

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

JACQUELINE SKOLNICK, ASHLEY
DIXON, CANDICE FACON, BENJAMIN
KASHVILI, YOUN LEE, JILLIAN
MALONEY, individually and on behalf of
all others similarly situated,

Index No. 706879/2024

Plaintiffs,

v.

M&D CAPITAL PREMIER BILLING, LLC
and ISLAND AMBULATORY SURGERY
CENTER LLC,

Defendants.

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

We are counsel for Plaintiffs in the above-captioned case. This declaration supports Plaintiffs' Motion for Preliminary Approval of Class Action Settlement with Defendants M&D Capital Premier Billing LLC ("M&D") and Island Ambulatory Surgery Center ("IASC") (together with M&D, "Defendants"), and the attachments thereto, including the Claim Form, the Short Notice, the Long Form Notice, the Proposed Preliminary Approval Order, and the Proposed Final Approval Order, attached to the Settlement Agreement. This declaration explains the bases for the settlement, including the significant relief it affords the Settlement Class. We have personal knowledge of the facts in this declaration and could testify to them if called on to do so. We declare as follows:

1. M&D is a sophisticated healthcare advisory firm that provides services such as physician, facility, and non-par provider hospital billing, professional coding, claims recovery, and

review of billing practice and credentialing. Amended Complaint (“Am. Compl.”) ¶ 1; NYSCEF Doc. No. 11. IASC is a surgery center that is an M&D client. *Id.* ¶ 34.

2. Plaintiffs allege they provided M&D, or one of M&D’s clients, including IASC, with their sensitive and confidential Private Information so they could receive medical services. *Id.* ¶¶ 34-36. In the course of their business relationship, IASC and M&D’s other clients provided their patients’ Private Information to M&D.

3. On or about July 8, 2023, M&D detected unauthorized access to their computer network systems (the “Data Incident”). Based on a subsequent forensic investigation, M&D determined that a cybercriminal organization accessed certain personal information within M&D’s computer systems and network. Plaintiffs subsequently received notice that the Private Information that they provided to M&D or M&D’s clients may have been accessed during the Data Incident. *Id.* ¶¶ 2, 42, 54.

4. Plaintiffs allege that Defendants never implemented the safeguards and systems needed to fulfill those provide data security. *Id.* ¶ 24. Plaintiffs are current and former consumers and patients of M&D or M&D’s clients as well as data breach victims. *Id.* ¶¶ 19-24.

5. On March 28, 2024, Plaintiff Ashley Dixon sued Defendants in the United States District Court for the Eastern District of New York alleging negligence, negligence per se, breach of implied contract, third party beneficiary, unjust enrichment, and invasion of privacy. *See Dixon v. M&D Capital Premier Billing LLC and Island Ambulatory Surgery Cetner LLC*, No. 1:24cv2317.

6. On March 29, 2024, Plaintiff Skolnick filed her Complaint in the Supreme Court of the State of New York, County of Queens, alleging negligence, negligence per se, breach of implied contract, breach of confidence, and a violation of the New York consumer law for

deceptive acts and practices act. *See Skolnick v. M&D Capital Premier Billing LLC*, No. 706879/2024.

7. In the following days, Plaintiffs Lee, Kashvili, Facon, Barnes, and Maloney filed their respective suits in the United States District Court for the Eastern District of New York with similar claims. *See Lee v. M&D Capital Premier Billing LLC and BL Pain Management PLLC*, No. 1:24cv2475; *Barnes v. M&D Capital Premier Billing LLC*, No. 1:24cv2543; *Maloney v. M&D Capital Premier Billing LLC*, No. 1:24cv2945; *Facon, et al v. M&D Capital Premier Billing LLC*, No. 1:24cv2374.

8. Prior to filing their case, Plaintiffs' counsel conducted extensive pre-suit discovery to ascertain all publicly available details about the cause, scope, and result of the data breach, as well as about the damages suffered by Plaintiffs and the Class.

9. On May 17, 2024, Plaintiffs Dixon, Lee, Barnes, Kashvili, Facon, and Maloney voluntarily dismissed their respective cases. On July 23, 2024, these aforementioned Plaintiffs were added into Plaintiff Skolnick's amended complaint where Plaintiffs alleged negligence, negligence *per se*, breach of implied contract, unjust enrichment, breach of fiduciary duty, and a violation of the New York consumer law for deceptive acts and practices act against Defendants M&D Capital and IASC. *See Scolnick et. Al. v. M&D Capital Premier Billing LLC et. al.*, No. 706879/2024 (NYSCEF Dkt. No. 11).

10. Shortly after Plaintiffs filed their amended complaint and recognizing the benefits of early resolution, the parties agreed to work cooperatively to schedule mediation and attempt to resolve their claim.

11. In preparation for mediation, Plaintiffs propounded informal discovery requests on Defendants to which Defendants responded by providing information related to, among other

things, the nature and cause of the Data Incident, the number and geographic location of victims impacted by the Data Incident, and the specific type of information breached.

12. In February 2025, the parties mediated with Judge Morton Denlow (Ret.) from JAMS, a mediator experienced in resolving data breach cases. Under his guidance, the parties negotiated at “arm’s length,” communicating their positions through him and evaluating the strengths and weaknesses underlying their claims and defenses. From the start, the parties agreed they would not negotiate the proposed class’s attorney fees or plaintiffs’ service awards until they agreed on the settlement agreement’s core terms, thus avoiding conflict between plaintiffs and the class.

13. Through the mediation, the parties reached agreement on the principal terms of a settlement and executed a term sheet. In the following weeks, the parties diligently negotiated and circulated drafts of the Settlement, along with accompanying notices, a Claim Form, and other exhibits, and agreed upon a Claims Administrator.

14. Settlement Class Counsel has successfully negotiated the Settlement of this matter to the benefit of Plaintiffs and Settlement Class Members

15. Class Counsel are highly qualified and have a great deal of experience litigating complex consumer class actions, including in the data privacy context. As can be seen from their respective resumes, attached hereto as *Exhibits 1-2*, Class Counsel has 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.

16. This experience proved beneficial to Plaintiffs and the Settlement Class during Settlement negotiations.

17. As demonstrated above, Class Counsel has devoted substantial time and resources

to vigorously prosecute this Action and will continue to do so. Specifically, we have evaluated the claims; prepared comprehensive pleadings; consulted with data security experts; propounded informal discovery requests on Defendants to which Defendants responded by providing information related to, among other things, the nature and cause of the Data Incident, the number and geographic location of victims impacted by the Data Incident, and the specific type of information breached; and participated in the mediation that ultimately resulted in this Settlement.

18. The Settlement Class Member Benefits set forth in the Agreement are more than reasonable when compared to other data breach settlements and considering the type of information at issue and the class size. Settlement Class Members may elect Cash Payment and/or Medical Monitoring.

19. Numerosity is satisfied because there are approximately 284,326 Settlement Class members.

20. Commonality is satisfied because the claims turn on whether Defendants' security environment was adequate to protect the Settlement Class' Private 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 Private Information impacted in the Data Incident.

21. Plaintiffs satisfy the typicality requirement for the same reason they satisfy commonality—their claims arise from the same event as the class's claims. They are also based on the same theories, including on Defendants' liability and the losses the breach imposed on the class. And even if Plaintiffs' facts or losses differ from class members' in some way, that does not defeat typicality because those issues do not predominate.

22. Plaintiffs are adequate representatives of the Settlement Class because there are no

conflicts between Plaintiffs, their counsel, and the class. Plaintiffs allege the data breach exposed their Private Information—just as it exposed the Private Information belonging to the class. Indeed, Plaintiffs’ claims coincide with the class’s claims, and they desire the same outcome: relief to compensate them for their losses. Settlement Class Counsel are also adequate. To pursue this action, counsel investigated, prepared, and reviewed pleadings, and evaluated the strengths and weaknesses impacting their case. Counsel’s resume shows they have litigated data breach cases for consumers across the country, establishing they possess the qualifications and experience needed to prosecute the action on the class’s behalf.

23. Class treatment is the best method of adjudication, as seen in the fact that every Settlement Class member shall receive relief without the need for numerous (and duplicative) individual cases. Each members claims would be for a relatively small dollar amount such that they would not be interested in filing separate actions and it is desirable to adjudicate all claims in one forum. Class Counsel is unaware of any other litigation than the Related Actions.

24. Class Counsel has not been paid for their efforts or reimbursed for litigation costs. Class Counsel shall apply to the Court for an award of attorneys’ fees of up to 35% of the Settlement Fund (or \$350,000), plus reimbursement of costs, which shall be paid from the Settlement Fund. Class Counsel will formally request attorneys’ fees and costs through an application that will be filed no less than 45 days before the original date set for the Final Approval Hearing with the Motion for Final Approval.

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

26. 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.

27. 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.

28. Class Counsel are confident 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 approximately 284,326 individuals.

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

30. 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.

31. Class Counsel believe the claims asserted are meritorious and that Plaintiffs would prevail if this matter proceeded to trial. However, Class Counsel are also pragmatic and understand the legal uncertainties associated with continued litigation, which would be lengthy and expensive. Accordingly, a class action is the superior method of adjudicating this case.

32. 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 a motion

to dismiss, 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 impede 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.

33. Although the Parties entered into a Settlement relatively early in litigation, the Parties had sufficient visibility into the strengths and weaknesses of their respective cases. Further, the Settlement negotiations were hard-fought, and the Parties expended significant time and energy on negotiating the terms of the Settlement Agreement.

34. 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.

Under penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true. Executed in Miami, Florida on June 18, 2025.

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