**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF PENNSYLVANIA**

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

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

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## INTRODUCTION

Plaintiffs First Choice Federal Credit Union ("FCFCU") and Financial Horizons Credit Union ("FHCU") (collectively, "Plaintiffs" or "Settlement Class Representatives"), on behalf of themselves and the Settlement Class, respectfully submit this memorandum of law in support of their Motion for Final Approval of the Proposed Class Action Settlement Agreement with Defendant Slim CD, Inc. ("Slim CD" or "Defendant") (together with Plaintiffs, the "Parties").[1] The Settlement provides substantial, immediate, and certain relief to a class of financial institutions allegedly injured by a payment-card data breach, and it does so in an evolving, risk-laden area of the law where recovery at trial was far from assured.

The Settlement requires Slim CD to pay $2 million into a non-reversionary Settlement Fund for the benefit of the Settlement Class. S.A. §2.42. After payment of Court-approved fees, litigation expenses, Service Awards, Taxes and Tax Expenses, any fees of the Escrow Agent, the Costs of Settlement Administration, and any other fees and expenses authorized by the Court, the Net Settlement Fund will be distributed *pro rata* to Settlement Class Members who submit Approved Claims, in proportion to each institution's number of Alerted On Payment Cards. *Id.* §2.22, 2.3, 4.7-4.8. Because the Settlement Fund is non-reversionary, no portion of it will return to Slim CD. *Id.* §4.11.

On June 3, 2026, the Court granted preliminary approval of the Settlement, preliminarily certified the Settlement Class, approved the Notice Program, and directed that notice be issued to the Settlement Class. ECF No. 39. The Court-appointed Settlement Administrator, Analytics LLC ("Analytics"), has since implemented the Notice Program. *See generally* Declaration of Richard

[1] Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the proposed Class Action Settlement Agreement (the "Settlement" or "S.A."), dated May 13, 2026. ECF No. 32-3.

Simmons in Support of Unopposed Motion for Final Approval of Class Action Settlement ("Simmons Decl"). The deadlines for Settlement Class Members to submit claims (October 5, 2026) and to request exclusion or object (both September 4, 2026) have not yet passed; however, to date, no requests for exclusion or objections have been received. Simmons Decl. ¶¶17-18. Plaintiffs will report on any requests for exclusions and will respond to any objections in their reply submission on September 18, 2026, in advance of the Final Approval Hearing scheduled for September 22, 2026.

The Settlement readily satisfies the standard for final approval under Federal Rule of Civil Procedure 23(e)(2) and the additional factors the Third Circuit articulated in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998), and *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 174 (3d Cir. 2013). Nothing has changed since preliminary approval to disturb the Court's conclusion that it would likely be able to approve the Settlement and certify the Settlement Class under these standards. Plaintiffs respectfully request that the Court grant final approval, certify the Settlement Class, and enter the proposed Final Approval Order and Judgment.

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

### A. The Data Security Incident

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. ECF No. 1 ("Complaint") ¶¶19-20. 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. *Id.* ¶¶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. *Id.* ¶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"). *Id.* ¶¶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. *Id.* ¶2. As a result, Plaintiffs and Settlement Class Members incurred costs to cancel and reissue payment cards and to mitigate the risk of fraudulent transactions. *Id.* ¶¶78-84.

**B. Procedural History**

On July 22, 2025, Plaintiffs filed a class action Complaint against Slim CD in this Court, asserting claims for negligence, negligence *per se*, declaratory and injunctive relief, and unjust enrichment. The Court designated the case for its Alternative Dispute Resolution program, Slim CD waived service, and, on the Parties' joint motion, the Court stayed the litigation pending mediation and administratively closed the case for the duration of the stay. ECF Nos. 6, 9, 16-17.

**C. 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.[2] 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 also exchanged detailed mediation statements setting out their respective positions on the claims and defenses. *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, which resulted in an agreement in principle. *Id.* ¶7. After finalizing a term sheet on January 30, 2026, the Parties worked to craft a comprehensive settlement agreement, solicit proposals from settlement administrators, subpoena documents from the Card Brands, draft the proposed notices, claim form, and proposed orders, and negotiate terms for the contemplated escrow accounts, culminating in a fully executed Settlement Agreement on May 12, 2026. *Id.* ¶10. The negotiations were hard-fought, conducted at arm's length, and informed by counsel's experience in payment-card data-breach litigation and their extensive research of the facts and law relating to this case. *Id.*

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[2] Citations to the "Joint Decl." are to the Joint Declaration of Joseph P. Guglielmo and Gary F. Lynch in Support of Plaintiffs' Unopposed Motion for Preliminary Approval. ECF No. 32.

### D. Summary of the Settlement

*Monetary relief.* Slim CD will pay $2 million into a non-reversionary Settlement Fund. S.A. §§2.42, 4.1, 4.10. 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, calculated as the member's number of Alerted On Payment Cards divided by the total number of Alerted On Payment Cards for all Approved Claims, multiplied by the Net Settlement Fund. *Id.* §§2.31, 4.8. The Settlement Administrator will validate each claim against the card-brand data and, if the Settlement is approved, distribute payments following the Effective Date. *Id.* §4.8. Settlement Class Members have until October 5, 2026 to submit their Claim Forms. ECF No. 39.

*Release*. In exchange, Settlement Class Members who do not timely exclude themselves will release their Data Security Incident-related claims against Slim CD. S.A. §8.2.

*Settlement Class*. The Settlement Class is defined as:

> [A]ll financial institutions in the United States (including its territories and the District of Columbia) that issued one or more Alerted on Payment Cards. Excluded from the Settlement Class are: (i) the Court and any immediate family members of the Court; (ii) directors and officers of Defendant; (iii) parents and subsidiaries of Defendant; and (iv) financial institutions that timely and validly request exclusion from the Settlement Class

*Id.* §2.41.

*Fees, expenses, and service awards*. Class Counsel has applied a separate motion filed concurrently herewith, for an award of attorneys' fees of equal to one-third of the Settlement Fund, reimbursement of litigation expenses, and Service Awards to Plaintiffs of $2,500 each (*Id.* §2.38) (collectively, the "Fee and Expense Application"), all payable from the Settlement Fund. *Id.* §§9.1-9.2. The Settlement is not contingent on the Court's approval of any particular fee, expense, or service-award amount. *Id.* §9.4.

**E. Preliminary Approval**

On June 3, 2026, the Court preliminarily approved the Settlement as fair, reasonable, and adequate; preliminarily certified the Settlement Class under Rule 23(b)(3); preliminarily appointed Plaintiffs as Settlement Class Representatives and their counsel as Class Counsel; appointed Analytics as Settlement Administrator; approved the Notice Program; and directed that notice be issued to the Settlement Class. ECF No. 39.

**F. Implementation of Notice Program**

As directed by the Court, and using card-brand data obtained by subpoena to identify Settlement Class Members and their Alerted On Payment Cards (Joint Decl. ¶15), the Settlement Administrator implemented the Court-approved Notice Program. *See generally* Simmons Decl. The card-brand data identified 4,380 Settlement Class Members and contained email and/or postal addresses for members of the Settlement Class. *Id.* ¶¶4, 7-8. The Notice disseminated to the Settlement Class included the required description of the material Settlement terms; the process by which Settlement Class Members could file a Claim Form; the deadline for Settlement Class Members to file a Claim Form; the deadline for Settlement Class Members to opt-out of the Settlement Class; the deadline for Settlement Class Members to object to the Settlement; and the address of the Settlement Website at which Settlement Class Members could access the Long Form Notice, Claim Form, Settlement Agreement, and other related documents and information. *Id.* ¶5 & Ex. 1 (Long Form Notice).

On July 6, 2026, the Settlement Administrator commenced the Notice Program. *Id.* ¶13. Direct notice was provided by email notice where available to 602 Settlement Class Members. *Id.* ¶13 & Ex. 3 (Email Notice). Where email was not available, the Settlement Administrator sent mail notice via First Class U.S. mail for 3,778 Settlement Class Members. *Id.* ¶12. Of those 602

Settlement Class Members who were sent email notice, 76 had email addresses that did not confirm as delivered. *Id.* ¶14. The Settlement Administrator promptly mailed the mail notice by First Class U.S. Mail to these 76 Settlement Class Members for which the emails were either invalid or unsuccessfully delivered. *Id.* ¶14. For the Settlement Class Members that were mail notice, 48 were returned as undeliverable. *Id.* ¶15. The Settlement Administrator will perform an advance address search and mail the Notices to the updated addresses, where available. *Id.* ¶15.

Further, on July 6, 2026, the Settlement Administrator established a dedicated Settlement Website through which Settlement Class Members could review the Settlement documents, submit claims, and obtain information about the Settlement.[3] *Id.* ¶¶9-10. CAFA notice was served on the appropriate federal and state officials, and the applicable waiting period has elapsed with no objection. *Id.* ¶25.

As a result of the Notice Program, 98.69% of Settlement Class Members identified through the subpoena process received direct, individualized notice of the Settlement. *Id.* ¶24. The deadline to submit an objection to, or opt out of, the Settlement will occur on September 4, 2026. ECF No. 39. To date, no Settlement Class Member has objected to the Settlement, nor have any Settlement Class Members submitted a request for exclusion. Simmons Decl. ¶¶17-18. The deadline to submit a Claim Form will occur on October 5, 2026. ECF No. 39. To date, 256 Claim Forms have been received; Analytics anticipates that additional claims will be received as the claims deadline approaches. Simmons Decl. ¶19. The Settlement Administrator will submit a supplement declaration in advance of the final approval hearing advising the Court on any updates to objections, opt-outs, and claims submissions. *Id.* ¶¶17-19.

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[3] *Home*, SLIM CD FINANCIAL INSTITUTION DATA BREACH SETTLEMENT, https://slimcdpaymentcardsettlement.com/.

## ARGUMENT

## II. THE SETTLEMENT WARRANTS FINAL APPROVAL

A class action may be settled only with the court's approval, which requires a finding that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Third Circuit has long recognized "an overriding public interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004); *see In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995).

Rule 23(e)(2) directs the court to consider whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposed settlement was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of the proposed method of distributing relief, the terms of any proposed award of attorneys' fees, and 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). Courts in this Circuit also consider the *Girsh* factors and, where relevant, the *Prudential* and *Baby Products* factors. *Girsh*, 521 F.2d at 157; *In re Prudential*, 148 F.3d at 323; *In re Baby Prods.*, 708 F.3d at 174; *see also In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 333 F.R.D. 364, 379-80 (E.D. Pa. 2019). In granting preliminary approval, the Court determined that it would likely be able to approve the Settlement and certify the Settlement Class. ECF No. 39. Nothing has changed since that ruling, and each factor supports final approval of the proposed Settlement.

### A. Settlement Class Representatives and Class Counsel Have Adequately Represented the Class

The first Rule 23(e)(2) factor asks whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). This factor overlaps substantially with the adequacy requirement of Rule 23(a)(4) and with the considerations governing the appointment of class counsel under Rule 23(g), and the analysis that follows establishes that those requirements are satisfied as well. "The adequacy requirement encompasses two distinct inquiries designed to protect the interests of absentee class members": whether the named plaintiffs' interests are aligned with the absentees', and whether class counsel are qualified to represent the class. *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 309 (E.D. Pa. 2012) (citation modified); *see Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 181 (3d Cir. 2012).

Both inquiries are satisfied. Plaintiffs' interests are aligned with those of the absent Settlement Class Members: as financial institutions that issued Alerted On Payment Cards, Plaintiffs allegedly suffered the same category of injury from the same Data Security Incident, and their claims would "prevail or fail in unison" with the class. *Cf. Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 460 (2013). Plaintiffs brought their claims to Class Counsel, assisted in the investigation, provided information, and reviewed and approved the Settlement. Joint Decl. ¶11.

Class Counsel, in turn, have spent nearly a decade litigating these types of claims precisely. Mr. Guglielmo and Mr. Lynch have been appointed co-lead counsel for financial institution classes in the largest payment-card data breach cases in the country, including *In re Equifax, Inc., Customer Data Security Breach Litig.*, No. 1:17-md-02800 (N.D. Ga.) ($32.5 million settlement finally approved); *In re Home Depot Data Breach Litig.*, No. 1:14-md-2583 (N.D. Ga.) ($27.25 million finally approved); and *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356

(W.D. Wash.) ($9.8 million finally approved). They brought that experience to bear here, investigating the claims, litigating the case, and negotiating the Settlement. Joint Decl. ¶2 & Exs. 1-2 (firm resumes). This factor supports final approval. *See Braun v. Phila. Inquirer, LLC*, 2025 WL 1314089, at *7 (E.D. Pa. May 6, 2025); *Clemens v. ExecuPharm, Inc.*, 2024 WL 4530310, at *2 (E.D. Pa. Oct. 1, 2024).

**B. The Proposed Settlement Was Negotiated at Arm's Length**

The second Rule 23(e)(2) factor asks whether the Settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). "The participation of an independent mediator in settlement negotiations virtually ensures that the negotiations were conducted at arm's length and without collusion between the parties." *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) (citation modified). Here, the Settlement is the product of a full-day, in-person mediation before Steven R. Jaffe, an experienced data-breach mediator, preceded by informal discovery and the exchange of detailed mediation statements. Joint Decl. ¶¶4-7. The involvement of an experienced neutral, together with the informed and hard-fought nature of the negotiations, confirms the arm's-length character of the process. *See In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) (settlement enjoys a presumption of fairness where, among other things, negotiations occurred at arm's length and the proponents are experienced in similar litigation).

**C. The Relief Provided for the Settlement Class Is Adequate**

The third Rule 23(e)(2) factor asks whether "the relief provided for the class is adequate," taking into account the costs, risks, and delay of trial and appeal; the effectiveness of the proposed method of distributing relief; the terms of any proposed award of attorneys' fees; and any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C). Each sub-factor supports approval.

### 1. The Costs, Risks, and Delay of Trial and Appeal Support Approval

The immediate and certain relief the Settlement provides stands in stark contrast to the risks, expense, and delay of continued litigation. Data-breach litigation is a complex and rapidly evolving area of law, and recovery is far from certain. *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."); *Corra v. ACTS Ret. Servs., Inc.*, 2024 WL 22075, at *8 (E.D. Pa. Jan. 2, 2024) (same); *In re Wawa, Inc. Data Sec. Litig.*, 2023 WL 6690705, at *7 (E.D. Pa. Oct. 12, 2023) ("This is a complex class action lawsuit regarding damages from a data breach, an area of law that has not yet been fully developed."); *In re Onix Grp., LLC Data Breach Litig.*, 2024 WL 5107594, at *9 (E.D. Pa. Dec. 13, 2024) (same); *In re Equifax Inc. Customer Data Sec. Breach Litig*., 2020 WL 256132, at *32 (N.D. Ga. Mar. 17, 2020) ("The law in data breach litigation remains uncertain and the applicable legal principles have continued to evolve, . . . [and] protracted appellate litigation in two other data breach cases while this case has been pending demonstrate the unsettled state of the law."), *reversed on other grounds*, 999 F.3d 1247 (11th Cir. 2021).

Absent the Settlement, Plaintiffs would have to defeat a forthcoming motion to dismiss, obtain and maintain class certification, survive summary judgment, prevail in a battle of experts, and succeed at trial and on any appeal, with each step presenting a genuine risk of reduced or no recovery. Class certification in particular is not assured in data-breach cases. *See Theus v. Brinker Int'l, Inc*., 2025 WL 1786346, at *2 (M.D. Fla. June 27, 2025) (denying certification in a data-breach case); *Maldini v. Marriott Int'l, Inc*., 140 F.4th 123, 138 (4th Cir. 2025) (reversing certification in data-breach litigation). "[C]ontinued litigation would entail a lengthy and expensive legal battle that may result in no relief or substantially delayed relief to the Settlement Class[]." *Fulton-Green*, 2019 WL 4677954, at *10; *see In re Wawa*, 2023 WL 6690705, at *7, *9 (recognizing the risks financial-institution plaintiffs faced in data-breach litigation).

Given the highly technical nature of the claims, continued litigation would require substantial expert work and expense. *See In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 2020 WL 4212811, at *8 (N.D. Cal. July 22, 2020) ("Litigation costs would be quite high, given that the case involves complex technical issues and requires substantial expert testimony."); *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001).

Weighed against these risks, the $2 million non-reversionary Settlement Fund, delivering prompt, certain cash relief, is a strong result. *See In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) (elimination of delay and expense and the provision of immediate benefit favors approval). This sub-factor decisively supports final approval of the proposed Settlement.

**2. The Method of Distributing Relief is Effective**

The Settlement provides an effective and straightforward method of distributing relief. Fed. R. Civ. P. 23(e)(2)(C)(ii). Each Settlement Class Member needs only to submit a Claim Form identifying its Alerted On Payment Cards; the Settlement Administrator validates the claim against card-brand data and distributes a *pro rata* payment following Settlement approval. S.A. §§2.31, 4.8. A claims process "should deter or defeat unjustified claims" without being "unduly demanding." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. The process here meets that standard, and because the Settlement Class comprises financial institutions that have received similar notices and claim forms in other payment-card breach settlements, Settlement Class Members are familiar with the process. Joint Decl. ¶18. This sub-factor supports final approval of the proposed Settlement.

#### 3. The Terms of the Proposed Award of Attorneys' Fees Support Approval

Under Rule 23(e)(2)(C)(iii), the Court considers "the terms of any proposed award of attorney's fees, including timing of payment." Class Counsel have sought fees, expenses, and service awards by separate motion. Consistent with the Settlement Agreement and the notice provided to the Settlement Class, Class Counsel have requested attorneys' fees of one-third of the Settlement Fund, plus reimbursement of litigation expenses, and Service Awards of $2,500.00 for each Settlement Class Representative. Such a request falls within the range courts in this Circuit routinely approve. *See In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *11 (E.D. Pa. Apr. 18, 2005) ("[C]ourts within [the Third] Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses."). The Settlement is not contingent on approval of any particular fee amount, S.A. §9.4, and the reasonableness of the request is addressed in the separate fee motion. This sub-factor supports final approval of the proposed Settlement.

#### 4. There Are No Agreements Requiring Disapproval Under Rule 23(e)(3)

Rule 23(e)(2)(C)(iv) and Rule 23(e)(3) require the parties to identify any agreement made in connection with the Settlement. Apart from the Settlement Agreement itself, two such agreements exist: a supplemental agreement setting the threshold number of exclusions that would permit Slim CD to terminate the Settlement under S.A. §10.1, and an agreement between the Parties and the Escrow Agent governing the Escrow Account. Neither affects the fairness of the Settlement, and copies can be submitted for *in camera* review upon request. This sub-factor supports final approval of the proposed Settlement.

### D. The Settlement Treats Settlement Class Members Equitably

The final Rule 23(e)(2)(D) factor asks whether the Settlement "treats class members equitably relative to each other." It does. Every Settlement Class Member recovers on the same *pro rata* basis in proportion to its number of Alerted On Payment Cards, which corresponds directly to each institution's share of the potential damages. *See* S.A. §2.31. "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.*, 726 F.2d 956, 964 (3d Cir. 1983)). The *pro rata* allocation, available on equal terms to every Settlement Class Member, satisfies this standard.

### E. The Girsh Factors Confirm the Settlement's Fairness

In addition to the factors set forth in Rule 23(e), courts in the Third Circuit consider the *Girsh* factors, which include: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and 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 defendant to withstand a greater judgment; (8) the range of reasonableness in light of the best possible recovery; and (9) the range of reasonableness in light of the attendant risks. *Girsh*, 521 F.2d at 157. No single factor is dispositive, and "[a] court may approve a settlement even if it does not find that each of [the *Girsh*] factors weighs in favor of approval." *In re N.J. Tax Sales Certificates Antitrust Litig.*, 750 F. App'x 73, 77 (3d Cir. 2018). These factors overlap substantially with the Rule 23(e)(2) analysis above and confirm the Settlement's fairness.

### 1. Complexity, Expense, and Likely Duration of the Litigation

The first factor "captures the probable costs, in both time and money, of continued litigation." *In re Nat'l Football* , 821 F.3d at 437. As discussed above, §II.C.1., this data-breach action would require a contested motion to dismiss, class certification, summary judgment, expert discovery, trial, and likely appeals. This is a lengthy and expensive path in an unsettled area of law. *See In re Wawa*, 2023 WL 6690705, at *7. This factor supports final approval of the proposed Settlement.

### 2. The Reaction of the Settlement Class

"[T]he reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Maley v. Del Global Techs. Corp.*, 186 F.Supp.2d 358, 362 (S.D.N.Y. 2002). A minimal number of objections and exclusions favors approval, and "[s]ilence constitutes tacit consent to the agreement." *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 n.15, 1314 (3d Cir. 1993). Here, no objections or requests for exclusion have been submitted (Simmons Decl. ¶¶17-18); however, the deadline for Settlement Class Members to object or request exclusion is September 4, 2026. ECF No. 39. Plaintiffs will report the final objection and exclusion figures in their reply submission on September 18, 2026, in advance of the Final Approval Hearing on September 22, 2026. *Id.*

### 3. The Stage of Proceedings and Discovery Completed

The third factor asks whether "counsel had an adequate appreciation of the merits of the case before negotiating." *In re Cendant*, 264 F.3d at 235. This does not require completed discovery. *In re Nat'l Football*, 821 F.3d at 439 (approving a settlement where class counsel had not conducted formal discovery but had "adequately evaluated [merits] issues through informal discovery"). Through informal discovery, Slim CD's production concerning the Data Security

Incident, the exchange of detailed mediation statements, and their independent investigation and experience in payment-card breach cases, Class Counsel had more than sufficient information to evaluate the strengths and weaknesses of the claims. Joint Decl. ¶¶2, 5-6, 16, 20. This factor supports final approval of the proposed Settlement.

#### 4. The Risks of Establishing Liability and Damages and Maintaining the Class Through Trial

The fourth, fifth, and sixth factors "require the Court to survey the potential risks and rewards of proceeding to litigation in order to weigh the likelihood of success against the benefits of an immediate settlement." *Fulton-Green*, 2019 WL 4677954, at *10 (citation modified). As explained above, §II.C.1., Plaintiffs faced substantial risks in proving Slim CD's duty, breach, causation, and damages under an evolving body of data-breach law, and in obtaining and maintaining class certification. *See also In re Prudential*, 148 F.3d at 321 (there "will always be a 'risk' or possibility of decertification"). These factors support final approval of the proposed Settlement.

#### 5. The Ability of Slim CD to Withstand a Greater Judgment

The seventh factor "is most relevant when the defendant's professed inability to pay is used to justify the amount of the settlement." *In re Nat'l Football*, 821 F.3d at 440. Slim CD does not premise the Settlement on an inability to pay, and this factor accordingly does not weigh against approval. *See Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 254 (E.D. Pa. 2011) (where there is no reason to believe the defendant faces financial instability, this factor "is largely irrelevant").

#### 6. The Range of Reasonableness in Light of the Best Possible Recovery and the Attendant Risks

The eighth and ninth factors "evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case," testing the "reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial." *In re Warfarin*, 391 F.3d at 538. The $2 million Settlement Fund provides a strong per-card recovery when measured against comparable payment-card breach settlements. In *In re Wawa*, the court approved a financial-institution settlement valued at approximately $1.25 per compromised card, and in *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-02807 (N.D. Ohio), the court approved a settlement valued at approximately $0.64 per card. The approximately $1.33 per-card value here compares favorably.[4] Given the significant litigation risks, these factors support final approval of the proposed Settlement.

**F. The Relevant Prudential and Baby Products Factors Are Satisfied**

In addition to the *Girsh* factors, the Third Circuit has elaborated on additional factors, the *Prudential* and *Baby Products* factors that supplement, and overlap with, the *Girsh* factors; only the factors relevant to the litigation need be addressed. *In re Prudential*, 148 F.3d at 323-24; *In re Baby Prods.*, 708 F.3d at 174; *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 350 (3d Cir. 2010). The *Prudential* factors include: (1) the maturity of the underlying substantive issues; (2) the existence and probable outcome of claims by other classes and subclasses; (3) the comparison between the results achieved for class members and those achieved or likely to be achieved for other claimants; (4) whether class members may opt out; (5) whether any attorneys' fee provisions are reasonable; and (6) whether the claims-processing procedure is fair and reasonable. *In re Prudential,* 148 F.3d at 323. A *Baby Products* analysis further entails considering (7) the number of individual awards compared to both the number of claims and the estimated number of class

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[4] The approximately $1.33 figure reflects the gross $2 million Settlement Fund divided by the approximately 1.5 million compromised cards. The ultimate per-card recovery will depend on the Net Settlement Fund and the number of Alerted On Payment Cards on Approved Claims and thus will most likely be much higher.

members; (8) the size of the individual awards compared to claimants' estimated damages; and (9) the claims process used to determine individual awards. *In re Baby Prods*., 708 F.3d at 174. The relevant factors confirm that final approval of the proposed Settlement is warranted.

#### 1. The Maturity of the Underlying Substantive Issues

The first *Prudential* factor "substantially mirrors Girsh factor three, the stage of the proceedings," and asks whether the record is sufficiently developed to assess the probable outcome. *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 2024 WL 815503, at *9 (E.D. Pa. Feb. 27, 2024). As explained above, §§II.A., II.C.1., and II.E.3.-4., Class Counsel's investigation, the information exchanged in and around mediation, and counsel's experience in payment-card breach litigation placed the parties in a position to fully evaluate the case. This factor favors final approval of the proposed Settlement.

#### 2. The Existence and Probable Outcome of Claims by Other Classes and Subclasses

There are no competing classes or subclasses, and no Settlement Class Members have requested exclusion. Simmons Decl. ¶17. This factor favors final approval.

#### 3. The Comparison Between the Results Achieved and Results Achieved in Comparable Cases

As set out above in connection with the eighth and ninth *Girsh* factors, §II.E.6., the approximately $1.33 per-card value compares favorably with the per-card recoveries approved in comparable payment-card breach settlements, including *Wawa* (approximately $1.25 per card) and *Sonic* (approximately $0.64 per card). This factor favors final approval.

**4. Whether Settlement Class Members Are Accorded the Right to Opt Out**

Settlement Class Members were given notice of, and a full opportunity to exercise, the right to opt out. *See In re Suboxone*, 2024 WL 815503, at *10; *see* Simmons Decl. Ex. 1 (Notice) at 1, 5-6. This factor favors final approval.

**5. Whether the Provisions for Attorney's Fees Are Reasonable**

For the reasons stated in connection with Rule 23(e)(2)(C)(iii) above, §II.C.3., the Settlement's fee-related terms are reasonable and were disclosed in the notice to the Settlement Class. The reasonableness of the fee request itself is addressed in Class Counsel's separate fee motion. This factor favors final approval.

**6. Whether the Procedure for Processing Claims is Fair and Reasonable**

As explained above, §§II.C.2., II.D., the claims procedure—a Claim Form validated against card-brand data, followed by a *pro rata* distribution—is fair, reasonable, and well suited to a class of financial institutions. This factor favors approval.

**7. The Number of Individual Awards Compared to Both the Number of Claims and the Estimated Number of Class Members**

This factor asks whether the Settlement's value will actually reach Settlement Class Members. *See In re Baby Prods.*, 708 F.3d at 174. It will. The Settlement Fund is non-reversionary, and every Settlement Class Member with an Approved Claim receives a payment calculated as its share of Alerted On Payment Cards. S.A. §§2.31, 4.1, 4.8, 4.10. No portion of the Net Settlement Fund returns to Slim CD, and none is diverted from the Settlement Class. This factor favors final approval.

#### 8. The Size of the Individual Awards Compared to Claimants' Estimated Damages

The size of the individual awards is reasonable when measured against Settlement Class Members' estimated damages, which consist principally of the costs of reissuing Alerted On Payment Cards and of absorbing fraud losses on those cards. As explained above, §II.E.6., the Settlement delivers approximately $1.33 per Alerted On Payment Card, exceeding the per-card values courts approved in comparable financial-institution payment-card breach settlements, including *Wawa* (approximately $1.25 per card) and *Sonic* (approximately $0.64 per card). Because relief is allocated by card count, each Settlement Class Member's award scales directly with its exposure to the Data Security Incident. Weighed against the risk of no recovery at all, the awards represent a substantial return on the claims released. This factor favors final approval.

#### 9. The Claims Process Used to Determine Individual Awards

The claims process is designed to maximize participation rather than to suppress it. As explained above, §§II.C.2., II.D., a Settlement Class Member needs only to submit a Claim Form identifying its Alerted On Payment Cards; the Settlement Administrator validates the claim against data produced by the Card Brands and calculates the *pro rata* award. S.A. §§2.31, 4.8. No Settlement Class Member must document individual losses, quantify fraud write-offs, or produce cardholder records, and the awards are determined by an objective formula that leaves no discretion in the allocation. The process is also familiar: as financial institutions that have participated in other payment-card breach settlements, Settlement Class Members have received and completed comparable claim forms before. Joint Decl. ¶18. This factor favors final approval.

## III. CERTIFICATION OF THE SETTLEMENT CLASS REMAINS APPROPRIATE

The Settlement Class consists of: all financial institutions in the United Sates (including its territories and the District of Columbia) that issued one or more Alerted on Payment Cards. Excluded from the Settlement Class are: (i) the Court and any immediate family members of the Court; (ii) directors and officers of Defendant; (iii) parents and subsidiaries of Defendant; and (iv) financial institutions that timely and validly request exclusion from the Settlement Class. S.A. §2.41.

In its Preliminary Approval Order, the Court determined it was likely to certify the Settlement Class under Rule 23(a) and Rule 23(b)(3) for settlement purposes. ECF No. 39 ¶1. Nothing has changed to call that determination into question. Plaintiffs' preliminary approval papers establish each requirement: numerosity (approximately 4,100 financial institutions), common questions concerning Slim CD's data-security duties and the Data Security Incident, typical claims arising from the same conduct, adequate representation (*see also* §II.A., above), and the predominance of common issues together with the superiority of class resolution. Plaintiffs' Memorandum of Law in Support of Unopposed Motion for an Order Authorizing Notice of Proposed Class Action Settlement, ECF No. 31 §IV.B. The Settlement Class should therefore be finally certified for purposes of effectuating the Settlement.

## IV. PLAINTIFFS SHOULD BE APPOINTED AS SETTLEMENT CLASS REPRESENTATIVES, AND PLAINTIFFS' COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL

At preliminary approval, the Court preliminarily appointed First Choice Federal Credit Union and Financial Horizons Credit Union as Settlement Class Representatives and appointed Plaintiffs' counsel as Class Counsel under Rule 23(g). ECF No. 39 ¶¶3-4. Nothing has occurred since then to undermine those findings. Plaintiffs have been active participants throughout: they brought their claims to Class Counsel for investigation, agreed to serve as representatives, reviewed the complaint, provided information and documentation where available, and reviewed and approved the Settlement. Joint Decl. ¶11. The Court should confirm their appointment 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); *see also* Fed. R. Civ. P. 23(g). Counsel satisfy each Rule 23(g)(1)(A) factor. They investigated the claims, prosecuted this Litigation from its inception, negotiated the Settlement, and committed the resources necessary to do so. Each firm has decades of experience leading complex class actions, including data breach actions on behalf of financial institutions, and has vigorously represented Plaintiffs and Settlement Class Members at every stage. *See* Joint Decl. ¶2 & Exs. 1-2 (firm resumes). The Court should appoint Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP and Gary F. Lynch of Lynch Carpenter, LLP as Class Counsel for the Settlement Class.

## V. NOTICE SATISFIED RULE 23 AND DUE PROCESS

Rule 23 requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," Fed. R. Civ. P. 23(c)(2)(B), directed to class members in a "reasonable manner," Fed. R. Civ. P. 23(e)(1)(B). Notice satisfies due process where it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see In re Nat'l Football*, 775 F.3d at 583.

The Court-approved Notice Program satisfied these standards. Using card-brand data to identify Settlement Class Members and their Alerted On Payment Cards, the Settlement Administrator provided direct notice by email and mail and maintained a dedicated Settlement Website. Simmons Decl. ¶¶4-16, 24. *In re Philips Recalled CPAP, Bi-Level PAP, & Mech. Ventilator Prods. Litig.*, 347 F.R.D. 113, 126 (W.D. Pa. 2024) (finding that notice plan that included email notice "was directed to the putative class members in the best way practicable under the circumstances"); *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 962 F. Supp. 450, 527-28 (D.N.J. 1997), *aff'd*, 148 F.3d 283 (3d Cir. 1998) (individualized notice by mail is the best notice practicable); *Gilbertson v. J. Givoo Consultants I, Inc.*, 2021 WL 689114, at *2 (D.N.J. Feb. 23, 2021) ("[T]he practice of permitting notice by USPS and additional electronic means, including email and text messaging, finds ample support in this district.") (listing cases). The notice, among other things, informed Settlement Class Members of: the nature of the action and a summary of the claims, issues, and defenses; the Settlement's terms, including the binding effect of the judgment; the definition of the Settlement Class and that the Court will exclude any Member who opts out; and their rights to submit claims, object, or opt out and the applicable deadlines and procedures for doing so. *See* Fed. R. Civ. P. 23(c)(2)(B).

Analytics has calculated that 4,323 (98.69%) Settlement Class Members received notice by mail and/or email. This reach is consistent with or better than other effective court-approved settlement notice programs and is designed to meet due process requirements. The FJC's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide considers 70-95% reach among class members to be a "high percentage" and reasonable. Simmons Decl. ¶24.

Such direct notice to identifiable financial institutions is the best notice practicable and fully comports with Rule 23 and due process.

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) grant final approval of the Settlement as fair, reasonable, and adequate under Rule 23(e)(2); (2) finally certify the Settlement Class for settlement purposes under Rules 23(a) and 23(b)(3); (3) confirm the appointment of First Choice Federal Credit Union and Financial Horizons Credit Union as Settlement Class Representatives and Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP and Gary F. Lynch of Lynch Carpenter, LLP as Class Counsel under Rule 23(g); (4) find that the Notice Program satisfied Rule 23 and due process and constituted the best notice practicable under the circumstances; (5) enter the accompanying proposed Final Approval Order and Judgment; and (6) retain jurisdiction over the implementation, administration, and enforcement of the Settlement.

Dated: August 21, 2026

Respectfully Submitted,

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