

# Exhibit C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

LISA SMITH, et al.,

Plaintiff,

v.

APRIA HEALTHCARE LLC,

Defendant.

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

**PLAINTIFFS' UNOPPOSED  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs, by Interim Class Counsel, pursuant to Federal Rule of Civil Procedure 23(e), respectfully move the Court to enter an order: (1) preliminarily approving the class action Settlement Agreement and Release (the "Settlement") that is attached as Exhibit A to the accompanying memorandum; (2) certifying the Settlement Class for settlement purposes; (3) approving the form of and manner of notice, including the opt-out and objection procedures, set forth in the Settlement; (4) approving the Claim Form and Claims process in the Settlement; (5) appointing Plaintiffs as Settlement Class Representatives; (6) appointing Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel; and (7) appointing Kroll Settlement Administration, LLC, as the Settlement Administrator.

Defendant does not oppose the requested relief.

Plaintiff has submitted an accompanying memorandum in support, along with a Joint Declaration and proposed Preliminary Approval Order.

Dated: March 5, 2025

Respectfully submitted,

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*Plaintiffs' Interim Co-Lead Counsel*

**CERTIFICATE OF SERVICE**

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

/s/Lynn A. Toops  
Lynn A. Toops

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

Dated: March 5, 2025

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

## **I. INTRODUCTION**

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

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

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those defined in the Settlement Agreement, attached hereto as **Exhibit A**.

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

## **II. SUMMARY OF THE ACTION**

### **A. Plaintiffs' Allegations**

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

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

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

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

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

### **B. Litigation, Mediation, and Settlement**

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

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

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

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

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

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

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

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

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

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

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

### **III. MATERIAL TERMS OF THE SETTLEMENT**

#### **A. Settlement Class**

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

All individuals who received actual or constructive notice from Apria that their information may have been compromised as a result of the Illegal Hacking Events.

Excluded from the Settlement Class are: (1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) [Apria] and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

Agreement § 1.45.

#### **B. Settlement Fund**

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

#### **C. Settlement Class Member Benefits**

##### **1. Reimbursement for Out-Of-Pocket Losses**

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

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

## 2. Pro Rata Cash Payment

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

## 3. Business Practice Adjustments

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

#### **D. Settlement Class Notice**

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



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

#### **E. Claims and Distribution of Settlement Funds**

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

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

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

#### **F. Payments to Settlement Class Members**

Payments for Approved Claims for reimbursement for Out-of-Pocket Losses and/or Pro Rata Cash Payments shall be issued in the form of a Settlement Check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date. *Id.* § 5.1. Settlement Checks shall bear in the legend that they expire if not negotiated within 90 days of their date of issue. For any funds remaining in the Cash Settlement Fund 60 days after the date of issue, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member to remind him/her of the deadline to cash such Settlement Check. *Id.* § 5.2. For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within 30 days after the Settlement Check is returned. *Id.* § 5.3. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member to obtain updated address information. *Id.* To the extent a Settlement Check is not cashed within 90 days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued Settlement Check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissue a Settlement Check or mail the Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued Settlement Check. *Id.* § 5.4. Any replacement or reissued Settlement Checks issued to Settlement Class Members shall remain valid and negotiable for 60 days from the date of their issuance and may thereafter automatically be

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

#### **G. Settlement Administrator**

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

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Providing Notice to Settlement Class Members via U.S. mail and e-mail;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) Business Day;
- f. Responding to any mailed or e-mailed Settlement Class Member inquiries within one (1) Business Day;
- g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- h. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Apria's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Apria's Counsel;

- i. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- j. Providing weekly or other periodic reports to Class Counsel and Apria's Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Apria's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- k. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of the Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and
- l. Performing any function related to settlement administration at the agreed-upon instruction of Class Counsel or Apria's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

Agreement § 11.1. The Parties shall jointly oversee the Settlement Administrator. Joint Decl. ¶ 35.

Notice and Administration Expenses will be paid from the Settlement Fund. Agreement § 2.5.

#### **H. Opt-Out and Objection Procedures**

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

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

### **I. Release of Claims**

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

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

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

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

**IV. ARGUMENT**

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

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

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

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

**A. The Court should certify the Settlement Class.**

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

1. Numerosity

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

2. Commonality and Typicality

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

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



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

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

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

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

### 3. Adequacy

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

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

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

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

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

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

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

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

4. Superiority and Predominance

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

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

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

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

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

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

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

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

<sup>4</sup> The Rule 23(e)(2) factors are whether:

- (A) the class representative and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
  - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

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

1. Adequate Representation and Class Counsel’s Opinion

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

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

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

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

### 3. The Settlement Relief Balanced Against the Merits

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

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

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

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<sup>5</sup> There is no side agreement to be disclosed pursuant to Fed. R. Civ. P. 23(e)(3).



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

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

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

#### 4. Equitable Treatment

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

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

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

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

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

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

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

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

Thus, the Court should approve the Notice procedures and form and content of the Notice.

*See* Agreement at Ex. B.

## **V. PROPOSED SCHEDULE OF POST-PRELIMINARY APPROVAL EVENTS**

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

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

## **VI. CONCLUSION**

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

Dated: March 5, 2025

Respectfully submitted,

By: /s/Lynn A. Toops  
Lynn A. Toops (No. 26386-49)  
Amina A. Thomas (No. 34451-49)  
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Indianapolis, Indiana 46204  
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Phone: 866-252-0878  
gklinger@milberg.com

*Plaintiffs' Interim Co-Lead Counsel*

**CERTIFICATE OF SERVICE**

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

/s/Lynn A. Toops  
Lynn A. Toops

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement” or “Agreement”) is made and entered into by and among the following Parties (as defined below): Lisa Smith, Robert N. Herrera, Suzanne Cuyle, Leonardo DePinto, Joel Kamisher, Debbie Bobbitt, Dottie Nikolich, Sabrina Munoz, Hilary French, Elisa Stroffolino, Amy Clark, Reginald Reese, Rita May, Tammie Creek, Sonya Albert, Paul Kramer, Chad Hohenbery, Colleen Rickard, Kristinia Accardo, Roger Winstanley, and Bonnie Bennett (together, “Plaintiffs” or “Representative Plaintiffs”), individually on behalf of themselves and each of the Settlement Class Members (as defined below), and Defendant Apria Healthcare LLC (“Apria” or “Defendant,” as defined below). Plaintiffs and Defendant are referred to here as the “Settling Parties” or “Parties” and each individually as a “Party.” The Settlement Agreement is intended by the Settling Parties to resolve, discharge, and settle the Released Claims (as defined below) upon and subject to the terms and conditions set forth below and approval by the United States District Court for the Southern District of Indiana (the “Court”).

### **RECITALS**

WHEREAS, the Parties hereto state the following:

In April of 2019 and various dates thereafter, criminal actors illegally accessed limited portions of Apria’s computer network and gained unauthorized access to the personally identifiable information (“PII”) and Personal Health Information (“PHI”) (collectively “Protected Information”) of certain Apria customers and employees (the “Illegal Hacking Events”).

Starting on June 9, 2023, Plaintiffs filed a series of class action lawsuits against Apria in federal district court in the Southern District of Indiana arising out of and related to the Illegal Hacking Events.

On or about September 6, 2023, all such class action lawsuits were consolidated into one case, captioned *In Re Apria Data Breach Litigation.*, Case No. 1:23-cv-01003-JPH-KMB (“the Class Action Lawsuit”). (ECF No. 44).

On October 23, 2023, Plaintiffs filed a consolidated complaint with all claims asserted against Apria (the “Consolidated Complaint”). (ECF No. 52). Plaintiffs, on behalf of themselves and a purported class and subclasses, alleged claims for:

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

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

The Consolidated Complaint alleged that Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals.

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

On or about December 13, 2023, Apria filed a limited answer to address those Plaintiffs' claims that were not subject to the Partial Motion to Dismiss. (ECF No. 84).

In response to informal and formal discovery requests, Apria produced information that addressed the manner and mechanism of the Illegal Hacking Events, the number of impacted individuals nationwide, and Apria's security enhancements implemented following the Illegal Hacking Events. Apria and counsel for the Plaintiffs engaged in multiple arm's-length settlement negotiation sessions by telephone, and e-mail after the Consolidated Complaint was filed and through October 2024.

On April 23, 2024, Apria and the Plaintiffs participated in a formal mediation with Hon. Wayne R. Andersen (Ret.). Apria and Plaintiffs were unable to resolve their disputes, claims, and defenses at that time. However, Apria and the Plaintiffs made progress in negotiations for a complete resolution of the Class Action Lawsuit.

Pursuant to a Scheduling Order entered on July 29, 2024, (ECF No. 114), Apria and Plaintiffs agreed to engage the United States Magistrate Kellie Barr to oversee settlement negotiations.

On October 21, 2024, the Parties engaged in an in-person settlement conference conducted by Magistrate Judge Barr and, after thorough negotiations aided by Magistrate Judge Barr, were able to reach a resolution. The agreed resolution or settlement is memorialized in this Settlement Agreement.

Class Counsel has investigated the facts relating to the Illegal Hacking Events, analyzed the evidence adduced based on publicly available information, court filings, discovery responses, and information exchanged during settlement discussions, and researched the applicable law with respect to the Plaintiffs' claims against Apria and potential defenses thereto, including the Partial Motion to Dismiss described above.

Apria denies any wrongdoing whatsoever and denies all of the claims and contentions alleged in the Consolidated Complaint. This Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Apria with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Apria has asserted or would assert. Apria has considered the uncertainty and risks inherent in any litigation and in the Class Action Lawsuit. Apria has therefore determined that it is desirable and beneficial that the Class Action Lawsuit be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

Based upon their investigation as set forth above, Class Counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in the best interests of Plaintiffs and Settlement Class Members, and have agreed to settle the claims relating to the Illegal Hacking Events pursuant to the terms and provisions of this Agreement after considering (a) the substantial benefits that Settlement Class Members will receive from the Settlement, (b) the uncertain outcome and attendant risks of litigation, (c) the delays inherent in litigation, and (d) the desirability of permitting the settlement of this litigation to be consummated as provided by the terms of this Agreement.

It is the intention of the Parties to resolve the Class Action Lawsuit and all claims which they have between them on the terms set forth below.

### **TERMS OF THE SETTLEMENT**

IT IS HEREBY STIPULATED AND AGREED, by and among the Representative Plaintiffs (individually and on behalf of the Settlement Class Members), by and through their duly authorized counsel, and Apria, by and through its duly authorized counsel, that the Class Action Lawsuit and all matters that have been, could have been, or could be raised in the Class Action Lawsuit are hereby settled and compromised, that the Class Action Lawsuit will be dismissed on the merits and with prejudice as to Apria based upon the terms and conditions set out in this Settlement Agreement (including the Release), subject to the Court's approval and such approval becoming Final.



## 1. Definitions

As used in this Settlement Agreement, the following capitalized terms have the following meanings, unless a section or subsection of this Settlement Agreement provides otherwise. The definitions in this Agreement are intended to have substance and effect and are considered a material part of all terms and conditions in this Agreement.

- 1.1 “Affiliates” means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with such entity. For purposes of this definition, “control,” when used with respect to any entity, means an ownership interest of at least twenty-five percent (25%) and/or the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities by contract or otherwise. For avoidance of any confusion, “Affiliates” with respect to Apria includes, but is not limited to, Owens & Minor, Inc.; Apria Healthcare; Apria Healthcare Group, Inc.; Apria Healthcare Group LLC; Apria Healthcare, Inc.; Apria, Inc.; and Coram Specialty Infusion Services, An Apria Healthcare Company.
- 1.2 “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release and its exhibits attached hereto, including any subsequent written amendments to the Settlement Agreement and Release and/or to its exhibits.
- 1.3 “Apria’s Counsel” means Dentons Bingham Greenebaum LLP.
- 1.4 “Approved Claim” means the timely submitted Claim Form by a Settlement Class Member that has been approved by the Settlement Administrator.
- 1.5 “Business Days” means Monday, Tuesday, Wednesday, Thursday, and/or Friday, excluding holidays observed by the federal government and/or the state of Indiana.
- 1.6 “Business Practice Adjustments” means the security business practice adjustments that Apria has made to its information security policies following the Illegal Hacking Events, including specific business practice and remedial measures within the following general categories: (i) enhanced cybersecurity training and awareness program, (ii) enhanced data security policies, (iii) enhanced security measures, (iv) further restricting access to Protected Information, and (v) enhanced monitoring and response capability, as provided in Section 7 of this Agreement.
- 1.7 “Claim” or “Claims” means any and all actions, causes of action, proceedings, adjustments, counter-claims, cross-claims, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages, demands (whether written or oral), agreements, promises, liabilities, controversies, costs, expenses, attorneys’ fees and losses of any sort whatsoever, whether in law, in admiralty or in equity, and whether based on a United States federal, state or foreign statutory or common-law United States federal, state or foreign statutory or

common-law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known, accrued or not accrued, existing now or to be created in the future, including “Unknown Claims” (as defined below).

- 1.8 “Claim Form” means the form(s) Settlement Class Members must submit to receive a Pro Rata Cash Payment or be eligible for reimbursement of Out-of-Pocket Losses or Expenses, which is attached hereto as Exhibit A.
- 1.9 “Claims Deadline” means the last day to submit a timely Claim Form(s), which will occur ninety (90) days after the Notice Deadline.
- 1.10 “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive Settlement benefits, which will end on the Claims Deadline.
- 1.11 “Class Action Lawsuit” means the nationwide class action lawsuit captioned *Smith et al v. Apria Healthcare LLC*, No. 1:23-cv-01003-JPH-KMB (S.D. Ind.), currently pending before the Honorable Judge James Patrick Hanlon and referred in part to the Honorable Magistrate Judge Kellie Barr.
- 1.12 “Class Counsel” means Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC.
- 1.13 “Court” means the United States District Court for the Southern District of Indiana.
- 1.14 “Data Privacy Laws” means any law or industry self-regulatory program concerning the collection, use, analysis, retention, storage, protection, transfer, disclosure, disposal or processing of Protected Information.
- 1.15 “Defendant” means Apria.
- 1.16 “Effective Date” means one Business Day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment or one (1) Business Day following entry of the Final Approval Order and Judgment if no parties have standing to appeal; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.
- 1.17 “Fee Application” means any motion for an award of attorneys’ fees, Litigation Costs and Expenses, and Service Award Payments to be paid from the Settlement Fund, as set forth in Section 15.

- 1.18 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.
- 1.19 “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Class Action Lawsuit with prejudice, otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Settlement Agreement. Class Counsel and Apria’s Counsel will work together on a proposed Final Approval Order and Judgment, which Apria must approve before filing.
- 1.20 “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.
- 1.21 “Illegal Hacking Events” means the criminal attacks against Apria’s network that occurred between April 5, 2019 to May 7, 2019 and between August 27, 2021 to October 10, 2021.
- 1.22 “Judgment” means the final judgment to be entered by the Court.
- 1.23 “Litigation Costs and Expenses” means the costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Class Action Lawsuit.
- 1.24 “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses; (iii) Service Award Payments approved by the Court, and (iv) Fee Award and Costs approved by the Court.
- 1.25 “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order, substantially in the form attached hereto as Exhibit B.
- 1.26 “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members, and will occur forty-nine (49) days after entry of the Preliminary Approval Order.
- 1.27 “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, identifying and locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative

Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

- 1.28 “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement or Fee Application, which will be sixty (60) days after the Notice Deadline.
- 1.29 “Opt-Out Deadline” is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Deadline.
- 1.30 “Out-of-Pocket Losses or Expenses” means all documented and unreimbursed out-of-pocket losses, costs, or expenditures fairly traceable to and reasonably resulting from the Illegal Hacking Events that a Settlement Class Member has actually incurred. Out-of-Pocket Losses may include, without limitation, unreimbursed costs associated with fraud or identity theft, including professional fees such as attorneys’ fees (other than Class Counsel fees), accountants’ fees, fees for credit repair services, and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges, as well as costs for credit monitoring or other mitigative services that were incurred on or between April 5, 2019 and the Claims Deadline.
- 1.31 “Parties” or “Settling Parties” means all Parties to this Settlement Agreement.
- 1.32 “Person” means an individual or legal entity or their respective successors or assigns.
- 1.33 “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members and determining that the Court preliminarily approves the Settlement under Federal Rule of Civil Procedure 23(e)(2) and that is consistent with all material provisions of this Settlement Agreement. Class Counsel and Apria’s Counsel will work together on a proposed Preliminary Approval Order, which Apria must approve before filing.
- 1.34 “Pro Rata Cash Payment” means the cash payments of the remaining Net Settlement Fund to each Settlement Class Member after the distribution of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, as set forth in Section 4 of this Settlement Agreement.
- 1.35 “Protected Information” means Personally Identifiable Information (“PII”) and/or Protected Health Information (“PHI”). PII means (i) all data and information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, to a particular individual or is otherwise subject to any applicable Data Privacy Laws related to the privacy or security of information associated with an individual, and (ii) that was stored on

Apria's systems and potentially accessed without authorization during the Illegal Hacking Events. PHI refers to individually identifiable health information that is transmitted or maintained in any form or medium (electronic, oral, or paper) by a covered entity or its business associates, excluding certain educational and employment records, which is subject to any applicable Data Privacy Laws related to the privacy or security of information associated with an individual, and (ii) was stored on Apria's systems and potentially accessed without authorization during the Illegal Hacking Events.

- 1.36 "Release" means the release set forth in Section 14 of this Settlement Agreement.
- 1.37 "Released Claims" means any and all Claims, debts, demands, actions, causes of action, specialties, covenants, contracts, variances, damages, executions, rights, suits, sums, accounts, reckonings, presentments, extents and any other liabilities, fixed or contingent, matured or not matured, of or by the Settlement Class, or any member or representative of the Settlement Class, as against the Releasees, including both known claims and "Unknown Claims" (as defined below), whether class or individual in nature, that were asserted, could have been asserted, could in the future be asserted, or are related to the claims that were, could have been, or could in the future be asserted, related to the Illegal Hacking Events and/or prior unauthorized access to or disclosure of Protected Information of or by the Settlement Class, of or by any member or representative of the Settlement Class (including, without limitation, any claims for alleged violations of federal or state statutory or common law, or any other law, and for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), by reason of, arising out of, based on, or in any way relating to the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances, or other matters referenced in or relating to the Illegal Hacking Events and/or prior unauthorized access to or disclosure of Protected Information. It is understood that any current, former, and future in-house attorneys for Apria are intended to be included in and fully released hereunder.
- 1.38 "Releasee" means each and every one of, and "Releasees" means Apria and all past, present, and future Subsidiaries and/or Affiliates (including any and all in-house and outside counsel including, without limitation, Apria's Counsel) and its and/or their past, present, and future advisors, administrators, auditors (including any and all internal and external auditors), employees, accountants, actuaries, consultants, fiduciaries, representatives, service providers, Successors, successors-in-interest, parents, trustees, insurance carriers, reinsurers, estates, heirs, executors, beneficiaries, trusts, and assigns of, including all persons controlling, controlled by, or under common control with, any or all of the above persons or entities referenced in this paragraph.
- 1.39 "Releasor" means each and every one of, and "Releasors" means all of, (i) Representative Plaintiffs, (ii) all other Settlement Class Members, (iii) their respective past or present parents, predecessors, successors, current and former

Affiliates, divisions, business units, joint ventures, Subsidiaries, assigns, any entities in which any Releasor has or had a Controlling Interest or that has or had a Controlling Interest in him, her, or it, and any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of Representative Plaintiffs or any other Settlement Class Member and (iv) the respective past and present officers, directors, employees, officials, members, partners, estates, heirs, executors, beneficiaries, trusts, and assigns of any or all of the above persons or entities referenced in this paragraph.

- 1.40 “Request for Exclusion” is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice.
- 1.41 “Service Award Payment” means compensation awarded by the Court and paid to the Representative Plaintiffs in recognition of their role in this litigation.
- 1.42 “Settlement” means the settlement of the Class Action Lawsuit by and between the Parties, and the terms thereof as stated in this Settlement Agreement.
- 1.43 “Settlement Administrator” means Kroll Settlement Administration, LLC (“Kroll”). Class Counsel and Apria’s Counsel may, by agreement, substitute a different Settlement Administrator, subject to Court approval.
- 1.44 “Settlement Class” means all individuals who received actual or constructive notice and/or were mailed a notice by Apria that their information may have been compromised as a result of the Illegal Hacking Events and/or as a result of prior unauthorized access to or disclosure of Protected Information. Excluded from the Settlement Class are: (1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.
- 1.45 “Settlement Class List” means the list generated by Apria containing the full names and current or last known addresses for all persons who fall under the definition of the Settlement Class Members, which Apria shall provide to the Settlement Administrator within twenty-eight (28) days of the Preliminary Approval Order.
- 1.46 “Settlement Class Member” means an individual who falls within the definition of the Settlement Class.
- 1.47 “Settlement Class Representatives” or “Representative Plaintiffs” means Lisa Smith, Robert N. Herrera, Suzanne Cuyle, Leonardo DePinto, Joel Kamisher, Debbie Bobbitt, Dottie Nikolich, Sabrina Munoz, Hilary French, Elisa Stroffolino, Amy Clark, Reginald Reese, Rita May, Tammie Creek, Sonya Albert, Paul Kramer,



Chad Hohenbery, Colleen Rickard, Kristinia Accardo, Roger Winstanley, and Bonnie Bennett.

- 1.48 “Settlement Fund” means \$6,375,000.00 to be paid by Apria as specified in Section 2 of this Agreement, including any interest accrued thereon after payment. This payment is the limit and extent of Apria’s payment of any and all monetary obligations or liability with respect to the Settlement. For avoidance of any confusion, this limit and extent includes any and all forms of relief, monetary or otherwise, provided to Class Members by Apria pursuant to this Settlement, including, but not limited to, all items identified in Paragraph 2.5 of this Agreement, but excluding the business practice adjustments in Section 7 of this Agreement. Apart from the business practice adjustments in Section 7 of this Agreement, Apria is not and shall not, under any circumstance, be obligated to pay any amount beyond the agreed \$6,375,000.00 for anything arising out of or related to the Settlement or the Illegal Hacking Events, and/or any prior unauthorized disclosure of Protected Information by Apria or any of its Affiliates.
- 1.49 “Settlement Payment” or “Settlement Check” mean the payment to be made via mailed check and/or electronic payment to a Settlement Class Member pursuant to Section 5.
- 1.50 “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs’ motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs’ Fee Application, and the operative complaints in the Class Action Lawsuit. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.
- 1.51 “Subsidiaries” means with respect to any entity, any corporation, limited liability company, partnership, or other entity of which such entity owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation, limited liability company, partnership or other entity.
- 1.52 “Successor” means, with respect to a natural person, that person’s heir, and, with respect to an entity, any other entity that through merger, buyout, or any other means, acquires all or part of that entity’s duties, rights, obligations, shares, units, ownership interests, debts, or assets.

- 1.53 “Taxes and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Apria with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.
- 1.54 “Unknown Claims” means claims that could have been raised related to the Illegal Hacking Events or any prior unauthorized access or disclosure of Protected Information that any of the Settlement Class Representatives or Settlement Class Members do not know or suspect to exist, which, if known by him, her, or it, might affect his, her, or its agreement to release Releasees or the Released Claims or might affect his, her, or its decision to agree, object or not to object to the Settlement.

## 2. Settlement Fund

- 2.1 **Establishment of Settlement Fund.** Within thirty (30) days of the entry of the Preliminary Approval Order, Apria shall deposit the Settlement Fund into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator and Apria.
- 2.2 **Non-Reversionary.** The Settlement Fund shall be non-reversionary as set forth herein.
- 2.3 **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. Upon written request by any of the Parties, the Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement.
- 2.4 **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this



Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Section 13.

- 2.5 **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Service Award Payments approved by the Court; (iv) Fee Award and Costs; (v) reimbursement for Out-of-Pocket Losses or Expenses; and (vi) Pro Rata Cash Payments. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.
- 2.6 **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. The Settlement Administrator shall reserve funds reasonably sufficient to cover all Taxes and Tax-Related Expenses before distributing funds in accordance with Section 6.2. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund to any Settlement Class Representative or any Settlement Class Member. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to them of the receipt of funds from the Settlement Fund pursuant to this Agreement.

### 3. **Reimbursement for Out-Of-Pocket Losses**

- 3.1 **Reimbursement for Out-of-Pocket Losses.** The Settlement Administrator, from the Settlement Fund, will provide compensation, up to a total of \$2,000 per person who is a member of the Settlement Class, upon submission of a claim and supporting documentation, for out-of-pocket monetary losses or expenses that are fairly traceable to and reasonably resulting from the Illegal Hacking Event, including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the date of the Illegal Hacking Event through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.
- 3.2 **Assessing Claims for Out-of-Pocket Losses or Expenses.** Settlement Class Members with Out-of-Pocket Losses or Expenses must submit documentation supporting their claims. To receive reimbursement for Out-of-Pocket Losses,

Settlement Class Members must submit a valid Claim Form (either in paper form or on the Settlement Website) that includes the following: (i) third-party documentation supporting the loss; and (ii) a brief description of the documentation describing the nature of the costs, if the nature of the costs is not apparent from the documentation alone. This can include receipts or other documentation not “self-prepared” by the claimant that document the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. Out-of-Pocket Losses Claim Forms may be submitted at any time on or before the date that is ninety (90) days after entry of the Final Order Approving Settlement and Judgment. The Settlement Administrator shall verify that each person who submits an Out-of-Pocket Losses Claim Form is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent an Out-of-Pocket Claim Form reflects valid Out-of-Pocket Losses or Expenses fairly traceable to and reasonably resulting from the Illegal Hacking Events. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

- 3.3 **Disputes.** To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations. The Settlement Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Out-of-Pocket Losses or Expenses.

#### 4. **Pro Rata Cash Payment**

- 4.1 **Pro Rata Cash Payment.** After the distribution of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, the Settlement Administrator will make pro rata cash settlement payments of the remaining Settlement Fund to each Settlement Class Member who submits a valid claim for this benefit. This Pro Rata Cash Payment may be selected by itself or in addition to a claim for Out-of-Pocket Losses or Expenses. Any Net Settlement Funds that remain after the distribution and reissuance of all payments from the Settlement Fund, including for settlement

checks that are not cashed by the deadline to do so, will be distributed to a cy pres recipient that is jointly proposed by the parties and approved by the Court.

## 5. Payments to Settlement Class Members

- 5.1 **Payment Timing.** Payments for Approved Claims for reimbursement for Out-of-Pocket Losses or Expenses and/or Pro Rata Cash Payments shall be issued in the form of a check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date.
- 5.2 **Timing.** Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Check is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member reminding him/her of the deadline to cash such check.
- 5.3 **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Settlement Class Members within that time.
- 5.4 **Uncashed Checks.** To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissue a check or mail the Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Any reissued Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time. Any remaining funds will be distributed to a cy pres recipient that is jointly proposed by the parties and approved by the Court.

- 5.5 **Deceased Settlement Class Members.** If the Settlement Administrator is notified that a Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Settlement Class Member's estate upon receiving proof the Settlement Class Member is deceased and after consultation with Class Counsel.

6. **Claims, Caps, and Distribution of Settlement Funds**

- 6.1 **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. Defendant and Releasees shall be entitled to access information regarding which Settlement Class Members submitted a Claim Form or otherwise participated in the Settlement. Apria's Counsel may obtain this information upon request, including but not limited to any disputes arising out of the claims process.
- 6.2 **Order of Distribution of Funds.** The Settlement Administrator must first use the Net Settlement Fund to make payments for Approved Claims for Out-of-Pocket Losses. The Settlement Administrator shall then use the remaining funds in the Net Settlement Fund to make distributions for Pro Rata Cash Payments.
- 6.3 **Pro-Rata Contingencies.** In the event that the aggregate amount of all payments for reimbursement of Out-of-Pocket Losses exceeds the total amount of the Net Settlement Fund, then the value of such payments shall be reduced on a pro rata basis, such that the aggregate value of all payments for Out-of-Pocket Losses does not exceed the Net Settlement Fund. All pro rata determinations required by this Section shall be performed by the Settlement Administrator.

7. **Business Practice Adjustments**

- 7.1 **Business Practice Adjustments.** In connection with the Parties' settlement negotiations in the Class Action Lawsuit, Apria provided Plaintiffs with formal discovery regarding the Illegal Hacking Events and the security business practice adjustments that Apria has made to address its information security posture following the Illegal Hacking Events. These Business Practice Adjustments are specific business practice and remedial measures within the following general categories: (i) enhanced cybersecurity training and awareness program, (ii) enhanced data security policies, (iii) enhanced security measures, (iv) further restricting access to personal information, and (v) enhanced monitoring and response capability.
- 7.2 **Modification and Costs.** The Parties acknowledge that technical requirements for securing information evolve and change dynamically. In the event that technological or industry developments, or intervening changes in law or business

practices render specific Business Practice Adjustments obsolete or make compliance by Apria with them unreasonable or technically impractical, Apria may modify its business practices as necessary to ensure appropriate security practices are being followed. All costs associated with implementing the Business Practice Adjustments will be borne by Apria separate and apart from the Settlement Fund.

## 8. Taxes

- 8.1 **Awards to Settlement Class Members.** For tax purposes, Awards made to Settlement Class Members who are current or former Apria employees shall be allocated as non-wage compensation. The Claims Administrator is responsible for facilitating all reporting with respect to all amounts payable to Settlement Class Members required pursuant to any federal, state or local tax law or regulation and with respect to properly and timely filing and sending Form 1099s to any applicable Settlement Class Member.
- 8.2 **Individual Responsibilities.** Representative Plaintiffs and each individual Settlement Class Member that receives a payment will be solely responsible for all taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to this Settlement Agreement. Representative Plaintiffs, on behalf of the Settlement Class Members, acknowledge and agree that they have **not** relied upon any advice from Apria or Class Counsel as to the taxability of the payments received pursuant to the Settlement Agreement. Apria and Class Counsel shall have no responsibility for any taxes, interest penalties or other amounts due with respect to any payments made pursuant to the Settlement Agreement.
- 8.3 **Settlement Administrator.** The Claims Administrator shall handle all tax reporting with respect to the payments made pursuant to the Settlement Agreement and shall report the payments in accordance with applicable law, including, but not limited to, complying with the responsibilities in Section 8.1 of this Agreement.

## 9. Settlement Class Notice

- 9.1 **Notice.** Within twenty-eight (28) days after the date of the Preliminary Approval Order, Apria shall provide the Settlement Class List to the Settlement Administrator. Within twenty-one (21) days after receipt of Settlement Class List, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class. Notice shall be disseminated via U.S. mail to all Settlement Class Members and also via e-mail to Settlement Class Members whose personal e-mail addresses are known. Class Counsel may direct the Settlement Administrator to send reminder notices to Settlement Class Members at any time prior to the Claims Deadline.

## 10. Procedures for Opt-Outs and Objections to the Settlement

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

## 11. Duties of the Settlement Administrator

- 11.1 **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement as specified in this Agreement, including, but not limited to, the responsibilities under Section 8 and the following:
- a. Creating, administering, and overseeing the Settlement Fund;
  - b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
  - c. Providing Notice to Settlement Class Members via U.S. mail and e-mail;



- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) Business Day;
- f. Responding to any mailed or e-mailed Settlement Class Member inquiries within one (1) Business Day;
- g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- h. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Apria's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Apria's Counsel;
- i. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- j. Providing weekly or other periodic reports to Class Counsel and Apria's Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Apria's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- k. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of the Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion;
- l. Performing any function related to settlement administration at the agreed-upon instruction of Class Counsel or Apria's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed; and
- m. Distributing any net settlement funds that remain after the distribution and re-issuance of all payments from the Settlement Fund, including for settlement checks that are not cashed by the deadline to do so, to the cy pres recipient approved by the Court.

- 11.2 **Limitation of Liability.** The Parties, Class Counsel, and Apria's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.
- 11.3 **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Apria's Counsel for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

## 12. **Preliminary Approval, Final Approval, and Jurisdiction**

- 12.1 **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. The Parties also stipulate to the appointment of Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel. This stipulation is strictly for the purposes of this Settlement Agreement and shall not and may not be used in any other proceeding as any authority for or against certification of any other class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Class Action Lawsuit shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or



Settling Party's position on the issues of class certification, class action waivers, agreements to arbitrate, or any other issue.

- 12.2 **Preliminary Approval.** Within fourteen (14) days of execution of this Settlement Agreement, Class Counsel shall file a motion for preliminary approval of the settlement.
- 12.3 **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement Agreement to be issued at or following the Final Approval Hearing and at least one hundred (100) days after the motion for preliminary approval has been filed.
- 12.4 **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

### 13. **Modification or Termination of this Settlement Agreement**

- 13.1 **Modification.** The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.
- 13.2 **Decertification of the Settlement Class if Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order and Judgment; or (2) the Effective Date does not occur, the certification of the Settlement Class shall be void *ab initio*. Apria reserves the right to contest class certification for all other purposes. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition, the fact that Apria did not oppose certification of a class under the

Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification.

- 13.3 **Termination.** Settlement Class Representatives and Defendant shall have the right to terminate this Agreement by providing written notice of their or its election to do so (“Termination Notice”) within seven (7) days of: (1) the Court’s stated refusal to issue the Preliminary Approval Order; or (2) within fourteen (14) days of any of the following: (i) determination that a total of ten percent (10%) of Settlement Class Members object to the Settlement or Fee Application, (ii) the Court’s refusal to enter the Final Approval Order and Judgment, or (iii) the date upon which the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court.
- 13.4 **Effect of Termination.** In the event of a termination as provided in Section 13.3, this Agreement and the Settlement shall be considered null and void; all of the Parties’ obligations under the Agreement shall cease to be of any force and effect; and the Parties shall return to the status quo ante in the Class Action Lawsuit as if the Parties had not entered into this Agreement or the Settlement. In addition, in the event of such a termination, all of the Parties’ respective pre-Settlement claims and defenses, including, but not limited to, class action waivers and agreements to arbitrate, will be preserved.

#### 14. **Releases**

- 14.1 **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Settlement Class Representatives and Settlement Class Members shall be deemed to have released, acquitted, and forever discharged any and all Released Claims against Releasees.
- 14.2 **Unknown Claims.** The Released Claims include the release of Unknown Claims. Upon the Effective Date, the Settlement Class Representatives and Settlement Class Members shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, each of the Settlement Class Representatives and Settlement Class Members shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common

law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Settlement Class Representatives and Settlement Class Members acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Section.

- 14.3 **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Releasees or based on any actions taken by any of the Releasees that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

**15. Attorneys' Fees, Costs, Expenses, and Service Awards**

- 15.1 **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application to be paid from the Settlement Fund. Apria agrees not to oppose Class Counsel's request for an award of attorneys' fees not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of reasonable litigation costs and expenses not to exceed \$50,000.00. Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class Counsel shall provide to Apria and the Settlement Administrator a properly completed and duly executed IRS Form W-9. If approved by the Court, Fee Award and Costs shall be paid by the Settlement Administrator from the Settlement Fund, in the amount approved by the Court, no later than three (3) days after the Effective Date.
- 15.2 **Allocation.** Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs among Plaintiffs' counsel and any other attorneys for Plaintiffs. Apria shall have no liability or other responsibility for allocation of any such attorneys' fees and Litigation Costs and Expenses.
- 15.3 **Service Award Payments.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application that will include a request for Service Award Payments for the Settlement Class Representatives in recognition for their contributions to this Class Action Lawsuit. Apria agrees not to oppose Class Counsel's request for a service award not to exceed three thousand U.S. dollars and zero cents (\$3,000.00) per representative. If approved by the Court, the Settlement Administrator shall make the Service Award Payments to the Settlement Class Representatives from the Settlement Fund. Such Service Award Payments shall be paid by the Settlement Administrator from the Settlement Fund,

in the amount approved by the Court, no later than thirty (30) days after the Effective Date. Any Party receiving a Service Award Payment shall and hereby does release any and all Claims of any kind against Apria under federal, state, or local law and statute, including, but not limited to, the California Labor Code, California Civil Code, California Constitution, the California Private Attorneys General Act, and any similar federal or state law and/or regulation.

- 15.4 **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

## 16. **No Admission of Liability**

- 16.1 **No Admission of Liability.** Nothing relating to this Settlement Agreement, or any communications, papers, or orders related to the Settlement Agreement, shall be cited to as, construed to be, admissible as, or deemed an admission by Defendant or any Releasee of any liability, culpability, negligence, misconduct or other wrongdoing toward the Representative Plaintiffs, the Settlement Class Members, or any other Person, and Defendant and each Releasee specifically disclaims and disputes any liability, culpability, negligence, misconduct or other wrongdoing toward the Representative Plaintiffs, the Settlement Class Members, or any other Person, or that class certification is appropriate in this or any other matter. This Agreement, and any communications, papers, or orders related to the settlement, may not be cited to, used, or admitted as evidence of liability or that class action certification is appropriate. There has been no determination by any court as to the merits of the claims asserted by the Representative Plaintiffs against Defendant or as to whether a class should be certified, other than for settlement purposes only.
- 16.2 **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Apria in the Class Action Lawsuit or in any proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be, or may be used, in evidence as an admission, concession or presumption that class certification is appropriate in this Class Action Lawsuit.

## 17. **Miscellaneous Provisions**

- 17.1 **Reasonable, Good Faith Efforts.** The Parties and their counsel agree to make reasonable, good faith efforts to effectuate the purposes and intent of this Settlement

Agreement and obtain Court approval of this Settlement Agreement, subject to Apria's rights to terminate the Settlement Agreement, as provided herein.

- 17.2 **Representation by Counsel.** The Representative Plaintiffs and Apria represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Settlement Agreement and have been given the opportunity to review independently this Settlement Agreement with such legal counsel and agree to the particular language of the provisions herein.
- 17.3 **Exhibits.** All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. In the event of any difference between the terms of the Settlement Agreement and any of the exhibits, the terms of the Settlement Agreement shall control.
- 17.4 **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next Business Day. All reference to "days" in this agreement shall refer to calendar days unless otherwise specified.
- 17.5 **Final Resolution.** The Parties to this Settlement Agreement intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Representative Plaintiffs, any other Class Members and their attorneys against the Releasees with respect to the Released Claims. Accordingly, Representative Plaintiffs and Apria agree not to assert in any forum that the Class Action Lawsuit were brought by the Representative Plaintiffs or defended by Apria in bad faith or without a reasonable basis. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by the Parties, including during a mediation conducted by a Magistrate Judge, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.
- 17.6 **Headings.** The headings herein are used for the purpose of convenience only and are not meant to have legal effect. In the event of a dispute concerning the terms and conditions of this Settlement Agreement, the headings shall be disregarded.
- 17.7 **No Precedential Value.** The Parties agree and acknowledge that this Agreement carries no precedential value.
- 17.8 **Fair and Reasonable.** The Parties and their counsel believe this Settlement Agreement is a fair and reasonable compromise of the disputed claims, in the best interest of the Parties, and have arrived at this Agreement as a result of extensive arm's-length negotiations.
- 17.9 **Waiver.** The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or

remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any provision or breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other provision or any other prior or subsequent breach of this Settlement Agreement.

- 17.10 **Severability.** Should any part, term or provision of this Settlement Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.
- 17.11 **Integration.** This Settlement Agreement and its exhibits constitute the entire agreement among the Parties hereto concerning the Settlement of the Class Action Lawsuit, and no representations, warranties or inducements have been made by any Party hereto concerning this Settlement Agreement and its exhibits other than those contained and memorialized in such documents.
- 17.12 **Counterparts.** This Settlement Agreement may be executed in one or more original and/or faxed counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided, however, that counsel for the signatories of this Settlement Agreement shall exchange among themselves original signed counterparts.
- 17.13 **Facsimile and Electronic Mail.** Transmission of a signed Settlement Agreement by facsimile or electronic mail shall constitute receipt of an original signed Settlement Agreement by mail.
- 17.14 **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.
- 17.15 **Governing Law.** The construction, interpretation, operation, effect and validity of this Settlement Agreement, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Indiana without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.
- 17.16 **Interpretation.** Definitions apply to the singular and plural forms of each term defined. Definitions apply to the masculine, feminine, and neuter genders of each term defined. Whenever the words “include,” “includes” or “including” are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”
- 17.17 **Drafting.** This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is



the result of arm's-length negotiations between the Parties, and all Parties have contributed substantially and materially to the preparation of this Settlement Agreement.

- 17.18 **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other in good faith prior to seeking Court intervention.
- 17.19 **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.
- 17.20 **Contractual Agreement.** All counsel and any other persons executing this Settlement Agreement and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Settlement Agreement to effectuate its terms.
- 17.21 **No Assignment.** Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.
- 17.22 **Non-Disparagement.** Representative Plaintiffs, Class Counsel, Apria, and Apria's Counsel agree not to make any statements, written or verbal, or to cause or encourage any other Person to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Parties and their respective counsel concerning all Released Claims, as well as the litigation of the Class Action Lawsuit, the Settlement, this Settlement Agreement, and any discussions, interactions, or negotiations of the Settlement by the Parties and their counsel. Representative Plaintiffs, Class Counsel, Apria, and their respective counsel may issue press releases in connection with the filing of the motion for preliminary approval of this Settlement. The Parties shall exchange drafts of any such proposed press releases 24 hours in advance of publication and provide the opposing Party with a meaningful opportunity to comment on the draft press releases.
- 17.23 **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.
- 17.24 **Notice.** All notices to Class Counsel provided for herein shall be sent by overnight mail and e-mail to:

Lynn Toops  
Amina Thomas  
**Cohen & Malad, LLP**  
One Indiana Square  
Suite 1400  
Indianapolis, IN 46204

Gary M. Klinger  
**Milberg Coleman Bryson Phillips Grossman PLLC**  
227 West Monroe Street  
Chicago, Illinois 60606


All notices to Apria provided for herein, shall be sent by overnight mail and e-mail to:


John F. McCauley  
Gregory A. Neibarger  
Jessica Laurin Meek  
Zechariah Lee Banks  
**Dentons Bingham Greenebaum LLP**  
2700 Market Tower  
10 West Market Street  
Indianapolis, IN 46204

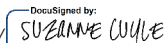
Colleen Parga  
**Dentons Bingham Greenebaum LLP**  
3500 PNC Tower  
101 S. 5th Street  
Louisville, KY 40202

The notice recipients and addresses designated above may be changed by written notice.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed by themselves or by their duly authorized counsel:

Signed by:  
/s/   
CE228F97F3E9485...  
Plaintiff Lisa Smith

DocuSigned by:  
/s/  2/25/2025  
84A300A081CA406...  
Plaintiff Robert Herrera

DocuSigned by:  
/s/   
95D3D56C5F1E428...  
Plaintiff Suzanne Cuyle



  
Plaintiff Leonardo DePinto

  
Plaintiff Joel Kamisher

  
Plaintiff Debbie Bobbitt

  
Plaintiff Dottie Nikolich

  
Plaintiff Sabrina Munoz

  
Plaintiff Hillary French

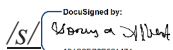
  
Plaintiff Elisa Stroffolino

  
Plaintiff Amy Clark

  
Plaintiff Reginald Reese

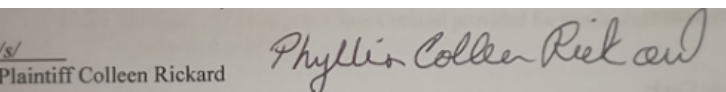
  
Plaintiff Rita May

  
Plaintiff Tammie Creek

  
Plaintiff Sonya Albert

  
Plaintiff Paul Kramer

  
Plaintiff Chad Hohenbery

  
Plaintiff Colleen Rickard

DocuSigned by:  
/s/ Kristina Accardo  
0121785A96AA17B...

Plaintiff Kristina Accardo

DocuSigned by:  
/s/ Roger Winstanley  
790B1CC3722E49B...

Plaintiff Roger Winstanley

Signed by:  
/s/ Bonnie Bennett  
700F80DE16804D1...

Plaintiff Bonnie Bennett

/s/\_\_\_\_\_

Defendant Apria Healthcare, LLC

Dated: \_\_\_\_\_

/s/

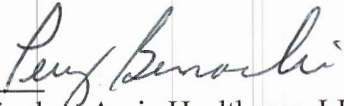
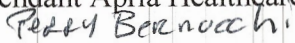
Plaintiff Kristina Accardo

/s/


Plaintiff Roger Winstanley

/s/

Plaintiff Bonnie Bennett


/s/  
Defendant Apria Healthcare, LLC  


Dated: 3/3/2025

By:   
John F. McCauley  
Gregory A. Neibarger  
Jessica Laurin Meek  
Colleen Parga  
Zechariah Lee Banks  
Dentons Bingham Greenebaum LLP

Date: March 4, 2025

*Counsel for Defendant Apria*

By:   
Lynn Toops  
Amina Thomas  
Cohen & Malad, LLP

Date: February 24, 2025

By:   
Gary M. Klinger  
Milberg Coleman Bryson Phillips Grossman PLLC

Date: February 24, 2025

*Counsel for Plaintiffs and the Settlement Class*

# **EXHIBIT A**

\*00000000000000\*

#: 1865

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Your claim must  
be submitted  
online or  
postmarked by:

<<Claims  
Deadline>>

**CLAIM FORM FOR APRIA DATA BREACH CLASS ACTION  
LAWSUIT**

*Smith et al v. Apria Healthcare LLC*

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

United States District Court for the Southern District of Indiana

APRIA-C

**USE THIS FORM ONLY IF YOU ARE A SETTLEMENT CLASS MEMBER**

**GENERAL INSTRUCTIONS**

If you received a Notice of this Settlement, the Settlement Administrator identified you as a Settlement Class Member who may have received actual or constructive notice from Apria that your information may have been compromised as a result of the Data Breach (defined in the Settlement Agreement as the "Illegal Hacking Events"). You may submit a claim for Settlement Payments, outlined below.

Please refer to the Notice posted on the Settlement Website [www.Website.com](http://www.Website.com), for more information on submitting a Claim Form and if you are part of the Settlement Class.

**To receive a Settlement Payment from this Settlement via an electronic payment, you must submit the Claim Form below electronically at [www.Website.com](http://www.Website.com) by <<Claims Deadline>>.**

This Claim Form may also be mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, including any supporting documentation, by U.S. mail to:

<<Mailing Caption>>  
c/o Kroll Settlement Administration LLC  
PO Box XXXX  
New York, NY 10150-XXXX

*Pro Rata* Cash Payments will be adjusted up or down depending on the amount of Approved Claims. Any increases or decreases to *Pro Rata* Cash Payments will be on an equal basis. **You may submit a claim for one or more of the following benefits:**

- 1) ***a) Reimbursement of Out-of-Pocket Losses or Expenses:*** reimbursement up to a total of \$2,000 per Person who is a Settlement Class Member, upon submission of an Approved Claim and supporting documentation, for out-of-pocket monetary losses or expenses incurred as a result of the Data Breach;

In addition to Out-of-Pocket Losses or Expenses, Settlement Class Members may also select:

- 2) ***b) Pro Rata Cash Payment.*** After the payment of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, the Settlement Administrator will make *pro rata*, or equal share, cash Settlement Payments from the remaining Settlement Fund to each Settlement Class Member who submits an Approved Claim for this benefit. This *Pro Rata* Cash Payment may be selected by itself or in addition to a claim for Out-of-Pocket Losses and Expenses.

Questions? Go to [www.Website.com](http://www.Website.com) or call (XXX) XXX-XXXX.

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Page 1 of 4

## I. PAYMENT SELECTION

If you would like to elect to receive your Settlement Payment through electronic transfer, please visit the Settlement Website and timely file your Claim Form. The Settlement Website includes a step-by-step guide for you to complete the electronic payment option.

## II. SETTLEMENT CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this Claim Form.

First Name

Last Name

Address 1

Address 2

City

State

Zip Code

Email Address (optional): \_\_\_\_\_@\_\_\_\_\_.com

Telephone Number: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

## III. PROOF OF DATA BREACH SETTLEMENT CLASS MEMBERSHIP

☐ Check this box to certify if you are an individual who received actual or constructive notice from Apria that their information may have been compromised as a result of the Data Breach.

Enter the Class Member ID Number provided on your Notice:

Class Member ID : 0 0 0 0 0 \_\_\_\_\_

Questions? Go to [www.aaaaaaaaaaaaaaaaaaaaaaaa.com](http://www.aaaaaaaaaaaaaaaaaaaaaaaa.com) or call (XXX) XXX-XXXX.

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#### IV. OUT-OF-POCKET LOSSES OR EXPENSES

All Settlement Class Members are also eligible for reimbursement for up to \$2,000 per person for Out-of-Pocket Losses incurred as a result of the Data Breach, including:

- (i) *Unreimbursed losses* relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after <<the date of the Data Breach>> through <<the date of claim submission>>; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Settlement Class Members with Out-of-Pocket Losses or Expenses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that document the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

This payment can be in addition to the *Pro Rata* Cash Payment.

**You must have unreimbursed Out-of-Pocket Losses or Expenses incurred as a result of the Data Breach and submit documentation to obtain this reimbursement.**

☐ I have attached documentation showing that the claimed losses were more likely than not caused by the Data Breach. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation.

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss	Description of Supporting Reasonable Documentation (Identify what you are attaching and why)
Example: Identity Theft Protection Service	0 7/17/2 0 (mm/dd/yy)	\$50.00	Copy of identity theft protection service bill
	— / — / — (mm/dd/yy)	\$ _____.	
	— — / — / — (mm/dd/yy)	\$ _____.	
	— — / — / — (mm/dd/yy)	\$ _____.	

Questions? Go to [www.Website.com](http://www.Website.com) or call (XXX) XXX-XXXX.



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#### IV. *PRO RATA* CASH PAYMENT

By checking the below box, I choose a *pro rata*, or equal share, cash payment (which may increase or decrease depending on Approved Claims and remaining Settlement Funds). **You may also submit a claim for Out-of-Pocket Losses or Expenses.**

☐

Yes, I choose a *Pro Rata* Cash Payment

#### VI. ATTESTATION & SIGNATURE

I swear and affirm under the laws of my state that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

\_\_\_\_\_  
Signature

\_\_\_\_ / \_\_\_\_ / \_\_\_\_  
Date

\_\_\_\_\_  
Print Name

Questions? Go to [www.Website.com](http://www.Website.com) or call (XXX) XXX-XXXX.

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\*Page 4 of 4\*

Page 4 of 4

# **EXHIBIT B**

# NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

United States District Court for the Southern District of Indiana

*Smith et al v. Apria Healthcare LLC*

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

A Court has authorized this Notice. This is not a solicitation from a lawyer.

---

**If You Received Actual Or Constructive Notice From Apria That Your Information May Have Been Compromised As A Result Of The Data Breach, You Are Eligible to Receive a Settlement Payment from a Class Action Lawsuit**

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- A Court authorized this Notice, to those that are eligible to receive a Settlement Payment from a proposed class action Settlement. The Class Action Lawsuit is titled *Smith et al v. Apria Healthcare LLC*, Case No. 1:23-cv-01003-JPH-KMB and is pending in the United States District Court for the Southern District of Indiana. The Persons that filed the Class Action Lawsuit are called Plaintiffs or Settlement Class Representatives and the company they sued is Apria Healthcare LLC (or Apria). Apria denies any wrongdoing whatsoever.

- **Who is a Settlement Class Member?**

All individuals who received actual or constructive notice from Apria that their information may have been compromised as a result of the Data Breach (defined in the Settlement Agreement as the “Illegal Hacking Events”).

Excluded from the Settlement Class are: 1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to <<the Opt-Out Deadline>>.

- Settlement Class Members under the Settlement Agreement will be eligible to receive:
  - ❖ **Out-of-Pocket Losses:** reimbursement up to a total of \$2,000 per person who is a Settlement Class Member, upon submission of an Approved Claim and supporting documentation, for out-of-pocket monetary losses or expenses that are as a result of the Data Breach; **AND/OR**
  - ❖ **Pro Rata Cash Payment:** After the payment of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, the Settlement Administrator will make *pro rata* cash payments of the remaining Settlement Fund to each Settlement Class Member who submits an Approved Claim for this benefit.
- To submit a claim or obtain more information visit [www.website.com](http://www.website.com) or call (XXX) XXX-XXXX to request a Claim Form no later than <<Claims Deadline>>.

**Please read this Notice carefully. Your legal rights will be affected, and you have a choice to make at this time.**

	<b>Summary of Legal Rights</b>	<b>Deadline(s)</b>
<b>Submit a Claim Form</b>	The only way to receive Settlement Payments from the Settlement.	Submitted or postmarked on or before <b>&lt;&lt;Claims Deadline&gt;&gt;</b> .
<b>Exclude Yourself by Opting Out of the Class</b>	Receive no benefit from the Settlement. This is the only option that allows you to keep your right to bring any other lawsuit against Apria relating to the Data Breach.	Mailed and postmarked on or before <b>&lt;&lt;Opt-Out Deadline&gt;&gt;</b> .
<b>Object to the Settlement and/or Attend the Final Approval Hearing</b>	You can write the Court about why you agree or disagree with the Settlement. The Court cannot order a different Settlement. You can also ask to speak at the Final Approval Hearing on <b>&lt;&lt;Final Approval Hearing date&gt;&gt;</b> , about the fairness of the Settlement, with or without your own attorney.	Mailed and postmarked on or before <b>&lt;&lt;Objection Deadline&gt;&gt;</b> .
<b>Do Nothing</b>	You will not receive any Settlement Payments from this class action Settlement.	N/A

- Your rights and options as a Settlement Class Member – **and the deadlines to exercise your rights** – are explained in this Notice.
- The Court still will have to decide whether to approve the Settlement. Payments to Settlement Class Members will be made only if the Court approves the Settlement and after any possible appeals are resolved.

**TO RECEIVE AN ELECTRONIC OR ACH PAYMENT FOR YOUR APPROVED CLAIM, YOU MUST FILE A CLAIM FORM ONLINE AT [WWW.WEBSITE.COM](http://WWW.WEBSITE.COM)**

**What This Notice Contains**

<b>Basic Information .....</b>	<b>4</b>
<b>Who is in the Settlement .....</b>	<b>4</b>
<b>The Settlement Benefits—What You Get if You Qualify .....</b>	<b>5</b>
<b>How Do You Submit a Claim .....</b>	<b>6</b>
<b>Excluding Yourself from the Settlement .....</b>	<b>7</b>
<b>Objecting to the Settlement .....</b>	<b>8</b>
<b>The Lawyers Representing You .....</b>	<b>9</b>
<b>The Court’s Final Approval Hearing .....</b>	<b>9</b>
<b>If You Do Nothing .....</b>	<b>10</b>
<b>Additional Information .....</b>	<b>11</b>

## BASIC INFORMATION

### 1. Why is there a Notice?

The Court authorized this Notice because you have a right to know about the Settlement, and all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the nature of the lawsuit that is the subject of the Settlement, the general terms of the Settlement, and your legal rights and options.

The Honorable Judge [REDACTED] of the United States District Court for the Southern District of Indiana is overseeing this case captioned as *Smith et al v. Apria Healthcare LLC*, Case No. 1:23-cv-01003-JPH-KMB. The people who brought the lawsuit are called the Settlement Class Representatives. The company being sued, Apria Healthcare LLC, is called the Defendant.

### 2. What is the Class Action Lawsuit about?

The Class Action Lawsuit alleges that in April of 2019 and various dates thereafter, criminal actors illegally accessed limited portions of Apria's computer network and gained unauthorized access to the personally identifiable Protected Information of certain Apria customers and employees, which constituted the Data Breach. The Settlement Class Representatives allege that Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals.

Apria denies any wrongdoing whatsoever. No court or other judicial body has made any judgment or other determination that Apria has done anything wrong.

### 3. Why is this a class action?

In a class action, one or more people called "Settlement Class Representatives" or "Plaintiffs" sue on behalf of all people who have similar claims. Together, all of these people are called a "Settlement Class," and the individuals are called "Settlement Class Members." One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

### 4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or Apria. Instead, both sides agreed to the Settlement. The Settlement avoids the cost and risk of a trial and related appeals, while providing benefits to Settlement Class Members. The Settlement Class Representatives appointed to represent the Settlement Class, and the attorneys for the Settlement Class, Class Counsel think the Settlement is best for all Settlement Class Members.

## WHO IS IN THE SETTLEMENT?

### 5. How do I know if I am part of the Settlement?

You are affected by the Settlement and potentially a Settlement Class Member if you are a

an individual who received actual or constructive notice from Apria that their information may have been compromised as a result of the Data Breach.

Only Settlement Class Members are eligible to receive benefits under the Settlement. Excluded from the Settlement Class are: (1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to <<the Opt-Out Deadline>>.

#### 6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call (XXX) XXX-XXXX with questions. You may also write with questions to:

<<Mailing caption>>  
c/o Kroll Settlement Administration LLC  
PO Box XXXX  
New York, NY 10150-XXXX

### THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

#### 7. What does the Settlement provide?

The Settlement provides the following Settlement Payments available to Settlement Class Members who submit Approved Claims: (a) Reimbursement for Out-of-Pocket Losses or Expenses; and/or (b) *Pro Rata* Cash Payment. If a Settlement Class Member does not submit an Approved Claim or opts out, the Settlement Class Member will release his or her Claims against Apria without receiving a Settlement Payment.

Settlement Class Members with Out-of-Pocket Losses or Expenses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

Apria has undertaken security business practice adjustments that Apria has made to address its information security posture following the Data Breach. These Business Practice Adjustments are specific business practice and remedial measures within the following general categories: (i) enhanced cybersecurity training and awareness program, (ii) enhanced data security policies, (iii) enhanced security measures, (iv) further restricting access to personal information, and (v) enhanced monitoring and response capability.

#### 8. What payments are available for reimbursement under the Settlement?

Settlement Class Members that submit a valid and timely Claim Form may select one or all of the following:

- a) ***Reimbursement of Out-of-Pocket Losses or Expenses:*** reimbursement up to a total of \$2,000 per Person who is a Settlement Class Member, upon submission of an Approved Claim and supporting documentation, for out-of-pocket monetary losses or expenses

Questions? Go to [www.website.com](http://www.website.com) or call (XXX) XXX-XXXX

incurred as a result of the Data Breach.

- These documented losses include:
  - *Unreimbursed losses* relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after <<the date of the Data Breach>> through <<the date of claim submission>>; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

In addition to Out-of-Pocket Losses or Expenses, Settlement Class Members may also select:

- b) ***Pro Rata Cash Payment.*** After the payment of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, the Settlement Administrator will make *pro rata* cash Settlement Payments from the remaining Settlement Fund to each Settlement Class Member who submits an Approved Claim for this benefit. This *Pro Rata* Cash Payment may be selected by itself or in addition to a claim for Out-of-Pocket Losses and Expenses.

## HOW DO YOU SUBMIT A CLAIM?

### 9. How do I get Settlement Payments?

To receive Settlement Payments, you must complete and submit a Claim Form online at [www.website.com](http://www.website.com) or by mail to <<Mailing caption>>, c/o Kroll Settlement Administration LLC, PO Box XXXX, New York, NY 10150-XXXX. Read the Claim Form instructions carefully, fill out the Claim Form, provide the required documentation, and submit online by <<Claims Deadline>> or by mail postmarked by <<Claims Deadline>>.

### 10. How will claims be decided?

The Settlement Administrator will decide whether and to what extent any claim made on each Claim Form is an Approved Claim. The Settlement Administrator may require additional information from you. If you do not provide the additional information in a timely manner, the claim will be considered invalid and will not be paid.

The Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies.

### 11. When will I get my Settlement Payment?

The Court will hold a Final Approval Hearing on <<Date>>, at <<Time>> a.m. ET to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals from that decision and resolving them can take time. It also takes time for all of the Claim Forms to be processed. Please be patient. Payments will begin after the Settlement has obtained Court approval



and the time for all appeals has expired.

## 12. What am I giving up as part of the Settlement?

Apria and its affiliates will receive a release from all Claims that could have been or that were brought against Apria relating to the Data Breach. Thus, if the Settlement becomes final and you do not exclude yourself from the Settlement, you will be a Settlement Class Member and you will give up your right to sue Apria and all past, present, and future Subsidiaries and/or Affiliates (including any and all in-house and outside counsel including, without limitation, Apria's Counsel) and its and/or their past, present, and future advisors, administrators, auditors (including any and all internal and external auditors), employees, accountants, actuaries, consultants, fiduciaries, representatives, service providers, Successors, successors-in-interest, parents, trustees, insurance carriers, reinsurers, estates, heirs, executors, beneficiaries, trusts, and assigns of, and any other person acting on Apria's behalf. This Release is described in the Settlement Agreement, known as Released Claims, which is available at [www.website.com](http://www.website.com). If you have any questions, you can talk to the law firms listed in Question 18 for free or you can talk to your own lawyer.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be part of the Settlement, then you must take steps to exclude yourself from the Settlement Class. This is sometimes referred to as "opting out" of the Settlement Class.

## 13. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to receive any benefits from the Settlement.

## 14. If I do not exclude myself, can I sue Apria for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Apria and any other Releasee for any Claim that could have been or was brought relating to the Data Breach. You must exclude yourself from the Settlement to start your own lawsuit or to be part of any different lawsuit relating to the Claims in this case.

## 15. How do I exclude myself from the Settlement?

To exclude yourself, send a Request for Exclusion or written notice of intent to opt-out that says you want to be excluded from the Settlement in *Smith et al v. Apria Healthcare LLC*, Case No. 1:23-cv-01003-JPH-KMB. The Request for Exclusion must include: the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. You must mail your Request for Exclusion to the Settlement Administrator postmarked by **<<Opt-Out Deadline>>**, to:

<<Mailing caption>>  
c/o Kroll Settlement Administration LLC  
PO Box XXXX  
New York, NY 10150-XXXX

Questions? Go to [www.website.com](http://www.website.com) or call (XXX) XXX-XXXX

## OBJECTING TO THE SETTLEMENT

### 16. How do I tell the Court that I do not like the Settlement?

You can tell the Court that you do not agree with the Settlement or some part of it by objecting to the Settlement. For an objection to be a valid objection under the Settlement, it must be in writing, mailed to the Settlement Administrator at the addresses listed below, postmarked by **no later** than **<<Objection Deadline>>**.

<<Mailing caption>>  
c/o Kroll Settlement Administration LLC  
PO Box XXXX  
New York, NY 10150-XXXX

Your objection must be written and must include all of the following:

- i) the name of the Class Action Lawsuit;
- ii) the Settlement Class Member's full name, current mailing address, and telephone number;
- iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection;
- iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- v) the identity of any attorneys representing the objector;
- vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and
- vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

### 17. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the Settlement or parts of it and why you do not think it should be approved. You can object only if you are a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and do not want to receive any payment from the Settlement. If you exclude yourself, you have no basis to object because you are no longer a Settlement Class Member, and the case no longer affects you.

## THE LAWYERS REPRESENTING YOU

### 18. Do I have a lawyer in this case?

Yes. The Court appointed Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, as Class Counsel to represent the Settlement Class in Settlement negotiations. If you want to be represented by your own lawyer, you may hire one at your own expense.

**19. How will the lawyers be paid?**

Class Counsel will file a Fee Application to be paid from the Settlement Fund. Apria agrees not to oppose Class Counsel's request for a Fee Award and Costs of attorneys' fees not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of reasonable Litigation Costs and Expenses not to exceed \$50,000. Any such award would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

Class Counsel will also ask the Court for request for a Service Award Payment not to exceed \$3,000 per Settlement Class Representative, from the Settlement Fund, in recognition of their contributions to this Class Action Lawsuit.

Any Fee Application for Fee Award and Costs, and Service Award Payments must be approved by the Court. The Court may award less than the amounts requested.

**THE COURT'S FINAL APPROVAL HEARING****20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at <<Time>> ET on <<Date>>, at the <<Court Address>>, Room [redacted] as ordered by the Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely and valid objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the Fee Application and Service Awards Payments. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so Class Counsel recommends checking the Settlement Website [www.website.com](http://www.website.com), or calling (XXX) XXX-XXXX.

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

No. Class Counsel will present the Settlement Class to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to visit the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 16, the Court will consider it.

**22. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file an objection according to the instructions in Question 16, including all the information required. Your objection must be **mailed** to the Settlement Administrator, at the mailing addresses listed above, postmarked by no later than the <<Objection Deadline>>.

## IF YOU DO NOTHING

### 23. What happens if I do nothing?

If you do nothing, you will not receive any benefits from this Settlement. If the Settlement is granted final approval and becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Apria or the other Releasees based on any Claim that could have been or that was brought relating to the Data Breach.

## ADDITIONAL INFORMATION

### 24. How do I get more information?

This Notice summarizes the Settlement. More details are in the Settlement Agreement itself. A copy of the Settlement Agreement is available at [www.website.com](http://www.website.com). You may also call the Settlement Administrator with questions or to receive a Claim Form at (XXX) XXX-XXXX.

### 25. What if my contact information changes or I no longer live at my address?

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below:

<<Mailing caption>>  
c/o Kroll Settlement Administration LLC  
PO Box XXXX  
New York, NY 10150-XXXX

**PLEASE DO NOT CONTACT THE COURT, CLERK OF THE COURT OR CLASS  
COUNSEL FOR INFORMATION ABOUT THE CLASS ACTION LAWSUIT  
SETTLEMENT**

Docusign Envelope ID: 252F7F1C-56D4-4666-B1EB-B0899906120A

<<Mailing Caption>>

c/o Kroll Settlement Administration LLC

P.O. Box <<#####>>

New York, NY 10150-<<####>>

FIRST-CLASS MAIL

U.S. POSTAGE PAID

CITY, ST

PERMIT NO. XXXX

**ELECTRONIC SERVICE REQUESTED**

**COURT APPROVED LEGAL NOTICE**

*Smith et al. v. Apria Healthcare LLC*  
Case No. 1:23-cv-01003-JPH-KMB

**If You Received Actual Or Constructive Notice  
From Apria That Your Information May Have Been  
Compromised As A Result Of The Data Breach,  
You Are Eligible to Receive a Settlement Payment  
from a Class Action Lawsuit.**

*This is not a solicitation from a lawyer.*

**This is NOT a Claim Form.**

**For more information about the Settlement  
and how to file a Claim Form visit or call:**

**[www.website.com](http://www.website.com)**

**(XXX) XXX-XXXX**

<<Refnum Barcode>>

**CLASS MEMBER ID:** <<Refnum>>

**Postal Service: Please do not mark barcode**

<<FirstName>> <<LastName>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>.-<<zip4>>

<<Country>>

Docusign Envelope ID: 252F7F1C-56D4-4666-B1EB-B0899906120A

*f al. v. Apria Healthcare LLC*. Case No. 1:23-cv-01003-JPH-KMB, filed in the United States District Court for the Southern District of Indiana. The Persons who sued are called the "Plaintiffs" or "Settlement Class Representatives" and the company they sued, Apria Healthcare LLC, is known as the Defendant in this case. The Class Action Lawsuit alleges that in April of 2019 and various dates thereafter, criminal actors illegally accessed limited portions of Apria's computer network and gained unauthorized access to the personally identifiable Protected Information of certain Apria customers and employees, which constituted the "Data Breach" (defined in the Settlement Agreement as "Illegal Hacking Events"). The Settlement Class Representatives allege that Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals. Defendant denies any wrongdoing whatsoever.

**Who Is A Settlement Class Member?** You are a Settlement Class Member if you are an individual who received actual or constructive notice from Apria that your Protected Information may have been compromised as a result of the Data Breach. The Settlement Class specifically excludes: (1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to **<<the Opt-Out Deadline>>**.

**What Are The Settlement Class Member Benefits?** Defendant has agreed to pay \$6,375,000 into a Settlement Fund. The Settlement provides the following Settlement Payments available to Settlement Class Members who submit Approved Claims: (a) Reimbursement for Out-of-Pocket Losses or Expenses; and/or (b) *Pro Rata* Cash Payment. The Settlement Administrator will distribute *pro rata*, or equal share cash payments, to Settlement Class Members who submit a valid and timely Claim Form.

**How To Make A Claim?** You must file a Claim Form by mail postmarked by **<<Claims Deadline>>**, and mailed to the Settlement Administrator's address below, or online at **www.website.com** by **<<Claims Deadline>**, to receive compensation from the Settlement.

**What Are My Other Rights?** If you do not want to be legally bound by the Settlement, you must exclude yourself by **Opt-Out Deadline**. If you do not exclude yourself, you will release any Claims you may have against Defendant and the Releasees, as more fully described in the Settlement Agreement, available at **WEBSITE**. If you do not exclude yourself, you may object to the Settlement by **Objection Deadline**. Visit **WEBSITE** for complete information on how to exclude yourself from or object to the Settlement.

**Do I have A Lawyer?** Yes, the Court has appointed the law firm of Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC to represent you and the Settlement Class. Class Counsel will request a Fee Award and Costs not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of reasonable Litigation Costs and Expenses not to exceed \$50,000 for prosecuting the Class Action Lawsuit, and Service Award Payments of \$3,000 for each Settlement Class Representative.

**The Final Approval Hearing:** The Court has scheduled a hearing for **DATE/TIME** in Courtroom **X**, located at **COURT ADDRESS**, to consider whether to approve the Settlement, Service Award Payments, Fee Award and Costs, as well hear as any objections. You or your attorney may request to appear at the hearing, but you are not required to do so. The date or time of the hearing may change, so please check **WEBSITE** for updates.

*This Notice is only a summary.*

**For Additional Information or to Update Your Address & Contact Information:**

Visit **WEBSITE** or contact the Settlement Administrator:

Mail: **<<Mailing Caption>>**, c/o Kroll Settlement Administration LLC, P.O. Box **XXXX**,

New York, NY 10150-XXXX

Toll-Free: **(XXX) XXX-XXXX**

Docusign Envelope ID: 252F7F1C-56D4-4666-B1EB-B0899906120A

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Postage Required
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<***Mailing Caption***>>

c/o Kroll Settlement Administration LLC

P.O. Box <<#####>>

New York, NY 10150-<<#####>>

Docusign Envelope ID: 252F7F1C-56D4-4666-B1EB-B0899906120A

<<Barcode>>

Class Member ID: <<Refnum>>

## Address Update

If you have an address different from where this postcard was mailed to, please write your correct address and email below and return this portion to the address provided on the other side.

**DO NOT USE THIS POSTCARD TO FILE A CLAIM, AN EXCLUSION OR OBJECTION.**

Name: \_\_\_\_\_  
First Name M.I. Last Name

Street Address: \_\_\_\_\_

Street Address 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

E m a i l   A d d r e s s : \_\_\_\_\_ @ \_\_\_\_\_



From:

To:

Subject: Email Notice of Class Action Settlement

Class Member ID: <<RefNum>>

## NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

United States District Court for the Southern District of Indiana

*Smith et al v. Apria Healthcare LLC*

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

**A Court has authorized this email. This is not a solicitation from a lawyer.**

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**If You Received Actual Or Constructive Notice From Apria That Their Information May Have Been Compromised As A Result Of The Data Breach, You Are Eligible to Receive a Settlement Payment from a Class Action Lawsuit**

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**What Is This Class Action Lawsuit About?** This Class Action Lawsuit is known as *Smith et al. v. Apria Healthcare LLC*. Case No. 1:23-cv-01003-JPH-KMB, filed in the United States District Court for the Southern District of Indiana. The Persons who sued are called the “Plaintiffs” or “Settlement Class Representatives” and the company they sued, Apria Healthcare LLC, is known as the Defendant in this case. The Class Action Lawsuit alleges that in April of 2019 and various dates thereafter, criminal actors illegally accessed limited portions of Apria’s computer network and gained unauthorized access to the personally identifiable Protected Information of certain Apria customers and employees, which constituted the “Data Breach” (defined in the Settlement Agreement as the “Illegal Hacking Events”). The Settlement Class Representatives allege that Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals. Defendant denies any wrongdoing whatsoever.

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*This email is only a summary.*

For Additional Information or to Update Your Address & Contact Information:

Visit **WEBSITE** or contact the Settlement Administrator:

**Mail:** **<<Mailing Caption>>**  
c/o Kroll Settlement Administration LLC  
P.O. Box **XXXX**,  
New York, NY 10150-**XXXX**

Toll-Free: **(XXX) XXX-XXXX**

**Unsubscribe**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

LISA SMITH, et al.,

Plaintiff,

v.

APRIA HEALTHCARE LLC,

Defendant.

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

**JOINT DECLARATION OF CLASS COUNSEL IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

We, Lynn A. Toops and Gary M. Klinger, declare as follows:

1. We are counsel of record for Plaintiffs<sup>1</sup> and proposed Class Counsel for the Settlement Class in the above-captioned matter. We submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. This Action concerns Illegal Hacking Events that occurred at Apria from April 5, 2019, to May 7, 2019, and again from August 27, 2021, to October 10, 2021, that affected over one million individuals.

3. Apria provides home healthcare equipment to nearly 2 million patients across the United States. Among its major services and products, Apria offers assistance for patients

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<sup>1</sup> The definitions and capitalized terms in the Settlement Agreement are hereby incorporated as though fully set forth herein and shall have the same meanings attributed to them in the Agreement. A true and correct copy of the Agreement is attached as Exhibit A to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

struggling with sleep problems, COPD and breathing difficulties, and diabetes, among other health problems.

4. To obtain healthcare services and products, Apria's customers and patients must provide their highly sensitive Protected Information to doctors, medical professionals, insurance companies, or to Apria directly, or sometimes all four. Similarly, Apria's employees must provide their highly sensitive Protected Information as a condition of their employment with Apria.

5. In May 2023, Apria admitted it was the subject of massive Illegal Hacking Events that affected millions of individuals. Specifically, between April 5, 2019 and May 7, 2019, and again between August 27, 2021 and October 10, 2021, unauthorized third-party cybercriminals infiltrated the network that Apria uses to store the Protected Information of its customers. Over 1.8 million individuals' most Protected Information—including personal, medical, health insurance, and financial information, as well as Social Security numbers—was compromised in the Illegal Hacking Events. The financial data accessed includes account numbers, credit/debit card numbers, account security codes, access codes, passwords, and PINs. Apria did not notify Plaintiffs and Settlement Class Members about the Illegal Hacking Events until May 2023, when it sent out notice letters to impacted individuals .

6. Before commencing litigation, we investigated potential claims against Apria, interviewed potential plaintiffs, and gathered information regarding the Illegal Hacking Events.

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

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

alleged claims for:

- a) negligence,
- b) negligence per se in violation of the Federal Trade Commission Act (“FTC Act”),
- c) negligent training and supervision,
- d) breach of contract,
- e) breach of implied contract,
- f) bailment,
- g) breach of fiduciary duty,
- h) breach of confidence,
- i) conversion,
- j) invasion of privacy- intrusion upon seclusion,
- k) invasion of privacy- public disclosure of private facts,
- l) unjust enrichment,
- m) violations of Indiana Deceptive Consumer Sales Act,
- n) violations of California’s Unfair Competition Act,
- o) violations of California Confidentiality of Medical Information Act,
- p) violations of Illinois Consumer Fraud and Deceptive Business Practices Act,
- q) violations of the Washington Consumer Protection Act,
- r) violations of the Washington Personal Information-Notice of Security Breaches,
- s) violations of the Washington Uniform Health Care Information Act,
- t) violations of the Missouri Merchandising Practices Act,
- u) violation of the New York Deceptive Trade Practices Act, and
- v) declaratory judgment.

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

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

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

12. In response to informal and formal discovery requests, Apria produced information that addressed the manner and mechanism of the Illegal Hacking Events, the number of impacted individuals nationwide, and Apria's security enhancements implemented following the Illegal Hacking Events.

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

14. Pursuant to a Scheduling Order entered on July 29, 2024, Apria and Plaintiffs agreed to engage the United States Magistrate Kellie Barr to oversee settlement negotiations. On October 21, 2024, the Parties did so.

15. In advance of the settlement conference, the Parties drafted and exchanged briefs that were submitted to Judge Barr. The information the Parties exchanged before the settlement conference allowed Plaintiffs and Class Counsel to enter settlement negotiations with substantial information about the facts and merits of the legal claims. In fact, Class Counsel conditioned mediation on "obtain[ing] sufficient written discovery to evaluate and value the claims at issue," ensuring plaintiffs had the information needed to negotiate an "adequate" settlement for the class.

16. Class Counsel has investigated the facts relating to the Illegal Hacking Events, analyzed the evidence adduced based on publicly available information, court filings, discovery responses, and information exchanged during settlement discussions, and researched the applicable law with respect to the Plaintiffs' claims against Apria and potential defenses thereto,

including the Partial Motion to Dismiss described above. This review of key documents and information, which allowed them to confidently evaluate the strengths and weaknesses of Plaintiffs' claims and prospects for success at class certification, summary judgment, and trial.

17. During the mediation, and later the settlement conference, during which Judge Barr engaged in a critical analysis of the Parties' arguments, the Parties thoroughly discussed and vetted the facts and law, including the likelihood that the Plaintiffs' claims would be subject to arbitration.

18. The settlement conference was successful and resulted in the Parties signing a binding term sheet setting forth the essential terms of settlement.

19. Thereafter, the Parties met and conferred to negotiate the finer points of the Agreement, including the terms of the Releases, the Settlement Administrator and its respective duties, the Notice, Claims process and Claim Form, and proposed schedule of post-settlement events. During this process, the Parties worked diligently to finalize the terms of the Agreement and ancillary documents.

20. Ultimately, armed with the information exchanged and Class Counsel's experience, Plaintiffs negotiated a \$6,375,000.00 Settlement that delivers the relief they wanted when they filed this Class Action Lawsuit. The benefits provided are consistent with other approved settlements.

21. The Agreement was executed on March 4, 2025.

22. The Agreement contains all the agreements between the Parties.

23. The Releases contained in the Agreement are tailored to claims that relate to "the Illegal Hacking Events or prior unauthorized access to or disclosure of Protected Information of or by the Settlement Class . . . by reason of, arising out of, based on, or in any way relating to the facts, acts, events, transactions, occurrences, courses of conduct, business practices,

representations, omissions, circumstances, or other matters referenced in or relating to the Illegal Hacking Events and/or prior unauthorized access to or disclosure of Protected Information.”

24. The timing of the Claim process outlined in the Agreement is structured to ensure that all Settlement Class members have adequate time to review the terms of the Agreement, compile documents supporting their Claims, and decide whether they would like to opt-out or object.

25. The Settlement was reached in the absence of collusion and is the result of good faith, informed, and extensive arm’s-length negotiations between competent and experienced attorneys who are familiar with class action litigation and with the legal and factual issues at the center of this Action.

26. Class Counsel are highly qualified and have a great deal of experience litigating complex consumer class actions, including in the data privacy context. This experience proved beneficial to Plaintiffs and the Settlement Class during Settlement negotiations.

27. Class Counsel have devoted substantial time and resources to vigorously prosecute this Action and will continue to do so. Specifically, we have litigated this Action, including evaluating the claims, preparing comprehensive pleadings, serving discovery, responding to Defendant’s motion to dismiss, complying with Court orders and requirements, and participating in a mediation that ultimately resulted in this Settlement.

28. The Settlement Class Member Benefits set forth in the Agreement are more than reasonable in light of the risks.

29. Plaintiffs’ respective interests are coextensive and do not conflict with the interests of the Settlement Class. Plaintiffs seek the same relief as the Settlement Class based on the same facts, and the absent Settlement Class members have no diverging interests.



30. Whether Apria had a duty to protect Plaintiffs' Protected Information, whether it breached that duty, whether that the breach harmed Plaintiffs, and what Plaintiffs can demand for relief are questions "common" to the Settlement Class.

31. Plaintiffs have cooperated with Class Counsel and assisted in providing important information in the preparation of the complaints filed in this Action. Plaintiffs have also diligently and adequately prosecuted this Action by, among other things, reviewing filings, promptly providing documents and information to Class counsel, acting in the best interest of the Settlement Class, reviewing the Agreement, and accepting the class-wide Settlement. Plaintiffs are committed to continue prosecuting this Action through Final Approval and protecting the interests of the Settlement Class. Class Counsel shall apply to the Court for Service Awards of up to \$3,000.00 for each Plaintiff for serving as a Class Representative. The Service Awards shall be paid from the Settlement Fund. Class Counsel will formally request the Service Awards in a Fee Application that will be filed no later than 21 days before the Opt-Out Deadline and Objection Deadline.

32. Class Counsel has adequately represented the interests of the Settlement Class. Class Counsel has devoted substantial time and resources to this Action, are qualified to represent the Settlement Class, and will, along with the Class Representatives, vigorously protect the interests of the Settlement Class.

33. Class Counsel have no conflicts of interest with the Settlement Class, and the Parties did not discuss Service Awards or attorneys' fees and costs until after an agreement had been reached on all material settlement terms regarding Settlement Class Member Benefits.

34. Class Counsel has not been paid for their extensive efforts or reimbursed for Litigation Costs and Expenses. Class Counsel shall apply to the Court for an award of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of its reasonable Litigation

Costs and Expenses not to exceed \$50,000, which shall be paid from the Settlement Fund. Class Counsel will formally request their attorneys' fees and costs through a Fee Application that will be filed no later than 21 days before the Opt-Out Deadline and Objection Deadline.

35. With the Court's approval, the Parties agree to use Kroll Settlement Administration LLC ("Kroll") for purposes of disseminating Notice and administering the Settlement. Kroll is a well-respected and reputable third-party administrator that was mutually selected by the Parties. Kroll is highly qualified to manage the entire settlement administration process. The Parties will jointly oversee Kroll.

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

37. Class Counsel is familiar with the claims they have litigated. As can be seen from their resumes, attached as *Exhibits 1 and 2*, Class Counsel have significant experience in the litigation, certification, trial, and settlement of national class actions, including substantial time and resources dedicated to past and present data breach litigation across the country, and have recovered hundreds of millions of dollars for the classes we have represented. Class Counsel have reached settlements that courts routinely approve, and this Settlement's benefits are consistent with

other approved settlements.

38. Class Counsel is confident that the Settlement warrants the Court's Preliminary Approval. Its terms are not only fair, reasonable, adequate, and in the best interests of the Settlement Class, but also are an extremely favorable result with substantial benefits. The Agreement provides significant and concrete benefits to over one million individuals. Indeed, the Settlement delivers the relief Plaintiffs wanted when they filed this Class Action Lawsuit.

39. Defendant's Counsel are also highly experienced in this type of litigation. Class Counsel and Counsel for the Defendant have fully evaluated the strengths, weaknesses, and equities of the Parties' respective positions and believe the proposed settlement fairly resolves their respective differences.

40. The risks, expense, complexity, and likely duration of further litigation support preliminary approval of the Settlement. Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Class Counsel believe the claims asserted are meritorious and that Plaintiffs would prevail if this matter proceeded to trial.

41. However, Class Counsel is also pragmatic and understand the legal uncertainties associated with continued litigation, which would be lengthy and expensive. Data breach litigation is often difficult and complex. Recovery, if any, by any means other than settlement would require additional years of litigation and possibly an appeal. Without the Settlement, the Parties faced the possibility of litigating this Action through the completion of fact discovery, class certification, expert discovery, summary judgment, trial, and appeals, which would be complex, time-consuming, and expensive. Continued litigation could have impeded the successful prosecution of these claims at trial and in an eventual appeal – resulting in zero benefit to the Settlement Class.

Further, since the Court had not yet certified a class at the time the Agreement was executed, it is unclear whether certification would have been granted. Briefing class certification would have required the Parties to expend significant resources.

42. Though the Settlement was reached at an early stage with the Partial Motion to Dismiss pending and an Answer as to the other claims, adequate discovery was completed in response to Plaintiffs' informal and formal discovery requests, resulting in Apria producing information that addressed the manner and mechanism of the Illegal Hacking Events, the number of impacted individuals nationwide, and Apria's security enhancements implemented following the Illegal Hacking Events. This information allowed Class Counsel to intelligently negotiate the Settlement benefits in the Agreement.

43. Settlement negotiations were hard-fought, and the Parties expended significant time and energy on this Action.

44. Under the circumstances, the Settlement represents a highly favorable compromise that balances the merits of Plaintiffs' claims and the likelihood of succeeding at trial and on appeal with the attendant risks. The inherent uncertainty in litigation presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for the Class.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.  
Executed in Indianapolis, Indiana, on March 5, 2025.

/s/ Lynn A. Toops

Lynn A. Toops

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.  
Executed in Chicago, Illinois, on March 5, 2025.

/s/ Gary M. Klinger

Gary M. Klinger

# EXHIBIT 1

# COHEN & MALAD, LLP

## ATTORNEYS

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One Indiana Square, Suite 1400 | Indianapolis, IN 46204  
317.636.6481 | [cohenandmalad.com](http://cohenandmalad.com)

### Complex Litigation Resume

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## Introduction

Cohen & Malad, LLP is a litigation firm founded in 1968 by a former Indiana Attorney General, a former United States Attorney and three other distinguished lawyers. With 30 experienced attorneys, we litigate cases across multiple practice areas including: class action, mass torts and individual personal injuries, business litigation, family law, as well as commercial litigation and appeals.

Cohen & Malad, LLP enjoys a reputation as one of Indiana's leading class action law firms. Over the last 55 years, the firm has served as class counsel in numerous local, statewide, multi-state, nationwide, and even international class actions. We have also served in leadership positions in numerous multidistrict litigation matters. Our personal injury and medical malpractice trial lawyers have handled high-profile cases against medical providers who subjected hundreds of their patients to unnecessary procedures, sometimes leading to deaths.

## Significant Class Actions

*Lead Counsel, Co-lead Counsel, or Executive Committee*

- ❖ *In re Holocaust Victim Assets Litigation*; Settlement of \$1.25 billion for claims relating to conversion of bank accounts and property of victims of the Holocaust during the Nazi era.
- ❖ *Raab v. R. Scott Waddell, in his official capacity as Commissioner of The Indiana Bureau of Motor Vehicles et al.*, Settlements (including settlement after trial and judgment) of approximately \$100 million in overcharges for motor vehicle and license fees.
- ❖ *In re Ready-Mixed Concrete Antitrust Litigation*; Settlements of over \$60 million for price fixing claims.
- ❖ *In re Iowa Ready-Mix Concrete Antitrust Litigation*; Settlement of over \$18 million for price fixing claims.
- ❖ *Moss v. Mary Beth Bonaventura, in her official capacity as Director of the Department of Child Services et al.* Settlement for underpayment of per diem subsidies owed to families who adopted special needs children out of foster care.
- ❖ *Bank Fee Litigation*. Litigation of hundreds of lawsuits against financial institutions for improper fee assessment and achieving dozens of settlements.

## Significant Mass Tort Litigation

*Leadership positions in federal multidistrict litigations and state court consolidations*

- ❖ *Gilead Tenofovir Cases, JCCP No. 5043, Superior Court for the County of San Francisco, California*. Cohen & Malad, LLP is currently representing patients against Gilead Sciences who were prescribed its TDF-based drugs to treat HIV, for pre-exposure prophylaxis (PrEP) to mitigate HIV risk, or to treat Hepatitis, and suffered serious kidney and bone injuries.



- ❖ *In Re: Zofran (Ondansetron) Products Liability Litigation.* Litigation on behalf of women who took Zofran while pregnant and gave birth to a baby who suffered from a serious birth defect. Litigation is currently pending.
- ❖ *In re: Fresenius Granuflo/Naturalyte Dialysate Products.* Litigation on behalf of dialysis patients alleging Fresenius' dialysis products caused cardiac injuries and death. \$250 million global settlement.
- ❖ *Pain Pump Device Litigation.* Cohen & Malad, LLP served in a National Coordinated Counsel role in litigation against pain pump manufacturers who marketed pain pumps to orthopedic surgeons for continuous intra-articular uses, despite the fact that intra-articular placement of the pain pump catheters was not approved by the FDA. The use of pain pumps in the joint space resulted in deterioration of cartilage, severe pain, loss of mobility or decreased range of motion and use of shoulder.
- ❖ *In Re: Prempro Products Liability Litigation.* Litigation on behalf of women who took the hormone replacement therapy drug Prempro manufactured by Wyeth and suffered strokes, heart attacks, endometrial tumors or breast cancers. Global settlement for more than \$890 million to settle roughly 2,200 claims.

## Significant Mass Medical Malpractice Actions

### Co-Lead counsel for mass litigation

- ❖ *Mass tort medical malpractice cases involving over 280 claimants against an ENT physician settled for more than \$59 million.*
- ❖ *Mass tort medical malpractice cases involving more than 260 claimants against a Northwest Indiana cardiology group settled for more than \$67 million.*

## Our Attorneys

### Irwin B. Levin, Managing Partner



Irwin joined Cohen & Malad, LLP in 1978 and concentrates his practice in the areas of class action, mass torts and commercial litigation. Irwin served on the Executive Committee in litigation against Swiss Banks on behalf of Holocaust victims around the world which culminated in a historic \$1.25 billion settlement. He has also served as lead counsel in class action cases around the country since 1983 including two class action cases against the Indiana Bureau of Motor Vehicles, which settled for nearly \$100 million, and was Co-Lead Counsel in two major antitrust cases against the concrete industry. Those cases settled for over \$75 million. Irwin has also served in leadership in various MDL and mass tort cases such as Pain

Pump and Hormone Therapy litigation. Irwin currently is counsel for dozens of Indiana cities and counties in litigation against companies responsible for the opioid epidemic.

### **David J. Cutshaw**

David's practice includes both class action and mass medical malpractice litigation. He served as co-lead counsel to successfully negotiate over \$59 million in settlements for more than 280 plaintiffs against former ENT surgeon Mark Weinberger who performed unnecessary sinus surgeries, negligent surgeries, and abandoned his patients. Weinberger was sentenced to seven years in jail for health care fraud. David acted as co-lead counsel in 263 claims against a Northwest Indiana cardiology group alleged to have unnecessarily implanted pacemakers and defibrillators and performed unnecessary cardiac vessel stenting. Those claims were recently settled for over \$67 million. He has also tried numerous medical malpractice jury trials as first chair.



### **Gregory L. Laker**



Greg is the chair of the personal injury practice group and oversees the firm's dangerous drug and defective medical device litigation team. Greg and his team have held leadership positions in several multidistrict litigations including In re: Prem Pro Products Liability, Pain Pump Device Litigation, In re: Consolidated Fresenius Cases (Granuflo), In re: Testosterone Replacement Therapy Products Liability, and others. Greg also oversees the firm's sexual abuse litigation team and litigates cases involving molestation committed by perpetrators in

institutional care facilities, sports and organizational groups, churches, schools, and doctor or medical offices.

### **Richard E. Shevitz**

Richard is the chair of the class action practice group and handles a wide variety of class action lawsuits, including claims against insurance companies, governmental entities, and manufacturers. He led the trial court proceedings and handled the appeal of a class action on behalf of drivers who had been overcharged for fuel prices by a publicly held trucking company, which resulted in a judgment of approximately \$5 million which was upheld on appeal. He also played a key role in the historic class action litigation bringing Holocaust-era claims against Swiss banks, which resolved for \$1.25 billion, as well as the prosecution of Holocaust-related claims against leading German industrial enterprises, which were resolved through a \$5 billion fund.



**Lynn A. Toops**

Lynn is a partner in the class action group and focuses her practice on high-stakes consumer protection litigation. Lynn and her team are currently litigating hundreds of class actions against financial institutions across the country for the improper assessment of various fees and have returned over \$100 million to well over one million consumers. Lynn is also a nationwide leader in data breach litigation and is currently litigating and settling dozens of those cases on behalf of consumers. Lynn also represents cities and counties across Indiana that are battling the opioid prescription epidemic via litigation against manufacturers and distributors of prescription opioids. Lynn also served in a leading role in litigation against the state of Indiana for failure to pay promised adoption subsidy payments to families who adopted special needs children out of the state's foster care program.

**Arend J. Abel**

Arend's practice includes complex litigation and appeals. His clients range from governmental entities to businesses of all sizes, from Fortune 500 companies to sole proprietors. His legal career includes work for former Indiana attorney general Pamela Carter, for whom he served as special counsel. In that role, Arend briefed and argued two cases on the merits before the United States Supreme Court. He has also briefed and argued numerous cases before the Indiana State Supreme Court and State and Federal Trial and Appellate Courts. Arend supports the class action practice group via briefing on complex issues at the trial and appellate court level.

**Scott D. Gilchrist**

Scott is a class action attorney and concentrates his practice on antitrust, securities fraud, and consumer protection matters. Scott was a principal attorney in two antitrust cases against suppliers of ready-mixed concrete on behalf of small businesses, farmers and individuals. In re: Ready Mixed Concrete Antitrust Litigation, which settled for nearly \$60 million and In re: Iowa Ready Mix Concrete Antitrust Litigation, which settled for more than \$18 million.

**Vess A. Miller**

Vess is a class action attorney and focuses his practice on consumer protection matters. He uncovered hundreds of illegal charges made by the Indiana BMV and gave closing arguments at trial. After a ruling for drivers, that case settled for over \$62 million in refunds. Vess has also successfully litigated predatory lending claims against payday lenders



that charged interest rates exceeding 1,000% APR. He defeated arbitration clauses that would have left consumer with no recovery, and successfully defended the wins at the Indiana Court of Appeals, the Indiana Supreme Court, and ultimately the United States Supreme Court.

### **Gabriel A. Hawkins**



Gabriel is a class action and complex litigation attorney. He is an integral part of the firm's mass medical malpractice litigation team. He helped represent over 280 plaintiffs in lawsuits against former ENT surgeon Mark Weinberger who performed unnecessary sinus surgeries, negligent surgeries, and abandoned his patients. Weinberger was sentenced to seven years in jail for health care fraud. Gabriel's work contributed to the successful \$59 million global settlement for these plaintiffs.

### **Lisa M. La Fornara**

Lisa handles complex civil litigation, including class and representative actions, with a focus on consumer protection, financial services, and data security matters. Lisa has actively litigated hundreds of actions against financial institutions and has helped consumers recover tens of millions of dollars in improperly collected fee revenue. Lisa has helped achieve leading settlements in actions against companies that failed to protect their customers' most sensitive data, providing meaningful equitable and financial relief for victims who experienced or are likely to experience identity theft and fraud. Lisa has also uncovered and obtained refunds for consumers who were systematically underpaid by their insurers following the total loss of their vehicles, and as well as represented whistleblowers in *qui tam* and False Claims Act cases involving fraud against the government.



### **Natalie A. Lyons**



Natalie focuses on complex and class action matters. She has represented consumer and civil rights plaintiffs in federal and state class actions around the country—including two federal civil rights trials that resulted in merits wins for plaintiffs. She has litigated against the federal Departments of Homeland Security and Education, state correctional agencies, and an array of commercial defendants. She is presently litigating complicated class actions in state and federal courts under consumer protection laws, the

Telephone Consumer Protection Act, and state contract and fraud laws.

Prior to joining Cohen & Malad, LLP, Natalie advocated on behalf of marginalized communities in litigation, direct representation and policy advocacy at the Southern Poverty Law Center (Montgomery, AL), Housing & Economic Rights Advocates (Oakland,



CA) and Equal Rights Advocates (San Francisco, CA). In her role as an advocate for racial and social justice, she has appeared on panels; authored reports, op-eds and white papers; and testified on behalf of legislation. Here in Indiana, she served on the 2017 Spirit & Place Festival panel: Liberty & Justice for All?

### **Amina A. Thomas**

Amina is a partner on the Class Action team. Amina focuses the majority of her practice on privacy actions involving data breaches and the unlawful collection or disclosure of personal information. As part of the Firm's data breach litigation team, Amina has helped obtain recovery for thousands of individuals who have had their personal information leaked or unauthorizedly disclosed due to insufficient data security measures.



Prior to joining Cohen & Malad, LLP, Amina had the honor of serving as a judicial law clerk to the Honorable Judge Melissa S. May at the Indiana Court of Appeals and to the Honorable Judge Heather A. Welch at the Indiana Commercial Court. Amina's clerkship experience has given her command of courtroom procedure and commercial litigation.

### **Emily D. Kopp**



Emily is class action attorney focused on complex litigation involving consumer protection matters. She litigates matters against financial institutions related to improperly collected fee revenue. Emily also represents consumers in data breach litigation against businesses who failed to properly safeguard sensitive client personal identifying information.

### **Edward 'Ned' B. Mulligan V**

Ned handles product liability matters in the firm's dangerous pharmaceutical drug and defective medical device practice group. He has served in mass tort leadership roles on several multidistrict litigations including, In re: Testosterone Replacement Therapy Products Liability Litigation, and In re: Consolidated Fresenius Cases (Granuflo). Ned is a named member of the Plaintiff Steering Committee for In re: Zofran (Ondansetron) Products Liability Litigation. Ned has also written articles regarding mass tort litigation for Trial Magazine.



### Jonathon A. Knoll



Jon is a product liability attorney in the firm's dangerous pharmaceutical drug and defective medical device practice group. He has served in mass tort leadership roles for Biomet Metal on Metal Hip Replacement System Litigation in Indiana state court, *Gilead Tenofovir Cases*, JCCP No. 5043, as well as the multidistrict litigation *In re: Consolidated Fresenius Cases* (Granuflo). Jon speaks nationally on various topics related to mass tort litigation and has also written articles regarding mass tort litigation for Trial Magazine.

### Laura C. Jeffs

Laura is a class action and product liability attorney. Her work includes class action privacy claims involving data breaches and consumer protection claims. Laura represents people who have been injured by dangerous pharmaceutical and defective medical devices in litigation involving pain pump devices, hormone replacement therapy, transvaginal mesh implants, tainted steroid injections, talcum powder ovarian cancer claims, and tenofovir drug litigation.



### Mallory K. Schiller



Mallory is a class action attorney with a focus on complex litigation at both state and federal levels. Her diverse legal background includes successfully representing clients in matters such as civil rights litigation, labor and employment litigation, commercial litigation, constitutional law, regulatory law, special education law, and contract disputes. Previously, Mallory has served as Assistant Attorney General in the Office of the Tennessee Attorney General and as a Federal judicial law clerk for the Eastern and Western Districts of Kentucky.

## Antitrust Cases

- ***In re Bromine Antitrust Litigation***, U.S. District Court, Southern District of Indiana.  
Liaison Counsel for the class in price-fixing issue. Settlement valued at \$9.175 million.
- ***In re Ready-Mixed Concrete Antitrust Litigation***, U.S. District Court, Southern District of Indiana.  
Co-Lead Counsel in a consolidated class action alleging a price-fixing conspiracy among all of the major Ready-Mixed Concrete suppliers in the Indianapolis area. The total settlements provided for a recovery of \$60 million, which allowed for a net distribution to class members of approximately 100% of their actual damages.

- ***In re Iowa Ready-Mix Concrete Antitrust Litigation***, U.S. District Court, District of Iowa.  
Co-lead counsel in class action alleging a price-fixing conspiracy among major suppliers of Ready-Mixed Concrete in northwest Iowa and the surrounding states. Settlements totaled \$18.5 million, which allowed for a net distribution to class members of approximately 100% of their actual damages.

## Consumer Protection Cases

- ***Raab v. R. Scott Waddell, in his official capacity as Commissioner of The Indiana Bureau of Motor Vehicles et al.***, and ***Raab v. Kent W. Abernathy, in his official capacity as Commissioner of The Indiana Bureau of Motor Vehicles et al.***, Marion County Indiana, Superior Court.  
Actions on behalf of Indiana drivers who had been systematically overcharged by the Indiana Bureau of Motor Vehicles for driver's licenses, registrations, and other fees. Achieved a combined total \$100 million recovery providing either credits or refund checks to over 4 million drivers in amounts that equaled the agreed overcharge amounts.
- ***Moss v. Mary Beth Bonaventura, in her official capacity as Director of The Indiana Department of Child Services, et al.***, LaPorte County Indiana, Superior Court.  
Action on behalf of Indiana families that adopted special needs children from out of DCS foster care and who were denied an adoption subsidy payment. Achieved settlement over \$15 million providing checks to benefit over 1,880 special needs children, with the average settlement check near \$5,000 and a substantial number exceeding \$10,000.
- ***Coleman v. Sentry Insurance***, United States District Court, Southern District of Illinois.  
Class action on behalf of insured for failure to honor premium discounted features of automobile insurance policy; Settled for \$5.7 million cash fund, with direct payments to class members averaging over \$550.
- ***Econo-Med Pharmacy v. Roche***, United States District Court for the Southern District of Indiana. \$17 million common fund recovery in TCPA class action.
- ***Plummer v. Nicor Energy Services Company***, U.S. District Court, Southern District of Indiana.  
Class counsel in multistate class action on behalf of utility customers for deceptive charges on utility bills. Resolved for \$12 million cash settlement.
- ***Price v. BP Products North America Inc.***, U.S. District Court, Northern District of Illinois.  
Class counsel in multi-state class action on behalf of motorists that purchased contaminated gasoline recalled by BP. Achieved settlement of \$7 million.

- ***Wilmoth et al. v. Celadon Trucking Services***, Marion County Indiana, Superior Court.  
Appointed Class Counsel and obtained judgment, which was upheld on appeal, for approximately \$5 million in favor of nationwide class of long-distance drivers who had compensation improperly withheld by Celadon from fuel purchases.
- ***Means v. River Valley Financial Bank, et al.***, Marion County Indiana, Superior Court.  
Action involving prepaid burial goods and services in Madison, Indiana. Cemetery owners and banks who served as the trustees for the prepaid burial funds violated the Indiana Pre-Need Act and other legal duties, which resulted in insufficient funds to provide class members' burial goods and services at death. Settlements valued at \$4 million were achieved to ensure that thousands of class members' final wishes will be honored.
- ***Meadows v. Sandpoint Capital, LLC***, and ***Edwards v. Apex 1 Processing, Inc.***, Marion County Indiana, Circuit Court.  
Class actions brought against internet-based payday lenders. Settlement provided reimbursement for fees and expenses that exceeded amounts permitted by the Indiana payday loan act.
- ***Edwards v. Geneva-Roth Capital, Inc.***, Marion County Indiana, Circuit Court. Class action brought against internet-based payday lenders. Achieved settlement over \$1 million providing checks for over 6,000 individuals.
- ***Colon v. Trinity Homes, LLC and Beazer Homes Investment Corp***, Hamilton County Indiana, Superior Court.  
Class counsel in statewide settlement providing for remediation of mold and moisture problems in over 2,000 homes. Settlement valued at over \$30 million.
- ***Whiteman v. Time Warner Entertainment Company, L.P.***, Marion County, Indiana, Superior Court.  
Successfully appealed to the Indiana Supreme Court challenging the application of the voluntary payment doctrine for class of cable subscribers. Following this victory, Cohen & Malad, LLP negotiated a multi-million-dollar settlement for class members.
- ***Hecht v. Comcast of Indianapolis***, Marion County Indiana, Circuit Court.  
Represented a class of Comcast cable subscribers challenging arbitrarily determined late fees as unlawful liquidated damages. Obtained a multi-million-dollar settlement on the eve of trial.
- ***Littell et al. v. Tele-Communications, Inc. (AT&T) et al.***, Morgan County, Indiana, Superior Court. Lead counsel in nationwide class action challenging late fee charges imposed by cable television companies. The total value of the nationwide settlement exceeded \$106 million.



- ***Bridgestone/Firestone, Inc., ATX, ATX II and Wilderness Tires Products Liability Litigation***, U.S. District Court, Southern District of Indiana.  
Court-appointed Liaison Counsel and Executive Committee Member in consolidated litigation involving international distribution of defective tires.
- ***Tuck v. Whirlpool et al.***, Marion County, Indiana, Circuit Court.  
Appointed Class Counsel in nationwide class action regarding defective microwave hoods. Settlement achieved in excess of \$7 million.
- ***Hackbarth et al. v. Carnival Cruise Lines***, Circuit Court of Dade County, Florida.  
Class Counsel in nationwide action challenging cruise lines' billing practices. Settlement valued at approximately \$20 million.
- ***Kenro, Inc. v. APO Health, Inc.***, Marion County Indiana, Superior Court.  
Appointed Class Counsel in case alleging violations of the Federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227. Settlement negotiated to create a common fund of \$4.5 million and provide benefits to class members of up to \$500 for each unsolicited fax advertisement received.
- ***Shilesh Chaturvedi v. JTH Tax, Inc. d/b/a Liberty Tax Service***, Court of Common Pleas, Allegheny County, Pennsylvania.  
Class Counsel in case involving Federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227. Settlement valued at \$45 million.
- ***Kenro, Inc. and Gold Seal Termite and Pest Control Company v. PrimeTV, LLC, and DirecTV, Inc.***, Marion County Indiana, Superior Court.  
Class Counsel in case involving the federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227. Following certification, the parties entered into nationwide settlement providing class members with benefits worth in excess of \$500 million.
- ***Econo-Med Pharmacy, Inc. v. Roche Diagnostics Corp. et al.***, U.S. District Court, Southern District of Indiana.  
Class Counsel in Telephone Consumer Protection Act case alleging medical device company sent unsolicited junk faxes to 60,000 U.S. pharmacies. Settlement for \$17 million.
- ***McKenzie et. al. v. Allconnect, Inc.***, U.S. District Court, Eastern District of Kentucky.  
Class action on behalf of consumers whose highly sensitive personally identifiable information was compromised as a result of a data breach. Settlement for \$500,000, five (5) years of credit monitoring services, and monetary payments of \$100 to each settlement class member.

## Bank Fee Cases

- **Hill v. Indiana Members Credit Union**, Marion County Indiana, Superior Court.  
Class action on behalf of credit union members who were improperly assessed (1) non-sufficient funds fees on accounts that were never actually overdrawn; (2) multiple non-sufficient funds fees on a single transaction; (3) out of network ATM withdrawal fees; and (4) ATM balance inquiry fees. Settlement for \$3 million.
- **Plummer v. Centra Credit Union**, Bartholomew County Indiana, Superior Court.  
Class action on behalf of consumers who were improperly assessed overdraft fees on accounts that were never actually overdrawn. Settlement for \$1.5 million.
- **Terrell et. al. v. Fort Knox Federal Credit Union**, Hardin County Kentucky, Circuit Court.  
Class action on behalf of consumers who were improperly assessed (1) overdraft fees on transactions that were previously authorized on a sufficient available balance and (2) multiple insufficient funds fees on a single transaction. Settlement for \$4.5 million.
- **Martin v. L&N Federal Credit Union**, Jefferson County Kentucky, Circuit Court.  
Class action on behalf of consumers who were improperly assessed overdraft fees on accounts that had sufficient funds to cover the transactions. Settlement for \$2.575 million.
- **Cauley v. Citizens National Bank**, Sevier County Tennessee, Circuit Court.  
Class action on behalf of consumers who were improperly assessed overdraft fees on transactions that did not actually overdraw checking accounts. Settlement for \$500,000.
- **Norwood v. The Camden National Bank**, Cumberland County Maine, Business and Consumer Court.  
Class action on behalf of consumers who were improperly assessed overdraft fees on accounts that were never actually overdrawn and also on phantom transactions—where an accountholder never made a withdrawal request and where an account balance was never reduced. Settlement for \$1.2 million.
- **Tisdale v. Wilson Bank and Trust**, Davidson County Tennessee, Chancery Court.  
Class action on behalf of consumers who were improperly assessed overdraft fees on transactions that were previously authorized on an account with sufficient funds. Settlement for \$550,000.

- ***Johnson et. al. v. Elements Financial Credit Union***, Marion County Indiana, Commercial Court.  
Class action on behalf of consumers improperly assessed (1) overdraft fees on accounts that were never actually overdrawn; and (2) multiple insufficient funds fees on a single transaction. Settlement for \$775,000.
- ***Holt v. Community America Credit Union***, U.S. District Court, Western District of Missouri.  
Class action on behalf of consumers who were improperly assessed overdraft fees on accounts that were never overdrawn and multiple fees on a single item or transaction returned for insufficient funds. Settlement for \$2.325 million.
- ***Hawley et. al. v. ORNL Federal Credit Union***, Anderson County Tennessee, Circuit Court.  
Class action on behalf of consumers who were improperly assessed (1) overdraft fees on transactions that did not actually overdraw checking accounts; (2) overdraft fees on transactions made on the same day that a direct deposit should have been made available to cover the transaction subject to an overdraft fees; and (3) multiple non-sufficient funds fees on a single transaction. Settlement for \$470,000.
- ***Graves v. Old Hickory Credit Union***, Chancery Court of Tennessee.  
Action on behalf of credit union members charged overdraft fees on debit card and ATM transactions when the member's Available Balance was negative, but their Ledger Balance was positive. Settlement for \$500,000.

## Human Rights Cases

- ***In re Holocaust Victims Assets Litigation***, U.S. District Court, Eastern District of New York.  
Selected as one of ten firms from the U.S. to serve on the Executive Committee in the prosecution of a world-wide class action against three major Swiss banks to recover assets from the Nazi era. This litigation resulted in a \$1.25 billion settlement in favor of Holocaust survivors.
- ***Kor v. Bayer AG***, U.S. District Court, Southern District of Indiana.  
Action against an international pharmaceutical company for participating in medical experiments on concentration camp inmates during World War II. This action was resolved as part of a \$5 billion settlement negotiated under the auspices of the governments of the U.S. and Germany and led to the creation of the *Foundation for Remembrance, Responsibility and the Future*.
- ***Vogel v. Degussa AG***, U.S. District Court, District of New Jersey.  
Action against a German industrial enterprise for enslaving concentration camp inmates during World War II for commercial benefit. This action also was resolved in connection with the settlement which created the *Foundation for Remembrance, Responsibility and the Future*.

## Health Care/Insurance Cases

- ***In re Indiana Construction Industry Trust***, Marion County, Indiana, Circuit Court.  
Lead Counsel in action against an insolvent health benefits provider from Indiana and surrounding states. Recovered approximately \$24 million for enrollees, providing nearly 100% recovery to victims.
- ***Coleman v. Sentry Insurance a Mutual Company***, United States District Court, Southern District of Illinois.  
Class Counsel on behalf of 6,847 policy holders in 11 states against insurer for breaching refund feature of auto insurance policies, which resulted in recovery of \$5,718,825.
- ***Davis v. National Foundation Life Insurance Co.***, Jay County, Indiana, Circuit Court.  
Class Counsel in action involving insureds who were denied health insurance benefits as a result of National Foundations' inclusion and enforcement of pre-existing condition exclusionary riders in violation of Indiana law. The settlement provided over 85% recovery of the wrongfully denied benefits.

## Securities Fraud Cases

- ***Grant et al. v. Arthur Andersen et al.***, Maricopa County Arizona, Superior Court.  
Lead counsel in class action arising from the collapse of the Baptist Foundation of Arizona, involving losses of approximately \$560 million. Settlement achieved for \$237 million.
- ***In re: Brightpoint Securities Litigation***, U.S. District Court, Southern District of Indiana.  
Class Counsel in securities fraud action that resulted in a \$5.25 million settlement for shareholders.
- ***City of Austin Police Retirement System v. ITT Educational Services, Inc., et al.***, U.S. District Court, Southern District of Indiana.  
Co-lead counsel in action alleging misrepresentations by defendant and certain principals concerning enrollment and graduate placement, and a failure to disclose multiple federal investigations into defendant's operations and records.
- ***Beeson and Gregory v. PBC et al.***, U.S. District Court, Southern District of Indiana.  
Class Counsel in a nationwide class action with ancillary proceedings in the District of Connecticut, and the Southern District of Florida. Multi-million-dollar settlement that returned 100% of losses to investors.

- ***In re: Prudential Energy Income Securities Litigation***, U.S. District Court, Eastern District of Louisiana.  
Counsel for objectors opposing a \$37 million class action settlement. Objection successfully led to an improved \$120 million settlement for 130,000 class members.
- ***In re: PSI Merger Shareholder Litigation***, U.S. District Court, Southern District of Indiana.  
Obtained an injunction to require proper disclosure to shareholders in merger of Public Service Indiana Energy, Inc. and Cincinnati Gas & Electric.
- ***Dudley v. Ski World, Inc.***, U.S. District Court, Southern District of Indiana.  
Class counsel for over 5,000 investors in Ski World stock. Multi-million-dollar settlement.
- ***Stein v. Marshall***, U.S. District Court, District of Arizona.  
Class Counsel Committee member in action involving the initial public offering of Residential Resources, Inc. Nationwide settlement achieved on behalf of investors.
- ***Dominijanni v. Omni Capital Group, Ltd. et al.***, U.S. District Court, Southern District of Florida.  
Co-lead counsel in securities fraud class action. Nationwide settlement on behalf of investors.

## Mass Medical Malpractice

- **Weinberger Litigation**, \$59 million in settlements.  
This litigation involved 282 plaintiffs who were patients of former ENT surgeon Mark Weinberger of Merrillville, Indiana. This mass medical malpractice included complaints ranging from unnecessary sinus surgeries and negligently performed surgeries to patient abandonment. Weinberger [fled](#) the country after more than a dozen medical malpractice lawsuits were filed against him. He was also indicted on 22 counts of health care fraud and was later apprehended at the foot of the Italian Alps. Weinberger was ultimately sentenced to 7 years in prison for insurance fraud. Cohen & Malad, LLP attorneys served as Co-Counsel in these medical malpractice lawsuits and successfully negotiated \$59 million in settlements for the people Weinberger harmed.
- **Northwest Indiana Cardiology Group Litigation**, \$67 million settlement.  
This litigation involved over 260 claimants who were patients of a cardiology practice in northwest Indiana. This mass tort medical malpractice included complaints of unnecessary heart surgeries, coronary artery stenting, peripheral stenting, and pacemaker and defibrillator implantations, as well as negligent credentialing claims. Cohen & Malad, LLP attorneys are served as Co-Counsel in these medical malpractice lawsuits and successfully negotiated a settlement of over \$67 million.

## Mass Tort Pharmaceutical Drug and Medical Device Litigation

- ***Gilead Tenofovir Cases***, JCCP No. 5043 (*pending*)  
Cohen & Malad, LLP is currently representing patients against Gilead Sciences who were prescribed its TDF-based drugs to treat HIV, for pre-exposure prophylaxis (PrEP) to mitigate HIV risk, or to treat Hepatitis, and suffered serious kidney and bone injuries. Thousands of cases are pending in the Superior Court for the County of San Francisco, California.
- ***Strattice Biologic Mesh*** (*pending*)  
Cohen & Malad, LLP is representing patients against LifeCell Corporation and Allergan who suffered injuries, including revision or removal surgeries, after receiving a Strattice mesh product for hernia repairs. These cases are currently pending in New Jersey State Court.
- ***In Re: Zofran (Ondansetron) Products Liability Litigation***, MDL No. 2657 (D. Mass) (*pending*)  
Cohen & Malad, LLP serves on the Plaintiff's Steering Committee, Narrative Committee, and Discovery, Briefing, and Science Committees in an action on behalf of women who took Zofran while pregnant and gave birth to a baby who suffered from a serious birth defect.
- ***In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation***, MDL No. 2738 (D. N.J.) (*pending*)  
Cohen & Malad, LLP is currently representing women who used Johnson & Johnson's talcum powder products for feminine hygiene and were diagnosed with ovarian cancer. Thousands of cases are currently pending.
- ***In Re: National Prescription Opiate Litigation***, MDL No. 2804 (N.D. Ohio) (*pending*)  
Cohen & Malad, LLP is currently representing dozens of Indiana cities and counties in litigation against the manufacturers and distributors of opioid pain medications. This litigation is focused on combating the prescription opioid epidemic and replenishing valuable resources for Indiana communities that have spent vital economic resources responding to public health and safety issues resulting from this epidemic.
- ***Biomet Metal on Metal Hip Replacement System*** (*pending*)  
Cohen & Malad, LLP is representing patients in Indiana state court who were implanted with a Biomet M2a metal on metal hip replacement system and suffered serious injuries such as significant pain, tissue destruction, bone destruction, and metallosis. In many cases, revision surgeries were necessary within just a few years of implantation.
- ***In Re: Zantac (Ranitidine) Products Liability Litigation***, MDL No. 2924, (S.D. FL.) (*pending*)  
Cohen & Malad, LLP is representing patients who were diagnosed with cancer following the use of Zantac (ranitidine). The U.S. Food and Drug Administration issued a recall for all Zantac (ranitidine) drugs including over the counter and prescription formulas on April 1, 2020.



- ***In Re: Cook Medical, Inc., IVC Filters Marketing, Sales Practices and Products Liability Litigation***, MDL No. 2570 (S.D. Ind.) (*pending*)  
Cohen & Malad, LLP is representing patients alleging serious injury related to the use of Cook Medical's inferior vena cava (IVC) filters.
- ***In Re: Prempro Products Liability Litigation***, MDL No. 1507  
Cohen & Malad, LLP litigated hundreds of claims against Wyeth, the manufacturer of Prempro, for women who took hormone replacement therapy drug Prempro and suffered stroke, heart attacks, endometrial tumors or breast cancers. Wyeth agreed to a global settlement for more than \$890 million to settle roughly 2,200 claims.
- **Pain Pump Device Litigation**  
No MDL existed for this litigation. Cohen & Malad, LLP served in a National Coordinated Counsel role. Litigation was against pain pump manufacturers who marketed pain pumps to orthopedic surgeons for continuous intra-articular uses, despite the fact that intra-articular placement of the pain pump catheters was not approved by the FDA. The use of pain pumps in the joint space resulted in deterioration of cartilage, severe pain, loss of mobility or decreased range of motion and use of shoulder.
- **Yaz**  
Cohen & Malad, LLP represented hundreds of women in claims against Bayer over its Yaz and Yasmin birth control oral contraceptive. The drugs contained a synthetic version of estrogen, drospirenone, that was linked to increased risk for blood clots, stroke, and heart attack. As of Jan 2016, Bayer agreed to pay \$2.04 billion to settle 10,000+ blood-clot injury claims.
- **Transvaginal Mesh**  
Cohen & Malad, LLP represented hundreds of women in claims against transvaginal mesh manufacturers Ethicon, C.R. Bard, Boston Scientific, and American Medical Systems. Mesh implants are synthetic material used to support organs in women who suffer from pelvic organ prolapse and stress urinary incontinence. The FDA received thousands of complaints from women who suffered serious personal injury including perforated organs, infection, severe pain, and erosion of the mesh.
- ***In Re: Testosterone Replacement Therapy Products Liability Litigation***, MDL No. 2425 (N.D. Ill.)  
Cohen & Malad, LLP served on the discovery team in action on behalf of men who took drug manufacturers' testosterone replacement therapy products and suffered injuries such as blood clots, heart attacks, strokes and death.
- ***In Re: Consolidated Fresenius Cases (Granuflo)***, MICV2013-3400-O, Commonwealth of Massachusetts, Middlesex County  
Cohen & Malad, LLP served on the Plaintiff's Steering Committee, bellwether discovery program committee, and privilege log committee in an action on behalf of dialysis patients alleging the defendant's dialysis products caused cardiac injuries and death. There was a \$250 million global settlement.

# EXHIBIT 2





**FIRM RESUME /**  
**BIOGRAPHY OF GARY M. KLINGER**



Milberg Coleman Bryson Phillips Grossman (“Milberg”) is an AV-rated international law firm with more than 100 attorneys and offices across the United States, the European Union, and South America. Combining decades of experience, Milberg was established through the merger of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP.

Milberg prides itself on providing thoughtful and knowledgeable legal services to clients worldwide across multiple practice areas. The firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

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

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

In the United States, Milberg currently holds more than 100 court-appointed full- and co-leadership positions in state and federal courts across the country. Our firm has offices in California, Chicago, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, Washington, Washington D.C., and Puerto Rico. Milberg’s commitment to its clients reaches beyond the United States, litigating antitrust, securities, and consumer fraud actions in Europe and South America, with offices located in the United Kingdom, and the Netherlands. Milberg prides itself on providing excellent service worldwide.

The firm’s lawyers have been regularly recognized as leaders in the plaintiffs’ bar by the National Law Journal, Legal 500, Chambers USA, Time Magazine, Lawdragon, and Super Lawyers, among others.

*“A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers.”*  
- THE NEW YORK TIMES

## PRACTICE AREAS

### SECURITIES FRAUD

Milberg pioneered the use of class action lawsuits to litigate claims involving investment products, securities, and the banking industry. Fifty years ago, the firm set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg remains among the most influential securities litigators in the United States and internationally.

Milberg and its attorneys were appointed Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases throughout its history.

### ANTITRUST & COMPETITION LAW

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

### FINANCIAL LITIGATION

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

### CONSUMER PROTECTION

Milberg's Consumer Protection Practice Group focuses on improving product safety and protecting those who have fallen victim to deceptive marketing and advertising of goods and services and/or purchased defective products. Milberg attorneys have served as Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases alleging the sale of defective products, improper marketing of products, and violations of consumer protection statutes.

### DANGEROUS DRUGS & DEVICES

Milberg is a nationally renowned firm in mass torts, fighting some of the largest, wealthiest, and most influential pharmaceutical and device companies and corporate entities in the world. Our experienced team of attorneys has led or co-led numerous multidistrict litigations of defective drugs and medical devices.

## EMPLOYMENT & CIVIL RIGHTS

Milberg's Employment & Civil Rights attorneys focus on class actions and individual cases nationwide arising from discriminatory banking and housing practices, unpaid wages and sales commissions, improperly managed retirement benefits, workplace discrimination, and wrongful termination.

## ENVIRONMENTAL LITIGATION & TOXIC TORTS

Milberg's Environmental Litigation & Toxic Torts Practice Group focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. Milberg and its attorneys have held leadership roles in all facets of litigation in coordinated proceedings, with a particular focus on developing the building blocks to establish general causation, which is often the most difficult obstacle in an environmental or toxic tort case.

## STATE & LOCAL GOVERNMENTS

Milberg attorneys are dedicated to defending the Constitutional and statutory rights of individuals and businesses that are subjected to unlawful government exactions and fees by state and local governments or bodies.

## CYBERSECURITY & DATA PRIVACY

Milberg is a leader in the fields of cyber security, data breach litigation, and biometric data collection, litigating on behalf of clients – both large and small – to change data security practices so that large corporations respect and safeguard consumers' personal data.

## APPELLATE

Consisting of former appellate judges, experienced appellate advocates, and former law clerks who understand how best to present compelling arguments to judges on appeal and secure justice for our clients beyond the trial courts, Milberg's Appellate Practice Group boasts an impressive record of success on appeal in both state and federal courts.

## LEADERSHIP ROLES

In re: Google Play Consumer Antitrust Litigation  
In re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation  
In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Products Liability Litigation  
In re: Blackbaud Inc., Customer Data Breach Litigation  
In re: Paragard IUD Products Liability Litigation  
In re: Seresto Flea & Tick Collar, Marketing Sales Practices & Product Liability Litigation  
In re: All-Clad Metalcrafters, LLC, Cookware Marketing and Sales Practices Litigation  
In re: Allergan Biocell Textured Breast Implant Products Liability Litigation  
In re: Zicam Cold Remedy Marketing, Sales Practices and Products Liability Litigation  
In re: Guidant Corp. Implantable Defibrillators Product Liability Litigation  
In re: Ortho Evra Products Liability Litigation  
In re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation  
In re: Kugel Mesh Hernia Patch Products Liability Litigation  
In re: Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation  
In re: Stand 'N Seal Products Liability Litigation  
In re: Chantix (Varenicline) Products Liability Litigation  
In re: Fosamax (alendronate Sodium) Products Liability Litigation  
In re: Benicar (Olmesartan) Products Liability Litigation  
In re: Onglyza (Saxagliptin) & Kombiglyze Xr (Saxagliptin & Metformin) Products Liability Litigation  
In re: Risperdal and Invega Product Liability Cases  
In re: Mirena IUS Levonorgestrel-Related Products Liability Litigation  
In re: Incretin-based Therapies Product Liability Litigation  
In re: Reglan/Metoclopramide  
In re: Levaquin Products Liability Litigation  
In re: Zimmer Nexgen Knee Implant Products Liability Litigation  
In re: Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation  
In re: Propecia (Finasteride) Products Liability Litigation  
In re: Transvaginal Mesh (In Re C. R. Bard, Inc., Pelvic Repair System Products Liability Litigation; In Re Ethicon, Inc., Pelvic Repair System Products Liability Litigation; In Re Boston Scientific, Inc., Pelvic Repair System Products Liability; In Re American Medical Systems, Pelvic Repair System Products Liability, and others)  
In re: Fluoroquinolone Product Liability Litigation  
In re: Depuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation  
In re: Recalled Abbott Infant Formula Products Liability Litigation  
Home Depot, U.S.A., Inc. v. Jackson  
Webb v. Injured Workers Pharmacy, LLC

## NOTABLE RECOVERIES

### \$4 Billion Settlement

In re: Prudential Insurance Co. Sales Practice Litigation

### \$3.2 Billion Settlement

In re: Tyco International Ltd., Securities Litigation

### \$1.14 Billion Settlement

In Re: Nortel Networks Corp. Securities Litigation

### \$1 Billion-plus Trial Verdict

Vivendi Universal, S.A. Securities Litigation

### \$1 Billion Settlement

NASDAQ Market-Makers Antitrust Litigation

### \$1 Billion Settlement

W.R. Grace & Co.

### \$1 Billion-plus Settlement

Merck & Co., Inc. Securities Litigation

### \$775 Million Settlement

Washington Public Power Supply System Securities Litigation

### \$586 Million Settlement

In re: Initial Public Offering Securities Litigation

## GARY M. KLINGER

**Gary M. Klinger** is a Senior Partner at Milberg and Chair of its Cybersecurity and Data Privacy Practice Group. Mr. Klinger is recognized as one of the most respected data privacy attorneys in the United States, having been ranked by Chambers and Partners as Band 3 for Privacy & Data Security Litigation (2024)<sup>1</sup> and having been selected to Lawdragon's 500 Leading Litigators in America for his accomplishments in privacy litigation (2024).<sup>2</sup> Law360 recently highlighted Mr. Klinger's work in the privacy space.<sup>3</sup>

Mr. Klinger has extensive experience serving as leadership in numerous privacy class actions, including as lead or co-lead counsel in the largest data breaches in the country.<sup>4</sup> Mr. Klinger and his firm are largely responsible for developing the favorable case law that many plaintiffs rely on in the data breach space.<sup>5</sup> Mr. Klinger has also successfully litigated privacy class actions through class certification. *E.g.*, *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at \*1 (N.D. Ill. 2018).

Over the past 3 years, Mr. Klinger has settled on a classwide basis more than one hundred (100) class actions involving privacy violations, the majority of which are data breaches, in state and federal courts across the country as lead or co-lead counsel. To his knowledge, no other attorney in the country has settled and won court approval of more data breach class actions during this period. Representative cases include:

- *Parris, et al., v. Meta Platforms, Inc.*, Case No.2023LA000672 (18th Cir. DuPage Cty., Ill.) (where Mr. Klinger serves as lead counsel and obtained a settlement of \$64.5 million for 4 million consumers in a privacy class action);
- *Boone v. Snap, Inc.*, Case No. 2022LA000708 (18th Cir. DuPage Cty., Ill.) (where Mr. Klinger served as lead counsel and obtained a settlement of \$35 million for 3 million consumers in a privacy class action);
- *In re: East Palestine Train Derailment*, No. 23-cv-00242 (N.D. Ohio) (where Mr. Klinger serves on the leadership team that obtained a settlement of \$600 million in a complex class action).

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<sup>1</sup> Only three plaintiffs' lawyers in the country received the distinction of being ranked by Chambers and Partners for Privacy & Data Security Litigation.

<sup>2</sup> See <https://chambers.com/lawyer/gary-klinger-usa-5:26875006>; <https://www.lawdragon.com/guides/2023-09-08-the-2024-lawdragon-500-leading-litigators-in-america>.

<sup>3</sup> <https://www.law360.com/articles/1854005/rising-star-milberg-s-gary-klinger>.

<sup>4</sup> See, e.g., *Isiah v. LoanDepot, Inc.*, 8:24-cv-00136-DOC-JDE (C.D. Cal.) (where Mr. Klinger is co-lead counsel in a data breach involving more than 17 million consumers); *In re Movelt Customer Data Security Breach Litigation*, 1:23-md-03083 (D. Mass.) (where Mr. Klinger was appointed to the leadership committee in multi-district litigation involving a data breach that impacted more than 95 million consumers).

<sup>5</sup> See e.g., *Webb v. Injured Workers Pharmacy, LLC*, 72 F.4th 365 (1st Cir. 2023) (Milberg attorneys obtained a decision from the First Circuit reversing the dismissal with prejudice of a data breach case and finding Article III standing); *In re Arthur J. Gallagher Data Breach Litig.*, 631 F. Supp. 3d 573, 586 (N.D. Ill. 2022) (Milberg attorneys largely defeated a motion to dismiss in a data breach case involving 3 million consumers); *In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-MN-02972-JMC, 2021 WL 2718439, at \*1 (D.S.C. July 1, 2021) (Milberg attorneys defeated a standing challenge in a 10 million person data breach case).

# LOCATIONS

## PUERTO RICO

1311 Avenida Juan Ponce de León  
San Juan, Puerto Rico 00907

## CALIFORNIA

280 South Beverly Drive, Penthouse  
Beverly Hills, California 90212

402 West Broadway, Suite 1760  
San Diego, California 92101

## FLORIDA

201 Sevilla Avenue, Suite 200,  
Coral Gables, Florida 33134

3833 Central Avenue  
St. Petersburg, Florida 33713

## ILLINOIS

227 W. Monroe Street, Suite 2100  
Chicago, Illinois 60606

## LOUISIANA

5301 Canal Boulevard  
New Orleans, Louisiana 70124

## MICHIGAN

6905 Telegraph Road, Suite 115  
Bloomfield Hills, Michigan 48301

## NEW JERSEY

1 Bridge Plaza North, Suite 675  
Fort Lee, New Jersey 07024

## NEW YORK

100 Garden City Plaza, Suite 500  
Garden City, New York 11530

405 E 50th Street  
New York, New York 10022

## NORTH CAROLINA

900 West Morgan Street  
Raleigh, North Carolina 27603

5 West Hargett Street, Suite 812  
Raleigh, North Carolina 27601

## SOUTH CAROLINA

825 Lowcountry Blvd, Suite 101  
Mount Pleasant, South Carolina 29464

## TENNESSEE

800 S. Gay Street, Suite 1100  
Knoxville, Tennessee 37929

## WASHINGTON

1420 Fifth Ave, Suite 2200  
Seattle, Washington 98101

17410 133rd Avenue, Suite 301  
Woodinville, Washington 98072

## WASHINGTON, D.C.

5335 Wisconsin Avenue NW, Suite 440  
Washington, D.C. 20015

## NETHERLANDS

## UNITED KINGDOM





**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

LISA Smith, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
APRIA HEALTHCARE LLC,	)	
	)	No. 1:23-cv-01003-JPH-KMB
Defendant.	)	

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**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter is before the Court on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. Plaintiffs, individually and on behalf of the proposed Settlement Class, and Defendant Apria Healthcare, LLC have entered into a Settlement Agreement and Release (the “Settlement Agreement”) that, if approved, would settle the above-captioned litigation. Having considered the Motion, the Settlement Agreement together with all exhibits and attachments thereto, the record in this matter, and the briefs and arguments of counsel, IT IS HEREBY ORDERED as follows:

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the same meaning ascribed to those terms in the Settlement Agreement.
2. The Court has jurisdiction over this litigation, Plaintiffs, Defendant, and Settlement Class Members, and any party to any agreement that is part of or related to the Settlement Agreement.

**PRELIMINARY APPROVAL**

3. The Court has reviewed the terms of the proposed Settlement Agreement, the exhibits and attachments thereto, Plaintiffs' motion papers and briefs, and the declarations of counsel and the Claims Administrator. Based on its review of these papers, the Court finds that the Settlement Agreement appears to be the result of serious, informed, non-collusive negotiations conducted with the assistance of mediator Hon. Wayne R. Anderson (Ret.) during a mediation session on April 23, 2024 and follow up discussions overseen by United States Magistrate Judge Kellie Barr, including an in person settlement conference on October 21, 2024, overseen by Judge Barr through which the basic terms of the Settlement were negotiated and finalized. The Court further observes that the Settlement Agreement is the product of an exchange of information between the Parties ahead of the mediation session. The terms of the Settlement Agreement do not improperly grant preferential treatment to any individual or segment of the Settlement Class and fall within the range of possible approval as fair, reasonable, and adequate.

4. The Court therefore GRANTS preliminary approval of the Settlement Agreement and all of the terms and conditions contained therein.

**PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

5. Pursuant to Federal Rule of Civil Procedure 23, the Court preliminarily certifies, for settlement purposes only, the Settlement Class defined in the Settlement Agreement as follows: all individuals who received actual or constructive notice from Apria that their information may have been compromised as a result of the Illegal Hacking Events. Excluded from the Class are (1) the judges presiding over the Class Action Lawsuit,

members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

6. The Court preliminarily finds that the Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(a) for settlement purposes only: the Settlement Class is comprised of approximately 1,869,598 individuals; there are questions of law or fact common to the Settlement Class because the claims of the Class all arise out of the same Illegal Hacking Events; the Class Representatives' claims are typical of those of Settlement Class Members; and the Class Representatives will fairly and adequately protect the interests of the Settlement Class and have no interests antagonistic to the Class.

7. The Court preliminarily finds that the Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only: the questions of law or fact common to the Settlement Class predominate over individual questions, as the primary issue relates to the Illegal Hacking Events that potentially compromised the Class Members' private information; and class action litigation is superior to other available methods for the fair and efficient adjudication of this controversy as the alleged Illegal Hacking Events effected a large group of people similarly.

8. The Court hereby appoints Lisa Smith, Robert N. Herrera, Suzanne Cuyle, Leonardo DePinto, Joel Kamisher, Debbie Bobbitt, Dottie Nikolich, Sabrina Munoz, Hilary French, Elisa Stroffolino, Amy Clark, Reginald Reese, Rita May, Tammie Creek, Sonya Albert, Paul Kramer, Chad Hohenbery, Colleen Rickard, Kristinia Accardo, Roger Winstanley, and Bonnie Bennett as the Class Representatives of the Settlement Class. The

Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and therefore typical of the Class and that they will be adequate Class Representatives.

9. The Court finds the following counsel are experienced and adequate counsel and appoints them as Class Counsel for the Settlement: Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, and Lynn A. Toops of Cohen & Malad, LLP.

### **NOTICE AND ADMINISTRATION**

10. Pursuant to the Settlement Agreement, Class Counsel will engage Kroll Settlement Administration, LLC (“Kroll”) as the Settlement Administrator. Kroll shall perform all the duties of the Settlement Administrator set forth in the Settlement Agreement.

11. The Court finds that the Class Notice and Notice Program set forth in the Settlement Agreement satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and provides the best notice practicable under the circumstances. The Class Notice and Notice Program are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the processes for doing so, and the Final Approval Hearing. The Court therefore approves the Class Notice and Notice Program and directs the Settlement Administrator to proceed with providing notice to Settlement Class Members pursuant to the terms of the Settlement Agreement and this Order.

12. The Settlement Administrator shall commence the Notice Program within the time required by the Settlement Agreement.

13. The Court also approves the Claim Form.

### **EXCLUSION AND OBJECTIONS**

14. Settlement Class Members who wish to opt out and exclude themselves from the Settlement Class may do so by notifying the Settlement Administrator in writing, postmarked no later than 60 days after the notice deadline. To be valid, each request for exclusion must be made in writing and Exclusion must include the name of the Class Action Lawsuit, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication.

15. All Settlement Class Members who do not opt out and exclude themselves shall be bound by the terms of the Settlement Agreement upon entry of a Final Approval Order and Judgment.

16. Settlement Class Members who wish to object to the Settlement may do so by submitting a written Objection to the Settlement Administrator in accordance with the procedures outlined in the Class Notice, postmarked no later than 60 days after the Notice Deadline). All such written objections to the Settlement Agreement must include all of the following: (i) the name of the Class Action Lawsuit; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the

class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

17. Any Settlement Class Member who does not timely submit a written objection in accordance with these procedures and the procedures detailed in the Class Notice and Settlement Agreement shall be deemed to waive the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

### **FINAL APPROVAL HEARING**

18. The Court will hold a Final Approval Hearing on \_\_\_\_\_ at \_\_\_\_\_ in the Birch Bayh Federal Building & U.S. Courthouse, 46 East Ohio Street Indianapolis, IN 46204.

19. At the Final Approval Hearing, the Court will consider whether: (a) the Settlement is fair, reasonable, and adequate; (b) the Settlement Class should be finally certified; (c) the preliminary appointment of Class Counsel should be made final; (d) the preliminary appointment of the Class Representatives should be made final; (e) Class Counsel's motion for Attorneys' Fees and Litigation Expenses should be granted; (f) the Service Awards sought for Class Representatives should be granted; and (g) a final judgment should be entered.

20. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to Settlement Class Members.

### **DEADLINES**

	<b><u>From Order Granting Preliminary Approval</u></b>
Defendant will provide the list of available addresses for Settlement Class Members to the Settlement Administrator	+21 Days
Defendant's payment of Settlement Fund to Settlement Administrator	+30 Days
Notice Date	+49 Days
Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Costs and Expenses	+95 Days
Objection Date	+109 Days
Opt-Out Date	+109 Days
Claim Deadline	+139 Days
<b><u>Final Approval Hearing</u></b>	(To be set by the Court) Not less than 120 Days from Order Granting Preliminary Approval
Motion for Final Approval	14 Days before Final Approval Hearing
	<b><u>From Effective Date</u></b>
Payment of Attorneys' Fees and Litigation Expenses and Class Representatives' Service Awards	+3 Days
Payment of Class Representatives' Service Awards	+30 Days

21. All proceedings and deadlines in this matter, except those necessary to implement this Order and the Settlement, are hereby stayed and suspended until further order of the Court.

22. In the event that the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement: (a) the Settlement Agreement and this Order shall become void, shall have no further force or effect, and shall not be used in the Litigation or any other



proceedings for any purpose other than as may be necessary to enforce the terms of the Settlement Agreement that survive termination; (b) this matter will revert to the status that existed before execution of the Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the Parties' settlement discussions, negotiations or documentation (including any briefs filed in support of preliminary or final approval of the Settlement) shall be (i) admissible into evidence for any purpose in this Litigation or in any other action or proceeding other than as may be necessary to enforce the terms of the Settlement Agreement that survive termination, (ii) deemed an admission or concession by any Settling Party regarding the validity of any of the Released Claims or the propriety of certifying any class against Defendant, or (iii) deemed an admission or concession by any Party regarding the truth or falsity of any facts alleged in the Litigation or the availability or lack of availability of any defense to the Released Claims.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. JAMES PATRICK HANLON  
UNITED STATES DISTRICT COURT JUDGE  
SOUTHERN DISTRICT OF INDIANA