

**FILED**  
Superior Court of California  
County of Los Angeles


**DEC 08 2023**

David W. Slayton, Executive Officer/Clerk of Court  
By: N. Navarro, Deputy

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**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

RUDOLPH M. FRANCHI, individually and  
on behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
BARLOW RESPIRATORY HOSPITAL,  
  
Defendant.

Case No.: 22STCV09016  
Consolidated with: 22STCV17107  
  
[~~TENTATIVE~~] ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT  
  
Date: December 8, 2023  
Time: 9:30 a.m.  
Dept.: SSC-17

**I. BACKGROUND**

Plaintiffs Rudolph M. Franchi and Carlos Aragon sue Defendant Barlow  
Respiratory Hospital (“Barlow” or “Defendant”) for claims arising from a cyberattack  
and data breach experienced by Defendant on approximately August 21, 2021 (the

1 “Data Incident”). The Data Incident involved unauthorized actors gaining access to  
2 Barlow’s computer systems and data containing the personally identifying information  
3 (“PII”) and protected health information (“PHI”) of 12,550 individuals. Information  
4 compromised in the Data Incident involves the PII and or PHI of Plaintiffs and  
5 Settlement Class Members, including their first and last names, Social Security  
6 numbers, driver’s license numbers, financial account information, and online account  
7 credentials which Barlow collected and maintained regarding its current and former  
8 employees and patients, including Plaintiffs.

9 Barlow notified approximately 10,761 patients of the Data Incident between  
10 December 2021 and March 2022, and 1,789 employees and physicians between  
11 October 2021 and March 2022. Plaintiffs received their notice letters in or about March  
12 2022.

13 On March 14, 2022, Plaintiff Franchi filed a putative class action complaint  
14 against Defendant, Case No. 22STCV09016 (the “Franchi Action”).

15 On May 23, 2022, Plaintiff Aragon also filed a putative class action against  
16 Defendant, Case No. 22STCV17107 (the “Aragon Action”).

17 On August 3, 2022, the Court entered an Order relating the Franchi Action and  
18 the Aragon Action and consolidating them into the first-filed case, Case No.  
19 22STCV09016. On September 19, 2022, Plaintiffs filed an amended, consolidated  
20 complaint (the “Consolidated Complaint”) in which they asserted claims for: (1)  
21 Negligence; (2) Common Law Invasion of Privacy; (3) Cal. Const. Art. I § I Invasion of  
22 Privacy; (4) Breach of Implied Contract; (5) Violation of California’s Confidentiality of  
23 Medical Information Act (CMIA) Cal. Civ. Code §§ 56 et seq.; (6) Violation of  
24 California’s Consumer Privacy Act (CCPA) Cal. Civ. Code § 1798, et seq.; (7)

1 Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et  
2 seq.; and (8) Declaratory Relief.

3 The parties participated in a mediation before Bennett G. Picker on January 18,  
4 2023, which ultimately resulted in an agreement in principle. The terms of settlement  
5 were negotiated over several weeks and finalized in the Settlement Agreement.

6 Plaintiffs filed their Motion for Preliminary Approval of Settlement and a copy of the  
7 Settlement Agreement with the Court on June 7, 2023, attached to the Declaration of  
8 John J. Nelson (“Nelson Decl.”).

9 On August 24, 2023, the Court issued a “checklist” to the parties pertaining to  
10 deficiencies in the proposed settlement and called the matter for hearing, discussing the  
11 issues set forth in the checklist with counsel. In response, on October 18, 2023, counsel  
12 filed further briefing and an Amended Settlement Agreement, attached to the  
13 Supplemental Declaration of John J. Nelson (“Supp. Nelson Decl.”) as Exhibit A.

14 On November 9, 2023, the Court issued a second “checklist” to the parties  
15 pertaining to remaining issues in the proposed settlement and called the matter for  
16 hearing. On November 28, 2023, counsel filed additional briefing and the Second  
17 Amended Settlement Agreement attached to the Second Supplemental Declaration of  
18 John J. Nelson as Exhibit A. All references below are to that agreement.

19 Now before the Court is Plaintiffs’ motion for preliminary approval of the  
20 settlement. For the reasons set forth below, the Court preliminarily grants approval for  
21 the settlement.

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1 **II. THE TERMS OF THE SETTLEMENT**

2 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

3 “Settlement Class” means all persons residing in the United States whose PII  
4 and/or PHI was potentially compromised in the Data Incident that occurred on or about  
5 August 27, 2021, including, but not limited to, the California Settlement Subclass. The  
6 Settlement Class specifically excludes: (i) Barlow and Barlow’s parents, subsidiaries,  
7 affiliates, officers and directors, and any entity in which Barlow has a controlling  
8 interest; (ii) all individuals who make a timely election to be excluded from this  
9 proceeding using the correct protocol for opting out; (iii) the attorneys representing the  
10 Parties in the Litigation; (iv) all judges assigned to hear any aspect of the Litigation, as  
11 well as their immediate family members; and (v) any person found by a court of  
12 competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or  
13 abetting the Data Incident, or who pleads nolo contendere to any such charge. (¶1.28)

14 “California Settlement Subclass” means all current and former Barlow Hospital  
15 [sic] patients whose PHI was potentially compromised in the Data Incident that  
16 occurred on or about August 27, 2021, and who were residing in the State of California  
17 at the time their PHI was potentially compromised in the Data Incident. The California  
18 Settlement Subclass specifically excludes: (i) Barlow and Barlow’s parents,  
19 subsidiaries, affiliates, officers and directors, and any entity in which Barlow has a  
20 controlling interest; (ii) all individuals who make a timely election to be excluded from  
21 this proceeding using the correct protocol for opting out; (iii) the attorneys representing  
22 the Parties in the Litigation; (iv) all judges assigned to hear any aspect of the Litigation,  
23 as well as their immediate family members; and (v) any person found by a court of  
24 competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or  
25 abetting the Data Incident, or who pleads nolo contendere to any such charge. (¶1.2)

1           “Data Incident” means the ransomware attack suffered by Barlow on or about  
2 August 27, 2021, in which an unauthorized third-party threat actor group uploaded a  
3 virus onto Barlow’s systems, encrypting Barlow’s data, and allegedly accessed the PII  
4 and/or PHI of current and former Barlow patients, employees, and/or physicians.

5 (¶1.10)

6  
7           **B. THE TERMS OF SETTLEMENT**

8           The essential terms are as follows:

- 9           • Expense and Lost-Time Reimbursement: All Settlement Class Members who  
10 submit a Valid Claim using the Claim Form (Exhibit A to the Settlement  
11 Agreement) are eligible to receive reimbursement for the following documented  
12 out-of-pocket losses and lost time, if not already reimbursed through any other  
13 source and caused by the Data Incident, not to exceed three hundred dollars and  
14 no cents (\$300.00) per Settlement Class Member: (i) unreimbursed costs to  
15 obtain credit reports; (ii) unreimbursed fees relating to a credit freeze; (iii)  
16 unreimbursed card replacement fees; (iv) unreimbursed late fees; (v)  
17 unreimbursed over-limit fees; (vi) unreimbursed interest on payday loans taken  
18 as a result of the Data Incident; (vii) unreimbursed bank or credit card fees; (viii)  
19 unreimbursed postage, mileage, and other incidental expenses resulting from  
20 lack of access to an existing account; (ix) unreimbursed costs associated with  
21 credit monitoring or identity theft insurance purchased prior to the Effective  
22 Date, with certification that it was purchased primarily as a result of the Data  
23 Incident; and (x) compensation for attested-to unreimbursed lost time spent  
24 monitoring accounts, reversing fraudulent charges, or otherwise dealing with the  
25 aftermath / clean-up of the breach, at the rate of twenty dollars and no cents

1 (\$20.00) per hour for up to five (5) hours, but only if at least one (1) full hour  
2 was spent. Members of the Settlement Class must attest on the Claim Form to  
3 the time spent. No documentation other than a verified description of their  
4 actions shall be required for members of the Settlement Class to receive  
5 compensation for attested time. The total of all amounts recovered under this ¶  
6 2.1 shall not exceed \$300.00 per Settlement Class Member. (¶2.1)

- 7 • **Extraordinary Expense Reimbursement:** Barlow shall reimburse, as provided for  
8 below, each Settlement Class Member in the amount of his or her proven loss,  
9 but not to exceed five thousand dollars and no cents (\$5,000.00) per claim (and  
10 only one claim per Settlement Class Member), for a monetary out-of-pocket loss  
11 that occurred as a result of the Data Incident if: (a) the loss is an actual,  
12 documented, and unreimbursed monetary loss; (b) the loss was substantially  
13 more likely than not caused by the Data Incident; (c) the loss occurred during the  
14 period from August 27, 2021, through and including the end of the Claims  
15 Deadline (see ¶ 2.4); (d) the loss is not an amount already covered by one or  
16 more of the categories in ¶ 2.1; and (e) the claimant made reasonable efforts to  
17 avoid or seek reimbursement for the loss, including, but not limited to,  
18 exhaustion of all available credit monitoring insurance and identity theft  
19 insurance as required under ¶ 2.4.4. The total of all amounts recovered under this  
20 paragraph shall not exceed \$5,000.00 per Settlement Class Member. Settlement  
21 Class Members with claims under this paragraph may also submit claims for  
22 benefits under ¶ 2.1. (¶2.2)

- 23 • **California Statutory Claim Benefits:** In addition to the above benefits, California  
24 Settlement Subclass Members are eligible for a separate, California statutory  
25 damages award. The amount awarded to California Settlement Subclass

1 Members who submit a Valid Claim shall be one hundred twenty-five dollars  
2 and no cents (\$125.00). To redeem this \$125.00 benefit, California Settlement  
3 Subclass Members must submit a Claim Form and attest that they were a  
4 California resident at the time of the Data Incident about which they were  
5 notified by Barlow. (§2.3)

- 6 • Identity-Theft Protection and Credit Monitoring: Settlement Class Members are  
7 eligible to receive two (2) years of identity-theft protection and credit monitoring  
8 services, which includes three bureau credit monitoring and alerts. This is in  
9 addition to the credit monitoring services previously offered to individuals who  
10 were notified of the Data Incident. Settlement Class Members must affirmatively  
11 request identity-theft protection services by indicating such request on the Claim  
12 Form, and codes will be sent either to an e-mail address provided by the  
13 Settlement Class Members or, if they do not have an e-mail address, mailed to  
14 the address provided on the Claim Form. Protection and monitoring provided  
15 shall include, at a minimum:

- 16 ○ a) Credit monitoring at one of the three major credit reporting agencies:  
17 Equifax, Experian or TransUnion;
- 18 ○ b) Dark web monitoring;
- 19 ○ c) Identity restoration and recovery services;
- 20 ○ d) \$1,000,000 identity theft insurance with no deductible. (§2.4.8)
- 21 ○ Settlement Class Members can enroll for these identity protection and  
22 credit monitoring services whether or not they are eligible for a monetary  
23 recovery under this Settlement. (§2.4.9)
- 24 ○ Plaintiffs' counsel asserts that these services have a value of \$599.76 per  
25 Class Member who avail themselves of that service, for a total value

1            offered to the class of \$7,526,988 (\$599.76 x 12,550 total Class  
2            Members). (Supp. Nelson Decl. ¶11.)

3            • Equitable Terms: In addition to the foregoing settlement benefits, Plaintiffs have  
4            received assurances that Barlow has implemented or will implement certain  
5            reasonable steps to adequately secure its systems and environments, including  
6            the following data security measures: (¶2.8)

- 7            ○ Review of Policies and Procedures. Barlow will periodically review and  
8            revise its policies and procedures addressing data security as reasonably  
9            necessary. (¶2.8.1)
- 10           ○ Vulnerability Assessment. Barlow will agree to implement automated  
11           vulnerability scanning tools that cover its systems and will set policies for  
12           prompt remediation. (¶2.8.2)
- 13           ○ Firewall Implementation. Barlow will agree to place all systems  
14           containing PII behind application firewalls. (¶2.8.3)
- 15           ○ Limit Remote Access. Barlow will agree that no users will be permitted to  
16           remotely access its networks without multi-factor authentication. This  
17           applies to any kind of remote access, including node-on-network and  
18           node-on-node. Barlow will configure all systems to alert on unsuccessful  
19           administrative account logins. (¶2.8.4)
- 20           ○ Implement Password Policies. Barlow will agree to verify that all default  
21           passwords are changed to follow password policies that comply with best  
22           practices. (¶2.8.5)
- 23           ○ Employee Education and Training. Barlow will maintain a program to  
24           educate and train its employees on the importance of the privacy and  
25           security of PII. (¶2.8.6)



1           ○ Plaintiffs’ counsel represents, via Defense counsel, that Defendant spent  
2           approximately \$700,000 on additional hardware and software upgrades,  
3           which does not include time, training and other expenses. (Supp. Nelson  
4           Decl. ¶12.)

5           • Other Payments by Defendant Under the Settlement:

- 6           ○ Up to **\$310,000** for attorney fees and costs (¶7.2);  
7           ○ Up to **\$4,000 total [\$2,000 each]** for service awards to the proposed class  
8           representatives (¶7.3); and  
9           ○ Estimated **\$68,000** for claims administration. (Decl. of Fenwick ¶16.)

10           All costs for notice to the Settlement Class as required under ¶¶ 3.1 and  
11           3.2, and Costs of Claims Administration under ¶¶ 8.1 and 8.2, shall be  
12           paid by Barlow. (¶2.6)

- 13           • Settlement Distribution: Payment of Valid Claims, whether via mailed check or  
14           electronic distribution, shall be made within forty-five (45) days of the Effective  
15           Date (“Initial Payment Date”), or within thirty (30) days of the date that the  
16           claim is approved, whichever is later. (¶8.2) Barlow shall pay the Court-  
17           approved amount of attorneys’ fees, costs, expenses, and service awards to  
18           Representative Plaintiffs to an account established by Proposed Class Counsel  
19           upon the Initial Payment Date, regardless of any appeal that may be filed or  
20           taken by any Settlement Class Member or third party.) (¶7.4)

- 21           • Uncashed Settlement Payment Checks: Cashing a settlement check is a condition  
22           precedent to any Settlement Class Member’s right to receive settlement benefits.  
23           All settlement checks shall be void one hundred eighty (180) days after issuance  
24           and shall bear the language: “This check must be cashed within 180 days, after  
25           which time it is void.” If a check becomes void, the Settlement Class Member

1 shall have until two hundred seventy (270) days after the Initial Payment Date to  
2 request re-issuance. If no request for reissuance is made within this period, the  
3 Settlement Class Member will have failed to meet a condition precedent to  
4 recovery of settlement benefits, the Settlement Class Member's right to receive  
5 monetary relief shall be extinguished, and Barlow shall have no obligation to  
6 make payments to the Settlement Class Member for expense reimbursement  
7 under ¶ 2.1 to ¶ 2.3 or any other type of monetary relief. The same provisions  
8 shall apply to any re-issued check. For any checks that are issued or re-issued for  
9 any reason more than two hundred seventy (270) days from the Initial Payment  
10 Date, requests for re-issuance need not be honored after such checks become  
11 void. (¶10.15)

12  
13 **C. TERMS OF RELEASES**

- 14 • Releases: Upon the Initial Payment Date (as defined in ¶8.2; i.e., within forty-  
15 five (45) days of the Effective Date), each Settlement Class Member, including  
16 Representative Plaintiffs, shall be deemed to have, and by operation of the  
17 Judgment shall have, fully, finally, and forever released, relinquished, and  
18 discharged all Released Claims. Further, upon the Initial Payment Date, and to  
19 the fullest extent permitted by law, each Settlement Class Member, including  
20 Representative Plaintiffs, shall, either directly, indirectly, representatively, as a  
21 member of or on behalf of the general public or in any capacity, be permanently  
22 barred from commencing, prosecuting, or participating in any recovery in any  
23 action in this or any other forum (other than participation in the settlement as  
24 provided herein) in which any Released Claim is asserted. (¶6.1)

- 1           ○ All Settlement Class Members who fail to timely submit a claim for any  
2           benefits hereunder within the time frames set forth herein, or such other  
3           period as may be ordered by the Court, or otherwise allowed, shall be  
4           forever barred from receiving any payments or benefits pursuant to the  
5           settlement set forth herein, but will in all other respects be subject to, and  
6           bound by, the provisions of the Settlement Agreement, the releases  
7           contained herein and the Judgment. (¶8.3)
- 8           ○ “Released Claims” shall collectively mean any and all claims, causes of  
9           action, damages, and penalties that have been alleged in the operative  
10          Consolidated Complaint on behalf of any Settlement Class Member, or  
11          that could have been alleged on behalf of any Settlement Class Member  
12          because they reasonably arise out of the same set of facts as alleged in the  
13          operative Consolidated Complaint, including any claims that a Settlement  
14          Class Member is or in the future could be damaged based on access to  
15          their PII or PHI as a result of the Data Incident, including claims for  
16          Negligence, Common Law Invasion of Privacy, Cal. Const. Art. 1 § 1  
17          Invasion of Privacy, Breach of Implied Contract, Violations of the  
18          California Confidentiality of Medical Information Act (Cal. Civ. Code §  
19          56, et seq.), Violations of the California Consumer Privacy Act (Cal. Civ.  
20          Code § 1798, et seq.), Violations of the California Unfair Competition  
21          Law (Cal. Bus. & Prof. Code § 17200, et seq.), and Declaratory Relief.  
22          Released Claims shall not include the right of any Settlement Class  
23          Member or any of the Released Persons to enforce the terms of the  
24          settlement contained in this Settlement Agreement, and shall not include  
25

1 the claims of Settlement Class Members who have timely excluded  
2 themselves from the Settlement Class. (§1.23)

- 3 • Upon the Initial Payment Date, Barlow shall be deemed to have, and by  
4 operation of the Judgment shall have, fully, finally, and forever released,  
5 relinquished, and discharged, Representative Plaintiffs, each and all of the  
6 Settlement Class Members, Proposed Class Counsel and Plaintiffs' Counsel, of  
7 all claims, based upon or arising out of the institution, prosecution, assertion,  
8 settlement, or resolution of the Litigation or the Released Claims, except for  
9 enforcement of the Settlement Agreement. Any claims based upon or arising out  
10 of any debtor-creditor, employment, contractual, or other business relationship  
11 with such Persons that are not based upon or do not arise out of the institution,  
12 prosecution, assertion, settlement, or resolution of the Litigation or the Released  
13 Claims are specifically preserved and shall not be affected by the preceding  
14 sentence. (§6.2) Notwithstanding any term herein, neither Barlow nor its Related  
15 Parties shall have or shall be deemed to have released, relinquished or  
16 discharged any claim or defense against any Person other than Representative  
17 Plaintiffs, each and all of the Settlement Class and California Settlement  
18 Subclass members, and Proposed Settlement Class Counsel. (§7)
- 19 • "Released Persons" means Barlow, its Related Entities, and each of its past or  
20 present parents, subsidiaries, divisions, and related or affiliated entities, and each  
21 of their respective predecessors, successors, directors, officers, employees,  
22 principals, agents, attorneys, insurers, and reinsurers. (§1.24)
  - 23 ○ "Related Entities" means Barlow's past or present parents, subsidiaries,  
24 divisions, and related or affiliated entities, and each of Barlow's  
25 predecessors, successors, directors, officers, employees, principals,

1 agents, attorneys, insurers, and reinsurers, and includes, without  
2 limitation, any Person related to any such entity who is, was or could have  
3 been named as a defendant in any of the actions in the Litigation, other  
4 than any Person who is found by a court of competent jurisdiction to be  
5 guilty under criminal law of initiating, causing, aiding, or abetting the  
6 criminal activity occurrence of the Data Incident or who pleads nolo  
7 contendere to any such charge. (¶1.22)

- 8 • The releases are effective on the Initial Payment Date (¶6.1), which is to occur  
9 within forty-five (45) days of the Effective Date (¶8.2).

#### 11 **D. SETTLEMENT ADMINISTRATION**

- 12 • The proposed Settlement Administrator is Kroll Settlement Administration, which  
13 has provided evidence that no counsel are affiliated with it and that it has adequate  
14 procedures in place to safeguard the data and funds to be entrusted to it. See Decl.  
15 of Scott M. Fenwick attached as Exhibit J to the Supp. Decl. of John J. Nelson  
16 filed October 18, 2023 (“Fenwick Decl.”).
- 17 • Settlement administration costs are estimated to be \$68,000. (Fenwick Decl.  
18 ¶16.) All costs for notice to the Settlement Class as required under ¶¶ 3.1 and  
19 3.2, and Costs of Claims Administration under ¶¶ 8.1 and 8.2, shall be paid by  
20 Barlow. (¶2.6)
- 21 • Notice: The manner of giving notice is described below.
- 22 • Claims Process: Settlement Class Members seeking reimbursement under ¶¶ 2.1  
23 or 2.2, and California Settlement Subclass Members seeking reimbursement  
24 under ¶2.3, must complete and submit a valid, written Claim Form to the Claims  
25 Administrator, postmarked on or before the ninetieth (90th) day after the

1 deadline for the completion of Notice to Settlement Class Members as set forth  
2 in ¶ 3.2 (the “Claims Deadline”).

3 ○ “Claim Form” means the form that the Settlement Class Member a must  
4 complete and submit on or before the Claim Deadline in order to be  
5 eligible for the benefits described. The Claim Form shall be reformatted  
6 by the Claims Administrator in order to permit the option of filing of  
7 claims electronically. The Claim Form shall require a sworn signature or  
8 electronic verification under penalty of perjury, but shall not require a  
9 notarization. (¶1.7)

10 ○ The Claim Form must be verified by the Settlement Class Member with a  
11 statement that his or her claim is true and correct, to the best of his or her  
12 knowledge and belief, and is being made under penalty of perjury.

13 Notarization shall not be required. The Settlement Class Member must  
14 plausibly attest that the out-of-pocket expenses and charges claimed were  
15 both actually incurred and arose from the Data Incident. Failure to  
16 provide supporting attestation and documentation as requested on the  
17 Claim Form, and after a reasonable opportunity to cure after notice from  
18 the Claims Administrator (as described in ¶2.6.2), shall result in denial of  
19 a claim. Disputes as to claims submitted under this paragraph are to be  
20 resolved pursuant to the provisions stated in ¶ 2.6. (¶2.4.2)

21 ○ No payment shall be made for emotional distress, personal/bodily injury,  
22 or punitive damages, as all such amounts are not recoverable pursuant to  
23 the terms of the Settlement Agreement. (¶2.4.6)

1           ○ Plaintiffs’ counsel estimates a claims rate of approximately 2-5%, based  
2           on the realized claims rates of recent data breach class actions. (Supp.  
3           Nelson Decl. ¶19.)

4           • Opt Out/Objection Dates:

5           ○ The “Notice Commencement Date” means the date by which notice of  
6           settlement to Settlement Class Members shall commence and shall be thirty  
7           (30) business days after the entry of the Preliminary Approval Order.  
8           (¶1.16)

9           ○ “Opt-Out Date” means the date by which requests for exclusion from the  
10          Settlement Class must be postmarked in order to be effective and timely.  
11          The postmark date shall constitute evidence of the date of mailing for these  
12          purposes. The Opt-Out Date shall be ninety (90) days after the Notice  
13          Commencement Date. (¶1.18)

14          ○ “Objection Date” means the date by which Settlement Class Members must  
15          mail to Class Counsel and counsel for Barlow their written objection to the  
16          Settlement for that objection to be effective. The postmark date shall  
17          constitute evidence of the date of mailing for these purposes. The Objection  
18          Date shall be ninety (90) days after the Notice Commencement Date.  
19          (¶1.17)

20                 ▪ Each Settlement Class Member desiring to object to the Settlement  
21                 Agreement shall submit a timely written notice of his or her  
22                 objection by the Objection Date or may orally object at the Final  
23                 Approval Hearing. (¶5.1) Notwithstanding the foregoing, any  
24                 Settlement Class Member who timely submits a written notice of  
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1 objection or attends the Final Approval Hearing may so state their  
2 objection at that time, subject to the Court's approval. (*Ibid.*)

- 3 ■ Although the Court's stated policy is to hear from any class member  
4 who attends the Final Approval Hearing and asks to speak regarding  
5 his or her objection to the settlement, the Parties reserve the right to  
6 challenge the objection of any Settlement Class Member who fails to  
7 comply with the requirements for objecting in ¶ 5.1 as having  
8 waived and forfeited any and all rights he or she may have to appear  
9 separately and/or to object to the Settlement Agreement, and assert  
10 that such Settlement Class Member is bound by all the terms of the  
11 Settlement Agreement and by all proceedings, orders and judgments  
12 in the Litigation. (¶5.2)

- 13 ○ In the event that within ten (10) days after the Opt-Out Date as approved by  
14 the Court, there have been more than 250 timely and valid Opt-Outs  
15 submitted, Barlow may, by notifying Proposed Class Counsel in writing,  
16 void this Settlement Agreement. (¶4.3)

- 17 ● Notice of Final Judgment will be posted on the Settlement Administrator's website  
18 (¶3.2.8).

### 19 20 **III. SETTLEMENT STANDARDS AND PROCEDURE**

21 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise  
22 of an entire class action, or of a cause of action in a class action, or as to a party,  
23 requires the approval of the court after hearing." "Any party to a settlement agreement  
24 may serve and file a written notice of motion for preliminary approval of the settlement.  
25 The settlement agreement and proposed notice to class members must be filed with the



1 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of  
2 Court, rule 3.769(c).

3 “In a class action lawsuit, the court undertakes the responsibility to assess  
4 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or  
5 dismissal of a class action. The purpose of the requirement [of court review] is the  
6 protection of those class members, including the named plaintiffs, whose rights may not  
7 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*  
8 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal  
9 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,  
10 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)  
11 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement  
12 agreement to the extent necessary to reach a reasoned judgment that the agreement is  
13 not the product of fraud or overreaching by, or collusion between, the negotiating  
14 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
15 concerned.”] [internal quotation marks omitted].

16 “The burden is on the proponent of the settlement to show that it is fair and  
17 reasonable. However, “a presumption of fairness exists where: (1) the settlement is  
18 reached through arm's-length bargaining; (2) investigation and discovery are sufficient  
19 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
20 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
21 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 ].

22 Notwithstanding an initial presumption of fairness, “the court should not give  
23 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
24 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a  
25 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*

1 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class  
2 members, the court must independently and objectively analyze the evidence and  
3 circumstances before it in order to determine whether the settlement is in the best  
4 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4<sup>th</sup> at 130.  
5 In that determination, the court should consider factors such as “the strength of  
6 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,  
7 the risk of maintaining class action status through trial, the amount offered in  
8 settlement, the extent of discovery completed and stage of the proceedings, the  
9 experience and views of counsel, the presence of a governmental participant, and the  
10 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of  
11 factors is not exclusive and the court is free to engage in a balancing and weighing of  
12 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
13 245.

14 At the same time, “[a] settlement need not obtain 100 percent of the damages  
15 sought in order to be fair and reasonable. Compromise is inherent and necessary in the  
16 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is  
17 substantially narrower than it would be if the suits were to be successfully litigated,’  
18 this is no bar to a class settlement because ‘the public interest may indeed be served by  
19 a voluntary settlement in which each side gives ground in the interest of avoiding  
20 litigation.’” *Id.* at 250.

#### 21 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

##### 22 **A. THERE IS A PRESUMPTION OF FAIRNESS**

23  
24  
25 The settlement is entitled to a presumption of fairness for the following reasons:

1  
2 **1. The settlement was reached through arm’s-length bargaining**

3 On January 18, 2023, the parties participated in a mediation before Bennett G.  
4 Picker of Stradley Ronon. (Nelson Decl. ¶28; Supp. Nelson Decl. ¶5.) The terms of  
5 settlement were further negotiated over several weeks and finalized in the Settlement  
6 Agreement on May 26, 2023. (Nelson Decl. ¶29.)

7  
8 **2. The investigation and discovery were sufficient**

9 Plaintiffs’ counsel represents that in anticipation of the mediation, Barlow  
10 produced informal discovery to Plaintiffs including information about the Data  
11 Incident, Defendant’s data security practices, the number of Class Members whose  
12 personal information was potentially implicated in the Data Incident, the types of  
13 personal information involved in the Data Breach, and the nature and breadth of the  
14 Data Incident. (*Id.* at ¶26.) Counsel represents that confirmatory discovery produced  
15 by Barlow identified the number of affected individuals, the numbers of California  
16 residents affected, and the precise categories of PII or PHI compromised in the Data  
17 Breach including the number of residents of each state whose information was  
18 compromised. Counsel further represents that Barlow also confirmed the number of  
19 notices issued to affected persons and confirmed that contact information for the  
20 Settlement Class is readily identifiable from its own records. (*Id.* at ¶27.)

21 As to the discovery undertaken, Plaintiffs’ counsel further represents that on or  
22 around December 9, 2022, Plaintiffs submitted informal discovery requests to  
23 Defendant pursuant to California Evidence Code § 1152 requesting information about  
24 the Data Breach. (Supp. Nelson Decl. ¶7.a) Specifically, Plaintiffs requested  
25 information about: the nature and seriousness of the breach, Defendant’s response to

1 the Data Breach, the information involved, the steps Defendant has taken to fix their  
2 system, as well as any willful acts on the part of Defendant. On January 5, 2023,  
3 Defendant provided Plaintiffs with its report to the Office of Civil Rights which  
4 constituted over 440 pages of confidential documents responding to these requests.  
5 Plaintiffs' counsel asserts that their review of those documents informed Plaintiffs'  
6 settlement posture. (*Ibid.*) This level of investigation is sufficient to value the case for  
7 settlement purposes.

### 8 9 **3. Counsel is experienced in similar litigation**

10 Class Counsel represent that they are experienced in class action litigation,  
11 including data breach and/or data privacy cases. (Supp. Nelson Decl. ¶13; see also  
12 Declarations of Francesca Kester Burne, Dylan J. Gould, Bryan L. Bleichner, M.  
13 Anderson Berry, and Gregory Haroutunian, attached as Exhibits E to I to the Supp. Decl.  
14 of Nelson.)

### 15 16 **4. Percentage of the class objecting**

17 This cannot be determined until the final fairness hearing. Weil & Brown et al.,  
18 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 ["Should  
19 the court receive objections to the proposed settlement, it will consider and either sustain  
20 or overrule them at the fairness hearing."].

### 21 22 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 23 **FAIR, ADEQUATE, AND REASONABLE**

24 Notwithstanding a presumption of fairness, the settlement must be evaluated in its  
25 entirety. The evaluation of any settlement requires factoring unknowns. "As the court

1 does when it approves a settlement as in good faith under Code of Civil Procedure  
 2 section 877.6, the court must at least satisfy itself that the class settlement is within the  
 3 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)  
 4 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to  
 5 consider and weigh the nature of the claim, the possible defenses, the situation of the  
 6 parties, and *the exercise of business judgment* in determining whether the proposed  
 7 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.  
 8 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

9  
 10 **1. Amount Offered in Settlement**

11 The most important factor is the strength of the case for plaintiffs on the merits,  
 12 balanced against the amount offered in settlement.” (*Id.* at 130.)

13 Class Counsel estimated Defendant’s maximum exposure at \$13,653,500 and  
 14 realistic exposure at \$795,427, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
CCPA Claim	\$5,720,250.00	\$762,700.00
CMIA Claim	\$7,627,000.00	\$7,627.00
Negligence, Breach of Contract, Invasion of Privacy Claims	\$306,250.00	\$25,100.00
<b>Total</b>	<b>\$13,653,500.00</b>	<b>\$795,427.00</b>

22 (Supp. Nelson Decl. ¶4.)

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## 2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].) Further, the settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and adequate. (Nelson Decl. ¶19.)

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## 3. The Releases Are Limited

The Court has reviewed the Releases to be given by the absent class members and the named plaintiffs. The releases, described above, are tailored to the pleadings and release only those claims in the pleadings. There is no general release by the absent class.

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## 4. Conclusion

Class Counsel estimated Defendant’s maximum exposure at \$13,653,500 and realistic exposure at \$795,427. Given the uncertain outcomes, including the potential that the class might not be certified, that liability is a contested issue, and that proof of the fact

1 of damages on a classwide basis may prove difficult, the settlement is within the  
2 “ballpark of reasonableness.”

### 3 4 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

5 A detailed analysis of the elements required for class certification is not required,  
6 but it is advisable to review each element when a class is being conditionally certified.

7 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party  
8 advocating class treatment must demonstrate the existence of an ascertainable and  
9 sufficiently numerous class, a well-defined community of interest, and substantial  
10 benefits from certification that render proceeding as a class superior to the alternatives.”

11 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

#### 12 **1. The Proposed Class is Numerous**

13 There are approximately 12,550 Class Members, including 7,627 California  
14 Subclass Members. (Nelson Decl. ¶34.) Numerosity is established. *Franchise Tax Bd.*  
15 *Limited Liability Corp. Tax Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that  
16 the “*requirement that there be many parties to a class action is liberally construed,*”  
17 and citing examples wherein classes of as little as 10, *Bowles v. Superior Court* (1955)  
18 44 Cal.2d 574, and 28, *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

#### 19 **2. The Proposed Class Is Ascertainable**

20 “A class is ascertainable, as would support certification under statute  
21 governing class actions generally, when it is defined in terms of objective  
22 characteristics and common transactional facts that make the ultimate identification  
23 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*  
24 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

1 The class is defined above. Class Members are ascertainable through  
2 Defendant's records. (Nelson Decl. ¶34.)

### 3 **3. There Is A Community of Interest**

4 "The community of interest requirement involves three factors: '(1) predominant  
5 common questions of law or fact; (2) class representatives with claims or defenses typical  
6 of the class; and (3) class representatives who can adequately represent the class.'"

7 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

8 As to predominant questions of law or fact, Plaintiffs contend that each claim of  
9 the Settlement Class turns on the question of whether Barlow's data security protocols  
10 were adequate to protect Settlement Class Members' PII and/or PHI. Plaintiffs contend  
11 that analysis of this question begets interrelated questions that are also common across  
12 the Settlement Class, including what steps Barlow took to identify and respond to  
13 security threats, whether Barlow complied with industry norms and applicable  
14 regulations, whether and when Barlow knew or should have known of the Data Breach,  
15 and whether the statutes asserted in the Consolidated Complaint have been violated.

16 (Memo ISO Prelim at 24:7-23.)

17 As to typicality, Plaintiffs assert that the typicality requirement is satisfied because  
18 (i) Barlow's alleged conduct, stemming from allegedly inadequate data security practices,  
19 similarly affected Plaintiffs and each member of the proposed Settlement Class; (ii) each  
20 member of the Settlement Class had their PII and/or PHI exposed in the same Data  
21 Breach; and (iii) Plaintiffs and the Settlement Class experienced similar harms as a result  
22 of the same Data Breach. (*Id.* at 24:25-25:5.)

23 As to adequacy, each Plaintiff represents that he has participated in the litigation  
24 and is aware of the risks and duties of serving as class representative. (Declaration of  
25



1 Carlos Aragon ¶¶8-14; Declaration of Rudolph Franchi ¶¶8-14.) As previously stated,  
2 Class Counsel have experience in class action litigation.

3  
4 **4. Substantial Benefits Exist**

5 Given the relatively small size of the individual claims, a class action is superior to  
6 separate actions by the class members.

7  
8 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS  
9 OF DUE PROCESS**

10 The purpose of notice is to provide due process to absent class members. A practical  
11 approach is required, in which the circumstances of the case determine what forms of  
12 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California  
13 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the  
14 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the  
15 stake of the individual class members; (4) the cost of notifying class members; (5) the  
16 resources of the parties; (6) the possible prejudice to class members who do not receive  
17 notice; and (7) the res judicata effect on class members.

18 **1. Method of class notice**

19 Notice shall be provided in English to Class Members as follows, and shall be  
20 subject to approval by the Court as meeting constitutional due process requirements  
21 (the "Notice Plan"): (¶3.2)

22 Barlow will provide the list of Settlement Class Members with available last  
23 known mailing addresses and email address (if any) from its system to the Claims  
24 Administrator within ten (10) business days of the Preliminary Approval Order. (¶3.2.1)  
25

1 Notice by Mail and Email: Claims Administrator will work with Class Counsel  
2 and counsel for Barlow to format the Short Notice for mailing and emailing. Upon  
3 approval, Claims Administrator will coordinate the preparation of Short Notice proofs  
4 for Class Counsel and counsel for Barlow to review and approve. (§3.2.2)

5 On the Notice Commencement Date, Claims Administrator will commence  
6 mailing the Short Notice to all Settlement Class Members and emailing the Short  
7 Notice to those Settlement Class Members with a known email address. (§3.2.3) The  
8 “Notice Commencement Date” means the date by which notice of settlement to  
9 Settlement Class Members shall commence and shall be thirty (30) business days after  
10 the entry of the Preliminary Approval Order. (§1.16)

11 Short Notices by mail will be sent by First-Class Mail to all physical addresses as  
12 noted above. In preparation for the notice mailing, within twenty (20) business days of  
13 the Preliminary Approval Order, Claims Administrator will send the Settlement Class  
14 Member data through the United States Postal Service’s (“USPS”) National Change of  
15 Address (“NCOA”) database. The NCOA process will provide updated addresses for  
16 Settlement Class Members who have submitted a change of address with the USPS in  
17 the last forty eight (48) months, and the process will also standardize the addresses for  
18 mailing. Claims Administrator will then prepare a mail file of Settlement Class  
19 Members that are to receive the notice via First Class Mail. (§3.2.4)

20 Short Notices returned by the USPS with a forwarding address will be  
21 automatically re-mailed to the updated address provided by the USPS. (§3.2.5)

22 At the direction of Class Counsel and counsel for Barlow, Short Notices returned  
23 by the USPS undeliverable as addressed without a forwarding address will be sent  
24 through an advanced address search process in an effort to find a more current address  
25 for the record. If an updated address is obtained through the advanced search process,

1 Claims Administrator will re-mail the notice to the updated address. The deadlines for  
2 the Objection Date and Opt-Out Date account for thirty (30) extra days for that Person  
3 to mail to Class Counsel and counsel for Barlow their written objection to the  
4 Settlement for that objection to be effective. The postmark date shall constitute  
5 evidence of the date of mailing for these purposes. (§3.2.6)

6 Short Notices returned by email will be automatically mailed to the Person's  
7 known physical address, and will follow the same mailing process discussed in §§ 3.2.1  
8 through 3.2.6. The deadlines for the Objection Date and Opt-Out Date account for thirty  
9 (30) extra days for that Person to mail to Class Counsel and counsel for Barlow their  
10 written objection to the Settlement for that objection to be effective. The postmark date  
11 shall constitute evidence of the date of mailing for these purposes. (§3.2.7)

12 Settlement Website: Claims Administrator will work with Class Counsel and  
13 counsel for Barlow to create a dedicated settlement website. The settlement website  
14 URL will be determined and approved by Class Counsel and counsel for Barlow, and  
15 will be accessible to the Settlement Class Members on the Notice Commencement  
16 Date. The settlement website will contain a summary of the Settlement, will allow  
17 Settlement Class Members to contact the Claims Administrator with any questions or  
18 changes of address, provide notice of important dates such as the Final Approval  
19 Hearing, Claims Deadline, Objection Date, and Opt-Out Date, and provide Settlement  
20 Class Members who file Claim Forms online the opportunity to select an electronic  
21 payment method or payment by check. The settlement website will also contain  
22 relevant case documents including the Consolidated Complaint, the Settlement  
23 Agreement, the Long Notice, the Claim Form, and the Preliminary Approval Order.  
24 (§3.2.8)

1 Toll-Free Number: Claims Administrator will also establish a toll-free number  
2 for the settlement, which will be available to the Settlement Class Members on the  
3 Notice Commencement Date. The toll-free number will allow Settlement Class  
4 Members to call and obtain information about the settlement through an Interactive  
5 Voice Response System and live operators. (§3.2.9)

6 Reminder Notices: As required under ¶ 1.25, fourteen (14) days before the Claim  
7 Deadline, Claims Administrator will send Reminder Notices. The Reminder Notice will  
8 be sent to Settlement Class Members who have not yet submitted a Claim Form and  
9 have not opted out of the settlement. The Reminder Notice will be sent to all Settlement  
10 Class Members with a known email address and mailed to the remaining Settlement  
11 Class Members for whom no known or valid email addresses exist. (§3.2.10)

12 The Notice and Claim Form approved by the Court may be adjusted by the  
13 Claims Administrator, respectively, in consultation and agreement with the Settling  
14 Parties, as may be reasonable and not inconsistent with such approval. Within thirty  
15 (30) business days after the entry of the Preliminary Approval Order and to be  
16 substantially completed not later than forty-five (45) business days after entry of the  
17 Preliminary Approval Order, and subject to the requirements of this Agreement and the  
18 Preliminary Approval Order, the Claims Administrator will provide notice to the  
19 Settlement Class via the Notice Plan. (§3.2.11)

## 20 **2. Content of class notice.**

21 Copies of the proposed claim form and class notices are attached to the  
22 Settlement Agreement. The notice includes information such as: a summary of the  
23 litigation; the nature of the settlement; the terms of the settlement agreement; the  
24 maximum deductions to be made from the gross settlement amount (i.e., attorney fees  
25 and costs, the enhancement award, and claims administration costs); the procedures and

1 deadlines for participating in, opting out of, or objecting to, the settlement; the  
2 consequences of participating in, opting out of, or objecting to, the settlement; and the  
3 date, time, and place of the final approval hearing. See Cal Rules of Court, rule  
4 3.766(d). Notice is to be given in English only as Plaintiffs' counsel asserts that  
5 Defense counsel represented that Barlow patients were initially provided intake and  
6 other medical forms and disclosures in the English language and that English is the  
7 predominant language of its patient population and employees. (Supp. Nelson Decl.  
8 ¶17.)

### 9 **3. Settlement Administration Costs**

10 Settlement administration costs are <sup>estimated</sup> capped at **\$68,000**, including the cost of  
11 notice (Fenwick Decl. ¶16). All costs for notice to the Settlement Class as required  
12 under ¶¶ 3.1 and 3.2, and Costs of Claims Administration under ¶¶ 8.1 and 8.2, shall be  
13 paid by Barlow. (¶2.6) Prior to the time of the final fairness hearing, the settlement  
14 administrator must submit a declaration attesting to the total costs incurred and  
15 anticipated to be incurred to finalize the settlement for approval by the Court.

### 17 **E. ATTORNEY FEES AND COSTS**

18 California Rule of Court, rule 3.769(b) states: "Any agreement, express or  
19 implied, that has been entered into with respect to the payment of attorney fees or the  
20 submission of an application for the approval of attorney fees must be set forth in full in  
21 any application for approval of the dismissal or settlement of an action that has been  
22 certified as a class action."

23 Ultimately, the award of attorney fees is made by the court at the fairness  
24 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*  
25 *v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*

1 (2000) 82 Cal.App.4<sup>th</sup> 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4<sup>th</sup> 1122,  
2 1132-1136. In common fund cases, the court may use the percentage method. If  
3 sufficient information is provided a cross-check against the lodestar may be conducted.  
4 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 503. Despite any  
5 agreement by the parties to the contrary, “the court ha[s] an independent right and  
6 responsibility to review the attorney fee provision of the settlement agreement and  
7 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*  
8 *Telephone Company* (2004) 118 Cal.App.4<sup>th</sup> 123, 128.

9 The question of class counsel’s entitlement to **\$310,000** in attorney fees and  
10 costs will be addressed at the final fairness hearing when class counsel brings a noticed  
11 motion for attorney fees. If a lodestar analysis is requested class counsel must provide  
12 the court with current market tested hourly rate information and billing information so  
13 that it can properly apply the lodestar method and must indicate what multiplier (if  
14 applicable) is being sought. Class counsel should also be prepared to justify the costs  
15 sought by detailing how they were incurred.

16 Fee Split: Plaintiffs’ counsel represents that they have no formal fee  
17 arrangement amongst themselves and counsel will be paid a portion of any attorney’s  
18 fees awarded by the Court determined by their reasonable hourly rate multiplied by the  
19 number of hours committed to the case, subject to Court approval. Plaintiff Carlos  
20 Aragon represented that he approves this method of fee distribution in writing on  
21 September 28, 2023. Plaintiff Rudolph Franchi approved this method of fee  
22 distribution in writing on October 18, 2023. (Supp. Nelson Decl. ¶23.)

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1           **F.     SERVICE AWARDS**

2           The Settlement Agreement provides for a service award of up to **\$2,000 each** for  
3 the class representatives (§7.3). Trial courts should not sanction enhancement awards  
4 of thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’  
5 hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity,  
6 in the form of quantification of time and effort expended on the litigation, and in the  
7 form of reasoned explanation of financial or other risks incurred by the named  
8 plaintiffs, is required in order for the trial court to conclude that an enhancement was  
9 ‘necessary to induce [the named plaintiff] to participate in the suit . . . .’” *Clark v.*  
10 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and  
11 ellipsis in original.

12           The Court will decide the issue of the enhancement award at the time of final  
13 approval.

14  
15           **V.     CONCLUSION AND ORDER**

16           The Court hereby:

- 17           (1) Grants preliminary approval of the settlement as fair, adequate, and  
18                 reasonable;
- 19           (2) Grants conditional class certification;
- 20           (3) Appoints Rudolph M. Franchi and Carlos Aragon as Class Representatives;
- 21           (4) Appoints M. Anderson Berry and Gregory Haroutunian of Clayeo C. Arnold,  
22                 Professional Law Corp.; Bryan L. Bleichner of Chestnut Cambronne PA;  
23                 Dylan J. Gould of Markovits, Stock & DeMarco, LLC; John J. Nelson of  
24                 Milberg Coleman Bryson Phillips Grossman, PLLC; and Francesca Kester of  
25                 Morgan & Morgan Complex Litigation Group as Class Counsel;

1 (5) Appoints Kroll Settlement Administration LLC as Settlement Administrator;

2 (6) Approves the proposed notice plan; and

3 (7) Approves the proposed schedule of settlement proceedings as follows:

- 4 • Preliminary approval hearing: December 8, 2023
- 5 • Deadline for Defendant to provide class data to settlement administrator:  
6 December 22, 2023 (within ten (10) business days of the Preliminary Approval  
7 Order)
- 8 • Deadline for settlement administrator to mail notices: January 24, 2024 (within  
9 thirty (30) business days after the entry of the Preliminary Approval Order)
- 10 • Deadline for class members to opt out: April 23, 2024 (90 days after the Notice  
11 Commencement Date)
- 12 • Deadline for class members to object: April 23, 2024 (90 days after the Notice  
13 Commencement Date)
- 14 • Deadline for class counsel to file motion for final approval:  
15 5/15, 2024 (16 court days prior to final fairness hearing)
- 16 • Final fairness hearing: 6/7, 2024, at 9:00 a.m.

17  
18 Dated: 12/8/23

Maren E. Nelson

19 MAREN E. NELSON

20 Judge of the Superior Court  
21  
22  
23  
24  
25