UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: MOVEIT CUSTOMER DATA SECURITY BREACH LITIGATION	MDL No. 1:23-md-03083-ADB-PGL
This Document Relates To: 1:23-cv-13014-ADB 1:23-cv-13015-ADB 1:23-cv-13026-ADB 1:23-cv-13019-ADB 1:23-cv-13018-ADB 1:23-cv-13020-ADB 1:23-cv-12524-ADB 1:23-cv-13025-ADB 1:23-cv-12736-ADB 1:24-cv-10031-ADB 1:23-cv-13077-ADB	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF PROPOSED AMENDED CLASS ACTION SETTLEMENT

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INTRODUCTION

Plaintiffs,[1] on behalf of themselves and all others similarly situated, respectfully move this Court, pursuant to Rule 23(e), for final approval of the proposed Amended Class Action Settlement Agreement and Release ("Settlement," "Settlement "Agreement," "SAR," or "Amended Settlement") with Arietis Health LLC ("Arietis Health" or "Defendant").[2] For the reasons set forth herein, final approval should be granted because the Settlement provides substantial relief for the Settlement Class, including: reimbursement of out-of-pocket losses; reimbursement for time spent; medical data and credit monitoring services; and identity theft protection services. The Settlement's terms are well within the range of reasonableness and granting final approval is consistent with applicable law.

On December 9, 2024, the Court issued an amended order granting preliminary approval of the Settlement. ECF No. 1300. Pursuant to the Court's Amended Preliminary Approval Order, Notice was effectuated to the Settlement Class, notifying them of the proposed Settlement, as well as CAFA Notice to the Attorney General of the U.S., the Attorneys General of each of the 50 states, and all other required recipients. *See* Declaration of Cameron R. Azari ("Azari Decl.") ¶ 8. Thus far, the Notice results have been overwhelmingly positive. To date, 1,943,740 of 1,967,908 Settlement Class Members have received direct notice, a notice rate of approximately 98%. Azari Decl. ¶ 18. Thus far, no Settlement Class Members have objected to the Settlement and only thirty-four (34) have opted out. Azari Decl. ¶ 22. As detailed below, the Settlement is an excellent result

[1] "Plaintiffs" is defined herein to include individual plaintiffs Danielle Schafer, Eliot Frankenberger, Gina Sligh, Charles Gentry, Robbin Zeigler, Kevan Seidner, Judy Paynter, Keith Sennefelder, David L. Pratt, Joyce Oguin, Timothy Hayden, Ahmad Hakemi, and Don Swekoski, Jr. (each Plaintiff also serving as a "Settlement Class Representative").

[2] Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the proposed Amended Class Action Settlement Agreement and Release, ECF No. 1294-1.

for the Settlement Class, the Court should find that the Settlement is fair, reasonable, and adequate, and the Court should therefore grant final approval of the Settlement.

BACKGROUND

I. History of the Litigation

Plaintiffs' claims against Arietis Health LLC arise out of a security incident stemming, in part, from a vulnerability in MOVEit Transfer. Compl. ¶ 7.[3] MOVEit Transfer is a subscription-based managed file transfer application developed and licensed by Progress Software Corporation ("Progress") and used by numerous commercial and government entities, including Arietis Health, to transfer large data files. *Id.* ¶ 30; ECF No. 908, ¶¶ 11-12. Between May 27, 2023, and May 31, 2023, the CL0P Ransomware Gang exploited a vulnerability in the MOVEit Transfer application. ECF No. 908, ¶¶ 90-155. CL0P used the MOVEit vulnerability to escalate user privileges, gain unauthorized access to customers' MOVEit Transfer environments, and access, copy, and exfiltrate the sensitive information stored there (the "MOVEit Security Incident "). ECF No. 908, ¶¶ 96-153. Shortly after exploiting the MOVEit Transfer vulnerability, CL0P threatened to name and publish the leaked data of any organizations that did not respond to its ransom demands. ECF No. 908, ¶¶ 175-79, 207-08. After the expiration of CL0P's ransom demands, CL0P began leaking links to the stolen information on its dark web leak site. ECF No. 908, ¶¶ 180-86, 209-14.

Arietis Health is a technology company that provides data-analytics, automation, and business-intelligence services to healthcare providers in order for the providers to optimize their revenue cycles. Compl. ¶ 3. Arietis Health used the MOVEit file-transfer software as part of its regular business operations. Compl. ¶ 3. Specifically, Arietis Health used MOVEit Transfer in

[3] Citations to "Compl." are citations to Plaintiff Schaefer's Complaint. *See Schafer v. Arietis, et al.*, No. 1:23-cv-13014 (D. Mass. Oct. 5, 2023) (ECF No. 1).

connection with its billing services to transfer sensitive information and exchange electronic medical records. Compl. ¶¶ 5, 30.

Although the MOVEit Security Incident involved an exploit of Progress' MOVEit Transfer application, Plaintiffs allege that Arietis Health's negligence also contributed to the breach and theft of Plaintiffs' and Settlement Class Members' PII and/or PHI. ECF No. 908, ¶¶ 427-57. Plaintiffs allege that Progress had warned users, including Arietis Health, that MOVEit Transfer was "not set it and forget it" with respect to security, and that additional steps should be taken to secure the data transferred with MOVEit Transfer. ECF No. 908, ¶¶ 458-66. Plaintiffs claim Arietis Health could have prevented or mitigated the MOVEit Security Incident by implementing reasonable data security to secure its MOVEit Transfer environment. ECF No. 908, ¶¶ 427-31. Consequently, Plaintiffs sued a combination of Arietis Health, Progress, and others for the harm caused by the theft of their highly personal and private information.

II. Negotiation of the Proposed Settlement

Lead Counsel and the Settlement Committee participated in a mediation session on April 30, 2024, led by the Honorable Diane M. Welsh (Ret.), a retired federal magistrate judge. ECF No. 1294, ¶¶ 17-18, 20. In preparation for the mediation, the Parties exchanged confidential information related to the MOVEit Security Incident, information related to Arietis Health's use of MOVEit Transfer, the types of information exchanged via MOVEit Transfer, the types of information exchanged, the cause and scope of the breach, and the number of individuals impacted. *Id.* ¶ 19. This information exchange allowed the parties to meaningfully assess their claims. *Id.* ¶ 19. The initial mediation was unsuccessful. *Id.* ¶ 20. However, the Parties continued their arm's-length negotiations and ultimately reached an agreement as to the material terms of the settlement. *Id.* ¶¶ 21-23. The Parties engaged in a series of further arm's-length discussions and entered into a final Class Action Settlement Agreement on August 12, 2024. *Id.* ¶ 24. The Class Action Settlement

Agreement was thereafter preliminarily approved by this Court on September 9, 2024. *See* ECF No. 1202.

The Parties later made minor amendments to the Class Action Settlement Agreement, and the Amended Class Action Settlement Agreement was finally executed on November 26, 2024. ECF No. 1294-1; Declaration of Gary F. Lynch ("Lynch Decl.") ¶ 5. Plaintiffs thereafter moved for preliminary approval of the Amended Settlement, and this Court issued an amended order granting preliminary approval on December 9, 2024. ECF No. 1300. In the Court's amended preliminary approval order, the Court preliminarily certified the following Settlement Class for purposes of Settlement:

> all persons in the United States who provided their personal information and/or personal health information—including: (1) dates of birth; (2) Social Security Numbers; (3) driver's license numbers; (4) parent's maiden names; (5) digital signatures; (6) medical record numbers; (7i) patient account numbers; (8) Medicare numbers; (9) Medicaid numbers; (10) health insurance account and group numbers; (11) medical history information; (12) medical diagnosis information; (13) medical treatment/procedure information; (14) medical provider information; (15) clinical information; and (16) prescription information—to Arietis, directly or indirectly, and whose personal identifying information and/or personal health information was included in files affected by the MOVEit Security Incident.

ECF No. 1300.

III. The Settlement Provides Significant Benefits to the Settlement Class

Under the Settlement Agreement, Arietis Health agreed to pay $2.8 million into a non-reversionary Settlement Fund to resolve Plaintiffs' and Settlement Class Members' claims against it. SAR § 3.1. The Settlement Fund will pay for: (1) costs of Notice and Settlement Administration; (2) any Court-approved Service Awards for the Settlement Class Representatives; (3) any Court-approved attorneys' fees and expenses; and (4) Settlement Payments to the Settlement Class pursuant to the Settlement and the proposed Settlement Benefits Plan, as approved by the Court.

Id. § 3.2. The Settlement also requires Arietis Health to make business practices changes specifically designed to prevent future data breaches arising out of defective third-party products or tools. *Id.* § 5.1

A. The Proposed Settlement Benefits Plan

The Settlement Committee's Settlement Benefits Plan provides Settlement Class Members who submit a timely claim with the opportunity to obtain one or more of the following: (1) reimbursement of up to $5,000 for documented out-of-pocket losses incurred due to the MOVEit Security Incident; (2) reimbursement of $25 per hour for each hour a Settlement Class Member spent responding to the MOVEit Security Incident, up to $100 (four hours); and (3) four years of medical data monitoring, credit monitoring, and identity theft protection services. ECF No. 1294-2.

B. Dismissal and Release of Claims

Upon the Effective Date of the Settlement, the Plaintiff Released Parties shall be deemed to have released any and all liabilities, claims, causes of action, damages, penalties, costs, attorneys' fees, losses or demands, whether known or unknown, existing or suspected or unsuspected, that were or reasonably could have been asserted against Defendant Released Parties and relate to the MOVEit Security Incident. SAR §§ 1.27, 15.1, 15.2. However, the Settlement is not intended to and does not prohibit a Class Member from responding to inquiries posited by federal, state or local agencies and/or law enforcement, even if the inquiries relate to the Released Claims. SAR § 1.27. Similarly, the Settlement is not intended to and does not prohibit a Class Member from bringing their concerns to federal, state or local agencies and/or law enforcement, even if those inquiries relate to the Released Claims. SAR § 1.27. Importantly, the Settlement does not release claims against Progress or NorthStar Anesthesia, any NorthStar Anesthesia affiliated

entities, or any other Arietis Client. SAR § 1.27. These releases were described in the Court-approved Long Form Notice.

IV. Results of Settlement Administration and Notice Plan

Following the Court's issuance of the Preliminary Approval Order, the Settlement Administrator completed the Notice plan set forth in the Settlement. Azari Decl. ¶ 10. The Notice plan was designed to reach as many Settlement Class Members as possible. Azari Decl. ¶¶ 6-7. The Notice included: the required description of the material terms of the Settlement; the date by which Settlement Class Members could opt out of the Settlement; the date by which Settlement Class Members could object to the Settlement; the Final Approval Hearing date and time; and the Settlement Website address at which Settlement Class Members could access the Long Form Notice, Settlement Agreement, Claim Form, and other related documents and information. Azari Decl. ¶¶ 14, 17; Attachment 3, 4.

Pursuant to the Preliminary Approval Order, Arietis Health provided the Settlement Administrator with the Class List containing information sufficient to provide Settlement Class Members with direct notice. Azari Decl. ¶ 11. Specifically, on September 13, 2024, the Settlement Administrator received the Settlement Class List that contained the full names and current addresses of 1,975,066 identified Settlement Class Members. *Id.* On September 24, 2024, the Settlement Administrator received supplemental data files that included the email addresses for Settlement Class Members, if available. *Id.* The Settlement Administrator then utilized a third-party to perform "reverse lookups" to identify the most likely valid email address for Settlement Class Members for whom email addresses were not provided in the Class List. *Id.* Thereafter, on January 3, 2025, the Settlement Administrator implemented the Notice plan, disseminating the Notice via email to 1,634,938 members of the Settlement Class and via U.S. mail to 332,970 members of the Settlement Class for whom no email address was available. Azari Decl. ¶¶ 12-14.

For email Notices returned as undeliverable, the Settlement Administrator searched for available mail addresses and promptly re-sent those potential Settlement Class Members Notices via U.S. mail, resulting in the mailing of an additional 327,795 Settlement Class Members. Azari Decl. ¶ 14. Prior to sending the mail Notices, the Settlement Administrator processed the names and addresses through the United States Postal Service National Change of Address Database. Azari Decl. ¶ 15. A customary Long-Form Notice with more detail than the Short Form Notice was also made available on the Settlement Website. Azari Decl. ¶ 19.

Further, on January 2, 2025, the Settlement Administrator established an informational Settlement Website, www.ArietisDataSettlement.com, allowing Settlement Class Members to obtain detailed information about the Settlement, file claims, and review important documents, including the Long Form Notice, Claim Form, Settlement Agreement, Preliminary Approval, and Motion for Attorneys' Fees. Azari Decl. ¶ 19. The Final Approval Motion will also be posted to the website. In addition to the Settlement Website, Arietis Health provided Notice of the Settlement via a notice on its own website, which directed individuals to the Settlement Website. Declaration of Ashwini Kotwal ¶¶ 2-4; Exhibit A.

The Settlement Administrator also sent a Reminder Notice via email to Settlement Class Members who had not submitted Claim Forms, objected, or otherwise opted out as of February 26, 2025. Azari Decl. ¶ 25. The Reminder Notice campaign has not yet finished. Class Counsel will be prepared to provide the Court with the results of the Reminder Notice campaign at the upcoming final approval hearing.

The deadline to submit an objection or opt out of the Settlement will occur on March 4, 2025. Azari Decl. ¶ 22. As of March 3, 2025, zero (0) Settlement Class Members have objected to the Settlement, and thirty-four (34) Settlement Class Members have submitted requests for

exclusion. *Id.* The deadline for Settlement Class Members to file claims is April 3, 2025. Class Counsel will be prepared to provide the Court with claims information at the Final Approval Hearing.

As a result of the Notice Plan, approximately 98% of the identifiable Settlement Class Members received direct notice of the Settlement. Azari Decl. ¶ 18. The Notice here was the best practicable under the circumstances and fully complied with all requirements of due process under the United States Constitution. Azari Decl. ¶¶ 26-30.

ARGUMENT

I. The Proposed Settlement Is Fair, Reasonable, and Adequate and Should Be Finally Approved

"Settlement agreements enjoy great favor with the courts as a preferred alternative to costly, time-consuming litigation." *Fid. & Guar. Ins. Co. v. Star Equip. Corp.*, 541 F.3d 1, 5 (1st Cir. 2008) (internal citation and quotations omitted); *see also In re Lupron Mktg. & Sales Pracs. Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005) ("[T]he law favors class action settlements."). Federal Rule of Civil Procedure 23(e) provides that a proposed settlement in a class action must be approved by the court. Fed. R. Civ. P. 23(e). "The approval of a class-action settlement agreement is a 'two-step process, which first requires the court to make a preliminary determination regarding the fairness, reasonableness, and adequacy of the settlement terms.'" *Meaden v. HarborOne Bank*, No. 23-CV-10467-AK, 2023 WL 3529762, at *1 (D. Mass. May 18, 2023) (citation omitted). "The second step in the settlement approval process requires a fairness hearing, after which the court may give final approval of the proposed settlement agreement." *Id.* (citation omitted).

Under Rule 23, a court may approve a class action settlement if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). While the First Circuit has not yet articulated its own test for evaluating the fairness of a class action settlement, courts within this Circuit look to precedent

from the Second Circuit Court of Appeals and factors that it considers when reviewing a motion for final approval. *See*, *e.g.*, *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 343 (D. Mass.), *aff'd*, 809 F.3d 78 (1st Cir. 2015); *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 472 (D.P.R. 2011); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 258 (D.N.H. 2007). Those factors, commonly referred to as the "*Grinnell*" factors are:

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

Roberts v. TJX Companies, Inc., No. 13-CV-13142-ADB, 2016 WL 8677312, at *6 (D. Mass. Sept. 30, 2016) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000)). Importantly a court need not find all the *Grinnell* factors satisfied to grant final approval, rather the court should conduct a holistic assessment that involves "balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement." *Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009); *see also Bussie v. Allmerica Fin. Corp*., 50 F. Supp. 2d 59, 72 (D. Mass. 1999) ("This fairness determination is not based on a single inflexible litmus test but, instead, reflects its studied review of a wide variety of **factors** bearing on the central question of whether the settlement is reasonable in light of the uncertainty of litigation."). A review of the *Grinnell* factors supports a finding that the Settlement is fair, reasonable, and adequate, and should be finally approved.

A. The Complexity, Expense, and Likely Duration of the Litigation

The first *Grinnell* factor is the complexity, expense, and likely duration of the litigation. Here, the costs, complexity, and likely duration of this case strongly favor settlement. As courts recognize, data breach class actions are inherently complex and "involve[ ] thorny issues regarding the emerging field of data breach litigation." *Holden v. Guardian Analytics, Inc.*, No. 2:23-CV-2115, 2024 WL 2845392, at *5 (D.N.J. June 5, 2024); *see also Fulton-Green v. Accolade, Inc*., No. 18-274, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019) (recognizing data breach litigation as complex, risky, and uncertain). Because "[t]he legal issues involved in [data breach litigation] are cutting-edge and unsettled … many resources would necessarily be spent litigating substantive law as well as other issues." *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-md-2522 (PAM) (JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015), *rev'd and remanded on other grounds*, 847 F.3d 608 (8th Cir. 2017), *amended*, 855 F.3d 913 (8th Cir. 2017), *and aff'd*, 892 F.3d 968 (8th Cir. 2018).

Another issue attendant in continued litigation is the expense of conducting further discovery. In complex cases, such as data breach and privacy cases, these costs can be especially extensive. *See Carter v. Vivendi Ticketing US LLC*, No. SACV2201981CJCDFMX, 2023 WL 8153712, at *5 (C.D. Cal. Oct. 30, 2023) (early resolution of data breach action favored final approval where "[s]ubstantial discovery, including document discovery and depositions, would be required" along with "[e]extensive and expensive expert analysis [that also] would be needed."); *In re Yahoo! Inc. Customer Data Security Breach Litig.*, No. 16-MD-02752, 2020 WL 4212811, at *9 (N.D. Cal. July 22, 2020) (noting that discovery is one of the significant expenses for continuing a data breach litigation). Given the highly technical nature of MOVEit data breach, it is very likely that discovery costs in this action would be substantial. Such costs would have been amplified by the involvement of experts to further analyze and explain the data and their relevance to the case.

See Bezdek, 79 F. Supp. 3d at 344 (noting that potential expenses stemming from further discovery can "decreas[e] the net benefit of any damages awarded obtained at trial").

While Plaintiffs are confident in the strength of their case, by reaching a favorable settlement at this stage of the litigation, however, the parties will avoid significant expense and delay and instead, provide immediate, tangible, and guaranteed relief to the Settlement Class. *See Holden*, 2024 WL 2845392, at *5 ("Although Plaintiffs believe they would ultimately prevail, litigation of this matter through trial would be complex, costly, and time-consuming. The Settlement eliminates the costs and risks associated with further litigation. The Settlement Class would also receive prompt compensation."). Accordingly, this factor strongly supports final approval of the Settlement.

B. The Reaction of the Class to the Settlement

The second *Grinnell* factor is the reaction of the Class to the Settlement. It is important to note that the existence of an objection to a settlement does not by itself prevent the court from approving the agreement. Rather, this factor weighs in favor of granting final approval so long as the reaction of the class is "positive." *In re Tyco*, 535 F. Supp. 2d at 261 (noting that "only a small number" of class members had raised objections and that their objections were "without merit"); *accord Bussie*, 50 F. Supp. 2d at 77 ("[The low] number of requests for exclusion from the settlement, as well as the number and substance of objections filed ... constitutes strong evidence of fairness of proposed settlement and supports judicial approval."). In cases where a smaller portion of class members respond to the notice of settlement, this factor can still weigh in favor of approval where the responding class members react positively and offer little objection. *See Roberts*, 2016 WL 8677312, at *6.

Here, the positive reaction of the Settlement Class weighs in favor of final approval. The Notice advised Settlement Class Members of their right to object to the Settlement and to otherwise

opt out of the Settlement. Azari Decl. ¶¶ 12, 14, 17; Attachment 2-4. Settlement Class Members have until March 4, 2025, to object or opt out of the Settlement, and, as of March 3, 2025, no Settlement Class Members have filed an objection, and only thirty-four (34) have opted out of the Settlement. Azari Decl. ¶ 22. The low number of opt outs and objections support finding the Settlement is reasonable. *See Roberts*, 2016 WL 8677312, at *6 (approving final settlement where, out of 4,018 class members, none objected to the settlement and three class members asked to be excluded from the settlement); *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG (RAOX), 2022 WL 18278431, at *6 (C.D. Cal. Nov. 21, 2022) ("Very few objections and opt-outs create a strong presumption that the Settlement is beneficial to the Class and thus warrants final approval."); *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 35-36 (D.N.H. 2006) (approving class action settlement after no objections and three opt-outs).

Given the positive reaction of the Settlement Class, this factor weighs in favor of final approval of the Settlement.

C. The Stage of the Proceedings and Amount of Discovery

The third *Grinnell* factor considers the stage of the proceedings and amount of discovery. In evaluating the stage of the case and the discovery taken, courts do not require that discovery be complete, rather the relevant inquiry is whether "sufficient discovery" was conducted "to make an intelligent judgment about settlement." *Hochstadt v. Bos. Sci. Corp.*, 708 F. Supp. 2d 95, 107 (D. Mass. 2010). Put differently, while the parties need not engage in extensive discovery, they must have conducted "a sufficient factual investigation . . . to afford the Court the opportunity to 'intelligently make … an appraisal' of the Settlement.'" *Diaz v. FCI Lender Servs., Inc.*, No. 17-CV-8686 (AJN), 2020 WL 4570460, at *4 (S.D.N.Y. Aug. 7, 2020) (citation omitted).

Here, the parties reached the proposed Settlement after engaging in a sufficiently adequate amount of informal discovery via the mediation process and after Co-Lead Counsel and others

working with them engaged in an in-depth factual investigation into the claims underlying the actions. Lynch Decl. ¶ 9. The information uncovered and reviewed by Co-Lead Counsel and the Settlement Committee provided them with the information needed to objectively evaluate the strengths and weaknesses of Plaintiffs' and Settlement Class Members' claims. *Id.* ¶¶ 7, 9.

Additionally, Arietis Health's MOVEit Security Incident is part of the larger MOVEit Security Incident that has spawned numerous related cases consolidated in the MDL. Co-Lead Counsel, who the Court appointed to manage the related actions in the MDL, have been informed by their investigations and litigation of those consolidated actions. *Id.* ¶ 7. Accordingly, Co-Lead Counsel's and the Settlement Committee's experience representing plaintiffs and other data breach victims in the MOVEit MDL provided further knowledge and background to guide their assessment of the reasonableness of the Settlement. *See, e.g.*, *id.* ¶¶ 3, 4.

The information received from Arietis Health and obtained in overseeing plaintiffs in the MDL, along with Settlement Committee's experience litigating data breach actions, provided counsel with sufficient information to evaluate the strengths and weaknesses of the claims and defenses in this case, and to assess the reasonableness of the Settlement. *Id.* ¶¶ 7. 9. Based on the information available to Co-Lead Counsel and the Settlement Committee, their respective experience in data breach litigation generally, and their experience in the MOVEit MDL specifically, Co-Lead Counsel and the Settlement Committee believe the Settlement to be fair, reasonable, and adequate. *Id.* ¶¶ 7, 9. Because Co-Lead Counsel entered into these settlement negotiations already well-informed from their work on the consolidated litigation and because the parties exchanged sufficient information to adequately inform them about their respective litigation positions, this factor weighs in favor of final approval. *See, e.g. Holden*, 2024 WL 2845392, at *5 (in a data breach settlement, recognizing that the parties adequately appreciated the

merits of the case through their factual investigation and the mediation process even though the case settled prior to the parties engaging in formal discovery).

D. The Risks of Establishing Liability and Damages

The fourth and fifth *Grinnell* factors evaluate the risks of establishing liability and damages. In assessing these factors, a court "need not decide the merits of the case, resolve unsettled legal questions, or attempt to predict the outcome." *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 313 (S.D.N.Y. 2020). Rather, the Court should balance the benefits afforded to the Class, including the immediacy and certainty of recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463.

Here, Plaintiffs are confident that they have a strong case against Arietis Health, but winning a judgment would require surmounting several legal hurdles, with a recovery at the end of the day being far from certain. *See In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts"). Specifically, had litigation proceeded, Arietis Health would likely have argued that Plaintiffs' primary cause of action (negligence) would fail, an argument that while Plaintiffs believe is unfounded, has been accepted by courts, and could stymie the Settlement Class's recovery. *Compare In re LastPass Data Sec. Incident Litig.*, No. CV 22-12047, 2024 WL 3580646, at *7 (D. Mass. July 30, 2024) (dismissing negligence claim arising from a data breach of a provider of digital password vaults), *with In re Fortra File Transfer Software Data Sec. Breach Litig.*, No. 23-CV-60830-RAR, 2024 WL 4547212, at *8 (S.D. Fla. Sept. 18, 2024) (allowing negligence claim to proceed against user of third-party file transfer application after the application was breached by cybercriminals). In addition, there is the possibility that the Court would not certify a nationwide class. *See, e.g.*, *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389 (D. Mass.

2007) (denying class certification because necessity of individualized inquiries regarding causation, comparative negligence, and damages precluded a finding of predominance). And even if Plaintiffs were successful in having a class certified, they risk a jury finding against them on liability and/or damages. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *10 (N.D. Ga. Mar. 17, 2020), *aff'd in part, rev'd in part and remanded*, 999 F.3d 1247 (11th Cir. 2021) ("The likelihood of success at trial is uncertain at best."); *see also In re Sonic Corp.*, 2019 WL 3773737, at *7 ("[J]uries are always unpredictable").

In addition, had the litigation continued, proving damages and liability would have likely required significant expert testimony and analysis. *See Carter*, 2023 WL 8153712, at *5 (recognizing at final approval that had data breach case proceeded, "[e]xtensive and expensive expert analysis would be needed."). Although Plaintiffs believe that expert testimony would provide evidence sufficient to establish the measure of damages in this case, it is possible that, in the unavoidable "battle of experts," a jury might disagree with Plaintiffs' expert, find Defendant's expert more persuasive, or agree with the Plaintiffs' expert but award a reduced amount of damages to the Settlement Class. *In re Tyco*, 535 F. Supp. 2d at 260–61 ("[E]ven if the jury agreed to impose liability, the trial would likely involve a confusing "battle of the experts" over damages. If, faced with conflicting expert testimony, the jury chose to embrace the most conservative estimate of damages, then the ultimate award might turn out to be less than the proposed settlement."). As such, Plaintiffs faced the risk of a non-monetary recovery for members of the Settlement Class even if they would be able to establish Arietis Health's liability.

In the face of these risks, and in Class Counsel's experienced and realistic opinion, the proposed Settlement represents a significant recovery to the Settlement Class. Lynch Decl. ¶¶ 9-11. As such, these factors favor final approval.

E. The Risks of Maintaining the Class Action Through Trial

The sixth *Grinnell* factor considers the risks of maintaining the class action through trial. This factor weighs in favor of settlement where "it is likely that defendants would oppose class certification if the case were to be litigated." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019). Here, had litigation proceeded, Arietis Health would likely have opposed class certification, arguing that individual issues predominate over common issues or that the class action device is not a superior form of adjudication. *See In re Marriott*, 341 F.R.D. 128, 162 (D. Md. 2022).[4] Further, even assuming that Plaintiffs were successful in certifying a class, there is a risk that Arietis Health would ask the Court to reconsider or amend the certification decision, or appeal it, and the First Circuit would have discretion to consider interlocutory review under Rule 23(f). *See Roberts*, 2016 WL 8677312, at *7. While Plaintiffs are confident in the strength of their case and that they would overcome Arietis Health's challenges to class certification, the possibility that certification could fail nevertheless creates a risk of delay and a risk of Plaintiffs failing to prevail. *See id.* As a result, this factor weighs in favor of final approval of the Settlement.

F. The Ability of the Defendant to Withstand a Greater Judgment

The seventh *Grinnell* factor looks to the defendant's ability to withstand a greater judgment. Courts have found this factor is not dispositive and need not affect the conclusion that the settlement is within the range of reasonableness. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001); *see also In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 3:09CV1293 VLB, 2012 WL 3589610, at *7 (D. Conn. Aug. 20, 2012) (defendant is "not required to empty its coffers before a settlement can be found adequate"). This factor is relevant, however, where "judgment

[4] *Vacated and remanded sub nom. In re Marriott Int'l, Inc.*, 78 F.4th 677 (4th Cir. 2023), and *reinstated by In re Marriott Int'l Customer Data Sec. Breach Litig.*, 345 F.R.D. 137 (D. Md. 2023).

may risk bankruptcy or severe economic hardship." *Jermyn v. Best Buy Stores, L.P.*, No. 08 CIV. 214 CM, 2012 WL 2505644, at *7 (S.D.N.Y. June 27, 2012).

Here, given Arietis Health's limited financial condition, Plaintiffs believe the size of a potential judgment could risk economic hardship. Accordingly, the Court should find the factor weighs in favor of approval, or, alternatively, "assign 'relatively little weight' to this factor." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 620–21 (S.D.N.Y. 2012).

G. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation

The last two *Grinnell* factors consider the range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation. These two factors are typically analyzed together. *See, e.g.*, *In re Sturm, Ruger, & Co.*, 2012 WL 3589610, at *7. The issue is not whether the settlement represents the best conceivable recovery, but how the settlement relates to the strengths and weaknesses of the case. *Grinnell*, 495 F.2d at 462. As such, courts consider and weigh the nature of the claims, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable. *Id.* Put differently, the focus is on whether the settlement "represents a reasonable one in light of the many uncertainties the class faces." *Hall v. ProSource Techs., LLC*, No. 14-CV-2502 (SIL), 2016 WL 1555128, at *8 (E.D.N.Y. Apr. 11, 2016).

As discussed above, Plaintiffs faced numerous uncertainties, including certifying a class and maintaining class certification, establishing liability and damages, and ultimately receiving a recovery. On the other hand, the Settlement provides relief to compensate for past injuries and the continued risk of harm, along with injunctive relief that is tailored to reduce the risk of a similar security incident occurring in the future. *See, e.g.*, *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 311 (N.D. Cal. 2018) (granting final approval of settlement in a data-breach case where class

members were provided with identity-theft monitoring services); *In re Equifax Inc. Customer Data Security Breach Litig.*, 999 F.3d 1247 (11th Cir. 2021) (affirming grant of final approval in a data-breach case where class members were provided with identify theft insurance, credit monitoring, and identity restoration services). Given these circumstances, these factors also favor final approval, and, thus, the Court should find the Settlement falls within the range of reasonableness.

II. The Settlement Benefits Plan Is Fair, Reasonable, and Adequate and Should Be Finally Approved

A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, adequate, and reasonable. *Bos. Sci. Corp.*, 708 F. Supp. 2d at 109 (citation omitted). "A plan of allocation is fair and reasonable as long as it has a 'reasonable, rational basis.'" *New England Biolabs, Inc. v. Miller*, No. 1:20-CV-11234-RGS, 2022 WL 20583575, at *4 (D. Mass. Oct. 26, 2022). "A reasonable plan of allocation need not necessarily treat all class members equally, but may allocate funds based on the extent of class members' injuries and consider the relative strength and values of different categories of claims." *Hill v. State Street Corp.*, No. 09-12146-GAO, 2015 WL 127728, at *11 (D. Mass. Jan. 8, 2015) (internal citations and quotations omitted). "In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel." *Id.*

Here, the proposed Settlement Benefits Plan meets this standard. It provides all Settlement Class Members with the same opportunity to file claims under the Settlement. The Settlement Benefits Plan was designed to provide equal treatment to those who did not incur out-of-pocket losses while allowing for individualized compensation to Settlement Class Members who incurred expenses as a result of the MOVEit Security Incident. The proposed Settlement Benefits Plan is similar to other court-approved allocation plans in other data breach cases. *See, e.g.*, *In re Cap. One Consumer Data Sec. Breach Litig.*, No. 119MD2915AJTJFA, 2022 WL 18107626, at *12

(E.D. Va. Sept. 13, 2022) (approving proposed allocation plan that allowed class members to submit claims for out-of-pocket losses, lost time, and credit monitoring services because it treated class members equitably). For these reasons, the proposed Settlement Benefits Plan is fair, reasonable, and adequate and should be finally approved.

III. The Court Should Finally Certify the Settlement Class

In finally approving a class action settlement, the Court must also determine whether to certify the class for settlement purposes. *In re Colgate-Palmolive Softsoap Antibacterial Hand Soap Mktg. & Sales Pracs. Litig.*, No. 12-MD-2320-PB, 2015 WL 7282543, at *5 (D.N.H. Nov. 16, 2015). Courts have repeatedly found data breach classes meet the class certification requirements. *See, e.g.*, *Attias v. CareFirst, Inc.*, 346 F.R.D. 1 (D.D.C. 2024); *Savidge v. Pharm-Save, Inc.*, No. 3:27-cv-186, 2024 WL 1366832 (W.D. Ky. Mar. 29, 2024); *In re Marriott Int'l, Inc..*, 341 F.R.D. at 173; *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2020 WL 6701992 (N.D. Ohio Nov. 13, 2020); *In re Target Corp. Customer Data Sec. Breach Litig.*, 309 F.R.D. 482 (D. Minn. 2015). Indeed, data breach actions conform to the "policy at the very core of the class action mechanism . . . to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).

In considering whether to certify a Settlement Class, courts look to Rule 23 of the Federal Rules of Civil Procedure. *See id.* at 620-21. Rule 23(a) creates four threshold requirements applicable to all class actions: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. Fed. R. Civ. P. 23(a)(1)-(4); *see also Amchem*, 521 U.S. at 613. Additionally, the proposed class must meet one of the requirements of Rule 23(b). *Id.* Where, as here, a Rule 23(b)(3) damages class is proposed, plaintiffs must show "the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is

superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). These requirements are generally referred to as "predominance" and "superiority." Here, as described below, the Rule 23(a) and (b) requirements are satisfied, and the Court should certify the Settlement Class.

A. The Settlement Class Meets the Requirements of Rule 23(a)

Rule 23(a) provides four prerequisites that any proposed class must meet. These prerequisites are: (1) the class is so numerous that joinder of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ("typicality"); and (4) the representative parties will fairly and adequately protect the interests of the class ("adequacy"). Fed. R. Civ. P. 23(a)(1)–(4). The proposed Settlement Class meets all four Rule 23(a) requirements.

1. Numerosity

Under Rule 23(a)(1), the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "The threshold for establishing numerosity is low, and '[c]lasses of 40 or more have been found to be sufficiently numerous.'" *Meaden*, 2023 WL 3529762, at *2 (citation omitted). Here, the Settlement Class is so numerous that joinder is impracticable. The Settlement Class consists of approximately 1.9 million individuals, far surpassing the threshold number of 40. Moreover, all Settlement Class Members have already been identified by Arietis Health during its investigation of the MOVEit Security Incident and its issuance of notice to affected individuals. *See Engel v. Scully & Scully, Inc.*, 279 F.R.D. 117, 127-28 (S.D.N.Y. 2011) (holding defendants' business records may be used to ascertain class members). Numerosity is met here.

2. Commonality

Under Rule 23(a)(2), the Settlement Class must share common questions of law or fact. The commonality requirement is not demanding. Rather, it is a "low bar" and may be satisfied by a single common question of fact or law. *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 522 F.3d 6, 19 (1st Cir. 2008). Commonality is met where the claims "depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 347 (2011).

Here, the Settlement Class shares numerous common questions of law and fact, and the answers to those common questions will have a class-wide effect. To start, Plaintiffs and Settlement Class Members' PII and/or PHI were collected and transferred by Arietis Health in the regular course of Arietis Health's business. As a result of the MOVEit Security Incident and Arietis Health's use of MOVEit Transfer, each Settlement Class Member's PII and/or PHI was accessed and obtained by cybercriminals due to the same security failures and as part of the same breach. *In re Anthem, Inc.*, 327 F.R.D. at 308 (commonality satisfied where "[t]he extensiveness and adequacy of Anthem's security measures lie at the heart of every claim."). Consequently, Plaintiffs and Settlement Class Members all suffered similar injuries, including, *inter alia*: the risk of harm from the misuse of their data; the loss of privacy from cybercriminals obtaining their PII and/or PHI; and out-of-pocket costs and lost time spent investigating the MOVEit Security Incident and mitigating the risk of future misuse of their PII and/or PHI. *Id.* ("[T]the Settlement Class Members suffered the same injury—namely, their personal information was stored on the same Anthem data warehouse that was breached by hackers.").

While only one common question is sufficient to satisfy commonality, here, Plaintiffs' and Settlement Class Members' claims present numerous additional common issues, including but are not limited to:

- Whether Arietis Health owed Plaintiffs and the Class a duty to reasonably secure their personal and health information;
- Whether Arietis Health breached its duty by implementing inadequate data security, failing to protect data transferred via MOVEit, and failing to patch vulnerabilities within MOVEit;
- Whether Arietis Health's breach of duty caused Plaintiffs' and the Class's harm, including the theft of their personal and health information;
- Whether Plaintiffs and the Class suffered harm due to the theft and potential misuse of their personal and health information; and
- Whether Plaintiffs' and the Class's damages are reasonably quantifiable.

The existence of these common legal questions and the overwhelmingly similar factual issues presented by Settlement Class Members' claims suffice to meet commonality here.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "To establish typicality, the plaintiffs need only demonstrate that 'the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.'" *In re M3 Power Razor Sys. Mktg. & Sales Prac. Litig.*, 270 F.R.D. 45, 54 (D. Mass. 2010). "The claims of the class representative and the class overall must share essential characteristics, but they need not be precisely identical." *Bezdek*, 79 F. Supp. 3d at 338.

Here, Plaintiffs' claims are typical of those of Settlement Class Members because they were all impacted by the same MOVEit Security Incident—a data incident in which their PII and/or PHI were accessed by an unauthorized third party—and involve the same overarching legal

theories, including theories that Arietis Health failed to safeguard their PII and/or PHI. *See Abubaker v. Dominion Dental USA, Inc.*, No. 119CV01050LMBMSN, 2021 WL 6750844, at *3 (E.D. Va. Nov. 19, 2021) (typicality satisfied where plaintiffs and settlement class members were subject to a data breach and were alleged to have suffered the same type of injuries); *In re Anthem*, 327 F.R.D. at 309 (typicality satisfied because the class representatives, like the class as a whole, each had their personal information stored on defendant's systems and that information was exfiltrated during a breach of such systems). Plaintiffs' legal theories do not conflict with those of absentee Settlement Class Members, and Plaintiffs will represent the interests of all Settlement Class Members fairly, because such interests parallel with their own. As such, Rule 23(a)(3)'s typicality requirement is satisfied.

4. Adequacy

Rule 23(a)(4) requires that the proposed class representative "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "This requirement has two parts. The plaintiffs 'must show first that the interests of the representative party will not conflict with the interests of any of the class members, and second, that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation.'" *In re M3 Power*, 270 F.R.D. at 55.

Here, Plaintiffs satisfy both requirements. First, Plaintiffs' interests align with, and are not adverse or antagonistic to, those of Settlement Class Members. Plaintiffs seek to hold Arietis Health accountable for, among other things, its failure to safeguard Plaintiffs' and Settlement Class Members' PII and/or PHI. As such, Plaintiffs seek to hold Arietis Health accountable for the same alleged wrongdoing that caused the Settlement Class to suffer similar harm—the theft and risk of misuse of their personal information. Plaintiffs' interests therefore fully align with those of the Settlement Class. *See In re Anthem*, 327 F.R.D. at 309-11 (finding the adequacy requirement

satisfied where all class members had their personal information compromised in the data breach and generally sought the same relief).

Second, Co-Lead Counsel are qualified, experienced, and competent in complex litigation, and have an established, successful track record in class litigation—including cases analogous to this one. Lynch Decl. ¶¶ 3, 4. Co-Lead Counsel and Plaintiffs have diligently advanced the interests of the Settlement Class, including by investigating the MOVEit Security Incident and resolving the case through Settlement. Accordingly, Rule 23(a)(4)'s adequacy requirement is satisfied.

B. The Settlement Class Meets the Requirements of Rule 23(b)

Under Rule 23(b)(3), a class action should be certified when the court finds that common questions of law or fact predominate over individual issues and a class action would be superior to other methods of resolving the controversy. The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 594, 623. "The superiority inquiry [ ] ensures that litigation by class action will 'achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. CV 14-MD-02503, 2017 WL 4621777, at *21 (D. Mass. Oct. 16, 2017) (citation omitted). Here, Plaintiffs readily meet both requirements.

1. Common Issues Predominate Over Individual Issues

A Rule 23(b)(3) settlement class must show that common questions "predominate over any questions affecting only individual [class] members." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013). Predominance "does not require that each element of the claims [be] susceptible to class-wide proof" but only that "the individualized questions . . . [do] not 'overwhelm' the common ones." *In re Celexa & Lexapro Mktg. & Sales Pracs. Litig.*, 325 F.R.D. 529, 537 (D. Mass. 2017) (citation omitted). "When one or more of the central issues in the action

are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016).

Here, common issues predominate over individual issues because each Settlement Class Member would rely on common factual evidence to establish Arietis Health's liability. Each Settlement Class Member's claim centers on the identically same issues regarding Arietis Health's allegedly inadequate data security and Arietis Health's use of MOVEit Transfer which, Plaintiffs allege, Arietis Health's knew or should have known could result in a data breach and harm to Plaintiffs and the Settlement Class. Despite that knowledge, Plaintiffs contend Arietis Health's knowingly used inadequate data security. Proof of those facts would establish Arietis Health's duty and breach of duty on a class-wide basis, and proof of those facts depends exclusively on Arietis Health's knowledge and actions. Thus, those elements of each Settlement Class Member's claim are resolvable in a "single stroke" and do not depend on any individualized issue. *Dukes*, 564 U.S. at 347; *see also In re Brinker Data Incident Litig.*, No. 3:18-cv-0686, 2021 WL 1405508, at *8 (M.D. Fla. Apr. 14, 2021) (granting class certification because common questions predominated, including "whether [defendant] had a duty to protect customer data, whether [defendant] knew or should have known its data systems were susceptible, and whether [defendant] failed to implement adequate data security measures"), *vacated in part sub nom*. *Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883 (11th Cir. 2023).

Additionally, common issues concerning causation and damages predominate. Whether Arietis Health's misconduct caused the MOVEit Security Incident and the resulting theft of Plaintiffs' and Settlement Class Members' data will also depend on common evidence comparing

Progress's and Arietis Health's knowledge and acts and their contribution to the breach. Further, as other courts have recognized, Plaintiffs can establish damages on a class-wide basis using models to measure the diminished value of the stolen data and the lost time and effort incurred responding to the breach. *See, e.g.*, *Green-Cooper*, 73 F.4th at 889–90 (approving plaintiffs' method for measuring class damages due to a data breach). Although each individual Settlement Class Member may have some individualized damages, those individual damages generally do not defeat class certification. *Corra v. ACTS Ret. Servs., Inc.*, No. CV 22-2917, 2024 WL 22075, at *5 (E.D. Pa. Jan. 2, 2024) ("Although there may be slight differences among class members regarding degree of damages or the exact type of injury suffered (e.g., breach of sensitive financial information or breach of health data), none of these differences would preclude resolution on a class-wide basis."). For these reasons, predominance is satisfied.

2. A Class Action is the Superior Device for Adjudicating this Case

The superiority criterion requires that class action be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In evaluating superiority, courts consider: (1) the interests of class members in individually litigating separate actions, (2) the extent and nature of existing litigation, (3) the desirability of concentrating the litigation of the claims in one forum, and (4) the difficulty of managing a class action. *Id.* "The superiority inquiry thus ensures that litigation by class action will 'achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *In re Solodyn*, 2017 WL 4621777, at *21 (citation omitted). Where a "large number of potential plaintiffs" share common claims, "certifying the class will allow a more efficient adjudication of the controversy than individual adjudications would." *Roberts v. Source for Pub. Data*, No. 08-CV-04167-NKL, 2009 WL 3837502, at *7 (W.D. Mo. Nov. 17, 2009).

Here, class resolution is superior to other available means for the fair and efficient adjudication of the claims asserted against Arietis Health. First, the potential damages suffered by the approximately 1.9 million Settlement Class Members are relatively low dollar amounts and would be uneconomical to pursue on an individual basis given the burden and expense of prosecuting individual claims. *In re Anthem*, 327 F.R.D. at 315 (superiority satisfied in data breach settlement where the "the amount at stake for individual Settlement Class Members is too small to bear the risks and costs of litigating a separate action."). Second, there is little doubt that resolving all Settlement Class Members' claims jointly, particularly through a class-wide settlement negotiated on their behalf by counsel well-versed in class action litigation, is superior to a series of individual lawsuits and promotes judicial economy. *See In re Cap. One*, 2022 WL 18107626, at *5 (recognizing that litigating the claims of millions of individuals impacted by a data breach would be inefficient).

For these reasons, the Settlement Class satisfies the requirements of Rule 23(a) and (b)(3), and Plaintiffs respectfully request that the Court finally certify the Settlement Class for purposes of Settlement.

IV. The Notice Program Satisfied Rule 23 and Due Process by Providing Class Members with Adequate Notice of the Settlement

Rule 23(e)(1)(B) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." Fed. R. Civ. P. 23(e)(1)(B). In addition, "[f]or any class certified under Rule 23(b)(3) … the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The Class Notice plan satisfied these requirements.

Here, following the Court's approval of the Notice plan, the Settlement Administrator directed notice to the Settlement Class via direct mail and email notice. Azari Decl. ¶¶ 11-17. To ensure that Notice reached as many Settlement Class Members as possible, the Settlement Administrator performed reasonable email and physical address checks for the Short Form Notice. Azari Decl. ¶¶ 11, 15. Finally, thirty-six (36) days before the deadline for Settlement Class Members to file claims, the Settlement Administrator began sending Reminder Notice to all Settlement Class Members who had not yet filed claims or otherwise opted out of the Settlement. Azari Decl. ¶ 25. Courts have recognized that email notices and online publication notice satisfy due process. *See Wright v. S. New Hampshire Univ.*, 565 F. Supp. 3d 193, 207 (D.N.H. 2021) (notice to class via direct email and mail notice "constitute[d] a reasonable manner of providing notice to those parties who would be bound by the terms of the proposed settlement agreement"); *Meaden*, 2023 WL 3529762, at *4 (same).

Further, the Notice included important information about the Settlement, including how to opt-out or object, where to find more information about the Settlement, and how to contact Class Counsel. Azari Decl. ¶¶ 12, 14, 17, 19; Attachment 2-4. Additionally, the Notice was designed to be "noticed," reviewed, and—by presenting the information in plain language—understood by Settlement Class Members. Azari Decl. ¶ 27. The design of the Notice followed principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov and contain plain-language summaries of key information about Settlement Class Members' rights and options. As required by Rule 23(e), the Notice generally described the Settlement in sufficient detail to alert Settlement Class Members to come forward to be heard and contained all of the critical information required to apprise Settlement Class Members of their rights. *Id.* Thus, the notice plan is adequate and provides sufficient detail to allow Settlement Class Members with

adverse viewpoints to come forward and be heard. *See Hill*, 2015 WL 127728, at *14 (notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

The Federal Judicial Center states that a notice plan that reaches 70% of class members is one that reaches a "high percentage" and is within the "norm." Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, "Managing Class Action Litigation: A Pocket Guide or Judges," at 27 (3d ed. 2010).[5] The Notice to the Settlement Class here was the best notice that is practicable and is equivalent or superior to notice campaigns approved in similar class action settlements. Azari Decl. ¶¶ 26-30.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed Final Approval Order and Final Judgement, filed herewith: (i) granting Final Approval of the Settlement; (ii) finally certifying the Settlement Class for purposes of settlement; and (iii) providing other such relief required to effectuate the Settlement.

DATED: March 4, 2025

Respectfully submitted,

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[5] This document is available at https://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf.

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document was filed electronically via the Court's CM/ECF system, which will send notice of the filing to all counsel of record.

Dated: March 4, 2025

/s/ Kristen A. Johnson
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