SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RORY LAWLESS, on behalf of himself and all others similarly situated, Plaintiff, v. **DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY, D/B/A DC HEALTH LINK** Defendant.	Civil Action No. 2023 CAB 001569 Next Court Date: February 21, 2025 Event: Final Approval Hearing Judge: Honorable Tanya Jones Bosier

PLAINTIFF'S CONSENT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Rory Lawless, with the consent of Defendant District of Columbia Health Benefit Exchange Authority D/B/A DC Health Link ("Defendant" or "DCHBX") (collectively, the "Parties"), hereby moves the Court for final certification of the proposed Class for settlement purposes and final approval of the Parties' proposed class action settlement, *see* Settlement Agreement.

A proposed Order Granting Final Approval to Class Action Settlement and a Final Judgment are submitted herewith as Exhibit 5. This Motion is supported by the accompanying memorandum of law and the declarations of Gary E. Mason, Brian K. Flowers, and Cameron R. Azari, submitted contemporaneously herewith.

Date: February 7, 2025

Respectfully Submitted,

/s/ Gary E. Mason

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CERTIFICATION PURSUANT TO
SUPER. CT. R. CIV. P. 12-I

The Parties jointly file this Motion and have consented to the relief herein sought.

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Consent Motion for Final Approval of Class Action Settlement was served on all counsel of record by operation of the Court's CM/ECF system, File & Serve Xpress, this 7th day of February on all counsel of record, namely:

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MEMORANDUM IN SUPPORT OF CONSENT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Rory Lawless, on behalf of himself and all others similarly situated, submits this Memorandum in support of his Consent Motion for Final Approval of Class Action Settlement. Here, Plaintiff and Class Counsel reached a Settlement that conveys significant benefits to the Class Members, while avoiding the inherent risks and costs of further litigation. For the forthcoming reasons, Plaintiff's Motion should be granted.

I. INTRODUCTION

This case arises from a data security incident experienced by Defendant District of Columbia Health Benefit Exchange Authority, D/B/A DC Health Link ("Defendant" or "DCHBX") in March 2023, where a bad actor initiated a cyber-attack of DCHBX's computer systems containing certain personal identifying information ("PII") of Class Members (the "Data Incident"). *See* Settlement Agreement ("SA") Recitals. Consequently, DCHBC notified 252,021[1]

[1] While the class size was originally estimated to include 254,388 individuals, after efforts at deduplication made by the Settlement Administrator, the class list was reduced to 252,021 individuals. *See* Decl. of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Plan ("Azari Decl."), filed herewith.

individuals that their PII was potentially compromised. *See* Pl's. Mot. for Prelim. Approval, p. 1. Of the 252,021 mentioned above, the information of 56,224 people was found exfiltrated and publicly posted. *Id.* Although the remaining 195,797 individuals' PII may have been compromised in the Data Incident, the information was not found publicly posted. *Id.*

After more than a year and a half of litigation, which involved hard-fought negotiations and mediation, the Parties reached a resolution that—upon final approval by the Court—will resolve the litigation and provide substantial relief to the Settlement Class. The Parties negotiated the Settlement Agreement, providing for a $1,450,000 settlement fund (the "Settlement Fund") that will cover payments to the Settlement Class, the cost of Notice and Administrative Expenses, and any Attorneys' Fees, Expenses, and Service Awards granted by the Court. SA ¶ 68.

Most importantly, Class Members can benefit directly from the Settlement Agreement in several ways: compensation for direct out-of-pocket losses or, in the alternative, to compensation for out of pocket losses—a straightforward cash payment. *Id.* ¶ 75. Additionally, Class Members who had not already claimed the credit monitoring services offered by DCHBX can claim one-year of three-bureau coverage which includes $1 million of fraud and identity theft insurance. Importantly, the Settlement Fund is non-reversionary—no funds will revert back to DCHBX.[2] The results achieved by the Settlement are outstanding given the litigation risks faced by Plaintiff and compare favorably with results achieved in other data breach cases. Accordingly, Plaintiff respectfully moves this Court to enter an Order granting final approval of the Settlement Agreement.

[2] The Settlement provides for all funds to be distributed; where funds remained unclaimed such as in the case of uncashed checks, they will be provided to the Remainder Funds Recipient, the District of Columbia Unclaimed Property Division, subject to approval from the Court.

II. STATEMENT OF FACTS

DCHBX is an instrumentality of the District of Columbia's government designed "to implement a health care exchange program in the District of Columbia in accordance with the Affordable Care Act." Class Action Complaint ("CAC") ¶ 1. Plaintiff alleges that DCHBX's computer network was subject to a cybersecurity attack ("the Data Incident"), where an unauthorized party exfiltrated files containing the personally identifiable information of enrollees of the exchange and subsequently posted the sensitive data on a public forum. *Id.* ¶ 38. The stolen files included certain Class Members' names, dependents' names, addresses, Social Security numbers, email addresses, phone numbers, employer names and information, work emails, health care plans, race, and other highly sensitive information. *Id.* ¶ 41. DCHBX's internal investigation and the Settlement Administrators efforts have identified 252,021 Class Members, 56,224 individuals whose PII was found publicly posted (referred to herein as "Group 1"), and 195,797 individuals whose information was stored in the same manner but was not found publicly posted (referred to herein as "Group 2"). *See* Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Plan ("Azari Decl."), ¶ 22.

Plaintiff alleges that DCHBX's failure to maintain adequate data security measures allowed unauthorized third parties to exfiltrate his PII, which has significantly increased his risk of fraud, identity theft, and misuse of said data. CAC ¶ 127. DCBHCX denies these allegations.

III. PROCEDURAL HISTORY

On March 14, 2023, Plaintiff Lawless filed a consolidated Class Action Complaint against DCHBX in the Superior Court of the District of Columbia, asserting the following claims on behalf of himself and a putative class. Declaration of Gary E. Mason in Support of Plaintiff's Consent Motion for Preliminary Approval of Class Action Settlement ("Mason MPA Decl.") ¶ 12, filed

Nov. 11, 2024. After Plaintiff Lawless filed his complaint, four additional cases ("the Related Matters") were filed in the District Court for the District of Columbia against DCHBX regarding the same Data Incident: *Suhr v. District of Columbia Health Benefit Exchange Authority d/b/a DC Health Link*, No. 1:23-cv-00694 (D.D.C); *Meranda v. District of Columbia Health Benefit Exchange Authority d/b/a DC Health Link*, No. 1:23-cv-00737 (D.D.C.); *McAteer v. District of Columbia Health Benefit Exchange Authority d/b/a DC Health Link*, No. 1:23-cv-01043; and *Caston v. District of Columbia Health Benefit Exchange Authority d/b/a DC Health Link*, No. 1:23-cv-01065 (collectively, the "Related Matters"). Mason MPA Decl. ¶ 13. Plaintiffs in the Related Matters coordinated and consolidated their cases in federal court. *Id.* ¶ 14. In October 2023, DCHBX filed motions to dismiss the *Lawless* Matter and the Related Matters. *Id.* ¶ 15. The motion to dismiss the *Lawless* Matter was granted on November 17, 2023 on sovereign immunity grounds, which Plaintiff Lawless appealed to the District of Columbia Court of Appeals. *Id.* ¶ 16. While the *Lawless* appeal was pending in state court and the motion to dismiss regarding the Related Matters was pending in federal court, the Parties agreed to try to negotiate a resolution with the assistance of mediator Jill Sperber, Esq., of Judicate West. *Id.* ¶ 17. In preparation for mediation, the Parties engaged in significant pre-mediation discovery that allowed them to adequately evaluate the claims, defenses, and value of the case. *Id*. ¶ 18. On May 24, 2024 the Parties attended a full-day virtual mediation with Ms. Sperber. *Id*. ¶ 19. After extensive arm's-length negotiations, and with Ms. Sperber's assistance, the Parties reached an agreement on the central terms of a settlement. Mason MPA Decl. ¶ 20. Subsequently, the Parties notified the Court of Appeals of the Settlement, had the matter remanded back to this Court, negotiated and drafted the merits of the Settlement (which was ultimately finalized in September 2024), and selected the Settlement Administrator. *Id.* ¶ 22.

Thereafter, the Parties moved the Court for preliminary approval of the Settlement and preliminary certification of the proposed Class. On November 13, 2024, the Court granted preliminary certification, preliminarily appointed Plaintiffs and their counsel as Class Representatives and Class Counsel, respectively, and ordered the distribution of notice to Class Members, which the Class Administrator completed in compliance with the terms of the Settlement and the Court's Order. Order at 2-5; *see also* Azari Decl. ¶¶ 22-33, attached as Exhibit 3. As of February 4, 2025, the Settlement Administrator had received only one (1) objection and fourteen (14) opt-outs. *See* Azari Decl. ¶ 34. One other objection was filed with the Court on February 4, 2025.[3]

Pursuant to D.C. Sup. Ct. R. 23, the Parties now ask the Court to finally certify the proposed settlement Class and finally approve the Settlement by entering the Proposed Order of Final Approval of Class Action Settlement and Judgment, attached as Exhibit 5.

IV. PROPOSED CLASS ACTION SETTLEMENT TERMS

The significant terms of the proposed settlement are the following:

1. Certification of a Super. Ct. R. Civ. P. 23(b)(3) Settlement Class

For settlement purposes only, the Parties seek final certification of the following Settlement Class pursuant to D.C. Sup. Ct. R. 23(b)(3):

The Settlement Class

> All persons residing in the United States who were sent notice by District of Columbia Health Benefit Exchange Authority (DCHBX) that their Private Information was potentially accessible during the Data Incident and/or known to be compromised by the Data Incident discovered on or about March of 2023. SA ¶ 58. Excluded from the

[3] As explained more fully at Section 2.5, the Parties have sought an amended Preliminary Approval Order defining the deadline to object to or opt-out of the Settlement as February 22, 2025, consistent with the terms of the Settlement Agreement. As this deadline is one day after the Final Approval Hearing, the Parties propose that Plaintiff shall inform the Court of any additional objections or requests for exclusion by February 25, 2025, at which point the Parties shall also submit a revised proposed Final Approval Order to reflect any additional opt-outs or objections.

> Settlement Class are: (1) the Judge presiding over this Litigation, and members of the Judge's direct family; (2) the Defendant and its current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline. *Id.*

See id. ¶¶ 34-35.

2. Settlement Benefits

a. Reimbursement of Monetary Losses

Per the terms of the Settlement, DCHBX shall fund a One Million Four Hundred and Fifty Thousand Dollars and Zero Cents ($1,450,000.00) non-reversionary common fund, which will be used to pay Notice and Administrative Expenses, Settlement Payments, Court-approved Fee Award and Expenses, Court-approved Service Awards for Class Representatives, and certain Settlement Fund taxes and costs. SA ¶ 68.

Specifically, the Settlement[4] provides that both Group 1 and Group 2 Class Members can obtain up to $2,500 in compensation for Documented Ordinary Losses that are fairly traceable to the Data Breach. *Id.* ¶ 75(A). In addition to the $2,500 available to every Class Member, Group 1 Settlement Class Members are eligible to receive up to $10,000 (in combination with any claimed Documented Ordinary Loss) in compensation for Documented Extraordinary Losses more likely than not caused by the Data Incident. *Id.* ¶ 75(A)(iii).

b. Alternative Cash Payment

In lieu of claiming reimbursement of Monetary Losses, Settlement Class Members may make a claim for an Alternative Cash Payment that will be calculated pro rata according to whether the claimant is a Group 1 or Group 2 Settlement Class Member. *See* SA ¶ 75(B).

[4] For a more thorough explanation of the Settlement Benefits, Plaintiff respectfully refers the Court to his Memorandum in Support of Preliminary Approval pp. 5-7.

c. Credit Monitoring and Identity Restoration Services

Moreover, Group 1 and Group 2 Settlement Class Members may claim one year of three-bureau credit monitoring services and at least $1 million of fraud/identity theft insurance, so long as they have not already enrolled in the credit monitoring services previously offered by DCHBX. *Id.* ¶ 75(C).

3. Attorneys' Fees, Costs, and Expenses

Plaintiff separately seeks an award of attorneys' fees constituting one-third (1/3) of the Settlement Fund (*i.e.*, $483,285.00), and reimbursement of reasonable costs and litigation expenses of $11,554.43, which shall be paid from the Settlement Fund. SA ¶ 101. The attorneys' fees and costs were negotiated only after the Parties agreed upon the merits of the Settlement. Plaintiff has filed a separate motion seeking approval of the proposed fees and costs. *See* Plaintiff's Motion for Attorneys' Fees, Litigation Expenses, and Service Awards, filed December 27, 2024 ("Fee Motion"). There has been no objection to Plaintiff's request for attorneys' fees and costs.

4. Service Award Payments

Plaintiff separately petitioned the Court for service awards of $2,500 for each Class Representative, in recognition of their invaluable contributions to this litigation and the Class. SA ¶ 99; *see also* Fee Motion. There has been no objection to Plaintiff's request service awards.

5. Objections and Exclusions

The Preliminary Approval Order issued by the Court set two contradicting deadlines for Class Members to object or opt-out of the Settlement. In order to avoid prejudice to the Class, the Parties agreed to accept objections and requests for exclusion up to the later of the two dates, February 22, 2025. The Settlement website has prominently displayed this extended deadline since December 30, 2024. On January 29, 2025, the Plaintiff filed a consent motion with the Court

officially requesting an amendment to the Preliminary Approval Order confirming the February 22, 2025 deadline. As of February 4, 2025, two (2) objections and fourteen (14) requests for exclusion have been submitted. *See* Azari Decl. ¶ 34.

V. ARGUMENT

Superior Court Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Thus, to certify a class for settlement purposes only, this Court must first consider whether the proposed class or classes meet the requirements of Superior Court Rule 23. *Kinard v. E. Capitol Fam. Rental, L.P.*, 331 F.R.D. 206, 212 (D.D.C. 2019) (referencing Fed. R. Civ. P. 23).[5] Although "[t]he Court should scrutinize the terms of the settlement carefully, … the discretion of the Court to reject a settlement is restrained by the 'principle of preference' that encourages settlements." *Stephens v. US Airways Grp. Inc.*, 102 F. Supp. 3d 222, 226 (D.D.C. 2015).

A. The Rule 23(a) Requirements are Satisfied.

The Court has preliminarily determined that the Rule 23(a) requirements are satisfied, by finding: (1) numerosity exists, as Class Members are so numerous that joiner is impracticable; (2) the case involves common questions of fact and law; (3) Plaintiffs' alleged injuries are typical of those alleged on behalf of the Class; (4) Plaintiffs are adequate representatives of the Class; and (5) common questions of law or fact predominate such that a class action is superior to individual actions. *See* Order p. 3.

[5] "[W]hen a federal rule and a local rule contain the same language, 'we will look to federal court decisions interpreting the federal rule as persuasive authority in interpreting the local rule'" *Oparaugo v. Watts*, 884 A.2d 63, 69 n.1 (D.C. 2005) ((quoting *Peddlers Square, Inc. v. Scheuermann*, 766 A.2d 551, 556 n.4 (D.C. 2001)). "[Superior Court] Rule 23 is identical to Federal Rule of Civil Procedure 23 except for certain changes in subsections (c)(1) and (c)(2) …." Comments to Super. Ct. R. Civ. P. 23.

B. The Rule 23(b) Requirements are Satisfied.

"In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). For cases seeking certification pursuant to Rule 23(b)(3), such as the instant matter, courts must find that "the questions of law or fact common to the members of the class *predominate* over any questions affecting only individual members, and that a class action is *superior* to other available methods for the fair and efficient adjudication of the controversy." D.C. Sup. Ct. R. 23(b)(3) (emphasis added). Essentially, the predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *In re APA Assesment Fee Litig.*, 311 F.R.D. 8, 15 (D.D.C. 2015) (quoting *Amchem,* 521 U.S. at 623). To establish superiority, the plaintiff must show that resolution via class action adjudication will "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable consequences." *Id.*, 521 U.S. at 615.

Plaintiff satisfies the predominance criteria, as proof of DCHBX's liability to the Class would be based on common policies and practices that applied universally to all Class Members, and the claims of the Settlement Class could be resolved on the basis of a common and predominant factual inquiry regarding whether DCHBX's alleged failure to adequately safeguard the PII of Class Members lead to publication of the sensitive data, and therefore constituted negligence. *See* CAC ¶¶ 13-15; 142-175. Moreover, the above-referenced uniformity of issues pertaining to DCHBX's alleged liability, the fact that there are over 250,000 Class Members, and the corresponding impracticability of bringing individual claims (considering judicial economy, costs, and potential for inconsistent rulings), supports a finding that class action adjudication is

superior to individual litigation. As a result, Plaintiff has readily established the Rule 23(b)(3) requirements.

C. The Proposed Settlement is Fundamentally Fair, Reasonable, and Adequate.

Courts in the District of Columbia may approve a proposed settlement after a hearing and finding that the proposal is "fair, reasonable, and adequate. *See* Rule 23(e). For this analysis, the Court considers "(1) whether the settlement is the result of arms-length negotiations; (2) the terms of the settlement in relation to the strengths of plaintiffs' case; (3) the status of the litigation proceedings at the time of the settlement; (4) the reaction of the class; and (5) the opinion of experienced counsel." *Jane Doe 2 v. Georgetown Synagogue - Kesher Isr. Congregation*, Case No. 2014 CA 7644 B, 2018 D.C. Super. LEXIS 17, *14 (D.C. Super. Ct. Sept. 19, 2018).

1. The Proposed Settlement is Fair.

"[A] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Stephens v. Farmers Rest. Group*, Civil Action No. 17-1087, 2019 U.S. Dist. LEXIS 103031, *24 (D.D.C. June 20, 2019) (internal citations omitted). In the present case. the Settlement is the result of substantial arms-length negotiations led by experienced counsel and significant, substantive discovery. *See* Mason MPA Decl. ¶¶ 18-21. The Parties were also assisted in their efforts to resolve the matter by an experienced mediator. *Id.* ¶ 19. In addition, the Court has already determined that the Settlement is within the range of reasonableness. *See* Order p. 3.

2. The Proposed Settlement is Adequate in Relation to Strength of the Case.

The relative strengths of the proposed settlement and the case have been called the most important factor a court considers when evaluating a proposed settlement. *See, e.g.*, *In re APA Assessment Fee Litig.*, 311 at 8, 19 (D.D.C. 2015). In determining whether to finally approve a

class, the court must evaluate the proposed relief against the relative strength of the plaintiffs' case, including their ability to obtain recovery at trial. *See Trombley v. Nat'l City Bank*, 759 F. Supp. 2d 20, 24 (D.D.C. 2011).

a. The Benefits to Settlement Class Members

In the instant case, the $1,450,000.00 common fund provides each Settlement Class Member (upon submission of a valid claim) with the ability to receive monetary relief in the form of reimbursements of Documented Loses (up to $2,500 for Settlement Class Members whose data was not found publicly available[6], and up to $10,000 for Settlement Class Members whose data was found publicly available[7]) or a pro rata cash payment from the Net Settlement Fund. *Id.* ¶ 75(B). Additionally, class members who have not already claimed credit monitoring services from DCHBX can claim one-year of three bureau credit monitoring/identity restoration services that include $1,000,000 in fraud insurance. *See* SA ¶ 75(A)(i-iii).

The relief obtained for the Class compares favorably with that obtained by plaintiffs in similar data breach cases nationwide, especially considering that here, only 22% of the Class was confirmed to have their PII and PHI publicly available. *See, e.g.*, *Fernandez v. 90 Degree Benefits, LLC*, No. 2:22-cv-00799-SCD (E.D. Wisc.) (data breach class action of approximately 185,000, all class members with impacted data, final approval granted November 2023) ($990,000 non-reversionary common fund providing: (1) reimbursement of out of pocket losses up to $5,000 per claimant, including up to 3 hours of lost time at a rate of $25 per hour, and 1-year of 3-bureau credit monitoring services including insurance for up to $1,000,000 in identity recovery services; OR (2) an alternative cash payment of $50.); *Lhota v. Mich. Avenue Immediate Care, S.C.*, No. 2022-CH-06616 (Ill. Cir. Ct. Cook Cnty.) (data breach class of 133,969, all class members with

[6] Group 2 Class Members.
[7] Group 1 Class Members.

impacted data, final approval granted Aug. 2023) ($850,000 non-reversionary common fund providing either (1) reimbursement for up to 4 hours of lost time at $25/hour, reimbursement of documented losses up to $2500 or (2) an alternative cash payment of $50).

Considering the risks of protracted litigation, as discussed more thoroughly below, this is an excellent result for Plaintiff and the Settlement Class Members.

b. The Risks, Duration and Expense of Additional Litigation

In the absence of settlement, Plaintiff faced an uphill battle. The case was dismissed in its entirety because the Court found Defendant to be an arm of the District of Columbia and entitled to sovereign immunity, a complete jurisdictional bar to recovery. Plaintiff appealed, and believed in the merits of the appeal but recognized that appellants have a relatively low rate of success across the judicial system. Moreover, even if Plaintiff overcame the odds and prevailed, the political branches of government could have retroactively conferred immunity, as they recently did in a similar situation. *See* D.C. Act 25-667, "Consumer Protection Clarification Emergency Amendment Act of 2024," available at: https://code.dccouncil.gov/us/dc/council/acts/25-667 (amending consumer protection statute so that the District of Columbia cannot be found to be a merchant after an adverse ruling on this issue in *May v. River E. at Grandview*, 322 A.3d 557, 566 (D.C. 2024)).

If Plaintiff prevailed on appeal and if the political branches did not intervene, there would nevertheless be an arduous road ahead in which the duration and expense of litigation would be substantial. *See Blake v. R&B Corp. of Va.*, No. 4:23-cv-66, 2023 U.S. Dist. LEXIS 127456, at *6 (E.D. Va. July 20, 2023) (noting that data privacy cases on the plaintiff side are known to be "particularly risky, expensive, and complex." (internal citation and quotation omitted).

For example, the Parties would engage in costly discovery (including retaining expert witnesses), and dispositive motion practice, including class certification briefing. Declaration of Gary E. Mason in Support of Plaintiff's Consent Motion for Final Approval of Class Action Settlement ("Mason FA Decl.") ¶ 4, attached as Exhibit 1. Notably, the latter step is rife with risk. *See, e.g.*, *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013) (discussing the potential for the Court to deny class certification in data breach cases); *see also In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-mn-02972-JFA, 2024 U.S. Dist. LEXIS 86740, at *93-94 (D.S.C. May 14, 2024) (denying plaintiffs' motion to certify the class after years of litigation). Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on the merits, thereby extending the case (and the costs) for an indeterminate amount of time. Mason FA Decl. ¶ 5. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs heavily in favor of its final approval compared to the risks of obtaining no recovery on immunity grounds as well as the inherent risk and delay of a long and drawn-out litigation, trial, and appeal. *Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at *13 (W.D. Wis. Mar. 4, 2021) (approving data breach settlement and noting that the relief "is particularly adequate given the costs, risks, and delay of trial and appeal. Data breach litigation is evolving; there is no guarantee of the ultimate result.").

c. The Solvency of the Defendant and the Likelihood of Recovery

There is no indication DCHBX will be unable to satisfy a judgment. Ultimately, however, this factor is "largely considered beside the point given the other factors weighing in favor of" final approval. *See Solomon v. Am. Web Loan, Inc.,* No. 4:17-cv-145, U.S. Dist. LEXIS 112782,

at *17-18 (E.D. Va. June 26, 2020) (citing *Henley v. FMC Corp.,* 207 F. Supp. 2d 489, 494 (S.D. W.Va. 2002)).

3. Notice and Reaction of the Classes: Claims, Objections and Requests for Exclusion

The reaction of the class is yet another factor taken into consideration by DC Courts. "[C]ourts have taken the position that one indication of the fairness of a settlement is the lack of or small number of objections." *Hammon v. Barry*, 752 F. Supp. 1087, 1093 (D.D.C. 1990) (citing H. Newberg, *Newberg on Class Actions* § 11.47, at 463 (2d ed. 1985) (citing *Laskey v. Int'l Union (UAW)*, 638 F.2d 954 (6th Cir.1981)). Here, the considerable claims rate (currently approximately 5.6%, with the claims period remaining open through March 28, 2025), low rate of requests for exclusion (as of February 4, 2025 only 14 individuals have sought to be excluded from the Class), and only two objections weigh in favor of Settlement approval.

In compliance with the Court's Order[8], the Settlement Administrator provided individual, written notice to each Class Member by direct mail and/or email. Azari Decl. ¶¶ 23-28. As of February 4, 2025, individual and direct notice via mail and/or email was delivered to 97.9% of the Settlement Class. Additionally, the Class Administrator established and has maintained a Settlement Website for Class Members to access the Complaint, Notices, and other pertinent documents and view critical dates. *See* Azari Decl. ¶ 30.

As of February 4, 2025, the Settlement Administrator has received 14,055 Claim Forms. Azari Decl. ¶ 36. This represents a robust 5.6% percent claims rate out, signaling that the Class approves of this Settlement. Azari Decl. ¶ 36. The response to a class settlement can also often be measured by those who opt-out of the settlement or object to it. Here, only fourteen (14) Settlement

[8] The Court already determined that the notice plan met the requirements of due process and applicable law, provided the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled to the notice. *See* Order ¶ 7.

Class Members have asked to opt-out of the Settlement, and two (2) people have objected to the Settlement. Considering the size of the Class, the robust nature and reach of the notice, those who have opted out and objected constitute a very low percentage of individuals who have expressed dissatisfaction with the Settlement. "These low opt-out and objection rates indicate widespread approval among the class and are consistent with or better than the objection rates in other large class action cases … in which district courts have approved settlements in part because of low disapproval ratings within the class." *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg.*, No. 1:15-md-2627 (AJT/TRJ), 2018 U.S. Dist. LEXIS 240724, at *29 (E.D. Va. Oct. 9, 2018).

As mentioned above, as of the time of filing, only two objections to the Settlement have been filed: the first by Aaron Wallisch and the second by Guy C. Dale. Both are attached hereto at Exhibit 4. Mr. Wallisch's objection essentially argues that the Settlement being offered to Class Members is deficient for the following reasons: (1) there are inconsistent Objection Deadlines; (2) Defendant provided notice of the Data Incident later than alleged in the Complaint; (3) there is no protection from future harm of data breaches; and (4) the Settlement is inefficient to address the harm incurred;. Ex. 3, pp 2-4. For the forthcoming reasons, the objection is without merit. Similarly, Mr. Dale objects that the Settlement is insufficient, particularly for Group 2 Settlement Class Members.

First, in order to eliminate potential prejudice to class members, the Parties agreed to accept opt-outs and objections to the Settlement up to the later of the two dates provided by the Court, February 22, 2025. While the earlier of the two dates was included on the mail and email notice to class members, since December 30, 2025, the extension to February 22, 2025 has been prominently displayed on the Settlement Website. The Parties have also filed a consent motion

with the Court, seeking an amended preliminary approval order clarifying the February 22, 2025 deadline.

Second, Mr. Wallisch's contention that DCHBX sent him notice of the Data Incident at a later date not only runs contrary to Class Counsel's research into the facts of this case, but it also does not negate the merits of the Settlement. While Mr. Wallisch could have suffered greater damages due to the late notice, he has not shown that the relief provided—namely up to $10,000 in documented expense reimbursements (or an alternative cash payment) and credit monitoring services would not in fact ameliorate any additional damage he may have incurred.

Third, since the data incident at issue, Defendant has undertaken measures to ensure the better protection of class member data in the future. For example, DCHBX conducted a full AWS review following the Data Incident for security vulnerabilities as well as a full assessment of their security program, code, and applications. As part of this review, DCHBX subscribed to the enterprise version of their previously used open-source Linus operating system, adding the support of Red Hat experts if needed. DCHBX also added additional controls to ensure supplementary levels of review and sign-off prior to a code being deployed on DCHBX's system. Existing security measures were also reconfirmed to not require changes to their security measures. *See* Declaration of Brian Flowers of DCHBX ¶¶ 13-18, dated February 6, 2025, attached as Exhibit 2. While these measures were not included as a part of the Settlement Agreement, Class Members who maintain their use of DCHBX systems will benefit from the increased security.

And finally, and in response to both objections, all settlements, including the instant Agreement, are compromises. Without such compromises, and in this case in particular, there is a real risk of losing completely—and of class members receiving no relief at all. Here, the Court completely dismissed Plaintiff's complaint on the grounds of sovereign immunity, and while

Plaintiff did appeal that decision, success on appeal was far from guaranteed. For example, even if Plaintiff prevailed on appeal, there would have been further challenges including proving causation of damages and obtaining and maintaining class certification. This Settlement guarantees relief for Settlement Class Members who choose to make a claim.

Notably, people who feel they have suffered greater harm and are therefore owed greater benefits, can simply opt-out of the Settlement and pursue their own individual matter, as it is not possible for a settlement of this size and scope to satisfy each and every Class Member. See *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 700 (S.D. Fla. 2014) ("[T]o the extent that these objectors believe that they are entitled to additional relief due to unique cases, they were entitled to opt out of the settlement."). In sum, the solution (notwithstanding the inconsistent Objection Deadlines), however, was for Mr. Wallisch and Mr. Dale to opt-out, as arguing a settlement is "not enough" is not a valid basis for an objection. *See, e.g.*, *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2019 U.S. Dist. LEXIS 80926, at *30 (N.D. Ill. May 14, 2019); *In re Anthem, Inc. Data Breach Litig.,* 327 F.R.D. 299, 321 (N.D. Cal. 2018) (overruling twenty-eight (28) objections that claimed "the Settlement is too low or otherwise insufficient;" "the positive response from the Class favors approval of the Settlement."); *Kolinek v. Walgreen Co.,* 311 F.R.D. 483, 497 (N.D. Ill. 2015) (overruling twenty (20) objections that claimed the settlement was inadequate because "[a] class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.").

Furthermore, as one federal court has noted, "[i]n not opting out, these objectors apparently recognize the inherent difficulties and uncertainties associated with pursuing this option, and their actions suggest that final approval of the Settlement is warranted*." In re Chinese-Manufactured Drywall Prods. Liab. Litig*., 424 F. Supp. 3d 456, 492 (E.D. La. 2020*)*. In addition, when the

benefits of this Settlement are compared to the risks of the litigation, added expenses, and time and effort associated with continued litigation, it becomes clear the Settlement merits final approval. All things considered, that the Class's response to the Settlement is favorable suggests strong support for the Settlement and weighs in favor of final approval. *See In re Celebrex (Celecoxib) Antitrust Litig.,* No. 2:14-cv-00361, 2018 U.S. Dist. LEXIS 85125, at *12 (E.D. Va. Apr. 18, 2018). For all these reasons, the Court should overrule the objections.

D. The Court Should Grant Final Certification to the Settlement Class

Pursuant to its Preliminary Approval Order, the Court found that the Class could be certified as defined in Paragraph 58 of the Settlement, and that the proposed Settlement Class met the notice requirements. Order ¶ 1. Thus, the Court found for purposes of preliminary approval that the Rule 23 class certification requirements were satisfied, and that Plaintiffs and Class Counsel were adequate representatives of the Class. *Id.* ¶ 3. Nothing has occurred that would change the Court's previous determination that Plaintiff satisfies the requirements under Rule 23. Therefore, for the reasons enumerated in Plaintiffs' Consent Motion for Preliminary Approval and discussed herein, Plaintiff respectfully requests that this Court grant final certification to the Settlement Class.

VI. CONCLUSION

Plaintiff respectfully requests that the Court grant this consent Motion and enter the proposed Final Approval Order, finally (a) certifying the proposed Settlement Class; (b) approving the proposed Settlement as fair, reasonable, and adequate pursuant to Sup. Ct. R. 23 (c) appointing Plaintiffs as Class Representatives for the Settlement Class; (d) appointing Plaintiff's Counsel as Class Counsel for the Settlement Class; (e) finding that the notice provided pursuant to the Order regarding preliminary approval was the best practicable notice under the circumstances and

satisfied all Constitutional and other requirements; (f) dismissing the Action pursuant to the terms and conditions of the Settlement Agreement; (g) retaining jurisdiction over the enforcement and implementation of the Settlement Agreement and any amendments thereto; and (h) issuing related orders as the Court finds necessary.

Date: February 7, 2025

Respectfully Submitted,

/s/ Gary E. Mason

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Danielle L. Perry (DC Bar #1034960)
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Counsel for Plaintiff Rory Lawless and the Proposed Class

** admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Memorandum in Support of Consent Motion for Final Approval of Class Action Settlement was served on all counsel of record by operation of the Court's electronic filing system, File & Serve Xpress, this 7th day of February 2025 on all counsel of record, namely:

Counsel for Defendant:

Thomas A. Coulter
NORTON ROSE FULBRIGHT US LLP
799 9th St. NW, Suite 100
Richmond, VA 23219
202-662-4643(F)
202-662-4765(W)
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/s/ Gary E. Mason

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Counsel for Plaintiff Rory Lawless and the Proposed Class

EXHIBIT 1

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
CIVIL ACTIONS BRANCH

RORY LAWLESS, individually and on behalf all others similarly situated, Plaintiff, v. DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY, d/b/a DC Health Link, Defendant.	Civil Action No. 2023 CAB 001569 Next Court Date: February 21, 2025 Event: Final Approval Hearing Judge: Honorable Tanya Jones Bosier

DECLARATION OF GARY E. MASON IN SUPPORT OF PLAINTIFF'S CONSENT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, Gary E. Mason, being competent to testify, make the following declaration:

1. I am currently a partner of the law firm Mason LLP. I am one of the lead attorneys for Plaintiff and the proposed Settlement Class. I submit this declaration in support of Plaintiff's Consent Motion for Final Approval of Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. It is my opinion, and the opinion of the other Class Counsel, that the settlement reached here is fair, reasonable, and in the best interests of the Settlement Class.

3. There were great risks to continuing litigation, including the fact that this case was dismissed in its entirety because the Court found Defendant to be an arm of the District of Columbia and entitled to sovereign immunity, a complete jurisdictional bar to recovery. While

Plaintiff did appeal this decision, and is confident in the merits of the appeal, success was in no way guaranteed.

4. Even if Plaintiff had prevailed on his appeal, further litigation would have resulted in costly discovery (including retaining expert witnesses), and dispositive motion practice, including class certification briefing.

5. Additionally, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal any decision on the merits, thereby extending the case (and the costs) for an indeterminate amount of time.

* * * * * * * * * * * * *

I declare under penalty of perjury of the laws of the District of Columbia and the United States that the foregoing is true and correct, and that this declaration was executed in Washington, D.C. on this 7th day of February, 2025.

/s/ Gary E. Mason

Gary E. Mason
MASON LLP
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Washington, DC 20015
Tel.: (202) 429-2290
gmason@masonllp.com

Attorney for Plaintiff Lawless and Proposed Class Counsel

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RORY LAWLESS, on behalf of himself and all others similarly situated, Plaintiff, v. **DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY, D/B/A DC HEALTH LINK** Defendant.	Civil Action No. 2023 CAB 001569 Next Court Date: February 21, 2025 Event: Final Approval Hearing Judge: Honorable Tanya Jones Bosier

PLAINTIFF'S CONSENT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Rory Lawless, with the consent of Defendant District of Columbia Health Benefit Exchange Authority D/B/A DC Health Link ("Defendant" or "DCHBX") (collectively, the "Parties"), hereby moves the Court for final certification of the proposed Class for settlement purposes and final approval of the Parties' proposed class action settlement, *see* Settlement Agreement.

A proposed Order Granting Final Approval to Class Action Settlement and a Final Judgment are submitted herewith as Exhibit 5. This Motion is supported by the accompanying memorandum of law and the declarations of Gary E. Mason, Brian K. Flowers, and Cameron R. Azari, submitted contemporaneously herewith.

EXHIBIT 2

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
CIVIL ACTIONS BRANCH

RORY LAWLESS, individually and on behalf of all others similarly situated, Plaintiff, v. DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY D/B/A DC HEALTH LINK, Defendant.	**CASE NO. 2023 CAB 001569** **Hon. Tanya Jones Bosier** **Next Court Date: February 21, 2025** **Event: Final Approval Hearing**

DECLARATION OF BRIAN K. FLOWERS
IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT

I, Brian K. Flowers, being competent to testify, make the following declaration:

1. I am the General Counsel of the District of Columbia Health Benefit Exchange Authority ("DCHBX").

2. I have personal knowledge of the facts contained in this Affidavit and I am competent to testify as to them. I submit this Affidavit solely as to facts below pertaining to the notice of class members and security enhancements undertaken by DCHBX. I hereby reserve all rights and privileges, including, but not limited to, attorney-client privilege, as to any other matters arising from or connected to this litigation.

DCHBX's Notification of Class Members

3. On March 9, 2023, three days after the data incident, DCHBX posted notice of the breach into the primary subscribers' DC Health Link online accounts for the entirety of the 56,415 Group 1 Settlement Class Members (as defined in the Settlement Agreement).

4. Separately, DCHBX emailed these primary subscribers about the notice in their account, if they had provided an email.

5. The notice remains visible at present in the subscribers' accounts and can be viewed any time a customer is logged into their account whether they received an email or not.

6. On March 17, 2023, an additional 31,362 were notified in the same manner described above. However, a subsequent forensic investigation found that those 31,362 individuals did not have their information exposed after all.

7. From March 10 to April 4, 2023, general notices were sent in the same manner to the 166,611 individuals making up Group 2 Settlement Class Members (as defined in the Settlement Agreement) (excluding the 31,362 individuals notified despite not having information exposed). The Group 2 general notice contain different language to account for the fact that there is no evidence that information for Group 2 was compromised or exposed.

8. On or around March 2023, DCHBX caused Experian to send duplicate letter notices to Group 1 Settlement Class Members, Group 2 Settlement Class Members, and the additional 31,362 whose information was determined not to have been exposed.

9. All except a single individual were sent an additional letter notification by Experian totaling 254,387 individuals.

10. On or around July 10, 2023, additional paper notice was sent by Experian via U.S. mail to Group 1 Settlement Class Members.

11. The total number of individuals noticed by DCHBX is 254,388.

12. An additional public notice and FAQs were posted on the DC Health Link website at https://www.dchealthlink.com/data-breach.

DCHBX's Security Enhancements

13. Prior to the data breach, DCHBX already had a substantial security infrastructure, including 24-7 monitoring and penetration testing and existing DCHBX security technologies – many of which are also used by the U.S. military and intelligence agencies, and Fortune 100 companies.

14. After the Incident, DCHBX conducted a full AWS review for security vulnerabilities, which included reviewing security configurations, logging and monitoring, and AWS IAM accounts, roles, permissions and policies, and completing vulnerability scans. DCHBX also understood to have a full assessment conducted of DCHBX's security program and review of all code and applications. These reviews resulted in certain recommendations that have been implemented

15. In addition to this comprehensive review of DCHBX's entire system, DCHBX further strengthened its security measures.

16. For example, having previously used open-source Linux operating system, DCHBX now subscribes to the enterprise version, adding the additional support of Red Hat experts as needed.

17. DCHBX also implemented additional controls that ensure additional levels of review and sign-off before any code is deployed on DCHBX's systems.

18. DCHBX also reconfirmed that in some cases existing security measures did not need changes, e.g. encryption.

Under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated in it are true.

Executed this __7th__ day of February, 2025

__/s/ *Brian K. Flowers*_____

Brian K. Flowers

EXHIBIT 4

[redacted]

December 30, 2024

Superior Court of the District of Columbia

Civil Actions Division

Moultrie Courthouse

500 Indiana Ave., NW

Washington, DC 20001

DCHBX Data Incident Settlement Administrator

c/o Epiq

P.O. Box 4710

Portland, OR 97208-4710

Re: Objection to Settlement in Lawless v. District of Columbia Health Benefit Exchange Authority, Case No. 2023-CAB-001569

Dear Superior Court,

I am writing to formally object to the proposed settlement amount for individuals in Group 2 in the case referenced above.

This objection is rooted in substantial concerns regarding the inadequacy of the proposed settlement amount for Group 2. The compensation offered is merely a token gesture and fails

to acknowledge the serious nature of the breach involving our personal information. Such a breach puts us at ongoing risk and deserves a more meaningful fiscal response.

Moreover, private-sector companies' actions often reflect a disturbing trend: prioritizing profits over the safety of American consumers. By neglecting to invest in effective data security measures, these entities expose us to unnecessary dangers and continuous fraudulent calls, emails, and, again, my personal information on the Black web. This settlement should demand fiscal and infrastructural accountability from this company, which denies claims of this data incident.

Additionally, the settlement overlooks the plight of working-class and marginalized individuals disproportionately affected by this incident. Many of us are already struggling financially, and inadequate compensation for a data security incident such as this fails to provide the support we need during this challenging time. It is crucial that the settlement reflects the true impact of the breach on our lives.

I don't plan to appear at the Final Approval Hearing to further voice my concerns, so I thought this letter would suffice.

Thank you for your attention to this matter.

[redacted]

[redacted]

Superior Court of the District of Columbia
Civil Actions Division
Moultrie Courthouse
500 Indiana Ave., NW
Washington, D.C. 20001

DCHBX Data Incident Settlement Administrator
c/o Epiq
P.O. Box 4710
Portland, OR 97208-4710

Re: Case No. 2023-CAB-001569

To Whom It May Concern:

I am writing to object to the class action settlement in Lawless v. District of Columbia Health Benefit Exchange Authority, d/b/a DC Health Link, Case No. 2023-CAB-001569. As a preliminary matter, I would like to call attention to inconsistent information provided by the Settlement Administrator about the procedures for objecting to this Settlement Agreement. On the notice I received on December 27, 2024 via e-mail as well as a postcard I received on December 31, 2024, the deadline for submitting this objection is a postmark of no later than January 12, 2025, which is eight (8) business days from the time I received the notice. The frequently asked questions sections of the linked website and the long form notice on the website (accessed December 28, 2024), on the other hand, states that the objection must be filed by a different date, February 22, 2025. As a result, Class Members who wish to object will likely be confused about which date applies and/or feel that they simply do not have time to submit a proper objection given both the very limited time that the e-mail and postcard notices provide as well as the fact that these limited days occur during year-end holidays. While I will attempt to provide the basis of my objections to this Settlement Agreement, given the very limited time for objecting, I will not be in a position to thoroughly review all of the documents submitted in this case nor will I be able to provide a comprehensive account of my many objections to the Settlement Agreement in this case. I would also like to formally request that the Court extend the time for submitting objections to this Settlement Agreement and, at least, clarify to Class Members that objections can be submitted by the February 22, 2025 deadline.

The settlement website states that this "objection must include: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorneys representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the

Final Approval Hearing; (vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous 5 years; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney." I will first address the procedural elements required for this objection and then provide the specific grounds for my objection.

According to the documents supplied by the Settlement Administrator, this case is captioned "Lawless v. District of Columbia Health Benefit Exchange Authority, d/b/a DC Health Link, Case No. 2023-CAB-001569." I am a Settlement Class Member and my name is Aaron Joseph Wallisch. I live at 616 E Street, NW, Apt. 853, Washington, DC 20004. My phone number is 301-706-5828. No attorney is representing me in this objection or this case but I am an attorney. Depending on the timing of the Final Approval Hearing, I do intend to appear to object to this Settlement Agreement. I have never objected to any class action settlements, either personally or professionally. My signature will follow my objections to this Settlement Agreement below.

I have several objections to the Settlement Agreement in this case. First, I do not believe that the Plaintiffs have accurately identified several issues related to the Defendant's failure to provide notice to Class Members. Contrary to several statements made by Plaintiffs that Class Members were informed of the security breach by the dates identified in the Complaint in early March, Plaintiffs did not actually provide written notice by mail to Class Members until August 2023. Rather, they provided an e-mail notice that a document was contained in a District of Columbia Health Benefit Exchange Authority ("D.C. Health") online portal. I never received this e-mail notice and only accessed the D.C. Health website and found the notice in the portal after a friend referred me to press reports several days later. When I brought this to the attention of D.C. Health staff, they acknowledged that many D.C. Health customers—*i.e.*, Settlement Class Members—had not received notice of the breach until the mailed letter was sent in August. This failure of notice is a direct violation of D.C. Code § 28-3852 requiring timely notice of these types of security breaches. Although it is somewhat unclear in the Complaint, Plaintiffs appear to be objecting to a delay of only 7 days in providing this required notice, while many Class Members (including me) may not have received that e-mailed notice and may not even have received any notice of the security breach until August 2023. Relying on friends or press reports to provide notice to Class Members is totally inadequate. The difference between a week and half of year is a significant distinction as to whether Class Members received timely notice from the Defendant.

Next, I do not believe that the Complaint and Settlement Agreement in this case adequately represent the varied Class Members in this case. The Complaint and Settlement Agreement appear to suggest that identity theft monitoring and identity theft insurance provided by the Defendant is adequate to mitigate damages incurred through the D.C. Health computer systems security breach. Specifically, the only Class Member identified in the Plaintiffs' Complaint has damages that are limited to time spent monitoring financial information and responding to spam e-mail and phone calls that resulted from the security breach. While I have clearly spent substantial amounts of time on both of these activities, I have also had my information that was released through this security breach used to a obtain loan in July 2023, which has required me to spend significant time to dispute this loan with the credit union and to correct errors in my credit bureau reports. These significant damages were incurred notwithstanding the fact that I signed

up for credit monitoring provided by Defendants immediately after learning of the security breach through press reports.

The Complaint also drastically underestimates the extent of damages that can be incurred from Defendant's negligence. I have personally spent hundreds of hours attempting to reestablish my identity, including spending over eighty hours on at least ten calls to the credit union where a loan was taken out in my name; drafting correspondence to the credit union after they ignored my repeated attempts to address the fraudulent loan, spending several hours on the phone with the D.C. Metropolitan police, spending most of a day at my local police substation to file a police report, spending dozens of hours on the phone with each of the credit bureaus to attempt to challenge false information on my credit reports, filing challenges to this false information on the credit bureaus' online portals, mailing certified letters to the credit bureaus after all other attempts to correct the information failed, researching case law and causes of action that can be brought in these types of cases, and preparing draft complaints to file against the credit union and credit bureaus in local and federal courts. I was also unable to obtain business and personal loans after the credit union granted and then determined that I had defaulted on the loan. Furthermore, I was required to have numerous calls with my credit card companies after they alerted me that my credit availability was being reviewed due to changes in my credit scores.

While I have many documents to support these events, due to the extremely tight timeframe for submitting this objection, I am only attaching the D.C. Metropolitan Police Report, and letters I sent to the credit union and a credit bureau recounting all the time and effort I had spent in attempting to challenge the loan and my credit history. I note that I was required to send these letters because over a hundred hours of phone calls and earlier letters were inadequate to successfully challenge the fraudulent loan and correct my credit bureau records. Following the receipt of these letters, I was required to have several additional calls before the credit union and credit bureaus responded to my repeated requests. I note that it took nearly six (6) months to challenge the fraudulent loan and correct the credit bureau information after I first became aware that my identity had been used to obtain a personal loan. Nowhere in the Settlement Agreement do the Plaintiffs fully address all the types of damages that Class Members have incurred or will incur as a result of the Defendant's actions. Based on my reading of the Settlement Agreement, it appears that I am only entitled to recover direct documented out-of-pocket costs which for me are limited to my expenses in sending certified mail to the credit union and credit bureaus, even though I have spent hundreds of hours of my time in an attempt to recover from D.C. Health's security breach. The relief provided to Class Members in the Settlement Agreement is inadequate to compensate them for the time they have spent or will spend in recovering from this breach.

I also have concerns that the Settlement Agreement is limited to damages that have occurred as of the date the agreement is adopted by the Court. Unfortunately, the nature of damages from identity theft does not lend itself to such tidy framing. While I am hopeful that I have successfully addressed most of the damage to my credit records and my liability for the fraudulent loan, I still regularly have to monitor and respond as appropriate to false information on my credit reports. I am also still subject to the ongoing risk of the fraudulent use of my personal information, as has already occurred. Many Class Members may not even be aware that their identity has been used fraudulently and the use of their personal information released by the

security breach may not occur for many years. Nowhere in the Settlement Agreement is there any provision related to future damages resulting from Defendant's negligence.

Finally, and most importantly, the most significant shortcoming of the Settlement Agreement is that there is no relief provided to Class Members to protect against future data breaches from the D.C. Health computer systems. I (and I assume many of the other Class Members) are required (through District of Columbia tax penalty provisions) to maintain health insurance as a full-time resident of the District. I am also required to use the D.C. Health computer system to obtain this insurance and must complete enrollment through these computer systems on, at least, an annual basis. I have had extensive, detailed calls with employees of D.C. Health to attempt to find alternative ways to obtain health insurance without using their computer systems. These employees have explained to me that there are no alternative options for obtaining health insurance through D.C. Health and that any insurance provider providing health insurance independently from the D.C. Health system is in direct violation of D.C. law. To date, D.C. Health has provided only limited reassurance that these computer systems have been improved or upgraded to ensure that this type of data breach will not recur. I do not believe that any settlement agreement that does not establish parameters for improving the D.C. Health computer systems and that does not include specific damages if these parameters are not met is woefully inadequate to protect Class Members' ongoing interests as they continue to use D.C. Health to obtain health insurance.

For the above reasons, I object to the Settlement Agreement in the above referenced case and request that the Court reject the agreement. If I can be of further assistance to the Court or the Parties, please feel free to contact me.

Sincerely,

Enclosures

CCN #23126351 - PUBLIC INCIDENT REPORT

REPORT DATE / TIME	EVENT START DATE / TIME - EVENT END DATE / TIME	REPORT AUTHOR
Aug 3, 2023 10:41	Aug 3, 2023 10:36 - Aug 3, 2023 10:38	MARIO TODD 4441 #3741

WEATHER	SHOTS FIRED
Unknown	☐ YES ☐ NO

AGENCY REPORT STATUS

Pending/Inactive

REPORTING PARTY-1

[redacted]

OFFENSE-1

OFFENSE CODE

Id Theft Second Degree - Intent To Obtain Property/service - Misdemeanor I DCC 22DC3227.02(2)(A)M

OFFENSE START DATE	OFFENSE END DATE	OFFENSE COMPLETION	SUSPECTED HATE CRIME
Jul 9, 2023 00:00	Aug 3, 2023 10:00	☐ COMPLETED ☐ ATTEMPTED	☐ YES ☐ NO

INCLUDES CARGO THEFT

☐ YES ☐ NO

OFFENSE LOCATION

[redacted]

PUBLIC NARRATIVE

On the above listed date and time R-1 reported that unknown person used his Identity without his authorization, taking out a loan with (DCU) Digital Federal Credit Union.

[redacted]

September 13, 2023

Attention: Legal Department
Digital Federal Credit Union
220 Donald Lynch Blvd.
Marlborough, MA 01752

To Whom It May Concern:

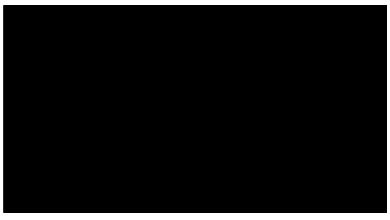
I am writing to you to request you to take action on my repeated attempts to address identify theft of personal identifying information which was used at your credit union to establish a checking account and a personal loan. I have contacted your credit union no fewer than ten separate times to try to address this issue. I received an e-mail on July 10, 2023 from my credit monitoring service that you had sent in a hard credit inquiry to Equifax on July 7, 2023. I first called your credit union on the number listed on the credit inquiry (800-328-8797) on the very early morning of July 10 and was told that I needed to wait until the fraud department was open at 8 a.m. I called back at 8:30 and was assigned a service number of S-6567017 by Angela and was assured that I would receive a call back from the fraud department in short order. I then received a letter from your credit union detailing the opening of a checking account dated July 10, 2023 on July 14th. I immediately called the number listed in the documentation and was told that no record of S-6567017 could be found anywhere in your credit union's files. The customer service representative established a new number (S-6582532) and told me that I would receive a response within 30 days.

After receiving loan coupon documentation, I called back on August 2nd and was cut off from your service department several times. I asked to speak to the fraud department and was told that someone would call me back. Needless to say, no one ever called me back from your credit union. After calling again on August 15th, 24th and 28th, with assurances that the fraud department would call me back each time, I was finally told that a letter had been sent to me. I received a letter dated August 25th (attached) on August 29th that said that your credit union had investigated my claim and determined that I was not responsible for either a membership or loan application established in my name and that your credit union would be contacting all credit bureaus to rectify the information contained in my credit reports about these issues. However, the letter was not signed by anyone at your credit union and no contact information was provided other than the same number I have been calling. I contacted all three credit bureaus to determine whether they had received the letter that was promised in my letter from you and all three said that they had received a letter but that the information they had received indicated merely that a loan account had been closed. I called your credit union on September

3rd and was told a supervisor would return my call. When again no one called me, I called again on September 5th and was told that the credit union could not do anything else unless I put my request in writing to this address.

At this point I have contacted your credit union multiple times, been on hold for over 45 hours with virtually no result. I have been told that the letter you have provided me was inadequate to address my credit report errors because it was not signed by any representative at your credit union—a point I made to a supervisor, Melanie, at your customer service number on September 5th. I have also had a business loan declined due to the presence of the closed loan account and credit inquiry from your credit union on my credit report. I have also contacted a mortgage broker who has indicated that these issues will certainly increase the mortgage rates I will obtain later this fall. Due to your failure to respond any other way to my legitimate complaints, I am writing to obtain all correspondence related to your credit union with the three credit bureaus to ensure that your credit union has informed them of the accurate disposition of this matter. I am also requesting a letter that is signed by an appropriate and authorized official that the accounts and loans in my name at your credit union were obtained by fraud. In order to mitigate my damages that have already been incurred through your credit union's negligence in addressing this matter, I am requesting these documents be provided to me within 15 days of your receipt of this letter.

If your credit union fails to respond to this request for information, I will be forced to seek a declaratory judgement in the Superior Court for the District of Columbia and will seek relief for all further damages that I incur. In preparing this letter and seeking to provide a certified copy to the appropriate personnel at your credit union, I have contacted the Business licensing department in the District of Columbia. They have informed me that you do not have a registered agent in the District, a condition of doing business in this jurisdiction. This failure is a prima facie violation of the D.C. business code. I have also reached out to representatives of the credit union and they have told me that although they believe your credit union is licensed to do business in Washington, D.C. , they have no information about the business licensing or registered agent in this jurisdiction. In order to mitigate the expense of serving the D.C. government in lieu of a business that has not established a registered agent, I am sending this letter to both your credit union's Risk Management and Legal Departments. If you do not provide a timely response to this letter, I will be forced to establish service of process through alternative means which are directly recoverable in local D.C. courts. If you have a response to this letter or have any further information needs, please reply directly to the address above.



[redacted]

September 13, 2023

Equifax Information Services, LLC
P.O. Box 740256
Atlanta, GA 30374

To Whom It May Concern:

I have attempted to address this issue online and by phone but you provide only a cursory review of documents and statements submitted through the online portal and the representatives available by phone cannot answer questions and are very poorly trained for addressing any identify theft issues. You have previously denied my identify theft dispute multiple times but are unable or unwilling to address this dispute via any other mechanism. As I have explained numerous times, I am the victim of identify theft which I discovered through credit monitoring. I am attaching a D.C. Metropolitan police report and an FTC identify theft report as well as a letter I have received from the creditor listed in my credit report finding me not responsible for accounts established at the creditor and a personal loan made through the creditor. My social security number is [redacted], my date of birth is [redacted] and my home address for the last 10 years has been [redacted]. I am also attaching a copy of my D.C. Driver's License and my Social Security Card. I am requesting that all information pertinent to the creditor, Digital Federal Credit Union be removed from my credit report including the credit report/score inquiry as well as the establishment of loans and accounts in my name.

If you need more information, please contact me at the above address.

[redacted]

EXHIBIT 5

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RORY LAWLESS, as an individual and on behalf of all others similarly situated, Plaintiff, v. DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY, d/b/a DC Health Link, Defendant.	**Case No. 2023-CAB-001569** **Honorable Tanya Jones Bosier**

[PROPOSED] ORDER

GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the above-captioned class action is pending in this Court (the "Action");

WHEREAS, Plaintiff Rory Lawless, individually and on behalf of all others similarly situated ("Plaintiff") and Defendant District of Columbia Health Benefit Exchange Authority d/b/a DC Health Link ("DCHBX" or "Defendant") have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation and provides for a complete dismissal with prejudice and release of the claims asserted against Defendant in the above-captioned matter on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated November 13, 2024 ("Preliminary Approval Order"), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding Final Approval of the Settlement;

WHEREAS, due and adequate Notice has been given to the Settlement Class;

WHEREAS, __ Class Members have submitted Requests for Exclusion;

WHEREAS, __ Class Members objected to the Settlement;

WHEREAS, the Court conducted a hearing on February 21, 2025 (the "Final Approval Hearing") to consider, among other things, (a) the Objection to the Settlement; (b) whether the terms and conditions of the Settlement were fair, reasonable and adequate to the Settlement Class, and should therefore be approved; (c) whether Class Counsel's motion for Fee Award and Expenses should be granted; (d) whether the Class Representatives' motion for Service Awards should be granted; and (e) whether a judgment should be entered dismissing the Action with prejudice as against Defendant; and

WHEREFORE, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings had in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction**: This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents**: This Judgment incorporates and makes a part hereof: the Settlement Agreement and the Notice documents filed with the Court on November 11, 2024.

3. **Class Certification for Settlement Purposes**: The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rule 23 of the District of Columbia Rules of Civil Procedure on behalf of the Settlement Class consisting of "All persons residing in the United States who were notified by DC Health Benefit Exchange Authority (DCHBX) that their Private Information was potentially accessible during the Data Breach and/or known to be compromised by the Data Breach discovered on or about March of 2023 and who were sent notice of the Data Breach." The Settlement Class specifically excludes: (1) the Judge presiding over this Action, and members of their direct families; (2) Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and its current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

4. **Adequacy of Representation**: Pursuant to Rule 23 of the District of Columbia Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Rory Lawless, Jenni Suhr, Pretial Caston, Austin Dressman, John Eborall, Keven Hammond, Taylor Heath, Shirley Huang, Kathleen McAteer, Angelo Meranda, Matthew Oginsky, and Catherine Sanders as Class Representatives for the Settlement Class and appointing Class Counsel to serve as counsel for the Settlement Class. The Class Representatives and Class Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering

into and implementing the Settlement and have satisfied the requirements of the District of Columbia Rule of Civil Procedure 23.

5. **Notice**: The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the nature of the Action, (ii) the definition of the Class certified, (iii) the Class claims, issues, or defenses; (iv) that a Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Class any Member who timely requests exclusion; (vi) the time and manner for requesting exclusion; the binding effect of a Class judgment on Members under Rule 23(c)(3); (vii) Class Counsel's motion for a Fee Award and Expenses, (viii) Class Representatives' motion for Service Awards, (ix) their right to object to any aspect of the Settlement, Class Counsel's motion for a Fee Award and Expenses, and/or Class Representatives' motion for Service Awards; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) was carried out as ordered by this Court's Preliminary Approval Order and satisfied the requirements of Rule 23 of the District of Columbia of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Objection**: As of February 22, 2025 (the objection deadline), ____ objections have been filed. The Court has reviewed and considered the objections.

7. **Final Settlement Approval and Dismissal of Claims**: Pursuant to, and in accordance with, Rule 23 of the District of Columbia Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects

(including, without limitation: the amount of the Settlement Fund; the Releases provided for in the Settlement Agreement; and the dismissal with prejudice of the claims asserted against Defendant in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

8. Upon the Effective Date, the Action shall be, and hereby is, dismissed with prejudice in its entirety as to Defendant, with each party to bear their own costs and attorneys' fees, except as provided in the Settlement Agreement, and all of the claims of the Settlement Class Members shall be, and hereby are, dismissed and released pursuant to the Settlement Agreement.

9. **Binding Effect**: The terms of the Settlement Agreement and this Judgment shall be forever binding on Defendant, Plaintiff, and all other Settlement Class Members (regardless of whether any individual Settlement Class Member submitted a Claim Form or seeks or obtains a distribution or benefits from the Net Settlement Fund), as well as their respective successors and assigns.

10. **Exclusions**: As of February 22, 2025 (the opt-out deadline), the Parties have received ___ valid requests for exclusion. The individuals are described by an assigned numeric identifier at Exhibit 3 to Plaintiff's Consent Motion for Final Approval.

11. The releases set forth in the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that, upon the Effective Date, and in consideration of the Settlement benefits described in the Settlement Agreement, each Settlement Class Member shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Persons from any and all Released Claims.

12. Notwithstanding Paragraph 10 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

13. **No Admissions**: This Judgment and Order, and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by the Defendant of any liability, claim or wrongdoing in this Action or in any other proceeding.

14. **Retention of Jurisdiction**: Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) Class Counsel's motion for a Fee Award and Expenses; (d) the Class Representatives' motion for Service Awards; and (e) the Settlement Class Members for all matters relating to the Action.

15. **Modification of the Agreement of Settlement**: Without further approval from the Court, Plaintiff and Defendant are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiff and Defendant may agree to reasonable extensions of time to carry out any provisions of the Settlement.

16. **Termination of Settlement**: If the Settlement is terminated as provided in the Settlement Agreement or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Settlement Agreement, and this Judgment shall be without prejudice to

the rights of Plaintiff, the other Settlement Class Members and Defendant, and the Parties shall revert to their respective positions in the Action as of the date prior to execution of the Settlement Agreement, as provided in the Settlement Agreement.

17. **Entry of Judgment**: There is no just reason for delay of entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final Judgment in the Action.

IT IS SO ORDERED this ___ day of _____, 2025.

_____
THE HONORABLE TANYA JONES BOSIER

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RORY LAWLESS, on behalf of himself and all others similarly situated, Plaintiff, v. **DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY, D/B/A DC HEALTH LINK** Defendant.	Civil Action No. 2023 CAB 001569 Next Court Date: February 21, 2025 Event: Final Approval Hearing Judge: Honorable Tanya Jones Bosier

FINAL JUDGMENT

The Court has entered Final Approval of the Parties' Settlement. Accordingly, Plaintiff's and the Class's claims against Defendant District of Columbia Health Benefit Exchange Authority, D/B/A DC Health Link, are hereby Dismissed with Prejudice, and this Final Judgment shall issue consistent with Rule 23 of the District of Columbia Rules of Civil Procedure.

So ordered on this _____ day of _____, 2025

_____
The Honorable Tanya Jones Bosier