IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DAVID M. LANDAY,

Representative Plaintiff,

v.

DATAVANT, LLC, successor-in-interest to HealthPort Technologies LLC,

Defendant.

CIVIL DIVISION
CLASS ACTION

GD-09-012923

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF CONSENT MOTION FOR PRELIMINARY APPROVAL, APPOINT-MENT OF CLASS COUNSEL, CERTIFI-CATION OF THE SETTLEMENT CLASS, AND FOR APPROVAL OF THE FORM, MANNER, AND ADMINISTRATION OF NOTICE

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DAVID M. LANDAY,	CIVIL DIVISION
Representative Plaintiff,	CLASS ACTION
v.	No. GD-09-012923
DATAVANT, LLC. formerly known as Health Port Technologies LLC,	Coordinated With: GD-09-012919; GD-09-012922; and GD-09-014785
Defendant.	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL, APPOINTMENT OF CLASS COUNSEL, CERTIFICATION OF THE SETTLEMENT CLASS, AND FOR APPROVAL OF THE FORM, MANNER, AND ADMINISTRATION OF NOTICE

I. INTRODUCTION

Representative Plaintiff David M. Landay ("Landay" or "Plaintiff") moves the Court to certify this matter as a class action for settlement purposes, to preliminarily approve a proposed class action Settlement Agreement, and to permit Notice to be given to the Class pursuant to Pa. R. Civ. P. 1707, 1708, 1709, 1711, 1712 and 1714. The relief sought in this Motion is uncontested by Defendant Datavant, LLC, successor-in-interest to HealthPort Technologies, LLC. ("Datavant/HealthPort", "HealthPort" or "Defendant"). The Settlement Agreement reflects, in the opinion of Class Counsel, an excellent result because it provides up to $5,588,547 in cash payments (the "Settlement Benefits") to Settlement Class Members for a release of claims based upon implied breaches of contracts for alleged violations of the 1998 version of the Pennsylvania Medical Records Act ("MRA") for charging the statutory maximum amounts for search and retrieval and per-page copying fees for copies of medical records, instead of charging the estimated actual and reasonable charges for those fees. The settlement proposes to release Defendant and the Released Parties (including Defendant's parents, subsidiaries, affiliates, officers, directors, insurers, and assigns, collectively). Datavant/HealthPort will pay for the cost of class administration, attorneys' fees, costs, and notice separately from the settlement benefits. Thus, the payments to Settlement Class Members will not be affected or diminished by the payment of class administration, notice and attorneys' fees and costs.

The proposed Class Settlement Agreement and Release ("Settlement Agreement") readily satisfies each of the factors that a court must consider in making the preliminary approval determination.[1]

Preliminary approval should be granted for the following reasons. *First,* the settlement is fair and adequate because the settlement provides for an amount that equates an expected recovery at trial less the risks of continued litigation. The Plaintiffs claim that Defendant engaged in breaches of implied contracts by charging and collecting the statutory maximum amounts for search and retrieval and per-page copying fees allowed by the 1998 MRA, instead of the "estimated actual and reasonable costs" associated with these fees. Accordingly, on summary judgement or at trial Plaintiffs would seek to recover the difference between the statutory maximums and Defendant's estimated actual and reasonable costs. To recover, Plaintiffs would have to establish Defendant's actual and reasonable costs incurred for search and retrieval and costs were less than the statutory maximums with that differential constituting Plaintiffs' breach of contract damages. The proposed Settlement provides that Plaintiffs can recover 35% of these amounts, that is, 35% of the amounts paid for search and retrieval and per-page copying fees. The recovery of 35%

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[1] A copy of the Settlement Agreement is attached to the Consent Motion as Exhibit 1. The proposed Order of Preliminary Approval is attached to the Consent Motion. The proposed Order establishes certain dates and the method for the delivery of the notice to the Settlement Class, the procedure and timing for administration and filing of objections (if any) to the Settlement, and the process for requests for exclusion by members of the Settlement Class. The proposed Class Notices are attached as Exhibits A, B and C to the Settlement Agreement.

represents a fair and reasonable amount for Plaintiffs' damages considering the risks of continued litigation.

Thus, the Settlement Agreement provides for claims-made payments to defined "Settlement Class Members". For those Settlement Class Members who submit a basic claim form, each claimant will have the opportunity to recover a payment that equates 35% of the amount invoiced and paid for search and retrieval fees and per page copying fees associated with request for the reproduction of medical records serviced by Defendant's predecessors. This damage amount approximates what might be recovered at trial or on summary judgment reduced by a fair approximation of the risk that no recovery might occur given various bases, including the risks associated with Defendant's opposition to class certification and defenses based upon voluntary payment and prior approval. Moreover, the claims-made process makes participation as easy as possible by providing extensive information to Settlement Class Members about their medical record transaction history and allowing for simple claims submission procedures.

Importantly, these settlement benefits, made available to the Settlement Class Members, will not be diminished by, and are exclusive of, the costs of class action notice, settlement administration and attorneys' fees. The full amount of $5,588,547 will be available to be claimed by Settlement Class Members. Thus, the costs of notice, administration and attorneys' fees and costs represent additional settlement benefits to the amounts described above that will be paid to Settlement Class Members.

Second, this action readily meets the certification requirements given that the Pennsylvania Supreme Court has upheld certification in a very similar action. *See Liss & Marion v. Recordex,* 603 Pa. 198, 983 A.2d 952 (2012).

Third, this Court must consider whether the negotiations in reaching the proposed settlement occurred at arm's length. The record demonstrates that this Settlement arose after discovery occurred and was ultimately the product of extensive arm's-length negotiation. This included multiple days of mediation before a former federal magistrate judge and experienced class action mediator along with numerous subsequent communications between the Parties and the mediator.

Fourth, this action involved extensive litigation, appellate proceedings and contentious discovery over many years such that the merits of the action and the risks of litigation were fully understood. Here, the Parties exchanged substantial information to determine: (1) the scope of the proposed class, (2) the amounts charged by Defendant for medical records during the class period, and (3) the nature and scope of Plaintiff's and the Class Members' claims and Datavant/HealthPort's potential defenses.

Fifth, the proponents (*i.e.* Plaintiff's Counsel) of the Settlement are experienced in similar litigation. Here, the record fully establishes that Plaintiff's Counsel have an extensive background in complex class action litigation.[2]

Submitted herewith is a proposed Order for Certification and Preliminary Approval which establishes certain dates for the mailing of Notice to the Class and the procedure and timing for filing objections, if any, or requests for exclusions by members of the Class. The proposed settlement is worthy of preliminary approval. (*See* Sett. Agreement, Ex. "1" attached to the Motion For Preliminary Approval).

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[2] The class action background of Plaintiff's Counsel is set forth in the Declarations of each Plaintiff's Counsel James Pietz and John Worgul accompanying the Motion For Preliminary Approval.

It is therefore respectfully requested that the Court grant preliminary approval.

II. STANDARDS FOR PRELIMINARY APPROVAL

A. General Standards

The Pennsylvania Supreme Court has noted that settlements are favored in class action lawsuits. *Dauphin Deposit Bank & Tr. Co. v. Hess*, 556 Pa. 190, 194, 727 A.2d 1076, 1078 (1999); *accord Buchanan v. Century Federal Savings and Loan Assoc.*, 259 Pa.Super. 37, 393 A.2d 704 (Pa. Super. Ct. 1978); and *see Milkman v. Am. Travelers Life Ins. Co.*, 61 Pa.D.&C.4th 502, 513 (C.P. Philadelphia 2002) quoting *Doe v. Delie,* 257 E3d 309, 322 (3d Cir. 2001) ("The law favors settlement, particularly in class actions and other complex cases, to conserve judicial resources and reduce parties' costs.")

Pennsylvania Rule of Civil Procedure 1714(a) provides that "no class action shall be compromised, settled, or discontinued without the approval of the court after hearing." Neither the Pennsylvania Supreme Court nor the Pennsylvania Rules of Civil Procedure have definitively set forth the legal standard that applies to a court's "preliminary approval" determination. However, Pennsylvania courts follow federal Rule 23 standards. The Explanatory Comment to Rule 1714 recognizes this and states that the rule is intended to incorporate the provisions of Federal Rule 23(e). The Commonwealth Court in *Brophy v. Phila. Gas Works*, 921 A.2d 80, 88 (Pa. Cmwlth. 2007) referred to and applied the federal standard for preliminary approval while determining that a trial court's preliminary approval order is not a final and appealable order. Accordingly, the federal Rule 23 standards are instructive as to the applicable standards under the Pennsylvania rules for approval of class action settlements.

Procedurally, approval of a class action settlement involves a two-step process. First, the court must review the settlement preliminarily for *prima facie* fairness, then grant preliminary approval. Second, the court must consider final approval after notice of the settlement has been provided to the class and a hearing held to consider the fairness of the proposed settlement. *Brophy*, 921 A.2d at 88. This motion addresses the first step of the process.

B. Specific Standards Applicable To Preliminary Approval

When *Brophy* was decided, the federal legal standard for preliminarily approval of a class settlement was two-fold. *First,* the Court had to determine whether a settlement class may be conditionally certified for settlement purposes. *See Amchem Products, Inc. v. Windsor,* 521 U.S. 591, 620 (1977) (trial court may disregard management issues in certifying a settlement class, but the proposed class must still satisfy the other requirements of Rule 23). While a settlement class must satisfy each of the requirements of Rule 23(a) and 23(b)(3), the fact of settlement is relevant to a determination of whether the proposed Class meets the requirement imposed by the Rule. *In re: Prudential Ins. Co. of America Sales Litigation,* 148 F.3d 283, 308-09 (3d Cir. 1998). As the *Prudential* court explained, "In *Amchem*, the Supreme Court held 'a district court [determining whether to certify a class for settlement purposes only] need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.'" *Id. at* 308. Thus, some courts make only a preliminary determination that the proposed claims satisfy the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b). *See In re NFL Players Concussion Injury Litig.*, 775 F.3d 570, 582 (3d Cir. 2014) *citing and quoting* MANUAL FOR COMPLEX LITIGATION § 21.632 (4th Ed. 2004). Accordingly, one of the steps in the preliminary approval analysis is whether the proposed Settlement Class meets the legal requirements for determining class certification as set forth in Pa.R.Civ.P. 1702, 1708 and 1709.

Second, the Court examines the proposed settlement to determine whether it appears fair and reasonable. This standard is explained in *In re: Nat'l Football League Players' Concussion Injury Litig.*, MDL 2323, 961 F.Supp.2d 708, 714 (E.D. Pa. 2014) as follows:

> At the preliminary approval stage, the bar to meet the "fair, reasonable and adequate" standard is lowered, and the court is required to determine 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."

See also Brophy, 921 A.2d at 88. To determine whether a settlement "falls within the range of possible approval," a court must "consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re NFL Players' Concussion Injury Litig.*, 961 F. Supp. 2d at 714. A seven-part test is used in evaluating whether the settlement falls within a "range of reasonableness." *Dauphin Deposit Bank, supra*, 556 Pa. at 194, 727 A.2d at 1078. This test, which also applies at the final approval stage, will weigh the settlement against:

1) the risks of establishing liability and damage;
2) the range of reasonableness of the settlement in light of the best possible recovery;
3) the range of reasonableness of the settlement in light of all the attendant circumstances;
4) the complexity, expense, and likely duration of the litigation;
5) the state of proceedings and the amount of discovery completed;
6) the recommendation of competent counsel; and
7) the reaction of the class to the settlement.

Id. Prong 7 can only be assessed after notice, of course.

C. Additional Considerations

Additionally, as the Third Circuit explained, an initial presumption of fairness is established when the court finds that: (1) the parties' negotiations occurred at arm's length; (2) there was sufficient discovery; and (3) the proponents of the settlement are experienced in similar litigations. *In re: General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation,* 55 F.3d 768, 785-86 (3d Cir. 1995). This examination is generally "made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties." *In re: Nat'l Football League*, 961 F.Supp.2d at 714.[3]

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[3] Since *Brophy*, the federal preliminary approval standard has been clarified with the promulgation of amended Rule 23(e). In 2018, Fed.R.Civ.P. 23(e) was amended to include new provisions relating to preliminary approval. See Fed.R.Civ.P. 23(e)(1) entitled "Notice to the Class". The new Rule 23(e) provides in relevant part:

> The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> **(1)** ***Notice to the Class.***
>
> **(A)** *Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.
>
> **(B)** *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:
>
> **(i)** approve the proposal under Rule 23(e)(2); and
> **(ii)** certify the class for purposes of judgment on the proposal.

Fed. R. Civ. P. 23

The Advisory Committee Notes to the 2018 revisions to Fed.R.Civ.P. 23(e)(1) further explain what is required by for preliminary approval. Fed.R.Civ.P. 23(e) (Advisory Committee Notes, 2018 Amendments). As these notes state, "The court should not direct notice to the class until the parties' submissions show it is likely that the court will be able to approve the proposal after notice to the class and a final approval hearing." Fed. R. Civ. P. 23.

It has further been observed that the approval of a proposed settlement of a class action is a matter within the broad discretion of the trial court. Of course, settlements of class actions are favored in the law. *See In re: General Motors Truck Litigation,* 55 F.3d at 784. As stated in *Collier v. Montgomery Cty. Hous. Auth.*, 192 F.R.D. 176, 184 (E.D. Pa. 2000), "The settlement must be both substantively reasonable compared to the likely rewards of litigation and the result of good faith, arm's length negotiations." In evaluating this requirement, courts proceed as follows:

> If the proposed settlement appears to be the product of serious informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to Class Representatives or segments of the Class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Id. A finding that these factors are present establishes an initial presumption of fairness. *Id.*

Moreover, at the preliminary approval stage, courts examine the fairness of the notice and claims processing provision by applying the FED. JUDICIAL CTR., JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010).[4] The court in *Perkins v. N.Y. Times Co.*, No. 22-cv-5202 (PKC), 2024 U.S. Dist. LEXIS 178651, at *2 (S.D.N.Y. Oct. 1, 2024) explained the nature of a reasonable notice and claims handling process:

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[4] *See,* https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0. *See also*, *Underwood v. Carpenters Pension Tr. Fund*, No. 13-cv-14464, 2014 U.S. Dist. LEXIS 128543, at *29 (E.D. Mich. Sep. 15, 2014) ("The Plan shall set forth proposed language for the notice and shall address the relevant checkpoints in the Federal Judicial Center's Class Action Notice and Claims Process Checklist"); *Perkins v. N.Y. Times Co.*, No. 22-cv-5202 (PKC), 2024 U.S. Dist. LEXIS 178651, at *2 (S.D.N.Y. Oct. 1, 2024); *Taqueria El Primo, LLC v. Ill. Farmers Ins. Co.*, No. 19-3071 (JRT/BRT), 2022 U.S. Dist. LEXIS 172226, at *9 (D. Minn. Sep. 23, 2022); *Fearn v. Blazin' Beier Ranch, Inc.*, No. 11-743 DSD/TNL, 2012 U.S. Dist. LEXIS 19934, at *7 (D. Minn. Jan. 30, 2012) *Maryland v. Johnson & Johnson*, No. 2:23-cv-629, 2025 LX 570140, at *61-62 (E.D. Va. Dec. 5, 2025).

> A district court has the "'duty to act as a fiduciary who must serve as a guardian of the rights of absent class members . . . .'" *In re Bank of Am. Corp. Sec., Derivative, & Emp. Ret. Income Sec. Act (ERISA) Litig.*, 772 F.3d 125, 134 (2d Cir. 2014) (quoting *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 419 (2d Cir. 2010)). . . . "One hallmark of a reasonable settlement agreement is that it makes participation as easy as possible, whether class members wish to make a claim, opt out, or object." *McClintic v. Lithia Motors, Inc.*, 2012 U.S. Dist. LEXIS 3846, 2012 WL 112211, at *6 (W.D. Wash. Jan. 12, 2012). "'There should be no unnecessary hurdles that make it difficult for class members to exercise their rights to opt out, object, submit a claim, or make an appearance.'" *City of Livonia*, 2013 U.S. Dist. LEXIS 113658, 2013 WL 4399015, at *10 (quoting Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, 3 (2010)).

Here, the proposed Settlement and notice plan meets these standards. Plaintiff sets forth below an analysis of the class claims, merits of the claims and defenses, settlement discussions and proceedings, and the substantive terms of the Settlement. This analysis demonstrates that that the proposed Settlement meets the preliminary approval standard in providing for a fair and reasonable resolution and that the class claims satisfy certification requirements.

III. HISTORY OF THE LITIGATION AND INVESTIGATION OF THE CLASS CLAIMS

This class action was initially assigned to the Commerce and Complex Center of the Court of Common Pleas of Allegheny County ("Trial Court") with other related case.[5] By order of the Trial Court, (ret. Wettick, J.), these related cases ("Coordinated Actions") were coordinated for pre-trial management. Exhibit 1 to Appendix In Support of The Motion For Preliminary Approval,

[5] The remaining pending cases are: *David M. Landay vs. UPMC Presbyterian Shadyside*, GD-09-012919; *David M. Landay vs. IOD*, GD-09-012922; and *David M. Landay vs. UPMC Magee-Womens Hospital*, GD-09-014785. The case of *David A. Neely v. MRO Corporation,* GD-09-012911 (formerly *Wayne M. Chiurazzi Law Inc. v. MRO Corporation*) was the subject of a class action settlement in 2018 and is no longer pending. Subsequent related cases of *Chiurazzi Law, Inc. v. Duplications, Inc.* GD-10-004369 and *Wheary v. HealthPort Technologies,* GD-11—11194 were voluntarily discontinued. Since the entry of this order, the case captions have changed because Mr. Landay has been substituted as the class representative in several of the cases.

Order of Coordination. (hereinafter App.Ex. ___").[6] Each of the Coordinated Actions arise from the same wrong, namely, the failure of various medical record reproduction companies ("MRRCs") or health care providers to comply with the 1998 version of the Pennsylvania Medical Records Act, 42 Pa.C.S.A. § 6152 ("MRA"). The 1998 version of the MRA, which was amended in 2012 during these actions, is attached hereto as App.Ex. 2.

A complete history of the course of proceedings in this matter is set forth in the Declaration of James M. Pietz that is filed in support of Plaintiffs' Motion For Preliminary Approval. Pietz Decl. at para. 17-63. A synopsis of this history shows that initially, the Trial Court granted in part and denied in part Defendants' preliminary objections to the Complaints in the Coordinated Actions and then certified for interlocutory appeal its ruling that the MRA[7] limits medical records retrieval and reproduction charges to the actual and reasonable expenses incurred by the records reproducer. App.Ex. 3, June 17, 2010 ruling. The Superior Court allowed the interlocutory appeal, and on August 11, 2011, rejected the Trial Court's interpretation of the MRA. *Wayne M. Chiurazzi Law Inc. v. MRO Corp.*, 2011 PA Super 169, 27 A.3d 1272 (2011). App.Ex. 4.

On February 22, 2012, the Pennsylvania Supreme Court accepted the case for review. *Wayne M. Chiurazzi Law, Inc. v. MRO Corp.*, 614 Pa. 572, 39 A.3d 267 (2012). On July 5, 2012, while the MRO case was pending at the Supreme Court, the MRA was amended. The new law eliminated the right of medical records requesters to obtain copies of medical records based on the estimated actual and reasonable cost of reproducing the records. Under this new 2012 version of the MRA – the version that continues in force to this day – MRRCs may charge the MRA's

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6 Exhibits referenced herein are contained in Appendix in Support of the Declaration Of James Pietz and the Motion To For Preliminary Approval.

7 All references in this Brief to the "MRA" are references to the 1998 version of this statute.

statutory maximum amounts without regard to their estimated actual and reasonable expenses incurred in reproducing the records. MRO sought to have the appeal dismissed by the Supreme Court because of the amendment, but the Court overruled that motion.

Thereafter, on June 14, 2014, the Pennsylvania Supreme Court reversed the Superior Court's decision in the *Wayne M. Chiurazzi Law Inc. v. MRO Corp.* case. *See Wayne M. Chiurazzi Law Inc. v. MRO Corp*., 626 Pa. 303, 97 A.3d 275 (2014). App.Ex. 5. After remand, the Parties continued extensive pre-trial proceedings including the filing of respective motions for judgement on the pleadings with respect to Defendant's affirmative defenses and extensive, contentious discovery proceedings.[8] Ultimately, the Parties agreed to mediation conducted by (ret.) Magistrate Judge Lisa Lupo Lenihan. The proposed settlement before the Court is a product of these mediation proceedings.

IV. THE MATERIAL PROVISIONS OF THE SETTLEMENT AGREEMENT

A. Payment To Each Eligible Claimant

The proposed Settlement Agreement ("SA") is attached to Plaintiff's Motion as Exhibit 1. Pursuant to the SA, Datavant/HealthPort has agreed to pay up to $5,588,547 to settle the Plaintiff's class claim. Section 3.2.1 of the SA. Section 3.1.1 provides for the manner in which this fund will be disbursed:

> Each Claimant shall be entitled to receive a Settlement Benefit for each Record Request made in an amount equal to 35% of the amounts paid to HealthPort/Datavant between July 15, 2005 and September 3, 2012 for invoiced amounts for basic fees, search and retrieval fees, and/or per page copying fees, as defined by the MRA, regardless of the characterization of such fees on any invoice or data evincing the charges identified on an invoice, subject to the provisions of Section 3.2.1 of the Settlement Agreement. To receive a Settlement Benefit, each Settlement Class Member must submit a Valid Claim and must not have submitted a request for exclusion pursuant to Section 5.1 of the Settlement Agreement. The

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[8] *See also,* Declaration of James M. Pietz, Esq. filed in support of the Motion For Preliminary Approval fully describing the history of the litigation.

> Electronic Proof of Claim (Exhibit D) can be accessed by all Proposed Settlement Class Members in their account on the Settlement Website. The Mail Proof of Claim is attached to the Patient Mail Notice (Exhibit B), which will be sent to Proposed Settlement Class Members who submitted a Record Request that the Settlement Administrator has determined, per criteria provided by Datavant, was submitted by or on behalf of patient for non-commercial or business purposes. The Proof of Claim forms shall identify each of the Proposed Settlement Class Member's Record Requests along with the amount of the Settlement Benefit being made available by the Settlement for all Record Requests attributable to a Settlement Class Member and for each particular Record Request. A Settlement Class Member or Successor Settlement Class Member may submit a single Proof of Claim for all identified Record Requests attributable to a Settlement Class Member. All Valid Claims will be paid by HealthPort/Datavant from the Settlement Account.

Section 1.1 of the SA defines the Settlement Class as follows:

> All patients, patient representatives, patient designees, including insurance companies and attorneys (including but not limited to, prosecuting, defense, or plaintiffs' attorneys) designated by a patient or patients' agents and representatives to obtain a patient's medical records, who made a request or others who served a subpoena without being designated by a patient ("Record Requests") to a Pennsylvania healthcare provider or facility to obtain copies of medical records and who were charged and paid to HealthPort Technologies LLC and or its subsidiaries the maximum basic, search and retrieval, and/or reproduction fees as set forth in 42 Pa.C.S. § 6152(a)(2)(i) of the Pennsylvania Medical Records Act as was effective between July 15, 2005 and September 3, 2012 with payment of the charges made between July 15, 2025 through September 3, 2012 and that was sent Mail Notice. This definition does not include medical record copying requests that did not require a patient authorization or where the maximum basic, search and retrieval, and reproduction fees as set forth in 42 Pa.C.S. § 6152(a)(2)(i) Pennsylvania Medical Records Act as was effective between July 15, 2005 and September 3, 2012 were **not** charged and paid, including the following examples (a) requests for radiological reports; (b) insurance companies performing auditing functions pursuant to a written contract; (c) healthcare providers or facilities; and (d) governmental entities. Excluded from the class are also (a) any present or former counsel for Defendant in this Litigation; (b) the Court, the Courts immediate family, and the Court staff; and (c) Class Counsel.

It is believed by the Parties that the Settlement Class consists of approximately 45,000 individual members who have collectively made 306,866 medical record requests. SA at § 5.1.2. A copy of the Notices to be sent to the Settlement Class are attached to the SA as Exhibit B

("Patient Notice") and C ("Non-Patient Notice). A copy of the Long Form Notice to be posted on the Settlement Website is attached as Exhibit A.

B. Class Notice

The Parties have estimated that Notice and Administration Expenses will be approximately One Hundred and Thirty-Three Thousand dollars ($133,000.00). *See* Settlement Agreement § 8.4. The Parties have agreed that the Defendant shall pay this amount of Notice and Administration Expenses without objection. The cost of notice and settlement administration are properly considered part of the value of a settlement. *See, e.g., Staton v. Boeing,* 327 F.3d 938, 974-975 (9th Cir. 2003). The class notice plan is further described below.

C. Attorneys' Fees And Costs

The SA provides that attorney's fees and costs will be paid by Defendant as stated above. *See* SA § 8.1. Section 8.1.1 of the SA provides that:

> 8.1.1. With the assistance of Mediator Honorable Judge (ret.) Lisa Pupo Lenihan, the Parties engaged in mediation on the amount of attorneys' fees and costs. Based upon this mediation, HealthPort/Datavant has agreed, subject to Court approval, to pay $1,620,678 to Settlement Class Counsel for reasonable attorneys' fees and litigation costs and expenses of no more than $32,500. This payment will be independent from, and not part of, the Settlement Claims Amount used to pay Settlement Benefits.

The Settlement is not contingent on Court approval of these payments. *See* SA § 8.1.3. The efforts of Plaintiffs' Counsel in prosecuting this class action over many years in the trial court and on appeal to the Pennsylvania Supreme Court are detailed in the Declaration of James Pietz and John Worgul that is filed herewith.

D. Class Notice Plan

The Class Notice Plan is based upon three distinct types of class notice. Initially, all Settlement Class Members will have access to a Long Form Notice that will be maintained on the Settlement

Website. Additionally, there are distinct groups of Settlement Class Members, Patients and Non-Patients, who each are to be sent a mail notice. Patients are those persons who directly requested and paid for copies of their own medical records. Non-Patients are those persons or entities who made requests for and paid for copes of medical records on behalf of a patient. This Non-Patient group would typically be attorneys, insurance companies or other persons or entities who made such third party requests. The Notices to be sent to each individual Patient Settlement Class members, is attached to the Settlement Agreement as Exhibit B. The Notice to be sent to Non-Patients is attached as Exhibit C. These Notices, taken together, are sufficient to inform Settlement Class Members regarding: (a) the formation of the Settlement Class; (b) the Class definition; (c) the terms of the proposed Settlement; (d) the proposed request for an award of attorneys' fees and expenses to counsel; (e) the proposed individual service award to the Representative Plaintiff; (f) Settlement Class Members' right to opt out of the Settlement Class and thereby not participate in the proposed Settlement; (g) Settlement Class Members' right to object to the proposed Settlement; (h) the time and date of the Final Approval Hearing; and, (i) Settlement Class Members' right to appear at the Final Approval Hearing in favor of or in opposition to the proposed Settlement. The Notices are clear in content and provides Settlement Class Members with sufficient information to make an intelligent decision as to whether to remain in the Settlement Class, opt out of the Settlement Class, or object to any aspect of the proposed Settlement.

E. Class Representative Service Award

The Class Representative will apply for an incentive award of $25,000 as the Class Representative, to compensate him appropriately for his efforts in prosecuting this case over many years including retaining counsel, assisting in discovery, and keeping abreast of the Litigation. The award is subject to court approval. Defendant agrees that the named Plaintiff is entitled to the incentive award pursuant to § 8.2 of the Settlement Agreement.

F. Defendant's Denial of Liability; Certification for Settlement

Defendant has asserted and continues to assert many defenses in this Litigation and has expressly denied and continues to deny any fault, wrongdoing or liability whatsoever arising out of the conduct alleged in the Litigation. Defendant expressly denies any fault, wrongdoing or liability whatsoever, and also denies the validity of each of the claims and prayers for relief asserted in the Litigation. *See* SA, at § 2.1.

V. THE PROPOSED SETTLEMENT SATISFIES THE STANDARDS FOR PRELIMINARY APPROVAL

A. Preliminary Approval of the Settlement Should Be Granted

Plaintiffs submit that this settlement is fundamentally fair, reasonable and more than adequate to the Class. As such, it falls well within the "range of reasonableness," *Dauphin Deposit,* 556 Pa. at 195, 727 A.2d at 1078, and fully satisfies the requisite standards for preliminary approval. This conclusion is supported through analysis of the seven-part test enumerated in *Dauphin Deposit*. *See id*.

1. The Risks of Establishing Liability and Damages

"The risks surrounding a trial on the merits are always considerable." *Milkman,* 61 Pa. D. & C. 4th at 533.[9] A reviewing court "must recognize the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id.* (internal citations omitted). Indeed, it is well-established that in evaluating the likelihood of success, a court should not attempt to resolve unsettled legal issues or legal principles. *Buchanan*, 259 Pa. Super. at 49, 393 A.2d at 710.

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[9] The court's cogent opinion on class certification in *Milkman* is frequently cited and was relied upon by the appellate court in *Brophy*, 921 A.2d at 88.

Although confident in his claims, Plaintiff faces a number of risks if his case proceeds through to trial. At the outset, Defendant maintains defenses based upon the "voluntary payment doctrine" and MRA's so-called "prior approval provision". These defenses essentially contend that Plaintiff and putative class members consented to pay the statutory maximum charges under the MRA by making the payments on the invoiced amounts. Plaintiffs brought a motion for judgement on the pleadings seeking to have these defenses dismissed as a matter of law. However, the Court (Ignelzi, J.) denied Plaintiffs' motion and at the same time denied Defendant's motion for judgement on the pleadings seeking a judgement based upon voluntary payment and voluntary approval. Pietz Decl. at 49-54. Plaintiffs believe that these defenses lack merit, but nonetheless recognize risks that the court or jury could rule in favor of Defendant. Moreover, the Plaintiff faces the risk that class certification could be denied.

As noted, the Court here is not required to attempt to resolve any unsettled legal issues, but to "attempt to make a reasonable estimate of the probability of success." *Buchanan*, 259 Pa. Super. at 49, 393 A.2d at 710. The settlement benefit of over $ 5,500,000 is substantial relief that will be available now (upon final approval), and not potentially years in the future. The magnitude of relief is large and provides immediate benefits to the Class in an amount that the court or a jury might award.

2. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery

In comparing a proposed settlement's value with the best possible recovery, the Court should not make a proponent of a proposed settlement justify each term of the settlement against a hypothetical or speculative measure of what concessions might have been gained. *Milkman*, 61 Pa. D. & C. 4th at 540. "Settlement represents a compromise in which the highest hopes of recovery are yielded in exchange for certainty and resolution and courts should guard against demanding too large a settlement based on the courts view of the merits of the litigation." *In re Safety Components Int'l, Inc. Sec. Litig.*, 166 F.Supp. 2d 72, 92 (D.N.J. 2002) (internal citation omitted) and *Milkman*, 61 Pa. D. & C. 4th at 540, citing and quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("inherent in compromise is a yielding of absolutes").

The proposed settlement would provide Settlement Class Members with the opportunity for cash payments for their claimed contractual damages within the range that might be recovered at trial. It can be reasonably anticipated, therefore, that a Class Member submitting a Claim Form will receive an appropriate discount of what might be expected if Plaintiff prevailed at trial and through appeals in light of the risks and costs of a trial.

The payment of these amounts is to be paid separately from other expenses related to the proposed settlement. Thus, the settlement benefits will not be diminished if this settlement is approved. The payment of Class Counsel fees and expenses, administrative costs and the class representative's service award are separate payments under the settlement.[10] In light of all circumstances, the comprehensive relief afforded by the settlement is substantial.[11]

3. The Range of Reasonableness of the Settlement in Light of all the Attendant Circumstances

In analyzing this factor, the test is not the adequacy of the settlement based on what could be the best possible outcome for the Class, but whether the settlement is reasonable in light of the

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[10] Class Counsel will move separately, at the time of final approval, for approval of fees and expenses.

[11] That Plaintiff could treble damages (like punitive damages) at trial is not properly considered in determining whether a class action settlement is fair, adequate and reasonable, as it would require the defendant to accept a form of guilt when guilt is disclaimed in the settlement agreement. The seminal case on this point is *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 458 (2d Cir. 1974).

stage of the proceedings, complexity, expense and duration of further litigation. *Dauphin Deposit,* 556 Pa. at 195, 727 A.2d at 1079. "[T]he element of uncertainty inherent in any compromise exists when a judicial outcome is foregone for the certainty of settlement." *Id.* Courts should generally "refuse to substitute their business judgments for that of the proponents" of the settlement. *Id.* at 1078.

Here, the settlement is reasonable in light of the stage of proceedings. The case could go on for years to come with a risk that class certification could be denied, or no recovery could be had. This factor counsels in favor of preliminary approval.

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

Generally, class action litigation is complex, time-consuming and expensive. This case is no different. Significant motions practice has occurred in this Court, the federal district court and the appellate courts. Pietz Decl. Para. 17-54. All relevant documents and other discovery were exchanged. Pietz Decl. Para. 55-59. Mediation took place over the course of multiple full days in person and then over the course of months in follow-up. Pietz Decl. 60-63. Liability is disputed and would have to be resolved by summary judgment or trial, with Plaintiff required to establish that Defendant breach an implied in fact contract by failing to charge and collected the actual and reasonable costs for reproduction on the records. Contested class certification and trial would be followed by appeals. This case has the potential to continue to be contested for years, but for the proposed settlement. This weighs heavily in favor of class settlement. *See In re Bridgeport Fire Litig.,* 8 A.3d 1270, 1285-86 (Pa. Super. Ct. 2010) (complexity of class case and prospect for appeals weighs in favor of approving class settlement).

5. The Stage of Proceedings and the Amount of Discovery Completed

This prong addresses whether the case has progressed to a point where the parties have sufficient knowledge to reasonably determine that settlement is in the parties' best interests. "Through this lens, the court can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *Milkman,* 61 Pa. D. & C. 4th at 544.

There has been extensive appeals and merits motion practice and the exchange of all relevant documents and other information in this case. Pietz Decl. 17-59. Plaintiff propounded, and Defendant responded to, written requests for information and documents. Pietz Decl. 59. The Parties exchanged and discussed class size information and liability related materials as part of the mediation (and subsequent informal negotiations). Pietz Decl. 60-63.

Plaintiff and Class Counsel believe that they have engaged in sufficient litigation and discovery to fully evaluate the merits and potential value of the claims, and the relative risks to obtaining a greater recovery through further litigation or trial, and do not believe that further discovery would have provided Plaintiff with any additional leverage to obtain a larger recovery. Class "counsel had a good basis for deciding which settlement amounts to accept …" *In re Bridgeport Fire*, 8 A.3d at 1286.

Moreover, Plaintiff's Counsel are experienced in this type of class action and, therefore, have a good understanding of the proper settlement value. Pietz Decl. 2-16. This factor supports preliminary approval.

6. The Recommendations of Competent Counsel

In evaluating the fairness of a proposed settlement, the "opinion of experienced counsel is entitled to considerable weight." *Fischer v. Madway*, 336 Pa. Super. 289, 297, 485 A.2d 809, 813 (1984). Here, the settlement process involved arm's-length negotiations by experienced counsel with adequate information to represent the Class effectively. Class Counsel has concluded that it is in the best interests of the Class to settle at this time on the terms set forth in the Settlement Agreement.

7. The Reaction of the Class to the Settlement

A court will inquire into the reaction of the Class in its determination of the reasonableness of the settlement. *Buchanan*, 259 Pa. Super. at 49, 393 A.2d at 709. This is a factor more properly addressed at final approval, after notice and an opportunity for the Class to be heard. The proposed Notice to the Class meets all requirements of the Pennsylvania Rules of Civil Procedure 1712 and 1714 and due process of law.

In short, the issues of law and fact have been thoroughly investigated, and continued litigation would further delay relief to the Class and consume substantial resources of the parties and the Court. The relief afforded under the Settlement Agreement is excellent, when balanced against the risk faced by Plaintiff on both the procedural aspects and the merits of the case, and the time, risks and expenses of further litigation. Nothing in the course of the settlement negotiations or the substance of the settlement itself discloses grounds to doubt its fairness. To the contrary, the arm's-length nature of the negotiations, the participation of experienced lawyers, and the value of the aggregate relief support a finding that the settlement is fair, reasonable and more than adequate to justify Notice to the Class and a hearing on final approval.

B. The Proposed Settlement Class Meets the Requirements for Certification

For a class to be certified, the requirements of Rules 1702, and 1708 must be satisfied. *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 603 Pa. 198, 217, 983 A.2d 652, 663 (2009). The burden of proof at class certification is "not a heavy one." *Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 398, 34 A.3d 1, 16 (2011). This is a paradigmatic class action which involves uniform documents and policies and procedures. The matter should be certified as a Class to permit Notice of the proposed settlement to issue. The Pennsylvania Supreme Court recognizes the claims asserted here are subject to class certification. *Liss & Marion v. Recordex,* 603 Pa. 198, 983 A.2d 952.

1. Numerosity is Present

Pennsylvania Rule of Civil Procedure 1702(1) requires a class to be so numerous that joinder of all members is impracticable. *Baldassari v. Suburban Cable Tv Co.*, 2002 PA Super 275, ¶ 14, 808 A.2d 184, 190. (citations omitted). Pennsylvania courts have found this requirement satisfied where there were as few as 123 people in a class. *Temple Univ. of Commonwealth Sys. of Higher Educ. v. Pa. Dep't of Pub. Welfare*, 30 Pa. Commw. 595, 603, 374 A.2d 991, 996 (1977); *See also Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001) (under comparable Fed. R. Civ. P. 23(a), numerosity generally satisfied with 40 or more putative class members).

The parties have been able to determine that the Class consists of approximately 45,000 individual members who have collectively made 306,866 medical record requests. SA at ¶ 5.1.2. The Class is sufficiently numerous to satisfy Rule 1702(1). *Temple University*, 374 A.2d at 996.

2. Commonality is Present

Rule 1702(2) requires that plaintiffs show that "there are questions of law or fact common to the class." Commonality does not require that every question of law or fact be common to every member of the class; rather, the requirement is generally met if the class members' legal grievances arise out of the "same practice or course of conduct" on the part of the class opponent. *Braun v. Wal-Mart Stores, Inc.*, 2011 PA Super 121, 24 A.3d 875, 894 *aff'd* 630 Pa. 292, 106 A.3d 656 (2014). Claims arising from standardized procedures and documents, like those of the Plaintiff here, will give rise to common questions. *Janicik v. Prudential Ins. Co.*, 305 Pa. Super. 120, 133, 451 A.2d 451, 457 (1982). "[C]lass members may assert a single common complaint even if they have not all suffered actual injury; demonstrating that all class members are subject to the same harm will suffice." *Liss & Marion, P.C.,* 983 A.2d at 666 (quoting *Baldassari*, 808 A.2d at 191 n. 6).

Here, the question of the legality of Defendant's medical record charging practices is substantially the same for every member of the Class. There are questions of law or fact common to the Class:

1) Did Defendant automatically charge the statutory maximum rates under the 1998 MRA?

2) Did Defendant fail to charge its estimated actual and reasonable expenses of reproduction?

3) What were Defendant's estimated actual and reasonable costs of reproduction?

4) What policies, practices and procedures did Defendant follow in handling and responding to medical record copying requests?

These above questions and their answers provide the "common source of liability" our Supreme Court requires. This case readily meets the threshold for commonality.

3. Typicality is Present

The typicality requirement is similar to the requirements of commonality and adequacy. *Braun*, 24 A.3d at 894. "The purpose of the typicality inquiry is to determine whether the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members." *Id.* at 894-95. The requirement is satisfied when the claims of the named plaintiff emanates from the same legal theory or common allegation as the claims of the class members. *See Baldassari*, 808 A.2d at 193.

Here, the claims of the named Plaintiff and the Class all arise from standardized procedures and conduct in the requesting and payment for copies of medical records. As with the related requirement of commonality, claims arising from standardized procedures and form documents generally give rise to typicality. *See id.; Janicik*, 451 A.2d at 457.

As such, each Class Member is in substantially the same situation. The FAC alleges no claims that are particular to Mr. Landay such that he would be atypical or antagonistic to any other Class Member (although Defendant would challenge typicality if Plaintiff sought certification outside of the context of a settlement). For these reasons, typicality is satisfied.

4. Adequacy is Present

Rule 1702(4) requires that "the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709." This requirement has three elements: (1) whether counsel for the named plaintiff will adequately represent the interests of the class; (2) whether the representative parties have no conflict of interest in the maintenance of the class action; and (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed. Pa. R. Civ. P. 1709; *D'Amelio v. Blue Cross of Lehigh Valley*, 347 Pa. Super. 441, 461, 500 A.2d 1137, 1147 (1985) The answer to all of these questions is "yes."

As a threshold matter, competency of Class Counsel is presumed. *See Janicik,* 451 A.2d at 458 ("Until the contrary is demonstrated, courts will assume that members of the bar are skilled in their profession."). However, this Court need not rely exclusively on the presumption. Plaintiff and the putative Class are represented by counsel experienced in consumer class action litigation generally. *See* Declarations of Plaintiff's Counsel filed in support of the Motion For Preliminary Approval.

Plaintiff will fairly and adequately represent the Class. He sits in virtually the same position as the putative Class Members who, like him, allegedly were overcharged for copies of medical records. Landay has been in regular contact with counsel, engaging with counsel to discuss the case, and has otherwise actively participated in this case. There is nothing to suggest that he has any interest antagonistic to the Class. Plaintiff submits that the adequacy prong is readily met.

5. Fair and Efficient Method of Adjudication

Rule 1702(5) requires that "a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708." The "predominance" element, as stated by Pennsylvania's Supreme Court, ensures "[t]he class action method of adjudication is fair and efficient if the 'common questions of law or fact predominate over any question affecting only individual members.'" *Liss & Marion*, 983 A.2d at 663 (quoting Pa. R. Civ. P. 1708(a)(1)).

As discussed above and below, these criteria are readily met here. Perhaps for these reasons, class cases challenging overcharges on medical records are readily subject to class certification.

Here, common questions predominate throughout the Class. *See* Rule 1708(a)(1). The predominance standard is "closely related" to the commonality requirement of Rule 1702(2) discussed above, which is clearly satisfied in this matter as set forth in Section B.2., *supra*. There are no individualized issues.

There is no basis to conclude that any difficulties would be encountered with the management of this matter on a class action basis. Rule 1708(a)(2). Indeed, the proposed settlement would obviate any conceivable management problems with the size of the Class or a complex trial. This forum is particularly appropriate for addressing the claims of the Plaintiff and the putative Class. *See* Rules 1708(a)(3)–(7). The prosecution of thousands of individual actions for the relief sought here could naturally result in inconsistent determinations, subjecting Class Members to unequal treatment. Here, treatment of this case as a class action ensures that one decision on the applicable law and damages applies to all.

Members of this Class may be unable to locate or hire lawyers experienced in this specialized area of consumer law. It is highly questionable that an attorney would take up representation for the claims. Overall, members of the putative Class will benefit considerably by proceeding on a Class basis.

C. Class Notice

With the Settlement Agreement and this motion, Plaintiff submits a proposed form of Notice to the Class. *See* Pa. R. Civ. P. 1712, 1714. A true and correct copy of the proposed Class Notices are appended to the proposed Settlement Agreement. (Of course, the blanks for dates will be filled in before mailing). In plain-English, the Notice informs Class Members regarding (a) formation of the Class; (b) the Class definition; (c) claims, defenses and issues in the case; (d) terms of the proposed settlement; (e) the request for an award of attorney's fees and expenses to Class Counsel; (f) the agreed individual settlement payment to representative Plaintiff Landay; (g) the Class Member's right to opt-out, and thereby not participate in the proposed settlement; (h) Class Member's right to appear and object to the proposed settlement; (i) the time, date and location of the final approval hearing; and (j) Class Member's right to appear at the final approval hearing in favor of or in opposition to the proposed settlement.

The proposed Notice comports with the requirements of Rules 1712 and 1714 and is written in plain-English so it is easily understood. The Notice is clear and reader friendly and provides

Class Members with sufficient information to make an intelligent decision as to whether to remain in the Class, opt-out, or object to any aspect of the proposed settlement.

Administration of Notice, opt-outs, objections and settlement checks will be handled by American Legal Claims Services, LLC., an experienced claims administrator. https://www.americanlegal.com/. (SA 1.31). *See also,* Declaration of Jeffrey Pirrung.

Finally, the notice and claims process plan comports with the FED. JUDICIAL CTR., JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010). For example, *inter alia,* 1) a high percent of the settlement class can be reached because Defendant's records are being used to identify class members and to send them notice; 2) a qualified professional is being proposed to administer the notice and class handling process; 3) the plan utilizes individual notice and a website to provide relevant information to class members; 4) the notice and claims handling plan allows sufficient time for class members to act on their rights; 5) the claims forms are easy to submit both by mail and online; 6) the settlement website will provide a function whereby class members can login and review their transaction data as part of the claims process; and 7) the claim forms themselves provide are easy to complete and submit.

V. CONCLUSION

The proposed settlement provides considerable cash relief to the Settlement Class Members. The instant settlement falls well within the range of a fair, reasonable and adequate award. Further, the proposed settlement Class meets the requirements of Rule 1702, 1708 and 1709.

Preliminary approval should be granted, and the Class Notice approved and directed in the form proffered. The relief sought here is unopposed by Defendant Datavant. A form of Order of Preliminary Approval is filed herewith.

Respectfully submitted

Date: June 8, 2026

/s/ *James M. Pietz*

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Dated: June 8, 2026 s/______________________________

James M. Pietz

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon counsel of record by Electronic Mail this 8th Day of June 2026 addressed as follows:

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