

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**IN RE: FORTRA FILE TRANSFER SOFTWARE
DATA SECURITY BREACH LITIGATION**

Case No. 24-md-03090-RAR

This Document Relates to:

TERRANCE ROSA, et al., on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

BRIGHTLINE, INC.,

Defendant.

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND MEMORANDUM OF LAW**

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs, Terrance Rosa, Ryan Watson, Donisha Jackson, Kyle Castro, on behalf of himself and his minor children, E.N.C., C.J.C., and E.J.C., Itaunya Milner, on behalf of herself and her minor child, B.G., and Anthony Ndifor, on behalf of themselves and the Settlement Class,¹ respectfully submit this Unopposed Motion for Preliminary Approval of the Class Action Settlement.

I. INTRODUCTION

Brightline is a virtual behavioral health care company that offers therapy and coaching for minors. Fortra is in the business of offering cybersecurity and automation solutions. Brightline was one of Fortra's customers who used Fortra's GoAnywhere MFT file transfer application. In January of 2023, a Data Incident occurred wherein Fortra's computer systems were hacked due to a

¹ All capitalized terms used herein shall have the same meanings as those defined in Section II of the Settlement Agreement, attached as *Exhibit A*.

vulnerability in Fortra's transfer application, which impacted highly sensitive personally identifiable information and health information belonging to millions of individuals, including over a million individuals whose information was stored in Brightline's instance of the GoAnywhere MFT at the time of the Data Incident. The Settlement Class members' impacted Personal Information included some combination of names, addresses, dates of birth, member identification numbers, start and end dates of health plan coverage, telephone numbers, Social Security numbers, and employer names that were being stored within Brightline's instance of the GoAnywhere MFT at the time of the Data Incident.

In or about April 2023, Plaintiffs and Settlement Class members began receiving notices of the unauthorized access to their Personal Information. Thereafter, lawsuits were filed against Brightline, which were consolidated and ultimately transferred with all the other Fortra-related lawsuits into MDL-3090. Following the formation of MDL-3090, and the filing of the Track 4 Consolidated Complaint, the Parties mediated and resolved the Action subject to Court approval.

To avoid the risk and expense of litigation, the Parties agreed to a settlement to resolve Plaintiffs' claims on a classwide basis. As demonstrated below, the Settlement provides significant relief for the Settlement Class, including a non-reversionary all cash \$7,000,000.00 Settlement Fund and valuable injunctive relief.

The Court should find the Settlement is within the range of reasonableness necessary to grant Preliminary Approval under Rule 23(e) and enter an order: (i) granting Preliminary Approval of the Settlement; (ii) provisionally certifying the Settlement Class for settlement purposes; (iii) appointing the Plaintiffs as Class Representatives; (iv) appointing Jeff Ostrow, John Yanchunis, James Cecchi, and Marson Barney as Class Counsel for the Settlement Class; (v) approving the form of the Notices and the Notice Program; (vi) approving the Claim Form and the Claim process;

(vii) appointing Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the Settlement Administrator; (viii) establishing procedures and deadlines for members of the Settlement Class to opt-out of or object to the Settlement; and (ix) scheduling a Final Approval Hearing at which time the Court will consider whether to grant Final Approval of the Settlement and Class Counsel’s Application for Attorneys’ Fees and Costs.

II. PROCEDURAL HISTORY

1. On May 2, 2023, Plaintiffs, Terrance Rosa and Ryan Watson, filed a complaint against Brightline, in the United States District Court for the Northern District of California, seeking damages related to the Data Incident. *See* Joint Declaration of Class Counsel (“Joint Decl.”), attached as *Exhibit B*, ¶ 5.

2. Thereafter, on May 11, 2023, May 22, 2023, and June 13, 2023, three additional complaints related to the Data Incident were filed against Brightline in the same district. *Id.* ¶ 6.

3. On July 25, 2023, the district court consolidated the actions into the first-filed action. *Id.* ¶ 7.

4. On October 20, 2023, pursuant to 28 U.S.C. § 1407, defendants NationsBenefits, LLC and NationsBenefits Holdings, LLC, two of the other parties defending lawsuits related to the Data Incident, filed a Motion for Transfer and Centralization of Related Actions to the District of Minnesota, where an action was already pending against Fortra. *Id.* ¶ 8. The motion was filed with the Judicial Panel on Multidistrict Litigation requesting that all matters concerning the Fortra GoAnywhere MFT Data Incident, including the consolidated action against Brightline, be centralized for pretrial purposes.

5. On October 23, 2023, Brightline filed a Motion to Dismiss in the Northern District of California, which was fully briefed by December 13, 2023. *Id.* ¶ 9.

6. On December 18, 2023, Brightline and the Plaintiffs in the California consolidated action jointly moved to stay the Motion to Dismiss hearing date until after the conclusion of the JPML hearing, and that motion was granted by order of the Court on December 21, 2023. *Id.* ¶ 10.

7. On or about February 5, 2024, the JPML ordered all matters concerning the Data Incident to be transferred to and centralized in the United States District Court for the Southern District of Florida, before the Honorable Rodolfo A. Ruiz II, including the consolidated action against Brightline. *Id.* ¶ 11.

8. Following transfer and centralization of the cases, Judge Ruiz created distinct tracks for the cases: Track 1: NationsBenefits; Track 2: Fortra; Track 3: NationsBenefits Spokes: Aetna, Anthem, Elevance, and Santa Clara; and Track 4: Fortra Spokes: Brightline, Community, Intellihartx, and Imagine360. [DE# 129].

9. On April 18, 2024, Plaintiffs filed their Track 4 Consolidated Complaint against all MDL-3090 Track 4 defendants, including Brightline, alleging causes of action for negligence, negligence per se, breach of fiduciary duty, breach of implied contract, breach of contract third party beneficiary, unjust enrichment, and violations of various states' consumer protection statutes. [DE# 153].

10. On April 18, 2024, the Parties exchanged their Initial Disclosures. Joint Decl. ¶ 14.

11. On April 22, 2024, the Court entered a Stipulated Confidentiality and Qualified Protective Order and Order Governing Production of Electronically Stored Information and Paper Documents. [DE# 154-155].

12. Thereafter, the Parties began discussing resolution of the claims against Brightline and scheduled a mediation before experienced class action mediator Michael Ungar, Esq. for July 11, 2024. Joint Decl. ¶ 16.

13. In advance of the mediation, Plaintiffs requested and Brightline produced extensive informal discovery, including, but not limited to, the number of individuals impacted by the Data Incident, as well as the categories of Private Information impacted by the Data Incident, and documents demonstrating that all data impacted had been removed from Clop's extortion portal. *Id.* ¶ 17.

14. The Parties also exchanged detailed Mediation Statements outlining their positions with respect to liability, damages, and settlement. *Id.* ¶ 18.

15. On July 11, 2024, the Parties participated in a full-day private mediation in Miami, Florida, concluding with the Parties agreeing to all material terms of the Settlement. *Id.* ¶ 21.

16. The Parties filed a Notice of Settlement with the Court on July 12, 2024. [DE# 165].

17. Over the next 60 days, the Parties worked diligently to finalize the terms of the Agreement and ancillary documents. Joint Decl. ¶ 23. The Agreement was executed on September 12, 2024. *Id.* ¶ 24. The Parties did not discuss attorneys' fees and costs until after they reached agreement on all material Settlement terms. *Id.* ¶ 25.

III. MATERIAL TERMS OF THE SETTLEMENT

A. Settlement Class - Plaintiffs seek Preliminary Approval of the Settlement on behalf of the following Settlement Class:

[A]ll individuals residing in the United States who received notice of the Brightline Data Incident indicating that their Private Information may have been impacted in the Data Incident.

A subset of the Settlement Class is the California Settlement Class which includes "Settlement Class members residing in California as of January 30, 2023." Excluded from the Settlement Class are (a) all persons who are employees, directors, and agents of Brightline, and their respective subsidiaries and affiliated companies; (b) governmental entities; and (c) the Judge assigned to the

Action, that Judge's immediate family, and Court staff. Agreement ¶¶ 20, 66.

B. Settlement Fund - The Settlement provides for a non-reversionary \$7,000,000 all cash Settlement Fund. *Id.* ¶ 69. The Settlement Fund will be partially funded by Brightline within 10 days of Preliminary Approval and fully funded within 10 days of the Effective Date. *Id.* ¶ 72. The Settlement Fund will be used to pay: (1) Settlement Class Member Benefits; (2) any attorneys' fees and costs awarded by the Court to Class Counsel; and (3) all Settlement Administration Costs. *Id.* ¶ 73. Once Brightline funds the Settlement Fund, Brightline will not be required to make any other payments under this Settlement. *Id.* ¶ 72.

C. Settlement Class Member Benefits - When submitting a Claim, Settlement Class members may elect to receive a Cash Payment and Credit Monitoring. *Id.* ¶ 76. California Settlement Subclass Members may also elect to receive an additional \$100.00. *Id.* ¶ 76c. Settlement Class Member Cash Payments may be subject to a *pro rata* increase or decrease, depending on the number of Valid Claims and the value of all Cash Payments claimed. *Id.* ¶ 76. If a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims against without receiving a Settlement Class Member Benefit. *Id.* ¶ 112.

Cash Payments (A or B and California Statutory Award) - Settlement Class Members may elect to receive either Cash Payment A or Cash Payment B, and a California Statutory Award (if applicable). *Id.*

Settlement Class Members who elect Cash Payment A may receive compensation for reasonable documented losses up to \$5,000. *Id.* ¶ 76a. To qualify for Cash Payment A, Settlement Class Members must provide supporting documentation supporting their losses. *Id.*

As an alternative to Cash Payment A, Settlement Class Members may elect Cash Payment B and receive a flat cash payment in the amount of \$100.00. *Id.* ¶ 76b.

In addition to Cash Payment A or Cash Payment B, all California Settlement Subclass Members may also elect to receive a \$100.00 California Statutory Award. *Id.* ¶ 76c.

Credit Monitoring - In addition to a Cash Payment and a California Statutory Award (if applicable), Settlement Class Members who did not elect to receive a credit monitoring and identity theft protection product previously offered by Brightline in connection with the Data Incident notification letter, may elect to receive three years of Credit Monitoring. *Id.* ¶ 76d. Those Settlement Class Members that accepted Credit Monitoring and identity theft protection when it was initially offered, may elect to receive up to one more year. The Credit Monitoring is with three bureaus (Experian, Equifax, and TransUnion) and has a value of \$90.00 per year per Settlement Class Member. *Id.*

Injunctive Relief - Prior to Final Approval, Brightline will provide Class Counsel with a security attestation as to the security measures it implemented following the Data Incident. The costs of any such security measures shall be fully borne by Brightline, and under no circumstances will such costs be deducted from the Settlement Fund. *Id.* ¶ 76e.

D. Settlement Class Notice – The Parties have agreed on a comprehensive Notice Program, which includes an Email Notice, Long Form Notice, Postcard Notice, Settlement Website, and Settlement telephone line for frequently asked questions. *Id.* § VIII.

Within 10 days of Preliminary Approval, Brightline will provide the Settlement Administrator with a Settlement Class List containing the Settlement Class members' names, postal addresses, and email addresses (if available). *Id.* ¶ 82. Thereafter, the Settlement Administrator will send Email Notice to all Settlement Class members for which an email address has been provided by Brightline. *Id.* ¶ 83. Those Settlement Class Members whose Email Notice is undelivered or bounces back, as well as those Settlement Class members for which email

addresses are unknown, shall receive a Postcard Notice disseminated via U.S. Mail. *Id.* Notice shall also be published on the Settlement Website and available by mail in a Long Form Notice upon request of the Settlement Administrator. *Id.* ¶ 84.

Settlement Class members may review the Long Form Notice, key documents and dates on the Settlement Website, and get answers to frequently asked questions by calling a toll-free telephone number. *Id.*

The Notice, in forms similar to those attached to the Agreement as Exhibits 1-3, will inform the Settlement Class of the general terms of the Settlement, including a description of the Action, the identity of the Settlement Class, and what claims will be released. It shall include, among other information: a description of the material terms; how to submit a Claim Form; the Claim Form Deadline; the Opt-Out deadline; the Objection Deadline to object to the Settlement and/or Class Counsel's Application for Attorneys' Fees and Costs; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class members may access the Agreement and other related documents and information. Additionally, opt-out procedures will be explained, as well as how Settlement Class Members may exercise their right to object to the proposed Settlement and/or Class Counsel's Application for Attorneys' Fees and Costs at the Final Approval Hearing. *Id.* ¶¶ 84, 86.

E. Claim Submission Process - To receive Settlement Class Member Benefits, Settlement Class Members must accurately and timely submit a Claim by the Claim Form Deadline. *Id.* § IX. A copy of the Claim Form is attached to the Agreement as Exhibit 4. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail sent to the Settlement Administrator at the address designated on the Claim Form. *Id.* ¶ 92. The Settlement Administrator will review all Claim Forms to determine their validity, eligibility, and the type and

amount of the Cash Payment to which the Settlement Class Member may be entitled. *Id.* ¶ 93. The Settlement Administrator will provide Settlement Class Members who submitted Valid Claims with their Settlement Class Member Benefits no later than 75 days after Final Approval or 30 days after the Effective Date, whichever is later. *Id.* ¶ 101. Cash Payments will be made electronically or by paper check, and an email will be sent to Settlement Class Members electing Credit Monitoring with activation instructions. *Id.* ¶ 102. Greater detail on the Claims process is in Section IX of the Agreement.

F. Disposition of Residual Funds – Any funds remaining in the Settlement Fund 240 days after Settlement Class Members receive an email from the Settlement Administrator to select a form of payment, shall be distributed to a mutually agreeable *cy pres* recipient to be approved by the Court. *Id.* ¶ 109. The Parties will propose a recipient in the Motion for Final Approval.

G. Settlement Administrator – The proposed Settlement Administrator, Epiq, is a well-respected and reputable third-party administrator that has significant experience with data breach settlements. Joint Decl. ¶ 36. The Settlement Administrator shall effectuate the Notice Program, handle the Claims process, administer the Settlement Fund, and distribute the Settlement Class Member Benefits to Settlement Class Members. Agreement § VII.

The Settlement Administrator’s duties include, *inter alia*: (i) providing Class Action Fairness Act (CAFA) Notice; (ii) initiating and completing the Court-approved Notice Program; (iii) establishing and maintaining the Settlement Fund Escrow Account; (iv) establishing and maintaining a post office box to receive opt-out requests, objections, and Claim Forms; (v) establishing and maintaining the Settlement Website; (vi) establishing and maintaining an automated toll-free telephone line for Settlement Class members to call; (vii) responding to any mailed Settlement Class member inquiries; (viii) sending an email to Settlement Class Members

with Valid Claims asking what form of payment they prefer (electronic or paper check), along with details of how to active Credit Monitoring for all those who elected the benefit; (ix) processing all opt-out requests from the Settlement Class; (x) providing weekly reports to Class Counsel and Defendants' Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices 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; (xi) in advance of the Final Approval Hearing, preparing a declaration confirming the Notice Program was completed in accordance with the terms of the Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received and the amount of Valid Claims, 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; (xii) distributing, out of the Settlement Fund, Cash Payments electronically or by paper check; (xiii) paying Court-approved attorneys' fees and costs out of the Settlement Fund; (xiv) paying Settlement Administration Costs out of the Settlement Fund following approval by Class Counsel; (xv) paying any residual funds to the Court-approved *cy pres* recipient; and (xvi) any other Settlement Administration function at the instruction of Class Counsel and Brightline including, but not limited to, verifying the Settlement Fund has been properly administered and the Cash Payments have been properly distributed. *Id.* ¶ 81. Class Counsel shall oversee the Settlement Administrator. *Id.* ¶ 79.

H. Opt-Out and Objection Procedures - Consistent with the Settlement's opt-out procedures, the Long Form Notice details that Settlement Class members who do not wish to participate in the Settlement may opt-out up to 30 days prior to the Final Approval Hearing. *Id.* ¶

52. During the Opt-Out Period, they may mail an opt-out request to the Settlement Administrator that includes the Settlement Class member's name, address, telephone number, and email address (if any), and a statement indicating a request to be excluded from the Settlement Class. *Id.* ¶ 86. Any Settlement Class member who does not timely request to opt-out shall be bound by the Agreement's terms even if that Settlement Class Member does not submit a Claim Form. *Id.*

The Agreement and Long Form Notice also specify how Settlement Class Members may object to the Settlement and/or the Application for Attorneys' Fees and Costs. *Id.* ¶ 87. Objections must be mailed to the Clerk of the Court, Class Counsel, Defendants' Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. *Id.* It 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 and Costs; (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) any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity; (g) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (h) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any); (i) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (j) the objector's signature (an attorney's signature is not sufficient). Class Counsel and/or Defendants' Counsel may conduct limited discovery on any objector or objector's counsel. *Id.*

I. Release of Claims - Plaintiffs and Settlement Class Members who do not timely and validly opt-out of the Settlement Class will be bound by the terms of the Settlement, including the Releases that discharge the Released Claims against the Released Parties. *Id.* § XIII. The Released Claims are narrowly tailored and are only claims arising out of or relating to the Data Incident. Joint Decl. ¶ 35.

J. Attorneys' Fees and Costs - The amount of any attorneys' fees and costs shall be determined by the Court. Class Counsel shall apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs. Agreement ¶ 107. The attorneys' fees and costs will be formally sought in the Application for Attorneys' Fees and Costs filed as part of the Motion for Final Approval filed no less than 45 days before the original date set for the Final Approval Hearing. The Settlement is not contingent on approval of the requests for attorneys' fees and costs, and if the Court grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force. *Id.* ¶ 108. The Notice will advise the Settlement Class of the amounts of attorneys' fees that Class Counsel intends to seek. *Id.* § VIII.

V. ARGUMENT

A. The Settlement Class Should Be Certified.

The Supreme Court has recognized the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). To certify a class, the class representative must have standing to sue and the proposed class must be adequately defined and clearly ascertainable. *Prado–Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000). Plaintiffs must satisfy all Rule 23(a) (numerosity, commonality, typicality, and adequacy), and one of the requirements of Rule 23(b). Plaintiffs seek certification under Rule 23(b)(3), requiring common questions of law or fact to predominate over any individual issues and class treatment to be the superior method for efficiently handling the case. Fed. R. Civ. P. 23(b)(3). These requirements are met for settlement purposes.

1. **Standing** – A plaintiff must demonstrate Article III standing to pursue each of the claims asserted in the complaint. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiff must establish that he: “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Further, “[t]o have standing to represent a class, a party must not only satisfy the individual standing prerequisites, but must also ‘be part of the class and possess the same interest and suffer the same injury as the class members.’” *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1307 (11th Cir. 2008) (quoting *Prado–Steiman*, 221 F.3d at 1279). In *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, 603 F. Supp. 3d 1183, 1200-1208 (S.D. Fla. 2022), this Court extensively addressed standing in data breach class actions, and subsequently relied on that analysis when preliminarily approving a class settlement in that case. *In re Mednax Serv., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, 2024 WL

1554329, at *4 n.2 (S.D. Fla. Apr. 10, 2024) (citing *Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883 (11th Cir. 2023)). Standing exists when a plaintiff's sensitive personal information is allegedly accessed and exfiltrated in a data breach. *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 796367, at *4 (S.D. Fla. Mar. 15, 2022); *see also Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 17477004, at *5 (S.D. Fla. Dec. 5, 2022). There is no requirement that Article III standing be proved with evidentiary support at the settlement approval stage. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1261 n.8 (11th Cir. 2021).

Here, all Plaintiffs have standing because, like the Plaintiffs in *Mednax* and *Desue*, their Personal Information was allegedly impacted in the Data Incident when an unauthorized third party gained access to Brightline's instance of Fortra's GoAnywhere MTF, which contained sensitive and confidential information. Because all Plaintiffs and Settlement Class members had their Personal Information impacted in the Data Incident, they have all suffered an injury in fact, that is fairly traceable to the Data Incident, and which could be redressed through an appropriate damages award if this case was litigated through trial. As in *Mednax* and *Desue*, the pursuit of damages and injunctive relief based on actual misuse and actual access to the Settlement Class' data is a plausible injury in fact – the substantial risk of future harm from identity theft and emotional injury; the diminution in the value of their Personal Information; and the loss of privacy. *Mednax*, 603 F. Supp. 3d at 1202-05.

The causal connection between the Data Incident and the Settlement Class' injuries, or traceability to the Data Incident, exists for Article III standing. The injuries must be "fairly traceable" to Brightline's actions, but that does not mean Plaintiffs are required to show proximate cause because harm flowing indirectly from the Data Incident are sufficient for standing. *Id.* at 1205. Brightline's actions need not be the very last step in causation chain. *Id.* Brightline's alleged

failure to protect the Personal Information, resulting in the Data Incident whereby unauthorized access was gained, preceded Plaintiffs' documented incidents of identity theft, economic losses, lost time, and emotional distress, and they are at substantial risk of future incidents of identity theft. *Id.* at 1206. What's important is not that the Data Incident provided all information necessary to inflict those harms; it is enough the Data Incident could give identity thieves information to aid those harms. *Id.*

2. Ascertainability - Ascertainability is an implied prerequisite of Rule 23. *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1302 (11th Cir. 2021). Before a district court can consider whether a potential class satisfies Rule 23(a), it must find the proposed class is "adequately defined and clearly ascertainable." *Id.* (citation omitted). Class definition and ascertainability typically involve one inquiry because, without an adequate definition for a proposed class, a district court cannot ascertain who belongs in the class. *Id.* For purposes of class certification, "a proposed class is ascertainable if it is adequately defined such that its membership is capable of determination." *Id.* at 1304. An adequately defined class thus should be defined by objective criteria with its members identifiable. *Id.* Here, the Settlement Class is adequately defined and clearly ascertainable because the Settlement Class definition contains sufficient objective criteria to allow an individual to determine whether he or she is a member of the Settlement Class—i.e., whether they were sent notification that their Personal Information was potentially compromised as a result of the Data Incident. Agreement. ¶ 51.

3. Rule 23(a) - Under Rule 23(a), the Court must determine whether: (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. Fed. R. Civ. P. 23(a). Each requirement is satisfied here.

Numerosity - Class sizes exceeding 40 are typically adequate for numerosity. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986); *In re Mednax Serv., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, 2024 WL 1554329, at *4 (S.D. Fla. Apr. 10, 2024) (Ruiz, II, J.). Here, the joinder of approximately one million Settlement Class members would certainly be impracticable, and thus numerosity is satisfied.

Commonality - This requirement is satisfied where the plaintiffs assert claims that “depend upon a common contention” that is “of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Courts in this Circuit have previously addressed this requirement in the context of data breach class actions and found it satisfied. *See, e.g., Mednax*, 2024 WL 1554329, at *4 (commonality satisfied because claims turn on adequacy of defendants’ data security to protect PII and PHI); *Desue*, 2022 WL 17477004, at *4; *see also Equifax*, 999 F.3d at 1274-75, 1277 (affirming district court’s certification of class, including finding of commonality). Here, as in the cases cited above, the claims turn on whether Brightline’s security environment, including its use of the Fortra’s GoAnywhere MFT file transfer application, was adequate to protect the Settlement Class’ Personal Information. That inquiry can be fairly resolved because it revolves around evidence that does not vary between members—at least for purposes of settlement—for all Settlement Class members at once. Indeed, the Settlement Class members each had their Personal Information impacted in the Data Incident.

Typicality - The commonality and typicality analyses often overlap, as they are both focused on whether a sufficient nexus exists between the legal claims of the named class

representatives and those of individual class members to warrant class certification. *Mednax*, 2024 WL 17477004 at 4. “Here, the typicality requirement is satisfied because Plaintiffs’ interests are aligned with the Settlement Class in that they all received a notice letter informing them their PHI/PII may have been compromised as a result of the Data Incident and was therefore impacted by the same purportedly inadequate data security that allegedly harmed the rest of the Settlement Class” *Id.* Their claims are based on the same legal theories and underlying event.

Adequacy of Representation – Fed. R. Civ. P. 23(a)(4) requires “the representative parties . . . fairly and adequately protect the interests of the class.” “Adequacy relates to: (1) whether the proposed class representative has interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake this litigation. *Mednax*, 2024 WL 17477004 at 5. “The determinative factor ‘is the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the members of the class.’” *Id.* (citation omitted). “Here, the Class Representatives have no conflicts with the Settlement Class and have demonstrated their adequacy by: (i) having a genuine personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii) producing information and documents to Class Counsel to permit investigation and development of the complaints; (iv) being available as needed throughout the litigation; and (v) monitoring the Litigation.” *Id.*

Like all Settlement Class members, Plaintiffs have claims against Brightline arising from the Data Incident that allegedly impacted their Personal Information. Plaintiffs were similarly injured by Brightline’s allegedly wrongful acts. Proof of Plaintiffs’ claims would necessarily involve adjudicating the same issues of law and fact as the claims of the Settlement Class as a whole. Thus, Plaintiffs and the Settlement Class they seek to represent have the same interests in recovering damages. Further, Plaintiffs have also diligently and adequately prosecuted this action

through Class Counsel by, among other things, reviewing filings, promptly providing documents and information to Class counsel, acting in the best interest of the Settlement Class, and accepting the classwide Settlement. Joint Decl. ¶ 31.

As for Class Counsel, they are highly qualified and have a great deal of experience litigating consumer class actions, including in the data privacy context. *See id.* ¶¶ 37, 39, Exs. 1–4. Like counsel in *Mednax*, “Class Counsel are adequate because of their vast experience as vigorous data breach class action litigators.” 2024 WL 17477004 at 5. Class Counsel have litigated this Action and against the other MDL-3090 defendants, including evaluating the claims, preparing comprehensive pleadings, serving informal discovery, consulting with data security experts, responding to the Track 1 Motion to Dismiss, complying with Court orders and requirements, and participating in a mediation that ultimately resulted in this Settlement. Joint Decl. ¶ 28. Accordingly, Plaintiffs and Class Counsel will adequately protect the Settlement Class.

4. Rule 23(b)(3) - Rule 23(b)(3) requires the court to find “questions of law or fact common to class members predominate over questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). When assessing predominance and superiority, the court may consider the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, ... for the proposal is that there be no trial.”).

Predominance – “The predominance inquiry looks at ‘the legal or factual questions that qualify each class member’s case as a genuine controversy, questions that preexist any settlement.’” *Mednax*, 2024 WL 17477004 at *5 (quoting *Amchem*, 521 U.S. at 623).

“[C]ommon issues of fact and law predominate if they have a direct impact on every class member's effort to establish liability and on every class member's entitlement to injunctive and monetary relief.” *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 985 (11th Cir. 2016). Further, “[i]t is not necessary that all questions of law or fact be common, but only that some questions are common and that they predominate over individual questions.” *In re Takata Airbag Prod. Liability Litig.*, No. 2599, 2023 WL 4925368, at *6 (S.D. Fla. June 20, 2023). Here, as in other data breach cases, common questions predominate because all claims arise out of a common course of conduct by Defendant. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 311–16 (N.D. Cal. 2018). The focus on a Defendants’ security measures in a data breach class action “is the precise type of predominant question that makes class-wide adjudication worthwhile.” *Id.* at 312.

Id. As in *Mednax*, all Settlement Class members had their Private Information compromised in the Data Incident and the security practices at issue did not vary from person to person. “Thus, because these common questions represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than on an individual basis.” *Id.* Thus, predominance is readily satisfied.

Superiority – “Certification of this suit as a class action is superior to other methods to fairly, adequately, and efficiently resolve the claims asserted.” *Id.* To satisfy Fed. R. Civ. P. 23(b)(3) superiority, Plaintiffs must show “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” “The focus of the superiority analysis is on the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to plaintiffs.” *Mednax*, 2024 WL 17477004 at *5 (citation omitted). As In *Mednax*, adjudicating individual actions would be impractical. The amount in dispute for each Settlement Class member is too small, the technical issues too complex, and the expert testimony and document review too costly. *Id.* Further, individual claim prosecution would be prohibitively expensive, needlessly delay resolution, and may lead to inconsistent rulings. *Id.* Accordingly, a class action is the superior method of adjudicating this case. *Id.*; *see also* Joint Decl. ¶¶ 38, 45.

B. The Settlement Should be Preliminarily Approved.

After determining settlement class certification is likely, the Court must determine whether the Settlement is worthy of preliminary approval and providing notice to the Settlement Class. The question is whether the Settlement is fair, adequate, and reasonable under Fed. R. Civ. P. 23(e)(2) and considering the “*Bennett*” factors. *Mednax*, 2024 WL 17477004 at *6.

At this juncture, “the court’s primary objective . . . is to establish whether to direct notice of the proposed settlement to the class, invite the class’s reaction, and schedule a final fairness hearing.” *Morris v. US Foods, Inc.*, No. 8:20-cv-105, 2021 WL 2954741, at *7 (M.D. Fla. May 17, 2021) (quoting William B. Rubenstein, 4 *Newberg on Class Actions* § 13:10 (5th ed. Supp. 2020)). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646, 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010). Courts have substantial discretion in approving a settlement agreement . . . , and settlement negotiations that involve arm’s-length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness, see *Manual for Compl. Lit.*, Third, § 30.42 (West 1995).

The Rule 23(e)(2) factors are:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arms’ length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

The *Bennett* factors: (1) the likelihood of success at trial; (2) the range of possible recoveries; (3) the point on or below the range of possible recoveries at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and degree of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved. See *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The Settlement

warrants Preliminary Approval under the factors set forth in Rule 23(e)(2) and *Bennett*.

1. Rule 23(e)(2) is Satisfied.

Adequacy of Representation (Rule 23(e)(2)(A)) - As this Court held in *Mednax*, “the first factor heavily weighs in favor of granting preliminary approval because both Class Counsel and the Class Representative have adequately represented the Class.” *Mednax*, 2024 WL 17477004 at *6. Class Counsel have adequately represented the Settlement Class by fully investigating the facts and legal claims. While litigation in *Mednax* proceeded to a later stage than here before the parties agreed to the settlement in that case, Class Counsel’s efforts to use informal discovery to learn what occurred to cause the Data Incident, stemming from Brightline’s use of the *Fortra* software, and the Private Information impacted in the Data Incident, before attending a full-day mediation session with Mike Unger allowed for arm’s length and good faith negotiations, without collusion. Joint Decl. ¶¶ 19–21, 26. Class Counsel used their experience in complex class action litigation, including similar data breach actions, and devoted substantial time and resources to vigorous litigation. *See id.*, ¶¶ 28, 32, 37. Also, the Class Representatives have demonstrated their adequacy by (i) having a genuine personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii) producing information and documents to Class Counsel to permit investigation and development of the complaints; (iv) being available as needed throughout the litigation; and (v) monitoring the Action. Joint Decl. ¶ 31. Plaintiffs’ respective interests are coextensive and do not conflict with the interests of the Settlement Class. *Id.* ¶ 30. Plaintiffs have the same interest in the Settlement relief, and the absent Settlement Class members have no diverging interests. *Id.*

The Settlement Was Negotiated at Arm’s Length (Rule 23(e)(2)(B)) – The Settlement was reached in the absence of collusion and is the result of good faith, informed, and arm’s-length negotiations between experienced attorneys who are familiar with class action litigation and with

the legal and factual issues at stake. *Id.* ¶¶ 27, 26, 39. Class Counsel thoroughly investigated and analyzed Plaintiffs’ claims, engaged in informal discovery, fully briefed motions to dismiss filed by Brightline and for Track 1 (which is similar to what they would have faced in Track 4), and consulted with data security experts, enabling them to gain an understanding of the evidence related to central questions in the Action and preparing them for well-informed settlement negotiations. *See id.* ¶¶ 9, 28; *see also Mednax*, 2024 WL 17477004 at *6. The Settlement was reached with the assistance of a well-respected and experienced mediator. *See* Joint Decl. ¶¶ 16, 21. “The fact that the Settlement was achieved through well-informed, arm’s-length, and neutrally supervised negotiations weighs in favor of granting preliminary approval under Rule 23(e)(2)(B).” *Mednax*, 2024 WL 17477004 at *6. For these reasons and those discussed related to attorneys’ fees below, there was no fraud or collusion in arriving at the Settlement. *Bennett*, 737 F.2d at 986.

The Adequacy of the Settlement Relief (Rule 23(e)(2)(C)) - Although Plaintiffs believe the claims asserted in the Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Brightline poses significant risks that make any recovery for the Settlement Class uncertain. This Court observed in *Mednax* that data breach class actions are risky. 2024 WL 17477004 at *7. The Settlement’s fairness is underscored by consideration of the obstacles that the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. *Id.* Despite the risks involved with further litigation, the Settlement provides outstanding benefits, including Cash Payments, Credit Monitoring, and injunctive relief for all Settlement Class Members. *See Equifax*, 999 F.3d at 1273 (“Settlements also save the bench and bar time, money, and headaches”). Also, the Claim Form submission process and distribution of Settlement Class Member Benefits is fair, convenient, and effective. Settlement Class Members will promptly receive Cash Payments by electronic means or

paper check issued by the Settlement Administrator and Credit Monitoring, if elected. The Settlement Administrator is highly qualified to manage the entire process. Joint Decl. ¶ 36. “ Thus, through the Settlement, Plaintiffs and Settlement Class Members gain significant benefits without having to face further risk of not receiving any relief at all.” *Mednax*, 2024 WL 17477004 at *7.

The Equitable Treatment of Settlement Class Members (Rule 23(e)(2)(C)) – As this Court found in *Mednax*, 2024 WL 17477004 at *7, all Settlement Class Members are given an equal opportunity to claim Settlement Class Member Benefits. Specifically, each Settlement Class member has the option to be reimbursed for documented losses up to \$5,000.00, or they may elect to receive a flat cash payment of \$100.00. Additionally, all California Settlement Class Members are equally entitled to the same Californian Statutory Award of \$100.00 and all Settlement Class Members may elect Credit Monitoring. Thus, “[t]he method of distributing the settlement benefits will be equitable and effective.” *Id.* Furthermore, the attorneys’ fees do not impact the other terms of the Settlement, as Class Counsel and Defendants negotiated and reached agreement regarding attorneys’ fees and costs only after reaching agreement on all other material Settlement terms. The Settlement, including disbursement of the Settlement Class Member Benefits, is also not contingent on approval of the attorneys’ fee or costs award to Class Counsel. Agreement ¶ 108. Finally, the Parties’ agreements are all in the Agreement. Joint Decl. ¶ 26.

2. The *Bennett* factors support Preliminary Approval.

Although typically a consideration at the final approval stage, here, the *Bennett* factors still support Preliminary Approval. First, the benefits of settlement outweigh the risk of trial given the substantial relief that Settlement Class members will be afforded, including guaranteed Cash Payments, Credit Monitoring, and injunctive relief.

Second and third, the Settlement is within the range of possible recoveries and is fair,

adequate, and reasonable. *See Burrows v. Purchasing Power, LLC*, No. 1:12-CV22800, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013). In determining whether a settlement is fair and reasonable, the court must also examine the range of possible damages Plaintiffs could recover at trial and combine this with an analysis of Plaintiffs' likely success at trial to determine if the settlements fall within the range of fair recoveries. *See, e.g., Equifax*, 999 F.3d at 1274 (affirming district court's decision that settlement was "fair, reasonable, and adequate because the settlement reflects relief the Court finds is in the high range of what could have been obtained had the parties continued to litigate."). Here, Settlement Class members may elect Cash Payment A for reimbursement of documented ordinary losses up to \$5,000.00, or they may elect Cash Payment B for a flat cash payment of \$100.00. Joint Decl. ¶ 29. Additionally, Settlement Class members may also elect Credit Monitoring, and California Settlement Class Members may receive an additional \$100.00. *Id.*

Fourth, continued litigation would be lengthy and expensive. With *Mednax* as an example, Data breach litigation is often difficult and complex. *Id.* ¶ 43. Although the Parties entered into a Settlement relatively early in litigation, the Settlement negotiations were hard-fought, and the Parties expended significant time and energy on this Action. *Id.* ¶ 44.

Fifth, opposition to the Settlement, if any, is better considered at the Final Approval stage, after Notice to the Settlement Class. *Mednax*, 2024 WL 17477004 at *7.

Sixth, despite resolving at an early stage of litigation, Plaintiffs have sufficient information to evaluate the merits and negotiate a fair, adequate, and reasonable settlement. *See, e.g., Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (S.D. Fla. 2014) (approving settlement where parties settled relatively early with experienced counsel who had sufficient information to evaluate merits of the case, engaged in full-day mediation, and engaged in post-mediation discovery). This

Action has been thoroughly investigated by counsel experienced in data breach litigation. Joint Decl. ¶¶ 17–20. Moreover, Class Counsel’s informal exchange of discovery and mediation with an experienced mediator has ensured a fair, reasonable, and adequate Settlement. *Id.*

Accordingly, the Court should find the Settlement is fair, reasonable, and adequately protects the interests of the Settlement Class members.

C. The Court Should Appoint the Proposed Class Representatives, Class Counsel, and Settlement Administrator.

Plaintiffs seek appointment as Class Representatives. Plaintiffs have cooperated with Class Counsel and assisted in the preparation of the complaints and in settlement of the Action. *Id.* ¶ 31. Moreover, Plaintiffs are committed to continuing to assist Class Counsel through Final Approval. *Id.* Because Plaintiffs are adequate, the Court should appoint them as Class Representatives. *See* § V(A)(3), *supra*.

For the same reasons discussed above for adequacy of representation, the Court should designate Jeff Ostrow, John Yanchunis, James Cecchi, and Mason Barney as Class Counsel. Federal Rule of Civil Procedure 23(g)(1)(A)’s four factors for appointing class counsel for a certified class are (1) “the work counsel has done in identifying or investigating potential claims in the action;” (2) “counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;” (3) “counsel’s knowledge of the applicable law;” and (4) “the resources that counsel will commit to representing the class.” The Court may also “consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class[.]” Fed. R. Civ. P. 23(g)(1)(B). Here, Plaintiffs and the Settlement Class are represented by qualified and competent Class Counsel who are leaders in the class action field with extensive experience prosecuting and resolving complex class actions. Before commencing litigation, they investigated the potential claims against Defendants, interviewed potential

plaintiffs, and gathered information regarding the Data Incident. Joint Decl. ¶ 4. Class Counsel has devoted substantial time and resources to this Action and will continue to do so. *Id.* ¶¶ 28, 32.

Finally, subject to Court approval, the Parties have agreed Epiq should be the Settlement Administrator. Epiq has a long history of successful class action administrations.

D. The Notice Program Contains the Best Notice Practicable.

Under Fed. R. Civ. P. 23(e)(1), the Court should “direct notice in a reasonable manner to all class members who would be bound” by the proposed settlement.. Notice of a proposed settlement must be the “best notice practicable.” Fed. R. Civ. P. 23(c)(2)(B). “[B]est notice practicable” means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The best notice practicable is that which “is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Moreover, Fed. R. Civ. P. 23(h)(1) requires that “[n]otice of the motion [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.”

The Notice Program satisfies the foregoing criteria. The Parties negotiated the form of the Notices with the help of the Settlement Administrator. The Notice will be disseminated to all persons who fall within the Settlement Class definition and whose names and addresses can be identified with reasonable effort from Brightline’s records, and through databases tracking nationwide addresses and address changes. In addition, Epiq will administer the Settlement Website containing relevant information about the Settlement. Further, the Notice includes, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the last day of the Opt-Out Period for Settlement Class members

to opt-out of the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or Application for Attorneys' fees and Costs; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. Agreement ¶ 84. Finally, the Notice Program satisfies the requirements of Rule 23(h)(1), as it notifies the Settlement Class that Class Counsel may apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs. *Id.* ¶ 107. Thus, the Court should approve the Notice Program, including the form and content of the Notices. Agreement Exs. 1-3.

E. Proposed Schedule of Post-Settlement Events

Plaintiffs respectfully propose the below schedule for the Court's review and approval. If the Court agrees, Plaintiffs request that the Court schedule the Final Approval Hearing for the week of January 20, 2025, or such later date available on the Court's calendar.

Deadline to commence Notice Program	Within 30 days of the Preliminary Approval Order
Deadline to complete Notice Program	45 days before the original Final Approval Hearing date
Deadline for filing Motion for Final Approval, including Class Counsel's Application for Attorneys' Fees and Costs	45 days before the original Final Approval Hearing date
Opt-out Period Ends	30 days before the original Final Approval Hearing date
Objection Period Ends	30 days before the original Final Approval Hearing date
Final Approval Hearing	The week of February 3, 2025 (or soon thereafter depending on the Court's availability).
Claim Form Deadline	15 days following the original Final Approval Hearing date

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request the Court: (1) preliminarily approve the Settlement; (2) certify the Settlement Class for settlement purposes only;

(3) approve the Notices and Notice Program, including the opt-out and objection procedures; (4) approve the Claim Form and Claims process; (5) appoint Plaintiffs as Class Representatives; (6) appoint Jeff Ostrow of Kopelowitz Ostrow P.A., John Yanchunis of Morgan & Morgan P.A., James Cecchi of Carella, Byrne, Cecchi, Brody, & Agnello P.C., and Mason Barney of Siri & Glimstad LLP as Class Counsel; (7) appoint Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator; and (8) enter the proposed Preliminary Approval Order, attached as Exhibit A-5.

CERTIFICATE OF LOCAL RULE 7.1(a)(3) CONFERRAL

Plaintiffs' counsel certifies that Plaintiffs have conferred with Defendant regarding the relief requested in this Motion and Defendant does not oppose the relief requested.

Dated: September 13, 2024.

Respectfully submitted,

/s/ Jeff Ostrow
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EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**IN RE: FORTRA FILE TRANSFER
SOFTWARE DATA SECURITY BREACH
LITIGATION**

Case No. 24-md-03090-RAR

This Document Relates to:

TERRANCE ROSA, et al., on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

BRIGHTLINE, INC.,

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement¹ is entered into between Plaintiffs, Terrance Rosa, Ryan Watson, Donisha Jackson, Kyle Castro, on behalf of himself and his minor children, E.N.C., C.J.C., and E.J.C., Itaunya Milner, on behalf of herself and her minor child, B.G., and Anthony Ndifor, individually and on behalf of the Settlement Class, and Defendant, Brightline, Inc., as of the date last signed below. 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. On February 1, 2023, cybersecurity expert Brian Krebs reported that Fortra, one of Brightline’s vendors, disclosed to its customers a “remote code injection exploit” affecting GoAnywhere MFT, Fortra’s widely used file transfer application. The hackers – the Russia-linked

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

ransomware group, “Clop” – used “remote code injection exploits” to remotely execute malicious code on their targets’ computer systems and exfiltrate personally identifiable information and protected health information. *See* Compl. ¶ 249 (DK# 153).

2. In or around May of 2023, Brightline began notifying impacted individuals, including Plaintiffs and Settlement Class members, of the unauthorized access to some combination of their names, addresses, dates of birth, member identification numbers, start and end dates of health plan coverage, Social Security numbers, and employer names that were being stored within Brightline’s instance of the Fortra GoAnywhere MFT at the time of the Data Incident. *Id.* ¶¶ 265-67.

3. Four lawsuits were subsequently filed against Brightline in the United States District Court for the Northern District of California and ultimately consolidated by order of the Court on July 25, 2023. In addition to consolidating Plaintiffs’ respective actions, the Court appointed Mason Barney as interim lead counsel by Court Order dated September 18, 2023. Brightline filed a motion to dismiss in the Northern District of California, which was fully briefed by December 13, 2023.

4. The consolidated action was later transferred and centralized, by order of the JPML, to the United States District Court for the Southern District of Florida before Judge Rodolfo A. Ruiz II, along with all other Fortra GoAnywhere MFT related cases.

5. Following transfer and centralization of the cases, Judge Ruiz created distinct tracks for each of the cases: Track 1: NationsBenefits;² Track 2: Fortra; Track 3: NationsBenefits Spokes: Aetna, Anthem/Elevance, and Santa Clara; and Track 4: Fortra Spokes: Brightline, Community,

² Each of these names represents a Fortra related case or cases the JPML centralized before Judge Ruiz.

Intellihartx, and Imagine360.

6. Judge Ruiz also appointed Jeff Ostrow and John Yanchunis as Co-Lead Counsel, James Cecchi as Track Coordination and Settlement Counsel, and maintained Mason Barney as a “Track Lead” for the instant Brightline matter.

7. On April 18, 2024, Plaintiffs filed their Track 4 Consolidated Complaint against all Track 4 defendants, including Brightline, alleging causes of action for: negligence, negligence per se, breach of fiduciary duty, breach of implied contract, breach of contract third party beneficiary, unjust enrichment, and violations of various states’ consumer protection statutes.

8. On April 18, 2024, the Parties exchanged their Initial Disclosures.

9. On April 22, 2024, the Court entered a Stipulated Confidentiality and Qualified Protective Order and Order Governing Production of Electronically Stored Information and Paper Documents.

10. Thereafter, the Parties began discussing resolution of the Action and scheduled a mediation before experienced class action mediator Michael Ungar for July 11, 2024.

11. In advance of the mediation, Plaintiffs requested and Brightline produced extensive informal discovery, including, but not limited to, the number of individuals impacted by the Data Incident, as well as the categories of Private Information impacted by the Data Incident, and documents demonstrating that all data impacted as part of the Data Incident—which would include all impacted Private Information—had been removed from Clop’s extortion portal.

12. The Parties also exchanged detailed mediation statements outlining their positions with respect to liability, damages, and settlement.

13. On July 11, 2024, the Parties participated in a full-day private mediation in Miami, Florida concluding with the Parties agreeing to all material terms of the Settlement.

14. The Parties filed a Notice of Settlement with the Court on July 12, 2024.

15. The Parties now agree to settle the Action entirely, without any admission by Brightline of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Brightline has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Complaint and the Data Incident as it relates to them and their impacted clients, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its business operations associated with further litigation. Brightline does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint (and similarly does not concede any of the allegations in the other complaints in the Related Actions), and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. 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 Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede that the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Brightline, 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

16. “**Action**” means the above-captioned action, *Terrance Rosa et al. v. Brightline, Inc.*;

Case No. 23-cv-60830-RAR (S.D. Florida).

17. “**Application for Attorneys’ Fees and Costs**” means the application made with the Motion for Final Approval seeking Class Counsel’s attorneys’ fees and reimbursement for costs.

18. “**Brightline**” means Defendant, Brightline, Inc.

19. “**CAFA Notice**” means the Class Action Fairness Act Notice which the Settlement Administrator shall serve upon the appropriate state and federal officials, providing notice of the proposed Settlement. The Settlement Administrator shall provide a declaration attesting to compliance with 28 U.S.C. § 1715(b), which will be filed with the Motion for Final Approval.

20. “**California Settlement Subclass**” means Settlement Class members residing in California as of January 30, 2023.

21. “**California Statutory Award**” means the additional \$100.00 available as a Settlement Class Member Benefit to members of the California Settlement Subclass.

22. “**Cash Payment**” means compensation paid to Settlement Class Members who elected to submit a Claim for either Cash Payment A or Cash Payment B.

23. “**Cash Payment A**” means the undocumented loss form of cash compensation Settlement Class Members elect as a Settlement Class Member Benefit.

24. “**Cash Payment B**” means the flat cash payment form of cash compensation Settlement Class Members may elect as a Settlement Class Member Benefit.

25. “**Claim Form**” means the proof of claim, substantially in the form attached hereto as *Exhibit 4*, which may be modified as necessary, subject to the Parties’ approval.

26. “**Claim Form Deadline**” shall be 15 days following 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 Settlement Class Member Benefit.

27. “**Claimant**” means a Settlement Class member who submits a Claim Form.

28. “**Class Counsel**” means: Jeff Ostrow of Kopelowitz Ostrow P.A, John Yanchunis of Morgan & Morgan P.A., James Cecchi of Carrella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., and Mason Barney of Siri & Glimstad LLP.

29. “**Class List**” means the list of Settlement Class members prepared by Brightline using information in Brightline’s records and provided to the Settlement Administrator by Brightline for Notice. The Class List shall include the Settlement Class members’ names, postal addresses (if available from Data Incident notice materials) and email addresses (if available from Data Incident notice materials). The Class List will also identify which members are Aetna insureds.

30. “**Class Representatives**” means Terrance Rosa, Ryan Watson, Donisha Jackson, Kyle Castro, on behalf of himself and his minor children, E.N.C., C.J.C., and E.J.C., Itaunya Milner, on behalf of herself and her minor child, B.G., and Anthony Ndifor.

31. “**Complaint**” means the Track 4 consolidated complaint filed on April 18, 2024, styled: *In Re Fortra File Transfer Software Data Security Breach Litigation, This Document Relates to: Track Four*; Case No. 24-md-03090-RAR (S.D. Fl. 2024).

32. “**Court**” means the United States District Court for the Southern District of Florida and the Judge(s) assigned to the Action.

33. “**Credit Monitoring**” means 3 years of credit monitoring Settlement Class Members may elect (adjusted to 1 year of credit monitoring for Settlement Class Members who already elected to receive 2 years of credit monitoring offered in connection with the Data Incident) as part of their Settlement Class Member Benefit.

34. “**Customer**” or “**Customers**” means each and every entity that directly or indirectly provided Settlement Class member Private Information to Brightline that was subject to unauthorized access or acquisition as a result of the Data Incident. For the avoidance of doubt, the term “Customer” or “Customers” includes Brightline’s direct Customers and the business customers of Brightline’s Customers.

35. “**Data Incident**” means the unauthorized access to or acquisition of the Private Information that took place on or about January 30, 2023, as a result of unauthorized access to Brightline’s GoAnywhere MFT instance.

36. “**Defendant**” means Brightline.

37. “**Defendant’s Counsel**” or “**Brightline’s Counsel**” means King & Spalding LLP.

38. “**Effective Date**” means the day after the entry of the Final Approval Order, provided no objections are made to the Settlement. If there are objections to the Settlement, then the Effective Date shall be the later of: (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.

39. “**Email Notice**” means the email form of Notice of the Settlement, substantially in the form attached hereto as *Exhibit 1*, distributed to Settlement Class members for which email addresses are provided by Brightline.

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

41. “**Final Approval**” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form attached to the Motion for

Final Approval.

42. “**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 and Costs.

43. “**Final Approval Order**” means the final order the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded to Class Counsel.

44. “**Long Form Notice**” means the long form notice of the Settlement, substantially in the form attached hereto as *Exhibit 3*, that shall be posted on the Settlement Website and shall be available to Settlement Class members by mail on request made to the Settlement Administrator.

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

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

47. “**Net Settlement Fund**” means the amount of the Settlement Fund following payment of Settlement Administration Costs and any attorneys’ fees and costs awarded by the Court to Class Counsel.

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

49. “**Notice Program**” means the methods provided for in this Agreement for giving Notice to the Settlement Class and consists of the Email Notice, Postcard Notice, and Long Form

Notice.

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

51. “**Objection Period**” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the initial scheduled Final Approval Hearing.

52. “**Opt-Out Period**” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the initial scheduled Final Approval Hearing.

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

54. “**Private Information**” means some combination of Settlement Class members’s names, addresses, dates of birth, member identification numbers, start and end dates of health plan coverage, Social Security numbers, telephone numbers, and employer names that were being stored within Brightline’s instance of the Fortra GoAnywhere MFT at the time of the Data Incident.

55. “**Plaintiffs**” means Terrance Rosa, Ryan Watson, Donisha Jackson, Kyle Castro, on behalf of himself and his minor children, E.N.C., C.J.C., and E.J.C., Itaunya Milner, on behalf of herself and her minor child, B.G., and Anthony Ndifor.

56. “**Postcard Notice**” means the postcard notice of the Settlement, substantially in the form attached hereto as *Exhibit 2* that the Settlement Administrator shall disseminate to Settlement Class members by mail.

57. “**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.

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

59. “**Related Actions**” means the four actions filed against Brightline regarding the Data Incident and later consolidated.

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

61. “**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, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act relating to the Data Incident. For the avoidance of doubt, Released Claims includes any claims Settlement Class members could or may have for damages attributed to Brightline in any subsequent proceeding against any other defendant in the Fotra File Transfer Software Data Security Breach Litigation MDL 3090.

62. “**Released Parties**” means Brightline and Brightline’s Customers and both Brightline and Brightline’s Customers 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. For the avoidance of doubt, Released Parties also includes Brightline’s affiliated entities, including Brightline Medical Associates, P.A.; Brightline Medical Associates of California, Inc.; Brightline Medical Associates of NJ, P.A.; and Brightline Medical Associates of KS, P.A.; which employ all clinicians providing clinical services on behalf of Brightline, and all such employed clinicians or clinician groups. MDL Defendants, Aetna Inc. and Aetna Life Insurance Company, and their parents, subsidiaries, and affiliated entities (collectively “Aetna”), are or may be Customers of Brightline. Some of Aetna’s insureds’ Private Information was impacted in the Data Incident (“Aetna-Brightline Population”). For the avoidance of doubt, this Settlement only releases claims against Aetna to the extent those claims arise from the Data Incident involving Brightline. To the extent the Aetna-Brightline Population’s Private Information was impacted independent of Brightline’s use of the Fortra GoAnywhere MFT, the Aetna-Brightline Population is not releasing those claims against Aetna or against any other defendant in the MDL.

63. “**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.

64. “**Settlement Administrator**” means Epiq Class Action & Claims Solutions, Inc. or Epiq.

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

66. “**Settlement Class**” means all living individuals residing in the United States who received notice of the Brightline Data Incident indicating their Private Information may have been

impacted in the Data Incident. Excluded from the Settlement Class are (a) all persons who are employees, directors, officers, and agents of Brightline, or their respective subsidiaries and affiliated companies; (b) governmental entities; and (c) the Judge assigned to the Action, that Judge's immediate family, and Court staff.

67. “**Settlement Class Member**” means any member of the Settlement Class, including any member of the California Settlement Subclass, who has not opted-out of the Settlement.

68. “**Settlement Class Member Benefit**” means the Cash Payment and, if applicable, the California Statutory Award, and/or Credit Monitoring, elected by Settlement Class Members.

69. “**Settlement Fund**” means the non-reversionary all cash \$7,000,000.00 fund that Brightline is obligated to fund under the terms of the Settlement.

70. “**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, Application for Attorneys' Fees and Costs, 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.

71. “**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. Eastern 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

72. Within 10 days of Preliminary Approval, Defendant shall cause the Settlement Fund to be funded in the amount of \$500,000.00 for the purpose of satisfying payment of initial Settlement Administration Costs, which amount shall be held in the Escrow Account to be established and maintained by the Settlement Administrator. Within 10 days of the Effective Date, Brightline shall cause the remaining \$6,500,000 to be transferred to the Escrow Account. In no event, will Brightline pay more than the \$7,000,000 required to fund the Escrow Account. In the event any post-settlement proceedings against other defendants in the MDL result in a monetary judgment for the the Settlement Class against Brightline, Brightline shall not be required to contribute any additional monetary amounts. In the event there is no Final Approval, all funds remaining in the Settlement Fund shall be payable to Brightline.

73. The Settlement Fund shall 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 and costs awarded by the Court to Class Counsel.

74. 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. All taxes (including any estimated taxes, and any interest 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 Brightline, Brightline'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. Brightline, Brightline's Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Brightline, Brightline's Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

IV. Certification of the Settlement Class

75. In the Motion for Preliminary Approval, Plaintiffs shall propose and request to the Court that the Settlement Class be certified for Settlement purposes only. Brightline 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, Brightline 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 Consideration

76. When submitting a Valid Claim, Settlement Class Members must choose either Cash Payment A or Cash Payment B. In addition, each member of the California Settlement Subclass who submits a Valid Claim may elect to receive a separate California Statutory Award. Settlement Class Members may also elect to receive Credit Monitoring in accordance with the

terms of this paragraph. Settlement Class Cash Payments and California Statutory Awards will be subject to a *pro rata* increase from the Net Settlement Fund in the event the amount of Valid Claims is insufficient to exhaust the entire Net Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Net Settlement Fund, the amount of the Cash Payments and California Statutory Awards may be reduced *pro rata* accordingly. 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 Credit Monitoring and then for Cash Payments and California Statutory Awards. Any *pro rata* increases or decreases to Cash Payments and California Statutory Awards 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 against the Released Parties 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 documenting 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 Brightline 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 – Flat Payment

As an alternative to Cash Payment A above, a Settlement Class Member may elect to receive Cash Payment B, which is a flat cash payment in the amount of \$100.00.

c. California Statutory Claim Payment

In addition to Cash Payment A or Cash Payment B, California Settlement Subclass Members who submit a Valid Claim may also elect to receive the California Statutory Award in the amount of \$100.00.

d. Credit Monitoring

In addition to Cash Payment A or Cash Payment B, and the California Statutory Claim Payment, if applicable, Settlement Class Members may also make a Claim for Credit Monitoring. Settlement Class Members who did not elect to receive a credit monitoring and identity theft protection product previously offered by Brightline or a Brightline Customer in connection with the Settlement Class Member's Data Incident notification letter may elect to receive three years of Credit Monitoring. Settlement Class Members who elected to receive two years of credit monitoring and identity theft protection previously offered by Brightline may elect to receive an

additional year of Credit Monitoring. Credit Monitoring has a value of approximately \$90.00 per year per Settlement Class Member. The Credit Monitoring will include: (i) real time monitoring of the credit file at all three bureaus; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) comprehensive public record monitoring; (iv) medical identity monitoring; (v) identity theft insurance (no deductible); and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft.

e. Injunctive Relief

Prior to Final Approval, Brightline will provide Class Counsel with a security attestation regarding security measures it implemented following the Data Incident. The costs of any such security measures on the part of Brightline shall be fully borne by Brightline, and under no circumstances will such costs be deducted from the Settlement Fund.

VI. Settlement Approval

77. Class Counsel shall file a Motion for Preliminary Approval on or before September 13, 2024.

78. The 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 set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form and Claim submission process; (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 Jeff Ostrow, John Yanchunis, James Cecchi, and Mason Barney as Class Counsel for Settlement purposes; (7) stay the Action pending Final Approval of the Settlement; and (8) schedule a Final Approval Hearing for a time and date

mutually convenient for the Court, the Parties, Class Counsel, and Brightline's Counsel.

VII. Settlement Administrator

79. The Parties agree that, subject to Court approval, Epiq 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.

80. 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 distributing the Cash Payments to Settlement Class Members who submit Valid Claims.

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

- a. Provide CAFA Notice;
- b. Complete the Court-approved Notice Program by noticing the Settlement Class by Email Notice aor Postcard Notice and 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;
- c. Establish and maintain the Settlement Fund the Escrow Account approved by the Parties;
- d. Establish and maintain a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class members, and Claim Forms;

- e. Establish and maintain the Settlement Website to provide important information and to receive electronic Claim Forms;
- f. Establish and maintain 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;
- g. Respond to any mailed Settlement Class member inquiries;
- h. Process all opt-out requests from the Settlement Class;
- i. Provide 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;
- j. In advance of the Final Approval Hearing, prepare 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, 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;
- k. Distribute, out of the Settlement Fund, Cash Payments by electronic means;
- l. Email all Credit Monitoring Codes to all Settlement Class Members who elect Credit Monitoring;
- m. Pay Court-approved attorneys' fees and costs out of the Settlement Fund;
- n. Pay Settlement Administration Costs out of the Settlement Fund following

approval by Class Counsel; and

o. Any other Settlement administration function at the instruction of Class Counsel and Brightline, including, but not limited to, verifying that the Settlement Fund has been properly administered and that the Cash Payments and Credit Monitoring Codes have been properly distributed.

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

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

83. Within 30 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice approved by the Court. Where email addresses are provided by Brightline for Settlement Class members, Email Notice shall be sent by email. Settlement Class members for which email addresses are not provided, or emails were undelivered (and a postal address is provided by Brightline), shall receive a Postcard Notice by mail.

84. The Email Notice and Postcard Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the last day of the Opt-Out Period for Settlement Class members to opt-out of the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees and Costs; the Final Approval Hearing date; and 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 Notice 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.

85. 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 directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

86. The Long Form Notice shall also include a procedure for Settlement Class members to opt-out of the Settlement Class, and the Postcard Notice and Email Notice shall direct Settlement Class members to review the Long Form Notice to obtain the opt-out instructions. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. 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 be excluded from the Settlement Class. 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.

87. The Long Form Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees and Costs, and the Postcard Notice and Email Notice shall direct Settlement Class members to review the Long Form

Notice to obtain the objection instructions. Objections must be filed with the 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 last day of the Objection Period, as specified in the Notice, and the Settlement Class Member must not have excluded him/herself from the Settlement Class. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. 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.

88. 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 5 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 and Costs;
 - 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 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 the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 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).

Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

89. The Settlement Administrator shall perform reasonable address traces for those Email Notices or Postcard Notices returned as 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. No later than 45 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces.

90. 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 Form Process and Disbursement of Cash Payments

91. The Notice and the Settlement Website will explain to Settlement Class members that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

92. 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.

93. 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.

94. 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.

95. 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.

96. 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 from 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 Brightline and Class Counsel otherwise agree.

97. 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/or

i. The Claim Form otherwise does not comply with the requirements of this

Settlement.

98. 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.

d. The Settlement Administrator's determination as to whether to approve,

deny, or reduce a Claim shall be final and binding.

99. 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 Brightline's Counsel. Additionally, Class Counsel and Brightline'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.

100. No person or entity shall have any claim against Brightline, Brightline'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.

101. 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.

102. Cash Payments to Settlement Class Members will be made by electronic payment or by paper check. Following Final Approval, the Settlement Administrator will send Settlement Class Members an email to select a form of electronic payment or to receive payment by paper check. 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. Settlement Class Members shall have 90 days to select their form of payment. Paper checks must be negotiated within 90 days of issuance. In the event the Settlement Administrator is unable to distribute funds to the person or persons entitled to receive them due to incorrect or incomplete information provided to the Settlement Administrator, the funds shall become residual funds, and the Settlement Class Member shall forfeit their entitlement

right to the funds.

103. In the event there are funds remaining in the Settlement Fund 240 days following the date Settlement Class members are sent an email to select their their form of payment, said funds attributable to unclaimed and undeliverable funds shall be treated as residual funds as described in Section XII.

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

X. Final Approval Order and Final Judgment

105. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees and Costs, 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 and Costs. 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 and Costs, provided the objectors submitted timely objections that meet all of the requirements listed in this Agreement.

106. 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 and Costs. 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. Determine that the Notice Program satisfies Due Process requirements;

d. 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;

e. Release Brightline and the Released Parties from the Released Claims; and

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

XI. Attorneys' Fees and Costs

107. Class Counsel shall apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs. The attorneys' fees and cost awards 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 15 days of Final Approval.

108. This Settlement is not contingent on approval of the request for attorneys' fees and costs, 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. The provisions for attorneys' fees and costs were not negotiated until after all material terms of the Settlement.

XII. Disposition of Residual Funds

109. In the event there are funds remaining in the Settlement Fund 240 days following the date Settlement Class members are sent an email to select their their form of payment, any residual shall be distributed to an appropriate mutually agreeable *cy pres* recipient to be approved by the Court.

XIII. Releases

110. 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 the Released Parties from any and all Released Claims, including but not limited to any state law or common law claims arising out of or relating to the Data Incident that the Releasing Parties may have or had, such as under California's Consumer Privacy Act, California Civil Code section 1798.100, *et seq.* and/or California's Unfair Competition Law, California Civil Code section 17200 *et seq.* Each Party expressly waives 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 also waive the provisions and rights of any law(s) that are comparable in effect to California Civil Code section 1542 (including, without limitation, California Civil Code § 1798.80, *et seq.*, Montana Code Ann. § 28- 1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11). 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, against any of the Released Parties based on any of the Released Claims.

111. For the avoidance of doubt, Brightline's Customers are only being released from claims related to Brightline's use of the Fortra GoAnywhere Transfer application. With the limited exception related to the portion of the Brightline-Aetna Population described in paragraph 62 above, no other Defendant in the MDL is released from any Settlement Class Members' claims

related to the Fotra Go Anywhere Transfer application data incident.

112. Settlement Class members who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims and will not obtain any benefits, including any Settlement Class Member Benefit, under the Settlement.

113. 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 any Released Claim against the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

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

XIV. Termination of Settlement

115. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of 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.

116. 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.

117. 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*.

118. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to Brightline. However, Brightline shall have no right to seek from Plaintiffs, Class Counsel, or the Settlement Administrator the Settlement Administration Costs paid. After payment of any Settlement Administration Costs that have been incurred and are due to be paid from the Settlement Fund, the Settlement Administrator shall return the balance of the Settlement Fund to Brightline within 21 days of termination.

XV. Effect of Termination

119. 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, Brightline's, and Brightline'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, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

120. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement 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

121. 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. Brightline has denied and continues to deny each of the claims and contentions alleged in the Complaint. Brightline does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Brightline 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.

122. 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 members.

123. 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.

124. 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 the 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.

125. In addition to any other defenses Brightline 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

126. Confidentiality. To the extent permitted by ethics rules, the Parties and their counsel shall keep confidential all settlement communications, including communications regarding the negotiation and drafting of this Agreement. The Parties will not make any public statement about the settlement that has not been approved by the other side, except as required or authorized by law. Approval of any proposed public statement of the other side will not be unreasonably withheld. The Parties will cooperate with each other regarding public statements about the settlement and may issue a joint statement/press release if they mutually agree to do so. This

paragraph shall not be construed to limit or impede the Notice requirements contained in this Settlement Agreement, nor shall this paragraph be construed to prevent Class Counsel or Brightline'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. Brightline may also provide information about the Agreement to its Customers, 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 effect the Settlement.

127. 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.

128. 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.

129. 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.

130. 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.

131. 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.

132. 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.

133. 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 Florida, without regard to the principles thereof regarding choice of law.

134. 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 by facsimile or through email of a PDF shall be deemed an original.

135. 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, 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.

136. 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:

Jeff Ostrow
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd., Ste. 500
Fort Lauderdale, FL 33301
ostrow@kolawyers.com

John Yanchunis
Morgan & Morgan P.A.
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
jyanchunis@forthepeople.com

James Cecchi
Carella, Byrne, Cecchi, Brody & Agnello, P.C.
5 Becker Farm Road
Roseland, NJ 07068
jcecchi@carellabyrne.com

Mason A. Barney
Siri & Glimstad LLP
745 Fifth Avenue, Suite 500
New York, NY 10151
mbarney@sirillp.com

If to Defendant or Defendant's Counsel:

Phyllis B. Sumner
Elizabeth D. Adler
Charles G. Spalding, Jr.
King & Spalding LLP
1180 Peachtree Street NE
Suite 1600
Atlanta, GA 30309
psummer@kslaw.com
eadler@kslaw.com
cspalding@kslaw.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 as a result of the Notice Program.

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

138. 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.

139. 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 of the terms and provisions of this Agreement.

140. Agreement Mutually Prepared. Neither Plaintiffs nor Brightline shall be considered to be 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.


141. 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 and their experts 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. 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.

142. 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.


Signature Pages to Follow


PLAINTIFFS


Terrance Rosa (Sep 13, 2024 08:46 EDT)
TERRANCE ROSA
Plaintiff


Ryan Watson (Sep 13, 2024 08:43 EDT)
RYAN WATSON
Plaintiff


Donisha Jackson (Sep 12, 2024 19:06 CDT)
DONISHA JACKSON
Plaintiff


Kyle Castro (Sep 13, 2024 14:44 CDT)
KYLE CASTRO
Plaintiff


Itaunya Milner (Sep 13, 2024 08:26 EDT)
ITAUNYA MILNER
Plaintiff


Anthony Ndifor (Sep 13, 2024 09:51 PDT)
ANTHONY NDIFOR
Plaintiff

CLASS COUNSEL

Jeff Ostrow

Jeff Ostrow (Sep 12, 2024 17:56 EDT)

JEFF OSTROW, ESQ.
KOPELOWITZ OSTROW P.A.
*Co-Lead Counsel for MDL Plaintiffs
and the Settlement Classes*

[Signature]

John Yanchunis (Sep 12, 2024 18:58 EDT)

JOHN A. YANCHUNIS, ESQ.
MORGAN & MORGAN
*Co-Lead Counsel for MDL Plaintiffs
and the Settlement Classes*

[Signature]

James Cecchi (Sep 12, 2024 17:55 EDT)

JAMES E. CECCHI, ESQ.
CARELLA, BYRNE, CECCHI,
BRODY & AGNELLO, P.C.
*Coordination and Settlement Counsel for
MDL Plaintiffs and the Settlement Classes*

[Signature]

MASON A. BARNEY, ESQ.
SIRI & GLIMSTAD LLP
Track 4 Lead Counsel for Brightline Plaintiffs

BRIGHTLINE, INC.

Sarah Weatherhead

By: Sarah Weatherhead

Its General Counsel

EXHIBIT 1
(EMAIL NOTICE)

Fr
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S r D S r I d S

C M r ID [REDACTED]

A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER

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Terrance Rosa, et al. v. Brightline, Inc., C N 4 d 0 0 0 RAR T A r J r 0 0 r
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Fr D d T r [REDACTED] d d r S
 W r US

Brightline Data Security Incident Settlement
 c/o [REDACTED]
 O [REDACTED]

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All requests to opt-out must be mailed and postmarked before the end of the Opt-Out Period and all objections must be filed with the Court and sent to Class Counsel, Brightline' Counsel, and the Settlement Administrator before the end of the Objection Period <Opt-Out/Objection Deadline>

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S F d r dr r r I r r C r d r

Mr I r Mr r d S A r d r r dd
Y d r S W r C r ACER r
F A r d d d r r r S C Y r
S Ad r r Brightline Data Security Incident Settlement
Y C Fr dr dd d
S W Y r r C Fr S A r d d dL Fr
N r r r

EXHIBIT 2
(POSTCARD NOTICE)

Brightline Data Security Incident Settlement
md-03090-RAR Document 17-1-1
Settlement Administrator
PO Box XXXX
Portland, OR 97xxx-xxxx

Entered on FLSD Docket 09/13/2024
93

FIRST-CLASS MAIL
U.S. POSTAGE
PAID
Portland, OR
PERMIT NO.xxxx

Court-Approved Legal Notice

Rosa et al. v. Brightline, Inc.,
24-md-03090-RAR, United States District
Court for the Southern District of Florida

**A proposed settlement has been
reached in a class action lawsuit.**

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

www.XXXXXXXXXXXXX.com
1-XXX-XXX-XXXX

<<MAIL ID>>
<<NAME 1>>
<<NAME 2>>
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A class action settlement in the amount of \$7,000,000.00 has been reached in a case known as *Nosza et al. v. Brightline, Inc.* (Case No. 24-md-03090-RAR (“Action”). Plaintiffs filed a lawsuit against Brightline, Inc. “Defendant,” individually, and on behalf of all others whose Private Information was potentially impacted as a result of a data security incident. The Action alleges the unauthorized access to or acquisition of the Private Information of the Settlement Class members occurred as a result of unauthorized access to computer software utilized by Brightline and the unauthorized access occurred on or about January 30, 2023 (“Data Incident”). This Action was filed asserting claims against Defendant relating to the Data Incident. Defendant denies any wrongdoing.

Who is a Settlement Class Member? All living individuals residing in the United States who received notice indicating their Private Information may have been impacted in the Brightline Data Incident. You are also a California Settlement Subclass member if you are a Settlement Class member residing in California as of January 30, 2023.

What are the benefits? The Settlement provides the following Settlement Class Member Benefits:

Cash Payment A. A Cash Payment up to \$5,000.00 per Settlement Class Member by providing reasonable documented losses related to the Data Incident. For more information on how to submit a Cash Payment A Claim, refer to the Long-Form Notice on the Settlement Website at www.xxxxxxxx.com.

Cash Payment B. In the alternative to Cash Payment A, Settlement Class Members may make a Claim for Cash Payment B, which is a flat cash payment in the amount of \$100.00,

California Statutory Award. In addition to Cash Payment A or Cash Payment B, all California Settlement Subclass Members who submit a Valid Claim may also make a claim for the California Statutory Award in the amount of \$100.00,

Credit Monitoring. All Settlement Class Members may also make a Claim for up to three years, or one additional year for Settlement Class Members who elected to receive two years offered by Brightline.

All Settlement Class Member Benefits may be subject to a *pro rata* increase or decrease depending upon how many Settlement Class Members make Valid Claims and the amount of the Cash Payments, California Statutory Awards, and Credit Monitoring claimed.

How do I make a Claim? You must file a Valid Claim Form by mail postmarked by <<Claim Deadline>>, and mailed to the Settlement Administrator, or online at www.xxxxxx.com by <<Claim Deadline>> to receive any benefit.

Other Options. If you do not want to be legally bound by the Settlement, you must opt-out of the Settlement no later than **Month XX, 2024**. If you do not opt-out, you will give up the right to sue the Released Parties about the legal claims in this Action. If you do not opt out, you may object to the Settlement by **Month XX, 2024**. The Long Form Notice on the Settlement Website has instructions on how to opt-out or object. If you do nothing, you will get no money, and you will be bound by the Settlement, any judgements and orders. The Court will hold a Final Approval Hearing on **Month XX, 20YY**, to consider whether to approve the Settlement, Class Counsel’s attorneys’ fees request of up to 33.33% of the Settlement Fund, and reimbursement of costs as well as any objections to the Settlement. You may attend the hearing, but you are not required to do so.

This notice is a summary. Learn more about the Settlement at www.XXXXXX.com, or by calling toll free 1-XXX-XXX-XXX.

EXHIBIT 3
(LONG FORM NOTICE)

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

**If You Received Notice of A Data Incident Involving
Brightline,
You May Be Eligible For Benefits From
A Class Action Settlement.**

*This is not a solicitation from a lawyer, junk mail, or an advertisement.
A Court authorized this Notice.*

- A proposed Settlement in the amount of \$7,000,000.00 has been reached in a class action lawsuit known as *Terrance Rosa et al. v. Brightline, Inc.*, Case No. 24-md-03090-RAR, S.D. Fla. (“Action”).
- The Action alleges that on or about January 30, 2023, unauthorized individuals accessed computer software utilized by Brightline that contained Private Information of approximately one million individuals that was in the custody and control of Brightline (“Data Incident”). Brightline maintains that it has defenses to the Action, and that it was prepared to vigorously defend the lawsuit.
- The Settlement Class includes: All living individuals residing in the United States who received notice that their Private Information may have been impacted in the Brightline Data Incident.
- California Settlement Subclass Members are: All Settlement Class members residing in California as of January 30, 2023.
- All Settlement Class Members may elect to receive a Cash Payment, California Statutory Award (if applicable), and Credit Monitoring, as set forth below:

Cash Payment A or Cash Payment B: Any Settlement Class Member who submits a Valid Claim may elect to receive Cash Payment A in the form of cash compensation up to \$5,000.00 per Settlement Class Member by providing reasonable documented losses related to the Data Incident (“Cash Payment A”); **or** Cash Payment B in the form of a flat cash payment in the amount of \$100.00 (“Cash Payment B”).

California Statutory Award: In addition to Cash Payment A **or** Cash Payment B, all California Settlement Subclass Members may also elect to receive the California Statutory Award in the amount of \$100.00.

Credit Monitoring: In addition to Cash Payment A **or** Cash Payment B and the California Statutory Award (if applicable), all Settlement Class Members may also make a Claim for three years of free Credit Monitoring, or one additional year of credit monitoring for Settlement Class Members who elected to receive two free years offered by Brightline.

All Settlement Class Member Benefits may be subject to a *pro rata* increase or decrease depending upon how many Settlement Class Members make Valid Claims and the total amount of the Cash Payments, California Statutory Awards, and Credit Monitoring claimed.

Cash Payments will be made via electronic transfer or by paper check out of the Net Settlement Fund. The Net Settlement Fund is the Settlement Fund after payment of Settlement Administration Costs, attorneys’ fees to Class Counsel of up to 33.33% of the Settlement Fund, and reimbursement of reasonable costs to Class Counsel.

**Your legal rights are affected regardless of whether you do or do not act.
Read this Notice carefully.**

YOUR LEGAL RIGHTS & OPTIONS IN THIS SETTLEMENT	
Submit a Claim Form	You must submit a Valid Claim Form to get a Cash Payment, California Statutory Award (if applicable) and Credit Monitoring from this Settlement. Claim Forms must be submitted online or mailed and postmarked no later than <<Claim Form Deadline>>.
Do Nothing	If you do nothing, you remain in the Settlement. You also give up your rights to sue Brightline or any of the other Released Parties, including those that directly or indirectly provided your Private Information to Brightline, and you will not get any of the Settlement Class Member Benefits (cash compensation or offer and credit monitoring).
Opt-Out of the Settlement	Get out of the Settlement. Get no Cash Payment, California Statutory Award (if applicable), or Credit Monitoring. Keep your rights. This is the only option that allows you to keep your right to sue Brightline or any one of its Customers for the claims being released in the Settlement. You will not get any money or benefits from the Settlement. Your request to opt-out must be mailed and postmarked no later than <<Opt-Out Period>>.
File an Objection	Stay in the Settlement, but tell the Court why you think the Settlement should not be approved. Objections must be filed with the Court no later than <<Objection Period>> and sent by U.S. Mail to Class Counsel, Defendant’s Counsel and the Settlement Administrator.
Go to a Hearing	You can ask to speak in Court about the fairness of the Settlement, at your own expense. See Question 18 for more details. The Final Approval Hearing is scheduled for <<Final Approval Hearing>>, at <<Time>> a.m. ET.

BASIC INFORMATION

1. How do I know if I am affected by the Action and Settlement?

You are a Settlement Class member if you are an individual residing in the United States who was sent a notice of the Brightline Data Incident indicating your Private Information may have been impacted in the Data Incident.

You are also a California Settlement Subclass member if you are a Settlement Class member residing in California as of January 30, 2023.

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

2. What is this case about?

This case is known as *Rosa et al. v. Brightline, Inc.*, Case No. 24-md-03090-RAR, currently pending in the United States District Court Southern District of Florida. The Persons who sued are called the "Plaintiffs" or "Class Representatives" and the company they sued, Brightline, Inc., is known as the "Defendant" in this case.

Plaintiffs filed a lawsuit against Defendant, individually, and on behalf of all others whose Private Information was potentially impacted as a result of the Data Incident.

The Action alleges that on or about January 30, 2023, there was unauthorized access to or acquisition of the Private Information of Plaintiffs and approximately one million Settlement Class members as a result of unauthorized access to the Fortra GoAnywhere MFT application that Brightline used.

Defendant denies all claims asserted against it in the Action and denies all allegations of wrongdoing and liability.

3. Why is there a Settlement?

The Parties agreed to settle the Action and all claims arising out of or related to the allegations or subject matter of the Complaint for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Action. The Plaintiffs and their attorneys believe the proposed Settlement is fair, reasonable, and adequate and in the best interest of the Settlement Class. The Court did not decide in favor of the Plaintiffs or Defendant. Full details about the proposed Settlement are found in the Settlement Agreement available at www.xxxxxxxxxxxxxxxxxxt.com.

4. Why is this a class action?

In a class action, one or more people called "Class Representatives" sue on behalf of all people who have similar claims. All of these people together are the "Settlement Class" or "Settlement Class members."

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

You are included in the Settlement Class if you are an individual residing in the United States and notice about the Brightline Data Incident indicating your Private Information may have been impacted in the Data Incident.

You are also a California Settlement Subclass member if you were residing in California as of January 30, 2023.

If you are not sure whether you are included as a Settlement Class member, or have any other questions about the Settlement, visit www.XXXXXXXXXXXXXX.com, call toll free (XXX) XXX-XXXX, or write to *Brightline Data Security Incident Settlement*, c/o

THE SETTLEMENT BENEFITS

6. What does this Settlement provide?

The proposed Settlement will provide the following benefits to Settlement Class Members:

Cash Payment A

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. Settlement Class Members will 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 Brightline or otherwise. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if their Claim is invalid as determined by the Settlement Administrator, and the Settlement Class member does not cure their Claim, the Claim will be denied and the Settlement Class Member's Claim for Cash Payment A will instead be processed as if they elected Cash Payment B.

For submitting reasonable documentation, it is important for you to send documents that show what happened and how much you lost or spent, so that you can be reimbursed. Examples of costs related to the incident may include receipts, notices, or account statements reflecting payment for credit monitoring services or a credit freeze/unfreeze.

If you have costs, expenses, and losses due to identity theft, fraud, or misuse of your personal information you believe is traceable to the Data Incident, please submit those documents as well. Examples include: account statement with unauthorized charges circled, police report, IRS document, FTC Identity Theft Report, letter refusing to refund fraudulent charges, and receipt for your credit.

Other expenses such as notary, fax, postage, copying, mileage, long-distance telephone charges, or professional fees related to the Data Incident can be reimbursed. Examples include phone bills, receipts, detailed list of addresses you traveled (i.e. police station, IRS office), reason why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled.

Cash Payment B

Instead of selecting Cash Payment A, a Settlement Class Member may elect to receive Cash Payment B, which is a flat Cash Payment in the amount of \$100.00.

California Statutory Award

In addition to Cash Payment A or Cash Payment B, California Settlement Subclass Members who submit a Valid Claim may also make a Claim for the California Statutory Award in the amount of

Questions? Go to www.XXXXXXXXXXXXXX.com or call 1-XXX-XXX-XXXX

\$100.00.

Credit Monitoring Claims

In addition to Cash Payment A or Cash Payment B and the California Statutory Claim Payment (if applicable), Settlement Class Members may also make a Claim for up to three years of free Credit Monitoring, or one additional year if a Settlement Class Member already accepted Brightline’s offer of two years.

Settlement Class Member Benefits may be subject to a *pro rata* increase or decrease depending upon how many Settlement Class Members submit Valid Claims and the value of all Settlement Class Member Benefits claimed.

7. How do I submit a Claim Form?

You must submit a Claim online at the Settlement Website (www.xxxxxxxxxxxxxx.com) or send a hard copy Claim Form to the Settlement Administrator at the following address: [XXXXXXXXXXXXXXXXXXXX](#). All Claim Forms will be reviewed by the Settlement Administrator for completeness and validity. Claim Forms must be postmarked or submitted online no later than **<<Claim Form Deadline>>**. For more information, please visit www.xxxxxxxxxxxxxx.com, or you can call the Settlement Administrator at **(XXX) XXX-XXXX** for a Claim Form.

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

If you stay in the Settlement Class, you will be eligible to receive the Settlement Class Member Benefits outlined herein provided you submit a Valid Claim, but you will not be able to sue Brightline, nor their past, present, or future direct or 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, or trustees; nor will you be able to sue Brightline or Brightline’s Customers’ past, present, or future direct or 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, or trustees (“Released Parties”) regarding claims relating to the Data Incident.

Please note that companies other than Brightline similarly experienced data incidents relating to the GoAnywhere MFT application at or around the same time as the Data Incident. By remaining in the Settlement Class, you will not be releasing any claims relating to any such other entities. For the avoidance of doubt, Brightline’s Customers are not released from any claims related to their own independent use of the Fortra GoAnywhere Transfer application and are only being released from claims which relate to Brightline’s use of the Fortra GoAnywhere Transfer application.

The Settlement Agreement, which includes all provisions about Released Claims and Released Parties, is available at www.xxxxxxxxxxxxxxxxxxxxxx.com.

The only way to keep the right to sue the Released Parties for claims arising from the Data Incident is to opt-out of the Settlement (*see* Question 10), otherwise you will be included in the Settlement Class and, if the Settlement is approved, you give up the right to sue for these claims.

EXCLUDE YOURSELF OR OPTING-OUT OF THE SETTLEMENT

9. How do I opt-out of the Settlement?

If you do not want to be included in the Settlement, you must “opt-out.” A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. 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 be excluded from the Settlement Class. 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.

Your written Request to Opt-Out must be postmarked no later than **<<Opt-Out Period>>** to:

Brightline Data Security Incident Settlement

c/o _____
PO Box _____

Instructions on how to submit a request to opt-out are available at www.xxxxxxxxxxxxxx.com or from the Settlement Administrator by calling **(XXX) XXX-XXXX**.

If you opt-out, you will not be able to receive any of the Settlement Class Member Benefits, and you cannot object to the Settlement at the Final Approval Hearing. You will not be legally bound by anything that happens in the Action, and you will keep your right to sue Brightline and / or its Customers on your own for the claims that this Settlement resolves.

10. If I do not opt-out, can I sue later?

No. If you do not opt-out of the Settlement, and the Settlement is approved by the Court, you forever give up the right to sue the Released Parties (listed in Question 8) for the claims this Settlement resolves and you will be bound by any judgment or orders issued by the Court.

11. What happens if I do nothing at all?

If you do nothing, you will be bound by the Settlement and any judgment or orders if the Court approves it, you will not get any money or reimbursement from the Settlement, you will not be able to start or proceed with a lawsuit against the Released Parties arising from the Data Incident, or be part of any other lawsuit against the Released Parties (listed in Question 8) related to the settled claims in this case at any time.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in the case?

Yes. The Court has appointed Jeff Ostrow of Kopelowitz Ostrow P.A, John Yanchunis of Morgan & Morgan P.A., James Cecchi of Carrella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., and Mason Barney of Siri & Glimstad LLP (called “Class Counsel”) to represent the interests of all Settlement Class members in this Action. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

Class Counsel will file an Application for Attorneys' Fees and Costs with the Court. The attorneys' fees will not exceed 33.33% of the total \$7,000,000.00 Settlement Fund. Class Counsel will also request the payment of reasonable costs incurred in prosecuting the Action. A copy of Class Counsel's Application for Attorneys' Fees and Costs will be filed with the Court no later than 45 days before the initial scheduled Final Approval Hearing. A copy will be posted on this Settlement Website, www.XXXXXXXXXXXXXX.com, before the Final Approval Hearing, and the Court will make the final decision as to the amounts to be paid to Class Counsel and may award less than the amount requested.

OBJECTING TO THE SETTLEMENT

14. If I do not like the Settlement, how do I tell the Court?

If you want to tell the Court that you do not agree with the proposed Settlement or some part of it, you must file an Objection with the Court and serve it on Class Counsel, Brightline's Counsel, and the Settlement Administrator by <<Objection Period>> (the last day of the "Objection Period") stating why you do not think the Settlement should be approved.

To be valid, each Objection must set forth the following:

- 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 5 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, 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 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 the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 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).
Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

Your objection must be filed with the Clerk of Court by <<Objection Period>> (the last day of the “Objection Period”) and must also include the case name and docket number *Rosa et al. v. Brightline, Inc.*, Case No. 24-md-03090-RAR (“Action”). The address of the Clerk of Court is as follows:

Office of District Court Southern District of Florida Clerk
<<Court Address>>

In addition, you must concurrently mail or hand deliver a copy of your objection to Class Counsel, Brightline’s Counsel and the Settlement Administrator, mailed and postmarked no later than <<Objection Period>>:

CLASS COUNSEL	BRIGHTLINE’S COUNSEL
<p>Jeff Ostrow Kopelowitz Ostrow P.A. One West Las Olas Blvd., Suite 500 Fort Lauderdale, Florida 33301 ostrow@kolawyers.com</p> <p>John A. Yanchnis Morgan & Morgan 201 N. Franklin St., 7th Floor, Tampa, FL 33602 jyanchnis@forthepeople.com</p> <p>James E. Cecchi Carella, Byrne, Cecchi, Brody & Angello, P.C. 5 Becker Farm Rd. Roseland, NJ 07068 jcecchi@carellabyrne.com</p> <p>Mason A. Barney Siri & Glimstad LLP 745 Fifth Ave., Suite 500 New York, NY 10151 mbarney@sirillp.com</p>	<p>Phyllis B. Sumner Elizabeth D. Adler Charles G. Spalding, Jr. King & Spalding, LLP 1180 Peachtree Street NE Suite 1600 Atlanta, GA 30309 eadler@kslaw.com cspalding@kslaw.com</p>
<p align="center">SETTLEMENT ADMINISTRATOR <i>Brightline Data Security Incident Settlement</i> PO Box XXXX Portland, OR 97XXX-XXXX</p>	

If you do not submit your objection with all requirements, or if your objection is not timely submitted by <<Objection Period>>, you will be considered to have waived all objections and will not be entitled to speak at the Final Approval Hearing.

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

Objecting is simply telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Settlement Class. Opting-out is telling the Court that you don’t want to be part of the Settlement Class. If you opt-out you have no basis to object because the Settlement no longer affects you.

THE FINAL APPROVAL HEARING

Questions? Go to www.XXXXXXXXXX.com or call 1-XXX-XXX-XXXX

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

The Court will hold the Final Approval Hearing on <<Final Approval Hearing Date>>, <<Time>> a.m. ET in Courtroom [REDACTED], of the United States District Court District for the Southern District of Florida <<Court Address>>. The hearing may be moved to a different date, time, or location, or may be held virtually, without additional notice, so it is recommended that you periodically check the website for updated information.

At the hearing, the Court will consider whether the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members, and if it should be Finally approved. If there are valid objections, the Court will consider them and will listen to people who have asked to speak at the hearing if the request was made properly. The Court will also consider the attorneys' fees and costs requested to be paid to Class Counsel.

17. Do I have to come to the hearing?

No. You are not required to come to the Final Approval Hearing. However, you are welcome to attend the hearing at your own expense.

If you submit an objection, you do not have to come to the hearing to talk about it. If your objection was submitted properly and on time, the Court will consider it. You also may pay your own lawyer to attend the Final Approval Hearing, but that is not necessary. However, you must follow the requirements for making objections in Question 15, including the requirements for making appearances at the hearing.

18. May I speak at the hearing?

Yes. You can speak at the Final Approval Hearing, but you must ask the Court for permission. To request permission to speak, you must file an objection according to the instructions in Question 15, including all the information required for you to make an appearance at the hearing. You cannot speak at the hearing if you opt-out from the Settlement.

GET MORE INFORMATION

19. How do I get more information about the Settlement?

This is only a summary of the proposed Settlement. If you want additional information about this Action, including a copy of the Settlement Agreement, the Complaint, the Court's Preliminary Approval Order, Class Counsel's Application for Attorneys' Fees and Costs when available, and more, please visit the Settlement Website, www.xxxxxxxxxxxx.com, or call (XXX) XXX-XXXX. You may also contact the Settlement Administrator at *Brightline Data Security Incident Litigation*, PO Box XXXX, Portland, OR 97XXX-XXXX.

PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR ACTION TO THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR BRIGHTLINE'S COUNSEL.

EXHIBIT 4
(CLAIM FORM)

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Your Claim must be submitted online or postmarked by: <<Claim Form Deadline>>

CLAIM FORM FOR BRIGHTLINE DATA INCIDENT

BRIGHTLINE-C

Brightline Data Security Incident Settlement Case No.: 24-md-03090-RAR United States District Court District for the Southern District of Florida

USE THIS FORM ONLY IF YOU ARE A SETTLEMENT CLASS MEMBER

GENERAL INSTRUCTIONS

If you received Notice of this Settlement, the Settlement Administrator identified you as a Settlement Class member because your Private Information may have been involved in the Data Incident that impacted Brightline, Inc.'s instance of the Fortra GoAnywhere MFT on or around January 30, 2023. You may submit a Claim for Settlement Class Member Benefits, outlined below. Please refer to the Long Form Notice posted on the Settlement Website, www.xxxxxxxxxxxx.com, for more information on submitting a Claim Form.

To receive Settlement Class Member Benefits for Cash Payment A or Cash Payment B, Credit Monitoring, and the California Statutory Claim Payment, if applicable, you must submit the Claim Form below by <<Claim Form Deadline>>.

This Claim Form may be submitted electronically via the Settlement Website at www.xxxxxxxxxxxxxx.com or completed and mailed to the address below. If you choose to complete and mail in a Claim Form, please type or legibly print all requested information in blue or black ink. Mail your completed Claim Form, including any supporting documentation, by U.S. mail to:

Brightline Data Security Incident Settlement c/o [Redacted]

You may submit a Claim for One or More of the following Settlement Class Member Benefits

Cash Payment A:

Compensation for Losses Related to Incident: Settlement Class Members may submit a claim for a Cash Payment up to \$5,000.00 per Settlement Class Member for documented losses incurred as a result of the Data Incident. To receive a documented loss cash payment, a Settlement Class Member must elect Cash Payment A on this Claim Form attesting under penalty of perjury to incurring documenting losses. Settlement Class Members will be required to submit reasonable documentation supporting the losses.

OR

Cash Payment B:

Flat Cash Payment: In the alternative to Cash Payment A above, Settlement Class Members may make a Claim for Cash Payment B, which is a payment in the amount of \$100.00.

AND, IF APPLICABLE TO YOU:

California Statutory Award: In addition to Cash Payment A or Cash Payment B, California Settlement Subclass members may also elect to receive the California Statutory Award in the amount of \$100.00.

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Your claim must be submitted online or postmarked by: <<Claim Form Deadline>>

AND

Credit Monitoring:

In addition to Cash Payment A or Cash Payment B and the California Statutory Award, if applicable, Settlement Class Members may also make a Claim for up to three years of free Credit Monitoring, or one additional year if a Settlement Class Member already accepted Brightline’s offer of two free years, that will include; (i) real time monitoring of the credit file at all three bureaus; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) comprehensive public record monitoring; (iv) medical identity monitoring; (v) identity theft insurance (no deductible); and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft.

Pro Rata Adjustments

Settlement Class Cash Payments and California Statutory Awards will be subject to a *pro rata* increase from the Net Settlement Fund in the event the amount of Valid Claims is insufficient to exhaust the entire Net Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Net Settlement Fund, the amount of the Cash Payments and California Statutory Awards may be reduced *pro rata* accordingly. 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 Credit Monitoring and then for Cash Payments and California Statutory Awards. Any *pro rata* increases or decreases to Cash Payments and California Statutory Awards will be on an equal percentage basis.

Claims must be submitted online or mailed by [deadline]. Use the address at the top of this form for mailed claims.

Please note: the Settlement Administrator may contact you to request additional documents to process your claim. Your [benefit language] may decrease depending on the number of claims filed.

For more information and complete instructions visit [website].

I. SETTLEMENT CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this Claim Form.

First Name

Last Name

Address 1

Address 2

City

State

Zip Code

Email : _____@_____

Telephone Number: (_____) _____ - _____

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Your claim must be submitted online or postmarked by: <<Claim Form Deadline>>

II. PROOF OF DATA INCIDENT SETTLEMENT CLASS MEMBERSHIP

Check this box to certify you are an individual residing in the United States who was sent a notice indicating your Private Information may have been impacted in the Brightline Data Incident.

Enter the Class Member ID Number provided on your Postcard Notice or in your Email Notice:

Class Member ID : 0 0 0 0 0 _____

III. PAYMENT SELECTION

All Cash Payments and California Statutory Awards will be paid by electronic payment or by paper check. The Settlement Website includes a step-by-step guide for you to complete the electronic payment option.

IV. CASH PAYMENT A

DO NOT COMPLETE THIS SECTION IF YOU WANT TO SELECT THE CASH PAYMENT B OPTION OF \$100.00 BELOW.

Settlement Class Members may submit a claim for a Cash Payment for up to \$5,000.00 per Settlement Class Member for documented losses incurred as a result of the Data Incident. Settlement Class Members can receive a documented loss payment if: (1) Settlement Class Member elects Cash Payment A on the Claim Form attesting under penalty of perjury to incurring documenting losses; (2) Settlement Class Member submits reasonable documentation supporting the losses; (3) Settlement Class Member was not already reimbursed for 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 Brightline or otherwise; (4) The loss date occurred between [date] and [date].

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.

You must submit documentation to obtain this reimbursement.

I have attached documentation showing that the claimed losses were fairly traceable to the Data Incident.

Expense Type and Example of Documents	Date of Loss	Amount	Description of Expense or Money Spent and Supporting Documents
Example: Identity Theft Protection Service	0 7 - 1 7 - 2 3 MM DD YY	\$50.00	Copy of identity theft protection service bill

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Your claim must be submitted online or postmarked by: <<Claim Form Deadline>>

Example: Fees paid to a professional to remedy a falsified tax return	0 2 - 3 0 - 2 3 MM DD YY	\$25.00	Copy of the professional services bill
	- -	\$.	
	MM DD YY		
	- -	\$.	
	MM DD YY		
	- -	\$.	
	MM DD YY		
	- -	\$.	
	MM DD YY		

V. CASH PAYMENT B

By checking the below box, I choose a cash payment of \$100.00 in the alternative to Cash Payment A.

NOTE: YOU MAY NOT FILE FOR CASH PAYMENT A IF YOU ARE FILING FOR THE CASH PAYMENT B CLAIM IN THIS SECTION.

Yes, I choose Cash Payment B of \$100.00 in the alternative of Cash Payment A.

VI. CALIFORNIA STATUTORY CLAIM PAYMENT

By checking the below box, I elect a California Statutory Award of \$100.00 in addition to the Claims above.

NOTE: YOU MUST BE A CALIFORNIA SETTLEMENT SUBCLASS MEMBER TO MAKE A CLAIM IN THIS SECTION.

I attest and affirm that I was residing in California on January 30, 2023.

Address: _____ Zip Code: _____

VII. CREDIT MONITORING CLAIM

By checking the below box, I choose, in addition to Cash Payment A or Cash Payment B and the California Statutory Award (if applicable) to make a Claim for Credit Monitoring that will include: (i) real time monitoring of the credit file; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) comprehensive public record monitoring; (iv) medical identity monitoring; (v) identity theft insurance (no deductible); and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft.

Check this box to certify that you elect and are eligible to receive a Credit Monitoring and identity theft protection product for 3 years because you did not previously accept the credit monitoring and identity theft protection services offered by Brightline in connection with the Settlement Class Member's Data Incident.

OR, if you have already chosen Credit Monitoring following receipt of notice of the Data Incident;

Check this box to elect to receive a Credit Monitoring and identity theft protection product for 1 additional year.

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Your claim must be submitted online or postmarked by: <<Claim Form Deadline>>

If you select this option, you will be sent instructions and an activation code after the settlement is final to your email address or home address. Enrollment in this service will not subject you to marketing for additional services or any required payments.

VIII. ATTESTATION & SIGNATURE

I swear and affirm under the laws of the United States that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

_____/_____/_____
Signature Date

Print Name

Questions? Go to www.xxxxxxxxxxxxxx.com or call (XXX) XXX-XXXX.

EXHIBIT 5
(PROPOSED PRELIMINARY
APPROVAL ORDER)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

**IN RE: FORTRA FILE TRANSFER
SOFTWARE DATA SECURITY BREACH
LITIGATION**

Case No. 24-md-03090-RAR

This Document Relates to:

TERRANCE ROSA, et al., on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

BRIGHTLINE, INC.,

Defendant

**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

THIS CAUSE comes before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval¹ requesting entry of an order: (i) granting Preliminary Approval of the Settlement; (ii) provisionally certifying the Settlement Class for settlement purposes; (iii) appointing Plaintiffs as Class Representatives; (iv) appointing Class Counsel for the Settlement Class; (v) approving the form of Notices and the Notice Program; (vi) approving the Claim Form and the Claim process; (vii) appointing the Settlement Administrator; (viii) establishing procedures for members of the Settlement Class to opt-out of or object to the Settlement; and (ix) scheduling a Final Approval Hearing on whether to grant Final Approval of the Settlement and Class Counsel's Application for Attorneys' Fees and Costs. [DE # 171].

Having carefully reviewed the proposed Settlement and its exhibits, all relevant filings,

¹ All capitalized terms used herein have the same meanings as those defined in Section II of the Settlement Agreement attached to the Motion for Preliminary Approval as *Exhibit A*.

and the record, the Court finds the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class should be preliminarily certified, the proposed Notice Program and Claim process should be approved, and Class Representatives, Class Counsel, and the Settlement Administrator should be appointed. Accordingly, it is hereby: **ORDERED AND ADJUDGED** that the Motion is **GRANTED** as set forth herein.

BACKGROUND

This Action is a putative class action that has been centralized with all other Fortra GoAnywhere MFT related cases into MDL-3090 before this Court. On April 18, 2024, Plaintiffs filed their Track 4 Consolidated Complaint against all MDL-3090 Track 4 defendants, including Brightline, alleging Brightline failed to adequately protect Plaintiffs' and the Settlement Class's Private Information from unauthorized access and asserting multiple common law and statutory claims for relief. [DE# 153].

Brightline is a virtual behavioral health care company offering therapy and coaching for minors. *Id.* ¶ 225. Fortra is in the business of offering cybersecurity and automation solutions. *Id.* ¶¶ 242–43. Brightline was one of Fortra's customers who used Fortra's GoAnywhere MFT file transfer application in connection with its business. *Id.* ¶ 242. In January of 2023, a Data Incident occurred wherein a ransomware group hacked Fortra's computer systems due to a vulnerability in Fortra's transfer application, resulting in the exfiltration of highly sensitive Private Information belonging to millions of individuals, including over one million individuals whose information was stored on Brightline's GoAnywhere MFT instance. *Id.* ¶ 249. The impacted information included some combination of names, addresses, dates of birth, member identification numbers, start and end dates of health plan coverage, telephone numbers, Social Security numbers, and employer names, which data was being stored within Brightline's instance of the Fortra Go

Anywhere MFT at the time of the Data Incident. *Id.* ¶¶ 1, 265. The ransomware group behind the Data Incident published the exfiltrated Private Information on its data leak site, where it was available to download for at least 50 days, and two Plaintiffs have received alerts that their Private Information is now on the dark web. *Id.* ¶¶ 69, 127, 267, 269. Following the Data Incident, in or about May 2023, Brightline began notifying millions of impacted individuals, including Plaintiffs and Settlement Class members, of the unauthorized access to and exfiltration of their Private Information. *Id.* ¶ 266.

Prior to mediating and reaching a settlement, the Parties engaged in meaningful discovery. The Parties exchanged Initial Disclosures and negotiated a Stipulated Confidentiality and Qualified Protective Order and Order Governing Production of Electronically Stored Information and Paper Documents, which the Court entered on April 22, 2024. [DE# 154, 155]. Plaintiffs also requested pre-mediation informal discovery from Brightline, and in response Brightline produced extensive material relating to liability and damages, including but not limited to, the number of individuals and categories of Private Information impacted by the Data Incident, and documents demonstrating that all data impacted as part of the Data Incident—which would include all impacted Private Information—had been removed from Clop’s extortion portal.. The Parties also exchanged detailed mediation statements outlining their positions with respect to liability, damages, and settlement.

On July 11, 2024, the Parties participated in a full-day private mediation in Miami, Florida, before experienced class action mediator Michael Ungar, Esq. The mediation concluded with the Parties agreeing to all material terms of the Settlement. The terms of the settlement reached are memorialized in the Agreement, which was negotiated at arm’s length, in good faith, and without collusion by capable and experienced counsel with full knowledge of the facts, the law, and the

inherent risks in the Action, and with the active involvement of Plaintiffs and Brightline.

The Parties filed a Notice of Settlement with the Court on July 12, 2024. [DE# 165]. Over the next couple of months, the Parties worked diligently to finalize the terms of the Agreement and ancillary documents, and the Agreement was executed on September 12, 2024. The Parties did not discuss attorneys' fees and costs until after they reached agreement on all material Settlement terms.

Specifically, the Settlement provides monetary relief that includes a non-reversionary all-cash Settlement Fund of \$7,000,000. The Settlement Fund will be partially funded by Brightline after Preliminary Approval with the remainder to be funded following Final Approval. The Settlement Fund will be used to pay; (i) Settlement Class Member Benefits; (ii) any attorneys' fees and costs awarded by the Court to Class Counsel; and (iii) all Settlement Administration Costs. Once Brightline funds the Settlement Fund, it will not be required to make any other payments to Settlement Class members under the Settlement. The Settlement also provides that prior to Final Approval, Brightline will provide Class Counsel with a security attestation as to the security measures it implemented following the Data Incident. The costs of any such security measures shall be fully borne by Brightline, and under no circumstances will such costs be deducted from the Settlement Fund.

Plaintiffs now seek Preliminary Approval of the Settlement on behalf of the proposed Settlement Class. Brightline does not oppose the relief sought in the Motion for Preliminary Approval and agrees the Court should grant Preliminary Approval of the Settlement and allow Notice to issue to the Settlement Class. As further discussed below, the Settlement falls within the range of judicial approval and includes comprehensive Notice Program and Claims process. As such, Preliminary Approval of the proposed Settlement is warranted.

LEGAL STANDARD

It is well established that “[a] class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue.” *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (cleaned up). “There is a strong judicial policy in favor of settlement, in order to conserve scarce resources that would otherwise be devoted to protracted litigation.” *Id.* In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class—*i.e.*, all Federal Rule of Civil Procedure 23(a) factors and at least one subsection of Federal Rule of Civil Procedure 23(b) must be satisfied— except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *See id.* at 671–672.; *see also Diakos v. HSS Sys., LLC*, 137 F. Supp. 3d 1300, 1306 (S.D. Fla. 2015) (explaining a court evaluates whether certification of a settlement class is appropriate under Rule 23(a) and (b)); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Rule 23(a) requires: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See Fed. R. Civ. P. 23(a)(1)–(4)*. Rule 23(b)(3) requires that (1) “the questions of law or fact common to class members predominate over any questions affecting only individual members” and (2) “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *Fed. R. Civ. P. 23(b)(3)*. The Eleventh Circuit also requires that the class representatives have standing to sue and that the proposed class is adequately defined and clearly ascertainable. *See Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000); *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012).

Before addressing any Rule 23 factor, however, the Court must ensure that standing under Article III is met. *See Griffin v. Dugger*, 823 F.2d 1476, 1482 (11th Cir. 1987) (“[A]ny analysis

of class certification must begin with the issue of standing . . .”). To satisfy Article III standing, a plaintiff must “(1) suffer[] an injury in fact, (2) that is fairly traceable to the challenged conduct of defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

If certification of a settlement class is appropriate, a court then determines if the proposal is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). To do so, the Court considers whether the following factors are met:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Id. Furthermore, the Eleventh Circuit “instruct[s] district courts to consider several additional factors called the *Bennett* factors.” *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021) (citing *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)).

These additional factors are (a) “there was no fraud or collusion in arriving at the settlement,” and [(b)] the settlement was fair, adequate and reasonable, considering (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Bennett, 737 F.2d at 986 (“*Bennett* factors”).

Courts have substantial discretion in approving a settlement agreement, *Bennett*, 737 F.2d at 986, and settlement negotiations that involve arm’s-length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See* Manual for Compl. Lit., Third, § 30.42 (West 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a

class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” (cleaned up). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646, 2010 WL 2401149, at *2 (S.D. Fla. June 15, 2010) (cleaned up).

ANALYSIS

The Court finds, for settlement purposes only and conditioned on final certification of the proposed Settlement Class and entry of a Final Approval Order, that the Settlement Class and proposed Settlement satisfy the requirements of Rule 23(a), 23(b)(3), and 23(e), as well as the *Bennett* factors.

a. Certification Of The Settlement Class Is Appropriate.

The Court finds, for settlement purposes only, that the Rule 23 factors are satisfied, and certification of the proposed Settlement Class is appropriate under Rule 23. The Court further finds that the Article III standing requirement is met here.

The Court therefore provisionally certifies the following Settlement Class:

All living individuals residing in the United States who received notice of the Brightline Data Incident indicating that their Private Information may have been impacted in the Data Incident.

A subset of the Settlement Class is the California Settlement Class of “Settlement Class members residing in California as of January 30, 2023.”²

The Court will address each Rule 23(a) and 23(b)(3) factor in turn.

1. The Rule 23(a) Factors Are Satisfied.

² Excluded from the Settlement Class are (a) all persons who are employees, directors, and agents of Brightline, and their respective subsidiaries and affiliated companies; (b) governmental entities; and (c) the undersigned, the undersigned’s immediate family, and Court staff.

(i) Rule 23(a)(1) - Numerosity

Rule 23(a)(1) requires that the “class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The numerosity requirement is “generally a low hurdle” and, as a baseline, “less than twenty-one is inadequate . . . [and] more than forty is adequate[.]” *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1267 (11th Cir. 2009) (cleaned up). Here, the numerosity requirement of Rule 23(a)(1) is satisfied because the Settlement Class includes approximately one million individuals. *See Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986) (numerosity generally satisfied where there are more than 40 class members); *In re Mednax Serv., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, 2024 WL 1554329, at *4 (S.D. Fla. Apr. 10, 2024) (Ruiz, II, J.). The joinder of approximately one million Settlement Class members would certainly be impracticable, and thus numerosity is satisfied.

(ii) Rule 23(a)(2) - Commonality

Rule 23(a)(2) requires that there must be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “[C]ommonality requires the plaintiff to demonstrate that the class members have suffered the same injury,” and the plaintiff’s common contention “must be of such a nature that it is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (cleaned up). The commonality requirement is a “low hurdle.” *See Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009). Courts in this Circuit have previously addressed this requirement in the context of data breach class actions and found it satisfied. *See, e.g., Mednax*, 2024 WL 1554329, at *4 (commonality satisfied because claims turn on adequacy of defendants’ data security to protect PII and PHI); *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 17477004, at *4

(S.D. Fla. Dec. 5, 2022); *see also Equifax*, 999 F.3d at 1274–75, 1277 (affirming district court’s certification of class, including finding of commonality).

Here, Plaintiffs and Settlement Class members all had their Private Information impacted by the Data Incident. Plaintiffs’ claims turn on whether Brightline’s data security environment, including the use of the Fotra GoAnywhere Transfer application, was adequate to protect Plaintiffs’ and the Settlement Class’ Private Information. These issues are common to the Settlement Class, are alleged to have injured all Settlement Class members in the same way and would generate common answers central to the viability of all claims were this case to proceed to trial. In other words, evidence to resolve said claims does not vary among Settlement Class members and can therefore be fairly resolved, for purposes of settlement, for all Settlement Class members at once. Thus, commonality is satisfied.

(iii) Rule 23(a)(3) - Typicality

Under Rule 23(a)(3), a class representative’s claims must also be typical of the putative class they seek to represent. *See* Fed. R. Civ. P. 23(a)(3). Typicality under Rule 23(a)(3) “measures whether a significant nexus exists between the claims of the named representative and those of the class at large.” *Hines v. Widnall*, 334 F.3d 1253, 1256 (11th Cir. 2003); *see also Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims “arise from the same event or pattern or practice and are based on the same legal theory”). “Neither the typicality nor the commonality requirement mandates that all putative class members share identical claims, and [] factual differences among the claims of the putative members do not defeat certification.” *Cooper v. S. Co.*, 390 F.3d 695, 714 (11th Cir. 2004) (cleaned up); *see also Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012). When the same course of conduct is directed at the named plaintiff and the members of the proposed class, typicality is

satisfied. *See Kennedy v. Tallant*, 710 F.2d 711, 717 (11th Cir. 1983).

Here, Plaintiffs' interests are aligned with the Settlement Class in that they all were sent a notice letter indicating their Private Information may have been impacted in the Data Incident and were therefore all affected by the same purportedly inadequate security that allegedly harmed Settlement Class members. Their claims are based on the same legal theories and underlying event. Thus, the typicality requirement is satisfied. *See Hines*, 334 F.3d at 1256; *Mednax*, 2024 WL 1554329, at *4.

(iv) Rule 23(a)(4) - Adequacy

Adequacy under Rule 23(a)(4) requires that “the representative parties . . . fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Adequacy relates to (i) whether the proposed class representative has interests antagonistic to the class, and (ii) whether the proposed class counsel has the competence to undertake this litigation. *Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 314–15 (S.D. Fla. 2001). The determinative factor “is the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the members of the class.” *Lyons v. Georgia-Pacific Corp. Salaried Emp’s Ret. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000) (cleaned up); *Mednax*, 2024 WL 17477004 at *5.

Here, like all Settlement Class members, Plaintiffs have claims against Brightline arising from the Data Incident that allegedly impacted their Private Information. Plaintiffs were similarly injured by Brightline’s allegedly wrongful acts. Proof of Plaintiffs’ claims would necessarily involve adjudicating the same issues of law and fact as the claims of the Settlement Class as a whole. Thus, Plaintiffs and the Settlement Class they seek to represent have the same interests in recovering damages and other relief. Further, Plaintiffs have also diligently and adequately prosecuted this action through Class Counsel by, among other things, reviewing filings, promptly

providing documents and information to Class Counsel, acting in the best interest of the Settlement Class, and accepting the classwide Settlement. Plaintiffs are committed to continuing to assist Class Counsel through Final Approval.

As for Class Counsel, they are highly qualified and have a great deal of experience litigating consumer class actions, including in the data privacy context, demonstrating their adequacy. *See Mednax*, 2024 WL 17477004 at *5 (“Class Counsel are adequate because of their vast experience as vigorous data breach class action litigators.”). Class Counsel have litigated this Action and against the other MDL-3090 defendants, including evaluating the claims, preparing comprehensive pleadings, serving informal discovery, consulting with data security experts, responding to the Track 1 Motion to Dismiss 1 (which is similar to what would they would have faced in Track 4), complying with Court orders and requirements, and participating in a mediation that ultimately resulted in this Settlement.

Accordingly, Plaintiffs have no conflicts with the Settlement Class and have demonstrated their adequacy as Class Representatives by “(i) having a genuine personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii) producing information and documents to Class Counsel to permit investigation and development of the complaints; (iv) being available as needed throughout the litigation; and (v) monitoring the Litigation.” *See Mednax*, 2024 WL 17477004 at *5. The adequacy requirement is therefore met.

2. The Rule 23(b) Factors Are Satisfied.

Having found that all Rule 23(a) factors are satisfied, the Court proceeds to address at least one subsection of Rule 23(b)—namely, Rule 23(b)(3)—to ascertain whether “questions of law or fact common to class members predominate over any questions affecting only individual members,” and to ensure “a class action is superior to other available methods for fairly and

efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). When assessing predominance and superiority, the court may consider the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, ... for the proposal is that there be no trial.”).

(i) Predominance

The predominance inquiry looks at “the legal or factual questions that qualify each class member’s case as a genuine controversy, questions that preexist any settlement.” *Id.* at 623. “[C]ommon issues of fact and law predominate if they have a direct impact on every class member’s effort to establish liability and on every class member’s entitlement to injunctive and monetary relief.” *Carruolo v. Gen. Motors Co.*, 823 F.3d 977, 985 (11th Cir. 2016). Further, “[i]t is not necessary that all questions of law or fact be common, but only that some questions are common and that they predominate over individual questions.” *In re Takata Airbag Prod. Liability Litig.*, No. 2599, 2023 WL 4925368, at *6 (S.D. Fla. June 20, 2023). The focus on a defendant’s security measures in a data breach class action “is the precise type of predominant question that makes class-wide adjudication worthwhile.” *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312 (N.D. Cal. 2018).

Here, as in other data breach cases, common questions predominate because all claims arise out of a common course of conduct by Brightline. *Id.* at 312; *Mednax*, 2024 WL 17477004 at *5. All Settlement Class members had their Private Information compromised in the Data Incident and the security practices at issue did not vary from person to person. “Thus, because these common questions represent a significant aspect of the case and they can be resolved for all members of the

class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than on an individual basis.” See *Mednax*, 2024 WL 17477004 at *5. The predominance requirement is therefore satisfied.

(ii) Superiority

To satisfy the superiority requirement of Rule 23(b)(3), a movant must show that “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “The focus of the superiority analysis is on the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to plaintiffs.” *Mohamed v. American Motor Co., LLC*, 320 F.R.D. 301, 316 (S.D. Fla. 2017) (cleaned up); *Mednax*, 2024 WL 17477004 at *5. Here, adjudicating individual actions would be impractical. The amount in dispute for individual class members is too small, the technical issues involved too complex, and the expert testimony and document review too costly. Further, individual claim prosecution would be prohibitively expensive, needlessly delay resolution, and may lead to inconsistent rulings. Accordingly, certification of this suit as a class action is superior to other methods to fairly, adequately, and efficiently resolve the claims asserted.

3. The Article III Standing Requirement Is Met.

To demonstrate Article III standing Plaintiffs must establish that they each “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo*, 578 U.S. at 338. Further, “[t]o have standing to represent a class, a party must not only satisfy the individual standing prerequisites, but must also ‘be part of the class and possess the same interest and suffer the same injury as the class members.’” *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1307 (11th Cir. 2008) (quoting *Prado*, 221 F.3d at 1279). There is no requirement that Article III standing be proved

with evidentiary support at the settlement approval stage. *Equifax*, 999 F.3d at 1261 n.8.

Standing exists when a plaintiff's sensitive personal information is allegedly accessed and exfiltrated in a data breach. *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 796367, at *4 (S.D. Fla. Mar. 15, 2022); *see also Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2022 WL 17477004, at *5 (S.D. Fla. Dec. 5, 2022). In a similar data breach class action, this Court extensively addressed standing in data breach class actions, and subsequently relied on that analysis when preliminarily approving a class settlement in that case. *See In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, 603 F. Supp. 3d 1183, 1200-08 (S.D. Fla. 2022) (denying motion to dismiss for lack of standing, including in the context of *TransUnion LLC v. Ramirez*, 594 U.S. 2190 (2021)); *Mednax*, 2024 WL 1554329, at *4 n.2 (citing *Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883 (11th Cir. 2023)) (citing standing analysis from motion to dismiss opinion and preliminarily approving class settlement).

To establish an imminent threat of identity theft based on a data breach, plaintiffs must show that "some misuse of class members' data" has already occurred. *Green-Cooper*, 73 F. 4th at 889 (citing *Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1343 (11th Cir. 2021)). Plaintiffs' allegations that a criminal ransomware group accessed their Private Information and published it to its data leak site, and that two Plaintiffs' Private Information is now on the dark web, supports that misuse. *See Green-Cooper*, 73 F. 4th at 890 (posting of Private Information on the dark web "establishes both a present injury . . . and a substantial risk of future injury"). Therefore, the actual misuse of and actual access to the Settlement Class's data are injuries-in-fact that plausibly give rise to a substantial risk of future harm from identity theft; emotional injury; the diminution in the value of Plaintiffs' and Settlement Class members' Private Information; and the loss of privacy. *Mednax*, 603 F. Supp. 3d at 1202–05.

Traceability—the causal connection between the Data Incident and the Settlement Class’ injuries—also exists for Article III standing. Plaintiffs’ and Settlement Class members’ injuries must be “fairly traceable” to Brightline’s actions, but that does not mean they are required to show proximate cause, as harms flowing indirectly from the Data Incident are sufficient for standing. *Id.* at 1205. Brightline’s alleged failure to protect the Private Information, resulting in the Data Incident whereby unauthorized access was gained, preceded Plaintiffs’ documented incidents of identity theft, economic losses, lost time, and emotional distress, and put them at a substantial risk of future incidents of identity theft too. *Id.* at 1206. The Data Incident need not have provided all information necessary to inflict those harms; it is enough the Data Incident could assist give identity thieves in perpetrating them. *Id.*

Thus, like in *Mednax* and *Desue*, because all Plaintiffs and Settlement Class members had their Private Information impacted in the Data Incident, they have all suffered injuries in fact that are fairly traceable to the Data Incident and would likely be redressed by a favorable judgment if this case was litigated through trial, demonstrating Article III standing. The Court therefore provisionally certifies the Settlement Class.

b. Preliminary Approval Of The Settlement Is Warranted.

Next, the Court must preliminarily determine whether the Settlement is fair, adequate, and reasonable under Rule 23(e)(2) while also considering the *Bennett* factors. At this juncture, “the court’s primary objective . . . is to establish whether to direct notice of the proposed settlement to the class, invite the class’s reaction, and schedule a final fairness hearing.” *Morris v. US Foods, Inc.*, No. 8:20-cv-105, 2021 WL 2954741, at *7 (M.D. Fla. May 17, 2021) (quoting William B. Rubenstein, 4 Newberg on Class Actions § 13:10 (5th ed. Supp. 2020)). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there

are no obvious deficiencies, and the settlement falls within the range of reason.” *Smith*, 2010 WL 2401149, at *2.

The Court finds the Settlement satisfies the requirements of Rule 23(e) as well as the *Bennett* factors. The Court will address each factor in turn.

1. Rule 23(e)(2) Is Satisfied.

(i) Rule 23(e)(2)(A) - Adequacy of Representation

For the same reasons that led the Court to find Class Counsel adequate for purposes of preliminary Settlement Class certification, Class Counsel have adequately represented the Settlement Class’ interests for purposes of Preliminary Approval of the Settlement. Additionally, as the Court has found for purposes of preliminary certification, Plaintiffs’ respective interests are coextensive and do not conflict with the interests of the Settlement Class, demonstrating their adequacy. Plaintiffs have the same interest in the Settlement relief as do Settlement Class members, and the absent Settlement Class members have no diverging interests.

Accordingly, the first Rule 23(e)(2) factor weighs heavily in favor of granting Preliminary Approval because both Class Counsel and the Class Representative have adequately represented the Settlement Class. *See Mednax*, 2024 WL 17477004 at *6.

(ii) Rule 23(e)(2)(B) - Arm’s Length Negotiations

The Court finds the Settlement was reached in the absence of collusion and is the result of good faith, informed, and arm’s-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues at stake. *Mednax*, 2024 WL 17477004 at *6. Before discussing a potential resolution, the Parties conducted thorough factual and legal investigation including significant pre-mediation discovery, allowing them to fully understand the claims, defenses, and risks of continued litigation. The Settlement was reached

after extensive legal and factual investigation by the Parties, a full-day mediation assisted by a well-respected and experienced mediator, and weeks of additional negotiations to finalize the terms of the Agreement and ancillary documents. The Parties did not discuss attorneys' fees and costs until after they had agreed on all material Settlement terms.

For these reasons and those discussed related to attorneys' fees below, there was no fraud or collusion in arriving at the Settlement. *See Bennett*, 737 F.2d at 986. Accordingly, “[t]he fact that the Settlement was achieved through well-informed, arm's-length, and neutrally supervised negotiations weighs in favor of granting preliminary approval under Rule 23(e)(2)(B).” *Mednax*, 2024 WL 17477004 at *6.

(iii) Rule 23(e)(2)(C) - Adequacy of Settlement Relief

The Court finds, considering the likelihood of success at trial, the complexity, expense, and duration of the litigation, the relief provided is reasonable. While Plaintiffs believe the claims asserted in the Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Brightline poses significant risks that make any recovery for the Settlement Class uncertain. “[D]ata breach class actions are risky cases.” *Mednax*, 2024 WL 17477004 at *7; *see also Fox v. Iowa Health Sys.*, No. 3:18-cv00327, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (“Data breach litigation is evolving; there is no guarantee of the ultimate result . . . [they] are particularly risky, expensive, and complex.”); *Fulton-Green v. Accolade, Inc.*, No. 18-274, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019) (data breach class actions are “a risky field of litigation because [they] are uncertain and class certification is rare.”). And given the complexity of the claims and arguments here, a lengthy trial would likely be required before Settlement Class members could recover. Maintaining class certification through trial “is another over-arching risk” as well. *Mednax*, 2024 WL 17477004 at *7. “Thus, through the Settlement,

Plaintiffs and Settlement Class Members gain significant benefits without having to face further risk of not receiving any relief at all,” weighing heavily in favor of preliminary approval. *Id.*

Despite the risks involved with further litigation, the Settlement provides outstanding benefits, including Cash Payments, Credit Monitoring, and injunctive relief for all Settlement Class members. *See Equifax*, 999 F.3d at 1273 (“Settlements also save the bench and bar time, money, and headaches”). All Settlement Class members are given an equal opportunity to claim Settlement Class Member Benefits. Specifically, each Settlement Class member has the option to be reimbursed for documented losses up to \$5,000.00, or they may elect to receive a flat cash payment of \$100.00. Additionally, all California Settlement Class members are equally entitled to the same Californian Statutory Award of \$100.00. In addition, all Settlement Class members may elect three years of Credit Monitoring.

The Court further finds the Claim Form submission process and distribution of Settlement Class Member Benefits to be fair, convenient, and effective. Settlement Class Members will promptly receive Cash Payments by electronic means or paper check issued by the Settlement Administrator and Credit Monitoring, if elected. The Settlement Administrator is highly qualified to manage the entire process. Thus, “[t]he method of distributing the settlement benefits will be equitable and effective.” *Mednax*, 2024 WL 17477004 at *7.

Furthermore, the attorneys’ fees do not impact the other terms of the Settlement. Class Counsel intend to request up to 33.33% of the Settlement Fund in attorneys’ fees, plus reimbursement of costs, to be paid from the Settlement Fund, subject to this Court’s approval. Class Counsel and Brightline negotiated and reached agreement regarding attorneys’ fees and costs only after reaching agreement on all other material Settlement terms. The Settlement, including disbursement of the Settlement Class Member Benefits, is not contingent on approval of the

attorneys' fee or costs award to Class Counsel. Finally, the Parties' agreements are all in the Agreement.

The Court therefore finds Rule 23(e)(2)(C)'s requirements are met.

(iv) Bennett Factors

The Court further finds the relevant *Bennett* factors³ are satisfied. First, the benefits of settlement outweigh the risk of trial given the substantial relief that Settlement Class members will be afforded, including guaranteed Cash Payments, Credit Monitoring, and injunctive relief. Second and third, the Settlement is within the range of possible recoveries and is fair, adequate, and reasonable. *See Burrows v. Purchasing Power, LLC*, No. 1:12-CV22800, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013) (considering the second and third *Bennett* factors together). Given the likelihood of Plaintiffs' success at trial and the range of possible damages that could be recovered, the Settlement provides fair recoveries. *See Equifax*, 999 F.3d at 1274.

Fourth, continued litigation would be lengthy and expensive. As noted above, data breach litigation is often difficult and complex. Although the Parties reached a Settlement relatively early in litigation, the Settlement negotiations were hard-fought, and the Parties expended significant time and energy on this Action, allowing Plaintiffs to have sufficient information to evaluate the merits and negotiate a fair, adequate, and reasonable settlement. *See, e.g., Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (S.D. Fla. 2014) (approving settlement where parties settled relatively early with experienced counsel who had sufficient information to evaluate merits of the case, engaged in full-day mediation, and engaged in post-mediation discovery).

Accordingly, the Court finds the Settlement is fair, reasonable, and adequately protects the

³ The fifth *Bennett* factor—opposition to the Settlement, if any— cannot be discerned at this time because Notice has not yet been given to the Settlement Class. *See Mednax*, 2024 WL 17477004 at *7.

interests of the Settlement Class members.

c. Appointment of Class Representatives and Class Counsel Is Appropriate.

For the reasons discussed above, the Court finds Plaintiffs have adequately represented the Settlement Class throughout this Action. The Court therefore designates and appoints Plaintiffs Terrance Rosa, Ryan Watson, Donisha Jackson, Kyle Castro, on behalf of himself and his minor children, E.N.C., C.J.C., and E.J.C., Itaunya Milner, on behalf of herself and her minor child, B.G., and Anthony Ndifor as Class Representatives.

Rule 23(g)(1)(A)'s four factors for appointing class counsel for a certified class are: (1) "the work counsel has done in identifying or investigating potential claims in the action;" (2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;" (3) "counsel's knowledge of the applicable law;" and (4) "the resources that counsel will commit to representing the class." Federal Rule of Civil Procedure 23(g)(1)(A). The Court may also "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class."

The Court finds proposed Class Counsel have expended a reasonable amount of time, effort, and expense investigating the Data Incident and in litigating this Action and the actions in MDL-3090. Further, it is clear from their track record of success, as outlined in their resumes, that Class Counsel are highly skilled and knowledgeable concerning class action practice. Therefore, for purposes of the Settlement only, and pursuant to Rule 23(g)(1), the Court appoints Jeff Ostrow, John Yanchunis, James Cecchi, and Mason Barney as Class Counsel to act on behalf of the Settlement Class with respect to the Settlement. They are experienced and competent counsel and will adequately protect the interests of the Settlement Class.

d. The Notice Program Is Sufficient.

Notice of a proposed settlement must be the “best notice practicable.” Fed. R. Civ. P. 23(c)(2)(B). The best notice practicable is that which “is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Court finds the form, content, and method of giving notice to the Settlement Class as described in the Notice Program, including the forms of Email Notice, Long Form Notice, Postcard Notice, Settlement Website, Settlement telephone line for frequently asked questions, and Claim Form (a) constitutes the best practicable notice to the Settlement Class; (b) is reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the Action, the terms of the Settlement, the effect of the proposed Settlement (including the Releases contained therein), and their rights under the proposed Settlement, including the right to opt-out of or to object to the proposed Settlement and appear at the Final Approval Hearing; (c) is reasonable and constitutes due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class members.

Rule 23(h)(1) further requires that “[n]otice of the motion [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.” The Notice Program satisfies the requirements of Rule 23(h)(1), as it notifies the Settlement Class that Class Counsel will apply to the Court for an award of attorneys’ fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs.

Accordingly, the Notice Program satisfies the requirements of Rule of Civil Procedure

23(c)(2)(B) and due process and is thus approved.

PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT

Upon preliminary review, the Court finds the proposed Settlement is fair, reasonable, and adequate; the Settlement Class should be certified for Settlement purposes; and the Notice Program satisfies the requirements of Rule 23 and due process. Accordingly, the Settlement is preliminarily approved.

a. Final Approval Hearing

The Court will hold a Final Approval Hearing on _____, 2025, at ___:___ am/pm. The Final Approval Hearing will be conducted for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Settlement, is fair, reasonable, and adequate, and should be approved by the Court; (b) to determine whether an order of Final Judgment should be entered dismissing the Action on the merits and with prejudice; (c) to determine whether the proposed plan of allocation and distribution of the Settlement Fund is fair and reasonable and should be approved; (d) to determine whether the requested award of attorneys' fees and costs should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. The Court may elect to hold the Final Approval Hearing virtually by Zoom or some other virtual application, and if it does, the instructions on how to attend shall be posted by the Settlement Administrator on the Settlement Website.

The Court will defer ruling on attorneys' fees and costs until the Final Approval Hearing when considering Class Counsel's Application for Attorneys' Fees and Costs. Plaintiffs shall file their Motion for Final Approval no later than 45 days before the original Final Approval Hearing date. At the Final Approval Hearing, the Court will hear argument from the Parties, and in the

Court's discretion, will also hear from any Settlement Class Members (or their counsel) who timely object to the Settlement or to the Application for Attorneys' Fees and Costs.

b. Appointment of Settlement Administrator

As agreed by the Parties, the Court appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator to supervise and administer the Notice Program and Claims process, as well as to administer the Settlement should the Court grant Final Approval. All Settlement Administration Costs will be paid out of the Settlement Fund.

c. Approval of Settlement Class Notice Program and Notice Forms

The Court approves, as to form and content, the Notice Program, including the Email Notice, Postcard Notice, and Long Form Notice, substantially in the forms attached as Exhibits 1-3 to the Agreement. Non-material modifications to these exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program and to perform all other tasks that the Settlement requires. The date and time of the Final Approval Hearing shall be posted on the Settlement Website and included in the Email Notice, Postcard Notice, and Long Form Notice, respectively, before they are emailed, mailed, or published.

d. Approval of Claim Form and Claims Process

The Court approves the Claim Form and the Claims process to be implemented by the Settlement Administrator. The Claim Form, attached to the Agreement as Exhibit 4, is straightforward and easy to complete, allowing each Settlement Class Member to elect their desired Settlement Class Member Benefits. 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 Settlement, including the Claim Form. Should the Court grant Final Approval to the Settlement, Settlement Class Members shall be bound by its terms even if they though do not

submit Claims.

The Court directs the Settlement Administrator to disseminate the Notices and Claim Form as approved herein. Class Counsel and Brightline's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this order or the Settlement, including making, without the Court's further approval, minor form or content changes to the Notices and Claim Form they jointly agree are reasonable or necessary.

e. Opt-Outs from the Settlement Class

The Notice shall provide that any member of the Settlement Class who wishes to opt-out of the Settlement must request exclusion in writing within the time and manner set forth in the Notice. The Notices shall provide that opt-out requests must be sent to the Settlement Administrator and be postmarked no later than 30 days before the original date set for the Final Approval Hearing (the last day of the Opt-Out Period). The opt-out request must be personally signed by the Settlement Class member and contain the Settlement Class member's name, postal address, email address (if any), and telephone number; the name of this Action (*In Re: Fortra File Transfer Software Data Security Breach Litigation (Brightline)*); a brief statement identifying membership in the Settlement Class; and a statement that indicates a desire to be excluded from the Settlement Class. The letter can simply say, "I hereby elect to opt out of the Settlement in *In Re: Fortra File Transfer Software Data Security Breach Litigation (Brightline)* class action." If submitted by mail, an opt-out request shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an opt-out request shall be deemed to have been submitted on the shipping date reflected

on the shipping label.

Any Settlement Class member who timely and validly opts-out from the Settlement Class shall, provided the Court grants Final Approval: (a) be excluded from the Settlement Class by Order of the Court; (b) not be a Settlement Class Member; (c) not be bound by the terms of the Settlement; and (d) have no right to the Settlement Class Member Benefits. Any Settlement Class member who does not timely and validly request to opt-out shall be bound by the terms of this Settlement, including all releases and covenants therein, as well as all subsequent proceedings, orders, and judgments applicable to the Settlement Class.

f. Objections to the Settlement

The Notice shall also provide that any Settlement Class Member who does not opt-out from the Settlement Class may object to the Settlement and/or the Application for Attorneys' Fees and Costs. Objections must be filed with the Clerk of the Court and mailed to the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted on behalf of a Settlement Class Member no later than 30 days before the original date set for the Final Approval Hearing (the last day of the Objection Period). When submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. 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.

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

- a. the objector's full name, address, email address (if any), and telephone number;
- 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 on 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 or Class Counsel's Application for Attorneys' Fees and Costs;
- 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 on 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 5 years;
- f. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
- g. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- h. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- i. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

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

Class Counsel and/or Brightline's Counsel may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure and respond in writing to the objections prior to the Final Approval Hearing.

Any Settlement Class Member who does not make an objection in the manner provided herein shall be deemed to have waived the right to object to any aspect of the Settlement and/or to the Application for Attorneys' Fees and Costs and, if Final Judgment is entered, shall forever be barred and foreclosed from raising such objections in this or any other proceeding and from challenging or opposing, or seeking to reverse, vacate, or modify, the Final Judgment or any aspect thereof.

g. Termination of the Settlement and Use of this Order

If the Settlement is not finally approved by the Court, or is terminated, canceled, or fails to become effective for any reason, or the Effective Date does not occur, this order shall become null and void and shall be without prejudice to the rights of Plaintiffs, the Settlement Class members, and Brightline, all of whom shall be restored to their respective positions in the Action as provided in the Agreement.

h. Bar from Continued Claims

Upon the entry of this order, with the exception of Class Counsel, Brightline's Counsel, Brightline, and the Class Representatives' implementation of the Settlement and the approval process in this Action, all members of the Settlement Class shall be provisionally enjoined and barred from asserting any claims or continuing any litigation against Brightline and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision as to whether to grant Final Approval of the Settlement.

i. Jurisdiction

For the benefit of the Settlement Class and to protect this Court’s jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

j. Schedule

The Court hereby sets the following schedule of events in connection with the Settlement’s administration and Final Approval Hearing:

Event	Date
Notice Program Begins	No later than 30 days after Preliminary Approval
Notice Program Complete	45 days before the initial scheduled Final Approval Hearing
Deadline to File Motion for Final Approval, and Application for Attorneys’ Fees and Costs	45 days before the initial scheduled Final Approval Hearing
Opt-Out Deadline	30 days before the initial scheduled Final Approval Hearing
Objection Deadline	30 days before the initial scheduled Final Approval Hearing
Deadline to Submit Claim Forms	15 days following the initial scheduled Final Approval Hearing
Final Approval Hearing	_____, 2025, at _____ am/pm

SO ORDERED this _____ day of _____, 2024.

HONORABLE RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**IN RE: FORTRA FILE TRANSFER SOFTWARE
DATA SECURITY BREACH LITIGATION**

Case No. 24-md-03090-RAR

This Document Relates to:

TERRANCE ROSA, et al., on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

BRIGHTLINE, INC.,

Defendant.

**JOINT DECLARATION OF CLASS COUNSEL
IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

We, Jeff Ostrow, John Yanchunis, James Cecchi, and Mason Barney, declare as follows:

1. We are counsel of record for Plaintiffs¹ and proposed Class Counsel for the Settlement Class in the above-captioned matter. We submit this declaration in support of Plaintiffs' Motion for Preliminary Approval. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. This Action arises from a Data Incident affecting the Fortra GoAnywhere MFT, which occurred in January 2023 and affected over a million individuals whose Private Information was stored within Brightline's instance of the Fortra GoAnywhere MFT at the time.

¹ The capitalized terms used herein shall have the same meanings as those defined in the Settlement Agreement, attached as Exhibit A to the Motion for Preliminary Approval.

3. In or about May of 2023, Plaintiffs and Settlement Class members began receiving notices that their Private Information was accessed in the Data Incident.

4. Before commencing litigation, we investigated potential claims against Brightline, interviewed potential plaintiffs, and gathered information regarding the Data Incident.

5. On May 2, 2023, Plaintiffs, Terrance Rosa and Ryan Watson, filed a complaint against Brightline in the United States District Court for the Northern District of California, seeking damages related to the Data Incident.

6. Thereafter, on May 11, 2023, May 22, 2023, and June 13, 2023, three additional complaints related to the Data Incident were filed against Brightline in the same district.

7. On July 25, 2023, the district court consolidated the actions into the first-filed action.

8. On October 20, 2023, pursuant to 28 U.S.C. § 1407, defendants NationsBenefits, LLC and NationsBenefits Holdings, LLC, two of the other parties defending lawsuits related to the Data Incident, filed a Motion for Transfer and Centralization of Related Actions to the District of Minnesota, where an action was already pending against Fortra. The motion was filed with the Judicial Panel on Multidistrict Litigation requesting that all matters concerning the Data Incident, including the consolidated action against Brightline, be centralized for pretrial purposes.

9. On October 23, 2023, Brightline filed a Motion to Dismiss in the Northern District of California, which was fully briefed by December 13, 2023.

10. On December 18, 2023, Brightline and the Plaintiffs in the California consolidated action jointly moved to stay the Motion to Dismiss hearing date until after the conclusion of the JPML hearing, and that motion was granted by order of the Court on December 21, 2023.

11. On or about February 5, 2024, the JPML ordered all matters concerning the Data

Incident to be transferred to and centralized in the United States District Court for the Southern District of Florida, before the Honorable Rodolfo A. Ruiz II, including the consolidated action against Brightline.

12. Following transfer and centralization of the cases, Judge Ruiz created distinct tracks for the cases: Track 1: NationsBenefits; Track 2: Fortra; Track 3: NationsBenefits Spokes: Aetna, Anthem, Elevance, and Santa Clara; and Track 4: Fortra Spokes: Brightline, Community, Intellihartx, and Imagine360.

13. On April 18, 2024, Plaintiffs filed their Track 4 Consolidated Complaint against all MDL-3090 Track 4 defendants, including Brightline, alleging causes of action for negligence, negligence per se, breach of fiduciary duty, breach of implied contract, breach of contract third party beneficiary, unjust enrichment, and violations of various states' consumer protection statutes.

14. On April 18, 2024, the Parties exchanged their Initial Disclosures.

15. On April 22, 2024, the Court entered a Stipulated Confidentiality and Qualified Protective Order and Order Governing Production of Electronically Stored Information and Paper Documents.

16. Thereafter, the Parties began discussing resolution of the claims against Brightline and scheduled a mediation before experienced class action mediator Michael Ungar, Esq. for July 11, 2024.

17. In advance of the mediation, Plaintiffs requested and Brightline produced extensive informal discovery, including but not limited to the number of individuals and categories of information impacted by the Data Incident, and documents demonstrating that all data impacted had been removed from Clop's extortion portal.

18. The Parties also exchanged detailed Mediation Statements outlining their positions

with respect to liability, damages, and settlement.

19. The information the Parties exchanged before mediation allowed Plaintiffs and Class Counsel to enter settlement negotiations with substantial information about the facts and merits of the legal claims.

20. Plaintiffs and Class Counsel reviewed key documents and information, which, in consultation with their data security experts, allowed them to confidently evaluate the strengths and weaknesses of Plaintiffs' claims and prospects for success at class certification, summary judgment, and trial.

21. On July 11, 2024, the Parties participated in a full-day private mediation in Miami, Florida, concluding with the Parties agreeing to all material terms of the Settlement.

22. The Parties filed a Notice of Settlement with the Court on July 12, 2024.

23. Over the next 60 days, the Parties worked diligently to finalize the terms of the Agreement and ancillary documents.

24. The Agreement was executed on September 12, 2024.

25. The Parties did not discuss attorneys' fees and costs until after they reached agreement on all material Settlement terms.

26. The Settlement was reached in the absence of collusion and is the result of good faith, informed, and extensive arm's-length negotiations between competent and experienced attorneys who are familiar with class action litigation and with the legal and factual issues at the center of this Action. The Parties' agreements are all in the Agreement.

27. Class Counsel are highly qualified and have a great deal of experience litigating complex consumer class actions, including in the data privacy context. This experience proved beneficial to Plaintiffs and the Settlement Class during Settlement negotiations.

28. Class Counsel have devoted substantial time and resources to vigorously prosecute this Action and will continue to do so. Specifically, we have litigated this Action, including evaluating the claims, preparing comprehensive pleadings, serving discovery, consulting with data security experts, responding to Defendant's motion to dismiss, complying with Court orders and requirements, and participating in a mediation that ultimately resulted in this Settlement.

29. The Settlement Class Member Benefits set forth in the Agreement are more than reasonable when compared to other data breach settlements when considering the type of information at issue and the class size of the class. Settlement Class members may elect Cash Payment A for reimbursement of documented ordinary losses up to \$5,000.00, or they may elect Cash Payment B for a flat cash payment of \$100.00. Additionally, Settlement Class members may also elect Credit Monitoring, and California Settlement Class Members may receive an additional \$100.00.

30. Plaintiffs' respective interests are coextensive and do not conflict with the interests of the Settlement Class. Plaintiffs have the same interest in the Settlement relief, and the absent Settlement Class members have no diverging interests.

31. Plaintiffs have cooperated with Class Counsel and assisted in providing important information in the preparation of the complaints filed in this Action. Plaintiffs have also diligently and adequately prosecuted this Action by, among other things, reviewing filings, promptly providing documents and information to Class Counsel, acting in the best interest of the Settlement Class, reviewing the Agreement, and accepting the class-wide Settlement. Plaintiffs are committed to continue prosecuting this Action through Final Approval and protecting the interests of the Settlement Class.

32. Class Counsel has devoted substantial time and resources to this Action, are qualified to represent the Settlement Class, and will, along with the Class Representatives, continue to vigorously protect the interests of the Settlement Class.

33. Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs and expenses. Class Counsel shall apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs, which shall be paid from the Settlement Fund. Class Counsel will formally request attorneys' fees and costs through a fee application that will be filed no less than 45 days before the original date set for the Final Approval Hearing.

34. The Settlement is not contingent on approval of the requests for attorneys' fees and costs, and if the Court grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force.

35. The Released Claims discharged against the Released Parties in the Agreement are narrowly tailored and are only claims arising out of or relating to the Data Incident.

36. With the Court's approval, the Parties agree to use Epiq Class Action & Claims Solutions, Inc. for purposes of disseminating Notice and administering the Settlement. Epiq is a well-respected and reputable third-party administrator that was mutually selected by the Parties and has significant experience with data breach class action settlements. Epiq is highly qualified to manage the entire settlement administration process. Class Counsel will oversee Epiq.

37. Class Counsel is familiar with the claims they have litigated. As can be seen from their respective resumes, attached hereto as *Exhibits 1–4*, Class Counsel have significant experience in the litigation, certification, trial, and settlement of national class actions, including

substantial time and resources dedicated to past and present data breach litigation across the country, and have recovered hundreds of millions of dollars for the classes we have represented.

38. Class Counsel are confident that the Settlement warrants the Court's Preliminary Approval. Its terms are not only fair, reasonable, adequate, and in the best interests of the Settlement Class, but also are an extremely favorable result with substantial benefits. The Agreement provides significant and concrete benefits to over two million individuals.

39. Brightline's Counsel are also highly experienced in this type of litigation.

40. Class Counsel and Counsel for the Defendant have fully evaluated the strengths, weaknesses, and equities of the Parties' respective positions and believe the proposed settlement fairly resolves their respective differences.

41. The risks, expense, complexity, and likely duration of further litigation support preliminary approval of the Settlement. Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay.

42. Class Counsel believe the claims asserted are meritorious and that Plaintiffs would prevail if this matter proceeded to trial. However, Class Counsel is also pragmatic and understand the legal uncertainties associated with continued litigation, which would be lengthy and expensive.

43. Data breach litigation is often difficult and complex. Recovery, if any, by any means other than settlement would require additional years of litigation and possibly an appeal. Without the Settlement, the Parties faced the possibility of litigating this Action through the completion of fact discovery, class certification, expert discovery, summary judgment, trial, and appeals, which would be complex, time-consuming, and expensive. Continued litigation could have impeded the successful prosecution of these claims at trial and in an eventual appeal – resulting in zero benefit to the Settlement Class. Further, since the Court had not yet certified a class at the time the

Agreement was executed, it is unclear whether certification would have been granted. Briefing class certification would have required the Parties to expend significant resources.

44. Although the Parties entered into a Settlement relatively early in litigation, the Settlement negotiations were hard-fought, and the Parties expended significant time and energy on this Action.

45. Under the circumstances, the Settlement represents a highly favorable compromise that balances the merits of Plaintiffs' claims and the likelihood of succeeding at trial and on appeal with the attendant risks. The inherent uncertainty in litigation presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for the Settlement Class.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct of my own personal knowledge. Executed in Florida on September 12, 2024.

/s/ Jeff Ostrow
Jeff Ostrow

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct of my own personal knowledge. Executed in Florida on September 12, 2024.

/s/ John Yanchunis
John Yanchunis

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct of my own personal knowledge. Executed in New Jersey on September 12, 2024.

/s/ James Cecchi
James Cecchi

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct of my own personal knowledge. Executed in New York on September 12, 2024.

/s/ Mason Barney
Mason Barney

EXHIBIT 1

JEFF OSTROW

Managing Partner

ostrow@kolawyers.com

954.332.4200



Bar Admissions

Florida Bar

District of Columbia Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Eastern District of Michigan

U.S. District Court, Western District of Tennessee

U.S. District Court, Western District of Wisconsin

U.S. District Court, Western District of Kentucky

U.S. District Court, Northern District of New York

U.S. District Court, District of Colorado

U.S. District Court, Southern District of Indiana

U.S. District Court, Eastern District of Texas

U.S. District Court, District of Nebraska

Education

Nova Southeastern University, J.D. - 1997

University of Florida, B.S. - 1994

Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice in 1997 immediately upon graduation from law school and has since grown the firm to 30 attorneys in 3 offices throughout south Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the area of consumer class actions. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, which is the highest possible rating by the most widely recognized attorney rating organization in the world.

Mr. Ostrow is an accomplished trial attorney who has experience representing both Plaintiffs and Defendants. He has successfully tried many cases to verdict involving multi-million-dollar damage claims in state and federal courts. He is currently court-appointed lead counsel and sits on plaintiffs' executive committees in multiple high profile nationwide multi-district litigation actions involving cybersecurity breaches and related privacy issues.

Additionally, he has spent the past 15 years serving as lead counsel in dozens of nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$1 billion for tens of millions of bank and credit union customers, as well as monumental changes in the way they assess fees. Those changes have forever revolutionized an industry, resulting in billions of dollars of savings. In addition, Mr. Ostrow has served as lead class counsel in many consumer class actions against some of the world's largest airlines, pharmaceutical companies, clothing retailers, health and auto insurance carriers, technology companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies. A selection of

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He has represented many Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, NBC, CBS, Fox, ESPN, and almost every other major national and international television network in connection with his cases, which often involve industry changing litigation or athletes in Olympic swimming, professional boxing, the NFL, NBA and MLB.

Mr. Ostrow received a Bachelor of Science in Business Administration from the University of Florida in 1994 and Juris Doctorate from Nova Southeastern University in 1997. He is a licensed member of The Florida Bar and the District of Columbia Bar, is fully admitted to practice before the U.S. Supreme Court, U.S. Court of Appeals for the Ninth Circuit and Eleventh Circuit, the U.S. District Courts for the Southern, Middle, and Northern Districts of Florida, District of Colorado, Southern District of Indiana, Western District of Kentucky, Eastern District of Michigan, Northern District of Illinois, District of Nebraska, Northern District of New York, Western District of Tennessee, Eastern District of Texas, and Western District of Wisconsin. Mr. Ostrow is also member of several bar associations.

In addition to the law practice, he is the founder and president of ProPlayer Sports LLC, a full-service sports agency and marketing firm. He represents both Olympic Gold Medalist Swimmers, World Champion Boxers, and select NFL athletes, and is licensed by both the NFL Players Association as a certified Contract Advisor. At the agency, Mr. Ostrow handles all player-team negotiations of contracts, represents his clients in legal proceedings, negotiates all marketing and NIL engagements, and oversees public relations and crisis management. He has extensive experience in negotiating, mediating, and arbitrating a wide range of issues on behalf of clients with the NFL Players Association, the International Olympic Committee, the United States Olympic Committee, USA Swimming and the World Anti-Doping Agency. He has been an invited sports law guest speaker at New York University and Nova Southeastern University and has also served as a panelist at many industry-related conferences.

He is a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have had multi-million dollar jury verdicts. Additionally, he is consistently named as one of the top lawyers in Florida by Super Lawyers®, a publication that recognizes the best lawyers in each state. Mr. Ostrow is an inaugural recipient of the University of Florida's Warrington College of Business Administration Gator 100 award for the fastest growing University of Florida alumni- owned law firm in the world.

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is the Managing Member of One West LOA LLC, a commercial real estate development company with holdings in downtown Fort Lauderdale. He has previously sat on the boards of a national banking institution and a national healthcare marketing company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive Dream Trips to destinations of their choice. Mr. Ostrow resides in Fort Lauderdale, Florida, and has 3 sons.

CLASS ACTION AND MASS TORTS**FINANCIAL
INSTITUTIONS**

Aseltine v. Bank of America, N.A., 3:23-cv-00235 (W.D.N.C.) – Preliminary Approval - \$21 million

McNeil v. Capital One, N.A., 1:19-cv-00473 (E.D.N.Y.) – Preliminary Approval - \$16 million

Devore, et al. v. Dollar Bank, GD-21-008946 (Ct. Common Pleas Allegheny 2024) - \$7 million

Nimsey v. Tinker Federal Credit Union, C1-2019-6084 (Dist. Ct. Oklahoma 2024) - \$5.475 million

Precision Roofing of N. Fla. Inc., et al. v. CenterState Bank, 3:20-cv-352 (S.D. Fla. 2023) - \$2.65 million

Checchia v. Bank of America, N.A., 2:21-cv-03585 (E.D. Pa. 2023) - \$8 million

Quirk v. Liberty Bank, X03-HHD-CV20-6132741-S (Jud. Dist. Ct. Hartford 2023) - \$1.4 million

Meier v. Prosperity Bank, 109569-CV (Dist. Ct. Brazoria 2023) - \$1.6 million

Abercrombie v. TD Bank, N.A., 0:21-cv-61376 (S.D. Fla. 2022) - \$4.35 million

Perks, et al. v. TD Bank, N.A., 1:18-cv-11176 (E.D.N.Y. 2022) - \$41.5 million

Fallis v. Gate City Bank, 09-2019-CV-04007 (Dist. Ct., Cty. of Cass, N.D. 2022) - \$1.8 million

Glass, et al. v. Delta Comm. Cred. Union, 2019CV317322 (Sup. Ct. Fulton Ga. 2022) - \$2.8 million

Roy v. ESL Fed. Credit Union, 19-cv-06122 (W.D.N.Y. 2022) - \$1.9 million

Wallace v. Wells Fargo, 17CV317775 (Sup. Ct. Santa Clara 2021) - \$10 million

Doxey v. Community Bank, N.A., 8:19-CV-919 (N.D.N.Y. 2021) - \$3 million

Coleman v. Alaska USA Federal Credit Union, 3:19-cv-0229-HRH (Dist. of Alaska 2021) - \$1 million

Smith v. Fifth Third Bank, 1:18-cv-00464-DRC-SKB (W.D. Ohio 2021) - \$5.2 million

Lambert v. Navy Federal Credit Union, 1:19-cv-00103-LO-MSN (S.D. Va. 2021) - \$16 million

Roberts v. Capital One, N.A., 16 Civ. 4841 (LGS) (S.D.N.Y. 2021) - \$17 million

Lloyd v. Navy Federal Credit Union, 17-cv-01280-BAS-RBB (S.D. Ca. 2019) - \$24.5million

Farrell v. Bank of America, N.A., 3:16-cv-00492-L-WVG (S.D. Ca. 2018) - \$66.6 million

Bodnar v. Bank of America, N.A., 5:14-cv-03224-EGS (E.D. Pa. 2015) - \$27.5 million

Morton v. Green Bank, 11-135-IV (20th Judicial District Tenn. 2018) - \$1.5 million

Hawkins v. First Tenn. Bank, CT-004085-11 (13th Jud. Dist. Tenn. 2017) - \$16.75 million

Payne v. Old National Bank, 82C01-1012 (Cir. Ct. Vanderburgh 2016) - \$4.75 million

Swift. v. Bancorpsouth, 1:10-CV-00090 (N.D. Fla. 2016) - \$24.0 million

Mello v. Susquehanna Bank, 1:09-MD-02046 (S.D. Fla. 2014) – \$3.68 million

Johnson v. Community Bank, 3:11-CV-01405 (M.D. Pa. 2013) - \$1.5 million

McKinley v. Great Western Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$2.2 million

Blabut v. Harris Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$9.4 million

Wolfgeher v. Commerce Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$18.3 million

Case v. Bank of Oklahoma, 09-MD-02036 (S.D. Fla. 2012) - \$19.0 million

Hawthorne v. Umpqua Bank, 3:11-CV-06700 (N.D. Cal. 2012) - \$2.9 million

Simpson v. Citizens Bank, 2:12-CV-10267 (E.D. Mich. 2012) - \$2.0 million

Harris v. Associated Bank, 1:09-MD-02036 (S.D. Fla. 2012) - \$13.0 million

LaCour v. Whitney Bank, 8:11-CV-1896 (M.D. Fla. 2012) - \$6.8 million

Orallo v. Bank of the West, 1:09-MD-202036 (S.D. Fla. 2012) - \$18.0 million

Taulava v. Bank of Hawaii, 11-1-0337-02 (1st Cir. Hawaii 2011) - \$9.0 million

DATA BREACH AND PRIVACY

In re: Fortra, MDL No. 3090 (S.D. Fla.) – Co-Lead Counsel
Crowe, et al. v. Managed Care of North America, Inc., 0:23-cv-61065-AHS (S.D. Fla.) – Co-Lead Counsel
Malinowski, et al. v. IBM Corp. and Johnson & Johnson, 7:23-cv-08421 (S.D.N.Y.) – Co-Lead Counsel
Gordon, et al. v. Zeroed-In Technologies, LLC, et al., 1:23-CV-03284 (D. Md.) – Co-Lead Counsel
Harrell, et al. v. Webtpa Employer Services LLC, 3:24-CV-01158 (N.D. Tex.) - Co-Lead Counsel
Gambino, et al. v. Berry Dunn Mcneil & Parker LLC, 2:24-CV-00146 (D. Me.) - Co-Lead Counsel
Isaac v. Greylock McKinnon Associates, Inc., 1:24-CV-10797 (D. Mass.) - Co-Lead Counsel
Rodriguez, et al. v. Caesars Entertainment, Inc., 2:23-CV-01447 (D. Nev.) - Steering Committee Chair
Owens v. MGM Resorts International, 2:23-cv-01480-RFB-MDC (D. Nev.) - Executive Committee
Doyle v. Luxottica of America, Inc., 1:20-cv-00908-MRB (S.D. Ohio) - Executive Committee
Doe, et al. v. Highmark, Inc., 2:23-cv-00250-NR (W.D. Penn.) - Executive Committee
Silvers, et al. v. HCA Healthcare, Inc., 1:23-cv-01003-LPH (S.D. In.) - Executive Committee
In re: 21st Century Oncology, MDL No. 2737 (M.D. Fla. 2021) - \$21.8 million
In re: CaptureRx Data Breach, 5:21-cv-00523 (W.D. Tex. 2022) - \$4.75 million
Lopez, et al. v. Volusion, LLC, 1:20-cv-00761 (W.D. Tex. 2022) - \$4.3 million
Mathis v. Planet Home Lending, LLC, 3:24-CV-00127 (D. Conn.) - Preliminary Approval - \$2.425 million
Stadnik v. Sovos Compliance, LLC, 1:23-CV-12100 (D. Mass.) - Preliminary Approval - \$3.5 million
Turner v. Johns Hopkins, et al., 24-C-23-002983 (Md. Cir. Ct.) - Preliminary Approval - \$2.9 million
Peterson v. Vivendi Ticketing US LLC, 2:23-CV-07498 (C.D. Cal.) - Preliminary Approval - \$3.25 million

Ostendorf v. Grange Indemnity Ins. Co., 2:19-cv-01147-ALM-KAJ (E.D. Ohio 2020) - \$12.6 million
Paris, et al. v. Progressive Select Ins. Co., et al., 19-21760-CIV (S.D. Fla. 2023) - \$38 million
Spielman v. USAA, et al., 2:19-cv-01359-TJH-MAA (C.D. Ca. 2023) - \$3 million
Walters v. Target Corp., 3:16-cv-1678-L-MDD (S.D. Cal. 2020) - \$8.2 million
Papa v. Grieco Ford Fort Lauderdale, LLC, 18-cv-21897-JEM (S.D. Fla. 2019) - \$4.9 million
In re Disposable Contact Lens Antitrust Litig., MDL 2626 (M.D. Fla.) - \$88 million
Vandiver v. MD Billing Ltd., 2023LA000728 (18th Jud. Dist. Ill. 2023) - \$24 million
Skerandel v. Costco Wholesale Corp., 9:21-cv-80826-BER (S.D. Fla. 2024) - \$1.3 million
Evans v. Church & Dwight Co., Inc., 1:22-CV-06301 (N.D. Ill. 2023) - \$2.5 million
Perry v. Progressive Michigan, et al., 22-000971-CK (Cir. Ct. Washtenaw) - Class Counsel
In re Apple Simulated Casino-Style Games Litig., MDL No. 2958 (N.D. Cal.) - Executive Committee
In re Google Simulated Casino-Style Games Litig., MDL No. 3001 (N.D. Cal.) - Executive Committee
In re Facebook Simulated Casino-Style Games Litig., No. 5:21-cv-02777 (N.D. Cal.) - Exec. Committee

In re Zantac Prods. Liab. Litig., MDL No. 2924 (S.D. Fla.) - Co-Lead Counsel
In re: National Prescription Opiate Litigation, No. MDL No. 2804 (N.D. Ohio) - \$100 million
In re: Juul Labs, No. MDL No. 2913 (N.D. Cal.) - \$26 million
In re: Davenport Hotel Building Collapse, LACE137119 (Dist. Ct. Scott Cty., Iowa) - Class Counsel
In re: 3M Combat Arms Earplug Prod. Liab. Litig., MDL No. 2885 (N.D. Fla.) - Numerous Plaintiffs
In re: Stryker Prod. Liab. Lit., 13-MD-2411 (Fla. Cir Ct.) - Numerous Plaintiffs

CONSUMER PROTECTION

MASS TORT

EXHIBIT 2

John A. Yanchunis

John Yanchunis leads Morgan & Morgan's class action group. Morgan & Morgan is America's largest injury law firm with over 1,000 lawyers in offices throughout the United States. Its depth as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country. Mr. Yanchunis—whose career as a trial lawyer began over 41 years ago following the completion of a two-year clerkship with United States District Judge Carl O. Bue, Southern District of Texas (now deceased)—has efficiently and expeditiously led many privacy-related Multidistrict Litigation (MDL) and non-MDL class action proceedings, including as Lead or Co-Lead Counsel in some of the largest privacy class actions. He has focused his practice on class action litigation for over 28 years.

As a result of his experience in insurance and complex litigation, beginning in 2005, he was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a member of the Florida Cabinet, to serve as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigations of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. He served as lead regulator counsel and worked with a core group of state Attorneys General from the National Association of Attorneys General, which were selected to conduct the investigations. The insurance regulator for Florida was the only insurance regulator in the group. The litigation that was filed and the related investigations netted millions of dollars in restitution for Florida consumers and resulted in significant changes in the way commercial insurance is sold in Florida and across the country.

During his career, he has tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by the Celotex

Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, he served as lead counsel for several insurance companies regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. He was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of his clients.

Mr. Yanchunis was recognized in 2020 for the second year in a row by Law360 as one of four MVPs in the area of Cybersecurity and Privacy. Similarly, in 2016 and then in 2020, Mr. Yanchunis was recognized by the National Law Journal as a Trailblazer in the Area of Cybersecurity & Data Privacy. In 2020, Mr. Yanchunis was named Florida Lawyer of the Year by the Daily Business Review, and in 2022, he was awarded the Best Mentor award in the state of Florida by the same publication. In 2023, he was named Consumer Lawyer of the Year by The Florida Bar's Consumer Protection Committee for his accomplishments in the area of data privacy. Again for his accomplishments in the area of data privacy and cyber security, in 2023, he was recognized as a 'Titan of the Plaintiffs' Bar by Law360. In 2024, he was named a finalist for Attorney of the Year by ALM/Law360 and he is a finalist for Lawyer of Year by The National Law Journal (winner to be announced in New York City on July 11, 2024). In 2024, the class action practice group that he leads at his firm was awarded Litigation Department of the Year in the state of Florida by ALM/Law360, and his practice group is a national finalist for Litigation Department of the Year by The National Law Journal (winner to be announced on July 11).

Because of his experience in the area of cyber security and privacy and data breach litigation, he is a frequent speaker nationally and internationally. He spoke on these topics in May of this year in London, and he is scheduled to speak in London and Lisbon in the fall at two separate symposiums on data privacy and cyber security. Presently, he is organizing with several universities in the United States, the European Union, and Israel, a symposium to focus on data privacy. It is planned to be held

in Rome in 2025. He also is a frequenter lecturer at Baylor College of Law in its LLM program on cyber security, most recently in June 2024.

Exhibiting his leadership skills and his ability to work collaboratively with others, Mr. Yanchunis has served in leadership positions on many professional committees and boards, most prominently as a member of the Board of Directors of The Florida Bar Foundation, a member of The Florida Board of Bar Examiners appointed by the Florida Supreme Court (5-year term, and he continues by appointment to date as an Emeritus Member), and an elected member for two terms to The Board of Governors of The Florida Bar, and to The Young Lawyers Division of The Florida Bar. He has served on The Florida Bar's Consumer Protection Committee, including serving as its Chair. He has also served as an expert in ethical issues in class litigation for The Florida Bar in disciplinary proceedings.

In his profession, he received the Florida Bar Foundation President's Award of Excellence, the Public Justice Impact Change Award, and for his work in representing a class of elderly indigent Floridians on Medicaid in a suit against the state of Florida, which resulted in an increase in the benefits to class members, he was awarded The Florida Bar Elder Law Section Chair's Honor Award.

He has been recognized as a Super Lawyer for over two decades and is AV rated by Martindale Hubbell.

EXHIBIT 3



CLASS ACTION RESUME

Formed in 1976, Carella Byrne is one of the leading law firms in the New Jersey – New York metropolitan area, serving a diverse clientele ranging from small businesses to Fortune 500 corporations. Carella Byrne’s class action practice - founded and led by James E. Cecchi - is the preeminent consumer class action firm in the State of New Jersey and across the United States. Mr. Cecchi has held leadership positions in many of the nation’s most complex and important consumer class actions effecting consumer rights in the last ten years including those listed below.

REPRESENTATIVE MATTERS

- *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.) (Hon. Charles R. Breyer) (James Cecchi appointed to Steering Committee and as Settlement Class Counsel; settlement in excess of \$15,000,000,000 for consumer fraud and warranty claims arising from the use of a defeat device to evade U.S. emissions regulations).
- *In re: Takata Airbag Products Liability Litigation*, MDL No. 2599 (S.D. Fla.) (Hon. Frederico A. Moreno) (James Cecchi appointed to Steering Committee and as Settlement Class Counsel; settlement in excess of \$1,500,000,000 for consumer fraud and warranty claims arising from use of defective and dangerous airbags; the case is ongoing as it pertains to second-wave defendants, including Mercedes Benz USA).
- *In re: American Medical Collection Agency, Inc. Customer Data Security Breach Litigation*, MDL No. 2904 (D.N.J.) (Hon. Madeline Cox Arleo) (James Cecchi appointed sole Lead Counsel in national Multi-District data breach litigation).
- *In re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio) (Hon. Dan A. Polster) (James Cecchi appointed to Plaintiffs’ Executive Committee relating to marketing of opioid drugs; recent settlements include a proposed \$26 billion settlement with the nation’s largest drug distributors and Johnson & Johnson; recent trial team victories include Track 3 bellwether of \$650.6 million).
- *In re: Mercedes-Benz Emissions Litigation*, Civil Action No. 16-cv-881 (D.N.J.) (Hon. Kevin McNulty) (James Cecchi appointed as Interim Co-Lead Counsel for Plaintiffs and the Proposed Class in a case arising out of the alleged use of a defeat device to evade U.S. emissions regulations; settlement with value in excess of \$700,000,000 granted final approval).
- *In re: Vytorin/Zetia Marketing, Sales Practices and Products Liability Litigation*, MDL No. 1938 (D.N.J.) (Hon. Dennis M. Cavanaugh); *In re Schering-Plough/Enhance Securities Litigation*, Civil Action No. 08-cv-397 (D.N.J.) (Hon. Dennis M. Cavanaugh); *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, Civil Action No. 08-cv-2177 (D.N.J.) (Hon. Dennis M. Cavanaugh) (consumer and securities fraud claims arising from

marketing and sale of anti-cholesterol drugs Vytorin and Zetia) (Co-Lead Counsel in Consumer Cases which settled for \$41,500,000 and Liaison Counsel in Securities Cases which collectively settled for \$688,000,000).

- *In re: Liquid Aluminum Sulfate Antitrust Litigation*, MDL No. 2687 (D.N.J.) (Hon. Jose L. Linares) (James Cecchi appointed as Lead Counsel and secured a settlement of greater than \$100,000,000).
- *In re: Effexor XR Antitrust Litigation*, Civil Action No. 11-cv-5661 (D.N.J.) (Hon. Joel A. Pisano) (Chair of Plaintiffs' Indirect Purchaser Executive Committee).
- *Davis Landscape v. Hertz Equipment Rental*, Civil Action No. 06-cv-3830 (D.N.J.) (Hon. Dennis M. Cavanaugh) (Co-Lead Counsel in settlement valued at over \$50,000,000 on behalf of contested nationwide class asserting claims that HERTZ' loss/damage waiver charges violated the New Jersey Consumer Fraud Act because it provides no benefit to customers).
- *In re: Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation*, MDL No. 1658 (D.N.J.) (Hon. Stanley R. Chesler) (Securities fraud claims arising from Merck's failure to disclose problems with commercial viability of anti-pain drug Vioxx which settled for more than \$1,000,000,000).
- *In re: Mercedes-Benz Tele-Aid Contract Litigation*, MDL No. 1914 (Hon. Dickson R. Debevoise) (Co-Lead Counsel in \$40,000,000 settlement of consumer fraud claims arising from Mercedes' failure to notify Tele-Aid customers of mandated change from analog to digital system, and charging customers to replace system Mercedes knew would be obsolete).
- *In re: TikTok Consumer Privacy Litigation*, MDL No. 2948-A (N.D. Ill.) (Hon. Rebecca R. Pallmeyer) (James E. Cecchi appointed to Plaintiffs' Steering Committee).
- *In re: Samsung Customer Data Security Breach Litigation*, MDL No. 3055 (D.N.J.) (Hon. Christine P. O'Hearn) (James E. Cecchi appointed as Lead Counsel).
- *In re: Fortra File Transfer Software Data Security Breach Litigation*, MDL No. 3090 (S.D. Fla.) (Hon. Rodolfo A. Ruiz, II) (James E. Cecchi appointed as MDL Track Coordination and Settlement Counsel).
- *In re: T-Mobile Customer Data Security Breach Litigation*, MDL No. 3073 (W.D. Mo.) (Hon. Brian C. Wimes) (James E. Cecchi appointed as Co-Lead Class Counsel).
- *In re: AT&T Inc. Customer Data Security Breach Litigation*, MDL No. 3114 (N.D. Tex.) (Hon. Ada Brown) (James E. Cecchi appointed to Plaintiffs' Executive Committee).

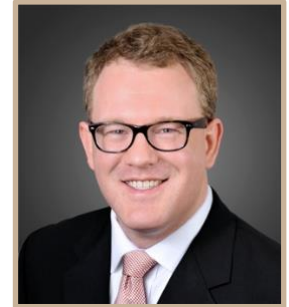
EXHIBIT 4



Mason A. Barney

Partner

Mason A. Barney is an experienced trial attorney who for nineteen years has represented both individuals and corporations in complex litigations. Mr. Barney received his J.D., *summa cum laude* from Brooklyn Law School, in 2005, where he graduated second in his class of nearly 500 students, and received numerous academic honors, in addition to being an editor on the Brooklyn Law Review. He then served as a law clerk to the Honorable Judge David G. Trager in the U.S. District Court for the Eastern District of New York. After clerking, he joined the litigation department at Latham & Watkins LLP, and later joined Olshan Frome Wolosky LLP a large established New York City law firm. Before law school, Mr. Barney earned his B.A. from Bowdoin College, where he double majored in Computer Science and Studio Art, and after college he served as a lead database developer for three years at a successful Internet start-up in Washington D.C.



Mr. Barney focuses his practice on class actions and representing individuals in complex litigations. In this practice he has won tens of millions of dollars for his clients. Among other matters, Mr. Barney has fought to stop companies from illegally spamming consumers with unwanted phone calls, has worked to stop companies from illegally obtaining their customers' biometric information (e.g., facial scans and fingerprints), and obtained recovery for numerous victims of data breaches. Mr. Barney has also served as counsel of record for numerous lawsuits involving alleged violations of the Illinois Genetic Information Privacy Act, successfully opposing dispositive motions and defeating improperly raised affirmative defenses.

Mr. Barney is recognized by the New York Legal Aid Society for his outstanding pro bono work representing indigent individuals in matters concerning prisoners' rights, immigration, and special education.

Mr. Barney has published a number of articles concerning a variety of legal issues. These include authoring or co-authoring: *The FBI vs. Apple: What Does the Law Actually Say?*, Inc. Magazine (February 2016); *Can Lawyers Be Compelled to Produce Data They Compile? An Emerging Front in the Trenches of e-Discovery Battles*, Bloomberg BNA (May 2015); *Legal Landscape for Cybersecurity Risk is Changing as Federal Government and SEC Take Action*, Inside Counsel Magazine (May 2015); *Tellabs v. Makor, One Year Later*, Securities Law 360 (July 2008); *Not as Bad as We Thought: The Legacy of Geier v. American Honda Motor Co. in Product Liability Actions*, 70 Brooklyn L. Rev. 949 (Spring 2005). Mr. Barney serves as an adjunct professor at Brooklyn College in New York, teaching Education Law in its graduate studies program, and separately has presented continuing legal education instruction regarding the Foreign Corrupt Practices Act.