IN THE PENNSYLVANIA COURT OF COMMON PLEAS
WARREN COUNTY

ROBERT PESSIA, PETER HETTMAN, HEIDI TULLER, ROBERT MARRONE, and JEAN BERRY individually and on behalf of all others similarly situated, Plaintiffs, v. WARREN GENERAL HOSPITAL, Defendant.	CIVIL DIVISION CASE NO. 501-2023 CONSOLIDATED CLASS ACTION

BRIEF IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiffs Robert Pessia, Peter Hettman, Heidi Tuller, Robert Marrone, and Jean Berry (collectively, "Plaintiffs"), individually and on behalf of the Settlement Class, respectfully submit this brief in support of their unopposed motion for final approval of the class action settlement reached with Defendant Warren General Hospital ("WGH" or "Defendant").

This Court previously granted preliminary approval of the Settlement on January 20, 2025, finding it to be fair, reasonable, and the product of arm's-length negotiations, and authorized notice to the Settlement Class.

I. INTRODUCTION

Plaintiffs respectfully request that the Court grant final approval of the parties' proposed class action settlement (the "Settlement"), which would resolve all claims against WGH relating to a 2023 Data Incident[1] that impacted approximately 168,921 current and former patients and other affiliated persons.

The Settlement should be finally approved because it is fair, reasonable, and adequate. The Settlement would establish a non-reversionary Settlement Fund of $1,300,000.00. Claimants may elect to receive: (1) a payment for reimbursement of documented losses (Cash Payment A) of up to $5,000; or (2) a pro rata cash payment (Cash Payment B), calculated in accordance with the terms of the Settlement Agreement. The Settlement also requires robust business practices changes to be implemented and/or maintained for a period of three years following final approval of the Settlement. WGH has also agreed to confirm its compliance with these measures.

[1] The Settlement Agreement in its entirety and its exhibits were attached to the Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"). Unless otherwise indicated, capitalized terms herein shall have the same meaning as assigned to them in that document.

The Settlement is the product of arduous, arms-length negotiations between experienced counsel after a mediation session with respected data privacy mediator Bennett Picker of the Stradley Ronon law firm. The agreement in principle reached at the mediation was followed by negotiations and subsequently finalizing the Settlement details so as to maximize the benefits to the Class Members.

Following preliminary approval, the parties implemented a comprehensive court-approved Notice Program. The response from the Class has been positive—at the time of this filing, there have been no objections, three opt-outs, and 3,407 claims have been submitted by Class Members seeking relief under the Settlement. These results strongly support final approval. Declaration of Cameron Azari ("Azari Decl.")[2] at ¶¶ 27, 29.

For the reasons set forth herein, and consistent with Pennsylvania Rule of Civil Procedure 1702, Plaintiffs respectfully request that the Court grant final approval of the Settlement, approve the requested attorneys' fees, expenses, and Service Awards, and enter the proposed Final Judgment.

II. FACTUAL AND PROCEDURAL HISTORY

A. The WGH Data Incident

WGH is a non-profit hospital located in Warren County, Pennsylvania. The hospital has 85 beds and provides patients with a wide range of medical services, including emergency medical care, surgery, rehabilitation, and specialized treatment. In the course of operating the hospital, WGH collects, maintains, and stores personal information pertaining to its patients, including, but not limited to, their name, address, date of birth, Social Security number, financial account information, payment card information, health insurance claims information, and medical

[2] The Azari Decl. is attached to the Motion as **Exhibit 2**.

information involving diagnosis, medications, lab results, and other treatment information. *See* Settlement Agreement ("SA") ¶¶ 1, 2.

On or about September 24, 2023, WGH discovered a Data Incident that disrupted its computer systems. A forensic investigation revealed that between September 15 and September 23, 2023, an unauthorized third party had gained access to files containing sensitive personal and medical information. *Id*. ¶ 3.

Following the Data Incident, WGH notified approximately 168,921 individuals that their Private Information may have been compromised, including names, dates of birth, Social Security numbers, financial account data, health insurance claims information, and medical records. *See* Compl. ¶ 4; Declaration of Danielle Perry. ("Perry Decl.")[3] ¶ 6.WGH publicly disclosed the Data Incident on November 9, 2023, via a filing with the U.S. Department of Health and Human Services Office for Civil Rights. *Id*. ¶ 4. Individual notices were mailed beginning November 17, 2023. *Id.* ¶ 7.

B. Procedural Posture

Commencing in late November 2023, WGH was named in several putative class action lawsuits—filed in both federal court and this Court—related to the Data Incident. SA ¶¶ 5. The Plaintiffs in these cases generally allege that WGH failed to adequately safeguard the sensitive data that was entrusted to it. Compl. ¶ 2. Plaintiffs' counsel in the related actions conferred, agreed to, and moved to consolidate the Related Actions and to appoint Class Counsel as Interim Co-Lead Class Counsel. SA ¶¶ 5, 6; *see also* Notice of Related Actions.

On January 29, 2024, the Court consolidated the actions and appointed Andrew W. Ferich of Ahdoot & Wolfson, PC. and Danielle L. Perry of Mason LLP as Interim Co-Lead Class Counsel

[3] The Perry Decl. is attached to this Motion as **Exhibit 1**.

for the putative class. On February 29, 2024, Plaintiffs filed the Complaint ("Compl."), which alleged the following causes of action: (a) negligence; (b) breach of contract; (c) breach of implied contract; (d) unjust enrichment; (e) breach of fiduciary duty; (f) breach of confidence; (g) violations of the Pennsylvania Unfair Trade and Consumer Protection Law; and (h) for declaratory judgment. *Id.* ¶¶ 8, 9.

WGH filed preliminary objections to the Complaint on March 29, 2024. On May 1, 2024, Plaintiffs filed a memorandum in opposition to the preliminary objections. On June 13, 2024, after hearing oral argument, the Court issued a memorandum opinion and order that granted in part and denied in part WGH's preliminary objections. On December 19, 2024, Plaintiffs filed a motion for Preliminary approval which was granted by the court on January 20, 2025. Notice was then issued to the Settlement Class pursuant to the Preliminary Approval Order. On March 21, 2025, Plaintiffs filed their Motion for Attorneys' Fees, Expenses and Service Awards ("Motion for Fees"). The fee motion is currently pending, and Plaintiffs have requested that the Court take up that motion in conjunction with final approval.

C. Settlement Negotiations and Mediation

During the litigation of this Action, the Parties began discussing settlement and scheduled a mediation with an experienced data breach class action mediator, Bennett G. Picker, Esq. *Id.* ¶ 13. The mediation occurred on October 31, 2024. *Id.*

In advance of the mediation, Plaintiffs propounded informal discovery requests to learn as much as possible about the Data Incident. Through the provision of informal discovery—and with the benefit of this Court's ruling on the preliminary objections—Plaintiffs were able to evaluate the merits of the WGH's position. The Parties also exchanged detailed mediation briefs outlining their positions with respect to liability, damages, and settlement-related issues. *Id.* ¶ 14.

After many hours of negotiating, the Parties reached agreement on the material terms of a settlement with the assistance of Mr. Picker. *Id.* ¶ 15.

Plaintiffs and Class Counsel now move the Court for Final Approval and apply for an award of attorneys' fees, costs and service awards. The Settlement satisfies all the criteria for Final Approval. Currently, there are no objections and only three Settlement Class members have opted-out. This overwhelmingly positive response affirms the Court's initial conclusion that the Settlement is fair, reasonable, and adequate. Class Counsel has fully evaluated the strengths, weaknesses, and equities of the Parties' respective positions and believe the proposed Settlement fairly resolves their respective differences. For all the reasons set forth herein, the Court should grant Final Approval of the Settlement and Class Counsel's Application for Attorneys' Fees, Costs and Service Awards.

III. TERMS OF THE SETTLEMENT

The Parties briefly summarize the key points of the Settlement below.

A. The Class Definition

The proposed Settlement Class is defined as follows:

> All natural persons in the United States whose Private Information was potentially accessed as a result of the Data Incident, including those who were sent a notification from Defendant of the Data Incident. Excluded from the Settlement Class are (a) all persons who are governing board members of the Defendant; (b) governmental entities; and (c) the Court and any Judge(s) presiding over this matter, the Court's immediate family, and Court staff.

Id. ¶ 63.

B. The Release

In exchange for the Settlement Benefits provided for under the Settlement Agreement, Settlement Class Members will release any and all claims against WGH and its Released Parties as set forth in the Settlement Agreement. *Id*. ¶¶ 57-58. The release is narrowly tailored to be limited

to claims concerning the Data Incident.

C. Settlement Fund

As discussed above, the Settlement provides for a $1.3 million non-reversionary Settlement Fund (*id*. ¶ 65) that will be used to pay for (1) Settlement Benefits to those Settlement Class Members who submit a Valid Claim (for both documented losses or for pro rata cash payments); (2) any Service Awards awarded to the Class Representatives; (3) any attorneys' fees and litigation costs and expenses awarded to Class Counsel; (4) all Settlement Administration Costs; and (5) taxes. *Id.* ¶ 69.

1. Cash Payment A - Documented Losses.

Class Members may submit a documented losses payment ("Documented Losses Payment") Claim seeking up to $5,000 per person for the reimbursement of Documented Losses with reasonable documentation. *Id.* ¶ 72(a). Documented Losses must be supported sufficiently to show that the claimed loss is more likely than not a result of the Data Incident. *Id*. Any Class Member who previously paid out-of-pocket for credit monitoring (or other similar expense) as a result of the Data Incident will be eligible to be reimbursed under this category. The Settlement Administrator will review these claims for compliance with the requirements of the Settlement Agreement. Any claim for a Documented Losses Payment that is rejected, if not timely cured, will instead be considered for a pro rate Cash Payment (Cash Payment B). *Id*.

2. Cash Payment B – Pro Rata Cash Payment

Class Members may submit a claim for a pro rata cash payment without documentary support. *Id.* ¶ 72(b). The amount of money each Class Member who submits an Approved Claim will receive will be calculated as follows:

> Settlement Class Cash Payments will be subject to a *pro rata* increase from the Settlement Fund in the event the amount of Valid Claims is insufficient to exhaust

> the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of the Cash Payments may be reduced pro rata accordingly. Any *pro rata* increases or decreases to Cash Payments will be on an equal percentage basis.

Id. ¶ 73.

3. Business Practice Changes

In addition to the foregoing Settlement Benefits, Plaintiffs have received assurances that WGH has undertaken reasonable steps to further secure its systems and environments. Defendant has provided confidential discovery regarding the facts and circumstances of the Data Incident and Defendant's response thereto, and the changes and improvements that have been made to protect class members' Private Information, which will be maintained for a period of no less than 3 years from entry of the Final Approval Order and Judgment. SA ¶ 74. The value of these data security commitments will inure to the benefit of Class Members irrespective of whether they file a Claim.

D. The Notice and Claim Process

1. Notice

The Parties agreed to use Epiq as the Settlement Administrator. *Id*. ¶ 80. The cost of Notice and Settlement Administration Costs will be paid from the Settlement Fund. *Id*. ¶ 69. The Settlement Administrator implemented the Notice Program, which provided for individual Notice to Class Members by direct mail at the last known physical address of each Class Member that WGH had on record, if one was available. *Id*. ¶¶ 81, 82; Azari Decl. ¶¶ 11-14. The Settlement Administrator notified Class Members in the same manner that they were initially notified of the Data Incident. As of April 9, 2025, individual notice efforts have reached approximately 90% of the identified Settlement Class members. Azari Decl. ¶ 31.

In addition, the Settlement Administrator conducted a Digital Advertisement Notice on social media and the internet that is geo-targeted to Warren County and the surrounding area. SA

¶ 35; Azari Decl. ¶¶ 15-23. It also established a dedicated Settlement Website that informed Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines, and related information. SA ¶¶ 66, 85; Azari Decl. ¶ 24. The Settlement Website includes relevant documents (Azari Decl. ¶ 24), such as the following: (i) the Long Notice; (ii) the Claim Form, which is available to download or submit electronically; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the operative Complaint, filed in the Action before this Court; (vi) the Application for Attorneys' Fees, Costs, and Service Awards; and (vii) any other materials agreed upon by the Parties and/or required by the Court. Class Members are able to submit Claim Forms through the Settlement Website. SA ¶ 88. The Settlement Administrator also created a toll-free help line so Class Members can obtain additional Settlement information. *Id.* ¶ 82(e). Class Counsel are also available to answer any questions from Class Members.

2. Claims

The claims process was structured to ensure that all Class Members had adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim (if submitting a claim for Documented Losses), and decide whether they would like to opt-out or object. Class Members will have until April 20, 2025, 15 days before the initial scheduled Final Approval Hearing, to complete and submit their Claim Form to the Settlement Administrator, either by mail or online. *Id.* ¶ 25. The Claim Form is written in plain language to facilitate Class Members' ease in completing it. SA, at Exhibit A (Claim Form). The Settlement Administrator, Epiq, is responsible for reviewing the Claim Forms and determining if they are complete and valid. *Id.* ¶ 96. Should a claim be incomplete or defective, the Settlement Administrator shall request additional information and give the claimant 15 days to cure the defect. *Id*. ¶ 99. Moreover, where 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 Payment B. *Id.* ¶ 72(a).

Any Class Member who wished to object had an opportunity to submit a timely written notice of his or her objection by the close of the Objection/Exclusion period, which ended on April 5, 2025. *Id.* ¶¶ 48, 49. Any objection needed to comply with the Settlement Agreement's requirements. *Id.* ¶¶ 90, 91(a-j). They must have been mailed to the Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator. *Id.* ¶ 90. Any Class Member who did not make their objections timely and in the manner prescribed by the Settlement Agreement waived their objection and is forever barred from raising objections, absent further order of the Court. As of this filing, there have been no objections received.

E. Residual

The Settlement Fund is non-reversionary and designed to distribute as much of its benefits directly to Class Members as possible. In the event there are any funds remaining from uncashed checks in the Settlement Fund within 45 days following the 180-day check negotiation period, all remaining funds, if any, shall be given to the Pennsylvania Interest on Lawyers Trust Account Board (PA IOLTA). *Id.* ¶ 111.

F. Proposed Class Representative Service Awards

Plaintiffs have been dedicated and active participants on behalf of the class they seek to represent. Perry Decl. ¶ 10. They assisted in the investigation of the matter prior to and after retaining counsel, provided relevant information to their counsel, reviewed and approved complaints, kept in close contact with counsel to monitor the progress of the litigation, and reviewed and communicated with their counsel regarding the Settlement. *Id.* In view of these efforts, on behalf of Plaintiffs, counsel will separately petition the Court for approval of Service

Awards in the amount of up to $2,000 for each of the five Plaintiffs. *Id.*; SA ¶ 108. This amount is consistent with those approved in other data breach class action settlements. The Settlement is not conditioned upon the Court's award of any Service Payments. SA ¶ 110. Service Awards will be paid from the Settlement Fund. *Id*. ¶ 108.

G. Attorneys' Fees and Expenses

As part of the Settlement—and prior to the deadline for the filing of objections—Plaintiffs filed the Motion for Fees on March 21, 2025. *Id*. ¶ 109; *see also* Application for Attorneys' Fees, Costs, and Service Awards. Plaintiffs' counsel has requested up to 35% of the Settlement Fund (i.e., $455,000), which is consistent with attorneys' fee awards and percentage for such awards under Pennsylvania and Third Circuit law. *Id.*; *see, e.g.*, *McDermid v. Inovio Pharms., Inc.,* No. 20-cv-01402, 2023 WL 227355, at *12 (E.D. Pa. Jan. 18, 2023) ("In common fund cases, fee awards generally range from 19% to 45% of the settlement fund.") (citing *Galt v. Eagleville Hosp.*, 310 F. Supp. 3d 483, 498 (E.D. Pa. 2018) ("fee awards ranging from 30% to 43% have been awarded in cases with funds ranging from $400,000 to $6.5 million") and *In re Cendant Corp. PRIDES Litig.,* 243 F.3d 722, 736 (3d Cir. 2001)); *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 315 (E.D. Pa. 2012) ("Within the Third Circuit, courts have approved attorneys' fees ranging from 19 percent to 45 percent of the settlement fund as reasonable.") (citation omitted).

Proposed Class Counsel also intend to seek reimbursement of all reasonably incurred litigation expenses incurred to date. Any approved award for attorneys' fees and costs will be paid out of the Settlement Fund. *Id*. ¶ 69. The Settlement is not conditioned upon the Court's award of any attorneys' fees or costs. *Id.* ¶ 110. Plaintiffs filed the Motion for Fees on March 21, 2025. These filings were promptly uploaded to the Settlement Website.

IV. LEGAL STANDARD

A. The Court Should Certify the Settlement Class for Final Approval Purposes

"As a threshold matter, the court must determine that it is appropriate to certify the class for the purpose of settlement pursuant to Pa. R. Civ. P. 1710." *Gregg v. Indep. Blue Cross*, No. 03482, 2004 WL 869063, at *25 (Pa. Com. Pl. Apr. 22, 2004)*, aff'd sub nom. Pennsylvania Orthopaedic Soc. v. Indep. Blue Cross*, 885 A.2d 542 (2005). Under the Pennsylvania Rules of Civil Procedure, a class may be certified if the proponent demonstrates that the requirements of Pa. R. Civ. P. 1702 are satisfied. Pa. R. Civ. P. 1702; *see also Samuel-Bassett v. Kia Motors America, Inc.*, 613 Pa. 371, 398, 34 A.3d 1, 16 (Pa. 2011).[4] The proponent must establish that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of those of the class; and (4) the representative parties will fairly and adequately assert and protect the interests of the class. *Id*. As previously set forth in the Brief in Support of Motion for Preliminary Approval ("MPA Brief"), each of these requirements remains satisfied here.

The Settlement Class consists of approximately 168,921 individuals—meeting the numerosity requirement. *See* MPA Brief at 11. Plaintiffs' claims arise from the same alleged course of conduct as those of the Class—namely, WGH's alleged failure to safeguard Private Information—thus satisfying both commonality and typicality. *Id*. 11-13. Finally, Plaintiffs and their Court-appointed Class Counsel will fairly and adequately protect the interests of the Class, as demonstrated by their active participation and significant experience in complex class action and data breach litigation. *Id*. 13-14.

[4] Additionally, Rules 1708 and 1709 specify the factors considered in determining the last two requirements of Rule 1702 (adequacy of representation and fairness and efficiency). *Id.*

Although the Court previously conditionally certified the Settlement Class at the preliminary approval stage, Plaintiffs now respectfully request that the Court grant final certification for settlement purposes.

B. The Settlement Satisfies the *Dauphin* Factors and Should Be Finally Approved

The "range of reasonableness" standard requires the Court to examine whether the proposed settlement secures an "'adequate' (and not necessarily best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin Deposit Bank and Trust Co. v. Hess*, 556 Pa. 190, 727 A.2d 1076, 1079 (Pa. 1999) (citation omitted).

In *Dauphin* the Supreme Court approved of the *Buchanan v. Century Fed. Sav. & Loan Asso.*, 259 Pa.Super. 37, 393 A.2d 704 (Pa. Super. Ct. 1978) decision and indicated "that the *Buchanan* case states the appropriate factors to consider in approving or disapproving a class action settlement." *Id*. at 1079. The Factors include:

> 1. the risks of establishing liability and damages; 2. the range of reasonableness of the settlement in light of the best possible recovery; 3. the range of reasonableness of the settlement in light of all the attendant risks of litigation; 4. the complexity, expense and likely duration of the litigation; 5. the state of the proceedings and the amount of discovery completed; 6. the recommendations of competent counsel; and; 7. the reaction of the class to the settlement.

Id. at 1079–80; *see also In re Bridgeport Fire Litig.*, 2010 PA Super 213, 8 A.3d 1270, 1285 (Pa. Super. Ct. 2010) (applying the *Dauphin* factors).

1. The Risks of Establishing Liability and Damages.

"One very significant factor in determining whether a settlement is reasonable is the risk involved in proving liability and damages." *Treasurer of State v. Ballard Spahr Andrews & Ingersoll LLP*, 866 A.2d 479, 484 (Pa. Cmwlth. Ct. 2005) (quoting *Fischer v. Madway*, 336 Pa. Super. 289, 485 A.2d 809 (1984)). Moreover, "because of the inherent risks of litigation, 'the vast

majority of courts which have approved settlements in ... have given their approval to settlements…"' *Id.* at 486 (citation and internal quotation marks omitted).

In this case, Plaintiffs allege that Defendant failed to implement adequate data security measures, resulting in unauthorized access to highly sensitive personal and medical information. While Plaintiffs believe their claims have merit, WGH has consistently denied any wrongdoing and raised substantial defenses, including challenges to causation, injury, and the existence of legal duties. Plaintiffs would have faced considerable hurdles in surviving dispositive motions, achieving class certification, and prevailing at trial. Even if liability were established, calculating and proving damages across a class of nearly 168,921 individuals would have been complex, expensive, and highly contested.

2. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery.

The second *Dauphin* factor asks whether the settlement falls within a reasonable range when compared to the best possible outcome at trial. The "range of reasonableness" standard requires the Court to examine whether the proposed settlement secures an '"adequate' (and not necessarily the best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *See Dauphin,* 727 A.2d 1076, at *1079 (citation and internal quotation marks omitted).

The Settlement provides $1,300,000 worth of monetary benefits (not counting the value of any improved security measures that WGH has agreed to undertake as part of the Settlement). *See* SA, Section III. The Settlement and claim process is structured so that Class Members who experienced any out-of-pocket financial losses will have an opportunity to submit claims for up to $5,000 in unreimbursed losses or a pro rata Cash Payment. SA ¶ 72(a). Alternatively, Class

Members can submit a Claim Form for a flat, pro rata cash payment, the cost of which will be charged against the Settlement Fund. *Id.* ¶ 72(b).

Here, the $1,300,000 non-reversionary cash Settlement provides a per capita recovery of approximately $7.69 for each Class Member. This is far superior to the per-capita cash recoveries in other, approved data breach settlements, including some of the largest settlements on record. For example, the settlement in *In re Anthem, Inc. Data Breach Litig*. created a $115 million settlement fund for a class size of approximately 79.15 million individuals, equal to roughly $1.45 per class member. *Anthem*, 327 F.R.D. 299, 318–19 (N.D. Cal. 2018). In *In re Equifax Inc. Customer Data Security Breach Litig*., the settlement provided cash benefits ranging between $380.5 million to $505.5 million (depending on the claims made) for a class of 147 million, equal to roughly $2.59 to $3.44 per class member. *See Equifax*, No. 17-md-2800, 2020 WL 256132, at *2 (N.D. Ga. Mar. 17, 2020)*, aff'd in relevant part,* 999 F.3d 1247 (11th Cir. 2021).

The chart below demonstrates the quality of this Settlement as compared to other data breach settlements (on a per capita basis per class member), and that the per capita amount here is in the middle of the range of approved data breach common fund settlements:

Case Title	Class Size	Settlement Fund	Gross Recovery Amount Per Class Member
In re Equifax Inc. Data Security Breach Litigation	> 147M	$380.5M	$2.59
In re Premera Blue Cross Customer Data Security Breach Litigation	8.86M	$32M	$3.61
Winstead v. ComplyRight, Inc.	665,689	$3.025M	$4.54
Kesner, et al. v. UMass Memorial Health Care, Inc.	209,047	$1.2M	$5.74
Pessia, et al., et al. v. Warren General Hospital	**168,921**	**$1,300,000**	**$7.69**

While the theoretical best-case recovery at trial might be higher, it is highly uncertain. Plaintiffs would bear the burden of proving liability, causation, and damages across a large class, and Defendant would vigorously oppose both class certification and any measure of damages. Accordingly, this Settlement offers a fair and reasonable resolution that delivers real value to the Class now.

3. The Settlement Is Reasonable in Light of the Risks of Litigation.

The third factor asks whether the proposed settlement is reasonable in light of the risks of litigation. Rule 1708(a)(6) requires the Court to consider whether, in light of the complexity of the issues and expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions. Relatedly, Rule 1708(a)(7) requires the Court to consider whether the amount that may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

These factors both support the Reasonableness of the Settlement and class certification here. First, pre-trial litigation would be extensive, with voluminous discovery needed from WGH and any third-party companies that it used in an information technology capacity. Experts will also be required to testify regarding WGH's data security practices, industry standard data security practices, and the ways WGH's data security practices deviated therefrom. Substantial fact-finding would be required into what information was taken, how it was taken, and what impact the taking has had and will have on the Settlement Class. Having already survived preliminary objections, the litigation would require that Plaintiffs proceed with class certification. Assuming a class will be certified, there is a potential for an appeal. Also, dispositive motion practice would follow that would consume several additional months, and all the while the law could change and threaten the

claims. Followed by that, there would be a lengthy trial necessitated by the complexity of the claims and allegations.

In sum, litigation would be complex and expensive, and it could take several years for the Class to see any real recovery, if any at all. This Settlement is particularly strong in light of the risks and delay-related downsides of continued litigation. Accordingly, the anticipated length of the litigation favors approving the Settlement Agreement.

4. The Complexity, Expense, and Likely Duration of the Litigation Support Settlement.

The fourth factor considers the complexity of the issues presented, the resources required to litigate the case to final judgment, and the expected timeline. Data breach litigation remains a developing area of the law, and few, if any, such cases have advanced all the way to trial. Numerous courts have noted that legal and factual uncertainty in this field supports approval of data breach class settlements. *Equifax*, 2020 WL 256132, at *7 (identifying disputed legal issues including duty, causation, class certification, and additional risks related to discovery, juries, and appeals); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 17-md-2807, 2019 WL 3773737, at *6 (N.D. Ohio Aug. 12, 2019) ("[t]he realm of data breach litigation is complex and largely undeveloped. It would present the parties and the Court with novel questions of law"); *Anthem*, 327 F.R.D. at 317–18.

"The reasonableness of a proposed settlement depends in part upon a comparison of the present value of the damages the plaintiffs would recover if successful, discounted by the risks of not prevailing." *Leap v. Yoshida*, No. 14-cv-3650, 2016 WL 1730693, at *8 (E.D. Pa. May 2, 2016) (quoting *Boone v. City of Phila.*, 668 F. Supp. 2d 693, 712 (E.D. Pa. 2009)). In light of the risk that continued litigation could potentially result in no recovery for the Class, the Settlement Benefits obtained under the Settlement are well within the range of reasonableness. There are no

"red flags" in the settlement: (1) all class members stand to receive compensation; (2) the full Settlement Fund will be distributed with no reversion to Defendant; and (3) Plaintiffs' requested attorneys' fees will be fully supported by counsel's lodestar and equal to 35% of the Settlement Fund, for which there is ample support in this jurisdiction and under applicable Third Circuit law, as Plaintiffs detailed in the Motion for Fees.

5. The State of the Proceedings and Amount of Discovery Completed.

The fifth factor considers the stage of the proceedings and the amount of discovery completed at the time of settlement. *Dauphin*, 727 A.2d at 1078. This consideration helps determine whether "sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently." *Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 514 (Pa. Com. Pl. 2002). Here, the parties reached the proposed Settlement after meaningful litigation and investigation. Prior to settlement, Defendant filed preliminary objections, which were partially granted and partially denied by the Court. The parties also engaged in informal discovery, including requests for information regarding the scope and cause of the Data Incident, the number of individuals affected, the categories of compromised data, and WGH's remediation efforts.

This discovery enabled Plaintiffs' counsel to evaluate potential damages, class-wide exposure, and the factual and legal issues central to liability. The parties then participated in a full-day mediation with Bennett Picker, Esq., a highly experienced neutral in complex class action and privacy matters. "A settlement that is the product of arm's-length negotiations conducted by experienced counsel is presumed to be fair and reasonable." *Id*. at 514–15 (citation and internal quotation marks omitted). The agreement was the result of extensive arm's-length negotiations.

6. The Recommendations of Competent and Experienced Class Counsel Support Final Approval.

The sixth factor under Dauphin examines the judgment of counsel in recommending the proposed settlement. Rule 1702(4) requires that the "representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709." Pa. R. Civ. P. 1702(4). In turn, Rule 1709 lists three requirements:

> (1) whether the attorney for the representative parties will adequately represent the interests of the class;
>
> (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and
>
> (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R. Civ. P. 1709. Plaintiffs and proposed Class Counsel meet all of these requirements.

a. Counsel for Plaintiffs have adequately represented the interests of the Class and will continue to do so

Plaintiffs retained qualified attorneys with significant experience in class action litigation in both state and federal courts. Andrew W. Ferich of Ahdoot & Wolfson, PC, and Danielle L. Perry of Mason LLP, and their respective firms are routinely appointed as class counsel in complex, multiparty litigation—including in data privacy litigation—and their firms have a long record of obtaining class relief through approved settlements or, when necessary, trial. Indeed, the Court already appointed them as interim class counsel and again at the preliminary approval stage. Preliminary Approval Motion at Ex. 2, Exs. A-B (Mason and AW firm resumes). The Court is also permitted to presume counsel's adequacy in the absence of any demonstration to the contrary. *Haft v. U.S. Steel Corp.*, 305 Pa.Super. 109, 451 A.2d 445, 448 (Pa. Super. Ct. 1982). For these reasons, the Court should find this factor is met here.

b. There are no conflicts of interest between Plaintiffs and the Class

As with the adequacy of counsel requirement, the Court "'may generally presume that no conflict of interest exists unless otherwise demonstrated.'" *Id.* (quoting *Janicik v. Prudential Ins. Co. of Am.*, 451 A.2d 451, 459 (1982)). Plaintiffs are not aware of any "hidden collusive circumstances," that could pose conflicts of interest between Plaintiffs and Class Members. *Id.* at 448. Plaintiffs and Class Members have aligned interests: they are all victims of the Data Incident and WGH's alleged misconduct. This factor is met.

c. The interests of Class Members have not been harmed by lack of adequate financial resources.

The requirement that the representative plaintiff demonstrate access to adequate financial resources to ensure that interests of the class are not harmed may be met if "the attorney for the class representatives is ethically advancing costs." *Id.*; *see also Janicik*, 451 A.2d at 459–60. That is the case here: Plaintiffs' counsel undertook this litigation pursuant to a standard contingent fee agreement, and up through this point in the litigation, counsel have advanced all costs required to maintain the litigation, such as filing fees, brief printing fees, and mediator fees.

7. The Reaction of the Class Supports Final Approval.

The seventh and final factor under Dauphin considers the response of the class to the proposed settlement. Strong support from the class—measured by the number of objections, opt-outs, and claims filed—provides compelling evidence that the settlement is fair and reasonable.

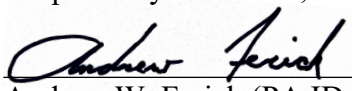
Here, the response from the Class has been overwhelmingly positive. As of this filing, there have been no objections, three opt-outs, and 3,407 claims have been submitted by Class Members seeking relief under the Settlement. These results strongly support final approval. Azari Decl. ¶¶ 27, 29.

V. CONCLUSION

Plaintiffs have negotiated a fair, adequate, and reasonable settlement that guarantees Class Members significant and meaningful relief. The Settlement Agreement is well within the range of, and an initial assessment of both Pa. R. Civ. P. 1702 and the *Dauphin* factors demonstrate that final approval is likely. For these reasons, as expounded on throughout this Brief, Plaintiffs respectfully request this Court certify the Settlement Class for final approval purposes and grant their Unopposed Motion for Final Approval of Class Action Settlement and Motion for Fees.

Dated: April 11, 2025

Respectfully submitted,



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CERTIFICATE OF SERVICE

AND NOW, this 11th day of April, I certify, as counsel for Plaintiffs, that I have served on this date a true and correct copy of the Unopposed Motion for Final Approval of Class Action Settlement, Brief in Support, Proposed Order, and all other supporting documents, upon Defendant Warren General Hospital, via e-mail to their counsel as follows:

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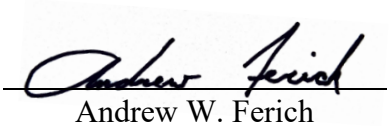
Dated: April 11, 2025



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