UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LISA SMITH, et al.,

Plaintiff,

v.

APRIA HEALTHCARE LLC,

Defendant.

Case No.: 1:23-cv-01003-JPH-KMB

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

Dated: March 5, 2025

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Plaintiffs,[1] individually, and on behalf of the proposed Settlement Class, respectfully submit this Memorandum of Law in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION

This Class Action Lawsuit concerns Illegal Hacking Events that occurred at Apria. On or around September 1, 2021, Apria detected unusual activity in its computer systems and ultimately determined an unauthorized third party accessed certain systems from April 5, 2019, to May 7, 2019, and again from August 27, 2021, to October 10, 2021. Apria's investigation confirmed the Illegal Hacking Events included approximately 1,869,598 individuals' Protected Information, including full names, addresses, financial information, contact information, medical information, and treatment information used by Apria for its business operations.

Plaintiffs, individually, and on behalf of the Settlement Class, and Apria have entered into a Settlement to resolve Plaintiffs' claims on a class-wide basis. As demonstrated below, the Settlement provides significant relief for the Settlement Class, including a non-reversionary all cash $6,375,000.00 Settlement Fund and Business Practice Adjustments. The Court should find the Settlement is within the range of reasonableness necessary for this Court to grant Preliminary Approval under Rule 23(e) and enter an order: (i) granting Preliminary Approval of the Settlement; (ii) provisionally certifying the Settlement Class for settlement purposes; (iii) appointing Plaintiffs as Settlement Class Representatives and Plaintiffs' counsel as Class Counsel; (iv) approving the form of and manner of Notice, including the opt-out and objection procedures; (v) approving the Claim Form and the Claim process; (vi) appointing Kroll Settlement Administration LLC ("Kroll") as the Settlement Administrator; (vii) establishing procedures and deadlines for Settlement Class

[1] All capitalized terms herein shall have the same meanings as those defined in the Settlement Agreement, attached hereto as **Exhibit A**.

Members to opt-out and Settlement Class Members to object; and (viii) scheduling a Final Approval Hearing at which time the Court will consider Final Approval of the Settlement, Class certification, and Class Counsel's Fee Application.

II. SUMMARY OF THE ACTION

A. Plaintiffs' Allegations

Apria provides home healthcare equipment to nearly 2 million patients across the United States. Consolidated Class Action Complaint ("Compl."). Dkt. 52, ¶ 43. Among its major services and products, Apria offers assistance for patients struggling with sleep problems, COPD and breathing difficulties, and diabetes, among other health problems. *Id.*

To obtain healthcare services and products, Apria's customers and patients must provide their highly sensitive Protected Information to doctors, medical professionals, insurance companies, or to Apria directly, or sometimes all four. *Id.* ¶ 49. Similarly, Apria's employees must provide their highly sensitive Protected Information as a condition of their employment with Apria. *See, e.g., id.* ¶ 353. As part of its business, Apria compiles, stores, and maintains the Protected Information it receives from its employees, customers, healthcare professionals, and insurers who submit Protected Information in exchange for Apria's goods or services. *Id.* Apria's employees, patients, and customers entrust Apria with their Protected Information to obtain Apria's employment and/or services and do so on the mutual understanding that Apria will implement reasonable data security sufficient to safeguard the Protected Information of Plaintiffs and Settlement Class Members. *Id.* ¶ 44. Plaintiffs allege Apria failed to do so, resulting in the Illegal Hacking Events. *See generally id.*

In May 2023, Apria admitted it was the subject of massive Illegal Hacking Events that affected millions of individuals. *Id.* ¶ 46. Specifically, between April 5, 2019 and May 7, 2019, and again between August 27, 2021 and October 10, 2021, unauthorized third-party cybercriminals

infiltrated the network that Apria uses to store the Protected Information of its customers. *Id.* Over 1.8 million individuals' most Protected Information—including personal, medical, health insurance, and financial information, as well as Social Security numbers—was compromised in the Illegal Hacking Events. *Id.* The financial data accessed includes account numbers, credit/debit card numbers, account security codes, access codes, passwords, and PINs. *Id.* Apria did not notify Plaintiffs and Settlement Class Members about the Illegal Hacking Events until May 2023, when it sent out notice letters to impacted individuals. *Id.* ¶¶ 5, 6.

Plaintiffs allege that pursuant to HIPAA, the FTC Act, contract, industry standards, common law, and its own promises and representations made to Plaintiffs and Settlement Class Members, Apria had a duty to adopt reasonable measures to protect Plaintiffs' and Settlement Class Members' Protected Information from involuntary disclosure to third parties. *See generally id.* As a result, Plaintiffs brought this Class Action Lawsuit against Apria. *Id.* Plaintiffs demand that Apria compensate Settlement Class Members for their losses and protect their identities. *Id.*

B. Litigation, Mediation, and Settlement

Starting on June 9, 2023, Plaintiffs filed a series of class action lawsuits against Apria in this Court arising out of and related to the Illegal Hacking Events. On or about September 6, 2023, all such class action lawsuits were consolidated into the Class Action Lawsuit. Dkt. 44.

On October 23, 2023, Plaintiffs filed a consolidated complaint with all claims asserted against Apria. Dkt. 52. Plaintiffs, on behalf of themselves and a purported class and subclasses, alleged claims for:

a) negligence,
b) negligence per se in violation of the Federal Trade Commission Act ("FTC Act"),
c) negligent training and supervision,
d) breach of contract,
e) breach of implied contract,
f) bailment,
g) breach of fiduciary duty,

h) breach of confidence,
i) conversion,
j) invasion of privacy- intrusion upon seclusion,
k) invasion of privacy- public disclosure of private facts,
l) unjust enrichment,
m) violations of Indiana Deceptive Consumer Sales Act,
n) violations of California's Unfair Competition Act,
o) violations of California Confidentiality of Medical Information Act,
p) violations of Illinois Consumer Fraud and Deceptive Business Practices Act,
q) violations of the Washington Consumer Protection Act,
r) violations of the Washington Personal Information-Notice of Security Breaches,
s) violations of the Washington Uniform Health Care Information Act,
t) violations of the Missouri Merchandising Practices Act,
u) violation of the New York Deceptive Trade Practices Act, and
v) declaratory judgment.

Those claims allege Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals.

On December 13, 2023, Apria filed its Partial Motion to Dismiss Under Federal Rule of Civil Procedure 12(B)(3) in response to certain Plaintiffs' claims within the Complaint based on the fact that the overwhelming majority, if not all, of the Plaintiffs signed their respective Sales Service and Rental Agreements and/or Employment Agreements, in which they explicitly agreed to arbitrate the disputes brought in this Class Action Lawsuit ("Partial Motion to Dismiss"). Dkt. 59. The Court in the Class Action Lawsuit has not yet ruled on the Partial Motion to Dismiss.

On or about December 13, 2023, Apria filed a limited answer to address those Plaintiffs' claims that were not subject to the Partial Motion to Dismiss. Dkt. 84.

In response to informal and formal discovery requests, Apria produced information that addressed the manner and mechanism of the Illegal Hacking Events, the number of impacted individuals nationwide, and Apria's security enhancements implemented following the Illegal Hacking Events. *See* Joint Declaration of Class Counsel ("Joint Decl."), attached hereto as **Exhibit B**.

Apria and counsel for the Plaintiffs engaged in multiple arm's-length settlement negotiation sessions by telephone, and e-mail after the Complaint was filed and through October 2024. Joint Decl. ¶ 13. On April 23, 2024, Apria and the Plaintiffs participated in a formal mediation with Hon. Wayne R. Andersen (Ret.). *Id*. Apria and Plaintiffs were unable to resolve their disputes, claims, and defenses at that time. *Id*. However, Apria and the Plaintiffs made progress in negotiations for a complete resolution of the Class Action Lawsuit. *Id*.

Pursuant to a Scheduling Order entered on July 29, 2024, Dkt. 114, Apria and Plaintiffs agreed to engage the United States Magistrate Kellie Barr to oversee settlement negotiations. On October 21, 2024, the Parties did so. In advance of the settlement conference, the Parties drafted and exchanged briefs that were submitted to Judge Barr. *Id.* ¶ 15. The information the Parties exchanged before the settlement conference allowed Plaintiffs and Class Counsel to enter settlement negotiations with substantial information about the facts and merits of the legal claims. *Id.* Class Counsel has investigated the facts relating to the Illegal Hacking Events, analyzed the evidence adduced based on publicly available information, court filings, discovery responses, and information exchanged during settlement discussions, and researched the applicable law with respect to the Plaintiffs' claims against Apria and potential defenses thereto, including the Partial Motion to Dismiss described above. *Id.* ¶ 16. This review of key documents and information, which allowed them to confidently evaluate the strengths and weaknesses of Plaintiffs' claims and prospects for success at class certification, summary judgment, and trial. *Id.* ¶ 16. During the mediation, and later the settlement conference, during which Judge Barr engaged in a critical analysis of the Parties' arguments, the Parties thoroughly discussed and vetted the facts and law, including the likelihood that the Plaintiffs' claims would be subject to arbitration. *Id.* ¶ 17. The settlement conference was successful and resulted in the Parties signing a binding term sheet

setting forth the essential terms of settlement. *Id.* ¶ 18. Thereafter, the Parties met and conferred to negotiate the finer points of the Agreement, including the terms of the Releases, the Settlement Administrator and its respective duties, the Notice, Claims process and Claim Form, and proposed schedule of post-settlement events. *Id.* ¶ 19. During this process, the Parties worked diligently to finalize the terms of the Agreement and ancillary documents. *Id.* The Agreement was executed on March 4, 2025. *Id.* ¶ 21. The Parties did not discuss attorneys' fees and costs until after an agreement had been reached on all material Settlement terms. *Id.* ¶ 33.

III. MATERIAL TERMS OF THE SETTLEMENT

A. Settlement Class

Plaintiffs seek Preliminary Approval of the Settlement on behalf of the following Settlement Class that includes approximately 1,869,598 individuals:

> All individuals who received actual or constructive notice from Apria that their information may have been compromised as a result of the Illegal Hacking Events.
>
> Excluded from the Settlement Class are: (1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) [Apria] and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

Agreement § 1.45.

B. Settlement Fund

The Settlement provides for a $6,375,000.00 Settlement Fund that shall be used to pay: (1) Notice and Administrative Expenses; (2) Taxes and Tax-Related Expenses; (3) Service Award Payments approved by the Court; (4) Fee Award and Costs approved by the Court; (5) reimbursement for Out-of-Pocket Losses or Expenses; and (6) Pro Rata Cash Payments. Agreement § 2.5.

C. Settlement Class Member Benefits

1. Reimbursement for Out-Of-Pocket Losses

All Settlement Class Members may submit a claim for up to $2,000.00 for reimbursement of out-of-pocket monetary losses or expenses that are fairly traceable to and reasonably resulting from the Illegal Hacking Event. *Id.* § 3.1.

To receive reimbursement for Out-of-Pocket Losses, Settlement Class Members must submit a valid Claim Form (either in paper form or on the Settlement Website) that includes the following: (i) third-party documentation supporting the loss; and (ii) a brief description of the documentation describing the nature of the costs, if the nature of the costs is not apparent from the documentation alone. *Id.* § 3.2. Third-party documentation can include receipts or other documentation not "self-prepared" by the Settlement Class Member that documents the costs incurred. *Id.* Out-of-Pocket Losses Claim Forms may be submitted at any time on or before the date that is 90 days after entry of the Final Order Approving Settlement and Judgment. *Id.* Self-prepared documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. *Id.* A legal guardian for a Settlement Class Member who is under the age of 18 at the time of claim submission may submit a minor Claim Form seeking reimbursement of Out-of-Pocket Losses on the minor's behalf. *Id.*

2. Pro Rata Cash Payment

After the distribution of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Approved Claims for Out-of-Pocket Losses, the Settlement Administrator will make Pro Rata Cash Payments of the remaining Settlement Fund to each Settlement Class Member. *Id.* § 4.1.

3. Business Practice Adjustments

Apria has made security business practice adjustments to address its information security posture following the Illegal Hacking Events. These Business Practice Adjustments are specific business practice and remedial measures within the following general categories: (i) enhanced cybersecurity training and awareness program, (ii) enhanced data security policies, (iii) enhanced security measures, (iv) further restricting access to personal information, and (v) enhanced monitoring and response capability. *Id.* § 7.1. If technological or industry developments, or intervening changes in law or business practices render specific Business Practice Adjustments obsolete or make compliance by Apria with them unreasonable or technically impractical, Apria may modify its business practices as necessary to ensure appropriate security practices are being followed. *Id.* § 7.2. All costs associated with implementing the Business Practice Adjustments will be borne by Apria, separate and apart from the Settlement Fund. *Id.*

D. Settlement Class Notice

The Parties have agreed on comprehensive Notice to the Settlement Class. *Id.* § 9.1. Notice, in the form substantially similar to those attached to the Agreement as Exhibit B, shall be disseminated via U.S. mail to all Settlement Class Members and also via e-mail to Settlement Class Members whose personal e-mail addresses are known. *Id.* Class Counsel may direct the Settlement Administrator to send reminder notices to Settlement Class Members at any time prior to the Claims Deadline. *Id.* Notice shall also be published on the Settlement Website, which will contain relevant documents, including, but not limited to, the Notice, the Agreement, Plaintiffs' motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs' Fee Application, and the operative complaints in the Class Action Lawsuit. *Id.* § 1.50. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. *Id.*

The Notice will inform Settlement Class Members of the Settlement's general terms, including a description of the Class Action Lawsuit, the identity of the Settlement Class, what claims will be released, how to submit a Claim Form and the Claims Deadline; the Opt-Out Deadline and opt-out procedure; the Objection Deadline and objection procedure; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class Members may access the Agreement and other related documents and information. *Id.* § 10.1 and Ex. B thereto.

E. Claims and Distribution of Settlement Funds

To be entitled to receive Out-of-Pocket Losses and/or a Pro Rata Cash Payment, Settlement Class Members must accurately and timely submit the Claim Form by the Claims Deadline. *See id.* § 6.1. Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via the Settlement Website or physically by mail. *Id.* Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. *Id.*

The Settlement Administrator must first use the Net Settlement Fund to make payments for Approved Claims for Out-of-Pocket Losses, followed by Approved Claims for Attested Time. *Id.* § 6.2. The Settlement Administrator shall then use the remaining funds in the Net Settlement Fund to make distributions for Pro Rata Cash Payments. *Id.* The value of such payments may be reduced on a pro rata basis, depending on the number and types of Approved Claims. *Id.* § 6.3.

The Settlement Administrator will review all Claim Forms to determine their validity, eligibility, and the type and amount of Pro Rata Cash Payment to which the Settlement Class Member may be entitled. *Id.* § 3. Greater detail on the Claims process is found in Section 6 of the Agreement. *See id.* § 6.

F. Payments to Settlement Class Members

Payments for Approved Claims for reimbursement for Out-of-Pocket Losses and/or Pro Rata Cash Payments shall be issued in the form of a Settlement Check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date. *Id.* § 5.1. Settlement Checks shall bear in the legend that they expire if not negotiated within 90 days of their date of issue. For any funds remaining in the Cash Settlement Fund 60 days after the date of issue, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member to remind him/her of the deadline to cash such Settlement Check. *Id.* § 5.2. For any Settlement 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 shall make reasonable efforts to locate a valid address and resend the Settlement Payment within 30 days after the Settlement Check is returned. *Id.* § 5.3. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member to obtain updated address information. *Id.* To the extent a Settlement Check is not cashed within 90 days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued Settlement Check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissue a Settlement Check or mail the Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued Settlement Check. *Id.* § 5.4. Any replacement or reissued Settlement Checks issued to Settlement Class Members shall remain valid and negotiable for 60 days from the date of their issuance and may thereafter automatically be

canceled if not cashed by the Settlement Class Members within that time. *Id.* §§ 5.3, 5.4. If the Settlement Administrator is notified that a Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Settlement Class Member's estate upon receiving proof the Settlement Class Member is deceased and after consultation with Class Counsel. *Id.* § 5.5.

G. Settlement Administrator

The proposed Settlement Administrator, Kroll Settlement Administration, LLC ("Kroll"), a well-respected and reputable administrator, was mutually selected by the Parties. Joint Decl. ¶ 35. The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to:

a. Creating, administering, and overseeing the Settlement Fund;

b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;

c. Providing Notice to Settlement Class Members via U.S. mail and e-mail;

d. Establishing and maintaining the Settlement Website;

e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) Business Day;

f. Responding to any mailed or e-mailed Settlement Class Member inquiries within one (1) Business Day;

g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;

h. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Apria's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Apria's Counsel;

i. After the Effective Date, processing and transmitting Settlement Payments to Settlement Cass Members;

j. Providing weekly or other periodic reports to Class Counsel and Apria's Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Apria's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;

k. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of the Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and

l. Performing any function related to settlement administration at the agreed-upon instruction of Class Counsel or Apria's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

Agreement § 11.1. The Parties shall jointly oversee the Settlement Administrator. Joint Decl. ¶ 35. Notice and Administration Expenses will be paid from the Settlement Fund. Agreement § 2.5.

H. Opt-Out and Objection Procedures

The Notice explains the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than 60 days after the Notice Deadline. *Id.* § 10.1. The Request for Exclusion must include the name of the Class Action Lawsuit, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. *Id.* The Notice will state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Section will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. *Id.*

The Notice shall also explain the procedure for Settlement Class Members who do not opt-out of the Settlement to object to the Settlement or Fee Application by submitting written objections to the Settlement Administrator postmarked no later than 60 days after the Notice Deadline. *Id.* § 10.2. The written objection must include (i) the name of the Class Action Lawsuit; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. *Id.* The Notice will set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Section waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement. *Id.*

I. Release of Claims

Plaintiffs and Settlement Class Members who do not timely and validly opt-out of the Settlement Class will be bound by the terms of the Settlement, including the Releases that discharge the Released Claims against the Releasees. *See id.* § 14. The Released Claims are narrowly tailored and only relate to "the Illegal Hacking Events and/or prior unauthorized access to or disclosure of Protected Information of or by the Settlement Class . . . by reason of, arising out of, based on, or in any way relating to the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances, or other matters

referenced in or relating to the Illegal Hacking Events and/or prior unauthorized access to or disclosure of Protected Information." *Id.* § 1.37.

J. Attorneys' Fees, Litigation Costs and Expenses, and Service Award Payments

The amount of any attorneys' fees, Litigation Costs and Expenses, and Service Award Payments to be paid from the Settlement Fund shall be determined by the Court. Class Counsel will submit its Fee Application at least 14 days before the Opt-Out and Objection Deadlines. *See id.* § 15.1. Class Counsel intends to apply to the Court for an award of attorneys' fees of up to one-third of the Cash Settlement Fund, plus reimbursement of its reasonable Litigation Costs and Expenses not to exceed $50,000. *Id.* In addition, Class Counsel intends to move for Service Award Payments of $3,000.00 for each Plaintiff (for a total of $63,000.00). *Id.* § 15.3. The Settlement is not contingent on approval of the request for the Fee Award and Costs or Service Award Payments. In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. *Id.* § 15.4. The Notices will advise the Settlement Class of the amount of attorneys' fees and Service Award Payments that Class Counsel intends to seek. *See id.* at Exhibit B.

IV. ARGUMENT

Class actions were designed as "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *General Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 155 (1987) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700 (1979)); *see also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 832 (1999) ("In drafting Rule 23(b), the Advisory Committee sought to catalogue in functional terms those recurrent life patterns which call for mass litigation through representative parties." (internal quotation omitted)). Any settlement that results in the

dismissal of a class action requires court approval. *See* Fed. R. Civ. P. 23(e); *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 279 (7th Cir. 2002).

The approval process includes two steps. *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998). First, the court conducts a preliminary review to determine whether the proposed settlement is "within the range of possible approval" and whether there is reason to notify the class members of the proposed settlement and proceed with a fairness hearing. *Id.* If preliminary approval is granted, the class members are notified and given an opportunity to object. *Id.* Second, the court holds a fairness hearing to determine whether the proposed settlement is "fair, reasonable, and adequate." *Id.*; Fed. R. Civ. P. 23(e)(2); *see also Wong v. Accretive Health, Inc.*, 773 F.3d 859, 862 (7th Cir. 2014).

At the preliminary approval stage, the court's task is to "determine whether the proposed settlement is within the range of possible approval." *Armstrong*, 616 F.2d at 314 (internal quotation omitted). The court's role is not "resolving the merits of the controversy or making a precise determination of the parties' respective legal rights." *E.E.O.C. v. Hiram Walker & Sons*, 768 F.2d 884, 889 (7th Cir. 1985) (collecting cases). At this stage, Plaintiffs need show only that final approval is likely, not that it is certain. *See* Fed. R. Civ. P. 23(e)(1)(B) ("The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal."). Nonetheless, a court considering a request for preliminary approval of a class settlement must be vigilant to ensure that the interests of the class are well served by the settlement. *See In re NCAA Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 588 (N.D. Ill. 2016).

A. The Court should certify the Settlement Class.

To start, the Court should certify the Settlement Class for settlement purposes. The Settlement Class qualifies for certification under Rule 23(a) and (b)(3) because Rule 23's numerosity, commonality, typicality, adequacy, predominance, and superiority requirements are met, as explained below.

1. Numerosity

The Settlement Class satisfies this requirement because it is "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). "While there is no magic number that applies to every case, a forty-member class is often regarded as sufficient to meet the numerosity requirement." *See Mulvania v. Sheriff of Rock Island Cnty.*, 850 F.3d 849, 860 (7th Cir. 2017). Thus, with approximately 1,869,598 members, the Settlement Class satisfies this factor.

2. Commonality and Typicality

To satisfy the Fed. R. Civ. P. 23(a)(2) commonality requirement, there must "be one or more common questions of law or fact that are capable of class-wide resolution and are central to the claims' validity." *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1026 (7th Cir. 2018) (citing *Bell v. PNC Bank, Nat'l Ass'n*, 800 F.3d 360, 374 (7th Cir. 2015)).

To satisfy the typicality requirement, "'the claims or defenses of the representative party [must] be typical of the claims or defenses of the class.'" *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009) (quoting *Williams v. Chartwell Fin. Servs., Ltd.*, 204 F.3d 748, 760 (7th Cir. 2000)). "A claim is typical if it 'arises from the same event or practice or course of conduct that gives rise to the claims of other class members and . . . [the] claims are based on the same legal theory.'" *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006) (quoting *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)). "Although 'the typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class

members,' the requirement 'primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large.'" *Muro*, 580 F.3d at 492 (quoting *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)).

Plaintiffs satisfy the Fed. R. Civ. P. 23(a)(2)-(3) commonality and typicality requirements because they assert a "common contention"— Apria violated its duties to the Settlement Class, leading to the Illegal Hacking Events that harmed them. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 338 (2011). Courts explain the commonality and typicality factors "tend to merge" because they rely on a similar analysis—whether plaintiffs and the class have the same claims based on the same facts. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 158 n.13 (1982); *See, e.g.*, *Sheffler v. Activate Healthcare, LLC*, No. 1:23-CV-01206-SEB-TAB, 2024 WL 4008289, at *5 (S.D. Ind. Aug. 30, 2024) (typicality is "closely related to the commonality element"). Those conditions exist here and are "capable of class wide resolution" because the facts at issue in plaintiffs' complaint give "rise to the claims of other class members and [are] based on the same legal theory." *Lacy v. Cook Cnty., Ill.*, 897 F.3d 847, 866 (7th Cir. 2018).

Courts in this Circuit do not struggle to apply these concepts to data breach cases. *See, e.g.*, *Sheffler*, 2024 WL 4008289, at *5 (finding commonality and typicality elements were met where the claims asserted "similarly challenge[d] the adequacy of the safeguards used by [d]efendants to store and maintain [plaintiff] and other Class Members' [protected information]," and all arose from the same course of conduct—"[d]efendants' collection and maintenance of [plaintiff] and Class Members' [protected information], which was subsequently subject to the Data Incident."). So, too, here. Whether Apria had a duty to protect Plaintiffs' Protected Information, whether it breached that duty, whether that the breach harmed Plaintiffs, and what Plaintiffs can demand for

relief are questions "common" to the Settlement Class. Nothing suggests Plaintiffs have "individualized" issues that would prevent finding commonality here; indeed, Plaintiffs request to be Settlement Class Representatives because their facts and claims *mirror* the Settlement Class's facts and claims. As a result, the Court should find Plaintiffs have satisfied these factors.

3. Adequacy

The Court should also certify the Settlement Class because Plaintiffs and Class Counsel are "adequate." Fed. R. Civ. P. 23(a)(4) (requiring that "the representative parties will fairly and adequately protect the interests of the class"). "This adequate representation inquiry consists of two parts: (1) the adequacy of the named plaintiffs as representatives of the proposed class's myriad members, with their differing and separate interests, and (2) the adequacy of the proposed class counsel." *Gomez v. St. Vincent Health, Inc.*, 649 F.3d 583, 592 (7th Cir. 2011) (citing *Retired Chi. Police Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993)).

Here, there is no evidence Plaintiffs' interests conflict with the Settlement Class. Indeed, Plaintiffs' interests are coextensive with those of the Settlement Class. Joint Decl. ¶ 29. Plaintiffs seek the same relief as the Settlement Class based on the same facts. *Id.* Plaintiffs have actively participated in this litigation by having provided documents, reviewed pleadings, remained in regular contact with counsel, and kept apprised of the status of this litigation and settlement negotiations throughout the entire case. Joint Decl. ¶ 31. That Plaintiffs also seek Service Awards for themselves does not change the analysis, as the Settlement does not guarantee them, and the Service Awards are meant to compensate Plaintiffs for their service to the Settlement Class, not as damages above what other Settlement Class Members will receive. *Scott v. Dart*, No. 23-1312, 2024 U.S. App. LEXIS 10305, at 11-12 (7th Cir. Apr. 29, 2024) ("incentive awards are designed

to compensate named plaintiffs for the costs incurred in performing their role as class representatives—costs above and beyond what they would bear as ordinary class members").

Further, Plaintiffs' counsel's supporting declaration shows they are "adequate" to serve as Class Counsel based on their qualifications and experience. *See* Ex. B. After a court certifies a Rule 23 class, the court is required to appoint class counsel to represent the class members. *See* Fed. R. Civ. P. 23(g)(1). In appointing class counsel, the court must consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
> (iii) counsel's knowledge of the applicable law; and
> (iv) the resources that counsel will commit to representing the class.

Fed R. Civ. P. 23(g)(1)(A).

Here, Plaintiffs' counsel have invested substantial time and resources in this Class Action Lawsuit by investigating the underlying facts, researching the applicable law, and negotiating a detailed settlement. Joint Decl. ¶27. Importantly, Plaintiffs' counsel have experience litigating consumer class actions, including dozens of data breach cases they have filed, litigated, and settled across the country.[2] *See* Joint Decl. at Exhibits 1 and 2. Finally, Plaintiffs' counsel do not appear to have interests that conflict with those of the Settlement Class. Joint Decl. ¶ 33. As a result, the Court should find Plaintiffs and their counsel are "adequate" and preliminarily appoint them as Settlement Class Representatives and Class Counsel, respectively.

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[2] *See, e.g., Paul v. Ardagh Glass Inc.*, 23-cv-02214-MPB-TAB (S.D. Ind.) (data breach affecting Ardagh employees settling on a class-wide basis); *Weigand v. Group 1001 Ins. Holdings*, 23:cv-01452-RLY-TAB (data breach affecting over 475,000 policy holders which settled on a class-wide basis); *In Re: Eskenazi Health Data Incident Litig.*, Cause No. 49D01-2111-PL-038870 (data breach that affected over 1.5 million patients of Eskenazi); *In re Cmty. Health Data Incident Litig.*, No. 49D01-2211-PL-041242; *McKenzie v. Allconnect*, No. 5:15-cv-00359 (E.D. Ky.) (federal district court approved a final settlement for current and former employees of Allconnect whose 2017 Form W-2 data was sent to an unauthorized third party in a phishing attack); *Excellus Data Breach Litig*., No. 6:15-CV-06569 (W.D.N.Y); *In re Med. Informatics Eng'g, Inc., Customer Data Sec. Breach Litig.*, MDL 2667 (N.D. Ind.); *In re Anthem, Inc. Data Breach Litig.*, MDL 15-MD-02617 (N.D. Cal.) (settled on a class-wide basis for nearly 80 million consumers).

4. Superiority and Predominance

Last, Plaintiffs satisfy Fed. R. Civ. P. 23(b)(3) because common issues predominate over "individualized" issues. Like class members in other data breach cases, those here "have an interest in efficiently resolving their claims, which a class action and the proposed settlement provide." *Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at *8 (W.D. Wisc. Mar. 4, 2021). If this Class Action Lawsuit did not proceed as a class action, Settlement Class Members would need to pursue their own claims, defeating efficiency and leading to varying judgments on the merits. Thus, the class device is "superior" here because it aggregates "many relatively small-value individual claims into one case." *In re Harvey*, No. 1:22-cv-000659-RLM-MJD, 2023 U.S. Dist. LEXIS 79391, at *12 (S.D. Ind. May 3, 2023). And splitting those claims up would not serve the Settlement Class's interests when their "common" issues predominate. *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012) ("predominance requirement is satisfied when common questions represent a significant aspect of a case and . . . can be resolved for all members of a class in a single adjudication"). In other words, efficiency and justice dictate that this lawsuit should proceed as a class action. Accordingly, the Court should find Plaintiffs have satisfied Rule 23(a) and (b) and certify the Settlement Class.

B. The Court should grant preliminary approval to the Settlement.

"Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *see also Armstrong*, 616 F.2d at 313 ("Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources."). Because the Settlement would bind all class members, the Court may approve the settlement only after finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

Again, the Court need not conduct "a deep, searching investigation" at this stage because Rule 23(e) does not require it. *Probst v. Eli Lilly & Co. Lilly USA LLC*, No. 1:22-cv-01986-MKK-SEB, 2023 U.S. Dist. LEXIS 237168, at *3 (S.D. Ind. Nov. 21, 2023). Rather, when preliminarily approving a "proposed" settlement, the Court need only find the Court will "likely" approve it after ordering the parties to notify the class. Fed. R. Civ. P. 23(e)(1)(B) (explaining notice is "justified" if the court will "likely" approve the settlement).

That likelihood considers six "*Wong*" factors under Seventh Circuit case law:

> (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.

Wong v. Accretive Health, Inc., 773 F.3d 859, 863 (7th Cir. 2014).[3] Rule 23 also articulates four factors for approval: whether plaintiffs "adequately" represented the class, whether the proposal was "negotiated at arm's length," the relief provided, and whether the relief is distributed "equitably." Fed. R. Civ. P. 23(e)(2).[4] Because the *Wong* and Rule 23 factors overlap with one another, Plaintiffs consolidate their analysis below. *See, e.g., Skevington v. Hopebridge, LLC*, No.

[3] The opposition to the settlement and class member reaction factors should be adjudged at the Final Approval stage after the Settlement Class Members have been given Notice.

[4] The Rule 23(e)(2) factors are whether:

> (A) the class representative 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.

1:21-CV-03105-JPH-MG, 2024 WL 1175448, at *4 (S.D. Ind. Mar. 18, 2024) (consolidating analysis of Rule 23 and *Wong* factors).

1. Adequate Representation and Class Counsel's Opinion

As explained above, Plaintiffs and Class Counsel have "adequately" represented the Settlement Class—securing a Settlement that accomplishes what they set out to achieve with this lawsuit. There are no "conflicting interests" between Plaintiffs, Class Counsel, and the Settlement Class, and there is "no reason to doubt the performance of counsel" or their clients. *Probst*, 2023 U.S. Dist. LEXIS 237168, at *9. Under conditions like this—with experienced counsel recommending the Settlement—courts approve settlements even when the parties reach them after "minimal litigation[.]" *Id*. In fact, Class Counsel conditioned mediation on "obtain[ing] sufficient written discovery to evaluate and value the claims at issue," ensuring plaintiffs had the information needed to negotiate an "adequate" settlement for the class. *Probst*, 2023 U.S. Dist. LEXIS 237168, at *9; *see* Joint Decl. at ¶ 15. Armed with that information and Class Counsel's experience, Plaintiffs negotiated a $6,375,000.00 Settlement that delivers the relief they wanted when they filed this Class Action Lawsuit. Joint Decl. at ¶ 20. Further, Class Counsel have represented data breach victims across the country and reached settlements that courts routinely approve, meaning the Court should give weight to their opinion approving of this Settlement. *Wong*, 773 F.3d 859, 863 (considering the "opinion of competent counsel"); *see also Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir. 1982) (courts are "entitled to rely heavily on the opinion of competent counsel'); Joint Decl. at ¶ 37. This Settlement's benefits are consistent with other approved settlements. Joint Decl. at ¶ 20. Thus, the Settlement satisfies this *Wong* factor and Rule 23(e)(2)(A)'s adequacy of representation factor.

2. Arm's Length Negotiations and Stage of the Proceedings

The Court should approve the Settlement in the "normal" course because the Parties reached it at arm's length. Fed. R. Civ. P. 23(e)(2)(b); *Burkholder v. City of Fort Wayne*, 750 F. Supp. 2d 990, 995 (N.D. Ind. 2010) ("Normally, a settlement is approved where it is the result of contentious arm's-length negotiations, which were undertaken in good faith by counsel) (citations and quotations omitted). Here, the Settlement was "reached because of serious and non-collusive, arm's-length negotiations, with both sides represented by experienced counsel familiar with the applicable facts and law." *In re Harvey*, 2023 U.S. Dist. LEXIS 79391, at *7; *See* Joint Decl. ¶ 25. Indeed, the Seventh Circuit holds that negotiation is at "arm's length" when the settlement was reached with the assistance of a third-party neutral, like the Settlement here. *Wong*, 773 F.3d 859, 864. Moreover, attorneys' fees and costs and Service Award Payments were not discussed until the Parties agreed to all other material Settlement terms. Joint Decl. ¶ 33. For these reasons, there was no fraud or collusion in arriving at the Settlement, and this factor favors approval.

Additionally, though the Settlement was reached at an early stage with the Partial Motion to Dismiss pending and an Answer as to the other claims, adequate discovery was completed in response to Plaintiffs' informal and formal discovery requests, resulting in Apria producing information that addressed the manner and mechanism of the Illegal Hacking Events, the number of impacted individuals nationwide, and Apria's security enhancements implemented following the Illegal Hacking Events. *See Probst*, 2023 U.S. Dist. LEXIS 237168, at *9 (approving settlement after "minimal litigation" where plaintiffs' counsel undertook sufficient discovery efforts to properly value their case); *see* Joint Decl. at ¶ 12. This information allowed Class Counsel to intelligently negotiate the Settlement benefits in the Agreement. *Id.*

3. The Settlement Relief Balanced Against the Merits

Plaintiffs settled this Class Action Lawsuit despite the risks it presented, achieving benefits that exceed those found in other data breach cases. Rule 23(e)(2)(C) requires the Court to "take into account" the "costs, risks, and delay of trial and appeal," how the settlement distributes benefits, the proposed attorneys' fees, and any "side" agreements when evaluating this factor.[5] The Rule's counterpart *Wong* factor holds that the "strength of plaintiff's case" is the "most important factor" when approving a settlement. *Adams v. Aztar Ind. Gaming Co.*, No. 3:20-cv-00143-MPB-RLY, 2023 U.S. Dist. LEXIS 33079, at *11 (S.D. Ind. Feb. 24, 2023).

This factor favors the Settlement given the benefits it delivers under the circumstances. Plaintiffs sued Apria to compensate the Settlement Class for their losses and protect their Protected Information following the Illegal Hacking Events, and the Settlement achieves just that. If they suffered out-of-pocket losses and/or time lost, the Settlement allows them to submit Claims for Out-of-Pocket Losses and Attested Time. Agreement § 3. Additionally, all Settlement Class Members are eligible to receive Pro Rata Cash Payments. *Id.* § 4.1.

These benefits stand out when putting them in context. *See Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Even as courts have allowed data breach cases to proceed past the motion to dismiss stage, they have not settled on whether plaintiffs can certify classes or survive summary judgment. As one federal district court observed when approving a settlement with similar class relief: "Data breach litigation is evolving; there is no guarantee of the ultimate result." *Fox*, 2021 U.S. Dist. LEXIS 40640, at *13 (citing *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 U.S. Dist. LEXIS 215430, at *1 (D. Colo. Dec. 16,

[5] There is no side agreement to be disclosed pursuant to Fed. R. Civ. P. 23(e)(3).

2019)). Given this litigation environment, the results achieved here render the Settlement "reasonable" under all standards.

Furthermore, "[e]ven if Plaintiffs were to succeed on the merits at some future date, a future victory is not as valuable as a present victory. Continued litigation carries with it a decrease in the time value of money, for '[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.'" *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (quoting *Reynolds*, 288 F.3d at 284). The Settlement also delivers relief now, rather than years from now. *In re Harvey*, 2023 U.S. Dist. LEXIS 79391, at *7 (favoring settlement when "[t]he costs, risks, and delays of trial and appeal could've delayed any recovery for several years and would have risked the class recovering nothing had this court or an appellate court ruled against them[.]"). Even winning at trial cannot guarantee a victory, rendering the Settlement a victory in its own right. *See Adams*, 2023 U.S. Dist. LEXIS 33079, at *11 ("The most obvious risk is if Plaintiff is not successful on her claims. Even if successful on the merits at some future time, a future victory is not as valuable as a present victory.").

Plaintiffs' attorney fee request is also "within the range of approval" because it requests one-third of the Settlement Fund. *Id*. at *10 (S.D. Ind. Feb. 24, 2023) ("courts in this district and around the Seventh Circuit routinely award one-third of the common fund"). In fact, "[t]he typical contingent fee is between 33 and 40 percent[.]" *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998). Thus, Plaintiffs' request, which the Court will decide on Class Counsel's Fee Application, is "within the range of likely approval." As a result, this factor favors approving the Settlement.

4. Equitable Treatment

Last, the Court reviews the Settlement for equity. When evaluating this factor, courts allow the parties to distribute benefits according to class members' losses. *Adams*, 2023 U.S. Dist.

LEXIS 33079, at *9 ("members will receive their pro rata portion of the allocation based on their individual damage figured compared to the total damage amount"). Indeed, when class members receive benefits "pro rata," that favors finding equity in the settlement. *Probst*, 2023 U.S. Dist. LEXIS 237168, at *13 ("pro rata distribution of settlement fund indicates equal treatment") (citing *T.K. v. Bytedance Tech. Co.*, No. 19-CV-7915, 2022 U.S. Dist. LEXIS 65322, at *32 (N.D. Ill. Mar. 25, 2022)). In other words, benefits must be "equal" to be "equitable"—allowing plaintiffs to award benefits according to a class member's loss.

Under this principle, the Court should find the Settlement is "equitable" under Rule 23(e)(2)(D). It guarantees Settlement Class Members a right to submit Claims for Out-of-Pocket Losses and Attested Time, a benefit meant to "equitably" acknowledge that some Settlement Class Members experienced "actual" harm resulting from the Data Breach while others did not. But, in any event, *all* Settlement Class Members are eligible to receive Pro Rata Cash Payment no matter their losses, and receive it "pro rata," assuring "equitable" treatment for all Settlement Class Members. As a result, the Court should find Plaintiffs have satisfied this factor.

C. The Court should approve notice to the Settlement Class.

After the Court preliminarily approves a settlement and certifies a class, it "must direct notice in a reasonable manner to all class members" to inform them about the proposed settlement. Fed. R. Civ. P. 23(e)(1)(B). Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. *Id*. "The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." *Id*. To comply with due process, notice must be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997). Notice must explain: (i) the action; (ii) how the class is defined; (iii) the class claims, issues, or defenses; (iv) that a class

member may appear through an attorney; (v) that the court will exclude from the class any member who requests it; (vi) the time and manner for requesting exclusion; and (vii) the binding effect that class judgment has on members. Fed. R. Civ. P. 23(c)(2)(B). Courts recognize mail notice is often the "best notice practicable to the class." *See, e.g.*, *In re Harvey*, 2023 U.S. Dist. LEXIS 79391, at *16.

The Notice satisfies the foregoing criteria. The Parties negotiated the form of the Notice with the aid of Kroll, the experienced Settlement Administrator. The Notice will be disseminated to all persons who fall within the Settlement Class and whose names, addresses, and e-mail addresses can be identified with reasonable effort from Apria's records, and through databases tracking nationwide addresses and address changes. If a Notice sent by U.S. Mail is "returned undeliverable," Kroll will re-send the Notice and skip trace an address if needed. Plus, Settlement Class Members will also be sent Notice by e-mail where Apria maintained a personal e-mail address for them. In addition, Kroll will administer the Settlement Website containing relevant information about the Settlement.

The Notice includes, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the Opt-Out Deadline for Settlement Class Members to opt-out of the Settlement Class; the Objection Deadline for Settlement Class Members to object to the Settlement and/or Fee Application; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class Members may access this Agreement and other related documents and information. Joint Decl. ¶ 36. Finally, the Notice satisfies the requirements of Fed. R. Civ. P. 23(h)(1), as it notifies Settlement Class Members that Class Counsel will apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of Litigation Costs and Expenses. *Id*.

Thus, the Court should approve the Notice procedures and form and content of the Notice. *See* Agreement at Ex. B.

V. PROPOSED SCHEDULE OF POST-PRELIMINARY APPROVAL EVENTS

Plaintiffs respectfully propose the following schedule for the Court's review and approval, which summarizes the deadlines in the Preliminary Approval Order. If the Court agrees with the proposed schedule, Plaintiffs request that the Court schedule the Final Approval Hearing.

Class List Deadline	***28 days after Preliminary Approval Order***
Notice Deadline	***49 days after Preliminary Approval Order***
Fee Application Deadline	***14 days before Opt-Out and Objection Deadlines***
Opt-Out Deadline	***60 days after the Notice Deadline***
Objection Deadline	***60 days after the Notice Deadline***
Motion for Final Approval Deadline	***14 days before the Final Approval Hearing***
Final Approval Hearing	***_____, 2025 at ____ a.m./p.m., or such later date available on the Court's calendar***
Claims Deadline	***90 days after the Notice Deadline***

VI. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request the Court (1) preliminarily approve the Settlement; (2) certify the Settlement Class for settlement purposes; (3) approve the form of and manner of Notice, including the opt-out and objection procedures; (4) approve the Claim Form and Claims process; (5) appoint Plaintiffs as Settlement Class Representatives; (6) appoint Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel; (7) Appoint Kroll as the Settlement Administrator; and (8) enter the proposed Preliminary Approval Order.

Dated: March 5, 2025

Respectfully submitted,

By: */s/Lynn A. Toops*
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Plaintiffs' Interim Co-Lead Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 5, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/Lynn A. Toops
Lynn A. Toops