



## **I. SUMMARY OF ARGUMENT**

Plaintiffs and FMC have reached a settlement that provides valuable benefits to the Settlement Class while avoiding the risks and costs of continued litigation.<sup>1</sup> The settlement makes available a \$2,150,000.00 non-reversionary common fund, which will be used to pay (1) all Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims; (2) all Settlement Administration Costs; and (3) any attorneys' fees, costs, expenses, and Service Awards approved by the Court. From the Settlement Fund, Settlement Class Members will be able to claim valuable benefits, including two years of medical data monitoring and valuable cash payments. The Settlement is fair, reasonable, and adequate, and should be preliminarily approved by the Court.

For the reasons stated below, Plaintiffs respectfully request that the Court grant their motion, preliminarily approve the Settlement, preliminarily certify the Settlement Class for settlement purposes, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs' counsel as Class Counsel, and approve the Parties' proposed notice plan.

## **II. STATEMENT OF THE FACTS**

### **A. Case Background**

On July 26, 2022, Defendant learned that unauthorized users had gained access to its network systems after those unauthorized users had encrypted several of Defendant's servers (the "Data Incident"). Thereafter, Plaintiffs filed lawsuits against Defendant relating to the Data Incident, alleging that Defendant violated its duty to protect their personally identifiable information ("PII") and personal health information ("PHI" and together with PII, "Personal

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<sup>1</sup> Unless otherwise indicated, capitalized terms herein shall have the same definitions as set forth in the Settlement Agreement ("Settlement" or "SA"), attached hereto as Exhibit A.

Information”). On December 15, 2022, Plaintiffs filed a consolidated petition, asserting claims for negligence, negligence *per se*, breach of fiduciary duty, breach of implied contract, and unjust enrichment. Extensive discovery and litigation ensued, including: an exchange of written interrogatories and requests for production; production and review of responsive documents; Defendant’s deposition of the named Plaintiffs; Plaintiffs’ deposition of Defendant’s CEO, CFO, an employee, its designated expert, and the President of Defendant’s IT vendor; and litigating and defeating Defendant’s Motion for Summary Judgment. *See* Declaration of Ben Barnow (“Barnow Decl.”), attached hereto as Exhibit B, ¶ 3. On November 3, 2025, Plaintiffs filed their motion for class certification, seeking: certification of a class of “all persons whose personally identifiable information or personal health information was compromised in the Data Breach by unauthorized persons, including all persons who were sent notice of the Data Breach” and appointment of Class Representatives and Class Counsel. Defendant opposed.

The Parties began discussing the prospect of settlement in mid-2024 and scheduled a remote mediation with experienced class action mediator John DeGroot of DeGroot Partners, LLC, for September 12, 2024. The mediation ended without settlement. In late 2025, and prior to the hearing on Plaintiffs’ Motion for Class Certification, the Parties agreed to resume mediation with John DeGroot and scheduled a remote mediation for January 7, 2026. After a full day of arm’s-length negotiations, and additional negotiations thereafter, the Parties agreed to the material terms of this class-wide Settlement.

## **B. Settlement Terms**

**The Settlement Class.** The Settlement Class is defined as “all persons whose personally identifiable information or personal health information was compromised in the Data Incident by unauthorized persons, including all persons who were sent notice of the Data Incident.” SA ¶ 64.

Excluded from the Settlement Class are: (1) all persons who are directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies; (2) governmental entities; and (3) the Judge assigned to the Action, that Judge’s immediate family, and Court staff. *Id.* The Settlement Class includes approximately 266,540 individuals (each, a “Settlement Class Member”).

**The Settlement.** The Settlement secures significant benefits for the Settlement Class. FMC will pay \$2,150,000.00 to a Settlement Fund. *Id.* ¶ 70. The fund is “non-reversionary,” meaning none of the funds will be returned to FMC if the Settlement becomes Final. *Id.* ¶ 67. To administer those funds and implement the Settlement’s terms, the Parties have agreed to use EAG Gulf Coast LLP (“EAG”) as Settlement Administrator.

Once funded, the Settlement Fund will be used by the Settlement Administrator to pay for: (1) all Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims; (2) all Settlement Administration Costs; and (3) any attorneys’ fees, costs, expenses, and Service Awards approved by the Court. *Id.* ¶ 71. The Settlement Fund allows all Settlement Class Members the opportunity to submit claims for the following:

*a.* **Cash Payment A – Documented Losses.** In lieu of the compensation outlined below in paragraph (b), Settlement Class Members may submit a claim for Cash Payment A for up to \$5,000.00 per Settlement Class Member upon presentment of reasonable documented losses related to the Data Incident. *Id.* ¶ 74(a). To receive a documented loss payment, a Settlement Class Member must elect Cash Payment A on the Claim Form attesting under penalty of perjury to incurring documented losses. *Id.* Settlement Class Members will be required to submit reasonable documentation supporting the losses, which means documentation contemporaneously

generated or prepared by a third party or the Settlement Class Member supporting a claim for expenses paid. *Id.*

**b. Cash Payment B – Alternate Cash.** As an alternative to Cash Payment A above, a Settlement Class Member may elect to receive Cash Payment B, which is a cash payment in the estimated amount of \$75.00. *Id.* ¶ 77. The amount of Cash Payment B will be calculated on a pro rata basis. *Id.* ¶ 74.

**c. Medical Data Monitoring.** In addition to Cash Payment A or Cash Payment B, adult Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s medical data monitoring product that will include: (i) real time monitoring of the credit file with one credit bureau; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) security freezing assistance; (iv) victim assistance; (v) \$1,000,000.00 in identity theft insurance with no deductible; and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft. *Id.* ¶ 74(c). Minor Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s minor monitoring product that will include: (i) real time monitoring for evidence of the minor’s SSN in combination with a credit file to protect against creation of synthetic identities; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) public record traces; and (iv) access to fraud resolution agents to help investigate and resolve instances of identity theft. *Id.*

**Notice and Settlement Administration.** EAG will handle all Settlement Notices, Claims, Settlement Payments, and other Settlement logistics. Notice will consist of (i) direct notice via U.S. mail and (ii) a settlement website maintained by the Settlement Administrator. *Id.* ¶¶ 54, 68.

Notice will comport with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution. *Id.* ¶ 76. Prior to sending notice, the Settlement Administrator will run all addresses through NCOA, forward any Postcard Notices returned with a forwarding address, and perform reasonable postal address traces and resend Postcard Notices returned undeliverable. *Id.* ¶ 81. The Postcard Notice shall include, among other information: (a) a description of the material terms of the Settlement; (b) how to submit a Claim Form; (c) the Claim Form Deadline; (d) the Opt-out Deadline; (e) the Objection Deadline; (f) the Final Approval Hearing date; and (g) the Settlement Website address at which Settlement Class Members may submit claims and access this Agreement and other related documents and information. *Id.* ¶¶ 68, 81.

**Claims, Exclusion, and Objection Procedures.** The timeline as set forth in the Settlement Agreement is designed to give Settlement Class Members sufficient time to receive Notice, review the relevant documents, and determine what they would like to do. Most notably, individuals in the Settlement Class will have until 30 days before the initially scheduled Final Approval Hearing to exclude themselves from the Settlement or object to its approval. *Id.* ¶¶ 48-49.

**Attorneys' Fees, Costs, Expenses, and Service Awards.** In connection with the Settlement, proposed Class Counsel will apply to the Court for an award of attorneys' fees up to one-third of the Settlement Fund, plus reimbursement of costs and expenses. *Id.* ¶ 103. Proposed Class Counsel will also apply to the Court for Service Awards of up to \$10,000.00 each. *Id.* ¶ 104. These fees, costs, expenses, and Service Awards will be paid from the Settlement Fund. *Id.* ¶¶ 103–04.

**Form and Scope of the Release.** In exchange for the relief described above, Plaintiffs and all Settlement Class Members who do not exclude themselves will, upon the Effective Date, provide the Released Parties with a full release of all Released Claims. The Released Claims

include, but are not limited to, any and all claims or causes of action, whether known or unknown, that arise out of the Data Incident that were asserted, or that could have been asserted, in the Lawsuit. *Id.* ¶ 58.

### **III. ARGUMENT**

#### **A. The Settlement Should be Preliminarily Approved**

The class action settlement process goes through two steps: (1) preliminary approval, where the Court determines whether to allow notice to be disseminated to the Settlement Class; and (2) final approval, where the Court finally determines whether a Settlement is fair, reasonable, and adequate. *See, e.g., McAllen Med. Ctr. v. Cortez*, 66 S.W.3d 227, 234 (Tex. 2001). At the preliminary approval stage, the Court should ascertain whether the proposed settlement is likely to be approved as fair, reasonable, and adequate, and whether the Settlement Class is likely to be certified for settlement purposes at the final approval stage.

Texas courts analyze the following factors to determine whether a settlement is fair, reasonable, and adequate:

(1) whether the settlement was negotiated at arms' length or was a product of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings, including the status of discovery; (4) the factual and legal obstacles that could prevent the plaintiffs from prevailing on the merits; (5) the possible range of recovery and the certainty of damages; (6) the respective opinions of the participants, including class counsel, class representatives, and the absent class members.

*Gen. Motors Corp. v. Bloyed*, 916 S.W.2d 949, 955 (Tex. 1996). An analysis of these factors demonstrates that the Settlement is fair, reasonable, and adequate, and should be preliminarily approved.

#### **1. Absence of Fraud and Collusion**

Plaintiffs and FMC reached the Settlement only after hard-fought, arms'-length

negotiations spanning more than a year, including two separate mediations before an experienced mediator, John DeGroot of DeGroot Partners LLC. *See* Barnow Decl., ¶ 4. “The Court may presume that no fraud or collusion occurred between counsel, in the absence of any evidence to the contrary.” *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010).<sup>2</sup> “[A]rms-length negotiations conducted under the close supervision of an experienced mediator are a ‘strong indicator of procedural fairness.’” *Matson v. NIBCO Inc.*, No. 5-19-CV-00717-RBF, 2021 U.S. Dist. LEXIS 201909, at \*25 (W.D. Tex. Oct. 20, 2021) (quoting *Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295 (5th Cir. 2017)); *see also Quintanilla v. A & R Demolition, Inc.*, No. H-04-1965, 2008 U.S. Dist. LEXIS 37449, at \*11 (S.D. Tex. May 7, 2008) (“The settlement was reached through arms-length negotiations after a long, hard-fought mediation with a neutral. Under such circumstances, courts find that class action settlements are free of fraud or collusion.”). The Settlement was only reached after the mediation and after significant further adversarial negotiations. *See* Barnow Decl., ¶ 4.

## **2. Complexity, Expense, and Likely Duration of the Litigation**

Without a settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. First, “[d]ata breach cases such as the instant case are particularly risky, expensive, and complex . . . .” *Gordon v. Chipotle Mexican Grill, Inc.*, Civil Action No. 17-cv-01415-CMA-SKC, 2019 U.S. Dist. LEXIS 215430, at \*3 (D. Colo. Dec. 16, 2019). Few, if any, data breach cases have been tried in any court across the country, let alone a Texas court. The Settlement will avoid the continuing burden on the Parties, as well as saving judicial resources and avoiding risk. *See* Barnow Decl., ¶ 5. At the time the Settlement was

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<sup>2</sup> *Northrup v. Sw. Bell Tel. Co.*, 72 S.W.3d 16, 20 (Tex. App.—Corpus Christi 2002) (“Federal decisions and authorities interpreting current federal class action requirements are persuasive authority in Texas.”).

reached, the Parties were engaged in briefing on Plaintiffs' Motion for Class Certification. The Court's ruling would have likely resulted in an appeal whether the motion was granted or denied. The case then would have gone to a lengthy and expensive trial. The outcome of the trial also would likely have resulted in an appeal. Instead, this Settlement provides significant relief for the Settlement Class now.

### **3. Stage of Proceedings**

The case is certainly at a stage of the proceedings that makes it ripe for settlement. Upcoming events, such as class certification proceedings, appeals, and trial, would have led to substantial expenditure of resources for both the Court and the Parties. *See* Barnow Decl., ¶ 5. Yet, the Parties were deep enough into the litigation to where they were supremely informed of the legal positions of the Parties and their chances of succeeding in the litigation going forward.

“A trial court correctly analyzes this factor by determining whether sufficient discovery has been conducted to allow the parties to make an informed decision about the relative merits of the case and the settlement.” *Johnson v. Scott*, 113 S.W.3d 366, 372 (Tex. App.—Beaumont 2003). Here, the Parties have conducted extensive discovery, including: an exchange of written interrogatories and requests for production; production and review of responsive documents; Defendant's depositions of the named Plaintiffs; and Plaintiffs' depositions of Defendant's CEO, CFO, an employee, its designated expert, and the president of Defendant's IT vendor. *See* Barnow Decl., ¶ 3.

### **4. Factual and Legal Obstacles for Plaintiffs**

A settlement must take “into account the uncertainty and risks involved in litigation” as well as “the strength of the claims and possible defenses.” *Collins v. Sanderson Farms, Inc.*, 568 F. Supp. 2d 714, 727 (E.D. La. 2008). Here, Proposed Representative Plaintiffs believe the claims

asserted in the litigation have merit. They would not have fought so hard to advance the claims if it were otherwise. Indeed, they prevailed over Defendant’s motion for summary judgment. But they also recognize the substantial risks involved in continuing this litigation. *See Yvonne Mart Fox v. Iowa Health Sys.*, No. 3:18-cv-00327-JDP, 2021 U.S. Dist. LEXIS 40640, at \*13 (W.D. Wis. Mar. 4, 2021) (“Data breach litigation is evolving; there is no guarantee of the ultimate result.”). FMC has aggressively maintained its positions that a litigated class could not be certified, that FMC would not be found liable at trial, and that Plaintiffs would not be able to prove damages resulting from the Data Incident. While Plaintiffs disagree with FMC’s views, they 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 at trial and in achieving a result better than that offered by the Settlement here. *See Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982) (one of the most important factors in assessing a class settlement is the probability of the plaintiffs’ success on the merits). As such, this factor favors approval of the settlement. *See Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“The court shall consider the vagaries of the litigation and compare the significance of immediate recovery by way of compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, it has been held proper to take the bird in hand instead of a prospective flock in the bush.”) (citations and quotations omitted).

## **5. Possible Range of Recovery**

“In assessing settlements, the trial court must consider the range of possible damages that plaintiffs could recover at trial and combine this assessment with the likelihood of plaintiffs’ success at trial to determine if the settlement falls within the range of recoveries that is fair.” *Johnson v. Scott*, 113 S.W.3d 366, 373 (Tex. App.—Beaumont 2003). “[M]athematical precision

is not required” to analyze this factor, only an estimate. *Id.*

Here, the relief that the Settlement Agreement provides is within the range of reasonableness, especially considering the attendant risks of litigation. FMC has maintained throughout the litigation that Plaintiffs cannot prove damages. While Plaintiffs firmly disagree, they recognize the risk that comes with a trial and that the possible recovery could be zero. The Settlement Agreement, by contrast, provides immediate relief. The Settlement Fund amounts to approximately \$8.07 per Settlement Class Member, which exceeds or is in line with many recent class action settlement agreements relating to medical data breaches:

<b>Case Title</b>	<b>Settlement Amount</b>	<b>No. of Class Members</b>	<b>\$ Per Class Member</b>
<i>Madkin v. Automation Personnel Services, Inc.</i> , No. 2:21-cv-1177 (N.D. Ala.)	\$1.37M	299,253	\$4.59
<i>Bingaman, et al. v. Avem Health Partners Inc.</i> , Case No. CIV23-130-SLP (W.D. Ok.)	\$1.45M	271,303	\$5.34
<i>Kesner, et al. v. UMass Memorial Health Care, Inc.</i> , No. 2185-cv-01210 (Mass. Supp. Ct.)	\$1.25M	209,047	\$5.74
<i>In re C.R. England, Inc. Data Breach Litigation</i> , No. 2:22-cv-374-DAK (D. Utah)	\$1.4M	224,572	\$6.23
<i>Reynolds v. Marymount Manhattan College</i> , No. 1:22-cv-06846 (S.D.N.Y.)	\$1.3M	191,752	\$6.78
<i>Kondo et al. v. Creative Services, Inc.</i> , Case No. 1:22-cv-10438-DJC (D. Mass.)	\$1.2M	164,000	\$7.27

Further, the cash compensation to which eligible Settlement Class Members will be entitled is significant relative to economic damages incurred.

## **6. Respective Opinions of Participants**

Plaintiffs, proposed Class Counsel, and Defendant all support the Settlement Agreement. Proposed Class Counsel believe that the proposed Settlement is in the best interests of the Settlement Class. *See* Barnow Decl., ¶ 5. Proposed Class Counsel strongly believe that the benefits

of the Parties' Settlement far outweigh the delay and considerable risk of proceeding through class certification, trial, and any appeals. *Id.* Given Plaintiffs' counsel's extensive experience litigating similar class action cases in federal, state, and appellate courts across the country, this factor also weighs in favor of granting preliminary approval. *See Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (holding that "the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel").

At the final approval stage, the Court will also have the opinion of the Settlement Class, through the submission of claims, objections (if any), and opt-outs (if any). Because there is no evidence of fraud or collusion here and because the Parties support the Settlement, the Court should preliminarily approve it and allow notice to be sent to the Settlement Class.

#### **B. The Settlement Class Should Be Conditionally Certified**

"The trial court must assume its role as guardian of the class not only in approving class settlements, but also in deciding whether to certify a class in the first place. This means that Rule 42's certification requirements of numerosity, commonality, typicality, and adequacy of representation must always be met, even when cases are settled before certification of the class. . . ." *Gen. Motors Corp. v. Bloyed*, 916 S.W.2d 949, 954 (Tex. 1996).

In order to certify a class action, the proposed class representatives must show that the following prerequisites are met: "(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." Tex. R. Civ. P. 42(a).

In addition to showing that the prerequisites are met, the proposed class representatives

must also demonstrate that the action satisfies one of the types of class actions set forth in Rule 42(b). *See Lebron v. Citicorp Vendor Fin.*, 99 S.W.3d 676, 679 (Tex. App.—Eastland 2003). Here, Plaintiffs seek to certify a class under Rule 42(b)(3), which requires that (1) “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” and (2) “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Rule 42(b)(3). The matters pertinent to the above issues include: “(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.” *Id.*

The proposed Settlement Class here meets all of the requirements for a class action under Rule 42.

### **1. Numerosity**

To meet the numerosity requirement, the Court must find that “the class is so numerous that joinder of all members is impracticable.” Rule 42(a)(1). “There is no mechanical rule for determining when class size reaches that threshold.” *Emp’rs Cas. Co. v. Tex. Ass’n of Sch. Bds. Workers’ Comp. Self-Insurance Fund*, 886 S.W.2d 470, 474 (Tex. App.—Austin 1994). Here, the proposed class numbers 266,540 persons. *See* Barnow Decl., ¶ 6. Joinder of 266,540 persons into the class is certainly impracticable. *See, e.g., Emp’rs Cas. Co.*, 886 S.W.2d at 474 (finding a potential class that included “over 1,000” members met the numerosity prerequisite); *Nat’l Gypsum Co. v. Kirbyville Indep. Sch. Dist.*, 770 S.W.2d 621, 624 (Tex. App.—Beaumont 1989) (class of 66 members meets numerosity prerequisite); *Chevron U.S.A., Inc. v. Kennedy*, 808 S.W.2d

159, 162 (Tex. App.—El Paso 1991) (20 class members sufficient).

## 2. Commonality

“The commonality requirement requires a determination that ‘there are questions of law or fact common to the class.’” *Emp’rs Cas. Co.*, 886 S.W.2d at 474 (quoting Tex. R. Civ. P. 42(a)(2)). “The rule does not require that all or even most of the questions be common; it is sufficient that there are some common questions of law or fact.” *Id.* There are several questions of law and fact that are common to the entire class, including, *inter alia*: (1) whether Defendant had a duty to implement and maintain reasonable security procedures and practices to protect and secure Settlement Class Members’ Personal Information from unauthorized access and disclosure; (2) whether Defendant failed to exercise reasonable care to secure and safeguard Settlement Class Members’ Personal Information; (3) whether an implied contract existed between class members and Defendant providing that Defendant would implement and maintain reasonable security measures to protect and secure Settlement Class Members’ Personal Information from unauthorized access and disclosure; (4) whether class members and Defendant had a fiduciary relationship; (5) whether Defendant breached its duties to protect Settlement Class Members’ Personal Information; (6) whether Defendant was unjustly enriched when it accepted payments and Personal Information and did not provide Settlement Class Members with adequate data security; and (7) whether Settlement Class Members are entitled to damages and the measure of such damages and relief.

These common questions of law and fact are certainly sufficient to demonstrate commonality. *See, e.g., Savidge v. Pharm-Save, Inc.*, 727 F. Supp. 3d 661, 698 (W.D. Ky. 2024) (finding commonality was met and stating, “in other data breach cases, courts have found the commonality requirement satisfied, so long as there existed at least one common issue of law or

fact”); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21, 27 (D. Me. 2013) (“Whether [defendant’s] conduct was negligent or a contractual breach and whether it caused a data security breach that resulted in theft of customers’ data and reasonably prompted customers to take mitigation measures are questions that are common among all the class members.”).

### **3. Typicality**

The proposed class also meets the standard for typicality. “A claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.” *Sw. Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 920 (Tex. 2010) (quoting *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007)). “The test for typicality is not demanding.” *Lon Smith & Assocs. v. Key*, 527 S.W.3d 604, 626 (Tex. App.—Fort Worth 2017).

Plaintiffs’ and the proposed class’s claims are typical. All of the claims arise out of the same set of facts (the Data Incident). Plaintiffs are patients or former patients of Defendant as are the rest of the proposed class. There is no differentiating factor between the claims of Plaintiffs and those of the putative class as the common factual and legal issues here pertain to all class members. Typicality is met.

### **4. Adequacy**

Adequacy is also met. “This requirement has two components: (1) an absence of antagonism between the class representatives and the class members, and (2) an assurance the representative parties will vigorously prosecute the class claims and defenses.” *Mosaic Baybrook One, L.P. v. Simien*, 646 S.W.3d 847, 855 (Tex. App.—Houston 2020). “Texas courts have considered the following factors in determining whether the class representative adequately

represents the class:

- the adequacy of counsel;
- potential conflicts of interest;
- the personal integrity of the plaintiffs;
- the representative's familiarity with the litigation and their belief in the legitimacy of the grievance;
- whether the class is manageable based on geographical limitations; and
- whether the plaintiff can afford to finance the class action.

*Id.* at 855-56 (citing *Forsyth v. Lake LBJ Inv. Corp.*, 903 S.W.2d 146, 150 (Tex. App.—Austin 1995)). An analysis of these factors shows that Plaintiffs are adequate representatives of the proposed class.

First, there is no antagonism between Plaintiffs and the proposed class members. As discussed in the typicality section, Plaintiffs are patients or former patients of Defendant as are the rest of the proposed class. Plaintiffs brought this lawsuit with the knowledge that they would be seeking to bring the case on behalf of a class of similarly situated individuals. Plaintiffs do not have personal conflicts of interest with the proposed class. There is no reason to believe that any antagonism exists between Plaintiffs and the rest of the proposed class.

Second, Plaintiffs have already demonstrated they will vigorously prosecute the class's claims. Plaintiffs have all sat for depositions in this matter, participated in discovery, and have been responsive when dealing with their counsel. *See* Barnow Decl., ¶ 7. In the depositions, each of Plaintiffs demonstrated an understanding of the lawsuit, the role of a class representative, and a willingness to serve as such. Plaintiffs are also represented by adequate and experienced counsel. Barnow Decl., ¶ 8. Proposed Class Counsel, Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason & Perry LLP, are highly experienced class action litigators and have led or participated in many data privacy class actions. *Id.* Plaintiffs are adequate Class Representatives,

and Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason & Perry LLP are adequate to serve as Class Counsel.

### **5. Predominance**

“Predominance requires that common questions of law or fact will predominate over questions affecting only individual members.” *Sw. Bell Tel. Co.*, 308 S.W.3d at 920. “The test for predominance is not whether common issues outnumber uncommon issues but . . . whether common or individual issues will be the object of most of the efforts of the litigants and the court.” *Id.* at 920–21 (alterations in original) (quoting *Sw. Ref. Co. v. Bernal*, 22 S.W.3d 425, 434 (Tex. 2000)). Here, the predominance requirement under Rule 42(b)(3) is satisfied for many of the same reasons that the commonality requirement of Rule 42(a) is satisfied. Defendant’s alleged actions or inactions with respect to protecting Personal Information affected all members of the Settlement Class, and all Settlement Class Members were harmed as a result of Defendant’s alleged conduct. Plaintiffs alleged damages theories that could be calculated on a classwide basis. Further, in their Motion for Class Certification, Plaintiffs analyzed all of their claims for predominance and demonstrated that the factor was met. *See* Plaintiffs’ Motion for Class Certification at 17–20. Common questions of law and fact predominate over individual questions here.

### **6. Superiority**

A class action that would resolve the proposed Settlement Class’s claims is superior to any other means of adjudication of the claims. To analyze superiority, Plaintiffs will demonstrate that the factors enumerated in Rule 42(b)(3)—(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular

forum; and (D) the difficulties likely to be encountered in the management of a class action—favor certification.

**a. Interest of Class Members in Individually Controlling Prosecution and Other Litigation Concerning this Matter**

The lack of interest of Settlement Class Members in individually controlling prosecution and the lack of other litigation concerning this matter favor superiority of the class action mechanism. “If few class members have filed individual suits, a court may conclude that the members do not possess strong interests in controlling their own litigation; this lack of individual lawsuits supports a finding of superiority.” *Lon Smith & Assocs. v. Key*, 527 S.W.3d 604, 637-38 (Tex. App.—Fort Worth 2017). Plaintiffs’ counsel are unaware of any litigation pertaining to this matter other than this consolidated lawsuit. *See* Barnow Decl. ¶ 9. Plaintiffs in this lawsuit all brought their claims expecting the case to be tried on a class basis. In data breach cases, courts have noted that, “[g]iven the size of the claims, individual class members have virtually no interest in individually controlling the prosecution of separate actions.” *In re Hannaford Bros.*, 293 F.R.D. at 33-34; *Savidge*, 727 F. Supp. 3d at 708. Given the lack of incentive Settlement Class Members have in bringing individual claims and the lack of other cases, a class action is superior to other methods of adjudication.

**b. Desirability of the Forum**

This forum is the best location for this class action because Defendant is headquartered in this judicial district. Accordingly, much of the evidence needed to analyze all of the common issues in this litigation are located within this district. Additionally, the vast majority of class members have last-known addresses in Texas, meaning that most of the proposed class is also near this district. There is no forum that would be better suited to handle this litigation.

### **c. Difficulties Likely to Be Encountered**

Plaintiffs cannot foresee any difficulties that will arise due to this case being brought as a class action rather than an individual action beyond those raised in every litigation, especially given the fact that the Settlement would resolve the action. Common questions predominate individual questions by far. The efficiencies of the class action mechanism here greatly outweigh any difficulties that may arise. As such, a class action is superior to an individual litigation.

### **C. The Court Should Approve the Proposed Notice Plan**

Before a settlement is finally approved, “[n]otice of the material terms of proposed settlement, dismissal or compromise, together with an explanation of when and how the members may elect to be excluded from the class, shall be given to all members in such manner as the court directs.” Rule 42(e)(1)(B). “Fair notice is grounded in due process, which requires that parties receive notice ‘reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections.’” *Garcia v. Harding*, 545 S.W.3d 8, 13 (Tex. App.—El Paso 2017).

Here, the proposed notice plan satisfies the requirements of Rule 42 and due process. The notices to be provided to Settlement Class Members will clearly and concisely summarize the case, the Settlement, and the legal rights of the Settlement Class Members. *See* SA ¶ 81. Moreover, the manner in which Settlement Class Members are to be notified—direct U.S. mail—is the best practicable under the circumstances. Providing notice directly to the members of the Class by regular U.S. mail is the gold standard for notice. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974) (holding that mailing direct notice to class members is the “best notice practicable”). In addition, the Settlement Administrator will establish a settlement website that will contain

relevant information pertaining to the Settlement Agreement and will allow Settlement Class Members to submit online claims. SA ¶ 68.

Accordingly, the Court should preliminarily approve the Settlement, conditionally certify the Settlement Class, and approve the Settlement's notice plan.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (i) grant Preliminary Approval of the Settlement; (ii) provisionally certify the Settlement Class for settlement purposes only; (iii) appoint Plaintiffs as Class Representatives and Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason & Perry LLP as Class Counsel; (iv) approve the form of the Notices and the Notice Program; (v) appoint EAG Gulf Coast LLP as the Settlement Administrator; (vi) establish procedures and deadlines for Settlement Class members to opt-out and Settlement Class Members to object; and (vii) schedule a Final Approval Hearing at which time the Court will consider Final Approval of the Settlement, Settlement Class certification, and a Motion for Attorneys' Fees, Costs, Expenses and Service Awards.

Dated: April 8, 2026

Respectfully submitted,

*/s/ J. Daren Brown*

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 8, 2026, a true and correct copy of the above and foregoing redacted instrument was served to counsel of record by e-service in accordance with the TEXAS RULES OF CIVIL PROCEDURE.

*/s/ J. Daren Brown* \_\_\_\_\_  
**J. Daren Brown**  
*Attorney for Plaintiffs*

# **Exhibit A**

CAUSE NO. 111219-D-CV

DENELI SHARBER, SHANNA BYERS,  
LYLE SCHAFER and JENNIFER HART,  
*individually and on behalf of all others  
similarly situated,*

Plaintiffs,

v.

FMC SERVICES, LLC, D/B/A FAMILY  
MEDICINE CENTERS,

Defendant.

IN THE DISTRICT COURT OF  
POTTER COUNTY, TEXAS

320<sup>TH</sup> JUDICIAL COURT

**SETTLEMENT AGREEMENT**

This Settlement Agreement<sup>1</sup> is entered into between Plaintiffs, individually, and on behalf of the Settlement Class, and Defendant, as of the date last signed below (referred to as “Settlement Agreement” or “Agreement,” or “Settlement”). The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

**I. Procedural History**

1. Defendant FMC Services, LLC (“Defendant” or “FMC”) provides medical services, including in-house x-rays, and lab tests. Defendant operates four or more primary care treatment centers and one urgent care center in Texas.

2. In the ordinary course of treating patients, Defendant collects personal and sensitive information from Texas residents, including names, mailing addresses, dates of birth, Social Security numbers, and protected health information (hereinafter, the “Private Information”).

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those defined in Section II below.

3. On July 26, 2022, cybercriminals unlawfully accessed information stored on FMC's computer systems. Plaintiff alleges that cybercriminals acquired the information.

4. As result, Defendant sent letters to 266,540 individuals advising them that their Private Information may have been impacted in the Data Incident.

5. On October 5, 2022, Plaintiff Sharber named Defendant in the first class action lawsuit related to the Data Incident. Thereafter, three other cases alleging similar causes of action and overlapping putative classes were filed against Defendant.

6. Following agreement, Plaintiffs moved to consolidate the actions on October 20, 2022.

7. On November 16, 2022, the Court granted the motion to consolidate and appointed Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason LLP as Interim Co-Lead Counsel.

8. On December 15, 2022, Plaintiffs filed their Consolidated Class Action Petition, alleging claims for negligence, negligence *per se*, breach of fiduciary duty, breach of implied contract, and unjust enrichment. Defendant filed its Answer on February 22, 2023.

9. The Parties began discussing the prospect of settlement in mid-2024 and scheduled a remote mediation with experienced class action mediator John DeGroote of DeGroote Partners, LLC, for September 12, 2024. The mediation ended without settlement.

10. Extensive discovery and litigation ensued, including: an exchange of written interrogatories and requests for production; production and review of responsive documents; Defendant's deposition of the named Plaintiffs; Plaintiffs' deposition of Defendant's CEO, CFO, an employee, its designated expert, and the President of Defendant's IT vendor; and litigating and defeating Defendant's Motion for Summary Judgment.

11. On September 17, 2025, Defendant moved the Court to reconsider its order denying its motion for summary judgment. Plaintiffs opposed. At the December 8, 2025 hearing, Defendant withdrew its motion to reconsider.

12. On November 3, 2025, Plaintiffs filed their motion for class certification, seeking certification of a class of “all persons whose personally identifiable information or personal health information was compromised in the Data Breach by unauthorized persons, including all persons who were sent notice of the Data Breach”, and appointment of Class Representatives and Class Counsel. Defendant opposed.

13. In late 2025, and prior to the hearing on Plaintiffs’ Motion for Class Certification, the Parties agreed to continue mediation with John DeGroote and scheduled a remote mediation for January 7, 2026.

14. After a full day of arms-length negotiations, and additional negotiations thereafter, the Parties agreed to the material terms of this class-wide Settlement.

15. The Parties filed a Joint Notice of Settlement and Request for Stay on January 12, 2026. The Court granted the motion on January 14, 2026.

16. The Parties agree to settle the litigation, without any admission by Defendant of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Petition and the Data Incident as it relates to it, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Petition, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the

Petition. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs enter into this Agreement to recover on the claims asserted in the Petition, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede that the claims alleged in the Petition lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

## **II. Definitions**

17. “**Action**” means the above-captioned consolidated action, Sharber v. FMC Servs., LLC, No. 111219-D-CV, pending in the District Court of Potter County, Texas, 320th Judicial Court.

18. “**Agreement**” or “**Settlement**” or “**Settlement Agreement**” means this Settlement Agreement, including all exhibits, between Plaintiffs and Defendant.

19. “**Application for Attorneys’ Fees, Costs, Expenses, and Service Awards**” means the application made with the Motion for Final Approval seeking attorneys’ fees, costs, expenses, and Service Awards.

20. “**Cash Payment**” means the cash compensation paid to Settlement Class Members who elected to submit a Claim for either Cash Payment A – Documented Losses or Cash Payment B – Alternate Cash.

21. “**Cash Payment A – Documented Losses**” means the cash compensation of up to \$5,000.00 that Settlement Class Members with documented losses may elect under the Settlement.

22. “**Cash Payment B – Alternate Cash**” means the cash compensation that Settlement Class Members may elect under this provision.

23. “**Claim Form**” means the proof of claim, substantially in the form attached hereto as *Exhibit 3*, which may be modified as necessary, subject to the Parties’ approval.

24. “**Claim Form Deadline**” shall be 15 days before the initial scheduled Final Approval Hearing and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class Member to be eligible for a Cash Payment.

25. “**Claimant**” means an individual who submits a Claim Form.

26. “**Claim Process**” means the process by which Claimants submit Claims to the Settlement Administrator and the Settlement Administrator determines which Claims are Valid Claims.

27. “**Class Counsel**” means: Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason LLP.

28. “**Class List**” is the class list provided by Defendant to the Settlement Administrator. The Class List shall include the Settlement Class Members’ names and addresses.

29. “**Class Representatives**” means the Plaintiffs the Court approves to serve as representatives on behalf of the Settlement Class.

30. “**Court**” means the District Court of Potter County, Texas, 320<sup>th</sup> Judicial District, and the Judge(s) assigned to the Action.

31. “**Data Incident**” means the unauthorized access to the Private Information that Defendant discovered on July 26, 2022, as a result of the infiltration of Defendant’s computer systems.

32. “**Defendant**” means FMC Services, LLC, the defendant in the Action.

33. “**Defendant’s Counsel**” means Justin J. Boron of Freeman Mathis & Gary, LLP

34. “**Effective Date**” means (a) 30 days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (b) if appeals are taken from the Final Approval Order, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal.

35. “**Escrow Account**” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

36. “**Final Approval**” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form attached hereto as *Exhibit 4*.

37. “**Final Approval Hearing**” means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, Expenses, and Service Awards.

38. “**Final Approval Order**” means the final order the Court enters granting Final Approval of the Settlement. The Final Approval Order also includes the orders, which may be entered separately, determining the amount of approved attorneys’ fees, costs, expenses, and Service Awards.

39. “**Long Form Notice**” means the long form notice of the Settlement, substantially in the form attached hereto as *Exhibit 2*, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail upon request to the Settlement Administrator.

40. “**Medical Data Monitoring**” means the CyEx monitoring product with two years of monitoring that Settlement Class Members may elect as a Settlement Class Member Benefit under the Settlement.

41. “**Minor Data Monitoring**” means the CyEx minor monitoring product.

42. “**Motion for Final Approval**” means the unopposed motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement.

43. “**Motion for Preliminary Approval**” means the motion that Plaintiffs shall file with the Court seeking Preliminary Approval of the Settlement.

44. “**Net Settlement Fund**” means the amount of the Settlement Fund following payment of Settlement Administration Costs and any attorneys’ fees, costs, expenses, and Service Awards.

45. “**Notice**” means the Postcard Notice and Long Form Notice that Plaintiffs will ask the Court to approve in connection with the Motion for Preliminary Approval.

46. “**Notice Program**” means the methods provided for in this Agreement for giving Notice to the Settlement Class and may consist of Postcard Notice, Long Form Notice, along with the Settlement Website and the Settlement telephone number.

47. “**Notice of Deficiency**” means the notice sent by the Settlement Administrator to a Settlement Class Member who has submitted an invalid Claim.

48. “**Objection Deadline**” means 30 days before the initial scheduled Final Approval Hearing and is the last date by which Settlement Class Members may object to the Settlement.

49. “**Opt-Out Deadline**” means 30 days before the initial scheduled Final Approval Hearing and is the last date by which Settlement Class Members may opt out of the Settlement.

50. “**Party**” means each of Plaintiffs and Defendant, and “**Parties**” means Plaintiffs and Defendant collectively.

51. “**Petition**” means the Consolidated Petition filed on December 15, 2022.

52. “**Plaintiffs**” means Deneli Sharber, Shanna Byers, Lyle Schafer, and Jennifer Hart.

53. “**Private Information**” means the personally identifiable information and private health information which consists of some combination of the following: name, mailing address, date of birth, Social Security Number and/or protected health information.

54. “**Postcard Notice**” means the postcard notice of the Settlement, substantially in the form attached hereto as *Exhibit 1*, that the Settlement Administrator may disseminate to Settlement Class members by mail.

55. “**Preliminary Approval**” means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form submitted with the Motion for Preliminary Approval.

56. “**Preliminary Approval Order**” means the order preliminarily approving the Settlement and proposed Notice Program, substantially in the form attached hereto as *Exhibit 5*.

57. “**Releases**” means the releases and waiver set forth in Section XIII of this Agreement.

58. “**Released Claims**” means any and all actual, potential, filed or unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected claims, demands, liabilities, rights, causes of action, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, joint or several, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, against the Released Parties,

or any of them, arising out of or relating to actual or alleged facts in the Action or any transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act arising from the Data Incident.

59. “**Released Parties**” means Defendant and its past, present, and future direct and indirect heirs, assigns, associates, corporations, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, members, agents, employees, attorneys, insurers, reinsurers, benefit plans, predecessors, successors, managers, administrators, executors, and trustees.

60. “**Releasing Parties**” means Plaintiffs and Settlement Class Members and their respective past, present, and future heirs, beneficiaries, conservators, executors, estates, administrators, assigns, agents, accountants, financial and other advisors, and any other representatives of any of these persons and entities.

61. “**Service Awards**” means the monetary compensation the Court approves for Plaintiffs for serving as Class Representatives.

62. “**Settlement Administrator**” means EAG Gulf Coast, LLC.

63. “**Settlement Administration Costs**” means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration.

64. “**Settlement Class**” means all persons whose personally identifiable information or personal health information was compromised in the Data Incident by unauthorized persons, including all persons who were sent notice of the Data Incident. Excluded from the Settlement Class are: (1) all persons who are directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies; (2) governmental entities; and (3) the Judge assigned to the Action, that Judge’s immediate family, and Court staff.

65. “**Settlement Class Member**” means any member of the Settlement Class who has not opted out of the Settlement.

66. “**Settlement Class Member Benefit**” means the Cash Payment and/or Medical Data Monitoring, elected by Settlement Class Members.

67. “**Settlement Fund**” means the non-reversionary all cash \$2,150,000.00 fund that Defendant is obligated to fund or cause to be funded pursuant to Section III herein. Under no circumstance will Defendant be required to pay more than the Settlement Fund under the Settlement Agreement.

68. “**Settlement Website**” means the website the Settlement Administrator will establish as a means for Settlement Class members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for at least six months after Final Approval.

69. “**Valid Claim**” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Central Time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of

the physical or e-signature. Failure to respond to the Settlement Administrator's Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

### **III. Settlement Fund**

70. Within 15 days of Preliminary Approval, Defendant shall fund or cause to be funded, an amount reasonably expected to be incurred in Settlement Administration Costs as set by the Settlement Administrator. Within 30 days of the Effective Date, Defendant shall fund, or cause to be funded, \$2,150,000.00 less any Settlement Administrative Costs already paid to fund the Settlement Fund. The Settlement Administrator shall provide Defendant with payment instructions within 5 days after the Effective Date. Defendant may not be required to pay, in any circumstance, more than the Settlement Fund. In the event there is no Final Approval, or the Effective Date does not occur, following the payment of any outstanding Settlement Administration Costs, all funds remaining in the Settlement Fund shall be returned to the Defendant.

71. The Settlement Fund shall be used to pay: (1) all Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims; and (2) all Settlement Administration Costs; (3) any attorneys' fees, costs, expenses, and Service Awards approved by the Court.

72. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. The Settlement Fund shall earn a reasonable rate of interest and all interest earned on the Settlement funds shall be for the benefit of the Settlement Class. All taxes (including any estimated taxes, and any interest, any expenses, or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed on Defendant, Defendant's Counsel, Plaintiffs, and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account

does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification). Except as otherwise provided by law, the Settlement Administrator shall indemnify and hold harmless the Parties, Settlement Class, Class Counsel, Defendant’s Counsel, and Defendant’s insurers and reinsurers for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator’s designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement; (iii) the formulation, design or terms of the disbursement of the Settlement; (iv) the determination, administration, calculation or payment of any claims asserted for the Settlement; or (v) the payment or withholding of any Taxes and Tax-Related Expenses. Paragraph 72, or its functional equivalent, must be included in the written agreement with the Settlement Administrator.

#### **IV. Certification of the Settlement Class**

73. In the Motion for Preliminary Approval, Plaintiffs shall propose and request to the Court that the Settlement Class be certified for Settlement purposes only. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this case shall proceed as a class action; provided however, that if a Final Approval Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Plaintiffs and

Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

**V. Settlement Class Member Benefits**

74. When submitting a Valid Claim, Settlement Class Members must choose either Cash Payment A – Documented Losses or Cash Payment B – Alternate Cash. All adult Settlement Class Members may also elect to receive Medical Data Monitoring and all minor Settlement Class Members may also elect to receive Minor Data Monitoring in accordance with the terms of this paragraph. All Cash Payments will be subject to a *pro rata* (a) increase from the Net Settlement Fund if the amount of Valid Claims is insufficient to exhaust the entire Net Settlement Fund or (b) decrease from the Net Settlement Fund if the amount of Valid Claims exhausts the amount of the Net Settlement Fund. For purposes of calculating the *pro rata* increase or decrease, the Settlement Administrator must distribute the funds in the Net Settlement Fund first for payment of Medical Data Monitoring, then for Cash Payment A – Documented Losses, and then to all those who elect Cash Payment B – Alternate Cash. Any *pro rata* increases or decreases will be on an equal percentage basis. If a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims without receiving a Settlement Class Member Benefit.

**a. Cash Payment A – Documented Losses**

Settlement Class Members may submit a claim for a Cash Payment under this section for up to \$5,000.00 per Settlement Class Member upon presentment of reasonable documented losses related to the Data Incident. To receive a documented loss payment, a Settlement Class Member must elect Cash Payment A on the Claim Form attesting under penalty of perjury to incurring documented losses. Settlement Class Members will be required to submit reasonable documentation supporting the losses, which means documentation contemporaneously generated

or prepared by a third party or the Settlement Class Member supporting a claim for expenses paid. Non-exhaustive examples of reasonable documentation include telephone records, correspondence including emails, or receipts. Except as expressly provided herein, personal certifications, declarations, or affidavits from the Settlement Class Member do not constitute reasonable documentation but may be included to provide clarification, context, or support for other submitted reasonable documentation. Settlement Class Members shall not be reimbursed for expenses if they have been reimbursed for the same expenses by another source, including compensation provided in connection with the credit monitoring and identity theft protection product offered as part of the notification letter provided by Defendant or otherwise. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if their Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, the Claim will be rejected and the Settlement Class Member's Claim will be as if he or she elected Cash Payment B.

**b. Cash Payment B – Alternate Cash**

As an alternative to Cash Payment A above, a Settlement Class Member may elect to receive Cash Payment B, which is a cash payment in the estimated amount of \$75.00.

**c. Medical Data Monitoring**

In addition to Cash Payment A or Cash Payment B, adult Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx's medical data monitoring product that will include: (i) real time monitoring of the credit file with one credit bureau; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) security freezing assistance; (iv) victim assistance; (v) \$1,000,000.00 in identity theft insurance

with no deductible; and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft.

d. **Minor Data Monitoring**

In addition to Cash Payment A or Cash Payment B, minor Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx's minor monitoring product that will include: (i) real time monitoring for evidence of the minor's SSN in combination with a credit file to protect against creation of synthetic identities; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) public record traces; and (iv) access to fraud resolution agents to help investigate and resolve instances of identity theft.

**VI. Settlement Approval**

75. Plaintiffs' Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program and the form and content of the Notices; (4) approve the Claim Process and the form and content of the Claim Form; (5) approve the procedures for Settlement Class Members to opt out of the Settlement or for Settlement Class Members to object to the Settlement; (6) appoint EAG Gulf Coast, LLC as the Settlement Administrator and include Paragraph 72 in the Preliminary Approval Order; (7) appoint Plaintiffs as Class Representatives and appoint Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason LLP as Class Counsel for Settlement purposes; (8) stay the Action pending Final Approval of the Settlement; and (9) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, the Parties, Class Counsel, and Defendant's Counsel.

## **VII. Settlement Administrator**

76. The Parties agree that, subject to Court approval, EAG Gulf Coast, LLC shall be the Settlement Administrator. Class Counsel shall oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution.

77. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims Process, administering the Settlement Fund, and ensuring the distribution of all Settlement Class Members Benefits.

78. The Settlement Administrator's duties include the following:

- a. Completing the Court-approved Notice Program by individually noticing the Settlement Class by Postcard Notice, sending out Long Form Notices and paper Claim Forms upon request from Settlement Class Members, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;
- b. Establishing and maintaining the Settlement Fund and the Escrow Account;
- c. Establishing and maintaining a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class Members, and Claim Forms;
- d. Establishing and maintaining the Settlement Website to provide important information and to receive electronic Claim Forms;

e. Establishing and maintaining an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class Members who call with or otherwise communicate such inquiries;

f. Responding to any mailed Settlement Class Member inquiries;

g. Processing all opt-out requests from the Settlement Class;

h. Providing weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notice of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;

i. In advance of the Final Approval Hearing, preparing a declaration confirming the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, including the value of all Claims for Cash Payment A, the number of Claims for Cash Payment B, the number of Settlement Class Members who elected Medical Data Monitoring, and the number of Settlement Class Members who elected Minor Data Monitoring, and providing the names of each Settlement Class Member who timely and properly requested to opt out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

j. Distributing, out of the Settlement Fund, Cash Payments by electronic means or by paper check;

- k. Ensuring the issuance of the Medical Data Monitoring and Minor Data Monitoring activation codes to all Settlement Class Members who elect Medical Data Monitoring;
- l. Paying Court-approved attorneys' fees, costs, expenses, and Service Awards out of the Settlement Fund;
- m. Paying Settlement Administration Costs out of the Settlement Fund following approval by Class Counsel; and
- n. Any other Settlement administration function at the instruction of Class Counsel and Defendant, including, but not limited to, verifying that the Settlement Fund has been properly administered and that the Cash Payments and Medical Data Monitoring activation codes have been properly distributed.

**VIII. Notice to the Settlement Class, Opt-Out Procedures, and Objection Procedures**

79. Defendant will provide the Settlement Administrator with the Class List no later than 10 days after entry of the Preliminary Approval Order. To the extent necessary, Defendant will cooperate with updating the Class List to accomplish the Notice Program and otherwise administer the Settlement.

80. Within 30 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the Postcard Notice and Long Form Notice approved by the Court.

81. All Class Members will be sent a Postcard Notice. The Settlement Administrator shall run all addresses through NCOA prior to sending, shall forward any Postcard Notices returned with a forwarding address, and shall perform reasonable postal address traces and resend Postcard Notices returned undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such

purpose. The Postcard Notice shall include, among other information: (a) a description of the material terms of the Settlement; (b) how to submit a Claim Form; (c) the Claim Form Deadline; (d) the Opt-Out Deadline which is the last day for Settlement Class members to opt out of the Settlement Class; (e) the Objection Deadline which is the last day for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, Expenses, and Service Awards; (f) the Final Approval Hearing date; and (g) the Settlement Website address at which Settlement Class Members may access this Agreement and other related documents and information. Class Counsel shall insert the correct dates and deadlines in the Notices before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

82. The Settlement Administrator shall establish the Settlement Website no later than the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claim Form that can be submitted online directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

83. The Long Form Notice will include a procedure for Settlement Class Members to opt out of the Settlement Class, and the Postcard Notice shall direct Settlement Class Members to review the Long Form Notice to obtain the opt-out instructions. Members of the Settlement Class may opt out of the Settlement Class at any time before the Opt-Out Deadline by mailing a request to opt out to the Settlement Administrator postmarked no later than Opt-Out Deadline. The opt-

out request must be personally signed by the Settlement Class member and contain the requestor's name, address, telephone number, and email address (if any), and include a statement indicating a request to opt-out of the Settlement Class ("Opt Out Elements"). Failure to include any of the Opt Out Elements must result in an invalid opt-out. Mass or class requests to opt out filed by third parties on behalf of a mass or class of Settlement Class members or multiple Settlement Class members where the opt-out has not been signed by each and every individual Settlement Class member may not be allowed. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Valid Claim.

84. The Long Form Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, Expenses, and Service Awards and the Postcard Notice shall direct Settlement Class members to review the Long Form Notice to obtain the objection instructions. Objections must be sent to the Clerk of Court, and sent by U.S. Mail to Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the Objection Deadline, as specified in the Notice, and the Settlement Class Member must not have opted out of the Settlement Class. Objections submitted by mail must be postmarked on the envelope no later than the last day of the Objection Deadline. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

85. For an objection to be considered by the Court, the objection must also set forth:

- a. the objector's full name, mailing address, telephone number, and email address (if any);

b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;

c. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;

d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, Expenses, and Service Awards;

e. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

f. the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing;

g. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

i. the objector's signature (an attorney's signature is not sufficient).

86. The Notice Program shall be completed in its entirety no later than 45 days before the original date set for the Final Approval Hearing.

**IX. Claim Process and Disbursement of Cash Payments and Medical Data Monitoring**

87. The Notice and the Settlement Website will explain to Settlement Class Members that they may be entitled to Settlement Class Member Benefits and how to submit a Claim Form.

88. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

89. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

90. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of Claims, and if there is, contact the Settlement Class Member in an effort to determine which Claim Form is the appropriate one for consideration.

91. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim Process. The Settlement Administrator may, in its discretion, deny in whole or

in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of Claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

92. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Settlement Class Member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Settlement Class Member using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the physical or e-signature. A Settlement Class Member shall have until the Claim Form Deadline, or 15 days after the date the Notice of Deficiency is sent via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Settlement Class Member timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Settlement Class Member does not timely and completely provide the

requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

93. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a timely and valid request to opt out of the Settlement Class.
- g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;
- h. Failure to submit a Claim Form by the Claim Form Deadline; and
- i. The Claim Form otherwise does not comply with the requirements of this Settlement.

94. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

- a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication;
- b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this paragraph;

c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants; and

d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

95. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Defendant's Counsel. Additionally, Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

96. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

97. No later than 75 days after Final Approval or 30 days after the Effective Date, whichever is later, the Settlement Administrator shall distribute the Settlement Class Member Benefits.

98. Cash Payments to Settlement Class Members will be made by electronic payment or by paper check, as selected on the Claim Form. In the event a Settlement Class Member does not make an election or there is a problem with issuance of an electronic payment, a paper check will be sent to the Settlement Class Member's last known address. Paper checks must be negotiated within 90 days of issuance. In the event the Settlement Administrator is unable to distribute funds to the Settlement Class Members entitled to receive them due to incorrect or incomplete

information provided to the Settlement Administrator, the funds shall become residual funds, and such Settlement Class Members shall forfeit their entitlement right to the funds.

99. In the event there are funds remaining in the Settlement Fund 180 days following the Effective Date, a subsequent payment shall be made evenly to all Settlement Class Members who claimed a Cash Payment and cashed or deposited the initial Cash Payment they received, provided that the average payment amount is equal to or greater than \$3.00. The distribution of the remaining monies in the Settlement Fund shall continue until the average payment amount in a distribution is less than Three Dollars and No Cents (\$3.00), whereupon the amount remaining, if any, shall be treated as residual funds as described in Section XII.

100. The Settlement Administrator will send an email to Settlement Class Members with Valid Claims that include an election for Medical Data Monitoring or Minor Data Monitoring with information on how to enroll in the Medical Data Monitoring or Minor Data Monitoring, including the activation code.

**X. Final Approval Order and Final Judgment**

101. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, Expenses, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs, Expenses, and Service Awards. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, Expenses, and Service Awards, provided the objectors submitted timely objections that meet all requirements listed in this Agreement.

102. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Application for Attorneys' Fees, Costs, Expenses, and Service Awards. Such proposed Final Approval Order shall, among other things:

a. Determine that the Settlement is fair, adequate and reasonable;

b. Finally certify the Settlement Class for settlement purposes only;

c. Finally appoint Plaintiffs as Class Representatives and finally appoint Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason LLP.

d. Determine the completed Notice Program satisfies Due Process requirements;

e. Bar and enjoin all Releasing Parties from asserting or otherwise pursuing any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;

f. Release Defendant and the Released Parties from the Released Claims, as specified in Section XIII below; and

g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

**XI. Attorneys' Fees, Costs, Expenses, and Service Awards**

103. *Attorneys' Fees, Costs, and Expenses* - Class Counsel shall apply to the Court for an award of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of costs and expenses. The attorneys' fees, costs, and expenses approved by the Court shall be paid by the

Settlement Administrator out of the Settlement Fund by wire transfer to an account designated by Class Counsel within five days of the Effective Date or five days after the date Defendant funds the Settlement Fund, whichever is later. Class Counsel shall be responsible for allocating and distributing attorneys' fees among all Plaintiffs' counsel.

104. ***Service Awards*** – Class Counsel shall apply to the Court for Service Awards for the Class Representatives of up to \$10,000.00 each. The Service Awards approved by the Court shall be paid by the Settlement Administrator out of the Settlement Fund directly to the Class Representatives within five days of the Effective Date.

105. Attorneys' fees, costs, expenses, and Service Awards were not negotiated by the Parties until all other material terms of the Settlement had been determined. This Settlement is not contingent on approval of the request for attorneys' fees, costs, expenses, and Service Awards and if the Court denies the request or grants amounts less than what was requested, the remaining provisions of the Agreement shall remain in force. Neither Class Counsel nor Settlement Class Members may terminate the Settlement Agreement based on the Court's ruling on Class Counsel's application for attorneys' fees, costs, expenses, and Service Awards.

## **XII. Disposition of Residual Funds**

106. In the event there are funds remaining in the Settlement Fund 240 days following the Effective Date, and after any additional payments as specified in Paragraph 99, any residual shall be distributed to the Electronic Privacy Information Center, subject to approval by the Court, or such other entity as the Court may approve.

## **XIII. Releases**

107. Upon the Effective Date, and in consideration of the Settlement relief and other consideration described herein, the Releasing Parties shall be deemed to have, and by operation of

the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished, and completely discharged Defendant from any and all Released Claims.

108. The Releasing Parties expressly waive all rights under California Civil Code section 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.

The Releasing Parties agree that, once this Agreement is executed, they will not, directly or indirectly, individually or in concert with another, maintain, cause to be maintained, or voluntarily assist in maintaining any further demand, action, claim, lawsuit, arbitration, or similar proceeding, in any capacity whatsoever, based on any of the Released Claims.

109. Settlement Class members who opt out of the Settlement prior to the Opt-Out Deadline do not release their claims arising out of or related to the Data Incident and will not obtain any of the Settlement Class Member Benefits under the Settlement.

110. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting all Released Claims, whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

111. The power to enforce any term of this Settlement is not affected by the releases in this section.

#### **XIV. Termination of Settlement**

112. This Agreement shall be subject to and is expressly conditioned on the occurrence of all the following events:

- a. Court approval of the Settlement consideration set forth in Section V and the Releases set forth in Section XIII of this Agreement;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and
- d. The Effective Date has occurred.

113. If any of the conditions specified in the preceding paragraph are not met, or if the Court otherwise imposes any modification to or condition of approval of the Settlement to which the Parties do not consent, then this Agreement shall be cancelled and terminated.

114. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement, and the Parties shall jointly file a status report in the Court seeking to reopen the Action and all papers filed. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this Action or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, nunc pro tunc.

115. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to the Defendant as described hereinabove.

However, Defendant shall have no right to seek from Plaintiffs, Class Counsel, or the Settlement Administrator the Settlement Administration Costs paid or incurred.

116. In the event that more than 300 Settlement Class Members submit notices to opt out of the Settlement Agreement, then Defendant may unilaterally terminate the Settlement Agreement by giving written notice of termination to Class Counsel.

**XV. Effect of Termination**

117. The grounds upon which this Agreement may be terminated are set forth in Section XIV. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, Defendant's, and Defendant's Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

118. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement Agreement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

**XVI. No Admission of Liability**

119. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Petition. Defendant does not admit any liability or wrongdoing of any

kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

120. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

121. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

122. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

123. In addition to any other defenses Defendant or the Released Parties may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

## **XVII. Miscellaneous Provisions**

124. ***Confidentiality.*** To the extent permitted by ethics rules, the Parties and their counsel shall keep confidential all settlement communications, including but not limited to communications regarding the negotiation and drafting of this Agreement and communications made during mediation. This paragraph shall not be construed to limit or impede the Notice requirements contained in this Agreement, nor shall this paragraph be construed to prevent Class Counsel or Defendant's Counsel from notifying or explaining that the Action has settled or limit the representations that the Parties or their counsel may make to the Court to assist in the Court's evaluation of the Settlement, Preliminary Approval, Final Approval, and any objection to the Settlement's terms. Defendant may also provide information about the Agreement to its attorneys, members, partners, insurers, brokers, agents, and other persons or entities as required by securities laws, other applicable laws and regulations, and as necessary to affect the Settlement.

125. ***Gender and Plurals.*** As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

126. ***Binding Effect.*** This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

127. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

128. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

129. **Integration and No Reliance.** This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

130. **No Conflict Intended.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

131. **Governing Law.** Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to the principles thereof regarding choice of law.

132. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted through email of a PDF shall be deemed an original.

133. ***Jurisdiction.*** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement Agreement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

134. ***Notices.*** All notices provided for herein shall be sent by email with a hard copy sent by overnight mail to:

**If to Plaintiffs or Class Counsel:**

Ben Barnow  
Barnow and Associates, P.C.  
205 West Randolph Street  
Ste. 1630  
Chicago, IL 60606  
Tel. (312) 621-2000  
Email: b.barnow@barnowlaw.com

Gary E. Mason  
Mason LLP  
5335 Wisconsin Ave., NW  
Washington, DC 20015  
Tel.: (202) 256-8540  
Email: gmason@masonllp.com

**If to Defendant or Defendant's Counsel:**

Justin J. Boron  
Partner, Freeman, Mathis & Gary LLP  
1600 Market Street, Suite 2700  
Philadelphia, PA 19103  
Tel: (215) 789-4919  
Email: justin.boron@fmglaw.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received because of the Notice Program.

135. ***Modification and Amendment.*** This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

136. ***No Waiver.*** The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

137. ***Authority.*** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all terms and provisions of this Agreement.

138. ***Agreement Mutually Prepared.*** Neither Plaintiffs nor Defendant shall be considered the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

139. ***Independent Investigation and Decision to Settle.*** The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and

law made in connection with this Action; and (b) that even if they 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 Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows unless there are grounds under Section XIV to terminate the Settlement Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

140. ***Receipt of Advice of Counsel.*** Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

**CLASS COUNSEL (On Behalf of Plaintiffs and the Settlement Class)**



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Ben Barnow  
Barnow and Associates, P.C.  
205 West Randolph Street

Ste. 1630  
Chicago, IL 60606  
Tel. (312) 621-2000  
Email: b.barnow@barnowlaw.com



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Gary E. Mason  
Mason LLP  
5335 Wisconsin Ave., NW  
Washington, DC 20015  
Tel.: (202) 256-8540  
Email: gmason@masonllp.com

**FMC Services, LLC**

/s/ Justin J. Boron

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By: Justin J. Boron  
Its Counsel

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**FMC SERVICES, LLC's COUNSEL**

/s/ Justin J. Boron

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Justin J. Boron  
Partner, Freeman, Mathis & Gary LLP  
7160 North Dallas Parkway  
Suite 625  
Plano, TX 75024  
Tel: (215) 789-4919  
Email: justin.boron@fmglaw.com

# **Exhibit 1**

**Court-Approved Legal Notice**

*Sharber, et al. v. FMC Services, LLC, Case No. 111219-D-CV (320th Dist. Ct.)*

**If you were sent a notice that your Private Information was potentially compromised in the FMC Services, LLC, Data Incident that occurred in July, 2022, you may be entitled to benefits from a class action settlement.**

*A Court has authorized this Notice. This is **not** a solicitation from a lawyer.*

A \$2,150,000.00 settlement has been reached in a class action lawsuit against FMC Services, LLC, (“Defendant” or “FMC”) arising out of a data incident Defendant experienced on or about July 26, 2022, by an unauthorized third party (“Data Incident”). Defendant denies that any information had been acquired.

**Who is Included?** You are part of the Settlement Class if your personal identifiable information or personal health information was compromised in the Data Incident by unauthorized persons, including all persons who were sent notice of the Data Incident.

For more information on the proposed settlement, including how to submit a claim, exclude yourself, or submit an objection, please visit [www.SettlementWebsite.com](http://www.SettlementWebsite.com) or call 1-XXX-XXX-XXXX.

**FMC Data Settlement Administrator**

PO Box XXXXX

Baton Rouge, LA 70821

**ELECTRONIC SERVICE REQUESTED**

SETTLEMENT CLAIM [ID]  
[FIRST NAME] [LAST NAME]  
[ADDRESS]  
[ADDRESS]  
[CITY] [STATE] [ZIP]

**What does the Settlement Provide?** The Settlement provides the following Settlement Class Member Benefits:

**Cash Payment A – Documented Losses:** You may claim up to \$5,000.00 upon presentment of reasonable documented losses related to the Data Incident.

**Cash Payment B – Alternate Cash:** As an alternative to Cash Payment A, you may elect to receive Cash Payment B, which is a cash payment in the estimated amount of \$75.00.

**Medical Data Monitoring:** In addition to Cash Payment A or Cash Payment B, you may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s medical data monitoring product.

**How do I receive a payment or other benefit?** To receive any payments or benefits under the Settlement, you **MUST** submit a claim. To submit a claim, you may either: (i) fill out, detach, and mail the attached Postcard Claim Form to the Settlement Administrator; or (ii) submit a Claim Form online at [www.SettlementWebsite.com](http://www.SettlementWebsite.com). You may also call [1-800-000-0000] to request that a Claim Form be mailed to you. **Claims must be submitted online or postmarked by Month DD, 2026.**

**What are my other options?** If you **Do Nothing**, you will be legally bound by the terms of the Settlement, and you will release your claims against FMC and other Released Parties as defined in the Settlement Agreement. If you do not want to be legally bound by the Settlement, you must **Exclude Yourself** by **Month DD, 2026**, or you will not be able to sue the Defendant for released claims relating to the Data Incident. If you exclude yourself, you cannot get money or benefits from this Settlement. If you want to **Object** to the Settlement, you may file an objection by **Month DD, 2026**. The Long Form Notice explains how to submit a Claim Form, exclude yourself, or object.

**When will the Court decide whether to approve the Settlement?** The Court will hold a Final Approval Hearing on **Month, DD, 2026, at x:xx a.m.** CT to decide whether to approve the Settlement. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve the Settlement, Class Counsel’s Application for Attorneys’ Fees, Costs, Expenses, and Service Awards. Under the Settlement, Class Counsel may seek up to one-third of the Settlement Fund for attorneys’ fees based on the percentage of the fund method, plus reimbursement of costs and expenses. Plaintiffs will also seek Service Awards of \$10,000 each. If there are objections, the Court will consider them. The Court will also listen to Settlement Class Members who have asked to speak at the hearing. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but it is not required.

For more information, call toll-free [1-800-000-0000](tel:1-800-000-0000) or visit [www.SettlementWebsite.com](http://www.SettlementWebsite.com) and read the detailed Notice.

**Claim Form** — Claim ID: [claim Id]

**Claims must be postmarked or submitted online  
no later than **Month DD, 2026.****

[FName] [LName]

[Add1] [Add2]

[City] [St] [Zip]

**Compensation for Cash Payment A - Documented Losses:** You can receive reimbursement for up to \$5,000.00 for documented losses incurred as a result of the Data Incident. Because you must submit supporting documentation to be compensated for Cash Payment A - Documented losses, you cannot use this tear-off claim form. **To file a claim for Cash Payment A, you must submit your claim online or return the full claim form via mail.**

Check the boxes below for the Settlement Benefits that you would like to claim.

Cash Payment B – Alternate Cash: I wish to claim Cash Payment B, estimated to be \$75, as an alternative to Cash Payment A. I understand this amount may increase or decrease depending upon the number of valid claims filed.

Medical Data Monitoring (**only for adult Class Members**): I wish to claim two (2) years of Medical Data monitoring through CyEx.

**For Claims on Behalf of Minors**

Minor Data Monitoring (**only for minor Class Members**): I wish to claim two (2) years of Medical Data monitoring through CyEx.

Provide your email to receive you Medical Data Monitoring redemption code.

Email Address: \_\_\_\_\_

**Select one of the following payment methods:** \*PayPal\_\_\_\_ \*Venmo\_\_\_\_ \*Zelle\_\_\_\_ Check\_\_\_\_

\*Please provide the email address or phone number associated with your PayPal, Venmo or Zelle account:

\_\_\_\_\_

**By signing my name, I swear and affirm I am completing this Claim Form to the best of my personal knowledge.**

**Signature:** \_\_\_\_\_

**Date (mm/dd/yyyy):** \_\_\_\_\_

**Place Stamp  
Here**

FMC Data Settlement  
Administrator  
PO BOX XXXX  
Baton Rouge, LA 70821

# **Exhibit 2**

*Sharber, et al. v. FMC Servs., LLC., Case No. 111219-D-CV (320th Dist. Ct.)  
District Court of Potter County, Texas, 320th Judicial Court*

**If you were sent a notice that your Private Information was potentially compromised in the FMC Services, LLC, Data Incident that occurred in July, 2022, you may be entitled to benefits from a class action settlement.**

*A Court has authorized this notice. This is **not** a solicitation from a lawyer.*

- A \$2,150,000.00 settlement has been reached in a class action lawsuit against FMC Services, LLC, (“Defendant” or “FMC”) arising out of a data incident Defendant experienced on or about July 26, 2022, by an unauthorized third party (“Data Incident”).
- You are part of the Settlement Class if your personal identifiable information or personal health information was compromised in the Data Incident by unauthorized persons, including all persons who were sent notice of the Data Incident.
- Under the terms of the Settlement, Settlement Class Members who submit Valid Claims may be able to recover the following benefits, subject to *pro rata* adjustments:
  - **Cash Payment A – Documented Losses:** You may claim up to \$5,000.00 upon presentment of reasonable documented losses related to the Data Incident.

**OR**

- **Cash Payment B – Alternate Cash:** As an alternative to Cash Payment A, you may elect to receive Cash Payment B, which is a cash payment in the estimated amount of \$75.00.

**AND**

- **Medical Data Monitoring (only for adult Class members):** In addition to Cash Payment A or Cash Payment B, you may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s medical data monitoring product.

**OR**

- **Minor Data Monitoring (only for Minor Class members):** In addition to Cash Payment A or Cash Payment B, you may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s minor monitoring product.

**This notice may affect your rights. Please read it carefully.**

Your Legal Rights and Options		Deadline
<b>SUBMIT A CLAIM FORM</b>	The only way to get Settlement benefits is to submit a Valid Claim.	Submitted online or Postmarked by <b>(Month, Day), 2026</b>
<b>OPT OUT OF THE SETTLEMENT</b>	Get no Settlement Class Member Benefits. Keep your right to file your own lawsuit against Defendant about the legal claims in this lawsuit.	Postmarked by <b>(Month, Day), 2026</b>
<b>OBJECT TO THE SETTLEMENT</b>	Stay in the Settlement but tell the Court why you do not agree with the Settlement. You will still be bound by the Settlement if the Court approves it.	Postmarked by <b>(Month, Day), 2026</b>

Questions? Go to [www.settlementwebsite.com](http://www.settlementwebsite.com) or call **1-800-000-0000**

<b>DO NOTHING</b>	Get no Settlement Class Member Benefits. Be bound by the Settlement.	<b>No deadline</b>
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- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court must still decide whether to approve the Settlement. There will be no Settlement Class Member Benefits unless the Court approves the Settlement, and it becomes final.

## BASIC INFORMATION

### 1. Why is this Notice being provided?

A Court authorized this notice because you have the right to know about the proposed Settlement of this class action lawsuit and all of your rights and options before the Court decides to grant Final Approval of the Settlement.

This notice explains the lawsuit, the Settlement, your rights, what benefits are available, who is eligible for them, and how to get them. The lawsuit is *Sharber, et al. v. FMC Servs., LLC*, No. 111219-D-CV, in the District Court of Potter County, Texas, 320th Judicial Court (the “Action”). The persons who filed this lawsuit are called “Plaintiffs” and/or “Class Representatives” and the company sued, FMC Services, LLC., is called the “Defendant.”

### 2. What is this lawsuit about?

Plaintiffs filed this lawsuit against Defendant. Plaintiffs allege that on July 26, 2022, Defendant experienced a Data Incident in which cyber criminals unlawfully accessed and acquired information stored on Defendant’s computer systems and allegedly compromised the Private Information of its patients, including their personally identifiable information and private health information which consists of some combination of the following: name, mailing address, date of birth, Social Security number, and medical information. Defendant denies that any information was acquired.

Plaintiffs brought this lawsuit against Defendant alleging claims of negligence, negligence *per se*, breach of fiduciary duty, breach of implied contract, and unjust enrichment.

Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Petition, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted. Plaintiffs enter into this Agreement to recover on the claims asserted, and to avoid the risk, delay, and uncertainty of continued litigation.

### 3. What is a class action?

In a class action, one or more people (called plaintiff(s) or class representative(s)) sue on behalf of all people who have similar legal claims. Together, all these people are called a “class” or “class members.” If the plaintiffs and defendant reach a settlement, the court resolves the issues for all class members via the settlement, except for those class members who timely opt out (exclude themselves) from the settlement.

#### 4. Why is there a Settlement?

The proposed Class Representatives in this lawsuit are Plaintiffs Deneli Sharber, Shanna Byers, Lyle Schafer, and Jennifer Hart.

Plaintiffs and Defendant do not agree about the legal claims made in the lawsuit. The lawsuit has not gone to trial, and the Court has not decided in favor of Plaintiffs or Defendant. Instead, Plaintiffs and Defendant have agreed to settle the lawsuit. The Class Representatives believe the Settlement is best for all individuals in the Settlement Class because of the benefits available to the Settlement Class and the risks and uncertainty associated with continuing the lawsuit.

### WHO IS INCLUDED IN THE SETTLEMENT?

#### 5. How do I know if I am part of the Settlement?

Settlement Class means all persons whose personally identifiable information or personal health information was compromised in the Data Incident by unauthorized persons, including all persons who were sent notice of the Data Incident.

#### 6. Are there exceptions to being included in the Settlement?

Yes. The Settlement Class specifically excludes: (1) all persons who are directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies; (2) governmental entities; and (3) the Judge assigned to the Action, that Judge's immediate family, and Court staff.

#### 7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class member, you may go to the Settlement Website at [www.settlementwebsite.com](http://www.settlementwebsite.com), call the Settlement Administrator's toll-free telephone number at [1-800-000-0000](tel:1-800-000-0000), or send an email to [info@settlementwebsite.com](mailto:info@settlementwebsite.com).

### THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

#### 8. What does the Settlement provide?

If you are a Settlement Class Member and you timely submit a Valid Claim, you may be eligible for the following benefits subject to *pro rata* adjustment:

**(1) Cash Payment A – Documented Losses:**

All Settlement Class Members may submit a Claim for a cash payment under this section for up to \$5,000.00 per Settlement Class Member upon presentment of reasonable documented losses related to the Data Incident. To receive a documented loss payment, you must elect Cash Payment A on the Claim Form attesting under penalty of perjury to having incurred documented losses.

You will be required to submit reasonable documentation supporting the losses, which means documentation contemporaneously generated or prepared by a third party or the Settlement Class Member supporting a claim for expenses paid. Non-exhaustive examples of reasonable documentation

include telephone records, correspondence including emails, letters or receipts. Personal certifications, declarations, or affidavits from the Settlement Class Member do not constitute reasonable documentation but may be included to provide clarification, context, or support for other submitted reasonable documentation.

**(2) Cash Payment B – Alternate Cash:**

As an alternative to Cash Payment A, you may elect to receive Cash Payment B, which is an alternative cash payment in the estimated amount of \$75.00.

**(3) Medical Data Monitoring (only for adult Class Members):**

In addition to Cash Payment A or Cash Payment B, you may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s medical data monitoring product that will include: (i) real time monitoring of the credit file with one credit bureau; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) security freezing assistance; (iv) victim assistance; (v) \$1,000,000.00 in identity theft insurance with no deductible; and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft.

**(4) Minor Data Monitoring (only for minor Class Members):**

In addition to Cash Payment A or Cash Payment B, minor Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s minor monitoring product that will include: (i) real time monitoring for evidence of the minor’s SSN in combination with a credit file to protect against creation of synthetic identities; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) public record traces; and (iv) access to fraud resolution agents to help investigate and resolve instances of identity theft.

**9. What am I giving up to receive Settlement benefits or stay in the Settlement Class?**

Unless you opt out of the Settlement, you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes final, all Court orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against the Released Parties, including Defendant, about the legal issues in this lawsuit that are released by this Settlement. The specific rights you are giving up are called “Released Claims.”

**10. What are the Released Claims?**

The Settlement Agreement Section XIII describes the Released Claims and the Release, in necessary legal terminology, so please read this section carefully. The Settlement Agreement is available at [www.settlementwebsite.com](http://www.settlementwebsite.com) or in the public Court records on file in this lawsuit. For questions regarding the Release or Released Claims and what the language in the Settlement Agreement means, you can also contact Class Counsel listed in Question 15 for free, or you can talk to your own lawyer at your own expense.

**HOW TO GET BENEFITS FROM THE SETTLEMENT**

**11. How do I make a Claim for Settlement benefits?**

To receive any of the benefits described in Question 8, you must submit a Valid Claim, **postmarked** or **submitted online** by **Month, Day, 2026**. Claim Forms may be submitted online at

[www.settlementwebsite.com](http://www.settlementwebsite.com) or printed from the Settlement Website and mailed to the Settlement Administrator at the address on the Claim Form. The quickest way to submit a Claim is online. Claim Forms are also available by calling [1-800-000-0000](tel:1-800-000-0000) or by writing to:

FMC Data Incident Settlement Administrator  
P.O. Box [XXXX](#)  
Baton Rouge, LA 70821

**Claim Forms must be submitted online or by mail postmarked by [Month DD, 2026](#).**

## 12. What happens if my contact information changes after I submit a Claim?

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling [1-800-000-0000](tel:1-800-000-0000), by writing to [info@settlementwebsite.com](mailto:info@settlementwebsite.com), or to:

FMC Data Incident Settlement Administrator  
P.O. Box [XXXX](#)  
Baton Rouge, LA 70821

## 13. When will I receive my Settlement benefits?

If you submit a timely and Valid Claim, payment will be made to you by the Settlement Administrator after the Settlement is approved by the Court and becomes final.

It may take time for the Settlement to be approved and become final. Please be patient and check [www.settlementwebsite.com](http://www.settlementwebsite.com) for updates.

## 14. How will I receive my payment?

If you submit a timely and Valid Claim for payment, and if your Claim and the Settlement are finally approved, you will be sent an electronic payment to the electronic payment option that you select when you file your claim or will be sent a paper check if you select that option. Several electronic payment options will be available, or you can elect a check. Please ensure you have provided a current and complete email address. If you select a paper check, the Settlement Administrator will attempt to send you a check relying on your physical address submitted on your Claim Form.

## THE LAWYERS REPRESENTING YOU

### 15. Do I have a lawyer in this lawsuit?

Yes, the Court has appointed Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason & Perry LLP, as Class Counsel lawyer to represent you and the Settlement Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this lawsuit.

### 16. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of costs and expenses. The Court may award less than the amount requested. If awarded by the Court, the Settlement Administrator will pay attorneys' fees, costs, expenses, and Service Awards out of the Settlement Fund.

Class Counsel's motion for Attorneys' Fees, Costs, Expenses, and Service Awards will be made available on the Settlement Website at [www.settlementwebsite.com](http://www.settlementwebsite.com) before the deadline for you to object to or opt out of the Settlement.

## OPTING OUT OF THE SETTLEMENT

If you are a Settlement Class Member and want to keep any right you may have to sue or continue to sue the Released Parties on your own based on the legal claims raised in this lawsuit or released by the Released Claims, then you must take steps to get out of the Settlement. This is called opting out of the Settlement.

### 17. How do I opt out of the Settlement?

To opt out of the Settlement, you must timely mail written notice of a request to opt out. The written notice must include:

- (1) Your physical signature as a Settlement Class member;
- (2) Your full name, mailing address, telephone number, and email address (if any); and
- (3) A statement clearly indicating your request to be excluded from the Settlement Class.

The opt out request must be **mailed** to the Settlement Administrator at the following address, and be **postmarked no later than (Month, Day) 2026**:

FMC Data Incident Settlement Administrator  
Exclusions  
P.O. Box **XXXX**  
Baton Rouge, LA 70821

**You cannot opt out by telephone or by email.**

### 18. If I opt out, can I still get anything from the Settlement?

No. If you opt out, you will not be entitled to receive any Settlement Class Member Benefits, but you will not be bound by any judgment in this lawsuit. You can only get Settlement Class Member Benefits if you stay in the Settlement and submit a Valid Claim.

### 19. If I do not opt out, can I sue Defendant for the same thing later?

No. Unless you opt out, you give up any right to sue Defendant and other Released Parties for the legal claims this Settlement resolves and Releases relating to the Data Incident. You must opt out of the lawsuit to start or continue with your own lawsuit or be part of any other lawsuit against Defendant or other Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## OBJECTING TO THE SETTLEMENT

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

If you are a Settlement Class Member, you can tell the Court you do not agree with all or any part of the Settlement and/or Class Counsel's motion for Attorneys' Fees and Costs.

To object, you must file a timely, written objection stating that you object in *Sharber, et al. v. FMC Servs., LLC*, Case No. 111219-D-CV (320th Jud. Ct., Dist. Ct. of Potter County, Texas). If your objection is submitted by mail, it must be **postmarked** by **(Month, day), 2026**.

The objection must also include all of the following information:

- (1) Your full name, mailing address, telephone number, and email address (if any);
- (2) A written statement of all grounds for the objection, accompanied by any legal support for the objection known to you or your lawyer;
- (3) The number of times you have objected to a class action settlement within the 5 years preceding the date that you filed the objection, the caption of each case in which you have made such objection, and a copy of any orders related to or ruling upon your prior objections that were issued by the trial and appellate courts in each listed case;
- (4) The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, Expenses, and Service Award;
- (5) The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which your counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
- (6) The identity of all counsel (if any) representing you and whether they will appear at the Final Approval Hearing;
- (7) A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- (8) A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- (9) Your signature (an attorney's signature is not sufficient).

To be timely, written notice of an objection in the appropriate form must be filed with the Court by **(Month, day), 2026**, with copies to the following address:

Clerk of Court	Settlement Administrator
Clerk of the District Court Potter County, Texas 501 S Fillmore St., Amarillo, TX 79101	FMC Data Incident Settlement P.O. Box XXXX Baton Rouge, LA 70821

Defendant's Counsel	Class Counsel
<p style="text-align: center;">Justin J. Boron  <b>Freeman, Mathis &amp; Gary LLP</b>            7160 North Dallas Parkway,            Ste. 625            Plano, TX 75024</p>	<p style="text-align: center;">Ben Barnow  <b>Barnow and Associates, P.C.</b>            205 West Randolph Street            Ste. 1630            Chicago, IL 60606</p> <p style="text-align: center;">Gary E. Masson  <b>Mason &amp; Perry LLP</b>            5335 Wisconsin Ave NW            Ste. 640            Washington D.C. 20015</p>

Any Settlement Class Member who fails to comply with the requirements for objecting detailed above will waive and forfeit any and all rights they may have to appear separately and/or to object to the Settlement Agreement and will be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation.

**21. What is the difference between objecting and asking to opt out?**

Objecting is simply telling the Court you do not like something about the Settlement or requested attorneys' fees and expenses. You can object only if you stay in the Settlement Class (meaning you do not opt out of the Settlement). Opting out of the Settlement is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you opt out, you cannot object to the Settlement.

**THE FINAL APPROVAL HEARING**

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

The Court will hold a Final Approval Hearing on **(Month, Day), 2026, at x:xx a.m. CT**, in the 320<sup>th</sup> District Court, Potter County, Texas, 350 SE 6th Ave., Suite 4A, Amarillo, Texas 79101, to decide whether to approve the Settlement. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve the Settlement, Class Counsel's Application for Attorneys' Fees, Costs, and Service Award. If there are objections, the Court will consider them. The Court will also listen to Settlement Class Members who have asked to speak at the hearing.

**Note:** The date and time of the Final Approval Hearing are subject to change. The Court may also decide to hold the hearing in person. Any change will be posted at [www.settlementwebsite.com](http://www.settlementwebsite.com).

**23. Do I have to attend to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you mail an objection, you do not have to attend the Final Approval Hearing to speak about it. As long as you file or mail your written objection on time, the Court will consider it.

#### 24. May I speak at the Final Approval Hearing?

Yes, as long as you do not opt out, you can (but do not have to) participate and speak for yourself at the Final Approval Hearing. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

If you want to appear, or if you want your own lawyer instead of Class Counsel to speak for you at the Final Approval Hearing, you must follow all of the procedures for objecting to the Settlement listed in Question 20 above—and specifically include a statement whether you and your lawyer will appear at the Final Approval Hearing.

### IF YOU DO NOTHING

#### 25. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will not receive any Settlement benefits, and you will give up rights explained in the “Opting Out of the Settlement” section of this notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against any of the Released Parties, including Defendant, about the legal issues in this lawsuit that are released by the Settlement Agreement relating to the Data Incident.

### GETTING MORE INFORMATION

#### 26. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [www.settlementwebsite.com](http://www.settlementwebsite.com), by calling [1-800-000-0000](tel:1-800-000-0000), by writing to [info@settlementwebsite.com](mailto:info@settlementwebsite.com) or:

FMC Data Incident Settlement Administrator  
P.O. Box [XXXX](#)  
Baton Rouge, LA 70821

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT’S CLERK OFFICE  
REGARDING THIS NOTICE.**

# **Exhibit 3**

FMC Data Settlement  
Administrator  
P.O. Box XXXX  
Baton Rouge, LA 70821

Your Claim Form  
must be postmarked or  
submitted online no  
later than [deadline]

*Sharber, et al. v. FMC Servs., LLC*, Case No. 111219-D-CV (320th Dist. Ct.)

## CLAIM FORM

### You are a member of the Settlement Class and eligible to submit a Claim Form if:

You may submit a Claim Form if you were sent a notice of the Data Incident indicating that your Private Information may have been impacted in the Data Incident.

The easiest way to submit a Claim is online at: [www.XXXXXXXX.com](http://www.XXXXXXXX.com), or you can complete and mail this Claim Form to the mailing address above.

## SETTLEMENT BENEFITS – WHAT YOU MAY GET

### You may submit a Claim for one or more of these benefits:

**(1) Cash Payment A – Documented Losses:** All Settlement Class Members may submit a Claim for a cash payment under this section for up to \$5,000.00 per Settlement Class Member upon presentment of reasonable documented losses related to the Data Incident. To receive a documented loss payment, you must elect Cash Payment A on the Claim Form attesting under penalty of perjury to having incurred documented losses.

You are required to submit reasonable documentation supporting the losses, which means documentation contemporaneously generated or prepared by a third party or the Settlement Class Member supporting a claim for expenses paid. Non-exhaustive examples of reasonable documentation include telephone records, correspondence including emails, letters or receipts. Personal certifications, declarations, or affidavits from the Settlement Class Member do not constitute reasonable documentation but may be included to provide clarification, context, or support for other submitted reasonable documentation.

**OR**

**(2) Cash Payment B – Alternate Cash.** As an alternative to Cash Payment A, you may elect to receive Cash Payment B, which is an alternative cash payment in the estimated amount of \$75.00. The amount of this payment will depend on the number of claims submitted.

**AND**

**(3) Medical Data Monitoring:** In addition to Cash Payment A or Cash Payment B, you may also make a Claim for Medical Data Monitoring that will include two (2) years of CyEx medical data monitoring product.

**OR**

**(4) Minor Data Monitoring:** In addition to Cash Payment A or Cash Payment B, minor Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two (2) years of CyEx's minor monitoring product.

Claims must be submitted online or mailed by [deadline].  
Use the address at the top of this form to mail your Claim Form.

QUESTIONS? VISIT [WWW.XXXXXXXX.COM](http://WWW.XXXXXXXX.COM) OR CALL TOLL-FREE 1-XXX-XXX-XXXX



## MEDICAL DATA MONITORING

Each Settlement Class Member may elect to receive two (2) years of CyEx medical data monitoring product. Please include your email address and mailing address on page 2 of this Form.

Adult Class Members:

Check this box if wish to receive two (2) years of Medical Data Monitoring.

Minor Class Members:

Check this box if wish to receive two (2) years of Minor Data Monitoring.

## PAYMENT SELECTION

Please select **one** of the following payment options:

**PayPal** - Enter your PayPal email address: \_\_\_\_\_

**Venmo** - Enter the mobile number associated with your Venmo account: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**Zelle** - Enter the mobile number or email address associated with your Zelle account:

Mobile Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ or Email Address: \_\_\_\_\_

**Physical Check** - Payment will be mailed to the address provided on this form.

## ATTESTATION & SIGNATURE

I swear and affirm under penalty of perjury that the information provided in this Claim Form, and any supporting documentation provided is true and correct to the best of my knowledge. I understand that my claim is subject to verification and that I may be asked to provide supplemental information by the Settlement Administrator before my claim is considered complete and valid.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

QUESTIONS? VISIT [WWW.XXXXXXX.COM](http://WWW.XXXXXXX.COM) OR CALL TOLL-FREE [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX)

# **Exhibit 4**

CAUSE NO. 111219-D-CV

DENELI SHARBER, SHANNA BYERS,  
LYLE SCHAFER and JENNIFER HART,  
*individually and on behalf of all others  
similarly situated,*

Plaintiffs,

v.

FMC SERVICES, LLC, D/B/A FAMILY  
MEDICINE CENTERS,

Defendant.

IN THE DISTRICT COURT OF  
POTTER COUNTY, TEXAS

320<sup>TH</sup> JUDICIAL COURT

**[PROPOSED] FINAL ORDER AND JUDGMENT GRANTING  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiffs' unopposed motion requesting that the Court enter an Order granting final approval of the class action Settlement involving Plaintiffs Deneli Sharber, Shanna Byers, Lyle Schafer, and Jennifer Hart ("Plaintiffs" or "Settlement Class Representatives") and Defendant FMC Services, LLC ("FMC" or "Defendant") as fair, reasonable, and adequate.

Having reviewed and considered the Settlement Agreement and the motion for final approval of the settlement, and having conducted a Final Approval Hearing, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

**THE COURT** not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

**THE COURT** being required under Texas Rule of Civil Procedure 42(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the

Settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

**IT IS ON THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2026,

**ORDERED** that:

1. The Settlement involves allegations in Plaintiffs' Consolidated Class Action Petition that Defendant failed to safeguard and protect the personally identifiable information and personal health information of approximately 266,540 individuals and that this alleged failure caused injuries to Plaintiffs and the Settlement Class.

2. The Settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.

3. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Settlement Agreement.

4. On \_\_\_\_\_, 2026, the Court entered an Order which among other things: (a) approved the Notice to the Settlement Class, including approval of the form and manner of notice under the Notice Program set forth in the Settlement Agreement; (b) provisionally certified a class in this matter, including defining the class, appointed Plaintiffs as the Settlement Class Representatives, and appointed Settlement Class Counsel; (c) preliminarily approved the Settlement; (d); set deadlines for opt-outs and objections; (e) approved and appointed the Administrator; and (f) set the date for the Final Approval Hearing.

5. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement, pursuant to Texas Rules of Civil Procedure 42(b)(3) and 42(e), for settlement purposes only, the Court certified the Settlement Class, defined as follows: All persons whose personally identifiable information or personal health information was compromised in the Data Incident by

unauthorized persons, including all persons who were sent notice of the Data Incident. The Settlement Class specifically excludes: (1) all persons who are directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies; (2) governmental entities; and (3) the Judge assigned to the Action, that Judge's immediate family, and Court staff.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties pursuant to Texas Rule of Civil Procedure 42(e)(2), grants final approval of the Settlement Agreement and defines the Settlement Class as defined therein and in the Preliminary Approval Order, and finds that the settlement is fair, reasonable, and adequate and meets the requirements of Texas Rule of Civil Procedure 42.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

- a. FMC to fund a \$2,150,000.00 non-reversionary Settlement Fund to be used by the Settlement Administrator to pay for: (1) all Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims; (2) all Settlement Administration Costs; and (3) any attorneys' fees, costs, expenses, and Service Awards approved by the Court.
- b. A process for Settlement Class Members to submit claims for compensation that will be evaluated by an Administrator mutually agreed upon by Settlement Class Counsel and Defendant.
- c. Defendant to pay a Court-approved amount of attorneys' fees not to exceed one-third of the Settlement Fund (\$716,666.66), plus reimbursement of costs and expense.
- d. Defendant to pay an Incentive Award not to exceed \$10,000 to each of the named Plaintiffs.

8. The Court, having reviewed and considered the motion for attorneys' fees, costs, and service awards, grants the same and grants the relief set forth below:

- a. Plaintiffs' request for attorneys' fees in the amount of \$716,666.66 is granted.
- b. Plaintiffs' request for litigation costs in the amount of \$ \_\_\_\_\_ is granted.

c. Plaintiffs' request for service awards in the amount of \$10,000 per Class Representative (\$40,000 total) is granted.

9. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby approved, adopted, and incorporated by the Court. The Parties, their respective attorneys, and the Administrator are hereby directed to consummate the Settlement in accordance with this Order and the terms of the Settlement Agreement.

10. Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and expenses, and the proposed Service Award payments to Plaintiffs have been provided to Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of the Settlement Administrator's compliance with the Notice Program has been filed with the Court.

11. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Texas Rule of Civil Procedure 42(c)(2)(B).

12. As of the final date of the Opt-Out Period, \_\_\_\_\_ potential Settlement Class Members have submitted a valid Opt-Out Request to be excluded from the Settlement.

13. As of the final date of the Objection Period, \_\_\_\_\_ potential Settlement Class Members have submitted a valid objection to the Settlement.

14. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

15. Pursuant to the Settlement Agreement, Defendant and the Administrator shall implement the Settlement in the manner and time frame as set forth therein.

16. In the event there are funds remaining in the Settlement Fund 240 days following the Effective Date, and after any additional payments are made pursuant to the Settlement, any residual shall be distributed to the Electronic Privacy Information Center.

17. Pursuant to the Settlement Agreement, Plaintiffs and the Settlement Class Members release claims against Defendant and all Released Persons, as defined in the Settlement Agreement.

18. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, the Releasing Parties will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the Released Claims.

19. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

20. In accordance with Tex. R. Civ. P. 42, this Final Order and Judgment resolves all claims against all parties in this Action and is a final order. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

Done and ordered this \_\_\_\_ day of \_\_\_\_\_, 2026.

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JUDGE PRESIDING

**APPROVED AS TO FORM:**

/s/ J. Daren Brown

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*Counsel for Defendant*

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# **Exhibit 5**

CAUSE NO. 111219-D-CV

DENELI SHARBER, SHANNA BYERS,  
LYLE SCHAFER and JENNIFER HART,  
*individually and on behalf of all others  
similarly situated,*

Plaintiffs,

v.

FMC SERVICES, LLC, D/B/A FAMILY  
MEDICINE CENTERS,

Defendant.

IN THE DISTRICT COURT OF  
POTTER COUNTY, TEXAS

320<sup>TH</sup> JUDICIAL COURT

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of a Settlement Agreement between Plaintiffs Deneli Sharber, Shanna Byers, Lyle Schafer, and Jennifer Hart ("Plaintiffs" or "Representative Plaintiffs"), individually and on behalf of the proposed Settlement Class, and Defendant FMC Services, LLC ("FMC" or "Defendant"), that, upon final approval by this Court, settles the above-captioned litigation.

The Court hereby GRANTS preliminary approval of the Parties' Settlement Agreement dated \_\_\_\_\_, 2026 ("Settlement Agreement"), the proposed Postcard Notice, Long Form Notice, and Claim Form, and finds as follows:

The Court has jurisdiction over all claims in this Action and all Parties hereto. This Order is based on Texas law, including but not limited to Rule 42 of the Texas Rule of Civil Procedure. The Court adopts by reference the Settlement Agreement, attached to Plaintiffs' Unopposed Motion for Preliminary Approval. This Order adopts the definitions in the Settlement Agreement,

and terms used in this Order shall have the same meaning ascribed to them in the Settlement Agreement.

The Court preliminarily FINDS that the Parties' Settlement, as reflected in the Settlement Agreement, is fair, reasonable, and adequate, and that it is in the best interests of the Settlement Class Members. The Court preliminarily approves the Settlement Agreement, provisionally appoints the Settlement Class Representatives, Class Counsel, and Claims Administrator, and ORDERS that the Parties should commence providing notice of the Settlement to Settlement Class Members in accordance with the procedures proposed in the Settlement Agreement.

This class action arises out a data incident wherein, on or around July 26, 2022, cybercriminals unlawfully accessed information stored on FMC's computer systems (the "Data Incident"). As a result of the Data Incident, approximately 266,540 individuals' personally identifiable information ("PII") and personal health information ("PHI") was affected.

On October 5, 2022, Plaintiff Sharber named Defendant in the first class action lawsuit related to the Data Incident. Thereafter, three other cases alleging similar causes of action and overlapping putative classes were filed against Defendant by the remaining Plaintiffs. Following agreement, Plaintiffs moved to consolidate the actions on October 20, 2022. On November 16, 2022, the Court granted the motion to consolidate and appointed Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason LLP as Interim Co-Lead Counsel. On December 15, 2022, Plaintiffs filed their Consolidated Class Action Petition, alleging claims for negligence, negligence per se, breach of fiduciary duty, breach of implied contract, and unjust enrichment.

The Parties entered into the Settlement after months of diligently negotiating, drafting, and finalizing a term sheet, the settlement agreement, notice forms, and coming to an agreement on a

claims process and administrator. Plaintiffs summarize the relevant terms of the proposed Settlement as follows:

**The Settlement.** The Settlement secures significant benefits for the Settlement Class. FMC will pay \$2,150,000.00 to a Settlement Fund. The fund is “non-reversionary,” meaning none of the funds will be returned to FMC if the Settlement becomes Final. To administer those funds and implement the Settlement’s terms, the Parties have agreed to use EAG Gulf Coast LLP (“EAG”) as Settlement Administrator.

Once funded, the Settlement Fund will be used by the Settlement Administrator to pay for: (1) all Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims; (2) all Settlement Administration Costs; and (3) any attorneys’ fees, costs, expenses, and Service Awards approved by the Court. The Settlement Fund allows all Settlement Class Members the opportunity to submit claims for the following:

- a. **Cash Payment A – Documented Losses.** In lieu of the compensation outlined below in paragraph (b), Settlement Class Members may submit a claim for Cash Payment A for up to \$5,000.00 per Settlement Class Member upon presentment of reasonable documented losses related to the Data Incident. To receive a documented loss payment, a Settlement Class Member must elect Cash Payment A on the Claim Form attesting under penalty of perjury to incurring documented losses. Settlement Class Members will be required to submit reasonable documentation supporting the losses, which means documentation contemporaneously generated or prepared by a third party or the Settlement Class Member supporting a claim for expenses paid.
- b. **Cash Payment B – Alternate Cash.** As an alternative to Cash Payment A above, a Settlement Class Member may elect to receive Cash Payment B, which is a cash payment in the estimated amount of \$75.00. The amount of Cash Payment B will be calculated on a pro rata basis.
- c. **Medical Data Monitoring.** In addition to Cash Payment A or Cash Payment B, adult Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s medical data monitoring product that will include: (i) real time monitoring of the credit file with one credit bureau; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) security freezing assistance; (iv) victim assistance; (v) \$1,000,000.00 in identity theft insurance with no deductible; and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft. Minor Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s minor monitoring product that will include: (i) real time

monitoring for evidence of the minor's SSN in combination with a credit file to protect against creation of synthetic identities; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) public record traces; and (iv) access to fraud resolution agents to help investigate and resolve instances of identity theft.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby **ORDERED** that Plaintiffs' Unopposed Motion for Preliminary Approval is granted as set forth herein.<sup>1</sup>

**1. Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to Rule 42 of the Texas Rule of Civil Procedure, the Court provisionally certifies a Settlement Class in this matter, defined as follows:

**Settlement Class**

All persons whose personally identifiable information or personal health information was compromised in the Data Incident by unauthorized persons, including all persons who were sent notice of the Data Incident.

The Settlement Class specifically excludes: (1) all persons who are directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies; (2) governmental entities; and (3) the Judge assigned to the Action, that Judge's immediate family, and Court staff.

The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable, (b) there are questions of law and fact common to the Settlement Class, (c) the claims and defenses of the Settlement Class Representatives are typical of the claims and defenses of the Settlement Class Members, (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives

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<sup>1</sup> Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class, (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members, and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

**2. Settlement Class Representatives and Settlement Class Counsel.**

Plaintiffs Deneli Sharber, Shanna Byers, Lyle Schafer, and Jennifer Hart are hereby provisionally designated and appointed the Settlement Class Representatives. The Court provisionally finds that the Settlement Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Settlement Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel: Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason & Perry LLP.

**3. Preliminary Settlement Approval.** Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing Notice of the Settlement to the Settlement Class and accordingly is preliminarily approved.

**4. Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement.

**5. Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_\_\_, 2026, at \_\_\_:00 .m., in the District Court of Potter County, Texas, 350 SE 6th Ave., Suite 4A, Amarillo, Texas 79101 to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Rule 42 of Texas

Rules of Civil Procedure; (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Rule 42(e) of Texas Rules of Civil Procedure; (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved; and (f) the motion of the Settlement Class Representatives for Service Awards (the "Service Award Request") should be approved. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, Expenses, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. The Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Award Request and Fee Request in conformance with the local rules.

6. **Appointment of Settlement Administrator.** The Court appoints EAG Gulf Coast, LLC as the Settlement Administrator, with responsibility for class notice and claims administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. In accordance with the Settlement Agreement, Defendant shall pay all agreed upon costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Claims Administrator's fees, as well as the costs associated with administration of the Settlement.

7. **Notice to the Class.** The proposed Notice Program set forth in the Settlement Agreement, and the Post Card Notice, Long Form Notice, and Claim Form attached to the Settlement Agreement as **Exhibits 1-3** satisfy the requirements of Texas Rule of Civil Procedure 42(e), provide the best notice practicable under the circumstances, and are hereby approved. The

Parties may make non-material modifications to these Exhibits without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within **30 days from the date of this Order** (the “Notice Deadline”), the Settlement Administrator shall commence the Notice Program provided in the Settlement Agreement, using the Postcard Notice and Long Form Notice approved by the Court.

**8. Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Paragraph 7 of this Order and Section VIII of the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class, (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement, (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice, and (d) the Court concludes that the Notice Program meets all applicable requirements of law, including Texas Rule of Civil Procedure Rule 42, and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

**9. Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Claims Administrator at the address provided in the Notice, postmarked no later than **30 days before the initial scheduled Final Approval Hearing** (the

“Opt-Out Deadline”). The written notification must be personally signed by the Settlement Class member and contain the requestor’s name, address, telephone number, and email address (if any), and include a statement indicating a request to opt-out of the Settlement Class.

The Claims Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may submit to the Court no later than **10 Days prior to the Final Approval Hearing**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

**10. Objections and Appearances.** A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is filed with the Court by the Objection Deadline and postmarked by

no later than **30 days before the initial scheduled Final Approval Hearing** (the “Objection Deadline”), as specified in the Notice. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 85 of the Settlement Agreement, which is as follows:

- (a) the objector’s full name, mailing address, telephone number, and email address (if any);
- (b) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- (c) the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s prior objections that were issued by the trial and appellate courts in each listed case;
- (d) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys’ Fees, Costs, Expenses, and Service Awards;
- (e) the number of times in which the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel’s or the counsel’s law firm’s prior objections that were issued by the trial and appellate courts in each listed case in which the

objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

- (f) the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing;
- (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- (h) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- (i) the objector's signature (an attorney's signature is not sufficient).

Any Settlement Class Member who fails to comply with the provisions in this Paragraph shall be deemed to have waived and forfeited any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Order and Judgment is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request.

If Final Order and Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from

challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

**11. Claims Process and Distribution and Allocation Plan.** Settlement Class Representatives and Defendant have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for Settlement Benefits described in the Settlement Agreement and directs that the Settlement Administrator prepare to effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

**12. Indemnification.** The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. The Settlement Fund shall earn a reasonable rate of interest and all interest earned on the Settlement funds shall be for the benefit of the Settlement Class. All taxes (including any estimated taxes, and any interest, any expenses, or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed on Defendant, Defendant’s Counsel, Plaintiffs, and/or Class

Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification). Except as otherwise provided by law, the Settlement Administrator shall indemnify and hold harmless the Parties, Settlement Class, Class Counsel, Defendant’s Counsel, and Defendant’s insurers and reinsurers for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator’s designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement; (iii) the formulation, design or terms of the disbursement of the Settlement; (iv) the determination, administration, calculation or payment of any claims asserted for the Settlement; or (v) the payment or withholding of any Taxes and Tax-Related Expenses.

**13. Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court’s orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

**14. Use of Order.** This Order shall be null and void and of no force or effect if Final Order and Judgment is not entered or there is no Effective Date. In such event, this Order shall not

be construed or used as an admission, concession, or declaration by or against Defendant of any negligence, fault, wrongdoing, omission, assertion, fact, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this Litigation or in any other lawsuit.

**15. Stay of Proceedings.** Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until further order of this Court.

**16. Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

**17. Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

<b><u>Grant of Preliminary Approval</u></b>	
FMC provides list of Settlement Class Members to the Settlement Administrator	+10 days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	+30 days after Preliminary Approval
Notice Commencement	+30 days after Preliminary Approval
Objection Deadline	-30 days before the initial scheduled Final Approval Hearing
Opt-Out Deadline	-30 days before the initial scheduled Final Approval Hearing

Claims Deadline	-15 days before the initial scheduled Final Approval Hearing
Settlement Administrator Provide List of Objections/Exclusions to Counsel	+7 days after deadline for Opt-Out
<b><u>Final Approval Hearing</u></b>	+120 days after Preliminary Approval Order, or any date thereafter convenient for the Court
Motion for Final Approval, inclusive of the Application for Attorneys' Fees, Costs, Expenses, and Service Awards	-45 Days before the original date set for the Final Approval Hearing
<b><u>Final Approval</u></b>	
Effective Date	+1 day after all conditions met pursuant to ¶ 34 of SA.
Payment of Attorneys' Fees and Expenses Class Representative Service Award	+5 days after the Effective Date or +5 days after the date Defendant funds the Settlement Fund, whichever is later
Distribution of Settlement Relief	+75 days after Final Approval or +30 days after the Effective Date, whichever is later

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2026

BY THE COURT:

---

**APPROVED AS TO FORM:**

*/s/ J. Daren Brown* \_\_\_\_\_

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*Counsel for Defendant*

*\*Pro Hac Vice Admission*

# **Exhibit B**



4. Plaintiffs and FMC reached the Settlement only after hard-fought, arms'-length negotiations spanning more than a year, including two separate mediations before an experienced mediator, John DeGroot of DeGroot Partners LLC. It did not settle at the mediations but only after further extensive negotiations.

5. I believe that the proposed Settlement is fair, adequate, and reasonable, and in the best interests of the Settlement Class. It will also avoid the continuing burden on the Parties, as well as saving judicial resources and avoiding risk.

6. Defense counsel has informed Plaintiffs' counsel that the proposed class numbers 266,540 persons.

7. Plaintiffs have all sat for depositions in this matter, participated in discovery, and have been responsive when dealing with their counsel.

8. Gary E. Mason of Mason & Perry LLP and I are highly experienced class action litigators and have led or participated in many of data privacy class actions and settlements.

9. I am unaware of any litigation pertaining to this matter other than this consolidated lawsuit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on April 8, 2026, in Chicago, Illinois.

/s/ Ben Barnow  
Ben Barnow

### Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Courtney Neely on behalf of John Brown  
Bar No. 24036271  
cneely@sjblawfirm.com  
Envelope ID: 113411307  
Filing Code Description: Motion (No Fee)  
Filing Description: FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT - PLTFS' UNOPPOSED  
Status as of 4/9/2026 10:07 AM CST

Associated Case Party: Deneli Sharber

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William BFederman		wbf@federmanlaw.com	4/8/2026 4:03:35 PM	SENT
Gary E.Mason		gmason@masonllp.com	4/8/2026 4:03:35 PM	SENT
Taylor Heath		theath@masonllp.com	4/8/2026 4:03:35 PM	SENT
Jenni Suhr		jsuhr@masonllp.com	4/8/2026 4:03:35 PM	SENT
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Reuben A.Aguirre		raguirre@masonllp.com	4/8/2026 4:03:35 PM	SENT
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Associated Case Party: Jennifer Hart

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Case Contacts

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Ben Barnow		b.barnow@barnowlaw.com	4/8/2026 4:03:35 PM	SENT

## Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Courtney Neely on behalf of John Brown  
Bar No. 24036271  
cneely@sjblawfirm.com  
Envelope ID: 113411307  
Filing Code Description: Motion (No Fee)  
Filing Description: FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT - PLTFS' UNOPPOSED  
Status as of 4/9/2026 10:07 AM CST

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