IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FIRST CHOICE FEDERAL CREDIT UNION and FINANCIAL HORIZONS CREDIT UNION, individually and on behalf of all others similarly situated, Plaintiffs, v. SLIM CD, INC., Defendant.	Case No. 2:25-cv-01088-MRH

PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF UNOPPOSED MOTION FOR AN
ORDER AUTHORIZING NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs First Choice Federal Credit Union ("FCFCU") and Financial Horizons Credit Union ("FHCU") (collectively, "Plaintiffs" or "Settlement Class Representatives"), individually and on behalf of all others similarly situated, and pursuant to Federal Rule of Civil Procedure 23(e), respectfully move this Court for preliminary approval of the proposed class action Settlement Agreement ("Settlement," "Agreement," or "SA") between themselves and Defendant Slim CD, Inc. ("Slim CD" or "Defendant").[1] Preliminary approval should be granted because the Agreement provides substantial monetary relief for the Settlement Class, including Slim CD's payment of $2,000,000.00 into a non-reversionary Settlement Fund that will be used to pay: (i) Taxes and Tax Expenses; (ii) the Fee and Expense Award authorized by the Court; (iii) any fees of the Escrow Agent; (iv) the Costs of Settlement Administration; and (v) any other fees and expenses authorized by the Court and paid from the Settlement Fund; and (vi) distributions to Settlement Class Members who submit Approved Claims. Under the proposed Settlement, the Net Settlement Fund will be distributed *pro rata* to Settlement Class Members who file Approved Claims.

As set forth below, the Agreement is fair, reasonable, and adequate, as it provides immediate and meaningful relief in the face of extensive and expensive litigation that poses a significant risk that Plaintiffs and the Settlement Class could recover nothing from Slim CD if the case proceeded towards trial. The Settlement is also the result of extensive and well-informed negotiations among counsel with extensive experience in data breach litigation, facilitated by an

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[1] Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the proposed Class Action Settlement Agreement ("S.A.") attached to the Joint Declaration of Joseph P. Guglielmo and Gary F. Lynch ("Joint Decl.") as Exhibit 3 that is filed concurrently herewith.

experienced data breach mediator, Steven R. Jaffe, Esq. For these reasons, Plaintiffs respectfully request that the Court preliminarily approve the Settlement, preliminarily certify the Settlement Class, approve the Notice Program, direct the Settlement Administrator to issue notice accordingly, and enter the proposed Preliminary Approval Order setting the Agreement's related deadlines.

II. FACTUAL BACKGROUND

A. The Litigation.

Plaintiffs are financial institutions that issued payment cards that were identified by the card brands (i.e., Visa, MasterCard, and Discover) as having been compromised during a cyberattack on Slim CD. ¶¶19-20.[2] Defendant is a payment gateway and processing provider for merchants across the United States, handling electronic payment transactions, including those involving credit and debit cards, through web-based terminals and mobile and/or desktop applications. ¶¶3, 21. When a cardholder initiates a purchase, either online through an e-commerce platform integrated with Slim CD's gateway or in-store through a point-of-sale ("POS") terminal, Slim CD receives and transmits the cardholder's payment card data, which includes the primary account number, expiration date, and other sensitive data elements. ¶30.

Between approximately August 17, 2023 and June 15, 2024, cybercriminals gained unauthorized access to Defendant's computer systems and compromised the payment card data of approximately 1.5 million payment cards issued by Plaintiffs and the Settlement Class (the "Data Security Incident"). ¶¶46. 49. The payment card data compromised during the Data Security Incident included cardholder names, credit card numbers, card expiration dates, and other critical payment card details. ¶2. Following the Data Security Incident, Plaintiffs and Settlement Class

[2] Citations to "¶" are citations to Plaintiffs' Complaint, ECF No. 1.

Members were required to take remedial measures, incurring damages that included direct out-of-pocket costs to cancel and reissue payment cards, as well as mitigating future risks associated with fraudulent payment card transactions if such cards were not cancelled. ¶¶79-85.

On July 22, 2025, Plaintiffs filed a Class Action Complaint against Slim CD in the United States District Court for the Western District of Pennsylvania (ECF No. 1), seeking damages and other relief and alleging that financial institutions had been injured as a result of the Data Security Incident. The Complaint asserts claims for negligence, negligence *per se*, declaratory and injunctive relief, and unjust enrichment. *Id.* On July 24, 2025, the Court designated the case for placement into the Court's Alternative Dispute Resolution program (ECF No. 6). On July 25, 2025, Slim CD waived service of process (ECF No. 9). On October 22, 2025, the Parties filed a Joint Motion to Stay the Litigation pending mediation (ECF No. 16), which the Court granted the same day, administratively closing the case for the duration of the stay without prejudice (ECF No. 17). The Parties thereafter filed a Joint Status Report advising the Court of a scheduled mediation with Mr. Jaffe. ECF No. 18.

B. Settlement Negotiations.

Following the commencement of the Litigation, the Parties began discussing the possibility of an early resolution of Plaintiffs' and the Settlement Class's claims asserted against Slim CD. *See* Joint Decl. ¶4. The Parties thereafter agreed to engage in mediation, and scheduled a mediation session with experienced data breach mediator Steven R. Jaffe of Upchurch Watson White & Max Mediation Group on January 15, 2026. *Id.* ¶¶4, 7. In advance of the mediation session, the Parties engaged in informal discovery, during which Plaintiffs propounded discovery requests on Slim CD and Defendant provided information about the Data Security Incident, including Slim CD's investigation into the Data Breach, the size of the Settlement Class, the payment card data compromised, and potentially applicable insurance policies. *Id.* ¶5. The Parties further exchanged substantive memoranda outlining their positions regarding the claims and defenses in the action. *Id.* Class Counsel was therefore well informed regarding the facts of the case, and the strengths and weaknesses of Plaintiffs' claims and Slim CD's defenses leading into the mediation. *Id.* ¶6, 14.

On January 15, 2026, the Parties participated in a full-day in-person mediation session before Mr. Jaffe. *Id.* ¶7. The mediation was ultimately successful, with the Parties reaching an agreement in principle to resolve the claims asserted in the Litigation. *Id.* After finalizing a term sheet on January 30, 2026, the Parties worked to craft a comprehensive settlement agreement, solicit proposals from settlement administrators, draft the proposed notices, claim form, and proposed orders, and negotiate terms for the contemplated escrow accounts, work which resulted in a fully executed Settlement Agreement on May 12, 2026. *Id.* ¶10. The Parties' settlement discussions throughout the mediation and negotiation processes were hard-fought and conducted at arm's length and in good faith by counsel guided by both their experience in these specific types of cases and their extensive research of the facts and the law relating to this case. *Id.*

III. THE PROPOSED SETTLEMENT

Under the proposed Agreement, Slim CD shall pay or cause to be paid $2 million for the establishment of a non-reversionary Settlement Fund for the benefit of the Settlement Class. S.A. §4.1. In exchange for the consideration set forth in the Settlement Agreement, all Settlement Class Members who do not exclude themselves from the Settlement will release their Data Security Incident-related claims against Slim CD. *Id.* §8.2.

A. The Proposed Settlement Class.

The proposed Settlement Class is defined as:

> All financial institutions in the United States (including its territories and the District of Columbia) that issued one or more Alerted on Payment Cards.[3]

Id. §2.41.

B. Compensation to Settlement Class Members.

Under the Agreement, each Settlement Class Member will be permitted the opportunity to file a claim for benefits. *Id.* §4.8. Each Settlement Class Member that submits a valid Claim Form identifying its Alerted On Payment Cards will receive a Pro Rata Share of the Net Settlement Fund. *Id.* §§2.31, 4.8. The Pro Rata Share for each Settlement Class Member is calculated as follows:

$$\textbf{Pro Rata Share} = \frac{\textbf{Member's Alerted On Payment Cards}}{\textbf{Total Alerted On Payment Cards in All Approved Claims}} \times \textbf{Net Settlement Fund}$$

Id. §2.31. The Settlement Administrator will evaluate each claim to determine: (a) whether the financial institution is a Settlement Class Member and submitted a complete and accurate Claim Form; and (b) whether the number of Alerted On Payment Cards identified in the Claim Form is accurate, based on a comparison of the information submitted and the card brand data provided to the Settlement Administrator.

After the Effective Date and once all Approved Claims have been determined, the Settlement Administrator will calculate the Pro Rata Share for each Settlement Class Member that submitted an Approved Claim and will mail a check to the address provided in the Claim Form, or to an updated address if one has been provided to the Settlement Administrator. *Id.* §4.8.

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[3] The term "Alerted On Payment Card" is further defined in the Settlement Agreement. S.A. §2.1. Excluded from the Settlement Class are: the judge of this Court presiding over this Litigation and its staff and the judges of any other court that preside, or have jurisdiction, over this Litigation or Settlement and their staff; directors, officers, and employees of Slim CD; parents and subsidiaries of Slim CD, and any entity in which Slim CD has a controlling interest; and financial institutions that fall within the Settlement class definition that timely and validly request exclusion from the Settlement Class. *Id.* §3.1.

C. Attorneys' Fees and Expenses, Class Representative Service Awards, and Costs of Settlement Administration.

Under the Agreement, Class Counsel may move the Court for an award of attorneys' fees expressed as a percentage of the fund, reimbursement of litigation expenses and costs, and Service Awards to the Settlement Class Representatives up to $2,500.00 each. *Id.* §§9.1-9.2. Any amounts awarded by the Court for attorneys' fees, expenses, costs, and Service Awards will be paid from the Settlement Fund. *Id.* The Agreement is not contingent on the Court's approval of the payment of attorneys' fees, expenses, costs, or Service Awards. *Id.* §9.4.

At least fourteen (14) days before the Objection Deadline, Class Counsel will apply to the Court for reimbursement of their expenses and an award of reasonable attorneys' fees to compensate them for their work in this case and for approval of Service Awards to each of the Settlement Class Representatives for the time and efforts they spent on the litigation. *Id.* §7.2. This information will also be made available on the Settlement Website.

D. Notice Plan and Settlement Administration.

The Parties have jointly developed a proposed Notice Program that comports with the requirements of Fed. R. Civ. P. 23(c)(2) and 23(e)(1). *Id.* §§6.1-6.2 (hereinafter referred to as "Notice Program"). The Notice Program aims to inform Settlement Class Members of the Settlement and ensure that they are able to review the Long-Form Notice, Settlement Agreement, settlement-related deadlines, and other settlement-related materials, understand their rights and options—including their right to object to the Settlement or opt out of the Settlement Class and to file a claim. *Id.* §6.1, Exhibits B-C; *see* Fed. R. Civ. P. 23(c)(2) advisory committee's note to 2018 amendment ("The ultimate goal of giving notice is to enable class members to make informed decisions about whether to opt out or, in instances where a proposed settlement is involved, to object or to make claims.").

In advance of the filing of this Motion, Class Counsel has conducted discovery in the claims of the case, including issuing subpoenas to Visa, Mastercard, and Discover to identify the number of Alerted On Cards for each class member, and determine available contact information for the Settlement Class, including the names, emails, and physical addresses, to the extent available, of the designated points of contact for Settlement Class Members, and to confirm the ultimate number of Settlement Class Members. Joint Decl. ¶15. Class Counsel and the proposed Settlement Administrator, Analytics, LLC, have significant prior experience providing notice to Settlement Class Members and believe this is best practicable notice to the Settlement Class. *See, e.g.*, *First Choice Fed. Credit Union v. Wendy's Co*., 2019 WL 948400, at *2 (W.D. Pa. Feb. 26, 2019) (approving Analytics, LLC as settlement administrator in data breach settlement for financial institutions where Lynch Carpenter LLP ("Lynch Carpenter") and Scott+Scott Attorneys at Law LLP ("Scott+Scott") served as co-lead counsel). Joint Decl. ¶16; Declaration of Richard W. Simmons ("Analytics Decl."), ¶¶2-10.

The proposed Notice will be sent to inform Class Members of the Settlement's substantive terms as well as: (i) the nature of the action; (ii) the definition of the Settlement Class certified; (iii) the Settlement Class's claims, issues, or defenses; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

The proposed Notice Plan and related forms of notice (*see* S.A. §§6.1-6.2) are "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The proposed Notice Program contemplated in the Settlement Agreement involves, at a minimum, the following two components: (i) direct notice via U.S. First-Class mail and email, to the extent available, to all financial institutions identified in discovery; and (ii) published notice on a dedicated Settlement Website. S.A. §6.2.1.

Direct notice will be sent via email where available and by U.S. First Class mail where email is not available. *Id.*; Analytics Decl. ¶¶14, 17. The direct notice sent by email will contain a link to the Settlement Website, which will make available to Settlement Class Members the Settlement Agreement, a summary message about the litigation, Long-Form Notice, Claim Form, and other information and materials relevant to the Settlement. S.A. §§6.2.1; Analytics Decl. ¶¶22-24. Direct notice sent by U.S. First Class mail will consist of the Long-Form Notice and a copy of the Claim Form. S.A. §§6.2.1; Analytics Decl. ¶14.

The dedicated Settlement Website will serve as a one-stop source by which Settlement Class Members can access relevant documents relating to the proposed Settlement. On the website, Settlement Class Members will be able to review and obtain: (i) a blank Claim Form for the Settlement; (ii) the Long-Form Notice and a brief summary of the litigation; (iii) the Settlement Agreement; (iv) key Court filings; (v) updates and developments about the case; and (vi) an online portal for Settlement Class Members to submit their claims electronically. S.A. §§2.43, 6.2; Analytics Decl. ¶¶22-24. The Settlement Administrator will also operate a toll-free number, and email account for Settlement Class Members to have their questions addresses. Analytics Decl. ¶¶18-21, 26-27. The Settlement Administrator will also establish a P.O. Box to receive mailings from Settlement Class Members.

Class Counsel respectfully request that Analytics be appointed to serve as the Settlement Administrator to oversee the Notice Program for the Settlement Class and to administer the claims process pursuant to the terms of the Settlement Agreement. S.A. §2.39. Analytics has performed administration services in several other payment card data breach actions brought by financial institutions and has worked directly with Class Counsel in those previous settlements. Joint Decl. ¶16; Analytics Decl. Ex. 1.

IV. ARGUMENT

Federal Rule of Civil Procedure 23(e), as amended in 2018, "explicitly discusses the requirements for class settlements." *Hall v. Accolade, Inc.*, 2019 WL 3996621, at *2 (E.D. Pa. Aug. 23, 2019). First, the parties "provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class." Fed. R. Civ. P. 23(e)(1)(A). The court then decides whether "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." *Id.* at (e)(1)(B).

In conducting this preliminary review, courts are cognizant that there is a "strong public policy . . . which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593 (3d Cir. 2010); *accord In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged.").

At this "preliminary approval" stage, a district court may provisionally certify a class, "leaving the final certification decision for the subsequent fairness hearing." *Hall*, 2019 WL 3996621, at *2; *accord Fulton-Green v. Accolade, Inc.*, 2019 WL 316722, at *1 (E.D. Pa. Jan. 23, 2019); *Myers v. Jani-King of Phila., Inc.*, 2019 WL 2077719, at *2 (E.D. Pa. May 10, 2019) (preliminary approval is not a commitment to grant final approval but "establishes an initial presumption of fairness.") (citation modified).

If the District Court determines that it will "likely be able to" approve the Settlement and certify the Settlement Class, it should direct notice in a "reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). The notice is usually sent under both Rule 23(e)(1) (regarding settlement) and Fed. R. Civ. P. 23(c)(2)(B) (regarding class certification). *See* Fed. R. Civ. P. 23(c)(2) advisory committee's note to 2018 amendment; *Fulton-Green,* 2019 WL 316722, at *1, *5 (granting motion for preliminary approval of data breach settlement "because it is within the range of possible approval, the requirements of conditional class certification are met, and the notice plan is reasonably designed to notify class members of the settlement agreement"); *In re Processed Egg Prods. Antitrust Litig.*, 2014 WL 12614451, at *2-4 (E.D. Pa. Dec. 19, 2014) (conditionally certifying class, preliminarily approving settlement, and directing notice to proposed class); *In re Imprelis Herbicide Mktg, Sales Prac. and Prods. Liab. Litig.*, 2013 WL 504857, at *1 (E.D. Pa. Feb. 12, 2013) (same).

A. The Settlement Is "Fair, Reasonable, and Adequate" and Satisfies the Rule 23(e)(2) Factors for Preliminary Approval.

Rule 23(e)(2) sets forth the factors a court must consider in determining the fairness of a class action settlement. The factors include whether: "(A) the class representatives 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." Fed. R. Civ. P. 23(e)(2).[4]

In determining whether preliminary approval is warranted, the Court should consider whether the "proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval." *Mehling v. N.Y. Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007) (citation modified); *see also Mack Trucks, Inc. v. Int'l Union, UAW*, 2011 WL 1833108, at *2 (E.D. Pa. May 12, 2011) (same). Under Rule 23, a settlement falls within the "range of possible approval" if there is a conceivable basis for presuming that the standard applied for final approval—fairness, adequacy and reasonableness—will be satisfied. *See Mehling*, 246 F.R.D. at 472. The Settlement here, as explained below, exceeds the preliminary approval threshold. Plaintiffs, without opposition from Defendant, respectfully request that this Court preliminarily approve the proposed Settlement.

1. The Proposal was Negotiated at Arm's Length.

The Settlement resulted from arm's-length negotiations between experienced counsel with an understanding of the strengths and weaknesses of their respective positions in this litigation,

[4] As the court in *Vinh Du v. Blackford*, 2018 WL 6604484, at *5 (D. Del. Dec. 17, 2018) explains, the Rule 23 factors largely overlap with the nine factors the Third Circuit directed courts to consider when determining the fairness of a proposed settlement in *Girsh v. Jepson*. Those factors are: "(1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Blackford*, 2018 WL 6604484, at *6; *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). These factors are likely to weigh in favor of the Settlement's approval.

overseen by a neutral and highly experienced mediator. *See supra* Part II.B. These circumstances weigh in favor of approval. Whether a settlement arises from arm's-length negotiations is a key factor in assessing preliminary approval. *See, e.g.*, *In re Nat'l Football League Players' Concussion Injury Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) (a presumption of fairness exists where parties negotiate at arm's length); *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 439, 444 (E.D. Pa. 2008) (stressing the importance of arm's-length negotiations and highlighting the fact that the negotiations included "two full days of mediation").

The Parties participated in settlement discussions mediated by Steven R. Jaffe of Upchurch Watson White & Max Mediation Group during a full-day mediation. Joint Decl. ¶4. Class Counsel who negotiated the Settlement are experienced and respected class action litigators with significant experience in data breach cases, having resolved nearly half a dozen previous payment card breach actions brought by financial institution plaintiffs. *Id.* ¶2, Exhibits 1-2. After reaching an agreement in principle, the Parties spent significant time drafting a term sheet, revising drafts of the full Settlement Agreement, related exhibits, and selecting the Settlement Administrator and Escrow Agent. *Id.* ¶10. At all times, these negotiations were at arm's length, courteous, professional, intense, and hard-fought on all sides. *Id.*

2. The Relief Provided for the Settlement Class Is Meaningful.

This case and the proposed Settlement are the product of significant investigation of Plaintiffs' and Settlement Class Members' claims. *Id.* ¶13. Class Counsel conducted extensive and lengthy research into the issues presented in this matter, reviewed documentation and information that Slim CD produced, and analyzed the applicable legal precedents and previous settlements in similar cases. *Id.* ¶¶5, 13-14. While the Parties did not engage in extensive formal discovery, the information uncovered and reviewed by Class Counsel, including informal discovery produced via the mediation process, provided the information needed for Class Counsel to objectively evaluate the strengths and weaknesses of Plaintiff's and Settlement Class Members' claims.[5] *Id.* ¶¶6, 14. Based on the information obtained from this discovery, Class Counsel's independent investigation of the relevant facts and applicable law, and Class Counsel's broad experience with other payment card and data breach cases, Class Counsel determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. *Id.* ¶14.

a. The Settlement accounts for the costs, risks, and delay of trial and appeal.

To determine whether a settlement provides adequate relief to the Settlement Class, the Court must evaluate "the costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), which involves considering the "complexity, expense, and likely duration of the litigation," were this case to proceed to trial, in relation to the Plaintiffs' "likelihood of success" on the merits. *Edwards v. Horizon Blue Cross Blue Shield of New Jersey*, 2018 WL 10133574, at *3 (D.N.J. Jun. 29, 2018). The likelihood of success on the merits necessarily implicates certain *Girsh* factors as well, including the concerns about the maturity of the substantive issue, the risks of establishing liability, the risks of establishing damages, and the risks of maintaining the class through the trial. Therefore, it is appropriate to address Rule 23(e)(2)(C)(i) in conjunction with the *Girsh* factors.

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[5] The fact that the Parties have not yet completed full discovery is not determinative. *See I Processed Egg*, 284 F.R.D. at 267 (Pratter, J.) (preliminarily approving class action settlement when "no formal discovery was conducted in this case during the time of the . . . Settlement negotiations or agreement"); *see also Fulton-Green,* 2019 WL 316722, at *3 (preliminarily approving class action settlement where "[e]ven though formal discovery has not started . . . the parties exchanged a substantial amount of information regarding the discrete issues in this case"); *In re Wawa, Inc. Data Sec. Litig.*, 2021 WL 3276148, at *9 n.4 (E.D. Pa. July 30, 2021) (stating that it "is not necessarily an obstacle for preliminary approval of a class action settlement, especially where, as here, the parties have exchanged important *informal* discovery") (emphasis added).

The immediate benefits that the Settlement provides stand in contrast to the risks, uncertainties, and delays of continued litigation. Class Counsel thoroughly assessed those contingencies in considering the terms of the Settlement. Joint Decl. ¶14. If the litigation were to continue, Plaintiffs and Settlement Class Members would need to overcome a number of issues, including overcoming Defendant's forthcoming motion to dismiss, obtaining class certification, briefing motions for summary judgment, defending expert opinions, and maintaining certification through trial. *See In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) ("[I]f the parties were to continue to litigate this case, further proceedings would be complex, expensive and lengthy, with contested issues of law and fact . . . . That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval."); *Craig v. Rite Aid Corp.*, 2013 WL 84928, at *9 (M.D. Pa. Jan. 7, 2013) (preliminarily approving settlement where "[n]ot only would continued litigation of these cases result in a massive expenditure of Class Counsel's resources, it would likewise place a substantial drain on judicial resources"). Although Class Counsel are confident in their ability to overcome these challenges, they create risk for the Settlement Class that must be weighed against the value of any potential recovery.

The strength of the settlement here is demonstrated, in part, by comparison with monetary recoveries in other data breach settlements involving financial institutions. For example, in *In re Wawa, Inc. Data Sec. Litig.*, No. 2:19-cv-06019 (E.D. Pa.), the court granted final approval to a claims-made settlement valued at up to $37.5 million for over 30 million compromised payment cards ($1.25 per card) and in *In re: Sonic Corp. Customer Data Breach Litig.*, No. 1:17-md-02807-JSG (N.D. Ohio) another court approved a $5.73 million common fund settlement for nearly 8.9

million compromised payment cards ($0.64 per card). Here, the $1.33 *pro rata* per card value falls squarely in line with similar payment card breach settlements.

There are several risks in this case that could pose obstacles to achieving a favorable outcome for Plaintiffs and the Settlement Class. If not for the Settlement, Plaintiffs would be faced with the task of moving for class certification and/or opposing Slim CD's forthcoming motion to dismiss and later motion for summary judgment, which could have resulted in dismissal of this case. While Plaintiffs believe they would have prevailed, there are risks involved in data breach litigation—an evolving area of law—including proving standing and causation that may continue even after the motion to dismiss phase. *See Fulton-Green v. Accolade, Inc.*, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019) ("This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare."); *see also In re Sonic Corp. Customer Data Breach Litig.*, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("[D]ata breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts."); *In re Wawa, Inc. Data Sec. Litig.*, 2023 WL 6690705, at *9 (E.D. Pa. Oct. 12, 2023) ("Here, there is no certainty that Financial Institutions would have won on class certification, let alone maintain that status throughout the entire litigation."). Given that the case law is still developing, there is uncertainty whether Plaintiffs would be likely to prevail on the merits had the case gone to trial.

Plaintiffs likely would have incurred significant costs to prove their case through fact and expert discovery. *See, e.g.*, *Fulton-Green*, 2019 WL 4677954, at *8 (recognizing that continued litigation of a data breach case "would be a time consuming and expensive process that would delay relief for class members"); *In re Yahoo! Inc. Customer Data Security Breach Litig.*, 2020 WL 4212811, at *8 (N.D. Cal. July 22, 2020) (approving settlement in data breach litigation after finding, among other things "[l]itigation costs would be quite high, given that the case involves complex technical issues and requires substantial expert testimony"), *appeal dismissed*, 2021 WL 2451242 (9th Cir. Feb. 16, 2021); *see also In re Wawa*, 2023 WL 6690705, at *7 (In FI data breach recognizing that "the parties would have significant expenses in briefing and arguing class certification, summary judgment, expert reports, and maintaining class certification throughout trial.").

Given the highly technical nature of the alleged misconduct, this Action would necessarily involve a battle of experts with respect to negligence, damages, and other issues. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001) (explaining that the first *Girsh* factor favors approval of a settlement when the case involves "complex and protracted discovery, extensive trial preparation, and difficult legal and factual issues"); *see also In re Yahoo!*, 2020 WL 4212811, at *9, 13 (noting that prior to settlement of data breach class action, plaintiffs produced four different expert reports, and defendants deposed four experts and filed three *Daubert* motions to exclude plaintiffs' experts).

The costs and risks would only further increase as the Parties contest class certification, file motions *in limine*, and proceed through to trial and any related appeals. The proposed Settlement, if approved, exchanges extensive costs and a lengthy litigation timeline for prompt financial recovery and certainty for the Settlement Class, finality as to the Parties, and the preservation of the Court's time and resources that can be redirected elsewhere.

The Settlement appropriately balances the strength of Plaintiffs' case against the risks and potential outcomes of continued litigation. *See In re Wawa*, 2023 WL 6690705, at *10 (recognizing the risks FI plaintiffs faced in data breach litigation made the settlement "especially reasonable"). Because of the substantial costs, risks, and delay in recovery associated with continued litigation, the first, fourth, fifth, and sixth *Girsh* factors and Rule 23(e)(2)(C)(i) support approval of the Settlement.

b. The Settlement provides for an effective method of distributing relief to the Settlement Class, including through a simplified claims process.

The Settlement creates a straightforward claims procedure for Class Members to claim a *pro rata* distribution of the Settlement Fund. S.A. §§2.31, 4.8, Ex. F. It also provides for effective notice to Settlement Class Members using direct U.S. mail and email, and Class Counsel are confident that the addresses of nearly all Settlement Class Members will be ascertained by the time Notice is issued. *Id.* §§6.1, 6.2. Further, this particular Settlement Class is comprised of financial institutions, most of which will have received similar notices and claim forms in connection with other payment card data breach settlements that utilized similar processes. Joint Decl. ¶18. For this reason, Settlement Class Members are likely to have familiarity with their available options.

c. The proposed attorneys' fee award is reasonable.

Class Counsel has devoted significant time and financial resources to the litigation despite the uncertainty of prevailing at class certification and on the merits, and of establishing damages. Pursuant to the Settlement Agreement, prior to a Final Approval Hearing, Class Counsel will file a motion seeking an amount not to exceed thirty-three and one-third percent (33.33%) of the Settlement Amount as a fee award, plus reimbursement of all reasonable litigation expenses incurred. This maximum amount that Class Counsel can request is presumptively reasonable. In *In re Ravisent Techs., Inc. Sec. Litig.,* Judge Surrick noted that "courts within [the Third] Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses." 2005 WL 906361, at *11 (E.D. Pa. Apr. 18, 2005) (citing *In re CareSciences. Inc. Sec. Litig.,* Civ. A. No. 01–5266 (E.D. Pa. Oct. 29, 2004)) (awarding one-third recovery of $3.3 million settlement fund, plus expenses). Importantly, this fee request is plainly documented in the proposed Short Form and Long-Form Notices.

d. Additional agreements required to be identified under Rule 23(e)(3).

Rule 23(e)(2)(C)(iv) requires courts to consider any agreement among the parties outside of the settlement agreement. *See also* Fed. R. Civ. P. 23(e)(3) ("The parties seeking approval must file a statement identifying any agreement made in connection with the proposal."). Other than the Settlement Agreement itself, there are only two additional agreements involving the Parties related to this Settlement. The first additional agreement is a supplemental agreement regarding the threshold number of exclusions required to trigger Slim CD's right to terminate the agreement under S.A. §10.1. Joint Decl. ¶9. The second is between the Parties and the Escrow Agent, Huntington Bank, regarding the terms governing the Escrow Account. *Id.* Copies of these two agreements can be submitted to the Court for *in camera* review upon request. *Id.*

e. The remaining Girsh factors also support approval of the Settlement.

Given the present posture of the Action, it is too early to evaluate the second *Girsh* factor concerning the reaction of the proposed Settlement Class. If the Court grants preliminary approval of this Settlement, Class Notice will be issued to Settlement Class Members, advising them of their opportunities to voice their reaction to the Settlement. Notably, Plaintiffs, whose interests are aligned with the Settlement Class, support the Settlement and have been closely involved in its negotiation. *Id.* ¶11.

The third *Girsh* factor asks whether sufficient discovery has been completed to provide the parties with a "clear view of the strengths and weaknesses of their cases." *In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *8 (E.D. Pa. Apr. 18, 2005) (citation modified). This does not require the parties to complete discovery. *See Tumpa v. IOC-PA, LLC*, 2021 WL 62144, at *8 (W.D. Pa. Jan. 7, 2021) (approving a settlement where the "limited discovery" was sufficient to provide the parties "with an appreciation of the merits of the case"). As described in Part IV.A.2 *supra*, Class Counsel had more than sufficient information, along with the help of neutral Steven R. Jaffe, to assess the Settlement in light of the strengths of the case and determined that the Settlement is fair, reasonable, and adequate.

The seventh *Girsh* factor, the ability to withstand a greater judgment, is relevant if "a settlement in a given case is less than would ordinarily be awarded but the defendant's financial circumstances do not permit a greater settlement." *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 254 (E.D. Pa. 2011). This factor is not dispositive, and courts apply a flexible standard as to how much weight it is given based on the unique circumstances of a given case.[6] When "the Court has not been presented with any reason to believe that [defendant] faces any financial instability . . . this [*Girsh*] factor is largely irrelevant for the purpose of resolving the instant motion." *Id.* at 254.

Finally, the Settlement should also be approved under the eighth and ninth *Girsh* factors because it is reasonable "in light of the best possible recovery" and "in light of all the attendant risks of litigation." *Girsh*, 521 F.2d at 157 (citation modified). The reasonableness inquiry compares "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, [against] the amount of the proposed settlement." *In re CertainTeed Corp. Roofing Shingle Prod. Liab. Litig.*, 269 F.R.D. 468, 489

[6] *See Reibstein*, 761 F. Supp. 2d at 254-55 ("[T]his factor does not necessarily militate against approval of the settlement. Some courts, for example, have accorded this factor little weight based on the unique circumstances of a given case. Others have concluded a settlement is fair under this *Girsh* factor because financial stability today does not ensure financial stability tomorrow.").

(E.D. Pa. 2010) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995)). Given that data breach litigation is an evolving area of law, the risk of continued litigation is significant, making the Settlement here, which provides significant relief to the class, even more reasonable.

3. The Settlement Treats Class Members Equitably Relative to Each Other.

Finally, as discussed above, the Settlement treats all Class Members equitably and provides all Class Members with the same convenient means to recover under the Settlement, using a *pro rata* payout that corresponds to their individual shares of the potential damages suffered by the class—i.e., the number of each Financial Institution's Alerted-On Payment Cards. "A district court's 'principal obligation' in approving a plan of allocation 'is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (quoting *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F.2d 956, 964 (3d Cir. 1983)). The proposed Settlement's *pro rata* relief is available to all Class Members and thus satisfies this standard. *See, e.g.*, *Swinton v. SquareTrade, Inc.*, 2019 WL 617791, at *8 (S.D. Iowa Feb. 14, 2019) ("There is no requirement that all class members in a settlement be treated equally. And, indeed, class members are not treated equally here. Some are entitled to cash refunds and others only benefit from a coupon and injunctive relief.") (citation modified).

The *Girsh* factors and Rule 23(e)(2)(C)(i) support approval of the Settlement.

B. The Proposed Settlement Class Satisfies the Criteria of Rule 23(a) and (b).

Courts may certify settlement classes that satisfy the requirements of Rule 23(a) and at least one provision of Rule 23(b). *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620-22 (1997); *Fulton-Green*, 2019 WL 316722, at *2. The proposed Settlement Class satisfies all requirements of Rule 23(a): "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims . . . of the representative parties are typical of the claims . . . of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Further, as required by Rule 23(b)(3), "questions of law or fact common to class members predominate over any questions affecting only individual members," and a "class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Thus, the Settlement Class should be preliminarily certified, pending a final certification order after the Fairness Hearing.

1. The Class Is Sufficiently Numerous.

The Parties estimate that there are approximately 1.5 million Alerted On Payment Cards compromised by the breach and that these cards were issued by approximately 4,100 financial institutions. Joint Decl. ¶16. Thus, the Settlement Class easily satisfies the Rule 23(a)(1) requirement that the class be "so numerous that joinder of all members is impracticable." *See Fulton-Green*, 2019 WL 316722, at *3 (proposed class of 973 people "easily meet[s] the numerosity requirement"); *Gates*, 248 F.R.D. at 439-40 (class of more than 40 potential plaintiffs generally meets numerosity requirement). Accordingly, the Settlement Class satisfies numerosity.

2. There Are Questions of Law or Fact Common to the Class.

"Rule 23(a)(2)'s commonality element requires that the proposed class members share at least one question of fact or law in common with each other." *Warfarin*, 391 F.3d at 527-28. The commonality threshold is low and does not require an "identity of claims or facts among class members." *Gates*, 248 F.R.D. at 440 (citation modified). "[F]or purposes of Rule 23(a)(2), even a single common question will do." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (citation modified). Here, the facts relating to the Data Security Incident are the key issues in the case. There are multiple common questions, including, but not limited to:

a. whether Slim CD owed a duty to the Plaintiffs and Settlement Class Members to protect payment card data;

b. whether the Data Security Incident was caused by specific negligent acts or omissions on the part of Slim CD;

c. whether the Data Security Incident could have been prevented or mitigated if Slim CD had acted with reasonable care; and

d. whether Plaintiffs and Settlement Class Members suffered damages as a result of Slim CD's alleged conduct.

The answers to these questions would drive the litigation forward and resolve issues as to all Class Members, either favorably or unfavorably. *See In re Wawa*, 2023 WL 6690705, at *4. Accordingly, the Settlement Class satisfies commonality.

3. The Settlement Class Representatives' Claims Are Typical of the Claims of the Settlement Class.

Rule 23(a)(3) requires that the "claims or defenses of the representative parties [be] typical of the claims or defenses of the class." This inquiry is "intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Hall*, 2019 WL 3996621, at *7 (citation modified). Typicality is satisfied where there is a "strong similarity of legal theories or where the claim arises from the same practice or course of conduct." *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 428 (3d Cir. 2016) (hereinafter "*NFL Players II*") (citation modified). Here, the claims of the Settlement Class Representatives are "not only similar to those of other class members but are virtually identical." *Fulton-Green*, 2019 WL 316722, at *4.

Here, the claims of Plaintiffs and Settlement Class Members arise from the same conduct. Specifically, Plaintiffs' and Settlement Class Members' claims arise from Slim CD's alleged implementation of data security measures that were unreasonable and inadequate to protect Plaintiffs' and Settlement Class Members' payment card data. There are no unique facts or circumstances that would render Plaintiffs atypical from the Settlement Class. *See In re Wawa*, 2023 WL 6690705, at *4 (typicality satisfied were "each institution's claim stem[ed] from Wawa's data security measures and whether they were adequate to protect payment card data"). Slim CD's alleged conduct caused the same type of alleged injury to Settlement Class Members. Every Settlement Class Member suffered the same varieties and types of risks and losses as a result of the Data Security Incident, and the only notable variation among Settlement Class Members is the amount of damages each one suffered. Accordingly, the Settlement Class satisfies typicality.

4. The Settlement Class Representatives and Class Counsel Will Fairly and Adequately Represent the Settlement Class.

The final requirement of Rule 23(a) requires that "the representative parties will fairly and adequately protect the interests of the class." "The adequacy requirement encompasses two distinct inquiries designed to protect the interests of absentee class members: . . . whether the named plaintiffs' interests are sufficiently aligned with the absentees', and . . . the qualifications of the counsel to represent the class." *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 309 (E.D. Pa. June 26, 2012) (citation modified); *see also Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 182 (3d Cir. 2012).

Here, adequacy is readily met. First, Plaintiffs have no adverse or "antagonistic" interests towards absent Class Members. Plaintiffs seek to hold Defendant accountable for, among other things, failing to implement adequate data security measures to secure Settlement Class Members' payment card data. Further, Plaintiffs have demonstrated allegiance and commitment to the

Litigation by assisting Class Counsel throughout the process of the litigation. Joint Decl. ¶11. As such, Plaintiffs' interests are well aligned with the interests of the absent Settlement Class Members. Second, Class Counsel is qualified, experienced, and competent in complex litigation, and have an established, successful track record in class litigation—including data breach class actions on behalf of Financial Institutions. *See id.* ¶¶ 2, 16, Exhibits 1-2. Accordingly, the adequacy requirement is satisfied.

5. Common Issues Predominate over any Individual Issues and a Class Action Is Superior to Other Available Methods of Adjudicating the Controversy.

In addition to satisfying the criteria under Rule 23(a), the proposed Settlement Class must meet one of the criteria under Rule 23(b). Fed. R. Civ. P. 23(b). Plaintiffs seek to certify a class under Rule 23(b)(3), which requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The proposed Settlement Class meets both requirements.

a. Common issues predominate.

Rule 23(b)(3) requires that "the questions of law or fact common to class members predominate over any questions affecting only individual members." *Id.* The Supreme Court has explained that the predominance inquiry:

> asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues. When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.

Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453-54 (2016) (citation modified). The predominate legal and factual issues in this litigation concern the nature of the Data Security Incident and Slim CD's degree of responsibility under principles of negligence law. The most significant remaining issues to be litigated or tried with respect to liability were whether: Slim CD had a legal duty to Plaintiffs to protect payment card data; Slim CD's breached a duty of reasonable care; and Slim CD's acts or omissions were the proximate cause of Plaintiffs' injuries. *In re Wawa*, 2023 WL 6690705, at *5 (predominance satisfied where "[t]he issues facing each class member are the same: demonstrating the degree of the Wawa data breach and proving Wawa's culpability"). All of these issues can been resolved on a class wide basis, with little to no emphasis on unique circumstances of any individual Plaintiff. *See, e.g.*, *NFL Players II,* 821 F.3d at 427 (though plaintiffs may have unique injuries, "their negligence and fraud claims still depend on the same common questions regarding the [defendant's] conduct"); *Warfarin*, 391 F.3d at 528 (finding commonality where liability depended on the defendant's conduct, not on conduct of individual class members, and proof of liability "depends on evidence which is common to the class members"). Therefore, common issues predominate and the Settlement proposed by Plaintiffs ensures that individualized damage calculations do not pose a problem.

b. A class action is superior to other means of adjudication.

"The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *In re Processed Egg,* 284 F.R.D. at 264 (citation modified). Rule 23(b)(3) suggests that courts consider the following non-exhaustive list of factors when making a superiority determination: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(A)-(D).

Here, all four considerations weigh in favor of certifying the Settlement Class. There is no indication that Settlement Class Members would be interested in litigating individually or that the litigation should proceed in a non-class forum. *See In re Wawa*, 2023 WL 6690705, at *5. In addition, the cost and complexity of litigation would preclude the vast majority of Class Members from filing suit individually.[7] The Settlement, in contrast, provides Settlement Class Members with an immediate monetary benefit.

For these reasons, the proposed Settlement Class satisfies the requirements of Rule 23(a) and Rule 23(b)(3) and should be conditionally certified for purposes of settlement.

C. The Notice Plan Provides Settlement Class Members with the Best Notice Practicable Under the Circumstances.

If the Parties show 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," then the Court must "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1)(B). Pursuant to Rule 23(c)(2)(B), the notice must be the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."

There are three aspects to notice requirements under Rule 23 and fundamental due process: (1) notice must be disseminated in a manner "reasonably calculated, under all the circumstances,

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[7] Because the Parties request certification for settlement purposes only, the Court "need not inquire whether the case, if tried, would present intractable management problems . . . [because] the proposal is that there be no trial." *Amchem*, 521 U.S. at 620; *accord In re Processed Egg*, 284 F.R.D. at 264.

to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"; (2) the content must be of "such nature as reasonably to convey the required information"; and (3) the notice must "afford a reasonable time for those interested to make their appearance" and exercise their options to file a claim, object, or opt out of the class. *Mullane*, 339 U.S. at 314 (citation modified); *see also In re Nat'l Football League Players Concussion Injury Litig.*, 775 F.3d 570, 583 (3d Cir. 2014) (principal purpose of notice provision of Rule 23(e)(1) is to "ensure that absentee class members, for whom a settlement will have preclusive effect, have an opportunity to review the materials relevant to the proposed settlement and to be heard or otherwise take steps to protect their rights before the court approves or rejects the settlement") (quoting 2 McLaughlin on Class Actions §6:17 (10th ed. 2013)). The Notice Program achieves all of these objectives.

When determining what constitutes the best notice practicable under the circumstances, courts consider the individual facts in the case. *See In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 177 F.R.D. 216, 232 (D.N.J. 1997) ("In all cases the Court should strike an appropriate balance between protecting class members and making Rule 23 workable.") (quoting *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993)); *see also* Fed. R. Civ. P. 23(c)(2) advisory committee's note to 2018 amendment ("[T]he amended rule relies on courts and counsel to focus on the means or combination of means most likely to be effective in the case before the court.").

Here, Settlement Class Members are financial institutions that vary in size and sophistication. Therefore, in consultation with their proposed Settlement Administrator, the Parties designed a multi-pronged Notice Program to ensure adequate dissemination of notice that, as detailed above, includes: individualized direct notice via mail and/or email and a dedicated Settlement Website.

For purposes of effectuating individualized direct Notice, Class Counsel have issued subpoenas to the Card Brands who will produce data identifying the number of Alerted-On Payment Cards as well as contact information for each Settlement Class Member who issued an Alerted-On Payment Card to Analytics to issued direct notice to Settlement Class Members. Joint Decl. ¶¶15-16. The Settlement Website will further support Settlement Class Members and facilitate resolution of any questions Settlement Class Members may have. Analytics Decl. ¶¶22-24. Courts routinely find that individual direct mail notice is "ideal" and "the best possible" method of notice and fully satisfies the requirements of Rule 23(c) and due process. *See In re Sonic Corp. Customer Data Sec. Breach Litig. (Fin. Institutions),* 2022 WL 1467604, at *3 (N.D. Ohio May 10, 2022) (preliminarily approving a similar notice plan for financial institutions in a data breach settlement). The Parties' proposed Notice Program is therefore the best notice practicable under the circumstances.

V. PLAINTIFFS SHOULD BE APPOINTED AS SETTLEMENT CLASS REPRESENTATIVES AND PLAINTIFFS' COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL.

Plaintiffs have adequately represented the Settlement Class. From the start, they have been active participants in this litigation, engaged in activities including but not limited to: bringing their claims to Class Counsel for investigation, agreeing to serve as representative plaintiffs, reviewing the complaint, providing information and documentation, where available, to Class Counsel, and reviewing and approving the Settlement. Joint Decl. ¶11. Thus, Plaintiffs request that the Court appoint First Choice Federal Credit Union and Financial Horizons Credit Union as Settlement Class Representatives.

When approving a settlement, the court must also inquire "whether Plaintiffs' counsel is qualified, experienced, and able to conduct the litigation." *Shapiro v. Alliance MMA, Inc.*, 2018 WL 3158812, at *5 (D.N.J. June 28, 2018) (citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 312 (3d Cir. 1998)). Plaintiffs' Counsel's extensive class action experience, combined with their extensive efforts in this litigation, provides direct evidence of their adequacy. Thus, Plaintiffs request that the Court appoint Plaintiffs' Counsel as Class Counsel for the Settlement Class.

Rule 23(g) sets forth the criteria for evaluating the adequacy of plaintiffs' counsel:

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).

The duty of adequate representation also requires counsel to "competently, responsibly and vigorously prosecute the suit." *In re CertainTeed Fiber.*, 303 F.R.D. at 212 (citation modified). Plaintiffs satisfy this requirement when their attorneys demonstrate that they can "fairly and adequately protect the interests of the class." *Shapiro v. Alliance MMA, Inc.*, 2018 WL 3158812, at *4 (quoting *In re Pet Food Products Liab. Litig.*, 629 F.3d 333, 341 (3d Cir. 2010)); *accord* Fed. R. Civ. P. 23(g).

Counsel has prosecuted this Litigation from its inception and negotiated the proposed Settlement. The firms representing Plaintiffs have vigorously represented the interests of Plaintiffs and Class Members at all times since their appointment. Each firm has decades of experience leading some of the most complex class actions, including data breach class actions on behalf of financial institutions. *See* Joint Decl. ¶¶2, 20, Exhibits 1-2. Plaintiffs request that the Court appoint Joseph P. Guglielmo of Scott+Scott and Gary F. Lynch of Lynch Carpenter as Class Counsel for the Settlement Class.

VI. PROPOSED SCHEDULE

Plaintiffs request that the Court establish dates for disseminating notice to the Settlement Class, deadlines for filing claims, exclusion or objections, dates for filing papers relating to final settlement approval and attorneys' fees, and a date for setting the Final Approval Hearing. Plaintiffs propose the following schedule based on the Settlement Agreement and as set forth in the [Proposed] Preliminary Approval Order:

Event	Due Date
Notice Deadline (commencement of Notice Program)	The later of (i) thirty (30) days after entry of the Preliminary Approval Order, or (ii) thirty (30) days after receipt of the Class List from the Parties, unless a different deadline is set by the Court
Settlement Website established	By the Notice Deadline
Motion for Final Approval and Fee and Expense Application filed	No later than 14 days prior to the Opt-Out and Objection Deadlines
Opt-Out Deadline	60 days after the Notice Deadline
Objection Deadline	60 days after the Notice Deadline
Reply briefs filed	No later than 14 days after Objection Deadline
Final Approval Hearing	No earlier than 100 days after the Notice Deadline

Event	Due Date
Claims Deadline	90 days after the Notice Deadline

VII. CONCLUSION

Based on the foregoing, Plaintiffs and Counsel respectfully request that the Court: (1) grant preliminary approval to the proposed Settlement; (2) preliminarily certify the proposed Settlement Class for settlement purposes, pursuant to Rules 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure; (3) appoint Analytics LLC as the Settlement Administrator; (4) approve the proposed Notice Program and authorize the Parties to begin conducting it; (5) conditionally appoint Plaintiffs First Choice Federal Credit Union and Financial Horizons Credit Union as Settlement Class Representatives; (6) conditionally appoint Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP and Gary F. Lynch of Lynch Carpenter LLP as Class Counsel; and (7) schedule a Final Approval Hearing in accordance with the proposed schedule set forth above; and (8) enter the proposed [Proposed] Preliminary Approval Order.

Dated: May 13, 2026

Respectfully submitted:

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