UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE SHIELDS HEALTH GROUP, INC DATA BREACH LITIGATION	CASE NO. 1:22-cv-10901-PBS Hon. Patti B. Saris Leave to file granted on December 9, 2025

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

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INTRODUCTION

Plaintiffs James Buechler, Julie Colby, John Kennedy, Sharon Pimental, and Cindy Tapper ("Federal Plaintiffs" or "Plaintiffs"), individually and on behalf of all others similarly situated, and pursuant to Rule 23(e), respectfully move this Court for final approval of the proposed Class Action Settlement Agreement ("Settlement Agreement" or "S.A."),[1] resolving their claims against Defendant Shields Health Care Group, Inc. ("Shields" or "Defendant"). The Settlement Agreement is attached hereto as **Exhibit 1**.

Final Approval should be granted because the Settlement provides substantial relief for the Settlement Class, including reimbursement for out-of-pocket losses and time spent responding to the Data Incident or, alternatively, a single cash payment. Pursuant to the Settlement Agreement, Shields shall pay $15,350,000 into a non-reversionary Settlement Fund which will pay for: (1) Administration and Notice Costs; (2) Approved Claims of all Settlement Class Members in both the Federal Action and State Action; (3) Service Awards to Settlement Class Representatives, as approved by the Court; and (4) Attorneys' Fees and Expenses, as approved and awarded by the

[1] Unless otherwise defined herein, all capitalized terms have the same definitions as those set forth in the proposed Class Action Settlement Agreement, ECF No. 158-1. The Settlement Agreement intends to resolve the claims of the above-mentioned Federal Plaintiffs that are, were, or could have been asserted in the litigation in the above-captioned action (the "Federal Action"). In addition, the Settlement Agreement also intends to resolve the substantially similar claims of Plaintiffs Constantine Kossifos, William Biscan, Tennie Komar, Lisa Smith, Amanda Johnson, Christine Cambria, Courtney Horgan, Kenneth Vandam, Peter Shea, and Maria Melo ("State Plaintiffs") pending in *Kossifos, et al., v. Shields Health Care Group, Inc.*, Case No. 2282-cv-0561, consolidated with *Johnson et al. v. Shields Health Care Group, Inc.*, Case No. 2277-cv-00839 and *Biscan et al. v. Shields Health Care Group, Inc.*, Case No. 2382-0023, which were consolidated in Norfolk Superior Court in the Commonwealth of Massachusetts (the "State Action" and, collectively, with the Federal Action the "Litigation"), along with the claims of the State Action Federal Class. The Federal Action is brought on behalf of class members who reside outside of the Commonwealth of Massachusetts. The Settlement is a global resolution and is contingent upon final approval in both the State Action and Federal Action. Plaintiffs provide details about the State Action for this Court's information only and do not request that this Court exercise jurisdiction over the State Plaintiffs or State Action Settlement Class.

Court. S.A. ¶ 3.3. In addition to monetary payments from the Settlement Fund, Shields has also already invested significantly in remediation, security enhancements and business practice changes to prevent future data security incidents and has committed to maintaining those investments and measures for the foreseeable future. *Id.* ¶¶ 5.1-5.3.

The Court granted preliminary approval of the Settlement on September 9, 2025. ECF No. 165. Pursuant to the Court's Preliminary Approval Order, Notice was effectuated to the Settlement Class, notifying them of the proposed Settlement. *See* Declaration of Richard W. Simmons ("Simmons Decl."), attached hereto as **Exhibit 2**. Additionally, CAFA Notice was provided to the Attorney General of the U.S., the Attorneys General of each of the states in which Settlement Class Members reside, and all other required recipients. *See id.* ¶ 5. To date, 1,922,085 of the 2,382,578 Settlement Class Members have received direct notice of the Settlement, a notice rate of 82.41%. *Id*. ¶ 17. As detailed below, the Settlement is an excellent result for the Settlement Class; the Court should find that the Settlement is fair reasonable, and adequate; and the Court should therefore grant final approval of the Settlement.

BACKGROUND

I. History of the Litigation[2]

Plaintiffs' claims in the Litigation arise out of a March 2022 incident ("Data Incident") where third-party cybercriminals gained access to Shields' network. S.A. ¶ 1.1. An investigation determined that these unauthorized actors may have accessed files that included State Action Settlement Class Members' Personal Information. S.A. ¶ 1.2. Shields began providing rolling notice of the Data Incident to impacted individuals in July 2022, and notice continued for the next several months. S.A. ¶ 1.4. By April 2023, Shields determined that the total number of individuals

[2] For a more comprehensive history of the litigation, *see* Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval, ECF No. 157 at *3-7.

impacted was approximately 2,382,578, including 2,132,692 residents of Massachusetts and 249,886 out-of-state residents. S.A. ¶ 1.5.

Class action complaints asserting claims arising out of the Data Incident were filed in the United States District Court for the District of Massachusetts starting on June 9, 2022, and were thereafter consolidated on this docket. S.A. ¶¶ 1.6–1.7. The Federal Plaintiffs filed a Consolidated Class Action Complaint ("Federal CAC"), the operative complaint, on January 9, 2023. S.A. ¶ 1.9. The Federal CAC consolidated the facts and claims of the actions brought in this District on behalf of a proposed nationwide class, with the exception of individuals who are citizens of Massachusetts.[3] *Id.* The parties engaged in motion practice related to the Federal CAC, which resulted in this Court's Order of March 5, 2024, granting in part and denying in part Shields' motion to dismiss. ECF No. 124. The parties thereafter engaged in targeted discovery and mediations. S.A. ¶¶ 1.30–1.33.

II. Negotiation of the Settlement

During the early procedural phase of this litigation, Plaintiffs' Counsel and Counsel for Shields agreed to mediate claims with Hon. Wayne Andersen (Ret.). The Parties engaged in an all-day mediation session on April 5, 2024 but failed to reach an agreement in principle during that session. S.A. ¶ 1.30. After additional case activity, including informal discovery and motion practice, the Parties scheduled a second mediation on November 15, 2024. S.A. ¶¶ 1.31–1.32. The second mediation resulted in a mediator's proposal that ultimately led to this settlement of the Litigation.

[3] Citizens of the Commonwealth of Massachusetts are represented by the State Plaintiffs in the parallel State Action, which case is subject to CAFA's home state exception. *See* 28 U.S.C. § 1332(d)(4).

The Parties subsequently finalized their agreement, and Plaintiffs moved for preliminary approval of the Settlement on May 15, 2025. ECF No. 156. This Court granted preliminary approval on September 9, 2025. ECF No. 165. The Court preliminarily certified the following Settlement Class for purposes of settlement:

> All persons in the United States that Shields identified as potentially having their Personal Information impacted by the Data Incident that are residents of any U.S. State, U.S. territory, or the District of Columbia, other than Massachusetts.

The Massachusetts Superior Court granted preliminary approval of the Settlement in the State Action by Order dated September 11, 2025.

III. Terms of the Settlement

Under the Settlement Agreement, Shields agreed to pay $15.35 million into a non-reversionary Settlement Fund to resolve Plaintiffs' and Settlement Class Members' claims against the Released Parties. S.A. ¶ 3.1. The Settlement Fund will pay for: (1) Administration and Notice Costs; (2) Approved Claims of all Settlement Class Members in both the Federal Action and State Action; (3) Service Awards to Settlement Class Representatives, as approved by the Court; and (4) Attorneys' Fees and Expenses, as approved and awarded by the Court. S.A. ¶ 3.3. The Settlement also requires Shields to make business practices changes specifically designed to prevent future data incidents. S.A. ¶ 5.

a. The Proposed Settlement Benefits Plan

All Settlement Class members who submit a valid and timely "Approved Claim" using the "Claim Form" (ECF No. 158-8) are eligible to receive: (i) reimbursement of up to $2,500.00 for "ordinary" out-of-pocket losses and/or five hours of "ordinary" attested time at $30.00 per hour; and (ii) reimbursement of up to $25,000.00 in "extraordinary" out-of-pocket losses and/or twenty

hours of "extraordinary" attested time at $30.00 per hour. S.A. ¶¶ 4.2–4.34.[4] Alternatively, Settlement Class members may elect to receive a flat cash payment of $50.00. S.A. ¶ 4.5. All payments are subject to *pro rata* increases or reductions. S.A. ¶ 4.7. The total amount of any *pro rata* increase may not exceed $400 over the claimed amount. *Id.*

Approved Claims will be paid via electronic payment or check mailed to the Settlement Class Member. Settlement Class Members will have ninety (90) days to cash the checks or electronically receive the payments, after which any uncashed checks will be void and the ability to receive electronic payments will expire. All funds remaining in the Qualified Settlement Fund Account after the disbursements to Settlement Class Members, payment of Notice and Administration costs, and payment of Attorneys' Fees, Costs, and Service Awards, and following the preparation of any required tax documents, will become the Remainder Fund for *cy pres* distribution to the Massachusetts Local Consumer Aid Fund, subject to approval by the Courts. S.A. ¶¶ 2.41, 4.8.

Since the Data Incident, Defendant has invested significantly in remediation, cybersecurity enhancements, and expansion of its IT workforce ("Data Security Enhancements"), and has committed to maintaining those investments and measures for the foreseeable future, details of which were confidentially shared with Plaintiffs' Counsel during settlement negotiations. S.A. ¶ 5.1. Actual costs for the implementation and maintenance of the Data Security Enhancements will be paid by Defendant apart from the Settlement Fund described in Section 3 of the Agreement. S.A. ¶ 5.2. Defendant provided Settlement Class Counsel with a confidential declaration detailing all Data Security Enhancements implemented as a result of the Data Incident, which shall be filed under seal only upon the Courts' request. S.A. ¶ 5.3.

[4] These reimbursements are subject to an aggregate per-individual cap of $25,000.00.

b. Dismissal and Release of Claims

Upon the Effective Date of the Settlement, the Representative Plaintiffs and Settlement Class Members shall be deemed to have released any and all liabilities, rights, claims, actions, causes of action, damages, penalties, costs, attorneys' fees, losses or demands, whether known or unknown, liquidated or unliquidated, existing or potential, suspected or unsuspected, legal, statutory, or equitable, based on contract, tort, or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties, or matters that were or reasonably could have been asserted against the Defendant Released Parties related to the Data Incident. S.A. ¶¶ 2.38–2.40. These releases were described in the Court-approved Long Form Notice. ECF No. 158-7 at 10.

IV. Results of Settlement Administration and Notice Plan

The Court-approved Settlement Administrator is Analytics Consulting LLC ("Analytics"). Following the Court's issuance of the Preliminary Approval Order, Analytics successfully completed the Notice plan set forth in the Settlement. See Simmons Decl. ¶¶ 6–17. The Notice plan was designed to reach as many Settlement Class Members as possible. See S.A. at Ex. D. The Notice included the required description of the material terms of the Settlement; the date by which Settlement Class Members could object to the Settlement; the Final Approval Hearing date and time; and the Settlement Website address at which Settlement Class Members could access the Long Form Notice, Settlement Agreement, Claim Form, and other related documents and information. See Simmons Decl. ¶ 4 and Exs. A–D.

The Notice also included information regarding the ability, process, and deadline for both State Action and Federal Action Settlement Class Members to Object to the Settlement and

informed Federal Action Settlement Class Members of their right to exclude themselves from the Settlement.

Pursuant to the Preliminary Approval Order, Shields provided Analytics with the Class List containing the names and last known addresses, where available, of all Settlement Class members—in other words, information sufficient to provide Settlement Class Members with direct notice. Simmons Decl. ¶ 6. Analytics then deduplicated the records in the Class List, identifying 2,332,092 unique Settlement Class Members. *Id*. ¶¶ 8–10. Analytics also processed the names and addresses through the United States Postal Service National Change of Address database in order to ensure notices were sent to the correct addresses. *Id.* ¶ 15. The Short Notices were then mailed directly to 2,041,255 State Action Settlement Class Members and 257,656 Federal Action Settlement Class Members on October 6, 2025. *Id*. at ¶ 15. For any Short Notice that was returned as undeliverable, Analytics performed an advanced address search in an effort to find a current address and re-mail the Notice. *Id*. at ¶ 16. Out of 564,374 returned Notices, Analytics was able to successfully located an updated address and re-send 187,548 of those Notices. *Id*.

In conjunction with the Notices, Analytics established an informational Settlement Website, https://www.shieldsdatasettlement.com/. The address of the Settlement Website was included on the Short Notices mailed to Settlement Class Members. Settlement Class Members could file their claims on the Settlement Website as well as review detailed information about the Settlement, including the Long Form Notice with additional detail to that included in the Short Notice, the Claim Form, the Settlement Agreement, the Preliminary Approval Order, and the Motion for Attorneys' Fees. *Id*. ¶ 11. The Notices also included a toll-free number and email address for contacting Analytics. *Id*. ¶ 11. The Final Approval Motion will also be posted to the website.

As a result of the Notice plan, more than 82% of the identifiable Settlement Class Members received direct notice of the Settlement. *Id*. ¶ 17.[5]

V. The Reaction of the Settlement Class to The Settlement

The reaction of the Settlement Class to the Settlement has been overwhelmingly positive. The deadline for Settlement Class Members to file claims was December 3, 2025.

Analytics continues to receive and process Claim Forms. *See* Simmons Decl. ¶ 21. As of today, 211,147 Claim Forms were submitted, resulting in a claims rate of 9.1%. *Id.* Analytics has currently processed about 84,000 of those claims—73,637 of which were submitted by State Action Settlement Class Members and 10,117 by Federal Action Settlement Class Members. *Id.* Any Settlement Class Members that are found to have deficient Claim Forms will receive notice of the deficiency and an opportunity to cure the deficiency. *Id.* at ¶ 22.

The deadline to submit any objection to the Settlement in either Action was November 25, 2025. *Id*. ¶ 19. The deadline for Federal Action Class Members to Opt-Out was also November 25, 2025. *Id*. ¶ 18.

[5] The Notice plan also provided for sending reminder notices by email to any Settlement Class Members whose email addresses were known and readily available to Defendant. S.A. ¶ 8.2. Email addresses were not readily available to Defendant and so were not provided to the Settlement Administrator with the Class List. Defendant has determined that with potential data examination and manipulation, some email addresses may be extracted from the original product of Defendant's data mining, which may potentially be able to be used to send reminder notices to some Settlement Class Members. Accordingly, counsel wishes to examine the viability of that data review process to maximize the opportunity of class members to make claims. The unrefined data has been provided to the Settlement Administrator, which is examining whether it can reasonably determine whether any email addresses can be connected to Settlement Class Members, as well as the validity of the email addresses. The Parties will be prepared to provide further information to the Court at the December 16, 2025 hearing and, to the extent email addresses are able to be connected to Settlement Class Members, will be prepared with an update regarding email reminder notices and processing of any related late claims.

Out of the more than 1.92 million Settlement Class Members that received direct notice of the Settlement, only two State Action Settlement Class Members and no Federal Action Settlement Class Members[6] submitted a timely and valid Objection.[7] *Id*. at ¶ 19 and Exs. G–H. One individual also sent a letter to Analytics, which did not meet the requirements to be a valid objection, but is addressed by Plaintiffs herein as though it is valid. *Id*. at ¶ 20 and Ex. I.

Only six Federal Action Settlement Class Members submitted a timely and valid exclusion request. *Id*. at ¶ 18 and Ex. E.[8]

As shown below, the minuscule number of Objections do not provide grounds for denying final approval. The Objections merely state, in conclusory fashion, that the Settlement should provide more compensation, without identifying any procedural, factual, legal, or other deficiency in the negotiation process or the Settlement itself.

The Settlement is a product of extensive, informed, and good faith, arm's-length negotiations overseen by an experienced mediator and former judge. The excellent resolution avoids considerable risk, delays, and expense inherent in continued litigation of the Released Claims, and the Settlement confers substantial benefits on Settlement Class members who have overwhelmingly reacted favorably to the Settlement. Settlement Class Counsel respectfully submit

[6] Objector Joseph Pedulla, a State Action Class Member, filed an objection on the Federal Action docket. Mr. Pedulla is a resident of Massachusetts and is part of the State Action Settlement Class only. *See id.* at Ex. G.

[7] An additional Objection was received from an individual who is not a Settlement Class Member in either of the Federal or State Actions. *Id.* at ¶ 23 and Ex. J. Because he is not a Settlement Class Member, he will not release any claims he may have against Defendant related to the Data Incident. *See* S.A. ¶ 14.1.

[8] Analytics also received an exclusion request from one State Action Settlement Class Member. *Id.* at ¶ 18 and Ex. F. Settlement Class Counsel spoke with the State Action Settlement Class Member by phone and explained that exclusions were not available under Mass. R. Civ. P. 23 and that he could submit and claim and/or object, or do nothing and be bound by the Settlement and Release.

that final certification of the Settlement Class and final approval of the Settlement by both the State and Federal Court are warranted.

ARGUMENT

I. The Proposed Settlement is Fair, Reasonable, and Adequate and Should be Finally Approved.

"Settlement agreements enjoy great favor with the courts as a preferred alternative to costly, time-consuming litigation." *Fid. & Guar. Ins. Co. v. Star Equip. Corp.*, 541 F.3d 1, 5 (1st Cir. 2008) (internal citation and quotations omitted); *see also In re Lupron Mktg. & Sales Pracs. Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005) ("[T]he law favors class action settlements."). Federal Rule of Civil Procedure 23(e) provides that a proposed settlement in a class action must be approved by the court. "The approval of a class-action settlement agreement is a 'two-step process, which first requires the court to make a preliminary determination regarding the fairness, reasonableness, and adequacy of the settlement terms.'" *Meaden v. HarborOne Bank*, No. 23-CV-10467-AK, 2023 WL 3529762, at *1 (D. Mass. May 18, 2023) (citation omitted). "The second step in the settlement approval process requires a fairness hearing, after which the court may give final approval of the proposed settlement agreement." *Id.* (citation omitted).

Under Rule 23, a court may approve a class action settlement if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also Henderson et al v. BNY Melon, National Assoc.*, No. 1:15-cv-10599 (D. Mass. Aug. 23, 2019) (Saris, J.) (ECF 603) (applying "fair, reasonable, and adequate" standard at final approval). The First Circuit has not established its own test for evaluating the fairness of a class action settlement. Rather, courts within this Circuit look to those set forth by the Second Circuit when reviewing a motion for final approval. *See*, *e.g.*, *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 343 (D. Mass.), *aff'd*, 809 F.3d 78 (1st Cir. 2015); *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 472 (D.P.R. 2011); *In re Tyco Int'l,*

Ltd. Multidistrict Litig., 535 F. Supp. 2d 249, 258 (D.N.H. 2007). These factors, commonly referred to as the "*Grinnell*" factors, are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Roberts v. TJX Companies, Inc., No. 13-CV-13142-ADB, 2016 WL 8677312, at *6 (D. Mass. Sept. 30, 2016) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000)). Importantly, a court need not find all the *Grinnell* factors satisfied to grant final approval, rather the court should conduct a holistic assessment that involves "balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement." *Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009); *see also Bussie v. Allmerica Fin. Corp*., 50 F.Supp.2d 59, 72 (D. Mass. 1999) ("This fairness determination is not based on a single inflexible litmus test but, instead, reflects its studied review of a wide variety of factors bearing on the central question of whether the settlement is reasonable in light of the uncertainty of litigation."). A review of the relevant *Grinnell* factors supports a finding that the Settlement is fair, reasonable, and adequate, and should be finally approved.

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

Courts have recognized that data breach class actions are inherently complex and "involve[] thorny issues regarding the emerging field of data breach litigation." *Holden v. Guardian Analytics, Inc.*, No. 2:23-CV-2115, 2024 WL 2845392, at *5 (D.N.J. June 5, 2024); *see*

also Fulton-Green v. Accolade, Inc., No. 18-274, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019) (recognizing data breach litigation as complex, risky, and uncertain). Because the "legal issues involved in [data breach litigation] are cutting-edge and unsettled … many resources would necessarily be spent litigating substantive law as well as other issues." *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-md- 2522 (PAM) (JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015), *rev'd and remanded on other grounds*, 847 F.3d 608 (8th Cir. 2017), *amended*, 855 F.3d 913 (8th Cir. 2017), *and aff'd*, 892 F.3d 968 (8th Cir. 2018).

Another issue attendant in the analysis is the expense of conducting further litigation. In complex class cases, including data breach and privacy cases, these costs can be especially extensive between discovery, multiple expert witnesses, class certification, and trial preparation. *See Carter v. Vivendi Ticketing US LLC*, No. SACV 22-01981-CJC (DFMx), 2023 WL 8153712, at *5 (C.D. Cal. Oct. 30, 2023) (early resolution of data breach action favored final approval where "[s]ubstantial discovery, including document discovery and depositions, would be required" along with "[e]xtensive and expensive expert analysis [that also] would be needed."); *In re Yahoo! Inc. Customer Data Security Breach Litig.*, No. 16-MD-02752, 2020 WL 4212811, at *9 (N.D. Cal. July 22, 2020) (noting that discovery is one of the significant expenses for continuing a data breach litigation).

This data breach case, as discussed above, necessarily involves complex and risky legal and factual issues. Given the highly technical nature of a data breach case, it is very likely that discovery in this action would be substantial. Such costs would have been amplified by the involvement of experts to further analyze and explain the data and their relevance to the case. *See Bezdek*, 79 F. Supp. 3d at 344 (noting that potential expenses stemming from further discovery can "decreas[e] the net benefit of any damages award obtained at trial"). Moreover, the parallel State

Action poses the risk of adding cost, complexity, and duration above and beyond a routine data breach case. Should the Parties continue litigation, they would have to navigate each of the above issues with a careful eye on the distinctions between federal and Massachusetts procedural rules and potentially legal precedent as well. In addition, Plaintiffs in both the Federal and State Action would have faced numerous substantive hurdles at class certification and summary judgment, leading to potential inconsistent rulings and outcomes for Federal and State Plaintiffs. Moreover, if both actions went to trial, the results could have been inconsistent, at the very least, adding an immeasurable risk and uncertainty to the viability of recovery.

Accordingly, while Plaintiffs are confident in the strength of their case, by reaching a favorable settlement at this stage of the litigation, the Parties will avoid significant expense and delay and will provide immediate and tangible relief to the Settlement Class. *See Holden*, 2024 WL 2845392, at *5 ("Although Plaintiffs believe they would ultimately prevail, litigation of this matter through trial would be complex, costly, and time-consuming. The Settlement eliminates the costs and risks associated with further litigation. The Settlement Class would also receive prompt compensation."). Accordingly, this factor strongly supports final approval of the Settlement.

B. The Reaction of the Settlement Class to the Settlement

The second *Grinnell* factor is the reaction of the Settlement Class to the Settlement. It is important to note that the existence of an objection to a settlement does not by itself prevent the court from approving the agreement. Rather, this factor weighs in favor of granting final approval so long as the reaction of the class is "positive." *Tyco*, 535 F. Supp. 2d at 261 (noting that "only a small number" of class members had raised objections and that their objections were "without merit"); *accord Bussie*, 50 F. Supp. at 77 ("[The low] number of requests for exclusion from the settlement, as well as the number and substance of objections filed ... constitutes strong evidence

of fairness of proposed settlement and supports judicial approval."). Even in cases where a small portion of class members respond to the notice of settlement, this factor can still weigh in favor of approval where the responding class members react positively and offer little objection. *See Roberts*, 2016 WL 8677312, at *6.

Here, the positive reaction of the Settlement Class weighs in favor of final approval. The Notice advised Settlement Class Members of their right to object to or exclude themselves[9] from the Settlement. *See* Simmons Decl. at ¶ 4 Settlement Class Members had until November 25, 2025, to object to the Settlement, and, as of that date, no Federal Action Settlement Class Members and only three State Action Settlement Class Members—a small fraction of a percent of the Settlement Class—submitted objections. Simmons Decl. at ¶¶ 19–20 Only six Settlement Class members have opted out of the Settlement. Simmons Decl. at ¶ 18.

This exceedingly low number of objections and opt-outs supports a finding that the Settlement is reasonable. *See*, *e.g.*, *Bezdek*, 79 F. Supp. 3d at 347 (characterizing three objections and 23 opt-outs in a class of 279,570 an "overwhelmingly positive" reaction); *In re Relafen Antirust Litig.*, 231 F.R.D. 52, 72 (D. Mass. 2005) (granting final approval to class settlement with 140 opt-outs and 10 objections); *Lupron*, 228 F.R.D. at 96 (granting final approval to class settlement with 49 opt-outs and 10 objections); *In re Harvard Pilgrim Data Sec. Incident Litig.*, Case No. 1:23-cv-11211-NMG, ECF No. 114 (D. Mass.) (granting final approval to class settlement and overruling three objections). Moreover, the few Objections lodged in the State Action do not provide grounds for denying final approval. The Objections merely state, in conclusory fashion, that the Settlement should provide more compensation, without identifying any procedural, factual, legal, or other deficiency in the negotiation process or the Settlement itself.

[9] The State Action Settlement Class members had no ability to Opt-Out of the Settlement.

Nor could they. The Settlement is a product of extensive, informed, and good faith, arm's-length negotiations overseen by an experienced mediator and former judge. The excellent resolution avoids considerable risk, delays, and expense inherent in continued litigation of the Released Claims, and the Settlement confers substantial benefits on Settlement Class Members who have overwhelmingly reacted favorably to the Settlement.

Additionally, Analytics has received 211,147 Claim Forms to date, resulting in an exceptional claims rate of approximately 9.1%. *Id*. at ¶ 21. This claims rate far exceeds the claims rate in many other data breach class actions that have been granted final approval. *See, e.g., Carter*, 2023 WL 8153712, at *9 (finding claims rate of 1.6% "in line with claims rates in other data breach class action settlements that courts have approved"); *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275-RAR, 2023 WL 4420348, at *9 (S.D. Fla. July 8, 2023) (granting final approval to a data breach settlement with a claims rate of 0.66%); *In re Forefront Data Breach Litig.*, No. 21-CV-887, 2023 WL 6215366, at *4 (E.D. Wis. Mar. 22, 2023) ("A claims rate of 1.46% is generally in line with the rate experienced in other data breach class actions."); *Schneider v. Chipotle Mexican Grill, Inc*., 336 F.R.D. 588, 599 (N.D. Cal. 2020) ("Here, the 0.83% claims rate ... is on par with other consumer cases, and does not otherwise weigh against approval).

Given the overall positive reaction of the Settlement Class, this factor weighs in favor of final approval of the Settlement.

C. The Stage of the Proceedings and Amount of Discovery

In evaluating the stage of the case and the discovery taken, courts do not require that discovery be complete, rather the relevant inquiry is whether "sufficient discovery" was conducted "to make an intelligent judgment about settlement." *Hochstadt v. Bos. Sci. Corp.*, 708 F. Supp. 2d 95, 107 (D. Mass. 2010). Put differently, while the parties need not engage in extensive discovery, they must have conducted "a sufficient factual investigation . . . to afford the Court the opportunity

to 'intelligently make … an appraisal' of the Settlement.'" *Diaz v. FCI Lender Servs., Inc.*, No. 17-CV-8686 (AJN), 2020 WL 4570460, at *4 (S.D.N.Y. Aug. 7, 2020) (citation omitted).

Here, the Parties reached the proposed Settlement after engaging in a sufficiently adequate amount of informal discovery via the mediation process, and Interim Class Counsel engaged in an in-depth factual investigation into the claims underlying both the Federal and State Actions. Joint Declaration in Support of Preliminary Approval ("Joint Decl."), ECF No. 158 at ¶¶ 28–30. The information received from Shields in informal discovery, along with Class Counsel's experience litigating data breach actions, provided sufficient grounds to evaluate the strengths and weaknesses of the claims and defenses in this case, and to assess the reasonableness of the Settlement. *Id.* at ¶¶ 37–39. Based on the information available to Settlement Class Counsel, their respective experience in data breach litigation generally, and their experience in the Federal and State Actions here, Settlement Class Counsel believes the Settlement to be fair, reasonable, and adequate. *Id.* Because the information produced during the mediation process adequately informed the Parties about their respective litigation positions, this factor weighs in favor of final approval. *See*, *e.g.*, *Holden*, 2024 WL 2845392, at *5 (in a data breach settlement, recognizing that the parties adequately appreciated the merits of the case through their factual investigation and the mediation process even though the case settled prior to the parties engaging in formal discovery).

D. The Risks of Establishing Liability and Damages.

The fourth and fifth *Grinnell* factors evaluate the risks of establishing liability and damages. In assessing these factors, a court "need not decide the merits of the case, resolve unsettled legal questions, or attempt to predict the outcome." *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 313 (S.D.N.Y. 2020). Rather, the Court should balance the benefits afforded to the Class, including the immediacy and certainty of recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463.

Here, though Plaintiffs are confident in the merits of their case, winning a judgment would require surmounting several legal hurdles, with a recovery at the end of the day being far from certain. *See In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts"). Specifically, had litigation proceeded, Shields would likely have argued, *inter alia*, that Plaintiffs' primary cause of action (negligence) would fail. While Plaintiffs believe this argument is unfounded, it has been accepted by courts in some instances and could stymie the Settlement Class's recovery. *Compare In re LastPass Data Sec. Incident Litig.*, No. CV 22-12047, 2024 WL 3580646, at *7 (D. Mass. July 30, 2024) (dismissing negligence claim arising from a data breach of a provider of digital password vaults) *with In re Fortra File Transfer Software Data Sec. Breach Litig.*, No. 23-CV-60830-RAR, 2024 WL 4547212, at *8 (S.D. Fla. Sept. 18, 2024) (allowing negligence claim to proceed against user of third-party file transfer application after the application was breached by cybercriminals).

In addition, had the litigation continued, proving damages and liability would require significant expert testimony and analysis.[10] *See Carter*, 2023 WL 8153712, at *5 (recognizing at final approval that had data breach case proceeded, "[e]xtensive and expensive expert analysis would be needed."). Although Plaintiffs believe that expert testimony would provide evidence sufficient to establish the measure of damages in this case, it is possible that, in the unavoidable "battle of experts," a jury might disagree with Plaintiffs' experts, find Defendant's experts more persuasive, or agree with the Plaintiffs' experts but award a reduced amount of damages to the Settlement Class. *Tyco*, 535 F. Supp. 2d at 260–61 ("[E]ven if the jury agreed to impose liability,

[10] Complicating the matter, the Parties (and the Courts) also potentially faced threshold disputes over *which* evidentiary rules—federal or Massachusetts—would apply to expert discovery in light of the likely overlap between the experts.

the trial would likely involve a confusing 'battle of the experts' over damages. If, faced with conflicting expert testimony, the jury chose to embrace the most conservative estimate of damages, then the ultimate award might turn out to be less than the proposed settlement."). As such, Plaintiffs faced the risk of a non-monetary recovery for all or some members of the Settlement Class even if they were able to establish Defendant's liability.

In the face of these risks, and in Settlement Class Counsel's experienced and realistic opinion, the Settlement provides substantial, certain, and immediate benefits to the Settlement Class, including the reimbursement of out-of-pocket losses, an Alternative Cash Payment, credit monitoring, and changes in Defendant's data security practices that will prevent future data incidents. Joint Decl. ¶¶ 49–51. As such, these factors favor final approval.

E. The Risks of Maintaining the Class Action Through Trial.

The sixth factor weighs in favor of settlement where "it is likely that defendants would oppose class certification if the case were to be litigated." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019). Here, had litigation proceeded, Shields would likely have opposed class certification, arguing that individual issues predominate over common issues or that the class action device is not a superior form of adjudication. *See In re Marriott Int'l, Inc. Customer Data Sec. Breach Litig.*, 341 F.R.D. 128, 162 (D. Md. 2022).[11] Further, even assuming that Plaintiffs were successful in certifying a class, there is a risk that Shields would ask the Court to reconsider or amend the certification decision, or appeal it, and the First Circuit would have discretion to consider interlocutory review under Rule 23(f). *See Roberts*, 2016 WL 8677312, at *7. While Plaintiffs are confident in the strength of their case and their ability to overcome

[11] *Vacated and remanded sub nom. In re Marriott Int'l, Inc.*, 78 F.4th 677 (4th Cir. 2023), and *reinstated by In re Marriott Int'l Customer Data Sec. Breach Litig.*, 345 F.R.D. 137 (D. Md. 2023), *and rev'd on other grounds by Maldini v. Marriott Int'l, Inc.*, 140 F.4th 123 (4th Cir. 2025).

Defendant's challenges to class certification, the opportunities where certification could fail nevertheless create a risk of delay and a risk of Plaintiffs failing to prevail, and a risk that the Settlement Class would receive nothing. *See id.*

Additionally, a jury trial is inherently uncertain and likely to result in an appeal (and, therefore, additional delay) thereafter. *See Cotter v. Checkers Drive-In Restaurants, Inc.*, No. 8:19-CV-1386-VMC-CPT, 2021 WL 3773414, at *8 (M.D. Fla. Aug. 25, 2021) ("The uncertainty of recovery suggests that the Settlement Agreement is a better alternative for Plaintiffs and the class versus continued litigation.").

Although Plaintiffs believe that the claims asserted in the Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the Settlement Class uncertain. If Plaintiffs did not prevail on class certification and trial, they faced the risk of recovering nothing for themselves and the Settlement Class. *See Fox v. Iowa Health Sys.*, No. 3:18-cv-00327, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) ("Data breach litigation is evolving; there is no guarantee of the ultimate result."). As a result, this factor weighs in favor of final approval of the Settlement.

F. The Ability of the Defendant to Withstand a Greater Judgment.

The seventh *Grinnell* factor looks to the defendant's ability to withstand a greater judgment. Courts have found this factor most relevant where "judgment may risk bankruptcy or severe economic hardship." *Jermyn v. Best Buy Stores, L.P.*, No. 08 CIV. 214 CM, 2012 WL 2505644, at *7 (S.D.N.Y. June 27, 2012). In other circumstances, this factor is not dispositive and need not affect the conclusion that the settlement is within the range of reasonableness. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001); *see also In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 3:09CV1293 VLB, 2012 WL 3589610, at *7 (D. Conn. Aug. 20, 2012) (a defendant is "not required to empty its coffers before a settlement can be found adequate.").

Although Shields may potentially have the ability to withstand a greater judgment, the outstanding result—a $15.35 million settlement and the immediacy of the benefit to Settlement Class Members—compared to the risks and expenses attendant to proceeding through class certification and trial weighs in favor of settlement. Accordingly, the Court should find the factor weighs in favor of approval or, alternatively, should "assign 'relatively little weight' to this factor." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 620–21 (S.D.N.Y. 2012).

G. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation.

The last two *Grinnell* factors are the range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation. These two factors are typically analyzed together. *See*, *e.g.*, *Sturm*, 2012 WL 3589610, at *7. The issue is not whether the settlement represents the best conceivable recovery, but how the settlement relates to the strengths and weaknesses of the case. *Grinnell*, 495 F.2d at 462. As such, courts consider and weigh the nature of the claims, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable. *Id.* Put differently, the focus is on whether the settlement "represents a reasonable one in light of the many uncertainties the class faces." *Hall v. ProSource Techs., LLC*, No. 14-CV-2502 (SIL), 2016 WL 1555128, at *8 (E.D.N.Y. Apr. 11, 2016).

As discussed above, Plaintiffs faced numerous uncertainties, including certifying a class and maintaining class certification, establishing liability and damages, and ultimately achieving and collecting a recovery. On the other hand, the $15.35 million Settlement for the approximately 2.3 million Settlement Class Members provides substantial and immediate relief to compensate them for past injuries and the continued risk of harm, along with injunctive relief that is tailored to reduce the risk of a similar data incident occurring in the future.

The relief obtained here is comparable, if not better, than other data breach settlements that have received final approval. *See*, *e.g.*, *Harbour v. California Health & Wellness Plan*, No. 5:21-CV-03322-EJD, 2024 WL 171192 (N.D. Cal. Jan. 16, 2024) (granting final approval to $10 million data breach settlement that provided credit monitoring, a cash payment, or a documented loss payment to a class of 1.5 million); *In re Harvard Pilgrim Data Sec. Incident Litig.*, No. 1:23-cv-11211-NMG, ECF No. 114 (D. Mass.) (granting final approval of $16 million settlement to a class of 2.9 million). *Forefront*, 2023 WL 6215366 (granting final approval to $3.75 million data breach settlement that provided credit monitoring, and reimbursement for documented losses and lost time to a class of 2.4 million); *In re Cap. One Consumer Data Sec. Breach Litig*., No. 1:19-MD-2915 (AJT/JFA), 2022 WL 18107626 (E.D. Va. Sept. 13, 2022) (approving proposed allocation plan for a $190 million settlement that allowed 98 million class members to submit claims for out-of-pocket losses, lost time, and credit monitoring services*); In re Lincare Holdings Inc. Data Breach Litig*., No. 8:22-CV-01472-AAS, 2024 WL 3104286 (M.D. Fla. June 24, 2024) (final approval granted to a $7.25 million settlement fund that would benefit approximately 2.9 million class members); *Sherwood, et al. v. Horizon Actuarial Services LLC*, Case No. 1:22-cv-01495 (N.D. Ga. Apr. 2, 2024) (ECF No. 94) (final approval of a $8.73 million settlement fund that would benefit approximately 1.3 million class members); *In re MOVEit Customer Data Sec. Breach Litig*., No. 1:23-md-03083 (D. Mass. Apr. 3, 2025) (ECF No. 1432) (granting final approval to $2.8 million settlement agreement that provided credit monitoring, and reimbursement for documented losses and lost time to 2 million class members). Given the risks of continued litigation compared to the Settlement's substantial and immediate benefits, these factors also favor final approval and thus the Court should find the Settlement falls within the range of reasonableness.

II. The Settlement Benefits Plan is Fair, Reasonable, and Adequate and Should be Finally Approved

A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, adequate, and reasonable. *Hochstadt*, 708 F. Supp. at 109 (citation omitted). "A plan of allocation is fair and reasonable as long as it has a 'reasonable, rational basis.'" *New England Biolabs v. Miller*, No. 1:20-CV-11234-RGS, 2022 WL 20583575, at *4 (D. Mass. Oct. 26, 2022). "A reasonable plan of allocation need not necessarily treat all class members equally, but may allocate funds based on the extent of class members' injuries and consider the relative strength and values of different categories of claims." *Hill v. State Street Corp.*, No. 09-12146-GAO, 2015 WL 127728, at *11 (D. Mass. Jan. 8, 2015) (internal citations and quotations omitted). "In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel." *Id.*

Here, the proposed Settlement Benefits Plan meets this standard. It provides all Settlement Class Members with the same opportunity to file claims for (1) reimbursement of ordinary out-of-pocket losses up to $2,500.00 (including lost time of up to five hours at $30.00 per hour) and reimbursement of extraordinary losses up to $25,000.00 (including lost time of up to twenty hours at $30.00 per hour); or (2) an alternative cash payment of $50.00 (all subject to *pro rata* reduction or increase based on total claim submission). The Settlement Benefits Plan was designed to provide equal treatment to those who did not incur out of pocket losses while allowing for individualized compensation to Settlement Class Members who incurred expenses as a result of the Data Incident. The proposed Settlement Benefits Plan is similar to other court-approved allocation plans in other data breach cases. *See supra* Argument § I.G. For these reasons, the proposed Settlement Benefits Plan is fair, reasonable, and adequate and should be finally approved.

III. The Court Should Finally Certify the Settlement Class.[12]

In finally approving a class action settlement, the Court must also determine whether to certify the class for settlement purposes. *Jean-Pierre v. J&L Cable TV Servs., Inc.*, 538 F. Supp. 3d 208, 212 (D. Mass. 2021). Courts have consistently found data breach classes meet the class certification requirements. *See*, *e.g.*, *Attias v. CareFirst, Inc.*, 346 F.R.D. 1 (D.D.C. 2024); *Savidge v. Pharm-Save, Inc.*, No. 3:27-cv-186, 2024 WL 1366832 (W.D. Ky. Mar. 29, 2024); *In re Marriott*, 341 F.R.D. at 173; *In re Sonic Corp. Customer Data Breach Litig.*, No. 1:17-MD-02807-JSG, 2020 WL 6701992 (N.D. Ohio Nov. 13, 2020); *In re Target Corp. Customer Data Sec. Breach Litig.*, 309 F.R.D. 482, 490 (D. Minn. 2015). Indeed, data breach actions conform to the "policy at the very core of the class action mechanism . . . to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).

Federal Rule of Civil Procedure 23(a) creates four threshold requirements applicable to all class actions: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. Fed. R. Civ. P. 23(a)(1)-(4); *see also Amchem*, 521 U.S. at 613. Additionally, the proposed class must meet one of the requirements of Rule 23(b). *Id.* Where, as here, a Rule 23(b)(3) damages class is proposed, plaintiffs must show "the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). These requirements are generally referred to as "predominance" and "superiority." Here, as

[12] The court provisionally certified the Settlement Class in its Order of May 20, 2025, ECF No. 160, and, as described herein, there have been no changed circumstances material to a Rule 23 analysis since then.

described below, the requirements of Rule 23(a) and (b) are satisfied, and the Court should certify the Settlement Class.

A. The Settlement Class Meets the Requirements of Rule 23(a).

1. The Class is Sufficiently Numerous.

Under Rule 23(a)(1), the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "The threshold for establishing numerosity is low, and '[c]lasses of 40 or more have been found to be sufficiently numerous.'" *Meaden*, 2023 WL 3529762, at *2 (citation omitted). Here, the Federal Action Settlement Class includes 249,886 individuals, far too many to make joinder practicable. Federal Settlement Members have been identified by Shields during its investigation of the Data Incident and its issuance of notice to affected individuals. *See Engel v. Scully & Scully, Inc.*, 279 F.R.D. 117, 127–28 (S.D.N.Y. 2011) (holding defendants' business records may be used to determine number of class members).

2. The Class Shares Common Questions of Law and Fact.

Under Rule 23(a)(2), the Settlement Class must share common questions of law or fact. The commonality requirement is not demanding. Rather, it is a "low bar" and may be satisfied by a single common question of fact or law. *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 522 F.3d 6, 19 (1st Cir. 2008). Commonality is met where the claims "depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 347 (2011).

Here, the Settlement Class shares numerous common questions of law and fact, and the answers to those common questions will have a class-wide effect. Plaintiffs allege that their Personal Information, along with the Personal Information of Federal Action Settlement Class members, was obtained and stored by Defendant, was accessed and obtained by cybercriminals in

a single Data Incident, and that the Data Incident was caused by Defendant's course of conduct. Along with these common questions of fact, Plaintiffs' and Federal Action Settlement Class Members' claims also present common questions of law, including:

- Whether Shields owed Plaintiffs and the Settlement Class a duty to reasonably secure their Personal Information;
- Whether Defendant's breach of its duties caused harm to Plaintiffs and the Settlement Class, including the theft of their Personal Information;
- Whether Plaintiffs and the Federal Action Settlement Class suffered harm due to the theft and potential misuse of their Personal Information; and
- Whether Plaintiffs' and Settlement Class Members' damages are reasonably quantifiable.

The existence of these common legal questions and the overwhelmingly similar factual issues presented by Settlement Class Members' claims suffice to meet commonality here.

3. Plaintiffs' Claims or Defenses are Typical of the Claims or Defenses of the Class.

Rule 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "To establish typicality, the plaintiffs need only demonstrate that 'the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.'" *In re M3 Power Razor Sys. Mktg. & Sales Prac. Litig.*, 270 F.R.D. 45, 54 (D. Mass. 2010). "The claims of the class representative and the class overall must share essential characteristics, but they need not be precisely identical." *Bezdek*, 79 F. Supp. 3d at 338.

Here, Plaintiffs' claims are typical of those of Settlement Class Members because they were all impacted by the same Data Incident, and involve the same overarching legal theories, including theories that Shields failed to safeguard their Personal Information. *See Abubaker v. Dominion Dental USA, Inc.*, No. 119CV01050LMBMSN, 2021 WL 6750844, at *3 (E.D. Va. Nov. 19, 2021) (typicality satisfied where plaintiffs and settlement class members were subject to

a data breach and were alleged to have suffered the same type of injuries); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 309 (N.D. Cal. 2018) (typicality satisfied because the class representatives, like the class as a whole, each alleged that their personal information was stored on defendant's systems and that information was exfiltrated during a breach of such systems). Plaintiffs' legal theories do not conflict with those of absentee Settlement Class Members, and Plaintiffs have represented and will continue to represent the interests of all Settlement Class Members fairly, because such interests parallel their own. As such, Rule 23(a)(3)'s typicality requirement is satisfied.

4. Plaintiffs and Class Counsel Have Adequately Represented the Class.

Rule 23(a)(4) requires that the proposed class representative "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "This requirement has two parts. The plaintiffs 'must show first that the interests of the representative party will not conflict with the interests of any of the class members, and second, that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation.'" *M3 Power*, 270 F.R.D. at 55.

Here, Plaintiffs satisfy both requirements. First, Plaintiffs' interests align with, and are not adverse or antagonistic to, those of Settlement Class Members. Plaintiffs seek to hold Shields accountable for, among other things, its failure to safeguard Plaintiffs' and Settlement Class Members' Personal Information—the same alleged wrongdoing that caused the Settlement Class to suffer the theft and risk of misuse of their Personal Information. Plaintiffs' interests therefore fully align with those of the Settlement Class. *See In re Anthem*, 327 F.R.D. at 309-11 (finding the adequacy requirement satisfied where all class members had their personal information compromised in the data breach and generally sought the same relief).

Second, Settlement Class Counsel are qualified, experienced, and competent in complex litigation, and have an established, successful track record in class litigation—including cases

analogous to this one. *See generally* Firm Resumes, ECF Nos. 158-2–158-5. Settlement Class Counsel and Plaintiffs have diligently advanced the interests of the Settlement Class, including by investigating the Data Incident, overcoming hard fought dismissal motion practice in Federal and State court, pushing discovery, and resolving the case through this Settlement which consisted of not one, but two mediations to obtain the best possible recovery for Plaintiffs and the Class. Accordingly, Rule 23(a)(4)'s adequacy requirement is satisfied.

B. The Settlement Class Meets the Requirements of Rule 23(b).

Under Rule 23(b)(3), a class action should be certified when the court finds that common questions of law or fact predominate over individual issues and a class action would be superior to other methods of resolving the controversy. The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 594, 623. "The superiority inquiry [ ] ensures that litigation by class action 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 results.'" *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. CV 14-MD-02503, 2017 WL 4621777, at *21 (D. Mass. Oct. 16, 2017) (citation omitted). Here, the Settlement Class readily meets both requirements.

1. Common Issues Predominate Over Individual Issues.

A Rule 23(b)(3) settlement class must show that common questions "predominate over any questions affecting only individual [class] members." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds,* 568 U.S. 455, 459 (2013). Predominance "does not require that each element of the claims [be] susceptible to class-wide proof" but only that "the individualized questions . . . [do] not 'overwhelm' the common ones." *In re Celexa & Lexapro Mktg. & Sales Pracs. Litig.*, 325 F.R.D. 529, 537 (D. Mass. 2017) (citation omitted). "When one or more of the central issues in the action

are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016).

Here, common issues predominate over individual issues because each Settlement Class Member would rely on common factual evidence to establish Defendant's liability. Each Settlement Class Member's claim centers on Shields' allegedly inadequate data security, which, Plaintiffs allege, Shields knew or should have known could result in a data breach and harm to Plaintiffs and the Settlement Class. Proof of those facts would establish Shields' duty and breach of duty on a class-wide basis, and proof of those facts depends exclusively on Shields' knowledge and actions. Thus, those elements of each Settlement Class Member's claim are resolvable in a "single stroke" and do not depend on any individualized issue. *Dukes*, 564 U.S. at 347; *see also In re Brinker Data Incident Litig.*, No. 3:18-cv-0686, 2021 WL 1405508, at *8 (M.D. Fla. Apr. 14, 2021) (granting class certification because common questions predominated, including "whether [defendant] had a duty to protect customer data, whether [defendant] knew or should have known its data systems were susceptible, and whether [defendant] failed to implement adequate data security measures"), *vacated in part sub nom. Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883 (11th Cir. 2023).

Additionally, common issues concerning causation and damages predominate. Whether Defendant's alleged misconduct, in part, caused the Data Incident and the resulting theft of Plaintiffs' and Settlement Class Members' data will depend on common evidence of Shields' knowledge and acts and their contribution to the breach. Further, as other courts have recognized, Plaintiffs can establish damages on a class-wide basis using models to measure the diminished

value of the stolen data and the lost time and effort incurred responding to the breach. *See*, *e.g.*, *Green-Cooper*, 73 F.4th at 889–90 (approving plaintiffs' method for measuring class damages due to a data breach). Although each individual Settlement Class Member may have some individualized damages, those individual damages generally do not defeat class certification. *Corra v. ACTS Ret. Servs., Inc.*, No. CV 22-2917, 2024 WL 22075, at *5 (E.D. Pa. Jan. 2, 2024) ("Although there may be slight differences among class members regarding degree of damages or the exact type of injury suffered (e.g., breach of sensitive financial information or breach of health data), none of these differences would preclude resolution on a class-wide basis."). For these reasons, predominance is satisfied.

2. A Class Action is the Superior Device for Adjudicating the Action.

The superiority criterion requires that a class action be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In evaluating superiority, courts consider: (1) the interests of class members in individually litigating separate actions, (2) the extent and nature of existing litigation, (3) the desirability of concentrating the litigation of the claims in one forum, and (4) the difficulty of managing a class action. *Id.* "The superiority inquiry thus ensures that litigation by class action 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 results.'" *In re Solodyn*, 2017 WL 4621777, at *21 (citation omitted). Where a "large number of potential plaintiffs" share common claims, "certifying the class will allow a more efficient adjudication of the controversy than individual adjudications would." *Roberts v. Source for Pub. Data*, No. 08-CV-04167-NKL, 2009 WL 3837502, at *7 (W.D. Mo. Nov. 17, 2009).

Here, class resolution is superior to other available means for the fair and efficient adjudication of the claims asserted against Shields. First, the potential damages suffered by the

approximately 2.3 million Settlement Class Members are relatively low dollar amounts and would be uneconomical to pursue on an individual basis given the burden and expense of prosecuting individual claims. *In re Anthem*, 327 F.R.D. at 315 (superiority satisfied in data breach settlement where the "the amount at stake for individual Settlement Class Members is too small to bear the risks and costs of litigating a separate action."). Second, there is little doubt that resolving all Settlement Class Members' claims jointly, particularly through a class-wide settlement negotiated on their behalf by counsel well-versed in class action litigation, is superior to a series of individual lawsuits and promotes judicial economy. *See In re Cap. One*, 2022 WL 18107626, at *5 (recognizing that litigating the claims of millions of individuals impacted by a data breach would be inefficient).

For these reasons, the Settlement Class satisfies the requirements of Rule 23(a) and (b)(3), and Plaintiffs respectfully request that the Court finally certify the Settlement Class for purposes of Settlement.

IV. The Notice Program Satisfied Rule 23 and Due Process.

Rule 23(e)(1)(B) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." Fed. R. Civ. P. 23(e)(1)(B). In addition, "[f]or any class certified under Rule 23(b)(3) … the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The Class Notice plan satisfied these requirements.

Here, following the Court's approval of the Notice plan, the Settlement Administrator directed notice to the Settlement Class via direct mail. Simmons Decl. ¶¶ 7–17. To ensure the Notice reached as many Settlement Class Members as possible, the Settlement Administrator performed reasonable physical address checks for the Short Notice, and performed advanced

address searching on any Notices returned as undeliverable. *Id*. Courts have recognized that direct notice satisfies due process. *See Wright v. S. New Hampshire Univ.*, 565 F. Supp. 3d 193, 207 (D.N.H. 2021) (notice to class via direct email and mail notice "constitute[d] a reasonable manner of providing notice to those parties who would be bound by the terms of the proposed settlement agreement"); *Meaden*, 2023 WL 3529762, at *4 (same).

The Notice included all essential information about the Settlement, including how to object, how to opt-out, where to find more information about the Settlement, and how to contact the Settlement Administrator and/or Settlement Class Counsel. *Id.* at ¶ 4 and Exs A–D. Additionally, the Notice was designed to be "noticed," reviewed, and—by presenting the information in plain language—understood by Settlement Class Members. *Id*.; *see also* S.A. at Ex. D. The design of the Notice followed principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov and contained plain-language summaries of key information about Settlement Class Members' rights and options. As required by Rule 23(e), the Notice generally described the Settlement in sufficient detail to alert Settlement Class Members to come forward to be heard and contained all of the critical information required to apprise Settlement Class Members of their rights. *Id.* Thus, the Notice plan was adequate and provided sufficient detail to allow Settlement Class Members with adverse viewpoints to come forward and be heard. *See Hill*, 2015 WL 127728, at *14 (notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

According to The Federal Judicial Center, a notice plan that reaches 70% of class members is one that reaches a "high percentage" and is within the "norm." Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, "Managing Class Action Litigation: A Pocket Guide or

Judges," at 27 (3d ed. 2010);[13] *see also In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 527 F. Supp. 3d 269, 273 (E.D.N.Y. 2021) (citation omitted) (observing that "a notice plan that reaches between 70 and 95 percent of the class is reasonable," and endorsing a notice plan with 80% expected reach). The reach of over 82% for this Notice plan far surpasses that threshold.

V. The State Action Objections Should Not Preclude Final Approval.

The Settlement globally resolves this Federal Action and the State Action and is conditioned upon final approval in both Actions. No Federal Action Settlement Class Members objected to the Settlement. There were, however, three Objections in the State Action, each were conclusory and do not show that the Settlement is unreasonable or unfair. State Action Plaintiffs have encouraged the State Court to overrule these objections.

The first State Action Objector objected generally: (1) to the requested attorneys' fees; and (2) that, in comparison, the Settlement Class Members would only receive $4.29. Simmons Decl. at Ex. G. This objection was already addressed in Settlement Class Counsel's petition for attorneys' fees and costs as it relates to the attorneys' fees and costs. *See* ECF No. 169. Additionally, the objector is not accurate in his assertion that Settlement Class Members will only receive $4.29. Indeed, Settlement Class members could very easily claim the alternative cash payment of $50 with no documentation—as more than 54,000 did—or submit documentation for other documented losses up to $25,000. *See* S.A. Section 4; *see also* Simmons Decl. at ¶ 21.

The second State Action Objector objected on two grounds: (1) the monetary relief provided by the Settlement is inadequate, and (2) she received her postcard notice only one week before the claims deadline. Simmons Decl. at Ex. H. Again, the first ground for objection is

[13] This document is available at https://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf.

meritless because, as discussed above, the Settlement's benefits compare favorably to settlements approved in other data breach class actions. As to the second ground for objection, any delay in this Objector receiving notice was harmless, as the Parties have agreed to treat this Objection as timely. Moreover, the Objector also received notice in sufficient time to submit a claim, and she did so. Simmons Decl. at ¶ 19.

The third State Action Objector objected based on an assertion that their credit was destroyed by the Data Incident and that the Settlement should pay over $2,500, not only $50. Simmons Decl. at Ex. H. This objection appears to be a misunderstanding of the options, because Settlement Class Members are entitled to claim out-of-pocket damages: Ordinary up to $2,500 and Extraordinary up to $25,000. *See* S.A. Section 4. The alternative cash payment of $50 may be claimed without further documentation. *Id*.

The state court has discretion in determining the reasonableness of the Settlement, based on the totality of the circumstances. *Sniffin v. Prudential Ins. Co. of America*, 480 N.E.2d 294, 300 (Mass. 1985). While the state court's inquiry needs to consider the Objections lodged, it may properly overrule any objections where, as here, the Settlement is in the best interest of the Settlement Class as a whole, including for the reasons discussed above. *Id.*

Here, although the Settlement puts millions of dollars collectively into the hands of Settlement Class Members, three of the State Action Settlement Class Members—who have no ability to exclude themselves from the Settlement under Massachusetts procedure—object that the amount individuals will receive is "just not enough." No objection identifies any legal, equitable, factual, or procedural errors or deficiencies in the Settlement. Courts routinely reject such conclusory objections, particularly where, as here, there were substantial litigation activities in an action involving complex legal issues resulting in over three years of active litigation. *See*, *e.g.*,

Hill, 2015 WL 127728, at *2 (district court overruled objections and adopted Magistrate Judges' recommendation that fees were "reasonable" where the "action involved complex legal and factual issues and required years of active litigation" and that the fee was "well within the typical range of fees in such actions"); *Commonwealth Care Alliance v. Astrazeneca Pharmaceuticals L.P.*., No. CIV.A. 05–0269 BLS 2, 2013 WL 6268236, at *1 (Mass. Super. Ct. Aug. 5, 2013) (overruling objection to request for fees and awarding fees in the amount of 30% of $20 million common fund—which was two times counsel's lodestar—plus expenses based, in part, on the successful outcome reached for the class).

Moreover, objections focusing on class-member-specific requests for compensation ignore that a litigated class action outcome—even if favorable—would not have addressed such individualized situations. *See*, *e.g.*, *Pallas v. Pacific Bell*, 1999 WL 1209495, at *9 (N.D. Cal. Jul. 13, 1999) (overruling objectors challenging settlement on grounds that their individual award should have been greater due to their own unique circumstances).

Settlement Class Counsel submits that it would be improper for the state court to deny Settlement Class Members excellent value for their claims to serve the agenda of three Objectors who simply want more for themselves. Because the Settlement is fair, adequate, and reasonable and is in the best interest of the Settlement Class, the three Objections should be overruled in the State Action.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed Final Approval Order and Final Judgment, filed herewith: (i) granting Final Approval of the Settlement; (ii) finally certifying the Settlement Class for purposes of settlement; and (iii) providing other such relief required to effectuate the Settlement.

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Respectfully submitted,

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