

FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT

**FILED**  
Superior Court of California  
County of Los Angeles

In re Planned Parenthood Los Angeles Data Incident Litigation,  
Case No.: 21STCV44106

**JAN 02 2024**  
David W. Skayton, Executive Officer/Clerk of Court  
By: P. Herrera, Deputy

The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable, on the condition that counsel add language to the settlement agreement to ensure that the release is only effective when Defendant fully funds the gross settlement amount.

The Parties' supplemental paperwork must be filed by January 16, 2024.

Nonappearance case management review is set for January 23, 2024, 8:30 a.m., Dept. 9.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$6,000,000.
- B. The Net Settlement Amount is the GSA minus the following:

Up to \$2,400,000 for attorney fees and litigation costs. (¶105); [Fee Split: Plaintiffs' Counsel anticipate distributing any fee award commensurate with the relative value of each firm's contribution to the serviced rendered in this case (i.e. based on each firm's individual lodestar contribution times any multiplier awarded by the Court). Any such distribution will be consistent with the Order Regarding Timekeeping and Expenses, Duties of Lead and Liaison Counsel, and Case Caption, entered by the Court on May 3, 2022, which delineated the duties and responsibilities of Co-Lead Counsel and Liaison Counsel and set forth general timekeeping standards and protocols that have been adhered to in this case. (Robinson Supp. Decl., ¶10)]

Up to \$9,000 (\$1,500 x 6) for a Service Payment to the Named Plaintiffs (Settlement, ¶102);

Up to \$883,544 for settlement administration costs (¶2); [Simpluris agreed to cap the cost for administration, which includes the cost for Credit Monitoring and Identity Theft Insurance Services provided by TransUnion through Simpluris, at \$497,223 if the claims rate is 1.5% or less, \$658,348 if the

claims rate is 3% or less, and \$883,544 regardless of the claims rate. (Ibid.)]

C. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by July 2, 2024. Please call Department 9 to get a hearing date and briefing schedule.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and email the [Proposed] Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

Nonappearance case management review is set for July 9, 2024, 8:30 a.m., Dept. 9.

I.  
BACKGROUND

This is a data breach class action. Defendant Planned Parenthood Los Angeles ("PPLA") is a provider of comprehensive, reproductive health care services in Los Angeles County.

On or about November 30, 2021, Defendant announced a security incident during which unauthorized parties accessed and acquired the personally identifiable information ("PII") and protected health information ("PHI") of approximately 409,437 PPLA patients (the "Data Breach"). In its Notice of Data Breach, PPLA explained that on October 17, 2021, PPLA became aware of suspicious activity on its computer network. Following an investigation, PPLA "determined that an unauthorized person gained access to [PPLA's] network between October 9, 2021, and October 17, 2021, and exfiltrated some files containing PII and PHI from [PPLA's] systems during that time." Those files contained the names, addresses, insurance information, dates of birth, and clinical information, such as diagnosis, procedure, and/or prescription information of PPLA patients.

Plaintiff Maria Orellana filed the first action on December 3, 2021, and six other related actions were filed shortly thereafter in December 2021.<sup>1</sup>

On May 25, 2022, Plaintiffs Maria Orellana, B.E., J.C., Michelle Garza, K.O., and T.S. filed a consolidated class action complaint ("Complaint") on behalf of a Class of "[a]ll individuals who were sent a Data Breach notice indicating their Confidential Information was compromised as a result of the Data Breach." Plaintiffs alleged claims for (1) violation of the Confidentiality of Medical Information Act ("CMIA") (Civ. Code § 56, et seq.); (2) negligence; (3) violation of the California Consumers Legal Remedies Act (Civ. Code § 1750, et seq.); (4) violation of the California Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.) for unlawful, fraudulent, and unfair business practices; (6) violation of California Consumer Records Act (Civ. Code § 1798.82, et seq.); (7) unjust enrichment; and (8) invasion of privacy.

Counsel represent that prior to the mediation, Plaintiffs requested, and PPLA provided as part of settlement negotiations, confirmatory information, including a confidential incident investigation report regarding the cause of the Data Breach. Plaintiffs reviewed and analyzed this information to determine the scope of necessary injunctive relief and the appropriate measure of settlement benefits to Plaintiff and the Class. PPLA also provided breakdowns showing (i) the total number of individuals whose information was potentially or actually compromised in the Data Breach, including from each state, and (ii) the categories of information potentially accessed as a result of the breach. Plaintiffs also reviewed and analyzed communications and notices sent to the California Department of Public Health and the Office of Civil Rights at the Department of Health and Human Services concerning the Data Breach. Plaintiffs further reviewed and analyzed policies demonstrating available insurance.

On September 2, 2022, the parties commenced mediation with mediator Jill R. Sperber, Esq. of Judicate West. Although the Parties were unable to come to a resolution during mediation,

---

<sup>1</sup> *Maria Orellana v. Planned Parenthood Los Angeles*, No. 21STCV44106; *Jane Doe v. Planned Parenthood Los Angeles*, No. 21STCV45028; *A.K. v. Planned Parenthood Los Angeles*, No. 21STCV46072; *T.S., et al. v. Planned Parenthood Los Angeles*, No. 21STCV46384; *Jane Doe, et al. v. Planned Parenthood Los Angeles*, No. 21STCV46178; *Lauren Danchick v. Planned Parenthood Los Angeles*, No. 21STCV46871; and *Michelle Garza v. Planned Parenthood Los Angeles*, No. 21STCV47357 (collectively, the "Related Cases").

they continued to engage in settlement discussions through the mediator and ultimately reached an agreement in principle on September 7, 2022. Since then, the parties continued to discuss the details of the Settlement and ultimately entered into a term sheet. The parties subsequently met and conferred and exchanged multiples drafts of the Settlement Agreement with revisions and comments, before ultimately entering into the Settlement Agreement on April 18, 2023. A copy of the Settlement Agreement was filed with the Court on April 19, 2023 attached to the Declaration of Daniel S. Robinson ("Robinson Decl."), as Exhibit 1.

On August 8, 2023 the Court issued a checklist of items for counsel to address. In response, on December 5, 2023, counsel filed supplemental briefing and a fully executed Amended Settlement Agreement ("Amended Settlement") attached to the Supplemental Declaration of Daniel S. Robinson ("Robinson Supp. Decl.") as Exhibit 2.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

## II. SETTLEMENT AGREEMENT

### A. Definitions.

"Settlement Class": Approximately 409,437 persons who are identified on the Settlement Class List, including Plaintiffs, who were notified that their personally identifiable information and/or protected health information may have been disclosed in the Data Breach (as defined in Plaintiffs' Consolidated Class Action Complaint).

Excluded from the Settlement Class are (1) the Judge(s) presiding over the Actions, and members of their families; (2) the Defendant, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or their parents have a controlling interest and their current or former officers, directors, and employees; (3) Persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded Persons. (Amended Settlement, ¶46)

"Data Breach": The data breach that is the subject of the Data Breach Action, announced by Planned Parenthood Los Angeles on or around November 30, 2021, whereby unauthorized parties

potentially accessed, viewed, and/or acquired copies of some of the documents on PPLA's systems. (¶14)

"Participating Settlement Class Member": a Settlement Class Member who submits a valid Claim approved by the Settlement Administrator for their given share of the Settlement Benefits pursuant to the terms and conditions of this Agreement. (¶33)

The parties stipulate to class certification for settlement purposes only. (¶58.)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$6,000,000, non-reversionary. (¶¶63, 65)
- The Net Settlement Amount ("Net") (\$2,707,456) is the GSA minus the following:
  - o Up to \$2,400,000 for attorney fees and litigation costs. (¶105);
  - Fee Split: Plaintiffs' Counsel anticipate distributing any fee award commensurate with the relative value of each firm's contribution to the serviced rendered in this case (i.e. based on each firm's individual lodestar contribution times any multiplier awarded by the Court). Any such distribution will be consistent with the Order Regarding Timekeeping and Expenses, Duties of Lead and Liaison Counsel, and Case Caption, entered by the Court on May 3, 2022, which delineated the duties and responsibilities of Co-Lead Counsel and Liaison Counsel and set forth general timekeeping standards and protocols that have been adhered to in this case. (Robinson Supp. Decl., ¶10)
  - o Up to \$9,000 (\$1,500 x 6) for a Service Payment to the Named Plaintiffs (Settlement, ¶102);
  - o Up to \$883,544 for settlement administration costs (¶12);
- and
- Simpluris has agreed to cap the cost for administration, which includes the cost for Credit Monitoring and Identity Theft Insurance Services provided by TransUnion through Simpluris, at \$497,223 if the claims rate is 1.5% or less, \$658,348 if the claims rate is 3% or less, and \$883,544 regardless of the claims rate. (Ibid.)
- Funding of Settlement: Defendant shall direct one million, five hundred thousand dollars and no cents (\$1,500,000.00) to be paid into the Settlement Fund within thirty (30) days after the

Court enters the Preliminary Approval Order to cover reasonable costs associated with the Notice Plan and any other Administrative Expenses incurred prior to entry of the Final Approval Order and Judgment; and (ii) Defendant shall direct an additional four million, five hundred thousand dollars and no cents (\$4,500,000.00) to be paid into the Settlement Fund within thirty (30) days after the Effective Date. (§63)

o Order of Distribution of Funds. The Settlement Administrator must first use the available Net Settlements Funds to make all Fraud/Out-of-Pocket Costs and Documented Time Payments. The Settlement Administrator shall then utilize the remaining funds to make all Statutory Payments. Settlement Class Members with Approved Claims who receive a Statutory Payment, Fraud/Out-of-Pocket Costs Payment, and/or Documented Time Payment, by physical check, shall have one hundred and twenty (120) days following distribution to deposit or cash their cash benefit check. Participating Settlement Class Members with Approved Claims who receive the Credit Monitoring and Insurance Services shall have one hundred and twenty (120) days following distribution of the enrollment instructions to sign up for the services. (§78)

• There is claim form requirement. (§33)

o Claims Process:

▪ Settlement Class Members may submit electronically verified Claim Forms to the Settlement Administrator through the Settlement Website, or may download Claim Forms to be filled out, signed, and submitted physically by U.S. Mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement Administrator shall reject any Claim Forms that are incomplete, inaccurate, or not timely received and is not required to, but may, provide Claimants the ability to cure defective claims, unless otherwise noted in this Agreement. (§85.a)

▪ "Claim Form" means the form attached to the Settlement as Exhibit 1, as approved by the Court. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the Settlement Website) by Settlement Class Members who wish to file a claim for their given share of the Settlement Benefits pursuant to the terms and conditions of this Agreement. The Claim Form shall be available for download from the Settlement Website. The Settlement Administrator shall mail a Claim Form, in hardcopy form, to any Settlement Class Member who so requests. (§6)

▪ "Claims Deadline" means the date by which all Claim Forms must be received to be considered timely and shall be set as the date one hundred and twenty (120) days after the Notice Date.

The Claims Deadline shall be clearly set forth in the Long Form Notice, the Summary Notice, the Claim Form, and the Court's order granting Preliminary Approval. In order to provide additional time for Settlement Class Members who are re-mailed a Summary Notice pursuant to Paragraph 88(c) or mailed a Summary Notice pursuant to Paragraph 88(d), the Parties have extended the Claims Deadline an additional thirty (30) days from a ninety (90) day deadline to a one hundred and twenty (120) day deadline for all Settlement Class Members. (¶7)

- "Claims Period" means the period of time during which Settlement Class Members may submit Claim Forms to receive their given share of the Settlement Benefits and shall commence on the Notice Date and shall end on the date one hundred and twenty (120) days thereafter. (¶8)

- o Appropriateness of a Claims-Made Settlement: Counsel represent that a claim form and claims-made settlement are necessary for several reasons. First, a claim form is necessary to obtain the email address that each Participating Settlement Class Member intends to use for the Credit Monitoring and Insurance Services, which is required to enroll in that service. Second, a claim form is necessary for any Class Member seeking a Documented Time Payment or Fraud/Out-of-Pocket Costs Payment to determine the amount of hours and reimbursement amount they are seeking, and so that the Claims Administrator can determine the validity of the claims. Third, by submitting a claim form, Class Members will be able to confirm that they want to participate in the Settlement and receive additional mailings from the Settlement Administrator. (¶44) A claim form will also determine which Class Members wish to participate in the Settlement and receive a monetary payment. Given the nature of Defendant's services, the parties are mindful that a Settlement Class Member may not want their association with this Settlement known. Although the parties are attempting to make best efforts to serve the Notice in a manner that minimize the chances of the Notice being obtained by an unintended recipient, the claims process will help eliminate future mailings to those who do not wish to receive further correspondence concerning this Settlement. (¶45)

- o Estimated Claims Rate: Counsel anticipate the claims rate will be between 1% to 4%, which is consistent, if not greater, than other similar data breach settlements. (Robinson Decl., ¶35)

- o Actions to Encourage Claim Submission: There shall be one reminder email within 21 days of the initial email providing Summary Notice. (¶88.b) The parties have also agreed to meet and confer within 14 days of dissemination of the reminder email concerning the efficacy of email notice. If at that time the

claims rate is less than 3%, the Settlement Administrator will mail postcard notices to all Settlement Class Members whose emails are confirmed unopened. (Settlement, ¶89)

• Each Participating Settlement Class Member may qualify for the following:

o Credit Monitoring and Identity Theft Insurance Services. Each Participating Settlement Class Member will receive three years of Credit Monitoring and Identity Theft Insurance Services. The Credit Monitoring and Identity Theft Insurance Services will be provided by TransUnion. The Credit Monitoring and Identity Theft Insurance Services will provide certain services to each Participating Settlement Class Member, including: unlimited updates to TransUnion Credit Report and Score, email updates of critical changes, instant email alerts sent as soon as TransUnion finds out someone has applied for credit in a user's name; locking and unlocking of TransUnion and Equifax Credit Reports, Personalized Debt Analysis & Credit Score Trending, Score Simulator including how specific credit choices may affect scores, toll-free access to identity theft specialists, and up to \$1,000,000 in identity theft insurance. (¶73.a)

o Statutory Payment. In addition to Credit Monitoring and Identity Theft Insurance Services, each Participating Settlement Class Member will receive a check from the Settlement Fund for the claim brought under the California Confidentiality of Medical Information Act, Cal. Civ. Code § 56 et seq. The check amount will depend on the participation rate for the Settlement and the amount will be each Participating Settlement Class Member's pro rata share of the remaining Net Settlement Fund, after all other Settlement Benefits have been paid for out of the remaining Net Settlement Fund, including any Fraud/Out-of-Pocket Costs Payments and Documented Time Payments. The following chart depicts an approximation of the Statutory Payment amounts before deducting costs for Fraud/Out-of-Pocket Costs Payments and Documented Time Payments:

Participation Rate	Approx. Statutory Payment
2%	\$359.23
4%	\$165.87
6%	\$110.58
8%	\$82.93
10%	\$66.35

In the event that a Statutory Payment made to Participating Settlement Class Members would exceed one thousand dollars and no cents (\$1,000.00), then the Parties will seek guidance from the Court on how to proceed. To receive a Statutory Payment, a



Settlement Class Member must submit a valid Claim Form to the Settlement Administrator. Settlement Class Members will be notified in the Long Form Notice and Summary Notice that the act of submitting a Valid Claim Form to the Settlement Administrator (via U.S. Mail or through the Settlement Website) entitles them to be a Participating Settlement Class Member and constitutes a representation that they are electing to receive a Statutory Payment under the Settlement. (§73.b)

o Fraud/Out-of-Pocket Costs Payment. In addition to the Credit Monitoring and Insurance Services and a Statutory Payment, each Participating Settlement Class Member may submit a claim for up to ten thousand dollars (\$10,000.00) for reimbursement of Fraud/Out-of-Pocket Costs ("Fraud/Out-of-Pocket Costs Payment"). To receive a Fraud/Out-of-Pocket Costs Payment, a Settlement Class Member must choose to do so on their given Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Fraud/Out-of-Pocket Costs Payment benefit; (ii) an attestation regarding any actual and unreimbursed Fraud/Out-of-Pocket Costs; and (iii) Reasonable Documentation that demonstrates the Fraud/Out-of-Pocket Costs to be reimbursed. (§73.c)

▪ "Fraud/Out-of-Pocket Costs" means out-of-pocket costs or expenditures supported by Reasonable Documentation that a Settlement Class Member actually incurred, including, but not limited to, unreimbursed losses and consequential expenses (including, but not limited to, late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, card cancellation or replacement fees, credit-related costs related to purchasing credit reports, credit monitoring or identity theft protection, costs to place a freeze or alert on credit reports, costs to replace a driver's license, state identification card, or social security number) that are related to any unauthorized identity theft or fraud fairly traceable to the Data Breach and incurred on or after October 9, 2021. (§23)

o Documented Time Payment. In addition to the Credit Monitoring and Identity Theft Insurance Services, a Statutory Payment, and an Out-of-Pocket Costs Payment, each Participating Settlement Class Member may submit a claim for up to seven hours of Documented Time at \$30 per hour ("Documented Time Payment"). To receive a Documented Time Payment, a Settlement Class Member must choose to do so on their given Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Time Payment benefit; (ii) an attestation regarding the Documented Time; and (iii) Reasonable Documentation that demonstrates their Documented Time. (§73.c)

▪ "Documented Time" refers to time actually spent by a Settlement Class Member supported by Reasonable Documentation

for attempting to remedy or remedying issues fairly traceable to the Data Breach (including time spent on any identity fraud, theft, fraud, bank fees, card cancellations, credit card fees, late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, card cancellation or replacement fees, credit-related costs related to purchasing credit reports, credit monitoring or identity theft protection, placing a freeze or alert on credit reports, and replacing a driver's license, state identification card, or social security number) incurred on or after October 9, 2021. (§18)

o "Reasonable Documentation" means documentation supporting a claim for Fraud/Out-of-Pocket Costs and/or Documented Time, including, but not limited to, credit card statements, bank statements, invoices, telephone records, and receipts. Fraud/Out-of-Pocket Costs and/or Documented Time cannot be documented solely by a personal certification, declaration or affidavit from the Claimant; a Settlement Class Member must provide reasonable supporting documentation. (§38)

o Pro Rata Contingency

▪ In the event that the aggregate amount of all Fraud/Out-of-Pocket Costs and Documented Time Payments exceed the total amount of the Net Settlement Fund, then the value of the Fraud/Out-of-Pocket Costs Payment and Documented Time Payments to be paid to each Participating Settlement Class Member shall be reduced on a pro rata basis, such that the aggregate value of all Fraud/Out-of-Pocket Payments and Documented Time Payments does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed to Participating Settlement Class Members with Approved Claims for Statutory Payments. (§79.a)

▪ In the event that the aggregate amount of all Fraud/Out-of-Pocket Costs Payments and Documented Time Payments does not exceed the Net Settlement Fund, then the remaining Net Settlement Fund will be divided pro rata among all Participating Settlement Class Members to make the Statutory Payments so that each Participating Settlement Class Member receives an equal share of the remaining Net Settlement Fund after all other Settlement Benefits have been paid out of that fund. If the Statutory Payment to each Participating Settlement Class Member receiving that benefit were to be less than five dollars and no cents (\$5.00), no Statutory Payments will be made and the Net Settlement Funds for Statutory Payments will instead be used to provide additional months of Credit Monitoring and Insurance Services to all Participating Settlement Class Members. (§79.b)

• Injunctive Relief: PPLA has agreed to implement certain reasonable steps to adequately secure its systems and environments, including taking the steps listed in the

Declaration of Kevin Oliver re: Planned Parenthood Los Angeles' Business Practice Commitments, which will be filed in support of Plaintiffs' Motion for Preliminary Approval. It sets forth the Business Practices Changes and costs PPLA has incurred, and an estimate of the cost to PPLA in the future, to implement the Business Practices Changes. (§83)

- "Notice Date" means the date upon which Settlement Class Notice is first disseminated to the Settlement Class, which shall be within sixty (60) days of the Settlement Administrator receiving the Settlement Class List from Defendant. (§28)
  - o "Objection Deadline" means ninety (90) days following the Notice Date. (§31)
  - o "Opt-Out Period" expires ninety (90) days following the Notice Date. (§32)
  - o In order to provide additional time for Settlement Class Members who are re-mailed a Summary Notice pursuant to Paragraph 88(c) or mailed a Summary Notice pursuant to Paragraph 88(d), the Parties have extended the Objection Deadline and Opt-Out Period an additional thirty (30) days from a sixty (60) day deadline to a ninety (90) day deadline for all Settlement Class Members. (§§31-32)
- Residual Funds: To the extent any monies remain in the Net Settlement Fund more than one hundred and fifty (150) days after the distribution of Settlement Payments to the Participating Settlement Class Members, a subsequent Settlement Payment will be evenly made to all Participating Settlement Class Members with Approved Claims who deposit or cash their benefit check provided that the average check or electronic deposit amount is equal to or greater than five dollars and no cents (\$5.00). The distribution of this remaining Net Settlement Fund shall continue to all Participating Settlement Class Members with Approved Claims who deposit or cash their residual benefit check until the average check amount in a distribution is less than five dollars and no cents (\$5.00). In the event that a Settlement Payment made to Participating Members would exceed one thousand dollars and no cents (\$1,000.00), then the Parties will seek guidance from the Court on how to disburse the remaining Net Settlement Fund. If the average check amount in a subsequent Settlement Payment distribution would be less than five dollars and no cents (\$5.00), the remaining Net Settlement Fund will be used to extend the Credit Monitoring and Insurance Services to Participating Settlement Class Members receiving that benefit for as long as possible. Any amount remaining in the Net Settlement Fund after said extension is accomplished, if any, shall be distributed to the Non-Profit Residual Recipient. (§80)

o "Non-Profit Residual Recipient" means Privacy Rights Clearinghouse, a 26 U.S.C. 501(c)(3) non-profit organization (¶27)

▪ Privacy Rights Clearinghouse, 3033 5th Ave, Suite 223, San Diego, CA 92103, is an organization that focuses exclusively on data privacy rights and issues.

▪ Counsel and parties represent that they do not have any personal interest or involvement in the governance or work of Privacy Rights Clearinghouse. (See Robinson Decl., ¶32; Polk Decl., 19; Kazerounian Decl., ¶19; Collignon Decl., ¶2; Pearson Decl., ¶2; Oliver Decl., ¶2.)

• The settlement administrator will be Simpluris. (¶2)

• Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

### III. DISCUSSION

#### A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On September 2, 2022, the parties commenced mediation with mediator Jill R. Sperber, Esq. of Judicate West. Although the Parties were unable to come to a resolution during mediation, they continued to engage in settlement discussions through the mediator and ultimately reached an agreement in principle on September 7, 2022. Since then, the parties continued to discuss the details of the Settlement and ultimately entered into a term sheet. The parties subsequently met and conferred and exchanged multiples drafts of the Settlement Agreement with revisions and comments, before ultimately entering into the Settlement Agreement on April 18, 2023. (Robinson Decl., ¶22)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represent that prior to the mediation, Plaintiffs requested, and PPLA provided as part of settlement negotiations, confirmatory information, including a confidential incident investigation report regarding the cause of the Data Breach. Plaintiffs reviewed and analyzed this information to determine the scope of necessary injunctive relief and the appropriate measure of settlement benefits to Plaintiff and the Class. PPLA also provided breakdowns showing (i) the total number of individuals whose information was potentially or actually compromised in the Data Breach, including from each state, and (ii) the categories

of information potentially accessed as a result of the breach. Plaintiffs also reviewed and analyzed communications and notices sent to the California Department of Public Health and the Office of Civil Rights at the Department of Health and Human Services concerning the Data Breach. Plaintiffs further reviewed and analyzed policies demonstrating available insurance. (Id. at ¶20)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including data breach class actions. (Id. at ¶¶40-43 and Exhibit 2 attached thereto; Declaration of Abbas Kazerounian, Exhibit 1 thereto; Declaration of Adam E. Polk, Exhibit 1 thereto.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the estimated exposure for each of the claims alleged:

<b>Violation</b>	<b>Maximum Exposure</b>
California Confidentiality of Medical Information Act (CMIA)	\$410,000,000.00
Negligence and remaining claims	\$442,062,000.00
TOTAL	\$852,062,000.00

(Supp. MPA pgs. 3-11.)

a. CMIA

Counsel represents that the CMIA allows for the recovery of \$1,000 nominal awards by any individual who has had their confidential information negligently released. The Class contains approximately 409,437 individuals. Accordingly, if

Plaintiffs were to have prevailed in certifying a class and then at trial and on appeal, the maximum statutory damages recovery, in view of the \$1,000 nominal awards, would have been approximately \$410 million. Although Plaintiffs could theoretically seek to certify a class seeking actual damages sustained by Class members, Counsel contend that doing so may require thousands of mini trials and Plaintiffs are presently unaware of any Class members that sustained actual damages in excess of \$1,000. Thus, the maximum realistic recovery Plaintiffs could recover for the Class is approximately \$410 million. (Id. at 3:4-23.)

b. Negligence and other claims

Counsel further represents that, had the case proceeded, Plaintiffs likely would have presented two class-wide damage models for purposes of these claims: one based on the cost of three years of credit monitoring, and the second based on the actual black-market value of the stolen information. (Id. at pgs. 3-5.)

Under the first model, Counsel contend that if a jury were to award Plaintiffs and the Class an amount equivalent to the cost of three years of credit monitoring, the maximum realistic recovery would likely range from \$146,862,000 to \$442,062,000, depending on the cost of the product that the jury decides to award. (Id. at 3:25-4:21.)

Under the second model, Counsel contend that PII can range from as little as \$1-\$2, but PHI can sell for as much as \$363 according to the Infosec Institute. Although Defendant's expert would likely present a substantially lower value for the information involved in this Data Breach, Plaintiffs' maximum realistic recovery under this damages model would be \$148,830,000. (Id. at 4:22-5:6.)

c. Risks unique to Data Breach class actions

Counsel also represent that the damages above assume complete success in the litigation, and that risks existed absent settlement, particularly because of the relative scarcity of data-breach class certifications and the reality that data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits. (Id. at 5:20-8:2.)

Counsel contend that the CMIA claim carried the risk of demurrer or dismissal with Defendant arguing that an 'affirmative disclosure' is required under section 56.10(a), or an 'actual viewing' is required under section 56.101. (Id. at 6:13-25.) Counsel further contend that biggest hurdles to the negligence claim would be element of causation and the economic loss rule. (Id. at 6:26-7:15) Finally, Counsel also represent that they took into consideration that the Data Breach came at a sensitive time when the landmark U.S. Supreme Court decision in Roe v. Wade was actively being challenged and that its overturning may have engendered sympathy for the Defendant (Id. at 7:19-23.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$6,000,000 non-reversionary settlement. The \$6,000,000 settlement amount constitutes approximately 0.70-1.08% of Defendant's maximum exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$6,000,000 settlement amount, if reduced by the requested deductions, will leave \$2,707,456 to be divided among approximately 409,437 class members. Assuming 100% participating, the resulting payments will average \$6.61 per class member. [ $\$2,707,456 / 409,437 = \$6.61$ ].

In addition to the pro rata payment, all Settlement Class members are eligible to receive a cash payment of up to \$10,000 for reimbursement of Fraud/Out-of-Pocket Costs fairly traceable to the Data Breach, and a cash payment of up to \$210 for time

spent addressing or remedying issues traceable to the Data Breach, in the amount of \$30 per hour for up to seven hours of Documented Time. Furthermore, each Settlement Class member who submits a valid claim can receive three years of Credit Monitoring and Identity Theft Insurance Services through TransUnion.

Finally, PPLA has agreed under the Settlement to implement and maintain certain Business Practice Changes for the foreseeable future to adequately secure its electronic systems and environments, as detailed in the Declaration of Kevin Oliver submitted under seal in support of Plaintiffs' preliminary approval motion.

Plaintiffs conservatively estimate that the value of the Settlement Benefits conferred to the Settlement Class is likely in excess of \$12 million, based on the amount of the Settlement Fund, the value of at least three years of Credit Monitoring and Identity Theft Insurance Services provided to Settlement Class Members, and the improvements to Defendant's data security practices. The total value of the Settlement Benefits provided to the Class is \$6,000,000 plus the estimated costs of Defendant's business practice changes and approximately \$4,414,549.73 for every one percent (1%) of Class Members receiving Credit Monitoring and Identity Theft Insurance Services,<sup>3</sup> before excluding the cost of Credit Monitoring and Identity Theft Insurance Services. Therefore, if one percent (1%) of the Settlement Class enrolls in Credit Monitoring and Identity Theft Insurance Services, Plaintiffs estimate the total value of the Settlement Benefits offered to the Settlement Class is \$12,365,403.73, before excluding the cost of Credit Monitoring and Identity Theft Insurance Services from the \$6 million fund paid for by PPLA. Plaintiffs will provide the exact value of the Settlement prior to the Final Fairness Hearing based on the final number of claims submitted. PPLA takes no position with respect to Plaintiffs' value of the Settlement. (Settlement Agreement, ¶84.)

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.



7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed fair, adequate, and reasonable.

C. Scope of the Release

Upon fifteen (15) days after the Effective Date, and in consideration of the Settlement Benefits described herein, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Parties from any and all Released Claims. (§60)

"Released Claims" means all claims or causes of action, including causes of action in law, claims in equity, complaints, suits or petitions, and allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, breach of contract, breach of the duty to settle or indemnify, breach of the covenant of good faith and fair dealing, punitive damages, attorneys' fees, costs, interest, expenses, or other potential claim), regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or another source, that the Releasing Parties had or have (including, but not limited to, assigned claims) that have been or reasonably could have been asserted in the Action or in another action or proceeding before any court, arbitrator(s), tribunal or administrative body (including but not limited to any state, local or federal regulatory body) based on the same set of operative facts as alleged in the Complaint. (§39)

"Released Parties" includes Planned Parenthood Los Angeles and its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future owners, officers, directors, employees, investors, owners, stockholders, partners, servants, agents, successors, attorneys, representatives,

insurers, reinsurers, subrogees, and assigns of any of the foregoing, as well as Plaintiffs and Class Counsel. Each of the Released Parties may be referred to individually as a "Released Party." (§40)

"Releasing Parties" means Plaintiffs, any Person in the Settlement Class, including those submitting or not submitting a claim for a Settlement Benefit, and each of their respective spouses, children, heirs, associates, co-owners, attorneys, agents, administrators, executors, devisees, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, employees or affiliates. Each of the Releasing Parties may be referred to individually as a "Releasing Party." (§41)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 409,437 class members. (MPA, 9:19-21.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's records. (MPA, 9:25-10:1.)

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Plaintiffs contend that several questions of law and fact are common to all Settlement Class Members, including Plaintiffs, such as whether PPLA had a duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the PII and PHI it collected from the Settlement Class and breached that duty. (MPA, 10:10-17.)

As to typicality, Plaintiffs contend that their claims are typical of the Class Members' claims because Plaintiffs' and all other Settlement Class Members' claims arise from PPLA's alleged failure to implement and maintain reasonable security measures and the ensuing Data Breach. (Id. at 10:21-23.)

As to adequacy, Plaintiffs represent that they were informed of the risks of serving as class representative, participated in the litigation, and do not have conflicts of interest with the class. (Id. at 11:6-14; Declarations of Plaintiffs Maria Orellana, B.E., J.C., Michelle Garza, K.O., and T.S., attached as Exhibit 2 to the Polk Declaration.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including data breach cases.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

E. Is the Notice Proper?

1. Content of class notice. The proposed notice is attached to the Settlement Agreement as Exhibit 3 and 5. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

2. Method of class notice. Class Notice will be provided by combination of direct mail, email, and publication notice. Within seven (7) days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. (§87) "Notice Date" means the date upon which Settlement Class Notice is first disseminated to the Settlement Class, which shall be within sixty (60) days of the Settlement Administrator receiving the Settlement Class List from Defendant. (§28)

a. Physical Address Only. For those Settlement Class Members for whom Defendant has only a physical address, the Summary Notice, substantially in the form attached hereto as Exhibit 5 shall be sent by U.S. mail. (§88.a)

b. Physical Address and Email. For those Settlement Class Members for whom Defendant has both a physical address and email address, the Summary Notice shall be sent by email. There shall be one reminder email within 21 days of the initial email providing Summary Notice. (§88.b)

The Settlement Administrator is to promptly mail postcard notice to all settlement class members where email is confirmed undelivered. Within 21 days after the Settlement Administrator's receipt of any Summary Notice returned by the U.S.P.S. as undelivered or undeliverable, the Settlement Administrator shall re-mail the Summary Notice using any forwarding address provided by the U.S.P.S. If the U.S.P.S. does not provide a forwarding address, the Settlement Administrator shall conduct an address search and re-mail the Summary Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Summary Notice to Class Members whose Summary Notice is returned by the U.S.P.S. a second time. In order to provide additional time for Settlement Class Members who are re-mailed a Summary Notice pursuant to this Paragraph, the Parties have extended the Claims Deadline, Claims Period, Opt-Out Period, and Objection Deadline for all Settlement Class Members an additional thirty (30) days from the original deadlines. (§88.c)

The Parties agree to meet and confer within 14 days of dissemination of the reminder email concerning the efficacy of email notice. If at that time the claims rate is less than 3%, the Settlement Administrator will mail postcard notice described in paragraph 88(c), above, to all Settlement Class Members whose emails are confirmed unopened. In order to provide additional time for Settlement Class Members who are re-mailed a Summary

Notice pursuant to this Paragraph, the Parties have extended the Claims Deadline, Claims Period, Opt-Out Period, and Objection Deadline for all Settlement Class Members an additional thirty (30) days from the original deadlines. (¶88.d)

c. Email Only. For those Settlement Class Members for whom Defendant has only an email address, the Summary Notice shall be sent by email. There shall be one reminder email within 21 days of the initial email providing the Summary Notice. (¶88.e)

Settlement Class Members may simply mail the pre-paid postage Claim Form attached to the Summary Notice or use the unique claim number and confirmation code contained in the Summary Notice to log onto the Settlement Website and either download a Claim Form or submit the Claim Form online. The Settlement Administrator shall use other reasonable fraud-prevention mechanisms to prevent (i) submission of Claim Forms by persons other than potential Settlement Class Members, and (ii) submission of more than one Claim Form per person. In the event a Claim Form is submitted without a unique class member identifier, the Settlement Administrator shall employ reasonable efforts to ensure that the Claim is valid. (¶89)

Prior to any dissemination of the Summary Notice, within twenty-one (21) days after Preliminary Approval of this Agreement, including the form and content of the Settlement Class Notice, and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the Internet in accordance with this Agreement. (¶90) The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall also maintain Spanish translations of the Claim Form, Summary Notice, and Long Form Notice. Defendant is to place a link to the Settlement Website on its website at <https://www.plannedparenthood.org/plannedparenthood-los-angeles>. (¶86.d)

Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶52)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$883,544 (Simpluris has agreed to cap the cost for administration, which includes the cost for Credit Monitoring and Identity Theft Insurance Services provided by TransUnion through Simpluris, at \$497,223 if the claims rate is 1.5% or less, \$658,348 if the claims rate is 3% or less, and \$883,544 regardless of the claims rate). Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$2,400,000 (40%) in attorney fees and costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

Plaintiffs' Counsel anticipate distributing any fee award commensurate with the relative value of each firm's contribution to the serviced rendered in this case (i.e. based on each firm's individual lodestar contribution times any multiplier awarded by the Court). Any such distribution will be consistent with the

Order Regarding Timekeeping and Expenses, Duties of Lead and Liaison Counsel, and Case Caption, entered by the Court on May 3, 2022, which delineated the duties and responsibilities of Co-Lead Counsel and Liaison Counsel and set forth general timekeeping standards and protocols that have been adhered to in this case. (Robinson Supp. Decl., ¶10)

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiffs will request a service award of \$9,000 (\$1,500 x 6). (¶102)

In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . . ." (Id. at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

IV.  
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable, on the condition that counsel add language to the settlement agreement to ensure that the release is only effective when Defendant fully funds the gross settlement amount.

2) The Parties' supplemental paperwork must be filed by January 16, 2024.

3) Nonappearance case management review is set for January 23, 2024, 8:30 a.m., Dept. 9.

4) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$6,000,000.

B. The Net Settlement Amount is the GSA minus the following:

Up to \$2,400,000 for attorney fees and litigation costs. (¶105); [Fee Split: Plaintiffs' Counsel anticipate distributing any fee award commensurate with the relative value of each firm's contribution to the serviced rendered in this case (i.e. based on each firm's individual lodestar contribution times any multiplier awarded by the Court). Any such distribution will be consistent with the Order Regarding Timekeeping and Expenses, Duties of Lead and Liaison Counsel, and Case Caption, entered by the Court on May 3, 2022, which delineated the duties and responsibilities of Co-Lead Counsel and Liaison Counsel and set forth general timekeeping standards and protocols that have been adhered to in this case. (Robinson Supp. Decl., ¶10)]

Up to \$9,000 (\$1,500 x 6) for a Service Payment to the Named Plaintiffs (Settlement, ¶102);

Up to \$883,544 for settlement administration costs (¶2); [Simpluris agreed to cap the cost for administration, which includes the cost for Credit Monitoring and Identity Theft Insurance Services provided by TransUnion through Simpluris, at \$497,223 if the claims rate is 1.5% or less, \$658,348 if the claims rate is 3% or less, and \$883,544 regardless of the claims rate. (Ibid.)]

C. Plaintiffs release of Defendants from claims described herein.

5) The Parties' Motion for Final Approval of Class Action Settlement must be filed by July 2, 2024. Please call Department 9 to get a hearing date and briefing schedule.

6) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who



opted out; and email the [Proposed] Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

7) Nonappearance case management review is set for July 9, 2024, 8:30 a.m., Dept. 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: January 2, 2024



~~YVETTE M. PALAZUELOS~~  
YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT