IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

P.I.T. RETRIEVALS, LLC,

Plaintiff,

vs.

HEALTHPORT TECHNOLOGIES, LLC,

Defendant.

CIVIL DIVISION

CASE NO. GD-13-023729

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

Filed on Behalf of: Plaintiff

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JURY TRIAL DEMANDED

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I. INTRODUCTION

The Class Settlement Agreement and Release ("Settlement Agreement") should be summarily approved. It easily satisfies each of the factors that a court must consider in making the final approval determination as set forth in Dauphin Deposit Bank and Tr. Co. v. Hess, 727 A.2d 1076, 1079-80 (Pa. 1999). To recap, the Named Plaintiff, P.I.T. Retrievals, LLC ("P.I.T."), brought the class claims against HealthPort Technologies, LLC ("HealthPort") on behalf of itself and the following class of similarly situated individuals:

> All patients, patient designees, and patient representatives that requested medical records from a Pennsylvania healthcare provider or facility in connection with patients' applications for life and/or health insurance, referred to by HealthPort as "underwriting" requests, and who paid to HealthPort an amount in excess of the maximum basic, search and retrieval, and/or reproduction fees as set forth in 42 Pa.C.S. § 6152(a)(2)(i) of the Pennsylvania Medical Records Act and who were not charged in accordance with an agreed-upon rate, during the period of December 17, 2009 through July 23, 2026. Excluded from the class are (a) any present or former counsel for Defendant in this Litigation; (b) the Court, the Court's immediate family, and the Court staff; and (c) Class Counsel.

("Class Members"). The Settlement Agreement provides for claims-made payments to defined Class Members based upon damage amounts that such persons could potentially receive were the action to proceed to a trial on the merits. Accordingly, the settlement avoids the risks of

establishing liability and damages, yet still provides a payment that could be recovered at trial. The settlement is reasonable, given that it provides a recovery that could be in the range of the best possible recovery in light of prevailing law, yet it avoids the risks of class denial, the risk of outright dismissal of the class claims, and the risk that a jury could find that the claims are not actionable. In addition, the settlement avoids years of potentially costly and time-consuming litigation. Moreover, to date no Class Member has lodged an objection.

Importantly, the settlement benefits to the Settlement Class Members will not be diminished by and are exclusive of the costs of class action notice, settlement administration, and Plaintiffs' counsel's attorneys' fees and costs, all of which will be paid separately by HealthPort in accordance with the provisions of the Settlement Agreement. Thus, the costs of class notice, administration and attorneys' fees/costs are properly considered additional settlement benefits in addition to the amounts described above. The Court should grant final approval.

II. STANDARDS FOR FINAL APPROVAL

A trial court's approval of a class action settlement involves a two-step process. Brophy v. Phila. Gas Works, 921 A.2d 80, 88 (Pa. Commw. 2007). Initially, the court must make a preliminary determination of the settlement's fairness. Id. Once this determination is made, then notice is directed to the class, after which the court then must hold a hearing and consider whether to grant final approval to the proposed settlement. Id.; see 4 H. NEWBERG & A. CONTE, NEWBERG ON CLASS ACTIONS § 11.25 (4th ed. 2002); see also MANUAL FOR COMPLEX LITIGATION (FOURTH), § 21.632 (2004).

The first step of this approval process has been completed – with the Court making a preliminary determination of the settlement's fairness, notice having been sent to the Settlement Class, and a final hearing having been scheduled. The matter is now ripe for final approval

determination. The legal standard for determining whether to grant final approval is derived from Pennsylvania Rule of Civil Procedure 1714(a). This rule provides that "No class action shall be compromised, settled or discontinued without the approval of the court after hearing." The Explanatory Comment to Rule 1714 states that the rule is intended to incorporate the provisions of Federal Rule of Civil Procedure 23(e).

To this end, the Pennsylvania Supreme Court has approved application of certain factors to consider in approving or disapproving a class action settlement. See Dauphin Deposit Bank and Tr. Co. v. Hess, 727 A.2d 1076, 1079-1080 (Pa. 1999), identifying the following factors:

1. the risks of establishing liability and damages;
2. the range of reasonableness of the settlement in light of the best possible recovery;
3. the range of reasonableness of the settlement in light of all the attendant risks of litigation;
4. the complexity, expense and likely duration of the litigation;
5. the state of the proceedings and the amount of discovery completed;
6. the recommendations of competent counsel; and
7. the reaction of the class to the settlement.

Id. (hereinafter the "Dauphin factors"). The Supreme Court in Dauphin, *supra* stated that the Superior Court in Buchanan v. Century Federal Savings and Loan Ass'n, 393 A.2d 704, 709 (Pa. Super. 1978) had previously correctly identified this legal standard. Buchanan adopted these factors from the Third Circuit decision in Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975), which construed the standard under Federal Rule of Civil Procedure 23(e). With respect to applying these factors, the Superior Court in Buchanan further observed that:

> In effect the court should conclude that the settlement secured an adequate advantage for the class in return for the surrender of litigation rights. As with valuation problems in general, there will usually be a difference of opinion as to the appropriate value of a settlement. For this reason, judges should analyze a settlement in terms of a "range of reasonableness" and should generally refuse to substitute their business judgment for that of the proponents. 3 H. Newberg, *Newberg on Class Actions*, § 5610b (1977).

Buchanan, *supra* (footnote omitted); see also In re Bridgeport Fire Litig., 8 A.3d 1270, 1285 (Pa. Super. Ct. 2010).

In addition, the final approval determination may include analysis as to whether the proposed Settlement Class meets the legal requirements for determining class certification as set forth in Pa.R.Civ.P. 1702, 1708, and 1709. Federal Rule 23(e), from which the Dauphin factors are derived, is construed as requiring a determination as to whether a settlement class may be certified for settlement purposes. See Amchem Products Inc. v. Windsor, 521 U.S. 591, 620 (1997) (trial court may disregard management issues in certifying a settlement class, but the proposed class must still satisfy the other requirements of Rule 23). While a settlement class under Federal Rule 23 must satisfy each of the requirements of Rule 23(a) and 23(b)(3), which mirror those found in Pa.R.Civ.P. 1702 and 1708, "the fact of settlement is relevant to a determination as to whether the proposed Class meets the requirement imposed by the Rule." Hall v. Midland Grp., 1999 U.S. Dist. LEXIS 17832 (E.D. Pa. 1999) (citing Amchem, *supra* at 620; In re Prudential Ins. Co. of America Sales Litig., 148 F.3d 283, 307-08 (3d Cir. 1998)).

III. THE SETTLEMENT IS APPROPRIATE FOR FINAL APPROVAL

Set forth below is an analysis of the class claims, merits and settlement proceeds, the substantive terms of the settlement and the results of class action notice. This analysis demonstrates that the proposed settlement meets the final approval standard in providing for a fair and reasonable resolution.

A. The Course of Proceedings and Procedural History

Between 2009 and 2011, a series of seven separate class action lawsuits were filed in this Court against various medical records reproduction companies, on the basis that the Pennsylvania Medical Records Act (the "Act") restricted such companies from charging in excess of their actual

costs for the search, retrieval, reproduction, and transmittal of medical records. Those seven class actions were filed at Case Nos. GD-09-012923, GD-09-12911, GD-09-012919, GD-09-012922, GD-09-014785, GD-10-004369, and GD-11-011194. Those seven class actions were all coordinated together for concurrent adjudication, though the cases were never consolidated. One of those coordinated class actions, Case No. GD-09-012923, was filed against HealthPort. Issues attendant to those seven cases were appealed on an interlocutory basis and ultimately returned to the trial court, whereupon they were litigated for a period of many years. HealthPort has changed its name and corporate form since the inception of those cases, but the case against HealthPort remained pending until last month.[1]

In the meantime while those seven coordinated class actions against HealthPort and other Defendants were traversing their way through this Court, in December 2013 the Named Plaintiff in this case, P.I.T., filed this separate class action alleging that HealthPort had violated the Act by charging amounts in excess of the statutory ceiling established by the Act.[2] That alleged a different, albeit similar, theory of liability to the cause of action articulated in the prior coordinated class actions. HealthPort filed preliminary objections in February 2014.[3] Those preliminary objections were overruled on June 26, 2014.[4] On December 15, 2014, HealthPort filed an Answer and New Matter.[5] The Named Plaintiff filed preliminary objections to the New Matter.[6] Those preliminary objections were overruled in April 2015.[7] The pleadings closed on April 23, 2015,[8]

[1] Case No. GD-09-012923, generally.
[2] See December 17, 2013 Complaint in Action No. GD-13-023729.
[3] See February 14, 2014 Preliminary Objections in Action No. GD-13-023729.
[4] See June 26, 2014 Order in Action No. GD-13-023729.
[5] See December 15, 2014 Answer and New Matter in Action No. GD-13-023729.
[6] See February 4, 2015 Preliminary Objections in Action No. GD-13-023729.
[7] See April 8, 2015 Order in Action No. GD-13-023729.
[8] See April 23, 2015 Reply to New Matter in Action No. GD-13-023729.

and the Plaintiff immediately served HealthPort with a First Set of Interrogatories and Request for Production.

HealthPort responded to that First Set of Discovery on September 23, 2015. HealthPort's responses contained objections, largely on the basis that there were pending issues to be decided by the Court in the coordinated class actions that had been first-filed before the instant case, and that those issues should run their course in the coordinated class actions first before discovery proceeded apace in the instant lawsuit. Subsequent correspondence amongst the parties' counsel established an agreement that the first-filed coordinated class actions including the prior case against HealthPort would proceed and flesh themselves out first, and then at that point in time the parties would see whether and to what extent there was anything left to be adjudicated *vis-à-vis* the Plaintiff's instant case.[9] Because the prior coordinated class actions remained pending for many years, the Plaintiff's instant action remained idle.

In or about the Summer of 2025, the Court issued a September 8, 2025 Order mandating that the parties to this case appear for an October 14, 2025 Status Conference pursuant to Pa.R.Civ.P. 230.2(h).[10] Following the Conference, the Court issued an Order placing the case on the November 2027 Trial List, and notating this case a "Class Action".[11]

Following receipt of that Order placing this case on a trial list, the Plaintiff's undersigned counsel prepared and served a Second Set of Interrogatories and Request for Production on December 18, 2025.[12] HealthPort filed a motion seeking a judgment of *non pros* against the

[9] See Plaintiff's Brief in Opposition to Defendant's Motion for *Non Pros* Judgment (hereinafter "Brief in Opposition"), pp. 5-6.
[10] See Brief in Opposition, Exhibit "J" thereto.
[11] See Brief in Opposition, Exhibit "K" thereto.
[12] See Brief in Opposition, Exhibits "L" and "M" thereto.

Plaintiff.[13] The Court denied that motion.[14] Thereafter, on March 25, 2026, HealthPort responded to both of the Plaintiff's sets of discovery requests with substantive responses, including the production of several thousand pages worth of documents. Following that document production, the parties commenced settlement dialogue.

B. The Settlement Negotiations

There are numerous complicated factual and legal issues remaining in this Litigation including, but not limited to, the Defendant's various defenses and the applicability of the "voluntary payment doctrine". In light of these (and other) issues and the cost, risk, and uncertainty of further litigation, the parties entered into settlement negotiations on or about April 15, 2026, seeking to fully, finally and forever resolve this dispute. After nearly three months of back-and-forth negotiations, the parties agreed upon the principal terms of a class action settlement and executed a Settlement Agreement on July 23, 2026.

C. The Material Provisions of the Settlement Agreement

i. Payment to Each Eligible Claimant

HealthPort has agreed to pay properly submitted claims up to an aggregate limit of $197,720.39 (the "Claims Amount"), including the Class Representative service award referenced below. For each valid claim submitted by a Claimant, the Claimant shall be entitled to receive an amount equal to 67.5% of the Claimant's alleged overpayment. All valid claims are subject to the Claims Amount. Valid claims made and the service award will be paid up to a maximum cap of $197,720.39. If valid claims made and the service award do not reach the $197,720.39 cap, then HealthPort will pay only the amount of valid claims plus the service award. If the total amount of

[13] See Defendant's Motion for Judgment of *Non Pros* and Protective Order, generally.
[14] See February 23, 2026 Order Denying Defendant's Motion.

valid claims exceeds the Claims Amount, then valid claims shall be paid and will be reduced on a pro rata basis. Under no circumstance will HealthPort pay for valid claims made and the service award in excess of $197,720.39. Each Claimant must affirmatively state in writing through a notice and claims process administered by the Settlement Administrator that they have a valid claim.

ii. *Costs of Notice*

The Parties have estimated that Notice and Administration Expenses will be less than fifteen thousand nine hundred dollars ($15,900), in addition to any expense incurred in creating the initial Settlement Class list. See Settlement Agreement § 8.4. The Parties have agreed that the Defendant shall pay this amount of Notice and Administration Expenses without objection. The cost of notice and settlement administration are properly considered part of the value of a settlement. See, *e.g.*, Staton v. Boeing, 327 F.3d 938, 974-975 (9th Cir. 2003).

iii. *Attorneys' Fees and Costs*

Defendant has agreed to separately pay Plaintiff's Counsel their reasonable attorneys' fees, costs and expenses in the amount of no more than $65,906.80, subject to court approval. See Settlement Agreement § 8.1.1. This payment will not reduce or affect the monetary claim of each Settlement Class Member. The Settlement is not contingent on Court approval of these payments. See Settlement Agreement § 8.1.3.

iv. *Class Notice*

The Notice to be sent to each individual Settlement Class member, a true and correct copy of which is attached to the Settlement Agreement as Exhibit "B", is sufficient to inform Settlement Class Members regarding: (a) the formation of the Settlement Class; (b) the Class definition; (c) the terms of the proposed Settlement; (d) the proposed request for an award of attorneys' fees and

expenses to counsel; (e) the proposed individual service award to the Representative Plaintiff; (f) Settlement Class Members' right to opt out of the Settlement Class and thereby not participate in the proposed Settlement; (g) Settlement Class Members' right to object to the proposed Settlement; (h) the time and date of the Final Approval Hearing; and, (i) Settlement Class Members' right to appear at the Final Approval Hearing in favor of or in opposition to the proposed Settlement. The Notice is clear in content and provides Settlement Class Members with sufficient information to make an intelligent decision as to whether to remain in the Settlement Class, opt out of the Settlement Class, or object to any aspect of the proposed Settlement.

v. *Class Representative Service Award*

The Class Representative, P.I.T. Retrievals, LLC, will apply for an incentive award of $2,500.00, as the Class Representative, to compensate it appropriately for its efforts in prosecuting this case including retaining counsel, assisting in discovery, and keeping abreast of the Litigation. The award is subject to court approval. Defendant agrees that the Named Plaintiff is entitled to the incentive award pursuant to § 8.3 of the Settlement Agreement.

vi. *Defendant's Denial of Liability; Certification for Settlement*

HealthPort has asserted and continues to assert many defenses in this Litigation and has expressly denied and continues to deny any fault, wrongdoing or liability whatsoever arising out of the conduct alleged in the Litigation. HealthPort expressly denies any fault, wrongdoing or liability whatsoever, as well as the validity of each of the claims and prayers for relief asserted in the Litigation. See Settlement Agreement § 2.1. Further, pursuant to § 2.2 of the Settlement Agreement, Defendant stipulates that a Settlement Class should be certified for settlement purposes only. Other than for purposes of the Settlement, under § 2.2 of the Settlement Agreement, Defendant denies that a litigation class could be properly certified.

D. The Results of Class Notice

American Legal Claims Services, LLC ("ALCS") was appointed to provide administrative and notice services for the settlement. See Order at ¶ 7 & Declaration of American Legal Claims Services, LLC Regarding Due Diligence in Noticing ("ALCS Decl."), which is being filed with the Consent Motion. ALCS printed and mailed 1,925 Notices to the Settlement Class Members on September 25, 2026. ALCS Decl. at ¶ 4. ALCS established a website, www.healthportpitsettlementpa.com, that contained a summary of the case and other important pleadings. ALCS Decl. at ¶ 7. As of November 16, 2026, the deadline for requests for exclusions, there have been no requests submitted to be excluded. ALCS Decl. at ¶ 10. As of November 2, 2026, the deadline for objections, no objections have been submitted. ALCS Decl. at ¶ 11.

IV. THE SETTLEMENT MEETS THE FINAL APPROVAL STANDARDS

As can be gleaned from the history of this litigation set forth above, the terms of the Settlement, and the notice proceedings, the final approval factors have been met.

A. The Risks of Establishing Liability and Damages

The first Dauphin factor – the risk of establishing liability and damages – seeks to balance the likelihood of success and the potential damage award if the case were to proceed to trial against the benefits of an immediate settlement. See Buchanan, *supra* at 710-15; In re Prudential, *supra* at 319. Through this lens, the court can review "what the potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them." In re Cendant Corp. Litig., 264 F.3d 201, 237 (3d Cir. 2001) (quoting In re Gen. Motors Co. Pick-Up Truck Fuel Tank Products Liab. Litig., 55 F.3d 768, 814 (3d Cir. 1995), *cert. denied* 516 U.S. 824 (1995)); Shaev v. Sidhu, 2009 Phila. Ct. Com. Pl. LEXIS 63 (2009), *aff'd* 11 A.3d 1016 (Pa. Super. Ct. 2010), *appeal denied* 12 A.3d 372 (Pa. 2010).

This factor is satisfied because the Settlement will provide Settlement Class Members with claims-made payments (as described above) based upon damage amounts that potentially could be received if the action were to proceed to a trial on the merits. Accordingly, the settlement avoids the risks of establishing liability and damages, yet still provides a payment for damages in an amount that a jury might reasonably award. As set forth in detail above, this matter has undergone years of substantial litigation through this Court. The Class Members face risks that their claims might be dismissed outright in total. The Class Members also face a risk that they may not sufficiently establish that Defendant's conduct was actionable and, therefore, may not recover any actual damages. The Class Members further face risk that the Court would not grant certification of a litigation class. These considerations weigh in favor of settlement.

In light of these and other issues along with the cost, risk, and uncertainty of future litigation, the parties entered into the settlement negotiations seeking to fully, finally, and forever resolve this dispute. Their resolution adequately balances the risk and uncertainty of any potential recovery (through further litigation) with the outcome of the Settlement.

B. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery

Under the second Dauphin factor, in cases seeking primarily monetary relief, courts should compare "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing,…with the amount of the proposed settlement." In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 538 (3d Cir. 2004) (quoting In re Prudential, *supra* at 322); see also Milkman v. Am. Travellers Life Ins. Co., 61 Pa. D. & C.4th 502, 540 (2002) ("a court should focus on 'the economic valuation of the proposed settlement' and whether the 'settlement represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution….'") (quoting Safety Components Inc., 166 F.

Supp. 2d 72, 92 (N.J.D.C. 2001), in turn quoting In re Aetna Sec. Litig., 2001 WL 20928, at *11 (E.D. Pa. 2001)). In conducting this economic valuation, a court must "guard against demanding too large a settlement based on its view of the merits of the litigation." In re Gen. Motors, *supra* at 806; Milkman, *supra* ("courts should guard against demanding too large a settlement based on the court's view of the merits of the litigation.") This factor supports final approval.

The best possible recovery that Plaintiffs might achieve would be to recover an amount for alleged implied breach of contract damages. The Settlement, therefore, provides relief well within the range of relief that could be obtained at trial. In light of the questions of law and fact present in this litigation, the value of the proposed settlement outweighs the mere possibility of future relief. The expense of a trial on the implied breach of contract claim and mini-trials on individual class member damages would be substantial. The continued litigation of this matter would require a large expenditure of the court's and the parties' resources.

Moreover, in light of the highly contested nature of liability, it is likely that any judgment entered would be the subject of post-trial motions and appeals, further prolonging the litigation and reducing the value of any recovery. This matter has already undergone nearly thirteen years of litigation. Thus, a settlement is advantageous to all concerned. An appeal of a damage award could seriously and adversely affect the scope of an ultimate recovery, if not the total recovery itself.

The Settlement represents a substantial benefit for the Class members. Here, the Settlement Agreement provides for claims-made payments based upon damage amounts that such persons could potentially receive were the action to proceed to a trial on the merits. That they can achieve this recovery without the costs and risk of continued litigation clearly establishes the fairness and adequacy of the Settlement as a final matter. When the additional benefits of the Settlement, which

are separate from and exclusive of these payments, such as costs of notice, settlement administration, and attorneys' fees and costs are further considered, the Settlement obviously meets the approval standard.

C. The Range of Reasonableness of the Settlement in Light of All the Attendant Risks of Litigation

The third Dauphin factor, similar to the second, is intended to compare "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing,…with the amount of the proposed settlement." In re Warfarin, *supra* at 541-42; see also Milkman, *supra* ("In deciding whether the settlement falls within a 'range of reasonableness,' we need to examine whether the proposed settlement secures an 'adequate' (and not necessarily the best possible) advantage for the class in exchange for the surrender of the members' litigation rights.'") In conducting this economic valuation, a court must likewise "guard against demanding too large a settlement based on its view of the merits of the litigation." In re Gen. Motors, *supra*; Milkman, *supra* ("a court need not inquire into whether the 'best possible' recovery has been achieved. Rather, in view of the stage of the proceedings, complexity, expense and likely duration of further litigation, as well as the risks of litigation, the court is to decide whether the settlement is reasonable….").

Here, the Class Members face potential risk that the entirety of their claims may be dismissed, class certification may be denied, a jury may find for HealthPort, or that a jury may not award any damages. Despite these risks, the Settlement confers a recovery based upon an assumption that these risks may be overcome. This factor supports approval of the Settlement.

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

The fourth Dauphin factor "captures the probable costs, in both time and money, of continued litigation." In re Warfarin, *supra* at 535-36 (quoting In re Cendant, *supra* at 233);

Milkman, *supra* at 542-43. "By measuring the costs of continuing on the adversarial path, a court can gauge the benefit of settling the claim amicably." In re Gen. Motors, *supra* at 812; Treasurer of Conn. v. Ballard, Spahr, Andrews & Ingersoll LLP, 866 A.2d 479 (Pa. Commw. Ct. 2005) (reversing trial court's rejection of a proposed settlement through mediation in part because mediation provides "tangible benefits…in terms of…reducing the high costs of litigation, particularly in complex cases….").

Here, absent the Settlement, continued litigation would take years and be quite costly. Future proceedings would include summary judgment motions and argument, class certification proceedings, a trial on the merits of the implied breach of contract claims, mini-trials on damages, possibly objections to class certification and, given the novel legal issues presented, an appeal. Both parties would be required to extensively brief and argue the issues.

Whether or not the case proceeded on a class basis, further discovery must be pursued, dispositive motions must be prepared and filed, and trial preparation on both sides would be necessary. Given Defendant's vigorous advocacy of the contention that it did not violate the law, it would be unrealistic not to expect appeals from any result reached on the question of liability or of damages. Avoidance of this unnecessary expenditure of time and resources clearly benefits all parties.

The resolution saves significant judicial resources by resolving without going through with a trial that involves court personnel, jurors, the parties, witnesses, and their attorneys. Also, the expense and uncertainty of an appeal is avoided by this Settlement.

E. The Stage of Proceedings and the Amount of Discovery Completed

This Dauphin factor permits the Court to take into account the degree of case development that has occurred prior to reaching a compromise. In re Cendant, *supra* at 235 (citing In re Gen.

Motors, *supra* at 813); see also Shaev, *supra* at 29-30. Its purpose is to assure that the parties had an "adequate appreciation of the merits of the case before negotiating." In re Prudential, *supra* at 319 (quoting In re Gen. Motors, *supra* at 813); see also Shaev, *supra*. The pertinent assessment concerns the degree to which counsel have been able to gain access to sufficient information to permit an informed, competent, supported evaluation of the legal and factual issues involved.

The parties have a clear view of the potential damages that could be recovered at trial. No amount of additional discovery could have altered the damages available to Settlement Class Members. The parties know of the risks of obtaining class certification and the other substantial defenses in this case. The Settlement was reached at a point in the litigation where the parties had a clear understanding of the factual basis for the claims and defenses. With years of litigation completed, the parties have an appreciation for the class certification issues, the issues for dispositive motions, potential damages, and the risk of trial.

Indeed, in addition to the discovery exchanged during the course of this litigation, in settlement discussions the parties exchanged substantial information related to the nature of the claims and/or defenses of the Plaintiff, the Settlement Class, and the Defendant. This included, among other things, information regarding: (1) the scope of the potential Settlement Class; (2) Defendant's "actual and reasonable" expenses incurred to service medical records' requests; (3) Defendant's process and procedure to service medical records' requests; (4) Defendant's profitability during the Class Period; and (5) the parties' factual and legal positions in this litigation. All the information necessary to support this Settlement is known and possessed by the parties and their counsel. This factor clearly supports final approval.

F. The Recommendations of Competent Counsel

Finally, counsel is experienced in consumer class action litigation, and endorses the

Settlement as fair and adequate under the circumstances. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. See, *e.g.*, Fischer v. Madway, 485 A.2d 809, 813 (Pa. Super. Ct. 1984) ("The opinion of experienced counsel is entitled to considerable weight."); In re MicroStrategy Inc. Sec. Litig., 148 F. Supp. 2d 654, 665 (E.D. Va. 2001); Stewart v. Rubin, 948 F. Supp. 1077, 1087 (D.D.C. 1996); Rolland v. Cellucci, 191 F.R.D. 3, 6 (D. Mass. 2000).

G. The Reaction of the Class to the Settlement

The lack of objections and opt outs to date demonstrates a general acceptance of the Settlement by Class Members. See, *e.g.*, Fischer, *supra* (finding "that only fourteen of a class of approximately 1000 members chose to object to the proposed settlement" to be "relevant" in affirming approval of settlement); Wallace v. Powell, 288 F.R.D. 347, 368 (M.D. Pa. 2012) (no objections in class of 3,910); Stoetzner v. U.S. Steel Corp., 897 F.2d 115, 118-19 (3d Cir. 1990) (approving settlement where "only" 29 objections were made in a 281-member class); Alexander v. Washington Mut., Inc., 2012 U.S. Dist. LEXIS 171611, at *6 (E.D. Pa. 2012) (reaction of class favored approval of settlement where only five class members opted out and no formal objections were filed to the settlement); Ripley v. Sunoco, Inc., 287 F.R.D. 300, 312 (E.D. Pa. 2012) (reaction of the class favored approval of settlement where "less than 1 percent of the eligible class members opted out of the settlement").

V. THE SETTLEMENT SATISFIES THE REQUIREMENTS FOR CLASS CERTIFICATION

The legal requirements for determining class certification are set forth in Pa.R.Civ.P. 1702,

1708, and 1709. Rule 1702 sets forth the five prerequisites that must be established.[15] One of these prerequisites mandates that a class action provide for a "fair and efficient method of adjudication of the controversy." Pa.R.Civ.P. 1702 (5). Rule 1708 defines the criteria for determining this particular requirement. Another of the Rule 1702 prerequisites mandates that the representatives will fairly and adequately assert and protect the interests of the class. Pa.R.Civ.P. 1702 (4). Rule 1709 defines the criteria for determining this requirement. Pa.R.Civ.P. 1709. Therefore, the determination of class certification requires application of Pa.R.Civ.P. 1702, 1708 and 1709. See Samuel-Bassett v. Kia Motors Am., Inc., 34 A.3d 1, 16 (Pa. 2011).

A. The Requirements of Pa.R.Civ.P. 1702 Are Fully Satisfied

1) Numerosity is Satisfied Because Joinder is Impracticable

The numerosity inquiry is two-fold. First, a proposed class must be sufficiently large such that joinder of all class members would be impracticable. Second, the class must be objectively defined so that members of the class are "identifiable." The proposed class defined above, which consists of approximately 1,925 persons/entities, is sufficiently large to justify class treatment and the members of the class are readily identifiable from HealthPort's records.

A class is sufficiently numerous when "the number of potential individual plaintiffs would

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[15] Rule 1702 provides that:

> One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:
>
> (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;
> (4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709; and
> (5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

pose a grave imposition on the resources of the court and an unnecessary drain on the energies and resources of the litigants should plaintiffs sue individually." Baldassari v. Suburban Cable TV Co., Inc., 808 A.2d 184, 190 (Pa. Super. Ct. 2002) (citing Temple University v. Pa. Dept. of Public Welfare, 374 A.2d 991, 996 (Pa. Commw. Ct. 1977)) (123 members sufficient); ABC Sewer Cleaning Co. v. Bell of Pa., 438 A.2d 616 (Pa. Super. Ct. 1981) (250 members sufficient); Ablin, Inc. v. Bell Tel. Co. of Pa., 435 A.2d 208 (Pa. Super. Ct. 1981) (204 plaintiffs sufficiently numerous). A class proponent "need not plead or prove the number of class members so long as she is able to define the class with some precision and affords the court with sufficient indicia that more members exist than it would be practicable to join." Janicik v. Prudential Ins. Co., 451 A.2d 451, 456 (Pa. Super. Ct. 1982).

To be identifiable, the class definition must be clear enough for the court to reasonably ascertain who the potential class members are. "When a class is narrowly and precisely drawn and there are still so many potential class members that joinder is impracticable or impossible, the class is sufficiently delineated to meet the numerosity requirement." Weismer v. Beech-Nut Nutrition Corp., 615 A.2d 428, 430 (Pa. Super. Ct. 1992).

The defined class of approximately 1,925 persons/entities is precisely and objectively defined. Indeed, all class members have already been identified. Joinder of this many persons would be impracticable. Numerosity is satisfied.

2) Commonality is Satisfied

Common questions exist within the meaning of Pa.R.Civ.P. 1702 (2) "if the class members' legal grievances arise out of the 'same practice or course of conduct' on the part of the class opponent." Janicik, *supra* at 457. Thus, it is necessary to establish that the facts surrounding each plaintiff's claim "must be substantially the same so that proof as to one claimant would be proof

as to all." Allegheny Cnty. Hous. Auth. v. Berry, 487 A.2d 995, 997 (Pa. Super. Ct. 1985).

In certifying a class of persons who underwent blood testing for HIV and HCV in Haluska v. Forbes Reg'l Hosp., this Court recognized:

> Each of the 235 patients has the same claim. Because of its negligence, the hospital could not guarantee that the patient will not experience future medical problems as a result of the procedure. Consequently, it is necessary for the patient to undergo testing recommended by the hospital and possibly to refrain from certain activities until the results of a first and repeat test are known.
>
> …
>
> …[I]n each case the patient sustains the same injury from the same negligent act…..

Haluska v. Forbes Regional Hospital, GD-05-009134 (Allegheny Ct. Common Pleas July 8, 2009) (Memorandum and Order of Court granting class certification at p. 3).

Here, likewise, the Representative and Class Plaintiffs have been subject to identical conduct. Their injuries are easily traceable to this same conduct. Accordingly, commonality is satisfied.

3) Typicality is Satisfied

The typicality requirement's "purpose is to determine whether the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members." Janicik, *supra* at 457. "Typicality exists if the class representative's claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class." Samuel-Bassett, *supra* at 31. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented. Id. But, typicality does not require that the claims of the representative and the class be identical, and the requirement "may be met despite the existence of factual

distinctions between the claims of the named plaintiff and the claims of the proposed class." Id.

The Named Plaintiff's claim is clearly "typical." The Representative Plaintiff requested medical records from a Pennsylvania medical facility (or affiliated entity), or HealthPort directly, throughout the year of 2013, with the request processed and fulfilled by HealthPort. To receive those records, the Named Plaintiff alleges it was charged and paid search and retrieval and/or "per page" reproduction fees in excess of the statutory ceiling for such fees set forth in 42 Pa.C.S. § 6152(a)(2)(i). Here, the Representative Plaintiff and the Settlement Class Members were subject to the same conduct and suffered the same alleged injury. In addition, the legal theory of the Representative Plaintiff and the Settlement Class members do not conflict in any way. Typicality is satisfied.

4) Adequate Representation is Provided

Rule 1702 (4) requires that "the representative parties will fairly and adequately assert and protect the interest of the class under the criteria set forth in Rule 1709." Rule 1709 sets forth the following three factors for determining the adequacy of representation:

1) whether the attorney for the representative parties will adequately represent the interests of the class,

2) whether the representative parties have a conflict of interest in the maintenance of the class action, and

3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa.R.Civ.P. 1709.

This Court has presumed that counsel will adequately protect the interests of the class in the absence of evidence to the contrary. Dunn v. Allegheny County Property Assessment, 794 A.2d 416, 425 (Pa. Commw. Ct. 2002). Plaintiff has retained competent class counsel who is experienced in class action litigation. Class counsel has represented many classes in both state

and federal courts in Pennsylvania and elsewhere. See Declaration of Edward I. Levicoff, Esquire.

Courts have also generally presumed that there is no conflict of interest on the part of the representative plaintiff unless the contrary is established. See Dunn, *supra* at 425-26.

Finally, class counsel has undertaken to represent the class and advance all costs of the class contingent upon the outcome of the litigation. Thus, Plaintiff has undertaken adequate steps to provide for the financing of this litigation and to assure that the interests of the class will not be harmed. Lash v. Equibank, 143 P.L.J. 60, 64 (1994).

5) A Class Action Would Provide a Fair and Efficient Method of Adjudication

Rule 1708 (a) sets forth the applicable factors to be considered in determining whether a class action provides a fair and efficient method of adjudication. Application of these factors demonstrates that a class action is the only feasible method of adjudication.[16]

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[16] Rule 1708 of the Pennsylvania Rules of Civil Procedure requires:

> In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth [below]:
> a) Where monetary recovery alone is sought, the court shall consider:
> (1) whether common questions of law or fact predominate over any question affecting only individual members;
> (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
> (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
> (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
> (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
> (4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
> (5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
> (6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
> (7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

First, as demonstrated above, common questions of law or fact predominate because virtually all of the elements of Plaintiff's claim are subject to common proof. Second, the employment of the class procedure here will obviate duplicative proceedings and prevent inconsistent results. Third, there are no other class cases pending against HealthPort with respect to this cause of action, which suggests that individual litigation may not be feasible because of the small amount of available damages. Fourth, in view of the complexities of the issues and the expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions.

Where, as here, the claimed injuries of an isolated group of individuals are traceable to a common act by the defendant, the asserted claims are appropriate for class action treatment. This Honorable Court's decision in Haluska, *supra*, is on point in describing the reasons this action satisfies the fair and efficient requirements:

> …the individual claims of each plaintiff involve small recoveries that are not likely to be litigated because of the expense involved in retaining separate counsel and pay[ing] court costs. The case law cited by plaintiffs recognizes that a purpose of a class action is to aggregate relatively small potential recoveries into a case worth an attorney's labor.

Haluska, *supra* at 2.

Fifth, this particular forum is appropriate because Plaintiff is located here and many of the class members are located here. In addition, other similar matters have been coordinated before this Court. Sixth, while the amount of Plaintiff's and the Settlement Class Members' damages are relatively small, they are not *de minimis*. But for a class action, it is likely that other members could not pursue their right to recover these damages.

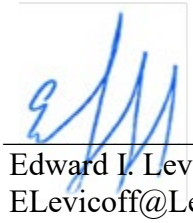
VI. CONCLUSION

Accordingly, the Plaintiff, with Defendant's consent, moves the Court for an Order finally

approving the Settlement.

Respectfully submitted,

Dated: November 16, 2026

By: 

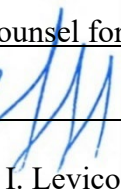
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the *Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Counsel for Plaintiff

Signature: 

Name: Edward I. Levicoff, Esquire

Attorney No.: 200108

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

P.I.T. RETRIEVALS, LLC, CIVIL DIVISION

Plaintiff, No. GD-13-023729

vs.

HEALTHPORT TECHNOLOGIES, LLC,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within ***Memorandum Of Law In Support Of Consent Motion For Final Approval Of Class Action Settlement*** has been served upon the following counsel via email only:

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