discovered November 3, 2022. (“Data Breach”). Defendant denies all liability.

Who is included Cleveland Brother’s records indicate that you are included in the settlement. The Settlement Class includes all individuals within the United States of America whose personally identifiable information (“PII”) was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022. (“Settlement Class Members”).

What does the settlement provide The settlement provides Settlement Class Members with the right to claim (1) compensation for documented out-of-pocket losses (up to \$5000), including compensation for Lost Time (up to 6 hours at \$35 per hour) and documented Extraordinary Losses or (2) a pro rata Alternative Cash Payment estimated to be \$200 in lieu of all other monetary benefits.

How do I get benefits You must complete and submit a Claim Form by **DATE**. Claim Forms are available and may be filed online at www.URL.com. Claim Forms may also be printed from the website or requested by calling the Settlement Administrator and submitted by mail postmarked by **DATE**.

What are my other options If you do not want to be legally bound by the settlement, you must exclude yourself by **DATE**. Unless you exclude yourself from the settlement, you will not be able to sue Cleveland Brothers or its related parties for any claim released by the Class Settlement Agreement. If you do not exclude yourself from the settlement, you may object and notify the Court that you or your lawyer intend to appear at the Court’s Fairness Hearing. Objections are due **DATE**.

The Court’s Fairness Hearing . The Court will hold a Final Fairness Hearing in this case (*In re Cleveland Brothers Data Incident Litigation*. 1:23-cv-00501-JPW) on **DATE, 202** , at **X:XX p.m.** at the US District Court in Scranton, Pennsylvania. At this hearing, the Court will decide whether to approve: (1) the settlement; (2) Settlement Class Counsel’s request for up to \$150,000 in attorneys’ fees, and reimbursement of costs; and (3) \$2,500 Service Awards to each Settlement Class Representative. You may appear at the hearing, but you do not have to. You also may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

This is only a summary of the settlement. For more information, visit URL.

Exhibit D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: CLEVELAND BROTHERS DATA Case No. 1:23-cv-00501-JPW
INCIDENT LITIGATION

[PROPOSED] ORDER GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (**Doc. No. __**) (the "Motion"), the terms of which are set forth in a Settlement Agreement between Plaintiffs and Defendant Cleveland Brothers Equipment Company, Inc. ("Defendant" or "Cleveland Brothers")(together with Plaintiffs, the "Parties"), with accompanying exhibits attached as **Exhibit** to Plaintiffs' Memorandum of Law in Support of their Motion (the "Settlement Agreement").¹

Having fully considered the issue, the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

1. **Class Certification for Settlement Purposes Only**. The Settlement Agreement provides for a Settlement Class defined as follows:

All individuals within the United States of America whose PII information was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.

Specifically excluded from the Settlement Class are: (1) the Judge and Magistrate Judge presiding over the Action, any members of the Judge's respective staffs, and immediate members of the Judge's respective families, (2) officers, directors, members and shareholders of Defendant, (3) persons who timely and validly request exclusion from and or opt-out of the Settlement Class; (4)

¹ All defined terms in this Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") have the same meaning as set forth in the Settlement Agreement, unless otherwise indicated.

the successors and assigns of any such excluded persons, and (5) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Data Breach or who pleads nolo contendere to any such charge.

Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving notice is justified. The Court finds that it will likely be able to approve the proposed Settlement as fair, reasonable, and adequate. The Court also finds that it will likely be able to certify the Settlement Class for purposes of judgment on the Settlement because it meets all of the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds for settlement purposes that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Class Representative are typical of and arise from the same operative facts and the Class Representatives seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives will fairly and adequately protect the interests of the Settlement Class as the Class Representatives have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this Litigation on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this Litigation.

2. **Settlement Class Representatives and Settlement Class Counsel.** The Court finds that Plaintiffs Randy Thomas, Gabrielle Thomas and Robert MacMichael will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as the Class Representatives. Additionally, the Court finds Laura an Note of Cole an Note and David . Lietz of Milberg

Coleman Bryson Phillips Grossman PLLC will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as Class Counsel pursuant to Rule 23(g)(1).

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly is preliminarily approved. In making this determination, the Court has considered the monetary and non-monetary benefits provided to the Settlement Class through the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the good faith, arms' length negotiations between the Parties and absence of any collusion in the Settlement, the effectiveness of the proposed method for distributing relief to the Settlement Class, the proposed manner of allocating benefits to Settlement Class Members, the Settlement treats the Settlement Class Members equitably, and all of the other factors required by Rule 23 and relevant case law.

4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. 1391(b).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on _____, 2024, at the William J. Nealon Federal Bldg. U.S. Courthouse, 235 N. Washington Avenue, Scranton, PA 17503, where the Court will determine, among other things, whether: (a) this Litigation should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (b) the Settlement should be approved as fair, reasonable, and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members (who have not timely and validly excluded themselves from the

Settlement) should be bound by the releases set forth in the Settlement Agreement; (e) the application of Class Counsel for an award of Attorneys' Fees, Costs, and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the application of the Class Representatives for a Service Award should be approved.

6. **Settlement Administrator.** The Court appoints **ADMIN** as the Settlement Administrator, with responsibility for class notice and settlement administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

. **Notice.** The proposed notice program set forth in the Settlement Agreement and the Notices and Claim Form attached to the Settlement Agreement as **Exhibits A, B, and C** are hereby approved. Non-material modifications to these Exhibits may be made by the Settlement Administrator in consultation and agreement with the Parties, but without further order of the Court.

. **Findings Concerning Notice.** The Court finds that the proposed form, content, and method of giving Notice to the Settlement Class as described in the Notice program and the Settlement Agreement and its exhibits: (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, 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; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; (d) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c); and (e) and meet the

requirements of the Due Process Clause(s) of the United States and Pennsylvania Constitutions. The Court further finds that the Notice provided for in the Settlement Agreement is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

The Settlement Administrator is directed to carry out the Notice program in conformance with the Settlement Agreement.

. **Class Action Fairness Act Notice.** Within ten (10) days after the filing of the Preliminary Approval motion with the Court, the Settlement Administrator acting on behalf of Defendant shall have served or caused to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 2 U.S.C. 1 15(b).

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator in the manner provided in the Notice. The Request for Exclusion shall (i) state the Class Member’s full name and current address and signature, and (ii) specifically state his or her desire to be excluded from the Settlement and from the Final Settlement Class. To be effective, such requests for exclusion must be postmarked no later than the Opt-Out Date, which is no later than sixty (60) days from the date on which the notice program commences, and as stated in the Notice.

The Settlement Administrator shall promptly furnish to Class Counsel and to Defendant’s counsel a complete list of all timely and valid requests for exclusion (the “Opt-Out List”) no later than sixteen (16) days prior to the Final Approval Hearing. Class Counsel shall file this list of Opt-

Outs with Court in conjunction with the Settlement Administrator's declaration in support of final approval, and serve the declaration with the list of opt-outs on Defendant.

If a Final Order and Judgment is entered, all Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Final Order and Judgment, and shall be deemed to have waived any rights or benefits under this Settlement Agreement.. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class may not object to the settlement.

11. **Objections and Appearances.** A Settlement Class Member (who does not submit a timely written request for exclusion) desiring to object to the Settlement Agreement may submit a timely written notice of his or her objection by the Objection Date and as stated in the Notice. The Long Notice shall instruct Settlement Class Members who wish to object to the Settlement Agreement to must mail a letter to the Settlement Administrator setting forth all of the following information in writing: (i) the objector's full name, current address, current telephone number, and be personally signed, (ii) the case name and case number, *In re: Cleveland Brothers Data Incident Litigation*, Case No. 1:23-cv-00501-JPW, currently pending in the United States District Court for the Middle District of Pennsylvania, (iii) documentation sufficient to establish membership in one of the Classes, such as a copy of the Postcard Notice he or she received, (iv) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position(s), (v) copies of any other documents that the objector wishes to submit in support of his her position, (vi) whether the objecting Class Member intends to appear at the Final Approval Hearing, and (v) whether the objecting Class Member is represented by counsel and, if so, the name, address, and telephone number of his her counsel.

Notwithstanding the foregoing, any Settlement Class Member who timely submits a written notice of objection and attends the Final Approval Hearing may so state their objection at that time, subject to the Court's approval.

Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The provisions stated in Paragraph 6.2 of the Settlement Agreement be the exclusive means for any challenge to the Settlement Agreement. Any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Order and Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

12. **Claims Process.** Settlement Class Counsel and Defendant have created a process for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves this process and directs the Claims Administrator to make the Claim Form or its substantial equivalent available to Settlement Class Members in the manner specified in the Notice.

The Claims Administrator will be responsible for effectuating the claims process. Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirement 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 Final Order and Judgment, including the releases contained therein.

13. **Termination of Settlement**. This Preliminary Approval 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 before the Court entered this Preliminary Approval Order and before they entered the Settlement Agreement, if: (a) the Court does not enter this Preliminary Approval Order; (b) Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement; (c) there is no Effective Date; or (d) otherwise consistent with the terms of the Settlement Agreement. In such event, (i) the Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; (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 Litigation or in any other proceeding for any purpose, and (iii) any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

14. **Use of Order**. This Preliminary Approval Order shall be of no force or effect if the 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, or liability. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they may have in this Litigation or in any other lawsuit.

15. **Continuance of Hearin** . The Court reserves the right to adjourn or continue the Final Fairness 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 Settlement Website maintained by the Claims Administrator. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

16. **Stay of Liti ation**. All proceedings in the Litigation, other than those related to approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending Final Approval of the Settlement Agreement.

1 . **Schedule and Deadlines**. The Court orders the following schedule of dates for the specified actions further proceedings:

SETTLEMENT TIMELINE

<u>Grant of Preliminary Approval</u>	
Settlement Administrator provides W- to Cleveland Brothers	5 days after Preliminary Approval Order
Cleveland Brothers provides list of Settlement Class Members to the Settlement Administrator	10 days after Preliminary Approval
Settlement Administrator to Provide CAFA Notice Required by 2 U.S.C. 1 15(b)	Within 10 days of filing of the Preliminary Approval Motion
Notice Date	30 days after Preliminary Approval.
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	14 days before Objection and Opt-Out Deadlines
Objection Deadline	60 days after Notice Date

Class Counsel to File All Objections With the Court	14 days after Objection Deadline
Opt-Out Exclusion Deadline	60 days after Notice Date
Claims Deadline	0 days after Notice Date
<u>Final Approval Hearin</u>	120 days after Preliminary Approval Order (at minimum)
Motion for Final Approval	14 days before Final Approval Hearing Date
Settlement Administrator Provide Notice of Opt-Outs and or Objections	16 days before Final Approval Hearing Date
<u>Final Approval</u>	
Effective Date	31 days after Final Approval Order
Distributing Payments to Class Members Who Make Valid and Timely Claims	30 days after Effective Date
Payment of Attorneys' Fees and Expenses Class Representative Service Award	10 days after Effective Date
Settlement Website Deactivation	10 days after Effective Date

SO ORDERED THIS _____ DAY OF _____, 2024.

Hon. Jennifer P. Wilson
United States District Court Judge

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

**IN RE: CLEVELAND BROTHERS
DATA INCIDENT LITIGATION**

Case No. 1:23-cv-00501-JPW

**JOINT DECLARATION OF LAURA VAN NOTE AND DAVID LIETZ IN
SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

We, Laura Van Note and David Lietz, hereby declare as follows:

1. Laura Van Note (“Van Note”), a shareholder and partner at Cole & Van Note, and David Lietz (“Lietz”), a senior partner at Milberg Coleman Bryson Phillips Grossman PLLC, are co-counsel for Plaintiffs in this action.

2. This Declaration is submitted in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement filed contemporaneously herewith. We make the following Declaration based upon personal knowledge and, where indicated as based on information and belief, the following statements are true. The executed Settlement Agreement (“SA”) is attached to the Memorandum in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement as **Exhibit 1** and is dated March 14, 2024. If called upon as witnesses, we could and would competently testify as follows:

Summary of the Litigation

3. This case arises from a data incident (the “Data Breach”) experienced by Cleveland Brothers Holdings, Inc. (“Cleveland Brothers”) that took place between November 3 and November 5, 2022, involving the potential unauthorized access of Personally Identifiable Information (“PII”) of Plaintiffs and Class Members.

4. Beginning in February of 2023, several class actions were filed in this

Court on behalf of consumers whose information was stolen by cybercriminals as part of the Data Breach. On May 8, 2023, Judge Jennifer P. Wilson entered an Order consolidating the cases relating to the Data Breach. (ECF No. 10.)

5. Thereafter, on June 7, 2023, Plaintiffs filed the operative Consolidated Class Action Complaint (ECF No. 12) (“Complaint”), which asserted claims for negligence, breach of implied contract, and unjust enrichment. The Complaint alleged, among other things, that despite the foreseeability of a data breach, Cleveland Brothers failed to implement adequate measures to protect the sensitive information entrusted to it by its customers. The Complaint also alleged that many Class Members have spent time responding to the security incident, may have spent money for protective measures, and are at an increased risk of future misuse of their information. The Complaint sought to remedy those harms through, among other things, reimbursement of out-of-pocket losses and compensation for time spent in response to the Data Breach, as well as injunctive relief entailing substantial improvements to Defendant’s data security systems.

6. Defendant filed a Motion to Dismiss the Plaintiffs Consolidated Complaint on July 7, 2023, with Supporting Memorandum of Law (ECF No. 16).

7. Throughout this time, the Parties discussed the possibility of exploring an early resolution via mediation. As the culmination of these efforts, on the same day Defendant filed its Motion to Dismiss, the Parties entered into a Joint Stipulation

to Stay the Proceedings Pending Settlement Discussions (ECF No. 18).

8. The Parties agreed to conduct a formal mediation with Bennett G. Picker of Stradley Ronon Stevens & Young, LLP, an extremely well-regarded mediator with considerable experience successfully mediating data breach class action lawsuits.

9. On January 25, 2024, the Parties participated in a mediation with Mr. Picker to engage in informal discovery to assess the alleged claims and the potential defenses to same. Following their agreement in principle to settle the matter, on February 12, 2024, the Parties filed a Notice of Settlement (ECF No. 26).

10. The Court issued an Order granting the Parties until March 14, 2024 to file Plaintiffs' Motion for Preliminary Approval. Over the past two months, the Parties have worked to finalize the finer points of the Settlement.

The Mediation and Settlement Negotiations

11. On January 25, 2024, the Parties took part in a mediation before Bennett G. Picker, Esq. of Stradley Ronon, a well-regarded Philadelphia law firm. Mr. Picker is one of the foremost mediators of data breach cases in the country, with an unparalleled track record of successful mediations leading to court-approved settlements.

12. In anticipation of the mediation, Plaintiffs served Cleveland Brothers with several requests for documents and information relevant to the Data Breach.

Cleveland Brothers provided Plaintiffs' counsel with written responses on or around January 10, 2024. Plaintiffs' counsel analyzed the documents in advance of the mediation. The Parties also exchanged mediation statements. Plaintiffs' submission of a mediation statement and class counsel's preparation for that proceeding and analysis of Cleveland Brother's mediation statement further informed Plaintiffs' assessment of the relative strengths and weaknesses of their claims.

13. Throughout the mediation, we zealously advanced the Plaintiffs' and Class Members' positions. We were fully prepared to proceed with the litigation rather than accept a settlement that was not in the best interests of the Class. At all times, the negotiations were at arm's length and, while courteous and professional, were intense and hard fought on all sides.

14. The January 25, 2024 mediation was productive and resulted in this Settlement.

15. The Parties agreed to resolve all claims asserted in the Consolidated Amended Complaint. The Parties thereafter spent significant amounts of time revising drafts and negotiating details of the final written Settlement Agreement that is now presented to the Court for approval.

16. These cases and the proposed Settlement are the product of significant investigation of Plaintiffs' and Class Members' claims. Proposed Class Counsel conducted extensive interviews of Plaintiffs and other Class Members, reviewed

Plaintiffs’ documentation and all documents that Cleveland Brothers produced regarding the Data Breach, and analyzed the applicable laws of Pennsylvania and other jurisdictions regarding breaches of customers’ personally identifiable information (“PII”). Moreover, Proposed Class Counsel proffered additional information regarding specific damages incurred by Plaintiffs, and Defendant’s counsel provided additional details and facts surrounding the Data Breach and events leading up to the Data Security Incident.

The Settlement

17. The Proposed Settlement Class is defined as:

All individuals within the United States of America whose personally identifiable information (“PII”) was exposed to unauthorized third parties as a result of the data breach discovered on November 3, 2022.

Excluded from the Settlement Class are: (1) the Judge and Magistrate Judge presiding over the Action, any members of the Judge’s respective staffs, and immediate members of the Judge’s respective families, (2) officers, directors, members and shareholders of Defendant, (3) persons who timely and validly request exclusion from and/or opt-out of the Settlement Class, (4) the successors and assigns of any such excluded persons, and (5) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Data Breach or who pleads nolo contendere to any such charge.

S.A. ¶ 3. The Settlement Class contains approximately 8,600 Settlement Class Members.

18. In exchange for the Settlement Benefits provided for under the Settlement Agreement, Class Members will release any and all claims against Cleveland Brothers and its Released Parties as set forth in the Settlement Agreement.

19. The monetary settlement here results in a payment of a \$450,000 non-reversionary Settlement Fund (*id.* ¶ 136) that will be used to pay for Administrative Expenses, taxes, any Service Awards, and any Fee Award and Costs (*id.* ¶ 3.8). The remaining amount, *i.e.*, the Net Settlement Fund, will be used to pay for Approved Claims submitted by Class Members for Settlement Benefits.

20. Class Members may submit an Out-of-Pocket Loss Payment claim up to \$5,000 per person for the reimbursement of Documented Losses with Reasonable Documentation. *See* SA ¶ 43(A)(i). This may include a claim for up to six (6) hours of time spent remedying issues related to the Data Breach at a rate of thirty-five dollars (\$35) per hour. *Id.* ¶ 43(A)(ii).

21. In the alternative, Class Members may submit a claim for a pro rata cash payment without any supporting documentation. *Id.* ¶ 43(B), estimated to be \$200, but increased or decreased depending upon the number of claims filed.

Notice Plan and Settlement Administration

22. The Parties have selected Postlethwaite & Netterville, APAC (“P&N”) to be the Settlement Claims Administrator. P&N is a nationally recognized claims administrator that has handled dozens of similar data breach settlements across the

country. All costs of the notice and settlement administrator will be deducted from the Settlement Fund. The Notice Plan provides for individual Notice to Class Members by the Settlement Administrator by direct mail—the same way Class Members were initially notified of the Data Breach.

23. The Long Form Notice describes the terms of the Settlement, including requests for service awards for the Class Representatives and for an award of attorneys' fees and reimbursement of expenses; informs Class Members about their right to object to the Settlement (and how to do so); provides the date, time, and place of the Final Approval hearing and the procedures for appearing at the hearing; and provides contact information for Co-Lead Counsel and the Settlement Administrator.

24. The Settlement Administrator will also establish a dedicated Settlement Website that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines, and related information.

25. The Settlement Website shall include relevant documents, including the following: (i) the Long Notice, (ii) the Claim Form, which will be available to download or submit electronically, (iii) the Preliminary Approval Order, (iv) this Settlement Agreement, (v) the operative Class Action Complaint, filed in the Action before this Court, (vi) the motion for a Fee Award and Costs and Service Awards after it is filed, and (vii) any other materials agreed upon by the Parties and/or

required by the Court. Class Members will be able to submit Claim Forms and Requests for Exclusion through the Settlement Website.

26. The Settlement Administrator will also create a toll-free help line so Class Members can obtain additional Settlement information.

27. Class Members will have until ninety (90) days after the notice is issued to complete and submit their Claim Form to the Settlement Administrator, either by mail or online. SA ¶ 6. The Claim Form is written in plain language to facilitate Class Members' ease in completing it.

28. The Settlement Administrator will be responsible for reviewing the Claim Forms and will determine if they are complete and valid. SA ¶ 50(xi). Should a claim be incomplete or defective, the Settlement Administrator shall request additional information and give the claimant an opportunity to cure the defect. *Id.* ¶ 50(xiii).

29. When a Class Member files a claim for a Documented Loss that is rejected, and the Class Member fails to cure that claim, the claim instead will be considered as a claim for a Cash Fund Payment.

30. Class Members will have sixty (60) days from the Notice Date to object to or to submit a request for exclusion from the Settlement. In order for Class Members to submit a Request for Exclusion to the Settlement, he or she must strictly comply with the requirements of the Settlement Agreement. *See* SA ¶ 52.

31. Any Class Member who wishes to object shall submit a timely written notice of his or her objection by the Objection Deadline, which like the Opt-Out Period, is sixty (60) days following the Notice Date. SA ¶¶ 21, 56.

32. To the extent any monies remain in the Net Settlement Fund more than 180 days after the distribution of Settlement Payments, a subsequent Settlement Payment will be paid to a charitable organization to be agreed upon by Cleveland Brothers and Class Counsel and approved by the Court SA ¶ 47.

Proposed Class Representative Service Awards and Attorneys' Fees

33. Plaintiffs have been dedicated and active participants on behalf of the class they seek to represent. Plaintiffs actively assisted Plaintiffs' Counsel with their investigation. Plaintiffs sat through multiple interviews and provided supporting documentation and personal information throughout the process. Plaintiffs reviewed the complaints and the terms of the Settlement and communicated with their counsel regarding the Settlement.

34. Plaintiffs put their names and reputations on the line for the sake of the Class, and the recovery would not have been possible without their efforts.

35. Plaintiffs' Counsel kept in close contact with Plaintiffs during the litigation through numerous emails and personal telephone calls. Plaintiffs have been vital in litigating this matter, have been personally involved in the case, and support the Settlement.

36. Settlement Class Counsel will request up to a \$2,500 service award to each Named Plaintiff in recognition of the time, effort, and expense they incurred in pursuing claims benefiting the Settlement Class.

37. Plaintiffs' counsel have devoted substantial resources to the prosecution of this action by investigating Plaintiffs' claims and that of the Settlement Class, including: obtaining, reviewing and analyzing Plaintiffs' detailed personal records; analyzing Cleveland Brothers' records, privacy policies, and any remedial steps; analyzing the scope and number of persons impacted by the Data Breach; participating in mediation; and, ultimately, negotiating a settlement that provides meaningful relief for the Settlement Class, despite the substantial litigation risks that were present.

38. Plaintiffs collectively request that the Court appoint Van Note and Lietz as Settlement Class Counsel. Proposed Class Counsel have extensive experience prosecuting similar class actions and other complex litigation. A copy of Cole & Van Note and Milberg Coleman Bryson Phillips Grossman PLLC's firm resumes are attached to this Declaration as **Exhibit A** and **B**, respectively.

39. As part of the Settlement, Plaintiffs will separately file a motion for an award of attorneys' fees and reimbursement of litigation costs and expenses. *Id.* ¶
39. Plaintiffs' counsel intends to request up to one-third of the Settlement Fund (*i.e.*, \$150,000) in attorneys' fees, consistent with attorneys' fee awards and percentage

for such awards under Pennsylvania and Third Circuit law. In addition, Proposed Settlement Class Counsel will request an award of the reasonable out-of-pocket litigations costs and expenses incurred litigating this matter. Proposed Settlement Class Counsel did not broach the topic of attorneys' fees until after agreeing on substantive settlement terms with Cleveland Brothers.

40. Any approved Fee Award and Costs will be paid out of the Settlement Fund. SA ¶ 39. The Settlement is not conditioned upon the Court's award of any attorneys' fees or expenses. Plaintiffs' will file a motion for a Fee Award and Costs (and Service Awards) no later than 14 days prior to the Objection Deadline, and will post the same on the Settlement Website so that the motion may be easily accessed by Class Members.

41. The Plaintiffs and all Plaintiffs' Counsel recommend, for the Court's consideration, preliminary approval of the Settlement because it is well within the range of possible approval, represents a fair, reasonable, and adequate settlement, and is in the best interests of the Settlement Class. This recommendation is based upon the information reviewed and gathered in the lead up to and at the mediation, Class Counsel's independent investigation of the relevant facts and applicable law, and counsels' broad experience with other data breach cases.

42. The immediate benefits that the Settlement provides stand in contrast to the risks, uncertainties, and delays of continued litigation. Proposed Settlement

Class Counsel thoroughly assessed those contingencies in considering the terms of the Settlement.

43. There is no side agreement among the Parties outside of the Settlement Agreement.

44. A proposed order granting the relief requested in Plaintiffs' Motion is attached to the Settlement Agreement as **Exhibit D** and is also submitted as an attachment to the filed Motion.

We declare pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct.

Executed this 14th day of March, 2024



David K. Lietz
**MILBERG COLEMAN
BRYSON PHILLIPS
GROSSMAN PLLC**



Laura Grace Van Note
COLE & VAN NOTE

EXHIBIT A



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Firm Resume

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

SHAREHOLDERS/ASSOCIATES:

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

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

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

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

Credentials: Member, State Bar of California (Admitted 2016), State Bar of Missouri (Admitted 2013), State Bar of Kansas (Admitted 2015); Admitted, Federal District Courts in California, Missouri, and Kansas. University of Missouri, Kansas City School of Law (2013, Order of the Barrister, Dean's List), Captain of the National Trial Advocacy Team, President of the American Constitutional Society for Law and Policy, Teaching Assistant to the Directory of Advocacy; Graduate, University of Missouri, Kansas City (Bachelor of Arts in History, Minor in French);

Elizabeth Ruth Klos, associate attorney, graduated from the University of Southern California Gould School of Law with a merit scholarship in 2022. During law school, Ms. Klos worked as a research assistant for the USC Law Library, while also achieving honors grades in courses such as Contracts, Labor Law, Torts, Mediation and Constitutional Law. Ms. Klos developed her passion for litigation through diverse experiences at the Hillsborough County Public Defender's office, a boutique family law practice in Los Angeles, and clerking under Judge Valerie Salkin at the Los Angeles Superior Court. At CVN, Ms. Klos utilizes her litigation experience in the areas of class action, consumer and data breach law.

Credentials: Admitted, California State Bar, December 2022; University of Southern California Gould School of Law, J.D., 2022; New College of Florida, B.A. in Liberal Arts (dual Area of Concentration in Political Science and History), 2016.

Margo Amelia Crawford, associate attorney, graduated from McGill University, Faculty of Law in Montréal, Canada with a joint J.D. and B.C.L. in 2020. Margo served as Vice President of the McGill Business Law Association, and as Editor and Vice President of Contours, a feminist law journal. At McGill, Margo focused her study on privacy and intellectual property. During law school Margo worked as a Pro Bono student for the Canadian Civil Liberties Association and a legal intern for the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic. Margo undertook independent research projects in comparative US-Canada trademark law, and Indigenous intellectual property rights. In 2022, Margo received an LL.M. from UC Law SF (formerly UC Hastings), where her studies focused on US trademark law. As an Associate at CVN, Margo uses

her unique experiences and educational background to bring new and analytical perspectives to consumer and data breach litigation.

Credentials: Admitted, California State Bar, May 2023; McGill University Faculty of Law, J.D. and B.C.L., 2020; The University of California College of the Law, San Francisco (formerly UC Hastings), LL.M., 2022; Brown University, A.B. (English Literature), 2016.

William Vollbrecht, associate attorney, graduated from the University of California, Davis School of Law (King Hall) with a merit scholarship in 2020. During law school he worked as a clerk at a boutique labor law practice and also clerked under Judge Mike Nakagawa at the United States Bankruptcy Court, District of Nevada. Prior to joining CVN, Wil practiced in wide range of areas, primarily focusing on labor disputes and civil rights claims. At CVN, Wil uses his litigation experience in the areas of class action, consumer, and data breach law.

Credentials: Admitted, California State Bar, May 2021; University of California, Davis school of Law, J.D., 2020; University of Missouri, Columbia, B.A. in Psychology and Sociology, 2017.

CVN SCHOLARLY PUBLICATIONS (*Partial List Only*):

Scott Edward Cole & Matthew Roland Bainer, *The Quest for Class Certification*, Employment Law Strategist (Sept. & Oct. 2003).

Scott Edward Cole & Matthew Roland Bainer, *To Be or Not to Be a Penalty: Defining the Recovery Under California's Meal and Rest Period Provisions*, Golden Gate U. L. Rev. (Spring 2005).

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

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

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

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

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

REPRESENTATIVE CLASS ACTION AND COMPLEX CASES (*Partial List Only*):

Our firm has represented, directly or indirectly, millions of individuals in thousands of legal disputes, including several hundred class actions and/or complex litigation cases. For three decades, the firm has amassed extensive experience litigating data breach, wage and hour, environmental, and other personal injury and commercial cases. Today, the firm almost exclusively prosecutes multi-state data breach class actions. Drawing from various areas of law, examples of the range of our practice include:

Augustus/Davis v. ABM Security Services, Inc (aka American Comm. Security Service, Inc. Superior Court of California, County of Los Angeles, Case No. BC336416

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

Bower, et al. v. Steel River Systems LLC

Illinois Fourteenth Judicial Circuit Court (Whiteside County), Case No. 2023-LA-000006
This action arose out of Steel River Systems’ 2022 data breach which affected numerous consumers and/or employees. This action has settled.

Bulow, et al. v. Wells Fargo Investments, LLC

United States District Court, Northern District of California, Case No. 3:06-CV-7924
This matter was filed as a nation-wide class action against Wells Fargo Investments, on behalf of its Financial Consultants to recover overtime pay, compensation for denied meal and rest periods (California only) and reimbursement for business related service and supply expenses (California only). This matter settled for \$6.9 million.

Cano, et al. v. United Parcel Service, Inc.

Superior Court of California, County of Alameda, Case No. RG03089266
This wage and hour complex litigation matter involved the alleged misclassification of overtime non-exempt Operations Management Specialists, Operational Excellence Specialists and/or Industrial Engineering Specialist at this company’s California facilities. This action settled in 2004 for \$4.5 million.

Chaidez, et al. v. Odwalla, Inc.

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

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

CKE Overtime Cases

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

This class action was brought against fast food chain Carl's Jr. for violations of California's overtime laws on behalf of the company's California restaurant chain Managers. The coordinated litigation settled for up to \$9.0 million in 2004.

Davis, et al. v. Universal Protection Security Systems, Inc., et al.

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

Our firm filed a claim in 2009 against Universal Protection Security Systems, Inc. for violations of California law for denial of meal and rest periods toward security guards. This case settled in 2013 for \$4 million.

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

United States District Court, Northern District of California, Case No. 3:03-CV-02001

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

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

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

Our firm filed this class action on behalf of the company's California "Group X" Instructors to recover regular and overtime pay, related penalties and un-reimbursed expenses. The action achieved class certification status in 2009. In 2011, the parties agreed to settle the expense reimbursement claims for \$10 million. The parties then filed cross-motions for summary adjudication and on August 2, 2011, the court issued an Order finding 24 Hour Fitness' session rate compensation scheme to be an invalid piece rate. The parties then agreed to settle the unpaid wage claims for another \$9 million, and the summary adjudication order was vacated pursuant to settlement.

Fedorys, et al. v. Ethos Group, Inc.

United States District Court, Northern District of Texas, Case No. 3:22-cv-02573-M

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

Hakeem v. Universal Protection Service, LP

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

After an exhaustive multi-year process including venue transfer, consolidation, migration of litigants from one case to the other, multiple appeals and hard-fought litigation, these security guards class actions achieved a consolidated judgment for \$10 million.

Henderson, et al. v. Reventics, LLC

United States District Court, District of Colorado, Case No. 1:23-cv-00586-MEH

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

Hinds v. Community Medical Centers

United States District Court, Eastern District of California, Case No. 2:22-cv-01207-JAM-AC

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

In Re Walgreen Co. Wage and Hour Litigation

United States District Court, Central District of California, Case No. 2:11-CV-07664

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

In Re: Apple Inc. Device Performance Litigation

United States District Court, Northern District of California, Case No. 5:18-md-02827-EJD

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

In Re: Rackspace Security Litigation

United States District Court, Western District of Texas, Case No. SA-22-cv-01296

This action arises out of Rackspace Technology's 2022 massive ransomware event which shut down functionality for tens of thousands of individuals and businesses across the United States and overseas. Cole & Van Note serves as court-appointed lead counsel for the nationwide class and representative plaintiffs from over 30 states.

In Re Tosco SFR Litigation

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

During incidents on April 16, 1997, and January 7, 1998, the Tosco Refinery in Rodeo, California released airborne toxic chemicals. These harmful substances traveled into neighboring communities, seriously affecting the health of citizens and local workers. CVN served as Lead

Counsel in this complex litigation and represented thousands of members of the community in that role. CVN settled this matter for \$2.5 million, the funds from which were disbursed to over 2,000 claimants who participated in the settlement.

In Re Unocal Refinery Litigation

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

In response to Unocal's 16-day airborne release of chemicals over the County of Contra Costa in 1994, CVN filed a class action against the corporation on behalf of thousands of victims and thereafter served as one of a handful of firms (among dozens of law firms of record) on the Plaintiffs' Steering Committee. After hard-fought litigation, the matter eventually settled for \$80 million. This case is the context for Mr. Cole's book "Fallout," published in 2018 (2605 Media LLC).

In Re Westley Tire Fire Litigation

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

On September 22, 1999, lightning struck and ignited a pile of approximately 7 million illegally stored waste tires in Westley, California, a town about 70 miles east of San Francisco. Over the subsequent five weeks, the fire spewed smoke and carcinogens over a large portion of the State of California. CVN served as the (sole) Lead and (shared) Liaison Counsel over a Plaintiffs' Steering/Management Committee in the consolidated actions against the owners and operators of this tire pile and related entities. These cases sought compensation for those individuals and businesses suffering personal and/or property damages as a result of these toxic substances and the fire's fall-out. In 2001, CVN reached a settlement with one defendant (CMS Generation Co.) for \$9 million. In 2003, the Court granted final approval of the settlement. In 2005, two of the remaining defendants settled for roughly \$1.4 million (over \$10 million aggregate).

Kowarsky v. American Family Life Insurance Company

U.S.D.C. Western District of Wisconsin, Case No. 3:22-cv-00377

This case involves a data breach in which a flaw in the Defendant's website allowed cybercriminals to obtain driver's license numbers, at least some of which were subsequently used to fraudulently apply for government benefits.

Kullar v. Foot Locker, Inc.

Superior Court of California, County of San Francisco, Case No. CGC-05-447044

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

Lett v. TTEC

U.S.D.C. Northern District of California, Case No. 3:22-cv-00018

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

Mambuki, et al. v. Securitas Security Services USA, Inc.

Superior Court of California, County of Santa Clara, Case No. 1-05-CV-047499 (JCCP No. 4460) Our firm filed a claim against this defendant for violations of California law (for denial of meal and rest periods) on behalf of the company's California-based security guards. This coordinated proceeding settled in 2008 for \$15 million.

Mendoza v. CaptureRx

United States District Court, Western District of Texas, Case No. 5:21-CV-00523-OLG

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

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

United States District Court, Northern District of Ohio, Case No. 1:08-CV-00529

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

Onyeige, et al. v. Union Telecard Alliance, LLC

U.S.D.C. Northern District of California, Case No. 3:05-CV-03971; MDL No. 1550

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

John Prutsman, et al. v. Nonstop Administration and Insurance Services, Inc.

United States District Court, Northern District of California, Case No. 3:23-cv-01131-VC

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

Ramirez, et al. v. The Coca Cola Company, et al.

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

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

This well-publicized action settled for \$12 million and on very favorable terms for the claimants. CVN filed the first action on these issues and ultimately worked with co-counsel for the proposed class of workers.

Riordan, et al. v. Western Digital Corp.

U.S.D.C. Northern District of California, Case No. 5:21-CV-06074

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

Roman, et al. v. HanesBrands, Inc.

United States District Court, Central District of California, Case No. 5:22-cv-01770

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

Thomas, et al. v. Cal. State Auto. Assoc., et al.

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

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

Tierno v. Rite Aid Corporation

United States District Court, Northern District of California, Case No. 3:05-CV-02520

Our firm filed this action against Rite Aid Corporation on behalf of its salaried California Store Managers. It was alleged that defendant, purportedly the nation's third largest drug store chain, failed to pay overtime to those workers and denied them their meal and rest periods. In 2006, the federal court certified the class in this action, and approved a \$6.9 million non-reversionary settlement in 2009.

Tsvetanova v. Regents of the University of California, d/b/a U.C. San Diego Health Superior Court of California, County of San Diego, Case No. 37-2021-00039888-CU-PO-CTL

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

Ward v. Anderson McFarland & Connors LLC

Superior Court of California, County of Los Angeles, Case No. 20CV00611

Our firm filed this case in connection with a data breach that affected the information the firm's clients, adversarial parties, etc. This action has settled.

Witriol, et al. v. LexisNexis., et al.

U.S.D.C., Southern District of California, Case No. 3:06-CV-02360

Our firm filed an action against this company for its unlawful disclosure of private credit, financial and/or other personal information. This action settled for up to \$2.8 million.

Zucchero v. Heirloom Roses, Inc.

U.S.D.C. Northern District of California, Case No. 4:22-cv-00068

CVN filed this case in connection with a 2021 data breach that hacked the information of the company's mostly online customers. This action has resolved.

NOTABLE APPELLATE EXPERIENCE:

CVN has substantial appellate experience, highlighted by the examples below. For other appellate and/or unreported opinions, please contact our firm.

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

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

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

In Re Certified Tired and Service Centers Wage and Hour Cases (Cal. Supreme Ct. Case No. S252517)

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

Montano v. The Wet Seal Retail, Inc. (2015) Not Reported in Cal.App.4th (2015 Cal. App. LEXIS 1199, Second District, Division 4, Case No. B244107)

O'Hara v. Factory 2-U Stores, Inc. (2003) Not Reported in Cal.Rptr.3d, 2003 WL 22451991 (First District, Division 4, Case No. A101452)

Taylor v. Park Place Asset Management, et al. (1999) (First Dist., Division 5, Case No. A086407)

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

CONTACT INFORMATION:

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EXHIBIT B



DAVID LIET BIOGRAPHY

1. I am currently a partner of the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”).

2. I am a 1991 graduate of Georgetown University Law Center. I have been licensed to practice law in the District of Columbia since 1991, am a member of the bars of numerous federal district and appellate courts, and have over three decades of litigation and class action experience.

3. I have represented and am currently representing plaintiffs in more than 100 class action lawsuits in state and federal courts throughout the United States. Both I and my firm carry on a national and international class action law practice. With respect to data privacy cases, I am currently litigating more than one-hundred cases across the country involving violations of privacy violations, data breaches, and ransomware attacks.

4. Over the past four years, I (either individually or as a member of my law firm) have been appointed class counsel in a number of data breach or data privacy cases that have been either preliminarily or finally approved by federal and state courts across the country, including:

- a. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D. Tenn.) (appointed co-class counsel in data breach class action settlement involving over 63,000 class members; final approval granted August 2021);
- b. *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 Feb. 2021);
- 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 Dec. 2020);
- 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 Feb. 2021);

- e. *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);
- f. *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 Sept. 2020);
- g. *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);
- 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. *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) (Mr. Lietz appointed Settlement Class Counsel; final approval granted October 2021);
- j. *Carr et al. v. Beaumont Health et al.*, Case No. 2020-181002-NZ (Circuit Court for the County of Oakland, Michigan) (Mr. Lietz appointed co-class counsel in data breach case involving 112,000 people; final approval granted October 2021);
- k. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899 (Circuit Court for Baltimore County, Maryland) (appointed class counsel; final approval granted November 2021);
- l. *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);
- m. *Powers, Sanger et al v. Filters Fast LLC*, Case 3:20-cv-00982-jdp (appointed co-lead Settlement Class Counsel; final approval granted July 2022);
- n. *Garcia v. Home Medical Equipment Specialists, LLC*, Case No. D-202-cv-2021-06846 (appointed class counsel; final approval granted June 2022);
- o. *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);

- p. *Hashemi, et. al. v. Bosley, Inc.*, Case No. 21-cv-00946-PSG (RAOx) (C.D. CA) (appointed co-class counsel; final approval granted November 2022);
- q. *Paras et al. v. Dental Care Alliance*, Civil Action No. 22EV000181 (State Court of Fulton County, Georgia (appointed co-class counsel; final approval granted September 2022));
- r. *James v. CohnReznick LLP*, Case No. 1:21-cv-06544 (S.D.N.Y.), (appointed as co-class counsel; final approval granted September 2022);
- s. *Purvis, et al v. Aveanna Healthcare, LLC*, Case No. 1:20-cv-02277-LMM (N.D. Ga.) (appointed class counsel; final approval granted October 2022);
- t. *Kolar v. CSI Financial Services LLC dba ClearBalance*, Case No. 37-2021-00030426-CU-NP-CTL (Superior Court of San Diego County, California) (appointed co-lead class counsel, final approval granted January 2023);
- u. *In re: California Pizza Kitchen Data Breach Litigation*, Master File No.: 8:21-cv-01928-DOC-KES (C.D. CA) (appointed settlement class counsel; final approval granted February 2023);
- v. *Snyder v. Urology Center of Colorado, P.C.*, Case No. 2021CV33707 (2nd District Court, Denver County, Colorado) (appointed settlement class counsel; final approval granted October 2022);
- w. *Steen v. The New London Hospital Association, Inc.*, Civil Action No. 217-2021-CV-00281 (Merrimack Superior Court, New Hampshire) (appointed class counsel; final approval granted January 2023);
- x. *Gonshorowski v. Spencer Gifts LLC*, Docket Number ATL-L-000311-22 (Superior Court of New Jersey, Law Division, Atlantic County (appointed Class Counsel; final approval granted September 12, 2022);
- y. *Nelson et. al v. Bansley & Kiener, LLP*, Civil Action No. 2021CH06274 (Ill. 1st Jud. Cir. Ct., Cook Cnty.) (appointed class counsel; final approval granted November, 2022);
- z. *Henderson et al. v. San Juan Regional Medical Center*, Case No. D-1116-CV-2021-01043 (11th Jud. Dist. Court, San Juan County, NM) (appointed class counsel; final approval granted March 2023);
- aa. *Cathy Shedd v. Sturdy Memorial Hospital, Inc.*, Civ. Action No: 2173 CV 00498 (Mass. Sup. Ct. Dept.) (appointed class counsel; final approval granted February 2023);

- bb. *Pagan et al. v. Faneuil, Inc.*, Civil Action No. 3:22-cv-297 (E.D. Va.)(appointed class counsel; final approval granted February 2023);
- cc. *Hawkins et al. v. Startek, Inc.*, Case No. 1:22-cv-00258-RMR-NRN (USDC CO)(appointed class counsel; final approval granted April 2023);
- dd. *McManus v. Gerald O. Dry, P.A.*, Case No. 22 CVS 001776 (N.C. Superior Court for Cabarrus County) (appointed settlement class counsel; final approval granted March, 2023);
- ee. *McHenry v. Advent Health Partners, Inc.*, Case No. 3:22-cv-00287 (USDC MD TN)(appointed class counsel; final approval granted April 2023),
- ff. *Lopez v. San Andreas Regional Center*, Case N0. 21CV386748 (Sup. Ct. CA, Santa Clara County) (appointed settlement class counsel; final approval granted September 2023);
- gg. *Charlie, et al. v. Rehoboth McKinley Christian Health Care Services*, Civil No 21-652 SCY/KK (USDC NM) (appointed class counsel, final approval granted May 2023);
- hh. *Arbuthnot v. Acuity – CHS, LLC*, Case No. 6:22-cv-658-PGB-DCI (USDC MD FL, Orlando Division) (appointed Settlement Class Counsel; final approval granted August 2023);
- ii. *Bergeson v. Virginia Mason Medical Center*, Case No. 22-2-09089-8 SEA (Superior Court of Washington for King County) (appointed Settlement Class Counsel; final approval granted August 2023);
- jj. *Reynolds et al. v. Marymount Manhattan College*, Case No. 1:22-CV-06846-LGS (USDC SDNY) (appointed Settlement Class Counsel; final approval granted October 2023);
- kk. *Griffey et al. v. Magellan Health, Inc.*, Case No. CV-20-01282-PHX-MTL (USDC AZ)(appointed Settlement Class Counsel; final approval granted February 9, 2024);
- ll. *Connor Rowe v. Sterling Valley Systems, Inc. d/b/a/ Inntopia*, Docket No.: 22-CV-04081 (Superior Court, Civil Division, Lamoille Unit, State of Vermont)(appointed Settlement Class Counsel; final approval granted Jan. 9, 2024);
- mm. *Jones, et al v. P2ES Holdings, LLC*, Case No. 23-cv-00408-GPG-MEH (USDC D. Colo.) (Appointed co-class counsel; preliminary approval granted Oct. 12, 2023);
- nn. *Guarino v. Radius Financial Group, Inc.*, Civ. Action No: 2283 CV 00196 (Mass. Sup. Ct. Dept. Plymouth County) (appointed class counsel; preliminary approval granted August 7, 2023);

- oo. *Foster et al. v. Lower, LLC*, Civil Action No. 1:22-CV-1581 (GLR) (USDC MD)(appointed Class Counsel; final approval granted Dec. 1, 2023), and;
- pp. *Lamie et. al v. LendingTree, LLC*, Case No. 3:22-cv-0037 (USDC WD NC)(appointed Class Counsel; final approval granted February 27, 2024).
- qq. *Kooner, et al v. Oral Surgeons of Virginia, PLLC*, Case No. 1:23-cv-01199 (USDC E.D. Va.) (appointed Co-Lead Counsel December 1, 2023);
- rr. *Tarrant v. Southland Holdings LLC*, Cause No. 067-333679-22 (67th Judicial Dist. Ct. of Tex., Tarrant Cnty.) (appointed Class Counsel; preliminary approval granted December 22, 2023);
- ss. *May, et al v. Five Guys Enterprises, LLC*, Case No. 1:23-cv-00029 (USDC E.D. Virg.) (appointed Class Counsel; preliminary approval granted Jan.4, 2024);
- tt. *Martinez, et al v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578 (2d Jud. Ct. of N.M., Cty of Bernalillo) (appointed Class Counsel; preliminary approval granted January 19, 2024);
- uu. *Medina v. Albertsons Companies, Inc.*, Case No. 1:23-cv-00480-MN (USDC D. Del.) (appointed Class Counsel; preliminary approval granted Jan. 11, 2024);
- vv. *Prevost, et al v. Roper St. Francis Healthcare*, C.A. No. 2021-CP-10-01754 (9th Jud. Cir. Ct. of S.C., Court of Common Pleas) (Appointed co-class counsel; preliminary approval granted Jan. 18, 2024);
- ww. *Williams v. Monarch*, Case No. 23CVS-105, (N.C. Sup. Ct., Cty. of Stanly) (Appointed Class Counsel; preliminary approval granted Jan. 17, 2024);
- xx. *Viruet v. Comm. Surgical Supply, Inc.*, Case No. OCN L-001215-23 (N.J. Sup. Ct. of Ocean Cty.) (Appointed co-class counsel; final approval granted Nov. 17, 2023)
- yy. *Kondo, et al v. Creative Services, Inc.*, Case No. 1:22-cv-10438-DJC (USDC of D. Mass.) (Appointed class counsel; final approval granted Sept. 7, 2023);
- zz. *Stark, et al v. Acuity Brands, Inc.*, Case No. 23EV006179H (Fulton Cty State Court of Ga.) (appointed class counsel; preliminary approval granted Jan. 18, 2024);
- aaa. *Keown, et al v. Int'l Assoc. of Sheet Metal Air Rail Transportation Workers*, Case No. 1:23-cv-03570-CRC (USDC D.C.) (Appointed class counsel);
- bbb. *Mendoza, et al v. Crystal Bay Casino, LLC*, Case No. 3:23-cv-00092-MMD-CLB (D. Nev.) (Appointed class counsel) (preliminary approval granted Feb. 5, 2024);
- ccc. *Oche v. National Math & Science Initiative*, Index No. 510959/2023 (N.Y. Supr. Crt, Kings Cnty.) (Appointed class counsel; preliminary approval granted Jan. 31, 2024); and

ddd. *Marshall v. Lamoille Health Partners, Inc.*, Case No. 2:22-cv-00166, (D. Vt.) (Appointed class counsel; preliminary approval granted Feb. 20, 2024).

5. I am also lead or co-lead counsel on the following cases that are on the cutting edge of Article III federal court jurisdiction in data breach litigation. Most recently, I briefed and argued *Webb v. Injured Workers Pharmacy, LLC*, 72 F.4th 365 (1st Cir. 2023), where the U.S. Court of Appeals for the First Circuit articulated important principles of Article III standing in data breach cases after the U.S. Supreme Court's decision in *Ramirez v. TransUnion*. Other noteworthy data breach decisions include *Purvis v. Aveanna Healthcare, LLC*, 563 F. Supp. 3d 1360 (N.D. Ga. 2021); *Charlie v. Rehoboth McKinley Christian Healthcare Services*, Civ. No. 21-652 SCY/KK, 2022 WL 1078553 (D.N.M. April 11, 2022); *Baldwin v. Nat'l W. Life Ins. Co.*, No. 2:21-CV-04066-WJE, 2021 WL 4206736, at *1 (W.D. Mo. Sept. 15, 2021) and *McCreary v. Filters Fast LLC*, No. 3:20-CV-595-FDW-DCK, 2021 WL 3044228 (W.D.N.C. July 19, 2021).

6. For my substantial efforts in advancing the state of the law in data breach and cybersecurity litigation, in April 2022 I was named to Law360's 2022 Cybersecurity & Privacy Editorial Board. This 12-person editorial board includes some of the most accomplished attorneys in the country in the cybersecurity and data breach legal field, and it was a high honor for me to be included on this board.

7. I give public presentations about data privacy and data breach litigation, including most recently at the Harris-Martin Publishing Conference in San Francisco in July 2023, a Strafford Publishing CLE panel discussion on my *Webb v. Injured Workers Pharmacy* case in October 2023, and a presentation at the North Carolina Bar Association 2023 Privacy & Data Security Section Annual Program in October 2023.

8. I have been appointed as class counsel in other consumer class action cases and have tried consumer class action cases to verdict before a jury, most recently in *Baez v. LTD Financial Services*, Case No: 6:15-cv-1043-Orl-40TBS (MD Fla.).

9. My experience with class actions also includes a leadership role in a Massachusetts Walmart wage abuse class action, national HMO litigation, the Buspirone MDL, and Louisiana Norplant litigation.

10. In addition to my class action experience, I have substantial appellate experience, successfully briefing and arguing multiple cases before a number of federal appellate courts, including *Home Depot v. Jackson* at the U.S. Court of Appeals for the Fourth Circuit, and served as part of the successful brief-writing and oral advocacy team for *Home Depot v. Jackson*, 139 S. Ct. 1743, 1744, 204 L. Ed. 2d 34 (2019) at the United States Supreme Court.

11. Prior to concentrating my practice on consumer class action litigation, I litigated critical injury and wrongful death actions arising from commercial incidents, such as tractor trailer incidents, industrial explosions, a subway collision, and commercial airplane crashes. A representative list of my critical injury and wrongful death cases include:

Represented the family of the deceased conductor of the Washington Metropolitan Area Transit Authority subway train that collided with another Metro train in 2009. Represented the family of a fatality victim of the 2006 Greyhound bus crash near Elizabethtown, New York.

Represented six victims (four deceased, two injured) of a massive fog related pileup on the Pennsylvania Turnpike in 2003.

Represented three victims (two deceased, one injured) of the 2002 Interstate 40 Bridge Collapse, where a tugboat and barge hit an interstate highway bridge near Webbers Falls, Oklahoma and caused several vehicles to plunge into the Arkansas River.

Represented the family of one victim of the 2000 Alaska Airlines Flight 261 crash, where an MD-83 with a cracked jackscrew nosedived into the water off Point Mugu, California.

Represented the victims (one deceased, one critically injured) of a 2000 incident where a tractor trailer rear ended a line of stopped traffic near Hopkinsville, Kentucky.

Represented a critically burned victim of the 1998 explosion at the State Line Energy plant in Hammond, Indiana, where a massive coal dust explosion ripped through the power plant, causing power shortages all over the city of Chicago, Illinois.

Represented the families of four victims of the 1996 ValuJet Flight 592 crash, where a DC-9 developed a cargo hold fire and crashed into the Everglades near Miami, Florida.

Represented the family of a victim of a 1994 crane collapse in Laughlin, Nevada, when a mobile truck crane toppled across the parking lot of a casino.

12. I negotiated several million+ dollar settlements, served as lead counsel in multiple civil actions, tried a number of cases to verdict in both jury and bench trials, and argued cases before federal district and appeals courts, and numerous state courts. I have lifetime verdicts and settlements in excess of \$100 million, and consistently achieved settlements in the highest quartile of tort and mass tort cases. I have litigated against some of the largest transportation-related companies in the US, including Greyhound, Goodyear, Cessna, Textron, and the Washington Metropolitan Area Transit Authority (WMATA).

13. I was first awarded the prestigious “AV” rating from Martindale-Hubbell in 1998, and have maintained that rating (and the concomitant listing in the Bar Register of Preeminent Lawyers) ever since.

14. In addition to my personal qualifications, I bring the support and resources of Milberg to this case on behalf of the putative class. Milberg pioneered federal class action litigation and is widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing, repeatedly taking the lead in landmark cases that have set groundbreaking legal precedents, prompting changes in corporate governance, and recovering over \$50 billion in verdicts and settlements. A brief firm biography is attached.

15. Milberg is and has been one of the nation’s most prominent class action law firms since its founding in 1965. Milberg continues to break new ground in cybersecurity and data privacy cases, including taking a co-lead counsel role in the high-profile *In re: Blaukbaud, Inc.*

Customer Data Security Breach Litigation (MDL 2972) that has established pleading standards and Art. III standing guidelines for data breach cases. Milberg has and is litigating multiple class actions against other companies within the same industry as Creative Services.

16. My experience and Milberg's data breach experience compare favorably with that of any law firm in the country. The firm has ample resources (both financial and personnel, with over 100+ attorneys at the firm) to fully and adequately represent the interests of the proposed class here.

17. I am, and my firm is, fully aware of the financial and human resources that will be required to bring this case to a successful conclusion and the Court should have no reservations that my firm has and is willing to commit those resources for the benefit of the Plaintiff's class. I personally have never used third-party funding on any data breach case, nor failed to meet my assessment obligations in any case. Neither I nor Milberg intends to use any third-party litigation funding for this case.

18. My experience coupled with my firms' resources, will allow me to skillfully litigate this type of case in the best interests of Plaintiff and the putative class. Not only does my law firm have the resources to effectively prosecute this case, but it is also committed to utilizing them to do so.

19. Milberg is a well-established law firm that employs numerous attorneys who represent plaintiffs in complex and class action litigation. Milberg can and will devote the necessary financial resources to this case.



FIRM RESUME

WHO WE ARE

Established by members of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP, the firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

For over 50 years, Milberg and its affiliates have been protecting victims' rights and have recovered over \$50 billion for our clients. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride ourselves on providing stellar client service. We have repeatedly been recognized as leaders in the plaintiffs' bar and appointed to leadership roles in prominent mass torts and class actions.

Milberg challenges corporate wrongdoing through class action, mass tort, consumer and shareholder rights services, both domestically and globally.

Milberg's previous litigation efforts helped to create a new era of corporate accountability that put big companies on notice. The strategic combination of four leading plaintiffs' firms offers clients expanded capabilities, greater geographical coverage, enhanced financial breadth, and increased operational capacity. It also enables the firm to serve diverse and global clients who are seeking to enforce their rights against well-financed corporations - wherever they operate.

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PRACTICE AREAS

ANTITRUST & COMPETITION LAW

Today, on a global scale, consolidated corporate entities exercise dominating market power, but proper enforcement of antitrust law ensures a fair, competitive marketplace. Milberg prosecutes complex antitrust class actions against large, well-funded corporate defendants in healthcare, technology, agriculture, and manufacturing. Our leading practitioners successfully represent plaintiffs affected by price-fixing, monopolization, monopoly leveraging tying arrangements, exclusive dealing, and refusals to deal. The firm continues aggressively vindicating rights of plaintiffs victimized by antitrust violations, holding companies accountable for anticompetitive behavior.

COMPLEX LITIGATION

With 50 years of vetted success, Milberg handles complex, high-stakes cases at any stage of the litigation process. Our attorneys have experience litigating complex cases for businesses and plaintiffs outside of the class action context, including business torts, contract disputes, anti-SLAPP motions, corporations, LLCs, partnerships, real estate, and intellectual property.

CONSUMER PRODUCTS

Milberg's consumer litigation group focuses on protecting victims of deceptive marketing and advertising of goods and services, or those who have bought defective products. Our attorneys are experienced in handling a wide array of consumer protection lawsuits, including breach of contract, failure to warn, false or deceptive advertising of goods and services, faulty, dangerous, or defective products, warranty claims and unfair trade practices cases. Milberg has achieved real-world recoveries for clients, often requiring corporations to change the way they do business. Our team of attorneys has extensive experience representing plaintiffs against well-resourced and sophisticated defendants.

CONSUMER SERVICES

Consumers have rights, and companies providing consumer services have a legal obligation to abide by contractual agreements made with customers. Companies must also follow state and federal laws that prohibit predatory, deceptive, and unscrupulous business practices. Milberg's Consumer Services litigation group protects consumers whose rights have been violated by improperly charged fees, predatory and discriminatory lending, illegal credit reporting practices, and invasion of privacy. We also enforce consumer rights by upholding The Fair Credit Reporting Act and Telephone Consumer Protection Act.

CLASS ACTION LAWSUITS

Milberg pioneered federal class action litigation, and is recognized as a leader in defending the rights of victims of corporate and large-scale wrongdoings. We have the manpower, resources, technology, and experience necessary to provide effective representation in nationwide class action lawsuits. Our attorneys have led class actions resulting in settlements of up to billions of dollars across a variety of practice areas, including defective consumer products, pharmaceutical drugs, insurance, securities, antitrust, environmental and toxic torts, consumer protection, and breach of contract.

DANGEROUS DRUGS & DEVICES

For some patients, medication and medical devices improve their lives. For others, the drugs and equipment have questionable benefits at best, and serious, unintended side effects at worst. Taking on drug and device makers requires a law firm that can stand up to the world's largest, most powerful companies. Our defective drug lawyers have held leadership roles in many national drug and device litigations, recovering billions of dollars in compensation.

DATA BREACH, CYBERSECURITY & BIOMETRIC DATA LAWSUITS

Technology changes faster than laws regulate it. Staying ahead of legal technical issues requires a law firm that can see the full picture of innovation and apply past lessons to navigate fast-moving developments, putting consumers ahead of corporate interests. Our data breach and privacy lawyers work at the cutting edge of technology and law, creating meaningful checks and balances against technology and the companies that wield it. Cybersecurity threats continue evolving and posing new consumer risks. Milberg will be there every step of the way to protect consumer privacy and hold big companies accountable.

ENVIRONMENTAL & TOXIC TORTS LITIGATION

Litigation is key in fighting to preserve healthy ecosystems and hold environmental lawbreakers accountable. But in today's globalized world, pollutants—and polluters—are not always local. Corporations have expanded their reach and ability to cause harm. Our environmental litigation practice focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. The companies involved in harmful environmental practices are large, wealthy, and globally influential, but as an internationally recognized plaintiffs' firm, Milberg has the strength and resources to present clients seeking to enforce their environmental rights against well-financed corporations—wherever they operation.

FINANCE & INSURANCE LITIGATION

Big banks and public insurance firms are obligated by their corporate charters to put shareholders' interests ahead of client interests. However, that doesn't mean they can deceive clients to profit at their expense. Milberg's attorneys handle hundreds of insurance-related disputes, including first party bad faith insurance cases, business interruption cases, and hurricane insurance cases. As one of the nation's top class action law firms, we are well-positioned to pursue insurance bad faith cases on a statewide or nationwide basis.

PUBLIC CLIENT REPRESENTATION

The ability of governments to serve and protect their residents is often threatened by the combination of lower revenues and rising costs. Budget shortfalls are increasing in part because private companies externalize costs, but while corporate profits grow, public interest pays the price. Effectuating meaningful change through litigation, Milberg partners with state and local governments to address the harms facing its residents. Internationally, Milberg's Public Client Practice has achieved success against global powerhouse corporations, including drug, tobacco, mining, and oil and gas companies.

SECURITIES LITIGATION

Over 50 years ago, Milberg pioneered litigation claims involving investment products, securities, and the banking industry by using class action lawsuits. Our litigation set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg continues to aggressively pursue these cases on behalf of institutional and individual investors harmed by financial wrongdoing. Inventors of securities class actions, Milberg has decades of experience holding companies accountable both in the United States and globally.

WHISTLEBLOWER & QUI TAM

Blowing the whistle on illegal or unethical conducted is a form of legally protected speech. Milberg's whistleblower attorneys have led actions that returned hundreds of millions of dollars in ill-gotten gains, resulting in significant awards of our clients. Our legacy of standing up to corporate power extends to advocating for greater transparency. In addition to representing whistleblowers, we fight back against corporate-backed laws seeking to deter them from making disclosures.

“Scoring impressive victories against companies guilty of outrageous behavior.”

- FORBES

“A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers.”

- NEW YORK TIMES

LEADERSHIP ROLES

In re: Google Play Consumer Antitrust Litigation, 20-CV-05761 (N.D. Cal.)
In re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation MDL No. 2973
In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Products Liability Litigation
In re: Blackbaud Data Privacy MDL No. 2972
In re: Paragard IUD Products Liability Litigation MDL No. 2974
In re: Seresto Flea & Tick Collar, Marketing Sales Practices & Product Liability Litigation MDL No. 3009
In re: All-Clad Metalcrafters, LLC, Cookware Marketing and Sales Practices Litigation
In re: Allergan Biocell Textured Breast Implant Product Liability Litigation

In re: Zicam	In re: Mirena
In re: Guidant Corp. Implantable Defibrillators	In re: Incretin
In re: Ortho Evra	In re: Reglan
In re: Yaz	In re: Levaquin Litigation
In re: Kugel Mesh	In re: Zimmer Nexgen Knee
In re: Medtronic Sprint Fidelis Leads	In re: Fresenius Granuflo
In re: Stand 'N Seal	In re: Propecia
In re: Chantix	In re: Transvaginal Mesh
In re: Fosamax	In re: Fluoroquinolones
In re: Olmesartan (Benicar)	In re: Depuy Pinnacle
In re: Onglyza (Saxagliptin) And Kombiglyze XR	In re: Recalled Abbott Baby Formula
In re: Risperdal and Invega Product Liability Cases	

NOTABLE RECOVERIES

\$3.2 Billion Settlement - In re: Tyco International Ltd., Securities Litigation, MDL 1335 (D.N.H.)
\$4 Billion Settlement - In re: Prudential Insurance Co. Sales Practice Litigation, No. 95-4704 (D.N.J.)
\$1.14 Billion Settlement - In Re: Nortel Networks Corp. Securities Litigation, No. 01-1855 (S.D.N.Y.)
\$1 Billion-plus Trial Verdict - Vivendi Universal, S.A. Securities Litigation
\$1 Billion Settlement - NASDAQ Market-Makers Antitrust Litigation
\$1 Billion Settlement - W.R. Grace & Co.
\$1 Billion-plus Settlement - Merck & Co., Inc. Securities Litigation
\$775 Million Settlement - Washington Public Power Supply System Securities Litigation

LOCATIONS

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