

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

**In re BJC Healthcare
Data Breach Litigation**

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) **Civil Action No. 2022-CC09492**
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**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

I. INTRODUCTION

Plaintiffs Brian Lee Bauer, Tiffany Jew, Jessica Simpson, Leaha Sweet, and Bradley Dean Taylor (“Representative Plaintiffs”), individually and on behalf of the Settlement Class (as defined in the Settlement and stated below)¹, by and through counsel, respectfully submit this motion for preliminary approval of class action settlement and submit concurrently the incorporated memorandum of law in support.

After months of negotiations, the Parties reached the Settlement Agreement (the “Settlement”) attached hereto as Exhibit A. The Settlement provides timely and excellent benefits to the Settlement Class. Under the Settlement, Settlement Class members are eligible to recover compensation for up to \$250 of ordinary out-of-pocket expenses, up to \$5,000 in extraordinary out-of-pocket expenses, and two years of credit monitoring protections. In addition, Defendant BJC Health System (“BJC”) will undertake commitments for the protection of its patients’ sensitive information, such as maintaining a written information security policy, conducting annual mandatory cybersecurity training, and implementing a new password policy and Multi-Factor

¹ The definitions in the Settlement are incorporated herein by reference.

Authentication for its e-mail systems. As detailed herein, the Settlement surely satisfies the preliminary approval standard of likely to be approved as fair, reasonable, and adequate.

Representative Plaintiffs respectfully move this Honorable Court for entry of an Order: (1) granting preliminary approval of the Settlement; (2) approving the Notice Program; (3) appointing RG/2 Claims Administration LLC (“RG/2”) as Settlement Administrator; (4) preliminarily certifying the Settlement Class for settlement purposes only; (5) appointing Brian Lee Bauer, Tiffany Jew, Jessica Simpson, Leah Sweet, and Bradley Dean Taylor as Representative Plaintiffs; (6) Appointing Ben Barnow of Barnow and Associates, P.C., John F. Garvey of Carey Danis & Lowe, and J. Gerard Stranch, IV of Branstetter, Stranch & Jennings, PLLC, as Missouri Class Counsel and Class Counsel, and Troy Walton of Walton Telken, LLC, Kenneth J. Brennan and Tyler Schneider of TorHoerman Law, LLC, and Aaron Zigler of Zigler Law Group, as Illinois Class Counsel, (all collectively, “Proposed Class Counsel”); and (7) approving the form and content of the Claim Form, Short Form Notice, and Long Form Notice, attached as Exhibits A–C to the Settlement Agreement, respectively; and (8) scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlement, final certification of the Settlement Class for settlement purposes only, and the request for attorneys’ fees, costs, and expenses, and Class Representative service awards.

II. FACTUAL BACKGROUND

A. The Data Breach

Representative Plaintiffs allege that on March 6, 2020, cybercriminals gained access to the email accounts of three BJC employees and accessed the sensitive information of Plaintiffs and approximately 287,873 other persons, including their dates of birth, Social Security numbers, drivers’ license numbers, and medical records (the “Incident”). Consolidated Class Action Petition

(“Pet.”) ¶ 3. On or around June 12, 2020, BJC sent letters to the persons whose information was disclosed in the Incident. Pet. ¶ 29. The Incident affected the current and former patients of 13 different BJC affiliated hospitals and service organizations. Pet. ¶ 26. These current and former patients had submitted their information in order to receive health-related or other services from BJC. Pet. ¶ 46. BJC denies these allegations and denies that Plaintiffs are entitled to any relief.

B. Procedural History

Following BJC’s notification to those affected by the Data Breach, five class action lawsuits were filed against BJC, four in Missouri and one in Illinois. The first Missouri action was filed on June 22, 2020, in the U.S. District Court for the Eastern District of Missouri (St. Louis) by Plaintiff Jason Vahle, Case No. 4:20-cv-00811-SRC. However, Plaintiff Vahle voluntarily dismissed his complaint on September 17, 2020. On July 13, 2020 Plaintiffs Tiffany Jew and Jessica Simpson filed a lawsuit captioned *Tiffany Jew and Jessica Simpson v. BJC*, Case No. 2022-CC09315 (Circuit Court of the City of St. Louis, Missouri). On August 10, 2020, Brian Lee Bauer filed his petition in the same court. *Brian Lee Bauer v. BJC*, Case No. 2022-CC09492 (Circuit Court of the City of St. Louis, Missouri). On September 24, 2020, another lawsuit was filed against BJC in the Circuit Court of St. Louis, Missouri, captioned *I.E. v. BJC Healthcare*, Case No. 20SL-CC04898. The “*I.E.*” case was voluntarily dismissed on December 4, 2020. The *Jew, Simpson, and Bauer* actions were consolidated on January 28, 2021 into the instant action, *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC09492. Missouri Plaintiffs filed a consolidated complaint asserting claims of negligence, negligence per se, breach of implied contract, violation of the Missouri Merchandising Practices Act, unjust enrichment, invasion of privacy, and breach of contract against BJC. BJC moved to dismiss the Consolidated Petition on February 23, 2021. The motion was denied in its entirety on April 27, 2021. BJC then filed its

answer to the Missouri Plaintiffs' Consolidated Petition on May 13, 2021, denying that the Missouri Plaintiffs were entitled to any relief.

Plaintiff Leaha Sweet filed her complaint on September 16, 2020, and later amended the complaint on February 24, 2021, adding plaintiff Bradley Dean Taylor. *Leaha Sweet v. BJC*, Case No. 20-CV-0947 (S.D. Ill.). The Illinois Plaintiffs asserted claims of unjust enrichment, breach of contract (BJC only), negligence, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), negligence per se, breach of covenant of good faith and fair dealing, vicarious liability, bailment, invasion of privacy, and violation of the Missouri Merchandising Practices Act against BJC and BJC Collaborative, LLC (the "Collaborative"). BJC and the Collaborative filed separate Motions to Dismiss on March 26, 2021. The motions were granted in part and denied in part on June 29, 2021. Plaintiffs' claims for Invasion of Privacy and Bailment were dismissed with prejudice, but the motions were denied for the other claims and the Court found standing for the Illinois Plaintiffs. BJC and the Collaborative then filed their separate answers on July 27, 2021, denying that the Illinois Plaintiffs were entitled to any relief.

The Parties engaged in extensive settlement negotiations to reach the Settlement Declaration of Ben Barnow ("Barnow Decl."), attached as Exhibit B, ¶ 8–11. On September 1, 2021, the Parties participated in a mediation with Mediator Bruce A. Friedman, Esq. of JAMS. Barnow Decl. ¶ 10. The Parties did not reach an agreement during the mediation, but continued to vigorously negotiate. Barnow Decl. ¶ 11. The Settlement Agreement was executed on April 21, 2022.

III. SUMMARY OF THE SETTLEMENT

A. The Settlement Class

The Settling Parties agreed to certification of the following Settlement Class for settlement purposes only:

[A]ll Persons to whom BJC sent notification that their personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Incident.

SA ¶ 13(ff).²

B. Settlement Benefits

The Settlement provides Settlement Class members with timely benefits targeted at remediating the specific harms they have suffered as a result of the Security Incident. The benefits of the Settlement are not subject to an aggregate cap and are available to all Settlement Class members. The Settlement provides the following benefits to all Settlement Class members who submit a valid claim:

1. Ordinary Expense Reimbursement

Settlement Class members are eligible to receive compensation for up to \$250 of their ordinary out-of-pocket expenses that were incurred between March 6, 2020 and the Claims Deadline as a result of the Incident through submission of a valid claim. SA ¶ 18. These ordinary out-of-pocket expenses include: (i) cost to obtain credit reports; (ii) fees related to a credit freeze; (iii) card replacement fees; (iv) late fees; (v) overlimit fees; (vi) interest on payday loans taken as a result of the Incident; (vii) other bank or credit card fees; (viii) postage, mileage, and other incidental expenses resulting from lack of access to an existing account; and (ix) costs associated with credit monitoring or identity theft insurance if purchased primarily as a result of the Incident;

² References to particular paragraphs of the Settlement are prefixed by “SA ¶.”

(x) compensation for attested-to lost time spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath/clean-up of the Incident, at the rate of \$20 per hour for up to three (3) hours of lost time (attestation requires a narrative description of the activities performed during the time claimed and their connection to the Incident). *Id.*

2. Extraordinary Expense Reimbursement

Settlement Class members who submit a valid claim are also eligible to recover compensation for up to \$5,000 of their documented extraordinary out-of-pocket losses, incurred on or after March 6, 2020, as a result of the Incident. SA ¶ 19. Settlement Class members need to submit supporting documentation with these claims to show that the Settlement Class member was not reimbursed from other sources, their losses were caused in material part by the Incident, and that they attempted to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all credit monitoring insurance and identity theft insurance. *Id.* If a Settlement Class member has suffered documented fraud, attempted fraud, or publication or actual misuse associated with the sensitive information compromised as a result of the Incident, that Settlement Class member can claim up to an additional three hours of lost time, at \$20 per hour, for time spent remedying the fraud or attempted misuse, subject to the \$5,000 extraordinary expense cap

3. Credit Monitoring Protections

BJC will offer two (2) years of one-bureau credit monitoring and identity theft insurance through IDX to Settlement Class members who request credit monitoring by indicating such request on the claim form. SA ¶ 20.

4. Equitable Relief

BJC will improve its security of its current and former patients' information through four different means: (1) BJC will maintain a written information security policy that will be made

available to all of its employees (SA ¶ 21(a)); (2) BJC will conduct annual mandatory cybersecurity training classes, new hire orientation, and periodic training updates as new information security issues arise (SA ¶ 21(b)); (3) BJC will maintain a written password policy, requiring appropriate password complexity (SA ¶ 21(c)); and (4) BJC will implement Multi-Factor Authentication for remote access to e-mail (SA ¶ 21(d)). BJC has estimated that the equitable relief will cost the company approximately \$2,688,000, including \$1,223,000 in initial implementation costs and \$1,465,000 in annual maintenance costs. SA ¶ 21(e). These figures are reasonable estimates only, and while BJC must comply with such equitable relief, BJC is not required to spend a particular dollar amount towards these measures but is required to materially comply.

5. Costs of Notice and Settlement Administration, Attorneys' Fees, Costs, and Expenses, and Incentive Awards

BJC will pay the costs of notice and settlement administration, Plaintiffs' attorneys' fees, costs, and expenses, and incentive awards to Plaintiffs. BJC will separately pay the attorneys' fees, costs, and expenses, as approved by the Court, up to \$790,000 to Missouri Class Counsel and up to \$415,000 to Illinois Class Counsel. SA ¶ 53. Missouri Class Counsel and Illinois Class Counsel will separately petition the Court for fees within 45 days after the Notice Date. SA ¶ 58. The Parties did not discuss or agree upon payment of attorneys' fees, costs, and expenses until after they agreed on all material terms of relief to the Settlement Class. SA ¶ 54. BJC will also not contest a request for incentive awards of up to \$2,000 per named plaintiff (up to \$10,000 in the aggregate). SA ¶ 55. The Parties did not discuss or agree upon payment of incentive awards until after they agreed on all material terms of relief to the Settlement Class. *Id.*

IV. ARGUMENT

The Settlement is fair, reasonable, and adequate, and meets all the requirements for a class action under Missouri law and should therefore be preliminarily approved by the Court. The

Settlement provides immediate benefits to the class that are not guaranteed if the litigation continues. Through hard-fought negotiations, the Parties reached an agreement that is fair for both parties given the facts underpinning to the lawsuit. For these reasons and the reasons that follow, Plaintiffs respectfully request the Court to preliminarily approve the Settlement.

Missouri Rule 52.08 governs class actions. The rule states, “A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” Missouri Rule 52.08(e). The Rule is “essentially identical” to Rule 23 of the Federal Rules of Civil Procedure and, therefore, Missouri courts “rely on federal cases where Missouri law has not definitively addressed an issue.” *Hope v. Nissan N. Am., Inc.*, 353 S.W.3d 68, 75 (Mo. Ct. App. 2011).

“[P]rior to certifying a temporary settlement class, the trial court should first conduct a preliminary examination of the record before it and make a preliminary determination as to whether it appears that a settlement class should be tentatively certified.” *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 383 (Mo. Ct. App. 1997). “The [district] court must . . . review the record before it, and determine whether, based on that record, it appears that the settlement is fair and that certification may ultimately be approved.” *Id.*

In determining whether a class action is fair, reasonable, and adequate, Missouri courts must consider: “(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff’s success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members.” *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. Ct. App. 2011).

Whether certification may ultimately be approved is determined by examining whether the requirements of Rule 52.08(a) and (b)(3) are met. *See Chadwick*, 956 S.W.2d at 383. Rule 52.08(a) lists four prerequisites to class actions: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Rule 52.08(b)(3) states that a class action may be maintained when “the court finds 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.”

A. The Settlement is Fair, Reasonable, and Adequate

1. No Fraud or Collusion

The Settlement is the product of in-depth motion practice and hard-fought, arm’s length negotiations conducted by experienced counsel. The Settling Parties participated in a full day mediation before Mediator Bruce A. Friedman, Esq. of JAMS on September 1, 2021. Barnow Decl. ¶ 10. The Settling Parties did not reach an agreement at the mediation, but continued their negotiations and landed on the substantive terms of the Settlement Agreement over three months later. *Id.* ¶ 11. Throughout the negotiations, Proposed Class Counsel and counsel for BJC fought hard for the interests of their respective clients. *Id.* The lengthy, hard-fought, motion practice and arm’s length negotiations demonstrates the absence of any fraud or collusion here. This factor supports the settlement being fair, reasonable, and adequate.

2. Litigation in these Actions Would Likely Be Lengthy and Complex

Both the Missouri and Illinois actions are still fairly early in their proceedings. Both actions have had rulings on the pleadings and answers have been filed. Further motion practice—with extensive briefing—would be necessary. A motion for class certification would need to be filed and motions for summary judgment would likely be filed as well. Class certification is inherently risky and would require in-depth research and would necessitate the use of many judicial resources. A trial would likely be lengthy and various experts would be needed on both sides. Even if the Court entered judgment for the Plaintiffs, the judgment would likely lead to an appeal, further lengthening the time until benefits would be distributed to the Class. Both the complexity and the length of future proceedings in these actions would be great, thus this factor also supports the fairness, reasonableness, and adequacy of the hard-fought settlement.

3. The Parties Have Completed Enough Discovery to Craft a Fair Settlement

The Settling Parties have exchanged enough information to negotiate a fair, reasonable, and adequate settlement. Namely, discovery related to BJC’s investigation of the Incident and the number of people affected by the incident was provided by BJC. After examining this information, Class Counsel and BJC’s counsel were able to determine reasonable terms to provide for a settlement that meets fair, reasonable, and adequate.

4. Success for the Class on the Merits is not Guaranteed

This factor is considered to be the “most important” by Missouri courts in determining whether a settlement is fair reasonable and adequate. *Bachman*, 344 S.W.3d at 266. Proposed Class Counsel and the Plaintiffs believe that the claims asserted in the litigation have merit. This is evidenced by their rigorous advocacy in the litigation and negotiations. However, they also recognize the substantial risks that exist if litigation continues. BJC has aggressively maintained

its position that Plaintiffs cannot state a claim for relief, that a class could not be certified, that it would not be found liable at trial, and that Representative Plaintiffs would not be able to prove damages resulting from the Data Breach. While they disagree with BJC's view, Proposed Class Counsel are mindful of the inherent problems of proof and possible defenses to the claims asserted in the litigation. They also recognize the difficulties in establishing liability on a class-wide basis through summary judgment or even at trial and in achieving a result better than that offered by the Settlement here.

In contrast with the risks and length of continuing with litigation, the benefits of the Settlement are certain and immediate. Class Members will be entitled to reimbursement for time and expenses that have occurred as a result of the Incident and will be entitled to credit monitoring services that will help to protect them from future expenses arising out of the Incident. To receive these benefits, the Class Members need only log on to the settlement website and complete the Claim Form. The benefits obtained by the Settlement in favor of the class are fair, reasonable, and adequate when the complexity and uncertainty of further litigation is considered.

5. The Settlement Value is Well Within the Range of Possible Recovery

The benefits that will be made available to the Class through the Settlement are within the range of possible recovery of the Class Members. Due to the risks of data breach litigation, Plaintiffs' Counsel believes that it is possible that the Class could receive nothing if the case is litigated. Barnow Decl. ¶ 13–14. Further, the nature of the Settlement ensures that Class Members will be compensated for the time and expenses because there is no aggregate cap on the amount that BJC will pay to the Class. This ensures that every Class Member who submits a valid claim will receive compensation of their selection for the harms that they have suffered as a result of the breach.

6. The Settlement is Supported by Class Counsel and Plaintiffs

Proposed Class Counsel believes that the Settlement is an excellent outcome for the class in view of the possible issues that could arise during litigation. Likewise, Plaintiffs have approved of the Settlement. In the event of any opt-outs or objections, Plaintiffs and Proposed Class Counsel will respond to them in the Motion for Final Approval and at the Final Fairness Hearing.

B. The Settlement Meets the Prerequisites of Rule 52.08(a)

1. Numerosity

The number of persons in the proposed class makes the joinder of all class members impracticable. The Class here consists of 287,874 persons. This is well over the number that has been approved by Missouri courts to satisfy numerosity. *See Frank v. Enviro-Tech Servs.*, 577 S.W.3d 163, 168 (Mo. Ct. App. 2019) (holding that a class of 82 satisfies the numerosity requirement of Rule 52.08(a)); *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 168 (Mo. Ct. App. 2006) (holding that a class of hundreds is sufficient for the numerosity requirement and noting that “[c]lass certifications have been upheld where the class is composed of even 100 or less”). The numerosity requirement is satisfied here.

2. Commonality

Many questions of law and fact in the case are common to all class members. “The common question ‘must be of such a nature that it is capable of classwide resolution’ such that the determination of its truth or falsity will resolve an issue that is central to the validity of each claim.” *Lucas Subway MidMo, Inc. v. Mandatory Poster Agency, Inc.*, 524 S.W.3d 116, 129–30 (Mo. Ct. App. 2017) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Several questions of law and fact exist here, including:

- a. Whether BJC had a duty to implement and maintain reasonable security procedures and practices to protect and secure Plaintiffs' and Class Members' PHI/PII from unauthorized access and disclosure;
- b. Whether BJC failed to exercise reasonable care to secure and safeguard Plaintiffs' and Class Members' PHI/PII;
- c. Whether BJC engaged in unlawful or unfair acts or practices in violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- d. Whether an implied contract existed between Class members and BJC providing that BJC would implement and maintain reasonable security measures to protect and secure Class Members' PHI/PII from unauthorized access and disclosure;
- e. Whether BJC breached its duties to protect Plaintiffs' and Class members' PHI/PII; and
- f. Whether Plaintiffs and other members of the Class are entitled to damages, injunctive relief, or other equitable relief, and the measure of such damages and relief.

3. Typicality

Plaintiffs' claims are also typical of the rest of the Class's claims. The typicality requirement is "is fairly easily met so long as other class members have claims similar to the named plaintiff. Factual variations in the individual claims will not normally preclude class certification if the *claim arises from the same event or course of conduct as the class claims*, and gives rise to the same legal or remedial theory." *Dale*, 204 S.W.3d at 169 (emphasis in original) (quoting *Carpe*

v. Aquila, Inc., 224 F.R.D. 454, 457 (W.D. Mo. 2004)). Here, Plaintiffs and the Class all suffered injuries arising out of the Incident. While injuries may differ somewhat, all of their claims arise from the same event and under the same legal theories. The typicality requirement is met here.

4. Adequacy

Plaintiffs and Proposed Class Counsel are more than adequate and easily meet this requirement. “To satisfy Rule 52.08(a)(4), a plaintiff must demonstrate that class counsel is qualified and competent to conduct the litigation and that the plaintiff has no interests that are antagonistic to the other proposed class members.” *Lucas Subway MidMo, Inc.*, 524 S.W.3d at 130. Plaintiffs have demonstrated that they are well-suited to represent the Settlement Class. They each came forward prior to the filing of the initial complaints and have been involved in this matter since that time. Their interests are aligned with those of the other Settlement Class members. Additionally, Proposed Class Counsel are well qualified to represent the Settlement Class, as they possess significant experience leading the prosecution of complex class action matters. *See e.g.* Barnow Decl. ¶¶ 21–31. The Rule 52.08(a)(4) adequacy requirement is also met here.

C. The Settlement Meets the Requirements of Rule 52.08(b)(3)

1. Common Questions Predominate Over Questions Affecting Individuals

The predominance requirement tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. To satisfy this requirement, not every single issue must be common to all class members. *See Elsea v. U.S. Eng’g Co.*, 463 S.W.3d 409, 422 (Mo. Ct. App. 2015). “In fact, the predominance requirement can be satisfied if there is one single common issue that is the overriding issue in the litigation.” *Id.* (quoting *Smith v. Am. Family Mut. Ins. Co.*, 289 S.W.3d 675, 688 (Mo. App. W.D. 2009)). “[T]he fundamental question is whether the group aspiring to class status is seeking to remedy a common legal grievance.” *Dale*, 204 S.W.3d at 175

(quoting *Carpe v. Aquila, Inc.*, 224 F.R.D. 454, 458 (W.D. Mo. 2004)). “[P]redominance is not precluded when there needs to be an inquiry as to individual damages.” *State ex rel. McKeage v. Cordonnier*, 357 S.W.3d 597, 600 (Mo. 2012).

This litigation revolves around a singular event that affected all Class Members in similar ways. The main underlying legal question common to the claims of all Class Members is whether BJC breached its duties to keep the Class Members PII/PHI safe. The main factual questions surrounding this litigation are whether BJC failed to take reasonable and adequate measures to prevent the Data Breach, whether BJC detected the Data Breach in a timely matter once initiated, and whether BJC effectively remedied and mitigated the effects of the Data Breach. All of these questions are common to all of the Class Members. Predominance is satisfied.

2. A Class Action is Superior Here

“The superiority requirement requires the trial court to balance, in terms of fairness and efficiency, the merits of a class action in resolving the controversy against those of alternative available methods of adjudication.” *Dale*, 204 S.W.3d at 181 (internal quotation omitted). “The balancing must be in keeping with judicial integrity, convenience, and economy.” *Id.* Another fact the Court may take into consideration is “the inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually.” *Id.* at 183.

A class action here is superior because of the increased efficiency and because a class action is likely the only way many Class members would be able to receive any compensation for their injuries stemming from the Data Breach. Courts routinely recognize that class actions are superior to individual litigation in other data breach cases where class-wide settlements have been approved. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK,

2020 U.S. Dist. LEXIS 129939, at *43 (N.D. Cal. July 22, 2020); *Hameed-Bolden v. Forever 21 Retail, Inc.*, No. 2:18-CV-03019 SJO (JPRx), 2019 U.S. Dist. LEXIS 231593, at *18 (C.D. Cal. Aug. 12, 2019); *Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, No. JKB-16-3025, 2019 U.S. Dist. LEXIS 120558, at *13 (D. Md. July 15, 2019). The Class here consists of approximately 287,876 persons. Having individual trials for all of the Class members would be impracticable and inefficient for the Court. *See Dale*, 204 S.W.3d at 183 (noting that “judicial economy would dictate that all such possible claims be tried in one class action lawsuit” when the number of claims were in the “hundreds or even thousands”). Further, the amount of damages for each class member is relatively small compared to the cost of litigation. A class action is superior to any other form of resolution here.

V. THE NOTICE PROGRAM IS SATISFACTORY

The Notice program, designed by experienced notice experts at RG/2 Claims, will provide the best notice practicable in compliance with Rule 52.08. The Notice program provides for robust direct notice via USPS first class mail, the creation of website containing important information about the Settlement, and a toll-free number that Class Members can call to seek information about the Settlement. Wickersham Decl., attached as Exhibit C, ¶ 6–11.

Direct mail notice via postcard will be sent to the Settlement Class members who are identified from Defendants’ records. Wickersham Decl. ¶ 7(a). This list of Settlement Class members will be updated by running the data through the USPS National Change of Address registry. *Id.* Direct USPS mail is the preferred form of notice for class members in a class action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175–76 (1974). For returned postcards without a forwarding address, RG/2 Claims will perform a search in order to retrieve the most accurate and

updated information. The Notice will be either be re-mailed to the updated addresses or sent by email. Wickersham Decl. ¶ 10.

A website will be established that provides access to the Notice and other important court documents relevant to the Notice. Wickersham Decl. ¶ 7(b).

The Notice is written in plain language and will be readily understandable to the Settlement Class. Wickersham Decl. ¶ 11.

The Notice program provides the best practicable method to reach the potential class members and is consistent with other class action notice programs that have been approved by various courts for similarly situated matters. Wickersham Decl. ¶ 8.

VI. CONCLUSION

The Settlement readily meets the standard for preliminary approval. Plaintiffs respectfully request that this Honorable Court enter an Order:

- (1) Preliminarily approving the Settlement;
- (2) Directing that notice be disseminated to the Settlement Class Members in accordance with the Notice Program;
- (3) Appointing RG/2 Claims Administration LLC (“RG/2”) as Settlement Administrator;
- (4) Approving the form and content of the Short Form Notice, Long Form Notice, and Claim Form attached as Exhibits A, B, and C to the Settlement Agreement;
- (5) Appointing plaintiffs Brian Lee Bauer, Tiffany Jew, Jessica Simpson, Leaha Sweet, and Bradley Dean Taylor as Representative Plaintiffs;
- (6) Appointing Ben Barnow of Barnow and Associates, P.C., John F. Garvey of Carey Danis & Lowe, and J. Gerard Stranch, IV of Branstetter, Stranch & Jennings,

PLLC, as Missouri Class Counsel and Class Counsel, and Troy Walton of Walton Telken, LLC, Kenneth J. Brennan and Tyler Schneider of TorHoerman Law, LLC, and Aaron Zigler of Zigler Law Group, as Illinois Class Counsel (collectively, “Proposed Class Counsel”);

- (7) Scheduling a Final Fairness hearing to consider the entry of final order and judgment approving the Settlement and the request for attorneys’ fees, costs, expenses, and Plaintiffs’ service awards; and
- (8) Such other relief as the Court deems just and appropriate.

Dated: April 25, 2022

Respectfully submitted,

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Proposed Illinois Class Counsel

Certificate of Service

The undersigned hereby certifies that the foregoing Unopposed Motion for Preliminary Approval of Class Action Settlement has been filed by using the Court's electronic case filing system on this 25th day of April, 2022, thereby serving all registered parties of record.

/s/John F. Garvey, Jr.

Exhibit A

Settlement Agreement

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

)	Cause No. 2022-CC09492
)	
IN RE BJC HEALTHCARE)	Division 1
DATA BREACH LITIGATION)	
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SETTLEMENT AGREEMENT

This Settlement Agreement, dated April 21, 2022, is made and entered into by and among: (1) Plaintiffs Brian Lee Bauer, Tiffany Jew, Jessica Simpson, Leah Sweet, Bradley Dean Taylor (“Plaintiffs” or “Class Representatives”), on behalf of themselves and the proposed Settlement Class; and (2) BJC Health System, d/b/a BJC Healthcare (“BJC”); and (3) BJC Collaborative, LLC (the “Collaborative”) (collectively, the “Parties”).

I. BACKGROUND

1. This litigation arises from a security incident involving the personally identifiable information (“PII”) and protected health information (“PHI”) of BJC’s patients and employees.

2. Plaintiffs allege that a phishing attack occurred on March 6, 2020, and that this attack may have resulted in cyber-criminals accessing and obtaining the PII/PHI of BJC’s patients and employees through one or more BJC employee email accounts (the “Incident”). Plaintiffs allege that the PII/PHI of approximately 287,874 BJC patients and employees was impacted in the Incident.

3. After BJC provided notice of the Incident on May 5, 2020, Plaintiffs filed several lawsuits against BJC:

- a. Plaintiffs Tiffany Jew and Jessica Simpson filed their petition on July 13, 2020. *Tiffany Jew and Jessica Simpson v. BJC*, Case No. 2022-CC09315 (Circuit Court of the City of St. Louis, Missouri).

- b. Plaintiff Brian Lee Bauer filed his petition on August 10, 2020, which became the operative action once consolidated. *Brian Lee Bauer v. BJC*, Case No. 2022-CC09492, (Circuit Court of the City of St. Louis, Missouri).
- c. On January 28, 2021, Plaintiffs Jew, Simpson, and Bauer consolidated their actions into the instant action, styled *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC09492.
- d. The Plaintiffs described in paragraph 3(a)-(c) are the “Missouri Plaintiffs.”
- e. Plaintiff Leaha Sweet filed her complaint on September 16, 2020. *Leaha Sweet v. BJC*, Case No. 20-CV-0947, (S.D. Ill.).
- f. On February 24, 2021, Plaintiff Sweet amended her complaint to add plaintiff Bradley Dean Taylor.
- g. The Plaintiffs described in paragraph 3(e)-(f) are the “Illinois Plaintiffs.”

4. The Missouri Plaintiffs asserted the following causes of action against BJC: (1) negligence; (2) negligence per se; (3) breach of implied contract; (4) violation of the Missouri Merchandising Practices Act; (5) unjust enrichment; (6) invasion of privacy; and (7) breach of contract.

5. The Illinois Plaintiffs asserted the following causes of action against BJC and the Collaborative: (1) unjust enrichment; (2) breach of contract (BJC only); (3) negligence; (4) Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”); (5) negligence per se; (6) breach of covenant of good faith and fair dealing; (7) vicarious liability; and (8) violation of the Missouri Merchandising Practices Act. The Illinois Plaintiffs also asserted claims of bailment and invasion of privacy, but those were dismissed with prejudice by the United States District Court for the Southern District of Illinois.

6. BJC and the Collaborative moved to dismiss Plaintiffs' Petitions and Complaints, and apart from the dismissals identified in paragraph 5, those motions were denied.

7. BJC filed its answer to the Missouri Plaintiffs' Consolidated Petition on May 13, 2021, denying that the Missouri Plaintiffs were entitled to any relief, and it filed its answer to the Illinois Plaintiffs' Complaint on July 29, 2021, denying that the Illinois Plaintiffs were entitled to any relief.

8. The Parties engaged in discovery.

9. On September 1, 2021, the Parties participated in a full-day mediation with JAMS Mediator Bruce A. Friedman, Esq.

10. The Parties were unable to reach a resolution at the mediation, but continued to engage in settlement negotiations

11. After coming to an agreement in principle, the Parties finalized the terms of this Settlement Agreement and the attached exhibits.

12. The Class Representatives and Class Counsel believe the Settlement confers substantial benefits on the Settlement Class and is in the best interest of the putative class.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is hereby agreed by and among the Class Representatives, individually and on behalf of the Settlement Class, BJC, and the Collaborative that, subject to the approval of the Court, the Litigation be forever resolved, settled, compromised, and dismissed with prejudice on the following terms and conditions:

II. DEFINITIONS

13. The terms used in this Settlement Agreement, and listed in this section, shall have the following meanings:

- a. "Missouri Action" means *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC09492.

- b. “Illinois Action” means *Leaha Sweet & Bradley Dean Taylor v. BJC*, Case No. 20-CV-0947, (S.D. Ill.).
- c. “Action” means the Missouri Action and the Illinois Action, together.
- d. “Agreement” or “Settlement Agreement” or “Settlement” means this Settlement Agreement, Exhibits, and the settlement embodied herein.
- e. “Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.
- f. “Claimant” means a Settlement Class member who makes a Claim for benefits under this Settlement Agreement.
- g. “Claims Administrator” means the third-party settlement administrator chosen by the Parties to provide Notice of the Settlement to the Settlement Class and administer the Settlement, subject to approval of the Court.
- h. “Claims Deadline” means the final time and date by which a Claim must be postmarked or submitted to the Settlement Website in order for a Class Member to be entitled to any of the settlement consideration contemplated by this Agreement. The Claims Deadline shall be one hundred and eighty (180) days after the Notice Date.
- i. “Claim Form” means the form that the Settlement Class member must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall be reformatted by the Settlement Administrator as needed. The Claim Form template is attached as **Exhibit A** to this Settlement Agreement.
- j. “Class Counsel” means Illinois Class Counsel and Missouri Class Counsel.

- k. “Missouri Class Counsel” means Ben Barnow, J. Gerard Stranch, IV, and John F. Garvey.
- l. “Illinois Class Counsel” means Troy Walton, Kenneth J. Brennan, Tyler Schneider, and Aaron Zigler.
- m. “Lead Class Counsel” means Missouri Class Counsel.
- n. “Class Representatives” means the Plaintiffs (as defined later in this section).
- o. “Missouri Petition” means the Consolidated Class Action Petition filed on January 28, 2021, before the Court.
- p. “Illinois Complaint” means the Second Amended Class Action Complaint filed in the Southern District of Illinois on February 24, 2021.
- q. “Court” means the Hon. Judge Christopher E. McGraugh for the Circuit Court of the City of St. Louis, Missouri, or such other Court sitting in its stead.
- r. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement in the Action shall become effective and final, and occurs when the Final Judgment, as defined in Paragraph 13-t, below, has been entered and all times to appeal therefrom have expired with (1) no appeal or other review proceeding having been commenced; or (2) an appeal or other review proceeding having been commenced, and such appeal or other review having been concluded such that it is no longer subject to review by any court, whether by appeal, petitions for rehearing or reargument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been resolved in a manner that affirms the Final Judgment in all material respects.

- s. “Fees, Costs, and Expenses” means the reasonable attorneys’ fees, costs, and expenses incurred by counsel for Plaintiffs and awarded by the Court, not to exceed the amount agreed to by the Parties.
- t. “Final Judgment” means a judgment entered by the Court, as discussed in Section XIII, below.
- u. “Litigation” means all claims and causes of action asserted, including those asserted in the Missouri Action and the Illinois Action, or that could have been asserted, against BJC, the Collaborative, and the Released Parties, including any and all appellate rights, as well as any other such actions by and on behalf of any other individuals or putative classes of individuals originating, or that may originate, in the jurisdictions of the United States against BJC and the Collaborative relating to the Incident. The Parties represent that they are unaware of any such actions pending other than the Missouri Action and the Illinois Action.
- v. “Notice” means the postcard “Notice of Pendency and Proposed Settlement of Class Action,” substantially in the form, included within **Exhibit B**, attached hereto, which is to be mailed to Settlement Class members via U.S.P.S. first class mail, subject to approval by the Court.
- w. “Notice Date” means the first date upon which the Notice is disseminated.
- x. “Opt-Out Date” means the date by which Settlement Class members must submit their request to be excluded from the Settlement Class in order for that request to be effective.
- y. “Parties” means (i) Class Representatives, on behalf of themselves and the Settlement Class; (ii) BJC; and (iii) the Collaborative.

- z. “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, agents and/or assignees.
- aa. “Plaintiffs” mean Brian Lee Bauer, Tiffany Jew, Jessica Simpson, Leaha Sweet, and Bradley Dean Taylor.
- bb. “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing mailed notice to the Settlement Class of the pendency of the Action and of the Settlement, to be entered by the Court.
- cc. “Released Claims” means any and all claims and causes of action of every nature and description (including Unknown Claims), whether arising under federal, state, statutory, regulatory, common, foreign, or other law, that arise in any way from or relate to the Litigation against BJC and/or the Collaborative and the Incident (other than claims to enforce the Settlement).
- dd. “Released Parties” means BJC and the Collaborative and all of their respective past, present, and future parent companies, partnerships, subsidiaries, affiliates, divisions, employees, servants, members, providers, partners, principals, directors, shareholders, and owners, and all of their respective attorneys, heirs, executors, administrators, insurers, reinsurers, joint ventures, personal representatives, predecessors, successors, transferees, trustees, and assigns, and includes, without limitation, any Person related to any such entities who is, was, or could have been named as a defendant in the Litigation.

- ee. “Incident” means the data incident described in the petitions filed by the Missouri Plaintiffs and in the Second Amended Complaint filed by the Illinois Plaintiffs.
- ff. “Settlement Class” means all Persons to whom BJC sent notification that their personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Incident.
- gg. “BJC” means BJC Health System, d/b/a BJC Healthcare (“BJC”).
- hh. “BJC’s Counsel” means Baker & Hostetler LLP.
- ii. “The Collaborative” means BJC Collaborative, LLC.
- jj. “The Collaborative’s Counsel” means Husch Blackwell.
- kk. “Unknown Claims” means any of the Released Claims that any Settlement Class members, including any of the Class Representatives, does not know or suspect to exist in his/her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, the Class Representatives expressly shall have, and each of the other Settlement Class members shall be deemed to have, and by operation of the Final Judgment shall have, waived the provisions, right, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by the law of any state, province, or territory of the United States, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR

SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class members, including the Class Representatives, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives expressly shall have, and each other Settlement Class member shall be deemed to have, and by operation of the Final Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all of the Released Claims. The Parties acknowledge, and Settlement Class members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

III. SETTLEMENT BENEFITS TO CLASS

18. **Ordinary Expense Reimbursement:** All Settlement Class members who submit a valid Claim are eligible to recover compensation for up to \$250 of their ordinary out-of-pocket expenses, that were incurred between March 6, 2020 and the Claims Deadline, as a result of the Incident, including: (i) cost to obtain credit reports; (ii) fees related to credit freezes; (iii) card replacement fees; (iv) late fees; (v) overlimit fees; (vi) interest on payday loans taken as a result of the Incident; (vii) other bank or credit card fees; (viii) postage, mileage, and other incidental expenses resulting from lack of access to an existing account; and (ix) costs associated with credit monitoring or identity theft insurance if purchased as a result of the Incident; (x) compensation for attested-to lost time spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the

aftermath/clean-up of the Incident, at the rate of \$20 per hour for up to three (3) hours of lost time (attestation requires at least a narrative description of the activities performed during the time claimed and their connection to the Incident). No attestation or verification required or permitted by this Agreement shall require notarization.

- a. For a Claimant to recover documented costs of credit monitoring services activated between March 6, 2020 and the Claims Deadline incurred as a result of the Incident, discussed in subpart (ix), above, the Claimant must submit either (1) a receipt showing a one year subscription to a credit monitoring service between March 6, 2020 and the Claims Deadline incurred as a result of the Incident; or (2) at least three receipts showing consecutive monthly payments to a credit monitoring service during the same period of time and an attestation that the Claimant intends to continue subscribing to such service through at least one year after the Claims Deadline. These instructions shall be expressly listed in the Long Form notice posted on the settlement website, and listed in the FAQs posted on the settlement website. These instructions shall be referenced in the online or mailed claim form. If these instructions are not followed in a material manner as determined by the Settlement Administrator in its professional judgment, the Settlement Administrator shall deem Claims invalid, subject to the Dispute Resolution Process.
- b. Settlement Class members seeking reimbursement under this Paragraph 18 must complete and submit either a written or online claim form to the Claims Administrator, postmarked or electronically submitted on or before the Claims Deadline. The claim form must be verified by the Settlement Class member with an attestation that he or she believes that the losses or expenses claimed were incurred as a result of the Incident. The claim form will require reasonable documentation of the ordinary out-

of-pocket cost(s). The reasonableness of such documentation will be determined by the Settlement Administrator in its professional judgment.

19. **Extraordinary Expense Reimbursement:** All Settlement Class members who submit a valid Claim are also eligible to recover compensation for up to \$5,000 of their documented extraordinary monetary out-of-pocket losses incurred on or after March 6, 2020, as a result of the Incident. This category of compensation requires documentation plausibly supporting that the loss was not reimbursed by any other source, the loss was in material part caused by the Incident, and the Settlement Class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. The determination of whether a loss was “in material part” caused by the Incident shall be determined by the Settlement Administrator. Any Settlement Class member who suffered documented fraud, attempted fraud, or publication or actual misuse associated with PHI compromised as a result of the Incident shall have the right to claim up to an additional three hours of lost time, at \$20 per hour, for time spent remedying the fraud or attempted misuse, subject to the \$5,000 extraordinary expense cap.

- a. Settlement Class members seeking extraordinary expense reimbursement under this Paragraph 19 must complete and submit either a written or online claim form to the Claims Administrator, postmarked or electronically submitted on or before the Claims Deadline.
- b. To claim extraordinary out-of-pocket expense reimbursements, a Settlement Class member must: (i) provide identification of the identity theft event(s); (ii) attest that he or she believes that the losses or expenses were incurred as a result of the Incident, and (iii) provide reasonable documentation of the out-of-pocket losses claimed.

- c. Claims for extraordinary compensable additional lost time will be provided to Settlement Class members subject to the following: reimbursement for up to three (3) hours of extraordinary compensable additional lost time will require an attestation that the time was spent as a result of the documented identity theft or fraud.

20. **Credit Monitoring Protections:** BJC agrees to offer two (2) years of 1B credit monitoring and identity theft insurance through IDX. Settlement class members must affirmatively request credit monitoring by indicating such request on the Claim Form, and codes will be sent either to an email address provided by the Settlement class member or, if they do not have an email address, mailed to the address provided on the claim form.

21. **Equitable Relief: BJC agrees to implement and maintain the following for at least one year from the Effective Date:**

- a. Security Policy: BJC agrees to maintain a written information security policy and further agrees to require BJC employees to electronically acknowledge receipt and review of BJC's written information security policy.
- b. Training: BJC will conduct cybersecurity training that contains annual mandatory classes, new hire orientation, and periodic training updates to necessary staff as new information security issues and trends arise.
- c. Password policy: BJC will maintain a written password policy that requires appropriate password complexity commensurate to sensitivity level to the system.
- d. BJC will require Multi-Factor Authentication (MFA) for remote access to e-mail.
- e. BJC has estimated the costs incurred in providing the equitable relief as approximately \$2,688,000, including \$1,223,000 in initial implementation costs and \$1,465,000 in annual maintenance costs. These estimates include both licensing and other outside vendor costs as well as internal costs attributable to personnel dedicated to ensuring

compliance with the equitable terms. These figures are reasonable estimates only and nothing in this Agreement shall be interpreted as requiring BJC to spend a particular dollar amount to comply with the Equitable Relief described in this paragraph 21, but BJC must comply with the Equitable Relief described in paragraph 21.

IV. STIPULATED CLASS ACTION SETTLEMENT CERTIFICATION

22. Only for purposes of effectuating the Settlement, Class Representatives, Class Counsel, BJC, and the Collaborative agree and stipulate to certification of the Settlement Class as defined in this Agreement. Class Representatives, Class Counsel, BJC, and the Collaborative further agree and stipulate that, subject to Court approval, Class Counsel shall act as counsel for the Settlement Class.

23. Class Representatives, Class Counsel, BJC, and the Collaborative agree and stipulate that the Settlement should be approved by the Court, and that the Court should make a determination that the Settlement is fair, reasonable, and adequate, and made in good faith. Class Counsel and BJC shall bear the expenses and responsibility for taking all necessary measures to obtain Court approval, including, without limitation, preparing and filing all papers with the Court necessary for obtaining such approval, and following the required procedures for a good faith determination.

24. Class Representatives, Class Counsel, BJC, and the Collaborative agree and stipulate that the Parties shall timely submit the motions for Preliminary and Final Approval of the Parties' Settlement to the Court.

V. RELEASE

25. Settlement Class members who do not opt-out of the Settlement in accordance with Court approved opt-out procedures and deadlines release any and all claims arising from or related to claims asserted in the Litigation, as more specifically set forth in Paragraphs 26 and 27, below.

26. The obligations incurred under this Settlement shall be in full and final disposition of the Litigation and of any and all Released Claims as against all Released Parties.

27. Upon the Effective Date, and without any further action, the Settlement Class members, including the Class Representatives, for good and valuable consideration the adequacy of which is hereby acknowledged, shall fully, finally, and forever release, relinquish, and discharge any and all Released Claims against each and every one of the Released Parties, and shall forever be barred and enjoined, without the necessity of any of the Released Parties posting a bond, from commencing, instituting, prosecuting, or maintaining any of the Released Claims. Upon the Effective Date, and without any further action, Class Representatives further agree not to knowingly and voluntarily assist in any way any third party in commencing of prosecuting any suit against the Released Parties relating to any Released Claim.

VI. ADMINISTRATION OF THE SETTLEMENT AND CLASS NOTICE

28. The Claims Administrator shall provide notice to the Settlement Class members and administer the Settlement under the Parties' supervision and subject to the exclusive jurisdiction of this Court.

29. Dissemination of the Notice shall be accomplished by the Claims Administrator and shall comply with the following:

- a. *Class Member Information*: No later than ten (10) days after entry of the Preliminary Approval Order, BJC shall provide the Claims Administrator with the name and physical address of each Settlement Class member (collectively, "Class Member Information") initially notified of the Incident. BJC agrees that it will provide the most current Class Member Information for all Settlement Class members from the updated mailing list in connection with the incident responses related to the Incident.

- b. The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the Settlement as provided for in this Agreement, or to provide all data and information in its possession to the Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- c. *Settlement Website:* Prior to the dissemination of the Notice, the Parties agree to direct the Claims Administrator to create a website dedicated to providing information related to the Action and this Settlement, including the Long Form notice contained within **Exhibit C**. The website will include the information in the Notice, access to relevant publicly available court documents relating to the Action and provide Settlement Class members with the ability to enroll in the Credit Monitoring Protections, make Claims for other Class benefits, and allow Settlement Class members to submit documents to supplement or cure deficient Claims.
- d. *Settlement Toll Free Number:* The Claims Administrator shall establish and maintain a toll free telephone number with information relevant to this Settlement.
- e. Within twenty-one (21) days of receiving the Class Member Information, the Claims Administrator shall crosscheck the Class Member Information against the National Change of Address directory to ensure the most recent and accurate addresses are used to disseminate the Notice. Upon receipt of any notice of address or forwarding address, the Claims Administrator shall re-mail any Notice so returned with a forwarding address.

- f. Within forty-five (45) days of receiving the Class Member Information, the Claims Administrator shall commence the dissemination of the Notice. Within fifteen (15) days thereafter, dissemination of the Notice shall be completed.
- g. Notice shall be given by U.S.P.S. first class mail to all Settlement Class members and postage will be prepaid by BJC. U.S. mail Notice shall consist of a postcard that
 - (1) notifies Settlement Class members of the Settlement and relevant terms;
 - (2) provides them with the URL to the Settlement Website and a telephone number they can call to obtain additional information about the Settlement; and
 - (3) instructs them on how to make a Claim.
- h. Notice is subject to review and approval by the Parties as well as an expert specializing in providing notice and administration to class members. Notice via U.S. mail shall be supplemented with the publication on BJC's website to the extent practicable.
- i. All Settlement Class members shall have one hundred and eighty days (180) after the Notice Date to make Claims for Class benefits.

30. The administration of the Settlement is defined as the approval of the form of notice program and all related forms; initial mailing of the Notice; creation and maintenance of Settlement Website; administration and coordination of the mailing and distribution of credit monitoring codes to be activated after final approval of Settlement; day-to-day administration of the Settlement, including responding to Settlement Class member inquiries; delivery to the Parties of any requests for opt-outs or objections; communication to the Parties about any issues that may arise; and the preparation of an Affidavit of Fairness of the Notice Program to be submitted to the Court with the Motion for Final Approval.

31. The notice program shall be designed to provide for maximum clarity and ease of Claim submission. Claims may be made by submitting a paper claim for by mail or by filling out an online claim form to be developed by the Claims Administrator.

32. The Claims Administrator shall inform Class Counsel and BJC's Counsel regarding all material aspects of the claims process including Claims made, Claims accepted, Claims rejected, and all substantive communications with Settlement Class members. Class Counsel may assist Settlement Class members with the claims process and intercede with the Claims Administrator on their behalf.

33. Checks and credit monitoring codes for approved claims shall be mailed or emailed after the Effective Date and within thirty (30) days of the Effective Date and/or thirty (30) days of the date that the claim is approved, whichever is latest.

34. Cashing a settlement check is a condition precedent to any Settlement Class member's right to receive Settlement benefits under Paragraphs 18 and 19. All settlement checks shall be void one hundred and twenty (120) days after issuance and shall bear the language: "This check must be cashed within 120 days of its date, after which time it is void." If a check becomes void, the Settlement Class member shall have an additional one hundred and twenty (120) days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class member will have failed to meet a condition precedent to recovery of Settlement benefits under Paragraphs 18 and 19, the Settlement Class member's right to receive monetary relief shall be extinguished, and BJC shall have no obligation to make payments to the Settlement Class member for expense reimbursement under Paragraphs 18 and 19 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than two hundred and forty (240) days from the Effective Date, requests for re-issuance need not be honored after such checks become void, except for good cause as determined by the Claims Administrator in its professional judgment.

35. All Settlement Class members who fail to timely submit a claim for any benefits hereunder within the time frames set forth within, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the Settlement set forth within, but will in all other respects be subject to, bound by, the provisions of the Settlement Agreement, the releases contained herein, and the Final Judgment.

36. No Person shall have any claims against the Claims Administrator, Class Representatives, Class Counsel, BJC, the Collaborative, and/or BJC's/the Collaborative's Counsel based on distribution of benefits to Settlement Class members. Nothing contained herein shall be deemed a release of any claim against the Claims Administrator for its breach of fulfilling its duties due under its administration obligations.

VII. OPT-OUT PROCEDURES

37. Under the procedure set forth in the Notice, Settlement Class members have the right and ability to exclude themselves from the Settlement Class as set forth in the proposed preliminary approval order. In order to validly be excluded from the Settlement, the Settlement Class member must send a letter to the Claims Administrator no later than sixty (60) days after the Notice Date, stating he or she wants to be excluded from the Settlement in either the Missouri Action, the Illinois Action, or both, and include his or her name, address, and signature. If the opt-out is untimely or otherwise fails to comply with any of the provisions for a valid opt-out, it shall not be considered a valid opt-out.

38. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in Paragraph 37, above, shall be bound by the terms of this Settlement Agreement and Final Judgment entered thereon.

39. The Claims Administrator shall cause copies of requests for exclusion from Settlement Class members to be provided to Class Counsel and BJC's Counsel as they are received. No later than ten (10) days after the Opt-Out Date, the Claims Administrator shall provide Class Counsel and BJC's Counsel a complete and final list of all known Settlement Class members who have excluded themselves from the Settlement. Class Counsel shall provide this information to the Court before the Final Fairness Hearing.

40. In the event that within ten (10) days after the Opt-Out Date, there have been requests for exclusion totaling more than two hundred and fifty (250) individuals, BJC may void this Settlement Agreement by notifying Class Counsel in writing. If BJC voids this Settlement Agreement under this paragraph, (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

VIII. OBJECTION PROCEDURES

41. The Notice will inform the Settlement Class members that they may submit a written objection in this case, *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC0949, before the Hon. Judge Christopher E. McGraugh for the Circuit Court of the City of St. Louis, Missouri. To be valid, an objection must state: (a) the objector's full name, address, telephone number (if any), and e-mail address (if any); (b) information identifying the objector as a Settlement Class member; (c) a written statement of all grounds for the objection, accompanied by any legal support the objector cares to submit; (d) the identity of all lawyers (if any) representing the objector; (e) the identity of all

of the objector’s lawyers (if any) who will appear at the Final Fairness Hearing; (f) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (g) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector’s signature or the signature of the objector’s duly authorized lawyer or other duly authorized representative.

42. In addition to the foregoing, objections should also provide the following information:

(a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years and (b) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

43. The Notice will further inform Settlement Class members that to be considered timely, any valid objection in the appropriate form must be **filed** with the Clerk for the Circuit Court of the City of St. Louis, Missouri no later than sixty (60) days after the Notice Date. The Notice will also inform Settlement Class members that they must **mail** a copy of their objection to the following three different places, postmarked no later than sixty (60) days after the Notice Date:

COURT	CLASS COUNSEL	BJC’S COUNSEL
Clerk of Court, Circuit Court of the City of St. Louis, Missouri. 10 N Tucker Blvd, St. Louis, MO 63101	Ben Barnow Barnow and Associates, P.C. 205 W. Randolph St. Ste. 1630 Chicago, IL 60606	Paul Karlsgodt BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, Colorado 80202

44. The Parties agree that Plaintiffs will take the lead in drafting responses to any objections to the Settlement, including any appeals filed by the objectors. However, both Parties retain their rights to make any argument(s) in response to any objector.

45. Any Settlement Class member who fails to comply with the requirements for objecting in this Section VIII shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of Section VIII. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Judgment to be entered upon final approval, shall be pursuant to appeal and not through a collateral attack.

IX. DISPUTE RESOLUTION FOR CLAIMS

46. The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the Claimant is a Settlement Class member; (2) the Claimant has provided all information needed to complete the claim form, including any documentation that may be necessary to reasonably support the claimed ordinary or extraordinary expenses, described in Paragraphs 18 and 19, above; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the Claimant has suffered the claimed losses as a result of the Incident (collectively, “Complete and Plausible”). The Claims Administrator may, at any time, request from the Claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the Claim (“Claim Supplementation”), e.g., documentation requested on the claim form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof.

47. The Claims Administrator’s initial review will be limited to a determination of whether the Claim is Complete and Plausible. For any such Claims that the Claims Administrator determines to be implausible, the Claims Administrator will submit those Claims to the Parties (Lead Class Counsel shall be designated to fill this role for all Plaintiffs). If the Parties agree that the Claimant’s

Claim is Complete and Plausible then the Claim shall be paid. If the Parties agree that the Claim is incomplete and/or implausible, it shall be denied. If the Parties do not agree, after meeting and conferring, then the Claim shall be referred to a mediator pursuant to agreement between the Parties (the “Claims Referee”), for resolution.

48. Upon receipt of an incomplete or unsigned claim form or a claim form that is not accompanied by sufficient documentation to determine whether the Claim is Complete and Plausible, the Claims Administrator shall request Claim Supplementation and give the Claimant thirty (30) days to cure the defect before rejecting the Claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such claim form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the 30-day period, the Claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the 30-day deadline in which to comply; however, in no event shall the deadline be extended to later than one year from the Effective Date. The COVID-19 pandemic, in and of itself, does not constitute good cause, but a Claimant may show good cause by providing information regarding why the COVID-19 pandemic caused the Claimant to fail to comply with the 30-day period. If the defect is not cured, then the Claim will be deemed invalid and there shall be no obligation to pay the Claim.

49. Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each Claim. If, after review of the Claim and all documentation submitted by the Claimant, the Claims Administrator determines that such a Claim is Complete and Plausible, then the Claim shall be paid. If the Claim is not Complete and Plausible because the Claimant has not provided all information needed to complete the claim form and evaluate the Claim, then the Settlement Administrator may

reject the Claim. If the Claim is rejected in whole or in part, for other reasons, then the Claim shall be referred to the Parties. If the Parties agree that the Claimant's Claim is incomplete and/or implausible then no further action shall be taken. If the Parties agree that the Claimant's Claim is Complete and Plausible then the Claim shall be paid. If the Parties do not agree, after meeting and conferring, then the Claim shall be referred to the Claims Referee for resolution. Once a final determination regarding a Claim has been made, notice will be sent to the Claimant by the Claims Administrator regarding whether the Claim has been accepted, in whole or lesser amount, or rejected.

50. Settlement Class members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination. If the Claimant approves the final determination, then the approved amount shall be the amount to be paid. If the Claimant does not approve the final determination within thirty (30) days, then the dispute will be submitted to the Parties within an additional ten (10) days.

51. If any dispute cannot be resolved by the Parties and is submitted to the Claims Referee, the Claims Referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days. Alternatively, the Claims Referee may make any other final determination of the dispute or request further supplementation of a Claim within thirty (30) days. The Claims Referee's determination shall be based on whether the Claims Referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Incident. The Claims Referee shall have the power to approve a Claim in full or in part. The Claims Referee's decision will be final and non-appealable. Any Claimant referred to the Claims Referee shall reasonably cooperate with the Claims Referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the Claims Referee to verify the Claim through third

party sources, and failure to cooperate shall be grounds for denial of the Claim in full. The Claims Referee shall make a final decision within thirty (30) days of receipt of all supplemental information requested.

X. NOTICE AND ADMINISTRATION EXPENSES

52. All costs of notice and administration, including, without limitation, the fees and expenses of the Claims Administrator and Claims Referee, shall be paid separately by BJC directly to the Claims Administrator, Claims Referee, or other party.

XI. ATTORNEYS' FEES, COSTS, EXPENSES AND INCENTIVE AWARDS

53. BJC will pay the attorneys' Fees, Costs, and Expenses incurred by Class Counsel in the Action, as approved by the Court, up to the following amounts:

- a. Missouri Class Counsel: \$790,000;
- b. Illinois Class Counsel: \$415,000.

54. The Parties did not discuss or agree upon payment of attorneys' fees, costs, and expenses until after they agreed on all materials terms of relief to the Settlement Class.

55. BJC also agrees not to contest a request for incentive awards of up to \$2,000 per named plaintiff (up to \$10,000 in the aggregate). BJC shall pay any incentive awards in addition to any benefits provided to Class Members and the costs of notice and settlement administration and separate from any award of attorneys' fees, costs, and expenses. The Parties did not discuss or agree upon payment of incentive awards until after they agreed on all materials terms of relief to the Settlement Class.

56. Any attorneys' fees, costs, and expenses awarded by the Court as well as any incentive awards awarded by the Court shall be paid within twenty-one (21) days after the Effective Date of Settlement.

57. BJC shall pay any attorneys' fees, costs, and expenses and any incentive award to the Class Representatives, as set forth above in Paragraphs 53, 54, 55, and 56, to accounts established by

Missouri Class Counsel and Illinois Class Counsel, respectively. Said counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' counsel and the incentive awards to Class Representatives.

58. The amount(s) of each award of attorneys' fees, costs, and expenses (Missouri Class Counsel, Illinois Class Counsel), and the incentive awards to the Class Representatives, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Missouri Class Counsel and Illinois Class Counsel will each file separate fee petitions within forty-five (45) days after the Notice Date. The fee petitions are separate from one another. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, and expenses, and/or incentive award ordered by the Court to the Missouri Class Counsel, Illinois Class Counsel, or Class Representatives shall affect whether the Settlement becomes effective and final or constitute grounds for cancellation or termination of this Settlement Agreement, except that the payment of the attorneys' Fees, Costs, and Expenses, as agreed to in Paragraph 53, will not be paid until any appeal or other review proceeding regarding the attorneys' Fees, Costs, and Expenses has been resolved.

XII. PRELIMINARY APPROVAL OF SETTLEMENT

59. Within ten business days ten (10) days after the execution of the Settlement Agreement, Lead Class Counsel and BJC's Counsel shall jointly submit this Settlement Agreement to the Court and file a Motion for Preliminary Approval of the Settlement with the Court requesting entry of the Preliminary Approval Order attached to Plaintiffs' Motion for Preliminary Approval, or an order substantially similar to such form, requesting, *inter alia*:

- a. Certification of the Settlement Class for settlement purposes only;
- b. Preliminary approval of the Settlement Agreement as set forth herein;
- c. Appointment of Class Counsel as counsel for the Settlement Class;

- d. Appointment of Class Representatives as representatives for the Settlement Class;
- e. Approval of a form of notice, which includes a notice to be individually mailed to the Settlement Class members, as well as a detailed long form notice that will be posted on the Settlement Website;
- f. Appointment of a Claims Administrator as jointly agreed by the Parties.

XIII. FINAL JUDGMENT

60. If the Preliminary Approval Order is entered by the Court, Lead Class Counsel will move the Court, within the time frames contemplated by the Preliminary Approval Order, for entry of a Final Judgment.

61. Upon entry of a Final Judgment the Illinois Plaintiffs shall move to dismiss the Illinois Action, with prejudice.

XIV. TERMINATION

62. If the Effective Date of Settlement does not occur, or if the Settlement is terminated or fails to become effective for any reason, then (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

XV. NO ADMISSION OF WRONGDOING OR LACK OF MERIT

63. The terms of this Settlement (whether the Settlement becomes final or not), the negotiations leading up to this Settlement, the fact of the Settlement, and the proceedings taken

pursuant to the Settlement, shall not: (a) be construed as an admission of liability or an admission of any claim or defense on the part or any Party, in any respect; (b) form the basis for any claim of estoppel by any third-party against any of the Released Parties; or (c) be admissible in any action, suit, proceeding, or investigation as evidence, or as an admission of any wrongdoing or liability whatsoever by any Party, or as evidence of the truth of any of the claims or allegations contained in the Complaint.

XVI. MISCELLANEOUS PROVISIONS

64. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

65. The Parties to the Settlement intend and agree that the Settlement is a final and complete resolution of all disputes related to the Litigation by the Class Representatives and the Settlement Class members who have not timely excluded themselves from the Settlement.

66. The Parties agree that the benefits provided herein and the other terms of the Settlement were negotiated at arm’s length in good faith by the Parties to the Settlement with the assistance of an experienced and independent mediator, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

67. This Settlement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest.

68. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

69. The Parties hereby irrevocably submit to the continuing and exclusive jurisdiction of the Court for any suit, action, proceeding, or disputing arising out of or relating to this Settlement as embodied in the Settlement or its applicability, and agree that they will not oppose the designation of such suit, action, proceeding, or dispute as a related case to the Action.

70. The Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to the Settlement shall exchange among themselves original signed counterparts. Electronically transmitted signatures are valid signatures as of the date thereof.

71. The construction, interpretation, operation, effect, and validity of the Settlement, and all documents necessary to effectuate it, shall be governed by the laws of the State of Missouri. The Parties understand and agree that any disputes arising out of the Settlement shall be governed and construed by and in accordance with the laws of the State of Missouri.

72. The Settlement shall not be construed more strictly against one Party to the Settlement than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Settlement is the result of arm's-length negotiation between the Parties to the Settlement, and all Parties to the Settlement have contributed substantially and materially to the preparation of the Settlement.

73. Any and all counsel and Parties to the Settlement who execute the Settlement and any of the exhibits hereto, or any related Settlement documents, represent that they have reviewed and understand those documents and have the full authority to execute the Settlement, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement to effectuate its terms.

74. Class Counsel, BJC's counsel, and the Collaborative's Counsel agree to recommend approval of the Settlement by the Court and to undertake their best efforts and cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement and the entry of the Final Judgment.

75. BJC agrees to comply with the CAFA notice provisions set out in 28 U.S.C. § 1715.

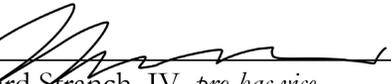
IN WITNESS WHEREOF, the Parties have, through their respective counsel, executed this

Settlement as of the date first above written.

Approved as to form and content by counsel for Plaintiffs and the Settlement Class:

By: /s/ 
Ben Barnow

BARNOW AND ASSOCIATES, P.C.
205 West Randolph Street, Ste. 1630
Chicago, IL 60606
Tel: 312.621.2000
Fax: 312.641.5504
b.barnow@barnowlaw.com

By: /s/ 
J. Gerard Stranch, IV, *pro hac vice*

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By: /s/ John Garvey
John F. Garvey #35879

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Tel: (314) 725-7700
Fax: (314) 678-3401
jgarvey@careydanis.com

By: /s/  go
Troy E. Walton

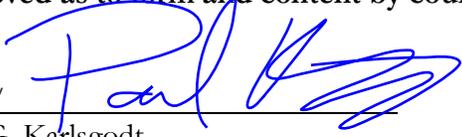
WALTON TELKEN, LLC
241 N. Main Street
Edwardsville, IL 62025
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twalton@waltontelken.com

By: /s/ 
Kenneth J. Brennan

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Approved as to form and content by counsel for BJC:

By: /s/


Paul G. Karlsgodt

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Denver, CO 80202

Tel.: (303) 861-0600

Fax: (303) 861-7805

pkarlsgodt@bakerlaw.com

Approved as to Form and Content by counsel for the Collaborative:

By: /s/

Matthew D. Knepper

Husch Blackwell

190 Carondelet Plaza, Suite 600

St. Louis, MO 63105

314-480-1848

Matt.Knepper@huschblackwell.com

Approved as to form and content by counsel for BJC:

By: /s/ _____
Paul G. Karlsgodt
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Denver, CO 80202
Tel.: (303) 861-0600
Fax: (303) 861-7805
pkarlsgodt@bakerlaw.com

Approved as to Form and Content by counsel for the Collaborative:

By: /s/  _____
Matthew D. Knepper
Husch Blackwell
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
314-480-1848
Matt.Knepper@huschblackwell.com

Settlement Agreement
Exhibit A

Claim Form

BJC Healthcare SETTLEMENT CLAIM FORM

This Claim Form should be filled out online or submitted by mail if you were notified by mail of the Data Incident announced by BJC Health System d/b/a BJC Healthcare (“BJC”) in 2020. All Settlement Class members are eligible to receive two years of credit monitoring services provided by IDX. If you had unreimbursed out-of-pocket expenses, unreimbursed extraordinary monetary losses, or lost time dealing with the aftermath of the Data Incident, you may get a check if you fill out this Claim Form, if the Settlement is approved, and if you are found to be eligible for a payment.

The Settlement Notice describes your legal rights and options. To obtain the Settlement Notice and find more information regarding your legal rights and options, please visit the official Settlement Website, [INSERT WEBSITE], or call toll-free [INSERT PHONE #].

If you wish to submit a claim for a settlement benefit electronically, you may go online to the Settlement Website, [INSERT], and follow the instructions on the “Submit a Claim” page.

If you wish to submit a claim for a settlement benefit via standard mail, you need to provide the information requested below and mail this Claim Form to [INSERT], postmarked by [INSERT MONTH AND DAY], 2022. Please print clearly in blue or black ink.

1. CLASS MEMBER INFORMATION

Required Information:

First: _____ M: _____ Last: _____

Address 1: _____

Address 2: _____

City: _____ State: _____ ZIP: _____

Country: _____

Phone: _____

E-mail: _____

2. BENEFIT ELIGIBILITY INFORMATION

To prepare for this section of the Claim Form, please review the Settlement Notice and the Settlement Agreement (available for download at [INSERT WEBSITE]) for more information on who is eligible for a benefit and the nature of the expenses or losses that can be claimed.

To help us determine if you are entitled to a settlement benefit, please provide as much information as possible.

A. Verification of Class Membership

You are only eligible to file a claim if you are a person to whom BJC sent notification that personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Data Incident occurring on March 6, 2020.

By submitting a claim and signing the certification below, you are verifying that you were notified by mail of the Data Incident announced by BJC in May of 2020.

In addition, to allow the Claims Administrator to confirm your membership in the Class, you must provide either:

(1) The unique identifier provided in the Notice you received by postcard or e-mail;

or

(2) name and physical address you provided to BJC for healthcare or employment related purposes.

Thus, please **EITHER**:

(1) Provide the unique identifier provided in the Notice you received:
_____.

OR

(2) Provide your name _____ and physical address you provided to BJC for healthcare or employment related purposes:
_____.

UPLOAD DOCUMENT [SETTLEMENT ADMINISTRATOR TO ADD]

B. Out-Of-Pocket Expenses

Check the box for each category of out-of-pocket expenses or lost time that you incurred as a result of the Data Incident. Please be sure to fill in the total amount you are claiming for each category and attach the required documentation as described in **bold type** (if you are asked to provide account statements as part of required proof for any part of your claim, you may redact unrelated transactions and all but the first four and last four digits of any account number). Please round total amounts down or up to the nearest dollar.

I. Ordinary Expenses Resulting from the Data Incident

Unreimbursed fees or other charges from your bank or credit card company incurred on or after March 6, 2020 and before [INSERT DATE] (the “Claims Deadline”) due to the

Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Unreimbursed overdraft fees, over-the-limit fees, late fees, or charges due to insufficient funds or interest.

[UPLOAD DOCUMENTS] Required: you must submit reasonable documentation supporting the above losses such as a copy of a bank or credit card statement or other proof of claimed fees or charges (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- Unreimbursed fees relating to your account being frozen or unavailable incurred on or after March 6, 2020 and before the Claims Deadline due to the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: You were charged interest by a payday lender due to card cancellation or due to an over-limit situation, or you had to pay a fee for a money order or other form of alternative payment because you could not use your debit or credit card, and these charges and payments were not reimbursed.

[UPLOAD DOCUMENTS] Required: you must submit reasonable documentation supporting the above losses such as a copy of receipts, bank statements, credit card statements, or other proof that you had to pay these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- Unreimbursed fees or other charges relating to the reissuance of your credit or debit card incurred on or after March 6, 2020 and before the Claims Deadline due to the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Unreimbursed fees that your bank charged you because you requested a new credit or debit card.

[UPLOAD DOCUMENTS] Required: you must submit reasonable documentation supporting the above losses such as a copy of a bank or credit card statement or other receipt showing these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- Other unreimbursed incidental telephone, internet, mileage or postage expenses directly related to the Data Incident incurred on or after March 6, 2020 and before the Claims Deadline due to the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Unreimbursed long distance phone charges, cell phone charges (only if charged by the minute), or data charges (only if charged based on the amount of data used).

[UPLOAD DOCUMENTS] Required: you must submit reasonable documentation supporting the above losses such as a copy of the bill from your telephone company, mobile phone company, or internet service provider that shows the charges (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- Credit Reports or credit monitoring charges purchased on or after March 6, 2020 and before the Claims Deadline due to the Data Incident. This category is limited to services purchased primarily as a result of the Data Incident and if purchased on or after March 6, 2020 and the Claims Deadline.

To obtain reimbursement under this category, you must attest to the following:

- I purchased credit reports on or after March 6, 2020 and before the Claims Deadline, primarily due to the Data Incident and not for other purposes.

DATE	COST

Examples: The cost of a credit report(s) that you purchased after hearing about the Data Incident.

[UPLOAD DOCUMENT] Required: you must submit reasonable documentation supporting the above losses such as a copy of a receipt or other proof of purchase for each product or service purchased (you may redact unrelated transactions). To recover costs of credit monitoring services activated between March 6, 2020 and the Claims Deadline incurred as a result of the Incident, you must submit either (1) a receipt showing a one year subscription to a credit monitoring service between March 6, 2020 and the Claims Deadline incurred as a result of the Incident; or (2) at least three receipts showing consecutive monthly payments to a credit monitoring service during the same period of time and an attestation that you intend to continue subscribing to such service through at least one year after the Claims Deadline.

Between one (1) and three (3) hours of documented time spent monitoring accounts or otherwise dealing with the aftermath / clean-up of the Data Incident on or after March 6, 2020 and before the Claims Deadline (round up to the nearest hour and check only one box).

- 1 Hour 2 Hours 3 Hours

Examples: You spent at least one (1) full hour calling customer service lines, writing letters or e-mails, or on the internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Check all activities, below, which apply.

- Time spent obtaining credit reports.
- Time spent dealing with a credit freeze.
- Time spent dealing with bank or credit card fees.
- Time on the internet updating automatic payment programs due to new card issuance.
- Time spent dealing with fraudulent transactions.

- Time spent monitoring accounts.
- Time spent working with credit reporting bureaus regarding correction of credit reports.
- Other. Provide description(s) here:

To recover for lost time under this section, you must select one of the boxes above or provide a narrative description of the activities performed during the time claimed, and you must have at least one hour of lost time in order to claim this benefit.

Attestation (You must check the box below to obtain compensation for lost time)

- I attest that I spent the number of hours claimed above making reasonable efforts to deal with the Data Incident.**

II. Extraordinary Expenses

If you have expenses related to the Data Incident that are more than the value or different than the type of ordinary expenses covered in the categories in Section I above, you may be entitled to compensation for your extraordinary expenses. To obtain reimbursement under this category, you must attest to the following:

- I incurred out-of-pocket unreimbursed expenses that occurred more likely than not as a result of the Data Incident during the time period on or after March 6, 2020 through the end of the Claims Deadline other than those expenses covered by one or more of the categories above, and I made reasonable efforts to avoid, or seek reimbursement for the loss, including but not limited to exhausting all available credit monitoring insurance and identity theft insurance.

- Unreimbursed fraudulent charges incurred on or after March 6, 2020 and before the Claims Deadline due to the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Fraudulent charges that were made on your credit or debit card account and that were not reversed or repaid even though you reported them to your bank or credit card company. *Note: most banks are required to reimburse customer in full for fraudulent charges on payment cards that they issue.*

[UPLOAD DOCUMENTS] Required: The bank statement or other documentation reflecting the fraudulent charges, as well as documentation reflecting the fact that the charge was fraudulent (you may redact unrelated transactions and all but the first four and last four digits of any account number). If you do not have anything in writing reflecting the fact that the charge was fraudulent (e.g., communications with your bank or a police report), please identify the approximate date that you reported the fraudulent charge, to whom you reported it, and the response.

Date reported: _____

Description of the person(s) to whom you reported the fraud:

Check this box to confirm that you have exhausted all applicable insurance policies, including but not limited to credit monitoring insurance and identity theft insurance, and that you have no insurance coverage for these fraudulent charges.

Between one (1) and three (3) hours of documented time spent remedying actual documented fraud relating to the Data Incident on or after March 6, 2020 and before the Claims Deadline (round up to the nearest hour and check only one box), which has not already been claimed in Section I, above.

1 Hour

2 Hours

3 Hours

Examples: You spent at least one (1) full hour calling customer service lines, writing letters or e-mails, or on the internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Check all activities, below, which apply.

- Calling bank/credit card customer service lines regarding fraudulent transactions.
- Writing letters or e-mails to banks/credit card companies in order to have fraudulent transactions reversed.

- Time on the internet verifying fraudulent transactions.
- Time on the internet updating automatic payment programs due to new card issuance.
- Calling credit reporting bureaus regarding fraudulent transactions and/or credit monitoring.
- Writing letters or e-mails to credit reporting bureaus regarding correction of credit reports.
- Other. Provide description(s) here:

To recover for lost time under this section, you must provide documentation substantiating or establishing the fraudulent activity, you must select one of the boxes above or provide a narrative description of the activities performed during the time claimed, and you must have at least one hour of lost time in order to claim this benefit.

- Other unreimbursed out-of-pocket expenses that were incurred on or after March 6, 2020 and before the Claims Deadline as a result of the Data Incident that are not accounted for in your response above.

DATE	DESCRIPTION	AMOUNT

Examples: This category includes any other unreimbursed expenses or charges that are not otherwise accounted for in your answers to the questions above, including any expenses or charges that you believe were the result of an act of identity theft.

[UPLOAD DOCUMENTS] Required: Describe the expense, why you believe that it is related to the Data Incident, and provide as much detail as possible about the date you incurred the expense(s) and the company or person to whom you had to pay it. Please provide copies of any receipts, police reports, or other documentation supporting your claim. The Claims Administrator may contact you for additional information before processing your claim.

Check this box to confirm that you have exhausted all credit monitoring insurance and identity theft insurance you might have for these out-of-pocket expenses before submitting this Claim Form.

III. Credit Monitoring

All Settlement Class Members who submit a valid claim are eligible to receive two (2) years of credit monitoring and restoration protections (“Credit Monitoring Protections”) provided by IDX and paid for by BJC.

Do you wish to sign up for free Credit Monitoring Protections through IDX?

Yes, I want to sign up to receive free Credit Monitoring Protections.

Email Address: _____

If you select “yes” for this option, you will need to follow instructions and use an activation code that you receive after the Settlement is final. Credit Monitoring Protections will not begin until you use your activation code to enroll. Activation instructions will be provided to your email address or, if you do not have an email address, to your home address.

C. Certification

I attest that the information supplied in this Claim Form by the undersigned is true and correct to the best of my recollection, and that this form was executed at _____ [City], _____ [State] on the date set forth below

I understand that I may be asked to provide supplemental information by the Claims Administrator before my claim will be considered complete and valid.

Print Name: _____

Signature: _____

Date: _____

D. Submission Instruction

Once you’ve completed all applicable sections, please mail this Claim Form and all required

supporting documentation to the address provided below, postmarked by [REDACTED],
2022.

In Re BJC Healthcare Data Breach Litigation

[INSERT CLAIMS ADMINISTRATOR
MAILING INFORMATION]

Settlement Agreement
Exhibit B

Short Form Notice

Notice of Pendency and Proposed Settlement of Class Action

If you were notified by mail of a Data Incident impacting BJC Health System in 2020, you may be eligible for a payment from a class action settlement.

A Settlement has been reached in a class action lawsuit (“Lawsuit”) about a data incident that occurred on March 6, 2020, which potentially exposed personally identifiable information (“PII”) and/or protected health information (“PHI”) of BJC patients and employees (the “Data Incident”). The Lawsuit alleges that BJC Health System d/b/a BJC Healthcare (“BJC”) and BJC Collaborative, LLC (the “Collaborative”) were responsible for the Data Incident because they did not take appropriate care to protect PII and PHI it collected from phishing attacks. BJC and the Collaborative deny the claims and deny any wrongdoing.

BJC records show you are a likely member of the Settlement Class. The Settlement will reimburse eligible people who submit claims for: (1) unreimbursed, documented out-of-pocket expenses and compensation for lost time, that resulted from the Data Incident, up to a maximum of \$250 per person; and (2) unreimbursed, documented extraordinary expenses that were caused by the Data Incident, up to a maximum of \$5,000 per person. The Settlement also includes two years of 1B credit monitoring and identity theft insurance through IDX.

If you are a Settlement Class Member and you want to receive any benefits from the Settlement, you must complete and submit a Claim Form along with any required supporting information. Claim Forms can be found and completed on this website: www.SettlementURL.com. The deadline to submit a Claim Form is Month 00, 2022.

Settlement Class Members may also request exclusion from the Settlement or object to it. Requests for exclusion are due by **Month 00, 2022**. Settlement Class Members who do not request exclusion can object to the Settlement. Objections are due by **Month 00, 2022**. The Court will hold a Final Settlement Approval Hearing on **Month 00, 2022 at 00:00 a.m.** at the Circuit Court of the City of St. Louis, Missouri, 10 N Tucker Blvd, St. Louis, MO 63101, Courtroom: [redacted] to consider whether to approve the settlement. The Court will hear objections, determine if the Settlement is fair, and consider Class Counsel’s request for attorneys’ fees, costs, and expenses of \$1,205,000 and service awards of up to \$2,000 for each of the Representative Plaintiffs. You or your own lawyer may ask to appear at the hearing to be heard by the Court, but you do not have to. The motion for attorneys’ fees and costs and service awards for the Representative Plaintiffs will be posted on the website after it is filed with the Court.

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit:

Ben Barnow of Barnow & Associates, 205 West Randolph St., Ste. 1630, Chicago, IL 60606, (312) 621-2000; J. Gerard Stranch, IV of Branstetter, Stranch & Jennings PLLC, 223 Rosa L. Parks Avenue, Ste. 200, Nashville, TN 37203, (615) 254-8801; John F. Garvey of Carey Danis and Lowe, 8235 Forsyth Blvd, Ste. 1100, St. Louis, MO 63105, (314) 725-7700; Troy Walton of Walton Telken, LLC, 241 N. Main St., Edwardsville, IL 62025, (618) 312-1104; Kenneth J. Brennan and Tyler Schneider of TorHoerman Law, LLC, 210 S Main St., Edwardsville, IL 62025, (618)223-5657; and Aaron Zigler of Zigler Law Group, 308 Jefferson St., Ste. 333, Chicago, IL 60661, (312)535-5995.

This is only a summary. For detailed information visit www.SettlementURL.com or call **1-000-000-0000**. You may contact the Settlement Administrator at BJC Settlement Administrator, PO Box 0000, City, State, Zip.

Settlement Agreement
Exhibit C

Long Form Notice

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

If you were notified by mail of the Data Incident impacting BJC Health System in 2020, you may be eligible for a class action settlement payment and credit monitoring services.

A court authorized this notice. This is not a solicitation from a lawyer.

- A Settlement has been reached in a class action lawsuit about a data incident that occurred on March 6, 2020, which potentially exposed personally identifiable information (“PII”) and/or protected health information (“PHI”) of BJC patients and employees (the “Data Incident”).
- A phishing attack occurred on March 6, 2020, and this attack may have resulted in cyber-criminals accessing and obtaining the PII/PHI of BJC’s patients and employees through one or more BJC employee email accounts. Plaintiffs allege that the PII/PHI of patients and employees was potentially impacted in the Incident. The potentially compromised PII and PHI included name, date of birth, medical record or patient account number, and limited treatment and/or clinical information, such as diagnosis, medications, provider, type of treatment and treatment location. Subsequently, lawsuits were filed against BJC Health System d/b/a BJC Healthcare (“BJC”) and BJC Collaborative, LLC (the “Collaborative”), alleging that they did not take appropriate care to protect patients and employees from the Data Incident.
- The Settlement includes all persons to whom BJC sent notification that their personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Data Incident.
- The Settlement provides payments to people who submit valid claims for out-of-pocket expenses and lost time that were incurred and plausibly arose as a result of the Data Incident, and for other extraordinary unreimbursed monetary losses and lost time.
- The Settlement also includes two years of 1B credit monitoring and identity theft insurance through IDX. You must submit a claim to receive this benefit.

Your legal rights are affected even if you do nothing. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim	The only way to get a payment. You must submit a claim by Month Day, 2022 .
Ask to be Excluded	Get no payment. The only option that allows you to sue BJC and the Collaborative over the claims resolved by this Settlement. You must exclude yourself by Month Day, 2022 .
Object	Write to the Court about why you do not like the Settlement. You must object by Month Day, 2022 .
Do Nothing	Get no payment. Give up rights.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

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BASIC INFORMATION

1. Why was this Notice issued?

The Court authorized this notice because you have a right to know about the proposed Settlement in this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the Settlement. This notice explains the legal rights and options that you may exercise before the Court decides whether to approve the Settlement.

This matter involves two separate lawsuits, styled (1) *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC09492, in the Circuit Court of the City of St. Louis, Missouri, and (2) *Leaha Sweet and Bradley Dean Taylor v. BJC*, Case No. 20-CV-0947, in the U.S. District Court for the Southern District of Illinois. The persons who sued are called the Plaintiffs. BJC and the Collaborative are called the Defendants.

2. What is this lawsuit about?

The lawsuits claim that BJC and the Collaborative were responsible for the Data Incident and asserts claims such as: negligence, negligence *per se*, breach of implied contract, violation of the Missouri Merchandising Practices Act, unjust enrichment, invasion of privacy, breach of contract, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, breach of the covenant of good faith and fair dealing, and vicarious liability. The lawsuits seek compensation for people who experienced unreimbursed, documented out-of-pocket expenses, fraudulent charges, and/or lost time spent dealing with the aftermath / clean-up of the Data Incident; or unreimbursed, documented extraordinary monetary losses as a result of the Data Incident.

BJC and the Collaborative deny all of the Plaintiffs’ claims and maintain they did not do anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called “Representative Plaintiffs” sue on behalf of all people who have similar claims. All of these people together are the “Class” or “Class members.” In this case, the Representative Plaintiffs are Brian Lee Bauer, Tiffany Jew, Jessica Simpson, Leaha Sweet, and Bradley Dean Taylor. One Court resolves the issues for all Class members, except for those who exclude themselves from the Class.

4. Why is there a Settlement?

By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will get compensation. The Representative Plaintiffs and their attorneys believe the Settlement is fair, reasonable, and adequate and, thus, best for the Class and its members. The Settlement does NOT mean that BJC and the Collaborative did anything wrong.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am included in the Settlement?

You are included in the Settlement Class if you are a person to whom BJC sent notification that personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Data Incident occurring on March 6, 2020.

Specifically excluded from the Settlement Class are: (i) BJC and the Collaborative and BJC and the Collaborative's parents, subsidiaries, affiliates, officers and directors, and any entity in which BJC and the Collaborative has a controlling interest; (ii) all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; (iii) any and all federal, state, or local governments, including but not limited to their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; (iv) the attorneys representing the any of the parties in the lawsuit; (v) all judges assigned to hear any aspect of the lawsuits, as well as their immediate family members; and (vi) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the Data Incident, or who pleads *nolo contendere* to any such charge.

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call 1-XXX-XXX-XXXX with questions or visit [WEBSITE]. You may also write with questions to BJC Claims Administrator, PO Box XXXX, City, State zip code. Please do not contact the Court with questions.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

The Settlement will provide payments to people who submit valid claims.

There are two types of general payments that are available:

- (1) Ordinary Expense Reimbursement (Question 8) and
- (2) Extraordinary Expense Reimbursement (Question 9).

You may submit a claim for either or both types of payments. You must also provide proof of your class membership in the form of either (1) the unique identifier provided in the notice you received by postcard or e-mail; or (2) name and physical address you provided to BJC for healthcare or employment related purposes.

If you provide a bill or payment card statement as part of required proof for any part of your claim, you may redact unrelated transactions and all but the first four and last four digits of any account number. In order to claim each type of payment, you must provide related documentation with the Claim Form, and the expense for which you are submitting a claim form cannot have been reimbursed through any other source.

The Settlement also includes two years of 1B credit monitoring and identity theft insurance through IDX for a period of 2 years from the effective date of the Settlement. You must submit a claim to obtain this credit monitoring service.

Finally, as part of the Settlement, BJC has agreed to implement and/or maintain certain data security measures. More details are provided in the Settlement Agreement, which is available at [\[WEBSITE\]](#).

8. What payments are available for Expense Reimbursement?

Class members are each eligible to receive reimbursement of up to \$250 (in total, per person) for the following categories of unreimbursed, documented out-of-pocket expenses resulting from the Data Incident:

- Cost to obtain credit reports;
- Fees relating to credit freezes;
- Card replacement fees;
- Late fees;
- Overlimit fees;
- Interest on payday loans taken as a result of the Data Incident;
- Other bank or credit card fees;
- Postage, mileage, and other incidental expenses resulting from lack of access to an existing account;
- Costs associated with credit monitoring or identity theft insurance if purchased primarily as a result of the Data Incident; and
- up to three (3) hours of unreimbursed attested lost time (at \$20 per hour) spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath / clean-up of the Data Incident (only if at least one full hour was spent and the Class member provides a description of the activities performed during the time claimed as reflected in the Claim Form.

9. What payments are available for Extraordinary Expense Reimbursement?

Class members who had other extraordinary unreimbursed fraudulent charges or out-of-pocket losses and/or lost time incurred as a result of, or in resolving issues and losses caused by, the Data Incident, are eligible to make a claim for reimbursement of up to \$5,000 per Class member. As part of the claim, the Class member must provide documentation plausibly supporting that:

- (1) it is an actual, documented, and unreimbursed monetary loss;
- (2) the loss was caused in material part by the Data Incident;
- (3) the loss occurred during the time period on or after March 6, 2020 through and including the end of the Claims Deadline;
- (4) the loss is not already covered by one or more of the categories in Question 8 or reimbursed through any other source; and

- (5) a reasonable effort was made to avoid or seek reimbursement for the loss (including exhaustion of all available credit monitoring insurance and identity theft insurance).

Class members who had documented extraordinary unreimbursed expenses may also make a claim for up to three (3) hours of unreimbursed attested lost time (at \$20 per hour) spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath / clean-up of the Data Incident (only if at least one full hour was spent and the Class member provides a description of the activities performed during the time claimed as reflected in the Claim Form).

More details are provided in the Settlement Agreement, which is available at [\[WEBSITE\]](#).

HOW TO GET BENEFITS

10. How do I get benefits?

To ask for a payment or to sign up for credit monitoring, you must complete and submit a Claim Form. Claim Forms are available at [\[WEBSITE\]](#), or you may request one by mail by calling [\[PHONE #\]](#). Read the instructions carefully, fill out the Claim Form, and mail it postmarked no later than **Month Day, 2022** to:

BJC Claims Administrator
PO Box **XXXXX**
City, State zip code

11. How will claims be decided?

The Claims Administrator will decide in their professional judgment whether the information provided on a Claim Form is complete and valid. The Claims Administrator may require additional information from any claimant. If the required information is not provided timely, the claim will be considered invalid and will not be paid.

REMAINING IN THE SETTLEMENT

12. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the Settlement, but if you want a payment you must submit a Claim Form postmarked by **Month Day, 2022**.

13. What am I giving up as part of the Settlement?

If the Settlement becomes final, you will give up your right to sue for the claims being resolved by this Settlement. The specific claims you are giving up are described in Section 13.cc of the Settlement Agreement. You will be “releasing” BJC and the Collaborative and all related people or entities as described in Section 13.dd of the Settlement Agreement. The Settlement Agreement is available at [\[WEBSITE\]](#).

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the law firms listed in Question 17 for free or,

you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue BJC and the Collaborative about issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

14. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any benefits of the Settlement, but you will not be bound by any judgment in this case.

15. If I do not exclude myself, can I sue BJC and the Collaborative for the same thing later?

No. Unless you exclude yourself, you give up any right to sue for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

16. How do I exclude myself from the Settlement?

To exclude yourself, send a letter that says you want to be excluded from the Settlement in *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC09492, in the Circuit Court of the City of St. Louis, Missouri, and *Leaha Sweet and Bradley Dean Taylor v. BJC*, Case No. 20-CV-0947, in the U.S. District Court for the Southern District of Illinois. Include your name, address, and signature. You must mail your Exclusion Request postmarked by **Month Day, 2022**, to:

BJC Settlement Exclusions
PO Box XXXXX
City, State zip code

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyers as “Class Counsel”: Ben Barnow of Barnow and Associates, P.C., 205 West Randolph St., Ste. 1630, Chicago, IL 60606, (312) 621-2000; J. Gerard Stranch, IV of Branstetter, Stranch & Jennings PLLC, 223 Rosa L. Parks Avenue, Ste. 200, Nashville, TN 37203, (615) 254-8801; John F. Garvey of Carey Danis and Lowe, 8235 Forsyth Blvd, Ste. 1100, St. Louis, MO 63105, (314) 725-7700 (collectively, Lead Class Counsel and Missouri Class Counsel); and Troy Walton of Walton Telken, LLC, 241 N. Main St., Edwardsville, IL 62025, (618) 312-1104; Kenneth J. Brennan and Tyler Schneider of TorHoerman Law, LLC, 210 S Main St., Edwardsville, IL 62025, (618)223-5657; and Aaron

Zigler of Zigler Law Group, 308 Jefferson St., Ste. 333, Chicago, IL 60661, (312)535-5995 (collectively, Illinois Class Counsel).

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the lawyers be paid?

Class Counsel will separately request the Court's approval of an award for attorneys' fees and reasonable costs and expenses of up to \$790,000 (to Missouri Class Counsel) and up to \$415,000 (to Illinois Class Counsel). Class Counsel will also request approval of an incentive award of \$2,000 for each of the Representative Plaintiffs. Any amount that the Court awards for attorneys' fees, costs, expenses, and an incentive award will be paid separately by BJC and will not reduce the amount of payments to Class members who submit valid claims.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

19. How do I tell the Court that I do not like the Settlement?

You can object to the Settlement if you do not like it or some part of it. The Court will consider your views. To do so, you must **file** a written objection in this case, *In Re BJC Healthcare Data Breach Litigation*, Case No. 2022-CC09492, in the Circuit Court of the City of St. Louis, Missouri, with the Clerk of the Court at the address below.

Your objection must include all of the following:

- your full name, address, telephone number, and e-mail address (if any);
- information identifying you as a Settlement Class member, including proof that you are a member of the Settlement Class, which is described in response to Question 5;
- a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe is applicable;
- the identity of all counsel representing you, if any, in connection with your objection;
- a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing;
- your signature or the signature of your duly authorized attorney or other duly authorized representative;

To be timely, your objection must be **filed** with the Clerk of the Court for the City of St. Louis, Missouri no later than **Month Day, 2022**.

In addition, you must **mail** a copy of your objection to both Class Counsel and Defense Counsel, postmarked no later than **Month Day, 2022**:

Court	Class Counsel	BJC's Counsel
Clerk of Court Circuit Court of the City of St. Louis, Missouri. 10 N Tucker Blvd, St. Louis, MO 63101	Ben Barnow Barnow and Associates, P.C. 205 W. Randolph St. Ste. 1630 Chicago, IL 60606	Paul Karlsgodt BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, Colorado 80202

20. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you do not exclude yourself from the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement.

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at [REDACTED] on **Month Day, 2022**, at the Circuit Court of the City of St. Louis, Missouri, 10 N Tucker Blvd, St. Louis, MO 63101, Courtroom [REDACTED] (or by Zoom if the Court so orders). The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [WEBSITE] or call [PHONE #]. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys' fees and reasonable costs and expenses, as well as the request for an incentive award for each of the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

22. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 19, the Court will consider it.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file an objection according to the instructions in Question 19, including all the information required therein. Your Objection must be **filed** with the Clerk of the Court for the Circuit Court of the City of St. Louis, Missouri by mailing it postmarked no later than **Month Day, 2022**. In addition, you must **mail** a copy of your objection to both Class Counsel and Defense Counsel listed in Question 19, postmarked no later than **Month Day, 2022**.

IF YOU DO NOTHING

24. What happens if I do nothing?

If you do nothing, you will get no benefits from this Settlement. Unless you exclude yourself, after the Settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against BJC and the Collaborative about the legal issues in this case, ever again.

GETTING MORE INFORMATION

25. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at [WEBSITE]. You may also write with questions to BJC Claims Administrator, PO Box XXXXX, City, State Zip. You can also get a Claim Form at the website, or by calling the toll-free number, [PHONE].

Exhibit B

Barnow Declaration

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

**In re BJC Healthcare
Data Breach Litigation**

)
)
) **Civil Action No. 2022-CC09492**
)
)
)

**DECLARATION OF BEN BARNOW IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Ben Barnow, declare as follows:

1. I am President and sole shareholder of Barnow and Associates, P.C. (“B&A”), and a member in good standing of the bar of the State of Illinois and State of New York. I submit this declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement in this action, as memorialized in the Settlement Agreement filed concurrently herewith.¹ I make the following declaration based on my own personal knowledge and, where indicated, based on information and belief, that the following statements are true and correct to my knowledge and belief. If called upon as a witness, I could and would competently testify as follows.

INTRODUCTION

2. The proposed Settlement is the product of hard-fought, arms-length negotiations between experienced counsel after confirmatory discovery by Plaintiffs’ counsel, settlement negotiations that included mediation before Mediator Bruce A. Friedman, Esq. of JAMS, and extensive ongoing negotiation efforts between counsel for Plaintiffs and Defendants BJC Health System (“BJC”) and BJC Collaborative, LLC (the “Collaborative”). The Settlement secures a

¹ The definitions in the Settlement Agreement are incorporated herein by reference.

significant recovery for the putative Class members, eliminates the risks of continued litigation, and is a data breach class action settlement result satisfying fair, reasonable, and adequate.

3. The Settlement, if approved, would resolve all class claims as pled against BJC and the Collaborative, on behalf of approximately 287,873 Settlement Class members relating to the unauthorized access of BJC's network systems on March 6, 2020 (the "Data Breach").

4. The Settlement provides the following benefits to the Class: (1) reimbursement for ordinary expenses up to \$250; (2) reimbursement for extraordinary expenses up to \$5,000; and (3) two years of 1B Credit Monitoring and Insurance Services ("CMIS"). In addition, BJC will be required to make significant improvements to its data protection practices through equitable relief, which it estimates will cost \$2,688,000.

5. For all the reasons explained herein, I believe the proposed Settlement to be fair, reasonable, and adequate, and in the best interests of the proposed Settlement Class.

PLAINTIFFS' LITIGATION EFFORTS AND WORK ON BEHALF OF THE CLASS

6. The attorneys at B&A who worked on this matter have stayed advised of all material developments involving the Data Breach. We have gathered the press releases and statements concerning the Data Breach, reviewed the information BJC has provided on its website about the breach, reviewed BJC's data breach notification letters, and kept informed of updates and new information relating to the Data Breach.

7. Following commencement of this action, Plaintiffs and BJC opened a dialogue about case management issues and engaged in meet-and-confer discussions. Proposed Lead Class Counsel led efforts to coordinate the related cases filed in this Court relating to the Data Breach. The Missouri cases were consolidated on January 28, 2021. After filing their Consolidated Complaint, Proposed Missouri Class Counsel opposed BJC's Motion to Dismiss, leading the

motion to be denied in its entirety. Plaintiffs in the Illinois action also argued against BJC and the Collaborative's Motion to Dismiss in the Illinois action, with much of the motion being denied.

MEDIATION AND SETTLEMENT NEGOTIATIONS

8. As a result of the Parties' continued efforts at achieving a fair, reasonable, and adequate resolution in this action, they were able to reach agreement to participate in mediation to attempt to resolve this matter. The mediation took place on September 1, 2021, before Mediator Bruce A. Friedman, Esq. of JAMS. Mr. Friedman is a highly respected and experienced mediator.

9. Prior to the mediation session, the Parties exchanged information to prepare for and facilitate a productive mediation session. The Parties communicated their respective positions on the litigation and the Parties' claims and defenses with each other and the mediator. Plaintiffs received and analyzed data and documents from BJC relating to the impact of the Data Breach on BJC, BJC's security practices, and the number of Class members impacted.

10. On September 1, 2021, the Parties participated in a full-day mediation session with Mr. Friedman. With Mr. Friedman's guidance, the Parties had a productive mediation session but were unable to reach a settlement at that time.

11. The Parties continued their negotiations after the mediation session. An agreement was eventually reached after those negotiations. The Parties expended significant efforts in negotiating and ironing out the numerous details of the Settlement. After an initial agreement was met, drafts of the Settlement Agreement and its exhibits were exchanged, and Class Counsel negotiated numerous details to maximize the benefits to the Class members.

12. The Notice Plan and each document comprising the Class Notice were negotiated and refined, with input from William Wickersham, Esq., Senior Vice President of Business

Development and Client Relations at RG/2, to ensure that these materials will be clear, straightforward, and understandable by Class members.

THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

13. I believe the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of Plaintiffs and the putative Class members. Despite my belief in the merits of this litigation and potential of success as trial, I believe that the benefits to Plaintiffs and the putative Class pursuant to the agreed upon terms substantially outweigh the risks of continuing to litigate the claims—namely, the delay that would result before Plaintiffs and the putative Class members receive any benefits should the action proceed to trial; the possibility of a negative outcome at trial; and the possibility of a negative outcome post-trial should Defendant appeal a judgment in favor of Plaintiffs and the putative Class. This Settlement provides significant benefits now and is in the best interests of the putative Class members.

14. Based on my knowledge and experience, I believe the Settlement is squarely within the possible range of recovery for the Class members. Though I strongly believe in the merits of the case, due to the risks of litigation, \$0 is certainly within the range of possibilities for the Class if the litigation were to continue.

15. The proposed Settlement was entered into by Plaintiffs with the benefit of the substantial experience of proposed Class Counsel. In my opinion and based on my decades of experience in privacy litigation and other complex litigation, Proposed Class Counsel had all of the information necessary to properly evaluate the case and determine the terms and conditions of the proposed Settlement.

16. Negotiations regarding the Settlement were conducted at arm's length, in good faith, free of any collusion, and, at the mediation, under the supervision of Mr. Friedman.

17. Plaintiffs' Counsel's knowledge of facts of this case and of the practice area more broadly informed Plaintiffs' clear view of the strengths and weaknesses of the case, the decision to go to mediation with BJC, and the decision to recommend that the Court grant preliminary approval to the Settlement.

18. The proposed Class Representatives have shown that they are well-suited to represent the Settlement Class, have actively participated in the litigation, and will continue to do so. They do not have any conflicts of interest with the absent Class members, as their claims are coextensive with those of the Class members.

19. Since the litigation was commenced, Missouri Plaintiffs have been dedicated and active participants. They investigated the matter prior to and after retaining counsel, participated in the client and case vetting process, reviewed and approved the initial complaints, kept in close contact with counsel to monitor the progress of the litigation, and reviewed and communicated with their counsel regarding the Settlement. In my opinion, each Plaintiff put their name and reputation on the line for the sake of the Class, and the recovery would not have been possible without their efforts.

20. During the Settlement negotiations process, the Parties deferred any discussion concerning the Service Awards to be sought by the proposed Class Representatives until after reaching an agreement on all material terms of the Settlement.

BARNOW AND ASSOCIATES, P.C. FIRM EXPERIENCE

21. At all times, B&A had the experience, expertise, and resources to effectively litigate any and all issues related to this litigation.

22. I am nationally recognized for my experience in leading some of the nation’s largest consumer class actions and have been recognized as a Titan of the Plaintiffs Bar.² As a court-appointed lead counsel or equivalent designation, I have successfully led over forty major class actions (including MDLs) where class-wide recoveries were achieved, resulting in benefits valued in excess of five billion dollars being made available to class members. This includes leading eight noteworthy privacy class actions where class settlements were achieved. Below is a brief description of some of the cases in which I served as lead or co-lead counsel.

23. *In Re: Sony Gaming Networks and Customer Data Security Breach Litigation*, No. 11-md-2258 (N.D. Cal.). I was appointed to the Plaintiffs’ Steering Committee—a committee of seven firms established to lead the litigation—in this MDL proceeding involving over 60 cases relating to a data security breach that affected approximately 50 million consumers. A settlement agreement was entered into and was granted final approval. At the final fairness hearing, the Honorable Judge Anthony J. Battaglia remarked: “Just in the final analysis, the order, much like all the work by both sides throughout the case, has been impeccable, highly professional, and skilled. It’s been a real pleasure dealing with you.”

24. *In Re: TJX Retail Security Breach Litigation*, No. 1:07-cv-10162 (D.Mass). I served as one of Co-Lead Settlement Class Counsel for the Consumer Track in this MDL proceeding relating to the theft of approximately 45 million credit and debit card numbers used at TJX stores and the personal information of over 454,000 TJX customers. I took the lead in negotiating a settlement with TJX’s attorneys that made available benefits valued at over \$200 million to the

² See Sindhu Sundar, Law360, Titan of the Plaintiffs Bar: Ben Barnow (Oct. 8, 2014), <https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow> (last visited Dec. 23, 2021).

Class. The Honorable Judge Young granted final approval to the settlement, which he referred to as “excellent,” and as containing “innovative” and “groundbreaking” elements.

25. *In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation*, No. 08-md-01998 (W.D. Ky.). I served as one of Co-Lead Settlement Class Counsel in this forty-case MDL proceeding relating to a former Countrywide employee’s theft and sale of millions of Countrywide customers’ private and confidential information. I negotiated a settlement that was granted final approval, making benefits valued at over \$650 million available to approximately 17 million Settlement Class members. In the opinion granting final approval to the settlement, the Honorable Chief Judge Russell noted that “Co-Lead Settlement Counsel are nationally recognized in the field of class actions, particularly those involving security breaches,” and stated that “the Court was impressed with Co-Lead Counsel and Countrywide counsels’ knowledge and skill, as represented in the various motions and hearings that took place throughout this settlement process.”

26. *Lockwood v. Certegy Check Services, Inc.*, No. 8:07-cv-01434 (M.D. Fla.). I served as one of Co-Lead Settlement Class Counsel in this consolidated proceeding relating to the theft of approximately 37 million individuals’ private and confidential information from Certegy Check Services, Inc.’s computer databases. I negotiated a settlement that was granted final approval, making benefits valued at over \$500 million available to Settlement Class members. At the final fairness hearing, the Honorable Judge Merryday described the settlement as a “good deal,” providing “a real benefit to a large class of persons” as “the result of the focused attention of skilled counsel for a protracted time.”

27. *Rowe v. Unicare Life and Health Insurance Co.*, No. 1:09-cv-02286 (N.D. Ill.). I was Lead Counsel in this proceeding relating to the defendants’ alleged failure to secure the private

health information of approximately 220,000 individuals enrolled in the defendants' health insurance plans, resulting in such information being accessible to the public via the Internet. I negotiated a settlement that was granted final approval, making benefits valued at over \$20 million available to Settlement Class members. At the preliminary approval hearing, the Honorable Judge Hibbler described the efforts of the parties as "exemplary."

28. *Orr v. InterContinental Hotels Group, PLC.*, No. 1:17-cv-01622 (N.D. Ga.). I was appointed as one of Lead Class Counsel in this payment card data breach litigation. I successfully negotiated a class settlement providing a claim process for Class members to seek reimbursement for certain expenses or fraudulent and unauthorized charges resulting from the data breach, subject to an aggregate cap of \$1.55 million. The settlement was granted final approval.

29. *In re: Zappos.com Inc. Customer Data Security Breach Litigation*, No. 12-cv-00325 (D. Nev.). I was one of Co-Lead Class Counsel and settlement class counsel in this litigation, which resulted in a landmark Ninth Circuit ruling recognizing the Article III standing of consumers harmed by data breaches. I also successfully opposed Zappos' petition for writ of certiorari to the Supreme Court of the United States, where I served as counsel of record for plaintiffs. After many years of litigation, I negotiated a settlement that was granted final approval. The Settlement provided Class members with CAFA-compliant coupons that were redeemed for over \$7 million.

30. A copy of my firm's resume is submitted herewith. Barnow and Associates Resume, Exhibit 1.

31. B&A has decades of experience in the prosecution of class actions, including data breach and privacy lawsuits such as this action. B&A can more than adequately represent the Settlement Class.

32. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class members.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of April, 2022, at Chicago, Illinois.

/s/ Ben Barnow
Ben Barnow

Barnow Declaration

Exhibit 1

Barnow and Associates, P.C.
Firm Resume

BEN BARNOW

BARNOW AND ASSOCIATES

a professional corporation
ATTORNEYS AT LAW

Ben Barnow is nationally recognized for his experience in leading some of the nation's largest class actions. In that capacity, he has successfully led the prosecution of a number of large-scale class actions relating to consumer data security breaches, consumer protection issues, and antitrust violations. He has been appointed to and served in leadership positions in cases throughout the nation, in both state and federal courts, including MDL proceedings. His efforts have delivered resolutions in numerous significant cases, including cases against America Online, DaimlerChrysler, McDonald's, Microsoft, Nissan, Shell Oil, Sony, TJX, and Toyota.

Ben Barnow graduated from the University of Wisconsin in 1966 with a Bachelor's degree in Business Administration. He received his Juris Doctor from the University of Michigan Law School in 1969. He is licensed to practice in the State of Illinois and the State of New York. Mr. Barnow is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the First, Third, Sixth, Seventh, Eighth, and Ninth Circuits, the United States District Court for the Northern District of Illinois, the Central District of Illinois, the District of Colorado, the Eastern District of Wisconsin, and the Western District of Wisconsin. He is a member of the American Bar Association, the American Association for Justice, the Illinois State Bar Association, and the Chicago Bar Association. He has also served as a member of the Panel of Arbitrators of the American Arbitration Association. He is listed in Martindale-Hubbell with an AV rating.

During his over fifty-year legal career, Ben Barnow has represented both plaintiffs and defendants in many types of litigation and has engaged in significant transactional work. He was General Counsel to one of the world's largest public relations agencies and presided as chairman of certain of its retirement trusts. Ben Barnow was an Associate Professor at Northern Michigan University from 1969-1971, where he taught business law and unfair competition. Mr. Barnow joined the law firm of Herrick, McNeill, McElroy & Peregrine in July 1971, where he became a partner in 1977.

As part of a series of articles by Law360 featuring notable plaintiff attorneys, Ben Barnow was recognized as a Titan of the Plaintiffs Bar, and Barnow and Associates, P.C. "a plaintiffs' class action outfit known for winning big-time antitrust and data breach settlements." Sindhu Sundar, Titan of the Plaintiffs Bar:

Ben Barnow, Law360 (Oct. 8, 2014), <https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow> (last visited June 3, 2019).

Selected Cases

Data Security Breach Cases

Orr v. InterContinental Hotels Group, PLC. Ben Barnow was appointed as one of Lead Class Counsel in this payment card data breach litigation. He successfully negotiated a class settlement providing a claim process for Class Members to seek reimbursement for certain expenses or fraudulent and unauthorized charges resulting from the data breach, subject to an aggregate cap of \$1.55 million. The settlement was granted final approval.

In re: Zappos.com Inc. Customer Data Security Breach Litigation. Ben Barnow was one of Co-Lead Class Counsel and settlement class counsel in this litigation, which resulted in a landmark Ninth Circuit ruling recognizing the Article III standing of consumers harmed by data breaches. He also successfully opposed Zappos' petition for writ of certiorari to the Supreme Court of the United States, where he served as counsel of record for plaintiffs. After many years of litigation, he negotiated a settlement that was granted final approval. The Settlement provided Class Members with CAFA-compliant coupons that were redeemed for over \$7 million.

In Re: Sony Gaming Networks and Customer Data Security Breach Litigation, MDL 2258. The Honorable Anthony J. Battaglia appointed Ben Barnow to the Plaintiffs' Steering Committee—a committee of seven firms established to lead the litigation—in this MDL proceeding involving over 60 cases relating to a data security breach that affected approximately 50 million consumers in the United States and Canada. A settlement agreement was entered into and was granted final approval. At the final fairness hearing, Judge Battaglia remarked: “Just in the final analysis, the order, much like all the work by both sides throughout the case, has been impeccable, highly professional, and skilled. It’s been a real pleasure dealing with you.”

In Re: TJX Retail Security Breach Litigation, MDL No. 1838. Ben Barnow served as one of Co-Lead Settlement Class Counsel for the Consumer Track in this MDL proceeding relating to the theft of approximately 45 million credit and debit card numbers used at TJX stores and the personal information of over 454,000 TJX customers. Mr. Barnow took the lead in negotiating a settlement with TJX's attorneys that made available benefits valued at over \$200 million to the Class. The Honorable Judge Young granted final approval to the settlement, which he referred to as “excellent,” and as containing “innovative” and “groundbreaking” elements.

In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation, MDL No. 1998. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this forty-case MDL proceeding relating to a former Countrywide employee's theft and sale of millions of Countrywide customers' private and confidential information. Mr. Barnow negotiated a settlement that was granted final approval, making benefits valued at over \$650 million available to approximately 17 million Settlement Class Members. In the opinion granting final approval to the settlement, the Honorable Chief Judge Russell noted that "Co-Lead Settlement Counsel are nationally recognized in the field of class actions, particularly those involving security breaches," and stated that "the Court was impressed with Co-Lead Counsel and Countrywide counsels' knowledge and skill, as represented in the various motions and hearings that took place throughout this settlement process."

In Re: Heartland Payment Systems Inc., Data Security Breach Litigation, MDL No. 2046. Ben Barnow served as one of Co-Lead Counsel for the Consumer Track in this MDL proceeding relating to what, at the time, was reported as one of the largest data security breaches in history. Mr. Barnow negotiated a settlement on behalf of a Settlement Class that is estimated to include more than 120 million members. Notice of the settlement was completed and only one objection was received. Final approval of the settlement was granted.

Winstead v. ComplyRight, Inc., Ben Barnow served as one of Co-Lead Settlement Class Counsel in this proceeding relating to the theft of approximately 665,000 individuals' private and confidential information (including Social Security numbers) from ComplyRight, Inc.'s web portal. Mr. Barnow and his Co-Lead Settlement Class Counsel negotiated a settlement that included the creation of a \$3,025,000 settlement fund and which allowed Settlement Class members to claim, at their selection, a cash payment, a protection plan option, or reimbursement of up to \$200 in documented and unreimbursed out-of-pocket expenses incurred as a result of the Data Breach. Final approval of the settlement was granted.

Lockwood v. Certegy Check Services, Inc. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this consolidated proceeding relating to the theft of approximately 37 million individuals' private and confidential information from Certegy Check Services, Inc.'s computer databases. Mr. Barnow organized all plaintiffs' counsel and pending cases without the benefit of an MDL and negotiated a settlement that was granted final approval, making benefits valued at over \$500 million available to Settlement Class Members. At the final fairness hearing, the Honorable Judge Merryday described the settlement as a "good deal," providing "a real benefit to a large class of persons" as "the result of the focused attention of skilled counsel for a protracted time."

McGann v. Schnuck Markets, Inc., Ben Barnow served as one of Co-Lead Settlement Class Counsel in this proceeding relating to the theft of the credit and

debit card information of an estimated 777,000 individuals from point-of-sale terminals at affected Schnucks stores. Mr. Barnow negotiated a settlement that has been granted final approval, making significant benefits available to the Settlement Class.

Rowe v. Unicare Life and Health Insurance Co. Ben Barnow was Lead Counsel in this proceeding relating to the defendants' alleged failure to secure the private health information of approximately 220,000 individuals enrolled in the defendants' health insurance plans, resulting in such information being accessible to the public via the Internet. Mr. Barnow negotiated a settlement that was granted final approval, making benefits valued at over \$20 million available to Settlement Class Members. At the preliminary approval hearing, the Honorable Judge Hibbler described the efforts of the parties as "exemplary."

Deceptive Trade Practices and Other Consumer Protection Cases

Gann v. Nissan North America, Inc. Ben Barnow served as one of Class Counsel in this case regarding defective continuously variable transmissions on 1.4 million 2013–2016 Nissan Altima vehicles. After successfully defeating Nissan's motions to dismiss the litigation in two separate courts, he negotiated a settlement providing reimbursement for out-of-pocket costs for prior transmission replacements and a warranty extension, collectively valued at over \$444 million.

Warner v. Toyota Motor Sales, U.S.A., Inc. Ben Barnow served as one of Co-Lead Counsel in this litigation regarding claims of excessive frame rust to certain Toyota vehicles, yielding a recent landmark settlement estimated at \$3.4 billion. Under the settlement, owners of 2005–2010 Toyota Tacoma, 2007–2008 Toyota Tundra, and 2005–2008 Toyota Sequoia vehicles are eligible for free frame inspections for a period of twelve years from the date the vehicle was originally sold or leased, or one year from the date of the Final Order and Judgment, whichever is longer. Vehicles that exhibit excessive frame rust are eligible for a free frame replacement.

Rafofsky v. Nissan North America, Inc. Ben Barnow served as Class Counsel in this litigation regarding the failure to timely deliver certain advertised infotainment apps on 2014 Infiniti Q50s. Class Counsel achieved a settlement in which class members could file claims for cash worth up to \$85 or for vouchers to purchase of a new Infiniti vehicle worth up to \$1,250.

Palace v. DaimlerChrysler Corp. Ben Barnow was one of Co-Lead Class Counsel in this litigation relating to the defendant's sale of Neons containing allegedly defective head gaskets. After several years of litigation, a settlement was granted final approval, making up to \$8.25 million available to Class members for reimbursement of repair costs and other expenses.

Schulte v. Fifth Third Bank. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this action relating to allegations that the defendant unlawfully re-sequenced debit card transactions in order to maximize overdraft fees. In this capacity, he negotiated a settlement with Defendant's counsel providing for the establishment of a \$9.5 million settlement fund and including substantial injunctive relief, the present value of which Plaintiffs' expert estimated to be approximately \$58.8 million over five years and \$108.3 million over ten years. The settlement has been granted final approval.

Schwab v. America Online, Inc. (America Online Access Litigation). Ben Barnow served as Class Counsel and Co-Chair in this highly publicized litigation relating to AOL's representation that users would have unlimited access to AOL for \$19.95/month and the connectivity problems that ensued in conjunction therewith. In the face of what was ultimately over one hundred class actions filed nationwide, Mr. Barnow organized over 50 law firms and set up the co-chairmanship and the Executive Committee, which brought order and resolution to this litigation. A settlement was reached and was granted final approval, resulting in a multi-million-dollar benefit to a Class estimated to include over 8 million people.

Miner v. Philip Morris USA, Inc., Ben Barnow served as one of Class Counsel in this litigation concerning Philip Morris USA, Inc.'s practice of marketing and selling its Marlboro Lights and Marlboro Ultra-Lights cigarettes as less harmful to smoke than regular cigarettes when, in fact, they were not. A settlement was reached and granted final approval, providing for Philip Morris's payment of \$45 million into an escrow account for the benefit of Class members.

Boland v. McDonald's Corp. (McDonald's Sweepstakes Litigation). As Co-Lead Class Counsel in this litigation, Ben Barnow coordinated the efforts of approximately 25 plaintiffs' firms. The litigation concerned certain McDonald's promotional games and arose from the fraudulent removal of winning game pieces from random public distribution. Mr. Barnow developed and accomplished the settlement concept; to wit, for a chance lost, a chance would be given. The settlement, valued at approximately \$20 million, included fifteen \$1 million prizes given away by random selection. The settlement included the United States and nine other countries.

Campos v. Calumet Transload R.R., LLC, Ben Barnow served as one of Co-Lead Settlement Class Counsel in this litigation relating to the defendants' alleged negligent storage and handling of petroleum coke and coal at certain industrial storage facilities in Chicago, Illinois. Two settlements were reached which collectively provided for the payment of \$1,455,000 for the benefit of Settlement Class members. The settlements were granted final approval.

Fernandez v. Vitamin Shoppe Industries, Inc. Ben Barnow served as Co-Lead Counsel in this national class action that settled, resulting in injunctive relief

regarding labeling practices, and additional relief by way of discount coupons and *cy pres* relief to appropriate charities.

Gianopolous v. Interstate Brand Corp. and Interstate Bakeries Corp. Ben Barnow was appointed one of Class Counsel in this litigation concerning allegedly adulterated bakery goods. A settlement was reached and granted final approval, making valuable relief available to consumers.

Glenz v. RCI, LLC. Ben Barnow served as one of three Class Counsel in this litigation involving the RCI Points program and allegations of improper use of points by RCI. The settlement made available cash benefits of approximately \$19 million to members of the Settlement Class and included substantial injunctive relief. Final approval of the settlement has been granted.

Heilman v. Perfection Corp. Ben Barnow served as Co-Lead Class Counsel in this national class action concerning allegedly defective dip tubes in over 14.2 million hot water tanks sold throughout the United States. In this capacity, Mr. Barnow organized twenty-three law firms and oversaw numerous filings in bringing about a national unified settlement that provided for a 100% recovery of out-of-pocket expenses and requisite repairs, including preventive replacement of all concerned dip tubes, whether or not the dip tubes had actually failed.

In Re: Chicago Flood Litigation. As Co-Lead Class Counsel and a member of the Executive Committee, Ben Barnow was responsible for several major aspects of this class action, which included years of litigation, appellate practice, trial, and a multi-million-dollar settlement. Mr. Barnow argued a related portion of the matter before the Supreme Court of the United States, *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995), and was responsible for preparing the petition for a writ of certiorari and all related filings. At the Supreme Court level, opposing counsel was John Roberts, who now sits as Chief Justice of the Supreme Court of the United States.

In Re: High Sulfur Content Gasoline Products Liability Litigation, MDL No. 1632 ("Shell Oil"). Ben Barnow served as Co-Lead Settlement Class Counsel in this 26-case MDL proceeding relating to the defendant's alleged sale of defective gasoline. A settlement was reached and was granted final approval, resulting in approximately \$100 million being made available towards the satisfaction of consumers' claims.

In Re: Mercury Class Action Litigation. Ben Barnow served as Co-Lead Class Counsel in this case relating to the location of mercury-containing gas regulators in and on real estate. A settlement was reached and granted final approval that provided for medical monitoring, removal of the regulators, and cash compensation to certain class members.

In Re: M3Power Marketing Practices Litigation, MDL No. 1704. Ben Barnow was appointed Co-Lead Class Counsel in this MDL proceeding relating to the defendant's allegedly deceptive marketing and sale of M3Power shaving razors. A settlement was reached and granted final approval, making available benefits of more than \$7 million to Class members.

In Re: Pilot Flying J Fuel Rebate Contract Litigation. Ben Barnow served as one of Settlement Class Counsel in this litigation involving allegations that the defendants withheld portions of fuel discounts and rebates that Class members were contractually entitled to receive in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO"), and various state laws. The \$84.9 million settlement was granted final approval.

In Re: Starlink Corn Products Liability Litigation, MDL No. 1403. Ben Barnow served as Co-Lead Class Counsel in this MDL proceeding relating to the alleged inclusion of genetically engineered corn in the defendants' food products. A settlement was reached, valued at \$9 million, including the return of up to \$6 million to consumers on a fluid recovery/*cy pres* basis through price reduction on future purchases coupled with a cash payment to approved charities based on shortfall in the redemption.

In Re: United Parcel Service, Inc., Shipper Excess Value Insurance Coverage Litigation. Ben Barnow was one of Settlement Class Counsel in this litigation. A settlement was reached and granted final approval, providing relief to UPS shippers who had paid premiums for excess value insurance coverage.

Ori v. Fifth Third Bank. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this action relating to inactive mortgage loans that were erroneously reported as active to Consumer Credit Reporting Agencies. The Settlement Class included approximately 55,000 individuals, and the settlement made available cash benefits of approximately \$3,000,000 to members of the Settlement Class. Final approval of the settlement has been granted.

Orrick v. Sonic Communications. Ben Barnow was one of Lead Class Counsel in this matter relating to the practice known as "slamming." The private actions and actions filed on behalf of various Attorneys General were consolidated. A settlement covering all of the pending cases and providing benefits of approximately \$8.3 million was achieved and granted final approval. This litigation is believed to be the first class certification and settlement relating to the practice known as "slamming."

Rosen v. Ingersoll-Rand Co., Kryptonite Corp. Ben Barnow was Co-Lead Class Counsel in this matter relating to allegedly defective bicycle locks. Mr. Barnow organized 18 U.S. and Canadian law firms and negotiated a settlement on behalf of Class members in the U.S. and Canada. The settlement was granted final approval,

providing valuable relief to purchasers of the allegedly defective U-shaped tubular cylinder bicycle locks in the U. S. and Canada.

Schneider v. Dominick's Finer Foods, Inc. Ben Barnow was Co-Class Counsel in this matter relating to the defendant's alleged failure to deliver on representations of 100% ground beef. A settlement was reached and granted final approval, which included significant remedial relief in the form of shop signage regarding cleanliness and meat grinding practices, and fluid recovery mechanisms to compensate the class members by way of in-store sales and published coupons.

Schwab v. Binney & Smith. Ben Barnow served as Co-Lead Class Counsel in this case relating to crayons that were produced for decades with talc, which allegedly contained, or was subject to containing, asbestos. Mr. Barnow negotiated a national class settlement that contributed to the reformulation of most crayons produced in this country, so as to eliminate the inclusion of talc and, thus, the alleged asbestos inclusion, and the settlement was granted final approval. This represented one of the largest classes ever certified, if not the largest.

Siegel v. Synchronys. Ben Barnow was Co-Class Counsel in this nationwide class action concerning an allegedly defective computer product. The matter was settled, resulting in a remedy for the Class that provided for a 100% reimbursement on moneys spent for the product; the value of the settlement was estimated at \$22 million.

Smith v. J.M. Smucker Co. Ben Barnow was Class Counsel in this litigation relating to allegedly deceptive advertising practices. Mr. Barnow negotiated a national settlement and organized a group of plaintiffs' counsel from over 25 firms throughout the country who supported the settlement. The settlement was granted final approval, making available valuable relief to consumers of spreadable fruit products labeled "Simply 100% Fruit," including a change of labeling practices by the defendant, which added and maintained the following language, in prominent fashion, on the front label of its Simply 100% Fruit products: "Sweetened with fruit syrup from apple, pineapple or pear juice concentrate," thus fairly and fully advising consumers of the product they were purchasing.

Stelk v. BeMusic, Inc. Ben Barnow served as Co-Lead Class Counsel in this litigation relating to charges for shipping and handling in the context of a "free" offer. The Class included an estimated 16 million members. A settlement was reached and granted final approval providing substantial relief to Class members, including a guaranteed minimum of \$8 million.

Antitrust Cases

Wisconsin Civil Microsoft Antitrust Litigation. Ben Barnow served as one of Co-Lead Class Counsel in this indirect purchaser antitrust lawsuit. Mr. Barnow and his co-counsel successfully petitioned the Wisconsin Supreme Court to recognize the rights of indirect purchasers to recover under Wisconsin's antitrust laws. *Olstad v. Microsoft Corp.*, 700 N.W.2d 139 (Wis. 2005). Subsequently thereto, Mr. Barnow negotiated a settlement valued at approximately \$224 million that was granted final approval.

Arkansas, Kansas, South Dakota Civil Microsoft Antitrust Litigations. Ben Barnow served as a Co-Lead Class Counsel in the Arkansas, Kansas, and South Dakota Microsoft civil antitrust cases. Each of these cases settled, and the settlements were granted final approval.

Microsoft Civil Antitrust Litigation, MDL No. 1332. Ben Barnow served as a member of the nine-member Plaintiffs' Lead Counsel Committee in this MDL antitrust proceeding before Judge Motz in the United States District Court for the District of Maryland.

Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd., Ben Barnow served as a Co-Lead Counsel for third-party payor plaintiffs in this antitrust action where settlements were reached and finally approved collectively providing for the payment of \$9,850,000 for the benefit of the Settlement Class.

Loeb Industries, Inc. v. Sumitomo Corp. Ben Barnow served as Co-Lead Counsel in this nationwide antitrust class action, which sought recovery on behalf of scrap copper purchasers who were allegedly harmed by activities designed to manipulate the copper market. A \$20 million cash settlement with one of the defendants (Merrill Lynch) was reached.

Vichreva v. Cabot Corp. Ben Barnow served as Co-Lead Counsel in this Florida antitrust litigation. An \$825,500 common fund, which is believed to be the largest per-consumer Carbon Black state court antitrust class action settlement in the country at that time, was obtained.

Public Speaking Engagements

1. HarrisMartin's Equifax Data Breach Litigation Conference (Atlanta, GA, Nov. 10, 2017), topic: "Settlements" (Program Co-Chair)
2. Bridgeport Continuing Education's 2016 Class Action Litigation & Management Conference (Los Angeles, CA, Apr. 15, 2016) (Program Co-Chair)

3. HarrisMartin's Data Breach Litigation Conference: The Coming of Age (San Diego, CA, Mar. 25, 2015), topic: "Creative Approaches to Settling Data Breach Cases."
4. Bridgeport Continuing Education's 2014 National Consumer Class Action Conference (Chicago, IL, Jun. 12-13, 2014); topic: "Privacy/TCPA Class Actions: State of the Law, Claims and Defenses, What Does the Future Hold?"
5. HarrisMartin's MDL Conference: Target Data Security Breach Litigation (San Diego, CA, Mar. 26, 2014); topic: "Settlement of a Data Breach Case."
6. NetDiligence Cyber Risk & Privacy Liability Forum (Marina del Rey, CA, Oct. 11-12, 2012).
7. 25th Annual Producer Conference (Stowe, VT, Sept. 10-12, 2012); topic: "Cyber 2.0—The Evolution of Cyber in the Boardroom."
8. NetDiligence 2012 Cyber Risk & Privacy Liability Forum (Philadelphia, PA, June 4-5, 2012); topic: "State of the Cyber Nation—Cases, Theories, and Damages."
9. Tulane University Law School's symposium on *The Problem of Multidistrict Litigation* (February 15-16, 2008); topic: "The Practicalities of Multidistrict Litigation."

ANTHONY L. PARKHILL

BARNOW AND ASSOCIATES

a professional corporation
ATTORNEYS AT LAW

Anthony L. Parkhill has more than five years of litigation experience and has spent the last four years prosecuting some of the nation's largest complex consumer fraud, automotive defect, and privacy class action matters.

Mr. Parkhill graduated from DePaul University with a Bachelor's degree in Political Science in 2010. He received his Juris Doctor from the University of Chicago Law School in 2014. He is licensed to practice in the State of Illinois. He is also admitted to practice before the United States Courts of Appeals for the Seventh Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Central District of Illinois, and the United States District Court for the District of Colorado. He is a member of the American Bar Association, the Illinois State Bar Association, and the Chicago Bar Association.

Mr. Parkhill has played an active role in litigating the following class action matters that successfully settled: *Gann v. Nissan North America, Inc.* (M.D. Tenn.) (settlement reached in case regarding defective transmissions providing reimbursement for out-of-pocket costs for prior transmission replacements and a warranty extension, collectively valued at over \$444 million); *Warner v. Toyota Motor Sales, U.S.A., Inc.* (C.D. Cal.) (settlement reached regarding allegations of excessive frame rust to certain vehicles providing benefits valued at in excess of \$3.4 billion to Settlement Class members); *Orr v. InterContinental Hotels Group, PLC* (N.D. Ga.) (settlement reached in payment card breach case providing reimbursement for certain expenses subject to an aggregate cap of \$1.55 million); *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.*, (E.D. Wis.) (settlements reached with four of six defendants in this ongoing international antitrust action providing for the payment of \$9,850,000); *Campos v. Calumet Transload R.R., LLC* (N.D. Ill.) (settlements reached providing for payment of \$1,455,000 for the benefit of the Settlement Class in action relating to the alleged negligent storage and handling of petroleum coke and coal at certain industrial storage facilities); *Rafofsky v. Nissan North America, Inc.*, (settlement providing class members with up to \$85 cash or vouchers worth up to \$1,250); and *In re Zappos Security Breach Litigation*, (D. Nev.) (settlement providing class with benefits in excess of \$7 million); and *Cullan and Cullan LLC v. m-Qube, Inc.*, (D. Neb.), (making over \$1 million available to victims of cell phone cramming).

Mr. Parkhill was appointed as one of Class Counsel in *Rafofsky v. Nissan North America, Inc.*, where a class settlement was granted final approval.

Exhibit C

Wickersham Declaration

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

**In re BJC Healthcare
Data Breach Litigation**

)
)
) **Civil Action No. 2022-CC09492**
)
)
)

**DECLARATION OF WILLIAM W. WICKERSHAM IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

1. I am the Vice President of Business Development and Client Relations at RG/2 Claims Administration LLC (“RG/2 Claims”). In that role, I oversee the intake and management of all ongoing class action settlements including the creation and implementation of legal notice plans.

2. RG/2 Claims was established in 2002 as a full-service class action notice and claims administrator, providing notice and administration services for a broad range of collective actions, including but not limited to antitrust, securities, consumer, and employment cases. RG/2 Claims specializes in the creation, development and implementation of legal notification plans. Accordingly, RG/2 Claims is familiar with, and guided by Constitutional due process provisions, rules of states and local jurisdictions, and the relevant case law relating to legal notification. Since 2000, RG/2 has administered and distributed in excess of \$2.0 billion in class-action settlement proceeds. A true and accurate copy of the firm’s publication describing RG/2’s background and capabilities is attached hereto as Exhibit A.

3. I have been involved in the development and implementation of media plans for class action notification for more than ten years.

4. I submit this declaration at the request of Class Counsel for the Settlement Class in order to describe the proposed notice plan and notice services in the settlement of claims against the Parties as defined in the Settlement Agreement (collectively “BJC” or “Defendants”) in the above-captioned litigation.

5. I have personal knowledge of the matters set forth in this declaration and, if called as a witness, could and would testify competently thereto.

6. The objective of the suggested Notice program is to provide the best notice practicable—Rule 52.08-compliant notice—to those members of the Class.

7. RG/2 Claims proposes a Notice program with the following elements:

a. Direct USPS first class notice via postcard to the Settlement Class members identified from Defendants’ records. The list of Settlement Class members will be updated by running the data through the USPS National Change of Address Registry.

b. The Notice and other important court documents relevant to the litigation will be made available on a case specific website designated for this action. Additionally, RG/2 Claims will maintain a toll-free number to answer and address any class member inquiries.

8. The Notice program provides the best practicable method to reach the potential class members and is consistent with other class action notice plans that have been approved by various courts for similarly situated matters.

9. Whenever practicable, direct USPS mail is the preferred form of notice for class members in a class action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-76 (1974).

10. All undeliverable mail will be sorted and scanned. For returned notices without a forwarding address, RG/2 Claims will use Accurint (a division of Lexis-Nexis) to perform a basic “skip trace” search in order to retrieve the most accurate and updated information. The

database will be updated with any new address found and the Notice will be either be re-mailed to the updated addresses or sent by email.

11. RG/2 Claims believes the Notice program described above is suitable for this case and is comparable to plans other courts have approved for similar cases. RG/2 Claims also believes that the Notice is drafted in the “plain language” format preferred by courts and provides the information required by Rule 52.08. RG/2 Claims believes that the Notice is understandable for members of the Class and complies with due process.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT TO THE BEST OF MY KNOWLEDGE THE FOREGOING IS TRUE AND CORRECT.

Executed on April 22, 2022 at New York, NY.



William W. Wickersham, Declarant

Exhibit A



SETTING A NEW STANDARD IN CLASS ACTION CLAIMS ADMINISTRATION

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Class Action Experience

High-Quality Service at Competitive Rates

RG/2 Claims seasoned professionals utilize their vast class action experience, tax and financial management resources to deliver high-quality service at competitive rates.

RG/2 Claims is a boutique class action claims administration firm with a nationwide presence founded by seasoned class action practitioners and highly credentialed tax professionals. Our leadership team has a collective 100 years' experience working in the field of class action litigation and settlement administration to leverage for the benefit of counsel. Our team of driven class action attorneys, *highly credentialed CPAs and forensic accountants* approach each matter with a personal goal to shepherd the settlement through the process from settlement negotiations through final approval. Our personal attention and care ensures that the administration is handled in a seamless matter that allows counsel to proceed with the knowledge and confidence that their settlement will receive the attention and care that they demand. In addition, our operations and IT personnel bring individualized innovations to each engagement, driving the notice and settlement administration to conclusion. We have the experience to handle large settlements with the personal attention and care expected from a boutique firm.

RG/2 Claims recognizes that cutting-edge technology is the key to efficient and reliable claim processing. Our IT Group, including an experienced web design team, enables RG/2 Claims to employ technologies used to enhance accuracy, efficiency and interaction of all participants in the claims process. Our approach focuses on analysis of case needs, development of solutions to maximize resources and reduce costs through accurate and efficient data collection and entry, and ongoing maintenance and support. Throughout the entire claims process, our goal is to (1) optimize completeness, accuracy and efficiency of the data management system, including online integration; (2) validate critical fields and data; and (3) track opt-outs and claimant responses. RG/2 Claims' proprietary database application provides a *single source for managing the entire claims administration process and expediting decision making and resource management*. From the initial mailing through distribution of settlement funds and reconciliation of distributed payments, RG/2 Claims' CLEVerPay® system centralizes data, facilitating information sharing and efficient communication.



Cutting-Edge Technology and Skilled Resources

The CLEVerPay® System: A proprietary and revolutionary application developed exclusively by RG/2 Claims.

At RG/2 Claims, we developed a proprietary and customizable database with the goal of providing single-source management throughout the claims administration process, expediting decision making and resource management.

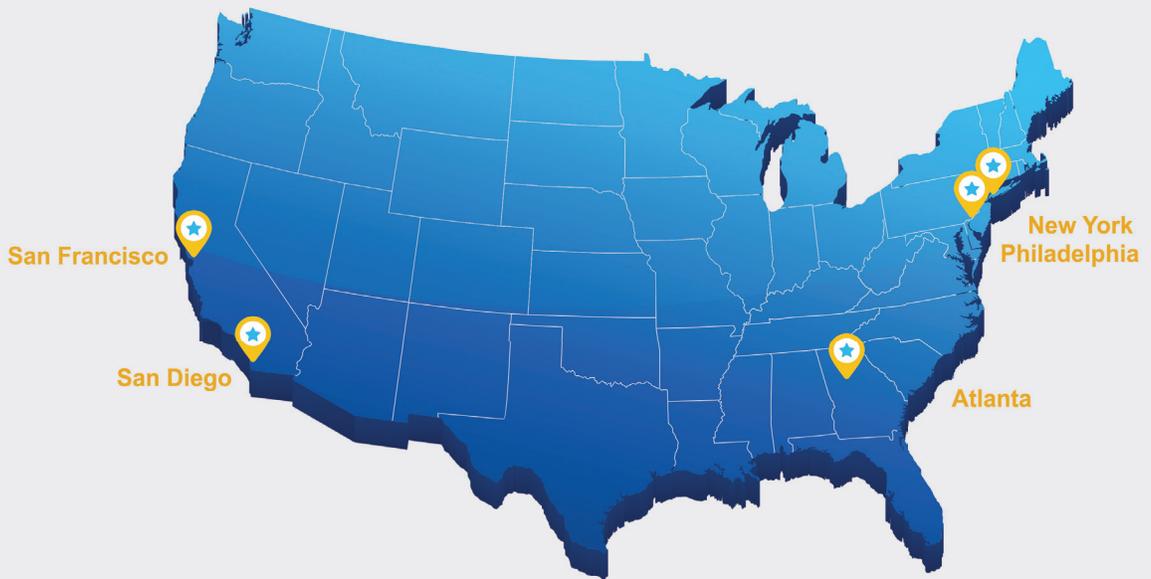
From the initial mailing through distribution of settlement funds and reconciliation of payments, RG/2 Claims' CLEVerPay® system centralizes the entire process while providing information sharing and communications solutions.

Our CLEVerPay® system is a robust and user-friendly resource that can be easily customized to meet your administration and distribution needs. We recognize how essential it is for data to be clean, centralized and readily accessible. RG/2 Claims' CLEVerPay® system has the capacity to assimilate and analyze large amounts of raw data from multiple inputs, to convert that raw data into useful information and to distribute the useful information in a variety of formats.

The integration of these elements results in timely and accurate distribution of secure payments generated from RG/2 Claims' single-source CLEVerPay® system.

For more information, please visit our website to download our CLEVerPay® System Datasheet at: <http://www.rg2claims.com/pdf/cleverPayDatasheet.pdf>.

Locations



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P 415.957.3011 • F 415.957.3090



Full Life-Cycle Support for Your Class Action With You Every Step of the Way

Whether engaged as a court-appointed settlement administrator, claims agent or disbursing agent, RG/2 Claims offers a complete range of claims, settlement administration and investment management services, including but not limited to:

PROFESSIONAL CASE MANAGEMENT CONSULTING

RG/2 Claims provides custom pre-settlement consultation and highly personalized attention throughout the life cycle of settlement administration. Each retention begins with an in-depth consultation concerning the specific needs of the case. Our professionals routinely and proactively identify administrative concerns and identify and propose solutions that avoid delay and remove unpredictability from the equation. We work through a coordinated approach involving a core of specialists that are intimately familiar with the case entrusted to our care. Our retentions result in effective and efficient solutions and greater peace of mind for busy lawyers.

NOTIFICATION PLANNING AND CAMPAIGNS

Whether routine or innovative, RG/2 Claims designs cost-effective and thorough notification plans that will suit your budget whether the settlement is national in scope or highly localized. RG/2 Claims guides you through the array of notice publication options at your disposal in a variety of media formats.

WEBSITE DESIGN

RG/2 Claims can assist in the design and hosting of a website specific to the client's needs to allow for document posting, as well as pertinent information and deadlines about the case. RG/2 Claims can also provide various options for claims filing, which includes an online portal that allows claimants to submit their claims and supporting documentation through the website.

CLAIMS PROCESSING

RG/2 Claims utilizes a proprietary and customizable database that provides a single-source management tool throughout the claims administration process, expediting decision making and resource management. RG/2 Claims' proprietary and sophisticated CLEVerPay® system centralizes the entire process while providing information sharing and communications solutions, from the initial mailing through distribution of settlement funds and reconciliation of payments.

DISTRIBUTION AND TAX SERVICES

RG/2 Claims' in-house tax, accounting and financial services professionals provide disbursement services, including management of checking, sweep, escrow and related cash accounts, as well as non-cash assets, such as credits, gift cards, warrants and stock certificates. RG/2 Claims' in-house CPAs provide a broad array of accounting services, including securing private letter rulings from the IRS regarding the tax reporting consequences of settlement payments, the preparation of settlement fund tax returns and the preparation and issuance of IRS Forms 1099 and W-2.

Range of Services

Offering Unparalleled Value

RG/2 offers a range of quality value-added services for your class action administration.

SECURITIES

RG/2 Claims' highly experienced team uses its various resources to locate beneficial holders of securities, including working with the Depository Trust Company and a proprietary list of nominee firms to identify and mail notices to the class. With RG/2 Claims' CLEVerPay system, claims are processed efficiently and accurately using our proprietary damage grid that calculates class member damages in accordance with a broad array of complex plans of allocation. Claims are automatically flagged through a validation process so RG/2 Claims can communicate with class members concerning their claims and can assist them in filing claims that are complete and properly documented. Once ready for distribution, RG/2 Claims conducts an audit of the claims to insure against calculation errors and possible fraudulent claims. Once the audit is completed, RG/2 Claims calculates distribution amounts for eligible class members in accordance with the plan of allocation and issues checks and any applicable tax documents. RG/2 Claims is also often called upon to act as the Escrow Agent for the Settlement Fund, investing the funds and filing all required tax returns.

ANTITRUST

Because of the high-dollar settlements involved in most antitrust cases and potential large recoveries on behalf of class members, RG/2 Claims understands the importance of accuracy and attention to detail for these cases. RG/2 Claims works with counsel to arrive at the best possible plan to provide notice to the class. With RG/2 Claims' CLEVerPay system, claims filed with a large volume of data, which is common in an antitrust case, can be quickly and easily uploaded into our database for proper auditing. Our highly-trained staff consults with counsel to apply an audit plan to process claims in an efficient manner while ensuring that all claims meet class guidelines. Once ready for distribution, RG/2 Claims calculates check amounts for eligible class members in accordance with the plan of allocation and will issue checks (including wire transfers for large distributions) as well as any necessary tax documents. RG/2 Claims is also available to act as the Escrow Agent for the Settlement Fund, investing the funds and filing all required tax returns.

EMPLOYMENT

With an experienced team of attorneys, CPAs, damage experts and settlement administrators, RG/2 Claims handles all aspects of complex employment settlements, including collective actions, FLSA, gender discrimination, wage-and-hour and, in particular, California state court class and PAGA settlements. RG/2 Claims utilizes technological solutions to securely receive and store class data, parse data for applicable employment information, personalize consents forms or claim forms, collect consents or claims electronically, calculate settlement amounts and make payments through our proprietary CLEVerPay system. Our proprietary database also allows for up-to-the-minute statistical reporting for returned mail, consents or claims received and exclusions submitted. Our CPAs concentrate on withholding and payroll issues and IRC section 468(B) compliance and reporting. Customizable case-specific websites allow for online notification and claims filing capabilities. With Spanish/English bilingual call center representatives on-staff, class members are provided immediate attention to their needs.

CONSUMER

RG/2 Claims handles a wide range of complex consumer matters with notice dissemination to millions of class members and with settlements involving cash, coupons, credits and gift cards. Our experienced claims administrators are available to provide guidance on media, notice and distribution plans that are compliant with the Class Action Fairness Act and the state federal rules governing notice, and that are most beneficial to the class. Our proprietary CLEVerPay system provides a secure and efficient way to track class member data, claims and payments. Integrated with our database, we can provide a user-friendly claims filing portal that will allow class members to complete a static claim form or log-in using user-specific credentials to view and submit a claim personalized just for that user. A similar online portal can be provided as a highly cost-effective method for distribution where the class member can log in to obtain coupons, vouchers or credits as their settlement award.

Effective administration requires proactive planning and precise execution. Before we undertake any matter, we work with you to develop a specific plan for the administration of your case. The service plan is comprehensive, complete and tailored to your specific needs.

RG/2 CLAIMS PROVIDES THE SERVICES SUMMARIZED BELOW:

- Technical consultation during formulation of settlement agreement, including data collection criteria and tax consequences
- Design and development of notice and administration plan, including claim form design and layout
- Claim form and notice printing and mailing services
- Dedicated claimant email address with monitoring and reply service
- Calculation and allocation of class member payments
- Claim form follow-up, including issuing notices to deficient and rejected claims
- Mail forwarding
- Claimant locator services
- Live phone support for claimant inquiries and requests
- Claim form processing
- Claim form review and audit
- Check printing and issuance
- Design and hosting of website access portals
- Online claim receipt confirmation portal
- Ongoing technical consultation throughout the life cycle of the case
- Check and claim form replacement upon request

WE ALSO PROVIDE THE FOLLOWING OPTIONAL SERVICES:

- Periodic status reporting
- Customized rapid reporting on demand
- Issue reminder postcards
- Consultation on damage analyses, calculation and valuation
- Interpretation of raw data to conform to plan of allocation
- Issue claim receipt notification postcards
- Online portal to provide claims forms, status and contact information
- Dedicated toll-free claimant assistance line
- Evaluation and determination of claimant disputes
- Opt-out/Objection processing
- Notice translation
- Integrated notice campaigns, including broadcast, print and e-campaigns
- Pre-paid claim return mail envelope service
- Web-based claim filing
- 24/7 call center support
- Damage measurement and development of an equitable plan of allocation

WE ALSO PROVIDE CALCULATION AND WITHHOLDING OF ALL REQUIRED FEDERAL AND STATE TAX PAYMENTS, INCLUDING:

- Individual class member payments
- Qualified Settlement Fund (QSF) tax filings
- Employment tax filings and remittance
- Generation and issuance of W-2s and 1099s
- Integrated reporting and remittance services, as well as client-friendly data reports for self-filing

**Don't see the service you are looking for?
Ask us. We will make it happen.**



FOR MORE INFORMATION, PLEASE CONTACT:

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WWW.RG2CLAIMS.COM



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