

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement, dated as of the Effective Date, is made and entered into by and among the following Settling Parties (defined below): (i) Plaintiff Barbara Horvath (“Representative Plaintiff”), individually and on behalf of the Settlement Class (defined below), by and through Milberg Coleman Bryson Phillips Grossman, PLLC (“Class Counsel”), on the one hand; and (ii) Defendant Gramercy Surgery Center, Inc. (“GSC” or “Defendant”), by and through its counsel of record, Mullen Coughlin LLC (“Defendant’s Counsel”) on the other hand. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Litigation (defined below) and the Released Claims (defined below), upon and subject to the terms and conditions below.

RECITALS

WHEREAS, on or about June 18, 2024, GSC became aware of suspicious activity on its computer network, potentially impacting certain information on the network (the “Data Incident”). The impacted information may include, but is not limited to, names, Social Security numbers, financial account information, date of birth, driver’s license numbers, medical record numbers, treatment information, and health insurance (personally identifiable information or “PII.” and protected health information or “PHI”) (collectively, “Personal Information”).

WHEREAS, after GSC learned of the Data Incident, GSC notified approximately 52,372 individuals that their Personal Information (defined below) may have been impacted by the Data Incident.

WHEREAS, after GSC provided its notice, Representative Plaintiff filed the following lawsuit in federal court against GSC concerning the Data Incident: *Horvath v. Gramercy Surgery Center, Inc.*, Case No.: 1:24-cv-06360-GHW-GWG. Subsequently, voluntary pre-suit discovery surfaced the fact that more than two-thirds of the putative class were residents of the State of New York, such that a federal court would be obligated to decline to exercise its jurisdiction under the Class Action Fairness Act. As a result, Representative Plaintiff voluntarily dismissed the federal court lawsuit and refiled this case, also styled *Horvath v. Gramercy Surgery Center, Inc.*, under Index No.: 159212/2024, in the Supreme Court of the State of New York, County of New York (the “Litigation”).

WHEREAS, the Class Action Complaint in the Litigation asserts the following claims: (i) negligence, (ii) breach of implied contract, and (iii) unjust enrichment.

WHEREAS, GSC denies each and all of the claims and contentions alleged against it in the Litigation, denies any and all liability or wrongdoing of any kind, and denies all charges of wrongdoing or liability as alleged, or which could be alleged.

WHEREAS, the Settling Parties have concluded that further litigation would be protracted and expensive, have considered the uncertainty and risks inherent in litigation, and have determined that it is desirable to effectuate a full and final settlement of the claims asserted in the above-referenced actions on the terms set forth below to avoid the associated burdens, risks, and extensive costs.

WHEREAS, over a period of several months, the Parties engaged in voluntary discovery and good faith, arm's-length negotiations between experienced counsel, and reached an agreement in principle to resolve the Litigation, as outlined herein.

WHEREAS, GSC provided Class Counsel with certain additional factual information to aid in negotiations and agreed to provide further confirmatory information as required to confirm the size of the class.

WHEREAS, GSC denies any wrongdoing whatsoever, and this Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of GSC with respect to any claim of any fault, liability, wrongdoing, or damage whatsoever, any infirmity in the defenses or arguments that GSC has asserted or would assert.

WHEREAS, based on their investigation and their substantial experience in data breach cases, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to Settlement Class Members (defined below) and are in their best interests, and they have agreed to settle the claims that were asserted or could have been asserted in the Litigation arising out of or relating to the Data Incident pursuant to the terms and provisions of this Agreement after considering (a) the substantial benefits that Settlement Class Members will receive from the Settlement, (b) the uncertain outcome and attendant risks of litigation, (c) the delays inherent in litigation, and (d) the desirability of permitting the settlement of this litigation to be consummated as provided by this Agreement.

WHEREAS, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against GSC relating to the Data Incident, by and on behalf of Plaintiff and Settlement Class Members, and any other such actions by and on behalf of any other individuals originating, or that may originate, in jurisdictions in the United States of America against GSC relating to the Data Incident.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiff, individually and on behalf of the Settlement Class, Class Counsel, and GSC that, subject to the Court's approval, when Judgment becomes Final (defined herein), the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who lawfully opt out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement.

1. Definitions.

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 "Agreement" or "Settlement" or "Settlement Agreement" means this agreement.

1.2 "Claims Administration" means providing notice to the Settlement Class Members and the processing and payment of claims received from Settlement Class Members by the Claims Administrator (defined below).

1.3 “Claims Administrator” means Angeion Group (“Angeion”) a notice and claims administrator with recognized expertise in class action notice and claims generally and data security litigation specifically, as jointly agreed upon by the Settling Parties and approved by the Court.

1.4 “Claims Deadline” means the postmark or online submission deadline for Valid Claims (as defined below), which is ninety (90) days after Notice is mailed to Settlement Class Members.

1.5 “Claim Form” means the form utilized by the Settlement Class Members to submit a Settlement Claim (as defined below) for reimbursement. The Claim Form will be substantially in a form as shown in Exhibit C attached hereto, which will be available on both the Settlement Website (as defined below) and in paper format, if specifically requested by Settlement Class Members.

1.6 “Claims Period” means the ninety (90) day period of time during which Settlement Class Members may submit Claim Forms to receive Settlement benefits, which will end on the Claims Deadline.

1.7 “Class Counsel” means Milberg, Coleman, Bryson, Phillips, Grossman, PLLC.

1.8 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.9 “Court” means the Supreme Court of the State of New York, County of New York.

1.10 “Data Incident” means the potential unauthorized access of certain information on GSC’s computer systems between June 14, 2024 and June 17, 2024, which gave rise to the Litigation.

1.11 “Effective Date” means the date upon which the Settlement contemplated by this Agreement shall become effective as set forth in ¶ 9.1.

1.12 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is finally approved by the Court; (ii) the Court has entered a Judgment (as defined below); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether the Judgment is Final or any other aspect of the Judgment.

1.13 “Final Fairness Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to New York Civil Practice Law and Rules Article 9 and for the Court to determine whether to issue the Judgment.

1.14 “Judgment” means a judgment rendered by the Court, after the Final Approval

Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Litigation with prejudice, and is consistent with all material provisions of this Settlement Agreement. Class Counsel and Defendant's Counsel will work together on a proposed Judgment, which GSC must approve before filing

1.15 "Long Notice" means the long form notice of settlement posted on the Settlement Website, substantially in the form as shown in Exhibit B hereto.

1.16 "Notice" means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order. Notice includes the Short Notice and Long Notice.

1.17 "Notice Deadline" means 30-days after entry of the Preliminary Approval Order and is the date by which the Claims Administrator shall establish the Settlement Website, toll-free telephone line, and complete the initial mailing of the Short Notice as set forth in ¶ 3.2.

1.18 "Objection Date" means 60-days after the Notice Deadline and is the date by which Settlement Class Members must mail their objection to the settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.19 "Opt-Out Date" means 60-days after the Notice Deadline and is the date by which Settlement Class Members must mail their requests to be excluded from the Settlement Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.20 "Person" means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.21 "Personal Information" includes, but is not limited to, names, social security numbers medical treatment information, and health insurance information.

1.22 "Plaintiff" or "Class Representative" or "Representative Plaintiff" means Barbara Horvath.

1.23 "Preliminary Approval Order" means the Court order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties' proposed form of Preliminary Approval Order is attached hereto as Exhibit D.

1.24 "Released Claims" shall collectively mean any and all past, present, and future rights, liabilities, actions, demands, damages, penalties, costs, attorneys' fees, losses, remedies, claims, and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States; all New York State consumer protection statutes; violations of any federal or state data breach notification statute; negligence; negligence

per se; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, existing or potential, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal statutory, or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Parties (including, but not limited to, assigned claims and any and all "Unknown Claims" as defined below) based on, relating to, concerning or arising out of the Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class consistent with the terms and requirements of this Agreement. Released Claims shall not include any claims for medical malpractice that Plaintiff and Settlement Class Members have, or may have in the future, against GSC.

1.25 "Released Parties" means both Gramercy Surgery Center, Inc. and The Gramercy Group MSO, LLC, and each of their past, present, and future parent companies, partnerships, subsidiaries, affiliates, divisions, employees, contractors, agents, servants, members, managers, providers, partners, principals, directors, shareholders, successors, assigns, and owners, and all of their attorneys, heirs, executors, administrators, insurers, writing companies, coinsurers, reinsurers, joint ventures, personal representatives, predecessors, successors, transferees, trustees, and assigns, and including, without limitation, any Person related to any such entity who is, was, or could have been named as a defendant in the Litigation.

1.26 "Request for Exclusion" is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice.

1.27 "Settlement Claim" means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.28 "Settlement Class" means all individuals to whom GSC provided notice of the Data Incident. The Settlement Class specifically excludes: (i) GSC, and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the presiding judge, and his or her staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.29 "Settlement Class List" means the list generated by GSC containing the full names, current or last known addresses for all persons who fall under the definition of the Settlement Class, which GSC shall provide to the Settlement Administrator within seven (7) days of entry of

the Preliminary Approval Order and engagement of a Settlement Administrator.

1.30 “Settlement Class Member(s)” or “Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.31 “Settlement Website” means the website described in ¶ 3.2.3.

1.32 “Settling Parties” means, collectively, GSC and Plaintiff, individually and on behalf of the Settlement Class.

1.33 “Short Notice” means the content of the postcard mailed notice to the proposed Settlement Class Members, substantially in the form as shown in Exhibit A attached hereto. The Short Notice will direct recipients to the Settlement Website and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys’ fees, and the date of the Final Fairness Hearing.

1.34 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiff intends to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class Members, including Plaintiff, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiff, expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims, including but not limited to any Unknown Claims they may have. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.35 “United States” as used in this Settlement Agreement includes all 50 states, the District of Columbia, and all territories.

1.36 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or dispute resolution process described in ¶ 2.5.

2. Settlement Benefits.

2.1 Monetary Relief. As set forth in more detail below, Settlement Class Members may claim (a) documented out-of-pocket expenses of up to \$2,500, inclusive of reimbursement for up to 3 hours lost time (at a rate of \$20 per hour), OR (b) a \$50 Alternative Cash Payment. Monetary Relief is subject to an aggregate cap of \$400,000.

2.1.1 Expense Reimbursements

- a) Documented Out-of-Pocket Losses. All Settlement Class Members who submit a Valid Claim using the Claim Form are eligible for any documented and attested-to out-of-pocket expenses directly associated with dealing with the Data Incident, not to exceed \$2,500 per Settlement Class Member, that were incurred more likely than not as a result of the Data Incident, including but not limited to (i) unreimbursed expenses, charges and/or losses relating to fraud or identity theft such as unreimbursed bank fees; long distance phone charges; cell phone charges (only if charged by the minute); data charges (only if charged based on the amount of data used); postage; gasoline for local travel; fees for credit repair or similar services; and costs associated with freezing or unfreezing credit; and/or any other charge or loss reasonably related to the Data Incident incurred by Class Members between June 14, 2024 and the Claims Deadline, except for reimbursement for credit monitoring service costs, which must have been incurred between August 9, 2024 and the Claims Deadline. To receive reimbursement for out-of-pocket losses, Settlement Class Members must submit a Valid Claim, including supporting documentation, to the Claims Administrator. Reimbursement for out-of-pocket expenses is subject to the following terms: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; and (3) the loss occurred between June 14, 2024, and the Claims Deadline (or for reimbursement for credit monitoring service costs, between August 9, 2024 and the Claims Deadline).
- b) Lost Time. Class Members are also eligible to receive reimbursement for up to three hours of lost time spent dealing with the Data Incident, rounded to the nearest whole hour, calculated at the rate of \$20 per hour. Class Members may receive up to three hours of lost time if the Class Member attests that any claimed lost time was spent responding to issues raised by the Data Incident, and briefly describes how the lost time was spent. Claims for reimbursement of lost time may be combined with claims for

documented out-of-pocket expenses, and are subject to the \$2,500 individual cap on Monetary Relief.

2.1.2 Alternative Cash Payment. As an alternative to seeking reimbursement of Expense Reimbursements in ¶ 2.1.1, Settlement Class Members may receive a one-time cash payment of \$50.

2.1.3 Aggregate Cap on Claims for Monetary Relief. GSC's obligation to pay for reimbursement for documented out-of-pocket expenses, lost time, and alternative cash payments under this ¶ 2.1 will not, under any circumstance, exceed \$400,000 in the aggregate. If the total of Valid Claims exceeds \$400,000, each claim shall be reduced *pro rata*. Nothing in this Settlement Agreement shall be construed as requiring GSC to provide, and GSC shall not be required to provide for a double payment for the same loss or injury that was reimbursed or compensated by any other source. This aggregate cap shall not apply to the costs of credit monitoring in ¶ 2.2, business practice changes in ¶ 2.4, notice and claims administration, or attorneys' fees, costs, and service awards.

2.2 Credit Monitoring and Identity Theft Protection. In addition to, and regardless of whether they submit a claim for, the Expense Reimbursements described in ¶ 2.1.1 or the Alternative Cash Payment in ¶ 2.1.2, Settlement Class Members may claim three (3) years of one-bureau credit monitoring and identity theft protection services. The identity theft monitoring will include identity theft insurance of at least \$1 million.

2.3 Settlement Class Members seeking reimbursement under ¶¶ 2.1 and 2.2 must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the Claims Deadline. The notice to the Settlement Class will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief and is being made under penalty of perjury. Notarization shall not be required. The Settlement Class Member must submit reasonable documentation that the out-of-pocket expenses, charges and/or losses claimed were both actually incurred and plausibly arose from the Data Incident. Failure to provide supporting documentation of the out-of-pocket expenses referenced above, as requested on the Claim Form, shall result in denial of a claim.

2.4 Business Practices Changes. The Settling Parties agree that as part of the settlement consideration, GSC, has adopted, paid for, implemented, and will maintain certain business practice changes related to information security to safeguard personal information on its systems. GSC will detail these business practice changes to Class Counsel in a confidential declaration.

2.5 **Duties of Settlement Administrator**. The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

2.5.1 Administering and overseeing the Settlement funds provided by GSC to pay Approved Claims.

2.5.2 Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;

2.5.3 Performing National Change of Address searches and/or skip tracing on the Settlement Class List;

2.5.4 Providing Notice to Settlement Class Members via U.S. mail and email;

2.5.5 Establishing and maintaining the Settlement Website;

2.5.6 Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;

2.5.7 Responding to any mailed or emailed Settlement Class Member inquiries within one (1) business day;

2.5.8 Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members and transmitting to Class Counsel and GSC's Counsel a list of Approved Claims, both periodically during the Claims Period and after the Claims Deadline;

2.5.9 Receiving Requests for Exclusion and Objections from Settlement Class Members and providing Class Counsel and GSC's Counsel a copy thereof immediately upon receipt. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to GSC's Counsel;

2.5.10 Working with the provider(s) of Credit Monitoring Services to receive and send activation codes within thirty (30) days of the Effective Date;

2.5.11 After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;

2.5.12 Providing bi-weekly or other periodic reports to Class Counsel and the GSC's Counsel that include information regarding the number of Settlement Checks mailed and delivered or checks sent via electronic means, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments;

2.5.13 In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and

2.5.14 Performing any function related to Settlement Administration at the agreed-upon instruction of Class Counsel or GSC's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

2.6 Limitation of Liability. The Parties, Class Counsel, and GSC's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the formulation, design or terms of the disbursement of the Settlement funds; (iii) the determination, administration, calculation or payment of any claims asserted against the Settlement funds; or (iv) the payment or withholding of any taxes and tax-related expenses.

2.7 Dispute Resolution for Claims.

2.7.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the expenses described in ¶ 2.1; and (iii) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Incident. In assessing what losses qualify as more likely than not caused by the Data Incident, the Claims Administrator will consider (i) whether the timing of the loss occurred on or after June 14, 2024 (or for reimbursement for credit monitoring service costs, after August 9, 2024); and (ii) whether the personal information used to commit identity theft or fraud consisted of the type of personal information identified in GSC's notices of the Data Incident. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require to evaluate the claim, *e.g.*, documentation requested on the Claim Form, and required documentation regarding the claimed losses. The Claims Administrator's initial review will be limited to a determination of whether the claim is complete and plausible. For any claims that the Claims Administrator determines to be implausible, the Claims Administrator will submit those claims to counsel for the Settling Parties. If the Settling Parties do not agree with the Claims Administrator's determination, after meeting and conferring, then the claim shall be referred to a claims referee for resolution. The Settling Parties will mutually agree on the claims referee should one be required.

2.7.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Claims Administrator shall request additional information ("Claim Supplementation") and give the claimant twenty-one (21) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the twenty-one (21) day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the twenty-one (21) day deadline in which to comply; however, in no event shall the deadline be extended to later than one-hundred-and-eighty (180) days from

the Effective Date. If the defect is not timely cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.7.3 Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have ten (10) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is facially valid, then the claim shall be paid. If the Claim Administrator determines that such a claim is not facially valid because the claimant has not provided all information needed to complete the Claim Form and enable the Claim Administrator to evaluate the claim, then the Claim Administrator may reject the claim without any further action.

2.7.4 If any dispute is submitted to the claims referee, the claims referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days of the claims referee's receipt of the submitted dispute. The claims referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days of the claims referee's receipt of the submitted dispute. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Data Incident. The claims referee shall have the power to approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall make a final decision within thirty (30) days of the latter of the following events: its receipt of the submitted dispute and receipt of all supplemental information requested.

2.8 Settlement Expenses. GSC will pay the following costs outside of the aggregate cap identified in ¶ 2.1.3: the costs of credit monitoring and identity theft protection described in ¶ 2.2; the costs of business practice changes described in ¶ 2.4; the costs of dispute resolution described in ¶ 2.7; attorneys' fees and costs as well as service awards described in the subsections of ¶ 7; and the costs of claims administration described under ¶¶ 8.1, 8.2, and 8.3.

2.9 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the Court does not issue the Preliminary Approval Order or the Judgment; (2) the Effective Date does not occur, or (3) the Settlement Agreement is terminated or cancelled pursuant to the terms of the Settlement Agreement, the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved.

3. Preliminary Approval and Notice of Fairness Hearing.

3.1. Preliminary Approval. As soon as practicable after the execution of the Settlement Agreement, Class Counsel and Defendant's Counsel shall jointly submit this Settlement Agreement to the Court, and Class Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form attached hereto as Exhibit D, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.6;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel;
- d) appointment of Plaintiff Barbara Horvath as Class Representative;
- e) approval of the Short Notice to be mailed by U.S. mail to Settlement Class Members in a form substantially similar to Exhibit A, attached hereto.
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to Exhibit B, attached hereto, which, together with the Short Notice, shall include a fair summary of the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, the requested attorneys' fees, and the date, time and place of the Final Fairness Hearing;
- g) approval of the Claim Form to be available on the Settlement Website for submitting claims and available, upon request, in a form substantially similar to Exhibit C, attached hereto; and
- h) appointment of Angeion as the Claims Administrator.

The Short Notice, Long Notice, and Claim Form shall be reviewed by the Claims Administrator and may be revised as agreed upon by the Settling Parties before such submissions to the Court for approval.

3.2 Notice. Notice shall be provided to Settlement Class Members by the Claims Administrator in a manner that satisfies constitutional requirements and due process. The notice plan shall be subject to approval by the Court as meeting the requirements of New York law and constitutional due process requirements.

- 3.2.1 Within seven (7) days after the date of the Preliminary Approval Order, GSC shall provide the Settlement Class List to the Settlement Administrator.

- 3.2.2 The Claims Administrator shall provide direct and individual notice to Settlement Class Members via U.S. Mail or email, to the extent mailing addresses or email addresses are available, by the Notice Deadline by mailing the Short Notice to the last known mailing addresses for Settlement Class Members. Prior to mailing, the Claims Administrator shall check and update all addresses through the National Change of Address (“NCOA”) Database. Where postcards are returned with a forwarding address prior to the claims deadline, the Claims Administrator shall forward the postcards to the forwarding address. Where postcards are returned with no forwarding address prior to the claims deadline, the Claims Administrator shall undertake reasonable means to ascertain a valid forwarding address and forward the postcard. The Settlement Administrator shall also issue notice by publication by issuing a press release announcing the Settlement on or around the Notice Date.
- 3.2.3 The Claims Administrator shall establish a dedicated Settlement Website and shall maintain and update the website throughout the Claims Period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement. The Settlement Website shall also include links to relevant filings including but not limited to the operative complaint; preliminary approval motion and order; motion for attorneys’ fees, costs, and service awards; and motion for final approval.
- 3.2.4 A toll-free help line staffed with a reasonable number of live operators shall be made available to address Settlement Class Members’ inquiries.
- 3.2.5 The Claims Administrator will also provide copies of the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement, upon request.
- 3.2.6 Before the Final Approval Hearing, Class Counsel shall file with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice. The Short Notice, Long Notice, and Claim Form approved by the Court may be adjusted by the Claims Administrator in consultation with an agreement by the Settling Parties, as may be reasonable and necessary and not materially inconsistent with such approval.
- 3.3 GSC shall pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Any attorneys’ fees, costs, and expenses of Plaintiff’s Counsel, and a service award to the Class Representative, as approved by the Court, shall be paid by GSC as set forth in Section 7.4 below.
- 3.4 Class Counsel shall move the Court for a Judgment of this Settlement, to be issued (1) following the Final Fairness Hearing, and (2) within a reasonable time after the Notice Deadline, Objection Date, and Opt-Out Date. In connection with the motion for preliminary approval described in ¶ 3.1, counsel for the Settling Parties shall request that the Court set a date for the Final Fairness Hearing that is no earlier than one hundred thirty-five (135) days after entry of the Preliminary Approval Order.

4. Opt-Out Procedures.

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, this written notice (a Request for Exclusion) must be postmarked no later than the Opt-Out Date.

4.2 All Persons who submit valid and timely Requests for Exclusion, as set forth in ¶ 4.1 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 In the event that within 10 days after the Opt-Out Date, there have been Requests for Exclusion totaling more than 200 individuals, Defendant shall have the right to terminate the Settlement Agreement in its entirety.

4.4 No person shall purport to exercise any exclusion rights of any other person, or purport (a) to opt-out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt-out more than one Settlement Class Member on a single paper, or as an agent or representative. Any such purported requests to Opt-Out as a group or in the aggregate shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Requests for Exclusion shall be treated as a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and judgment entered thereon, unless he or she submits a valid and timely Request for Exclusion.

5. Objection Procedures.

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vii) a list of all settlements to which the objector and/or their counsel have objected in the preceding three (3) years; and (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation). To be timely, written notice of an objection to the designated Post Office box established by the Claims Administrator by the Objection Date.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately

or to object to the Settlement Agreement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1.

6. Releases.

6.1 Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Settlement Class Member, including Plaintiff, and each of their respective heirs, executors, administrators, representatives, agents, predecessors, successors, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims including Unknown Claims, against each of the Released Parties. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiff, and each of their respective heirs, executors, administrators, representatives, agents, predecessors, successors, and assigns, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.2 Upon the Effective Date, GSC shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Plaintiff, each and all of the Settlement Class Members and Plaintiff's Counsel of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses GSC may have against such Persons including, without limitation, any claims based upon or arising out of any debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither GSC nor their Released Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Plaintiff, each and all of the Settlement Class Members and Plaintiff's Counsel.

7. Attorneys' Fees, Costs, and Expenses; Service Award to Plaintiff.

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiff, as provided for in ¶ 7.2 until after the substantive terms of the settlement had been agreed upon, other than that GSC would not object to a request for reasonable attorneys' fees, costs, expenses, and a service award to Plaintiff as may be ordered by the Court. GSC and Class Counsel then negotiated and agreed to the provision described in ¶ 7.2.

7.2 Class Counsel may petition the court for attorneys' fees, inclusive of any costs and expenses of the Litigation, in an amount not to exceed \$200,000.00.

7.3 Subject to Court approval, GSC has agreed not to object to a request for a service award in the amount of \$2,500 to the named Plaintiff.

7.4 If awarded by the Court, GSC shall pay the attorneys' fees, costs, expenses, and service awards to the Claims Administrator, as set forth above in ¶¶ 7.2 and 7.3 within thirty (30) days after the Effective Date. The Claims Administrator shall thereafter distribute the award of attorneys' fees, costs, and expenses to Plaintiff's Counsel and service awards to Plaintiff consistent with ¶¶ 7.2 and 7.3. The payment of attorneys' fees, costs, expenses, and service awards shall be paid outside of the aggregate cap in ¶ 2.1.3.

7.5 The Settling Parties agree that GSC will not in any event or circumstance be required to pay any amounts to Class Counsel for attorneys' fees, costs, and expenses in excess of the combined amount identified above in ¶ 7.2, or to pay any amounts to the Class Representative for service awards in excess of the amount identified above in ¶ 7.3.

7.6 Any award of attorneys' fees, costs, and expenses, and the service award to Plaintiff, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will not in any way reduce the consideration being made available to the Settlement Class as described herein. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service awards ordered by the Court to Class Counsel or Plaintiff shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Administration of Claims.

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under Section 2. The Claims Administrator's and claims referee's, as applicable, determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the dispute resolution process set forth in ¶ 2.5. All claims agreed to be paid in full by GSC shall be deemed a Valid Claim.

8.2 Payment for Valid Claims shall be issued, via check or electronically, within sixty (60) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later.

8.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise expressly allowed by law or the Settling Parties' written agreement, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4 No Person shall have any claim against the Claims Administrator, claims referee, GSC, Released Parties, Class Counsel, Plaintiff, Plaintiff's Counsel, and/or Defendant's Counsel based on distributions of benefits to Settlement Class Members or any alleged failure by GSC to implement the business practice changes in ¶ 2.4.

8.5 Information submitted by Settlement Class Members in connection with submitted claims under this Settlement Agreement shall be deemed confidential and protected as such by the Claims Administrator, claims referee, Class Counsel, and Defendant's Counsel.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination.

9.1 The Effective Date of the settlement shall be ten (10) days after the date when each and of all of the following conditions have occurred:

- a) This Settlement Agreement has been fully executed by all Settling Parties and their counsel;
- b) the Court has entered the Preliminary Approval Order, as required by ¶ 3.1, without material change;
- c) The Court-approved Short Notice has been sent and the Settlement Website has been duly created and maintained as ordered by the Court;
- d) GSC has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.3;
- e) the Court has entered the Judgment granting final approval to the Settlement as set forth herein; and
- f) the Judgment has become Final, as defined in ¶ 1.12.

9.2 If all conditions specified in ¶ 9.1(a)–(f) are not satisfied, the Settlement Agreement shall be canceled and terminated unless Class Counsel and Defendant’s Counsel mutually agree in writing to proceed with the Settlement Agreement.

9.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Class Counsel and to Defendant’s Counsel a complete list of all timely and valid Requests for Exclusion (“Opt-Out List”).

9.4 In the event that the Settlement Agreement or the releases set forth in ¶ 6 above are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms: (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled Litigation deadlines be reasonably extended by the Court to avoid prejudice to any Settling Party or Settling Party’s counsel; and (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys’ fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, GSC shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, and Claims Administration, and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

10. Miscellaneous.

10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth in the Settlement Agreement.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Parties may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.5 This Agreement contains the entire understanding between GSC and Plaintiff regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between GSC provided herein, each party shall bear its own costs. This Agreement supersedes all previous agreements made between GSC and Plaintiff. Any agreements reached between GSC, Plaintiff, and any third party, are expressly excluded from this provision.

10.6 The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

10.7 Class Counsel, on behalf of the Settlement Class, are expressly authorized by Plaintiff to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the

Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.8 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto warrants that such Person has the full authority to do so.

10.9 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be the same instrument. A complete set of original executed counterparts shall be filed with the Court.

10.10 The Settlement Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto. No assignment of this Settlement Agreement will be valid without the other party's prior, written permission.

10.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

10.12 All dollar amounts are in United States dollars (USD).

10.13 All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. Settlement Checks that are not negotiated within ninety (90) days of their date of issue shall not be reissued, unless a Settlement Check is returned as undeliverable. If a Participating Settlement Class Member fails to cash a Settlement Check issued under this Settlement Agreement before it becomes void, the Participating Settlement Class Member will have failed to meet a condition precedent to recovery of Settlement benefits, the Participating Settlement Class Member's right to receive monetary relief under the Settlement shall be extinguished, and Defendant shall have no obligation to make payments to the Participating Settlement Class Member for compensation or loss reimbursement or to make any other type of monetary relief to the Participating Settlement Class Member. Such Settlement Class Members remain bound by all terms of the Settlement Agreement.

10.14 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

10.15 This Agreement shall be deemed to have been drafted by the Settling Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement. Plaintiff and GSC each acknowledge that each have been advised and are represented by legal counsel of their own choosing throughout the negotiations preceding execution of this Agreement and have executed the Agreement after having been so advised.

10.16 Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such

provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed by their duly authorized attorneys.

/s/ David K. Lietz

David K. Lietz

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

5335 Wisconsin Avenue NW, Suite 440

Washington, D.C. 20015-2052

Telephone: (866) 252-0878

Email: dlietz@milberg.com

Counsel for Plaintiff and the Putative Class

/s/ Daniel M. Braude

Daniel M. Braude

Nicholas Pontzer

MULLEN COUGHLIN LLC

426 W. Lancaster Ave

Devon, PA 19333

Phone: (267) 930-4770

dbraude@mullen.law

npontzer@mullen.law

Attorneys for Defendant

EXHIBIT A

NYSCEF DOC. NO. 10

RECEIVED NYSCEF: 03/10/2025

Legal Notice

**TO BE OPENED
BY THE INTENDED
RECIPIENT ONLY.**

A court authorized this Notice.

*This is not a solicitation from a
lawyer.*

Gramercy Surgery Settlement
c/o Claims Administrator

Insert Address

«ScanString»

Postal Service: Please do not mark barcode

Notice ID: «Notice ID»

Confirmation Code: «Confirmation Code»

«FirstName» «LastName»

«Address1»

«Address2»

«City», «StateCd» «Zip»

«CountryCd»

A proposed settlement has been reached in a lawsuit entitled *Horvath v. Gramercy Surgery Center, Inc.*, Index No. 159212/2024 (N.Y. Cnty Sup. Ct.) relating to a June 2024 Data Incident during which cybercriminals potentially accessed files that contained individuals' private information. Gramercy Surgery Center, Inc. ("Defendant") denies all claims alleged against it and denies all charges of wrongdoing or liability. The settlement is not an admission of wrongdoing or an indication that the Defendant has violated any laws, but rather the resolution of disputed claims.

Am I Included? Yes. Defendant's records indicate your information may have been involved in the Data Incident.

The Settlement Benefits. The Settlement provides for Expense Reimbursement or an Alternative Cash Payment (up to an aggregate cap of \$400,000.00 for the full class), and/or Credit Monitoring for Settlement Class Members who submit a Valid Claim,. Please visit **WEBSITE** for complete information about the Settlement Benefits.

- **Monetary Relief:** Up to \$2500 for documented out of pocket losses and \$60 for lost time spent dealing with the Data Incident, **OR** an Alternative Cash Payment of \$50 ;
- **Credit Monitoring:** Three (3) years of credit monitoring services

How Do I Receive Settlement Benefits? Settlement Class Members must submit a Claim Form online at **WEBSITE** or by mailing a completed Claim Form postmarked no later than **DEADLINE** to the Claims Administrator. If you do not submit a Claim Form, you will not receive any Settlement Benefits.

What Are My Options? If you **do nothing** or **submit a Claim Form**, you will not be able to sue or continue to sue the Defendant about the claims resolved by this Settlement. If you **exclude yourself**, you will not receive any Settlement Benefits, but you will keep your right to sue the Defendant in a separate lawsuit about the claims resolved by this Settlement. If you do not exclude yourself, you can **object** to the Settlement. The deadline to exclude yourself from the Settlement or to object to the Settlement is **DEADLINE**. Visit **WEBSITE** for complete details on how to exclude yourself from, or object to, the Settlement.

The Final Fairness Hearing. The Court is currently scheduled to hold a Final Fairness Hearing at **TIME**, on **DATE**, in Courtroom **XX** located at **INSERT COURT ADDRESS**. At the hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court may also consider Class Counsel's request for an award of attorneys' fees, costs, and expenses in an amount not to exceed \$200,000.00, and a service award in the amount of \$2,500.00 for the Class Representative. If there are objections, the Court will consider them. Any changes to the date or time of the Final Fairness Hearing will be posted at **WEBSITE**.

This Notice is only a Summary. For additional information, please visit **WEBSITE** or call toll-free 1-**XXX-XXX-XXXX**. You may also write to the Claims Administrator at **EMAIL ADDRESS** or by mail to: Gramercy Surgery Data Incident, **_____**.

EXHIBIT B

SUPREME COURT FOR NEW YORK COUNTY, NEW YORK

If you are an Individual who was notified by Gramercy Surgery Center, Inc. that your PII was potentially compromised in a June 2024 Data Incident, a Class Action Settlement may Affect Your Rights.

A state court authorized this Notice. This is not a solicitation from a lawyer.

- A proposed settlement has been reached in a lawsuit entitled *Horvath v. Gramercy Surgery Center, Inc.*, Index No.: 159212/2024 (N.Y. Cnty Sup. Ct.) relating to a June 2024 Data Incident during which cybercriminals potentially accessed files that contained individuals' private information. Gramercy Surgery Center, Inc. ("GSC" or "Defendant") denies all claims alleged against it and denies all charges of wrongdoing or liability. The settlement is not an admission of wrongdoing or an indication that the Defendant has violated any laws, but rather the resolution of disputed claims.
- If you received a written notification from GSC about the 2024 Data Incident, you are included in this Settlement as a "Settlement Class Member."
- The Settlement provides for Expense Reimbursement or an Alternative Cash Payment (up to an aggregate cap of \$400,000.00 for the full class), and/or Credit Monitoring for Settlement Class Members who submit a Valid Claim. (See questions 7-10). In addition, GSC will pay for the Costs of Notice and Claims Administration, Attorneys' Fees and Costs awarded by the Court, and a service award to the Representative Plaintiff as awarded by the Court.
- Your legal rights are affected regardless of whether you do or do not act. Read this notice carefully. For complete details, visit [WEBSITE](#) or call toll-free 1-[XXX-XXX-XXXX](#).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY: DEADLINE	Submitting a valid Claim Form is the only way you can receive Credit Monitoring Services, Expense Reimbursement, or an Alternative Cash Payment.
EXCLUDE YOURSELF FROM THE SETTLEMENT BY: DEADLINE	If you exclude yourself from this Settlement, you will not receive any benefits from the Settlement, but you also will not release your claims against GSC. This is the only option that allows you to be part of any other lawsuit against GSC for the legal claims resolved by this Settlement. If you exclude yourself from the Settlement, you may not object to the Settlement.
OBJECT TO THE SETTLEMENT BY: DEADLINE	To object to the settlement, you can write to the Court with reasons why you do not agree with the Settlement. You may ask the Court for permission for you or your attorney to speak about your objection at the Final Fairness Hearing at your own expense.
DO NOTHING	If you do nothing, you will not receive any benefits from the Settlements. You will also give up certain legal rights.

Questions? Visit [WEBSITE](#) or call toll-free 1-[XXX-XXX-XXXX](#)

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....	PAGE 2
WHO IS INCLUDED IN THE SETTLEMENT?.....	PAGE 3
THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY.....	PAGE 3
HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM.....	PAGE 5
REMAINING IN THE SETTLEMENT.....	PAGE 5
EXCLUDING YOURSELF FROM THE SETTLEMENT.....	PAGE 5
THE LAWYERS REPRESENTING YOU.....	PAGE 6
OBJECTING TO THE SETTLEMENT.....	PAGE 7
THE COURT’S FINAL FAIRNESS HEARING.....	PAGE 8
IF YOU DO NOTHING.....	PAGE 8
GETTING MORE INFORMATION.....	PAGE 9

BASIC INFORMATION

1. Why is this Notice being provided?

The Court directed that this Notice be provided because you have a right to know about a proposed settlement that has been reached in this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after objections or appeals, if any, are resolved, the Claims Administrator appointed by the Court will distribute the Settlement Benefits to Settlement Class Members who submitted a Valid Claim. This Notice explains the lawsuit, the Settlement, your legal rights, what payments are available, who is eligible for them, and how to get them.

The Court overseeing this case is the Supreme Court of the State of New York, County of New York. The case is known as *Horvath v. Gramercy Surgery Center, Inc* Index No.: 159212/2024. Barbara Horvath, the individual who brought this Action, is called the Plaintiff or Representative Plaintiff, and the entity sued, Gramercy Surgery Center, Inc., or GSC, is called the Defendant.

2. What is this lawsuit about?

The Plaintiff claims that GSC is liable for the Data Incident and has asserted numerous legal claims against GSC. GSC denies each and all of the claims and contentions alleged against it in the Action. GSC denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Action.

For more information and to review the complaints filed in this Action, visit [WEBSITE](#).

3. What is a class action Settlement?

In a class action, Plaintiff sued on behalf of people who have similar claims. Together, these people are called a Settlement Class or Settlement Class Members. One Court and one judge resolve the issues for all Class members, except for those who exclude themselves from the Settlement Class.

4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiff or GSC. Instead, the Plaintiff negotiated a settlement with GSC that allows the Plaintiff, the proposed Settlement Class, and GSC to avoid the risks and costs of lengthy and uncertain litigation and the uncertainty of a trial and appeals. The Settlement provides benefits and allows Settlement Class Members to obtain payment for certain costs or losses without further delay. Plaintiffs and Class Counsel think the Settlement is in the best interest of all Settlement Class Members. This Settlement does not mean that GSC did anything wrong.

WHO IS INCLUDED IN THE SETTLEMENT?

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

The Settlement Class includes all individuals to whom GSC provided notice of the Data Incident.

Settlement Class Members were also provided notice of this class action Settlement via U.S. mail or email, to the extent mailing addresses or email addresses are available. If you received notice of this Settlement, you are eligible to receive Settlement Benefits. If you are still not sure whether you are included, you can contact the Claims Administrator by calling toll-free at 1-XXX-XXX-XXXX or by visiting the Settlement Website at [WEBSITE](#).

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

Yes. The Settlement Class specifically excludes: (i) GSC, and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the presiding judge, and his or her staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

The Settlement provides for both monetary relief and credit monitoring and identity theft protection. Monetary Relief is subject to an aggregate cap of \$400,000.00 for the full class. In addition, GSC will pay for claimed credit monitoring and identity theft protection, the Costs of Notice and Claims Administration, Attorneys' Fees and Costs awarded by the Court, and service awards to the Representative Plaintiffs awarded by the Court. Please visit [WEBSITE](#) for complete information about the Settlement Benefits.

- Monetary Relief:
 - (a) **Expense Reimbursements** including up to \$2500 in Documented Out-of-Pocket Losses, and up to \$60 in lost time (up to 3 hours at \$20 per hour),
 - OR
 - (b) **an Alternative Cash Payment** in the amount of \$50.
- Monetary Relief is subject to an aggregate cap of \$400,000.
- Credit Monitoring: Three (3) years of one bureau credit monitoring services.

8. What is included under Expense Reimbursement?

Expense Reimbursements include Documented Out-of-Pocket Losses and Lost Time.

Out-of-Pocket Losses. All Settlement Class Members who submit a Valid Claim using the Claim Form are eligible for any documented and attested-to out-of-pocket expenses directly associated with dealing with the Data Incident, not to exceed \$2500 per Settlement Class Member, that were incurred more likely than not as a result of the Data Incident, including but not limited to (i) unreimbursed expenses, charges and/or losses relating to fraud or identity theft such as unreimbursed bank fees; long distance phone charges; cell phone charges (only if charged by the minute); data charges (only if charged based on the amount of data used); postage; gasoline for local travel; fees for credit repair or similar services; and costs associated with freezing or unfreezing credit; and/or any other charge or loss reasonably related to the Data Incident incurred by Class Members between June 14, 2024 and the Claims Deadline, except for reimbursement for credit monitoring service costs, which must have been incurred between August 9, 2024 and the Claims Deadline.

To receive reimbursement for out-of-pocket losses, Settlement Class Members must submit a Valid Claim, including supporting documentation, to the Claims Administrator. Reimbursement for out-of-pocket expenses is subject to the following terms: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; and (3) the loss occurred between June 14, 2024, and the Claims Deadline, except for reimbursement for credit monitoring service costs, which must have been incurred between August 9, 2024 and the Claims Deadline.

Lost Time. Class Members are also eligible to receive reimbursement for up to three hours of lost time spent dealing with the Data Incident, rounded to the nearest whole hour, calculated at the rate of \$20 per hour. Class Members may receive up to three hours of lost time if the Class Member attests that any claimed lost time was spent responding to issues raised by the Data Incident, and briefly describes how the lost time was spent. Claims for reimbursement of lost time may be combined with claims for documented out-of-pocket expenses.

The amount of the Expense Reimbursements will be increased or decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments.

Settlement Class Members with Out-of-Pocket Losses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that document the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

9. What is the Alternative Cash Payment?

Settlement Class Members can elect to make a claim for a \$50.00 alternative cash payment in lieu of the Expense Reimbursement benefit. To receive this benefit, Settlement Class Members must submit a Valid Claim using the Claim Form, but no documentation is required to make a claim.

The amount of the alternative cash payment will be increased or decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments.

10. What is included in the Credit Monitoring Services?

Settlement Class Members who submit a Claim Form can elect to enroll in three (3) years of one bureau credit monitoring services.

These services will be made available to all Settlement Class Members who choose to enroll regardless of whether they claim Expense Reimbursement or the Alternative Cash Payment.

A unique redemption code, allowing Settlement Class Members to enroll in these services will be sent to each Settlement Class Member who submits a valid claim for such services after the Court approves the Settlement as final and after any appeals are resolved.

11. Has GSC implemented any additional security measures?

As part of this Settlement, GSC, has adopted, paid for, implemented, and will maintain certain business practice changes related to information security to safeguard personal information on its systems. GSC will detail these business practice changes to Class Counsel in a confidential declaration.

HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

12. How do I get benefits from the Settlement?

In order to receive Credit Monitoring or a Settlement payment, you must complete and submit a Claim Form. Claim Forms are available at WEBSITE, or you may request one by mail by calling 1-XXX-XXX-XXXX. Read the instructions carefully, fill out the Claim Form, and submit it online, or mail it postmarked no later than Month Day, 2025 to: Gramercy Surgery Settlement, c/o Claims Administrator, insert address.

13. How will claims be decided?

The Claims Administrator will decide whether the information provided on the Claim Form is complete and valid. The Claims Administrator may require additional information from any claimant. If the Claims Administrator requires additional information from you and you do not provide it in a timely manner, your claim may not be paid at the Claims Administrator's discretion.

14. When will I get my payment?

The Court is currently scheduled to hold a Final Fairness Hearing at : 0 .m. on Month Day, 2025 to decide whether to approve the Settlement. Even if the Court approves the Settlement, there may be appeals, and resolving them may take additional time. It also takes time for all the Claim Forms to be processed, depending on the number of claims submitted and whether any appeals are filed. Please be patient. If you have further questions regarding payment timing, you may contact the Claims Administrator by emailing EMAIL ADDRESS. Any changes to the date or time of the Final Fairness Hearing will be posted at WEBSITE.

REMAINING IN THE SETTLEMENT

15. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the Settlement, but if you want receive Credit Monitoring Services or a payment from the Settlement, you must submit a Claim Form online or postmarked by Month Day, 2025.

If you do nothing, you will **not** receive credit monitoring services or be eligible to receive a payment. You will also give up certain legal rights.

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

If the Settlement becomes final, you will give up your right to sue GSC for the claims being resolved by this Settlement. The specific claims you are giving up against GSC and the claims you are releasing are

described in the Settlement Agreement, available at [WEBSITE](#). The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions about what claims you are giving up and which parties you are releasing, you can talk to the law firms listed in Question 21 for free or you can, of course, talk to your own lawyer at your own expense.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want any benefits from this Settlement, and you want to keep the right to sue GSC about issues in the Litigation, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

17. If I exclude myself, can I still get payment from the Settlement?

No. If you exclude yourself from the Settlement, you will not be entitled to any benefits of the Settlement, but you will not be bound by any judgment in this case.

18. If I do not exclude myself, can I sue the GSC for the same thing later?

No. Unless you exclude yourself from the Settlement, you give up any right to sue GSC for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case.

19. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from the Settlement in *Horvath v. Gramercy Surgery Center, Inc.*, Index No.: 159212/2024 (N.Y. Cnty Sup. Ct.). Your letter must also include your full name, current address, and signature, and must clearly manifest your intent to be excluded from this settlement. You must mail your exclusion request postmarked no later than **Month __, 2025** to:

Gramercy Surgery Settlement
[\[insert address\]](#)

Settlement Class Members will only be able to submit an opt-out request on their own behalf; mass or class opt-outs are not permitted.

THE LAWYERS REPRESENTING YOU

20. Do I have a lawyer in this case?

Yes. The Court appointed the following attorneys as “Class Counsel” to represent the Settlement Class:

CLASS COUNSEL

David K. Lietz
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
5335 Wisconsin Ave., NW, Suite 440
Washington, DC 20016
Phone: 866.252.0878
dlietz@milberg.com

You will not be charged for contacting Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

21. How will Class Counsel be paid?

Class Counsel will ask the Court to award attorneys' fees, costs, and expenses in an amount not to exceed Two Hundred Thousand Dollars and No Cents (\$200,000.00). Class Counsel will also seek a service award in the amount of two thousand five hundred dollars and no cents (\$2,500.00) for the Representative Plaintiff.

The Court may award less than these amounts. The Court-awarded amounts for attorneys' fees, costs, and expenses, as well any service awards approved by the Court for the Representative Plaintiff will be paid separately by GSC and will not affect the Settlement Benefits available to Settlement Class Members.

OBJECTING TO THE SETTLEMENT

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

If you are a Settlement Class Member, you can object to the Settlement if you do not like or agree with the Settlement or some part of it. You can give reasons to the Court why you think the Court should not approve the Settlement. The Court will consider your views before deciding.

Objections must include:

- i. the objector's full name, address, telephone number, and email address (if any);
- ii. the case name and case number (i.e. *Horvath v. Gramercy Surgery Center, Inc.*, Index No.: 159212/2024 (N.Y. Cnty Sup. Ct.));
- iii. information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of original notice of the Data Incident or a statement explaining why the objector believes he or she is a Settlement Class Member);
- iv. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- v. the identity of all counsel representing the objector in connection with the objection;
- vi. a statement whether the objector and/or his or her counsel will personally appear at the Final Fairness Hearing;
- vii. a list of all settlements to which the objector and/or their counsel have objected in the preceding three (3) years and
- viii. the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative.

To be timely, written notice of an objection to the designated Post Office box established by the Claims Administrator by the Objection Date. You must mail your objection postmarked no later than **Month __, 2025** to:

Gramercy Surgery Settlement
[insert address]

Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Action. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth herein.

23. What is the difference between objecting to and excluding myself from the Settlement?

Objecting is telling the Court that you do not like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Class in this Settlement. If you exclude yourself from the Settlement, you have no basis to object or submit a Claim Form because the Settlement no longer affects you.

THE COURT'S FINAL FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. You cannot speak at the hearing if you exclude yourself from the Settlement.

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

The Court will is currently scheduled to hold a Final Fairness Hearing at **Time** on **Month Day Year**, in Courtroom located at **Address of the Courthouse**. At the hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court may also consider Class Counsel's request for an award of attorneys' fees, costs, and expenses not to exceed \$200,000.00, and a service award not to exceed \$2,500.00 for the Representative Plaintiff. The Court will take into consideration any timely sent written objections and may also listen to anyone who has requested to speak at the hearing (*see* Question 22). Any changes to the date or time of the Final Fairness Hearing will be posted at WEBSITE.

25. Do I have to come to the Final Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend the Final Fairness Hearing at your own expense. If you file an objection, you do not have to come to Court to talk about it. You may also hire your own lawyer to attend, at your own expense, but you are not required to do so.

26. May I speak at the Final Fairness Hearing?

You may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must follow the instructions provided in Question 22 above. You cannot speak at the hearing if you exclude yourself from the Settlement.

IF YOU DO NOTHING**27. What happens if I do nothing?**

If you do nothing, you will not receive credit monitoring services or be eligible to receive a payment from this Settlement. If the Court approves the Settlement, and you do nothing, you will be bound by the Settlement Agreement. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against GSC or Released Persons about the issues involved in this lawsuit, resolved by this Settlement, and released by the Settlement Agreement.

GETTING MORE INFORMATION**28. Are more details about the Settlement available?**

Yes. This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at **WEBSITE**, or by writing to Claims Administrator:

Gramercy Surgery Settlement
c/o Claims Administrator
INSERT ADDRESS
EMAIL ADDRESS

29. How do I get more information?

For more information, please visit **WEBSITE** or call toll-free **1-XXX-XXX-XXXX**. You can also contact the Claims Administrator by mail or email.

Please do not call the Court or the Clerk of the Court for additional information.

EXHIBIT C

NYSCEF DOC. NO. 10

RECEIVED NYSCEF: 03/10/2025

Your claim must be
submitted online or
postmarked by:
[DEADLINE]

Horvath v. Gramercy Surgical Center, Inc
Index No.: 159212/2024
Supreme Court for New York County, New York
CLAIM FORM

**GSC
CLAIM**

GENERAL INSTRUCTIONS

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

You are among the individuals to whom notice was provided of the Data Incident suffered by Defendant Gramercy Surgery Center, Inc. ("GSC" or "Defendant") wherein cybercriminals potentially accessed files containing the Personal Information of approximately 52,372 individuals from Defendant's network (the "Data Incident"). The Data Incident potentially impacted certain information that may include, but is not limited to, names, Social Security numbers, financial account information, date of birth, driver's license numbers, medical record numbers, treatment information, and health insurance (personally identifiable information or "PII," and protected health information or "PHI") (collectively, "Personal Information").

The Settlement Benefits

Documented Out-of-Pocket Losses. You are eligible for reimbursement of any documented and attested-to out-of-pocket expenses directly associated with dealing with the Data Incident, not to exceed \$2500 per Settlement Class Member, that were incurred more likely than not as a result of the Data Incident, including but not limited to (i) unreimbursed expenses, charges and/or losses relating to fraud or identity theft such as unreimbursed bank fees; long distance phone charges; cell phone charges (only if charged by the minute); data charges (only if charged based on the amount of data used); postage; gasoline for local travel; fees for credit repair or similar services; and costs associated with freezing or unfreezing credit; and/or any other charge or loss reasonably related to the Data Incident incurred by Class Members between June 14, 2024 and the Claims Deadline, except for reimbursement for credit monitoring service costs, which must have been incurred between August 9, 2024 and the Claims Deadline.

To receive reimbursement for out-of-pocket losses, you must submit supporting documentation to the Claims Administrator. Reimbursement for out-of-pocket expenses is subject to the following terms: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; and (3) the loss occurred between June 14, 2024, and the Claims Deadline, except for reimbursement for credit monitoring service costs, which must have been incurred between August 9, 2024 and the Claims Deadline.

Lost Time. You are also eligible to receive reimbursement for up to three hours of lost time spent dealing with the Data Incident, rounded to the nearest whole hour, calculated at the rate of \$20 per hour. Class Members may receive up to three hours of lost time if the Class Member attests that any claimed lost time was spent responding to issues raised by the Data Incident, and briefly describes how the lost time was spent. Claims for reimbursement of lost time may be combined with claims for documented out-of-pocket expenses, and are subject to the \$2500 individual cap on Monetary Relief.

Alternative Cash Payment. As an alternative to claiming Documented Out-of-Pocket Losses and Lost Time, you may claim one-time cash payment of \$50.

Credit Monitoring. In addition to, and regardless of whether you submit a claim for the Expense Reimbursements, Lost Time, or the Alternative Cash Payment, you may claim three (3) years of one-bureau credit monitoring and identity theft protection services. The identity theft monitoring will include identity theft insurance of at least \$1 million.

If the total Monetary Settlement Benefits claimed exceed \$400,000.00, the amounts paid to Settlement Class Members will be prorated downwards to stay within the maximum \$400,000.00 aggregate cap.

This Claim Form may be submitted electronically *via* the Settlement Website at [REDACTED] or completed and mailed, including any supporting documentation, to: Gramercy Surgical Settlement, Attn: Claim Forms, [REDACTED].

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

NYSCEF DOC. NO. 10

RECEIVED NYSCEF: 03/10/2025

Your claim must be
submitted online or
postmarked by:
[DEADLINE]

Horvath v. Gramercy Surgical Center, Inc
Index No.: 159212/2024
Supreme Court for New York County, New York
CLAIM FORM

**GSC
CLAIM**

I. SETTLEMENT CLASS MEMBER NAME AND CONTACT INFORMATION

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

First Name**Last Name****Street Address****City****State****Zip Code****Email Address****Telephone Number****Notice ID, if known****II. Documented Out-of-Pocket Losses**

- ☐ Check this box if you are requesting compensation for **Reimbursement** of Documented Out-of-Pocket Losses up to a total of \$2500.00.

You must submit supporting documentation demonstrating actual, unreimbursed monetary loss.

Complete the chart below describing the supporting documentation you are submitting.

Description of Documentation Provided	Amount
Example: Receipt for credit repair services	\$100
TOTAL AMOUNT CLAIMED:	

- ☐ You must check this box to attest that the out-of-pocket expenses and charges you listed above actually occurred and are associated with the Data Incident.

III. LOST TIME REIMBURSEMENT

- ☐ Check this box if you are requesting compensation for **Lost Time** up to a total of \$60.00 (3 hours of time at \$2.00 per hour).

NYSCEF DOC. NO. 10

RECEIVED NYSCEF: 03/10/2025

Your claim must be
submitted online or
postmarked by:
[DEADLINE]

Horvath v. Gramercy Surgical Center, Inc
Index No.: 159212/2024
Supreme Court for New York County, New York
CLAIM FORM

**GSC
CLAIM**

In order to receive this payment, you must describe what you did and how the claimed lost time was spent related to the Data Incident. Examples of compensable lost time include: Investigating credit history for potential fraudulent transactions; communicating with credit reporting bureaus; communicating with bank/credit card customer service lines regarding potential fraudulent transactions, changing cards or accounts; time on the internet addressing potentially fraudulent transactions; and time on the internet investigating identity theft or credit protection measures, products or services.

Please indicate how many hours of lost time you are claiming (up to 3 hours): ____

Description of Documentation Provided

- ☐ You must check this box to attest that the lost time expenses you listed above actually occurred and are associated with the Data Incident.

IV. ALTERNATIVE CASH PAYMENT

- ☐ Check this box if you wish to receive a \$50 alternative cash payment in lieu of expense reimbursement.

V. CREDIT MONITORING SERVICES

- ☐ Check this box if you wish to enroll in Credit Monitoring Services for three (3) years.

A unique redemption code, allowing Settlement Class Members to enroll in these services will be sent to each Settlement Class Member who submits a valid claim for such services after the Court approves the Settlement as final and after any appeals are resolved.

VI. PAYMENT SELECTION

Please select one of the following payment options:

QUESTIONS? VISIT WWW._____.COM OR CALL TOLL-FREE 1-XXX-XXX-XXXX

NYSCEF DOC. NO. 10

RECEIVED NYSCEF: 03/10/2025

Your claim must be
submitted online or
postmarked by:
[DEADLINE]

Horvath v. Gramercy Surgical Center, Inc
Index No.: 159212/2024
Supreme Court for New York County, New York
CLAIM FORM

**GSC
CLAIM**

☐ **PayPal** - Enter your PayPal email address: _____

☐ **Venmo** - Enter the mobile number associated with your Venmo account: ____-____-____

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

Mobile Number: ____-____-____ or Email Address: _____

☐ **Virtual Prepaid Card** - Enter your email address: _____

☐ **Physical Check** - Payment will be mailed to the address provided in Section I above.

VII. ATTESTATION & SIGNATURE

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

Signature

Printed Name

Date

EXHIBIT D

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

BARBARA HORVATH, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GRAMERCY SURGERY CENTER, INC.,

Defendant.

Index No.: 159212/2024

[PROPOSED] PRELIMINARY APPROVAL ORDER

WHEREAS, this Action¹ is a putative class action before this Court;

WHEREAS, Plaintiff, individually, and on behalf of the proposed Settlement Class, and Defendant, have entered into the Settlement Agreement, which is subject to review and approval by the Court under C.P.L.R. § 901, *et seq.*, and which, together with its exhibits, provides for a complete dismissal on the merits and with prejudice of the claims asserted in the Action against HA should the Court grant Final Approval of the Settlement;

WHEREAS, Plaintiff filed an unopposed motion pursuant to C.P.L.R. § 908 requesting entry of an order to: (1) conditionally certify the Settlement Class; (2) appoint Plaintiff as Class Representative; (3) appoint counsel listed in paragraph 1.7 of the Settlement Agreement as Class Counsel; (4) preliminarily approve the Settlement; (5) approve the Notice Program and Notices and direct that Notice be sent to the Settlement Class members; (6) approve the Claim Form and Claims process; (7) order the Settlement's opt-out and objection procedures; (8) appoint the Claims

¹ The capitalized terms used herein are defined and have the same meaning as used in the Settlement Agreement unless otherwise stated.

Administrator; (9) stay all deadlines in the Action pending Final Approval of the Settlement; (10) enjoin and bar all members of the Settlement Class from initiating or continuing in any litigation or asserting any claims against GSC and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision to grant Final Approval of the Settlement; and (11) set a date for the Final Approval Hearing; and

WHEREAS, the Court having reviewed the Motion along with the Settlement and its exhibits and finding that substantial and efficient grounds exist for entering this Preliminary Approval Order granting the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement Class Certification:** Pursuant to C.P.L.R. § 903, and for purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of the following Settlement Class:

all individuals to whom GSC provided notice of the Data Incident.

The Settlement Class specifically excludes: (i) GSC, and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the presiding judge, and his or her staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

2. **Settlement Class Findings:** The Court finds, for purposes of settlement only, and without any adjudication on the merits, that the prerequisites for certifying the Action as a class action under C.P.L.R. §§ 901-902 and have been satisfied, and that the Court will likely certify at the Final Approval stage a Settlement Class.

3. As to C.P.L.R. § 901(a)(1)-(5), the Court finds that: (a) the number of Settlement Class members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any questions affecting only individual members; (c) the claims of the proposed Class Representatives are typical of the claims of the Settlement Class; (d) the proposed Class Representatives and Class Counsel have and will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. As to C.P.L.R. § 902(1)-(5), the Court finds no evidence that there is any interest in any of the members of the Settlement Class in individually controlling the prosecution or defense of separate actions; it would be impracticable and inefficient to prosecute separate actions for each of the Settlement Class members; Plaintiffs are not aware of any litigation concerning the controversy already commenced by or against members of the Settlement Class; it is desirable to concentrate litigation of claims arising from the Data Incident in this Court; and since this case has now been settled pending Court approval, the Court need not be concerned about manageability issues that can exist in a class action trial.

5. **Appointment of Class Representatives and Class Counsel:** The Court hereby finds and concludes pursuant to § 901(a)(4), and for purposes of settlement only, that Plaintiff Barbara Horvath is an adequate class representatives and appoints her as Class Representative for the Settlement Class.

7. The Court has considered (1) the work Class Counsel have done in identifying or investigating potential claims in the action, (2) Class Counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action, (3) Class Counsel's knowledge of applicable law, and (4) the resources Class Counsel will commit to representing the

Settlement Class. The Court finds that proposed Class Counsel and their law firms have expended a reasonable amount of time, effort, and expense investigating the Data Incident. It is clear from their track records of success, as outlined in their resumes, that Class Counsel are highly skilled and knowledgeable concerning class action practice. For purposes of the Settlement only, pursuant to § 901(a)(4), the Court appoints the following as Class Counsel to act on behalf of the Settlement Class and the Class Representatives with respect to the Settlement: David Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC.

6. **Preliminary Approval of the Settlement:** The Court hereby preliminarily approves the Settlement, as embodied in the Agreement, as being fair, reasonable, adequate, and in the best interest of the named Plaintiff and the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below. *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D. 3d 63, 73 (2d Dep't 2006); *Rosenfeld v. Bear Stearns & Co., Inc.*, 237 A.D. 2d 199, 199-200 (1st Dep't 1996); *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000). To reach that conclusion at this Preliminary Approval stage, the Court considered the following five factors: (1) the likelihood of success; (2) the extent of support from the parties; (3) the judgment of counsel; (4) the nature of the issues of law and fact; and (5) the presence of bargaining in good faith, which Plaintiffs sufficiently address in the Motion, and which make the proposed Settlement well within the range of possible approval. *See Klurfeld v. Equity Enters., Inc.*, 79 A.D. 2d 124, 133 (2d Dep't 1981) (adopting the factors set forth in *State of W. Va. v. Chas. Pfizer & Co., Inc.*, 314 F. Supp. 710, 740 (S.D.N.Y. 1970), *cert. denied*, *Colter Drugs, Inc. v. Chas. Pfizer & Co., Inc.*, 404 U.S. 871, 92 S. Ct. 81 (1971)); *In re Colt Inds. Shareholder Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990) (same); *Hibbs v. Marvel Enters., Inc.*, 19 A.D.3d 232, 233 (1st Dep't 2005) (same).

7. **Claims Administrator:** Class Counsel are authorized to retain Angeion Group as

the Claims Administrator to supervise and administer the Notice Program and Claim process, as well as to administer the Settlement should the Court grant Final Approval.

8. **Approval of Notice Program and Notices:** The Court approves, as to form and content, the Notice Program, including the Email Notice, Postcard Notice, and Long Form Notice, substantially in the forms attached as Exhibits to the Agreement. The Court finds that the Notice Program: (a) is the best notice practicable under the circumstances; (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the Action, the terms of the Settlement, the effect of the proposed Settlement (including the Releases contained therein), and their right to opt-out of or to object to the proposed Settlement and appear at the Final Approval Hearing; and (c) will give the Settlement Class the required reasonable notice of the commencement of this Action, thereby satisfying the requirements C.P.L.R. § 904, due process, the rules of this Court, and all other applicable law and rules. The date and time of the Final Approval Hearing shall be posted on the Settlement Website and included in the Email Notice, Postcard Notice, and Long Form Notice, respectively, before they are emailed, mailed, or published. Consistent with the terms of the Settlement, and as permitted by C.P.L.R. § 908(d)(I), the Court approves use of a portion of the Settlement Fund paid by HA to be used to pay for the Notice Program.

9. **Claim Form and Claims Process:** The Court approves the Claim Form as set forth in the Settlement, and the Claims process to be implemented by the Claims Administrator. The Claim Form is straightforward and easy to complete, allowing each Settlement Class Member to elect the alternative Settlement Class Member Benefits. Should the Court grant Final Approval of the Settlement, Settlement Class Members who do not opt-out of the Settlement shall be bound by its terms even if they do not submit Claims.

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

11. **Opt-Outs from the Settlement Class:** The Notice shall provide that any member of the Settlement Class who wishes to opt out from the Settlement Class must request exclusion in writing within the time and manner set forth in the Notice. The Notices shall provide that opt-out requests must be sent to the Claims Administrator and be postmarked no later than 60 days after the Notice Deadline (the last day of the Opt-Out Period). The opt-out request must be personally signed by the Settlement Class member and contain the name of this proceeding (*Horvath v. Gramercy Surgery Center, Inc.*, Index No.: 159212/2024 (N.Y. Cnty Sup. Ct.)), the Class Member's full name, current address, and signature, and must clearly manifest your intent to be excluded from this settlement.. If submitted by mail, an opt-out request shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an opt-out request shall be deemed to have been submitted on the date submitted to the private courier.

12. Any Settlement Class member who timely and validly opts-out from the Settlement Class shall, provided the Court grants Final Approval: (a) be excluded from the Settlement Class by Order of the Court; (b) not be a Settlement Class Member; (c) not be bound by the terms of the Settlement; and (d) have no right to the Settlement Class Member Benefits. Any Settlement Class

member who does not timely and validly request to opt-out shall be bound by the terms of this Settlement.

13. **Objections to the Settlement:** The Notice shall also provide that any Settlement Class Member who does not opt-out from the Settlement Class may object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards. Objections must be mailed to the address designated by the Claims Administrator. For an objection to be considered by the Court, the objection must be submitted on behalf of a Settlement Class Member no later than 60 days after the Notice Deadline (the last day of the Objection Period). When submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the date submitted to the private courier.

14. For an objection to be considered by the Court, the objection must set forth:
- i. the objector's full name, address, telephone number, and email address (if any);
 - ii. the case name and case number (i.e. *Horvath v. Gramercy Surgery Center, Inc.*, Index No.: 159212/2024 (N.Y. Cnty Sup. Ct.));
 - iii. information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of original notice of the Data Incident or a statement explaining why the objector believes he or she is a Settlement Class Member);
 - iv. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
 - v. the identity of all counsel representing the objector in connection with the

objection;

- vi. a statement whether the objector and/or his or her counsel will personally appear at the Final Fairness Hearing;
- vii. a list of all settlements to which the objector and/or their counsel have objected in the preceding three (3) years and
- viii. the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative.

15. Class Counsel and/or GSC's counsel may conduct limited discovery on any objector consistent with the Civil Practice Law and Rules, and respond in writing to the objections prior to the Final Approval Hearing.

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

17. **Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards:** Class Counsel intends to seek an award of up to \$200,000 in combined attorneys' fees, costs, and out-of-pocket case expenses and a Service Award for the Class Representative of \$2,500.00, to be paid separately from Class Relief by GSC. These amounts appear reasonable, but the Court will defer ruling on those awards until the Final Approval Hearing when considering Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards.

18. Class Counsel shall file their Motion for Final Approval and Application for

Attorneys' Fees, Costs, and Service Awards no later than 14 days before the Opt-Out and Objection Deadlines. At the Final Approval Hearing, the Court will hear argument on Class Counsel's request for attorneys' fees and costs and Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the Application for Attorneys' Fees, Costs, and Service Awards, provided the objector(s) submitted timely objections that meet all of the requirements listed in the Settlement and in this order.

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

20. **Stay:** All pretrial proceedings in this Action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Settlement and this Preliminary Approval Order.

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

22. **Jurisdiction:** For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure

the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

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

24. **Schedule:** The Court hereby sets the following schedule of events:

Event	Date
Notice Deadline	30 days after Preliminary Approval
Deadline to File Motion for Attorneys' Fees , Costs, and Service Award	14 days prior to the Opt-Out and Objection Deadlines
Opt-Out Deadline	60 days after the Notice Deadline
Objection Deadline	60 days after the Notice Deadline
Deadline to Submit Claim Forms	90 days after the Notice Deadline
Final Approval Hearing	_____, 2025 at _____ am/pm Not Less than 135 days after Preliminary Approval

--	--

SO ORDERED this _____ day of _____, 2025.
