

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MICHAEL EVERETTS,

on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

Case No.: 2:21-cv-02061 (JMA) (ARL)

**PLAINTIFF’S NOTICE OF MOTION AND  
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

Plaintiff Michael Everetts (“Plaintiff”) respectfully moves for final approval of the Settlement and for certification of the Settlement Class.<sup>1</sup> Plaintiff respectfully requests that the Court, after the final approval hearing scheduled for July 22, 2024, grant this motion, grant Plaintiffs’ Unopposed Initial Motion for Service Award and Award of Attorney’s Fees and Litigation Costs (as supplemented by Plaintiff’s Unopposed Supplemental Motion for Service Award and Award of Attorney’s Fees and Litigation Costs), and enter a final judgment dismissing this case.

This Motion is based on the Supporting Memorandum filed herewith; the Declaration of co-Class Counsel Ryan D. Maxey, attached to the Supporting Memorandum as **Exhibit A**; the Declaration of Scott M. Fenwick of Kroll Settlement Administration LLC in Connection with

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<sup>1</sup> Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement (“S.A.”), which is attached hereto as **Exhibit A**.

Class Notice and Claim Activity, attached to the Supporting Memorandum as **Exhibit B**; the Declaration of Michael Everetts (the Plaintiff in this action), attached to the Supporting Memorandum as **Exhibit C**; the Settlement Agreement entered into between the parties (ECF No. 37-1); and any oral argument that may be heard by this Court regarding this Motion.

Dated: July 1, 2024

Respectfully submitted,

*/s/ Ryan D. Maxey*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 1, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using CM/ECF. Copies of the foregoing document will be served upon counsel via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Ryan D. Maxey

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MICHAEL EVERETTS,

on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

Case No.: 2:21-cv-02061 (JMA) (ARL)

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF UNOPPOSED  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT  
AND CERTIFICATION OF SETTLEMENT CLASS**

Plaintiff Michael Everetts (“Plaintiff”) respectfully moves for entry of an order granting final approval of this proposed class action settlement and certifying the settlement class. For the reasons set forth below, Plaintiff respectfully requests that the Court, after the final approval hearing scheduled for July 22, 2024, grant this motion, grant Plaintiffs’ Unopposed Initial Motion for Service Award and Award of Attorney’s Fees and Litigation Costs (ECF No. 40), as supplemented by Plaintiff’s Supplemental Motion for Service Award and Award of Attorney’s Fees and Litigation Costs (ECF No. 42), and enter a final judgment dismissing this case.

**I. Introduction**

Plaintiff, by and through the undersigned Settlement Class Counsel,<sup>1</sup> on behalf of himself and the Settlement Class, respectfully submits this motion pursuant to Federal Rule of Civil

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<sup>1</sup> The Court appointed John A. Yanchunis and Ryan D. Maxey as Class Counsel. (ECF No. 39 ¶ 2).

Procedure (“Rule”) 23(e) requesting final approval of this proposed class action settlement (“Settlement”) on the terms set forth in the Settlement Agreement (“S.A.”) (ECF No. 37-1) and for certification of the Settlement Class.<sup>2</sup>

If approved, the Settlement will successfully resolve the claims of approximately 753,107 individuals nationwide who were notified that Defendant (“PTHC”) suffered a cyber-security attack on its private cloud hosted by its managed service providers (the “Data Breach”). The Settlement brings meaningful resolution and significant benefits to the Settlement Class without requiring further delay, risk, and expense. As discussed below, the Settlement calls for PTHC to pay an aggregate cap of \$3,000,000.00 for the following: (i) valid and approved claims made by members of the Exposure Class<sup>3</sup> under S.A. ¶ 2.1, (ii) valid and approved claims made by members of the Non-Exposure Class<sup>4</sup> under S.A. ¶ 2.2, and (iii) settlement administration fees under S.A. ¶ 3.6 (\$369,030.80 incurred to date and \$170,000.00 estimated to be incurred to complete administration of the settlement). Declaration of Scott M. Fenwick (“Fenwick Decl.”) ¶ 19, attached hereto as **Exhibit A**. PTHC will also separately pay the cost of Identity Defense Total

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<sup>2</sup> Unless otherwise defined, all capitalized terms have the meanings set forth in the Settlement Agreement or in the Declaration of John A. Yanchunis in Support of Plaintiff’s Unopposed Motion to Direct Class Notice and Grant Preliminary Approval of Class Action Settlement (“Yanchunis Decl.”) (ECF No. 37-2) and the Declaration of Ryan D. Maxey in Support of Plaintiff’s Unopposed Initial Motion for Service Award and Award of Attorneys’ Fees and Litigation Costs (“Decl. in Support of Service Award, Attorney’s Fees, and Litigation Costs”) (ECF No. 41-1). Both Declarations are an integral part of this submission and, for the sake of brevity herein, Plaintiff respectfully refers the Court to the Declarations for a detailed description of, inter alia: the procedural history of the Action and the claims asserted, the negotiations resulting in the Settlement and the risks of continued litigation.

<sup>3</sup> The Exposure Class means Settlement Class members whose personally identifiable information or protected health information was potentially exposed in the security breach. S.A. ¶ 1.12.

<sup>4</sup> The Non-Exposure Class means Settlement Class members whose personally identifiable information or protected health information was not potentially exposed in the security breach. S.A. ¶ 1.17. In other words, they are receiving benefits for time or money spent in response to receiving notice of the Data Breach. See S.A. ¶¶ 2.2.1, 2.2.4.

Service for members of the Exposure Class, subject to an aggregate cap of \$67,000.00.

On January 22, 2024, the Court preliminarily approved the Settlement, finding that the Court “will likely be able to approve the proposed Settlement as fair, reasonable, and adequate.” (ECF No. 39) (“Preliminary Approval Order”) ¶ 1. The Court-ordered Notice Plan has since been executed; nothing has changed to alter the Court’s initial assessment that the Settlement is fair, reasonable, and adequate. The Settlement Class’s reaction to the Settlement has been overwhelmingly positive. Of the 743,888 individual potential Class Members who were sent Notice, only three (3) have requested exclusion and none have submitted objections. This response weighs in favor of final approval.

For the reasons detailed below, Plaintiff and Class Counsel respectfully submit that the Settlement meets the standards for final approval under Rule 23, and is a fair, reasonable, and adequate result for the Settlement Class. Plaintiff requests that the Court finally approve the Settlement, certify the settlement class, grant Plaintiff’s Unopposed Initial Motion for Service Award and Award of Attorney’s Fees and Litigation Costs, and enter a final judgment dismissing this case.

## **II. Summary of the Action and Settlement**

Plaintiff respectfully refers the Court to his Unopposed Motion to Direct Class Notice and Grant Preliminary Approval of Class Action Settlement (ECF No. 37) and his Memorandum in Support of Unopposed Initial Motion for Service Award and Award of Attorney’s Fees and Litigation Costs (ECF No. 41) for a thorough recitation of the substantive and procedural background of this litigation. For the purposes of final approval, Plaintiff highlights the following:

### **A. Background**

Plaintiff alleges that in or around March 2021, Defendant sent Notice of the Data Breach

to 753,107 potentially affected people concerning an unauthorized person who may have accessed private cloud business records of PTHC and its direct and indirect subsidiaries, including medical treatment information, insurance card and health plan benefit numbers, medical record numbers, first and last name, address, telephone numbers, date of birth, Social Security numbers, and financial information, including check copies, credit card numbers, and bank account information. On February 24, 2022, the parties participated in a full-day in-person mediation facilitated by an experienced JAMS mediator, Andrew Nadolna, who has over 25 years of experience in mediation. On June 2, 2022, the parties conducted a second session with Mr. Nadolna. Over the ensuing months, the parties continued to negotiate the terms of a potential settlement. After coming to an agreement in principle, the parties finalized the terms of the Settlement Agreement and the attached exhibits.

**B. Terms of the Settlement**

If the Settlement receives final approval, PTHC will pay an aggregate cap of \$3,000,000.00 for the following:

- (i) up to \$7,500.00 per Exposure Class Member for unreimbursed costs or expenditures that are fairly traceable to the security breach, including (1) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of class member's personal information; (2) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, bank, and long-distance telephone charges; (3) credit monitoring or other mitigative costs that were incurred on or after January 20, 2021 (or the earliest verifiable date the security breach occurred) through the date of the class member's claim submission; and (4)

- unpaid time off work to address issues fairly traceable to the security breach at the actual hourly rate of that class member;
- (ii) for members of the Exposure Class with Out-of-Pocket Losses, payment for up to three (3) hours of time spent remedying issues related to the security breach at Twenty Five Dollars (\$25) per hour;
  - (iii) up to \$125 per Non-Exposure Class Member for unreimbursed costs or expenditures that are fairly traceable to receipt of notice from Defendant of the security breach;
  - (iv) for members of the Non-Exposure Class with Out-of-Pocket Losses, payment for up to three (3) hours of time spent remedying issues related to the receipt of notice from Defendant of the security breach at Twenty Five Dollars (\$25) per hour; and
  - (v) settlement administration fees of \$539,030.80 (\$369,030.80 incurred to July 1, 2024 and \$170,000.00 estimated to be incurred to complete administration of the settlement). Fenwick Decl. ¶ 19.

As of July 1, 2024, (1) the Exposure Class has submitted 893 Approved Claims for Attested Time with an aggregate estimated value of \$60,275 and 4 Approved Claims for Out-of-Pocket Losses with an aggregate estimated value of \$1,009.88 and (2) the Non-Exposure Class has submitted 585 Approved Claims for Attested Time with an aggregate estimated value of \$36,850 and 1 Approved Claim for Out-of-Pocket Losses with an estimated value of \$75. *Id.* ¶ 16. Accordingly, the aggregate value of claims for Attested Time and Out-of-Pocket Losses is \$98,209.88.

PTHC will also separately pay the cost of two years of Identity Defense Total Service for members of both the Exposure Class and the Non-Exposure Class who make a claim for this



benefit, subject to an aggregate cap of \$67,000.00. As of July 1, 2024, the Exposure Class has submitted 620 Approved Claims for this benefit and the Non-Exposure Class has submitted 531 Approved Claims for this benefit, resulting in 1,151 total Approved Claims for this benefit. *Id.* Although the Non-Exposure Class is not entitled to such relief under the S.A., PTHC is willing to provide for those who asked for it despite the additional cost to PTHC. Each claim has a retail value of \$19.99/month \* 24 months = \$479.76. Declaration of Ryan D. Maxey, Esq. (“Maxey Decl.”) ¶ 3, attached hereto as **Exhibit B**. Accordingly, the retail value of this benefit is \$552,203.76.

In addition to the monetary relief and Identity Defense Total Service, PTHC has taken and agrees to continue for 36 months an adjustment to its internal controls and systems to further secure its protected health information and personally identifiable information (the “Business Practice Commitments”). It is Class Counsel’s understanding based on information provided by Defendant that the initial cost for PTHC’s implementation of certain security was approximately \$700,000, as follows: (i) \$223,000 for enhanced email platform licenses, (ii) \$38,193 for implementing multi-factor authentication, (iii) \$67,880 for cybersecurity awareness training, (iv) \$128,100 for endpoint detection, monitoring, and response systems, (v) \$209,800 for additional dedicated security resources, (vi) \$40,000 for annual risk management assessments and penetration testing by third-party. Maxey Decl. ¶ 4. In addition to these initial costs, PTHC incurred and will incur: (i) approximately \$300,000 in man hours for implementing and maintaining these changes and (ii) approximately \$700,000 in annual subscription fees and vendor charges, for a total approximate investment by PTHC of \$1.7M to date. *Id.*

Altogether, the value of the Settlement, exclusive of any service award, attorney’s fees, and litigation costs, is estimated at \$2,889,444.44 (comprised of \$98,209.88 in claims for Attested

Time or Out-of-Pocket Losses, \$552,203.76 in retail value of claims for Identity Theft Total Service, \$1,700,000 in the cost to date and estimated future costs for the Business Practice Commitments, and \$539,030.80 in past and estimated future notice and administration costs).

### **III. Preliminary Approval and Notice**

On May 5, 2023, Plaintiff moved the Court to grant preliminary approval of the Settlement, approve the proposed Notice Plan, direct notice be given to the Settlement Class, and Schedule a Final Approval Hearing. (ECF No. 37). On January 22, 2024, the Court granted Plaintiff's motion. (ECF No. 39). Pursuant to the Preliminary Approval Order, the Settlement Administrator implemented the Notice Plan, disseminating notices to 743,888 potential members of the Settlement Class via U.S. mail. *See* Fenwick Decl. ¶ 8. Notice was also provided via an internet website. *Id.* ¶ 4.

Notice instructed Class Members of their legal rights and options in this Settlement, including: the option to submit a Claim Form to receive monetary payment for losses suffered; the option to ask to be excluded from the Settlement and retain the right to bring an individual action against Defendant; the option to object to the Settlement; the option to attend the Final Approval Hearing; and the option to do nothing and not receive a monetary payment from the Settlement. (ECF No. 37-1 at 43-56). The deadline for Class Members to exclude themselves or object to the proposed Settlement passed on May 21, 2024, (ECF No. 39 at 16), and only three (3) exclusion requests and no objections have been received to date. Fenwick Decl. ¶ 17. The claim deadline was May 21, 2024, and approximately 2,492 claims have been received to date. *Id.* ¶ 13.

### **IV. The Settlement Merits Final Approval by the Court**

In *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, No. 18-CV-8472 (PKC), 2022 WL 2063864 (S.D.N.Y. June 8, 2022), another data breach case, Judge Castel thoroughly

laid out the criteria for finally approving a class action settlement in the data breach context before analyzing those criteria and ultimately granting final approval of a class action settlement. Plaintiff relies on Judge Castel's Order throughout this motion as it offers guidance particularly useful in the data breach context and this Court's Preliminary Approval Order cited the Order with approval regarding the calculation of attorney's fees (ECF No. 39 at 5).

**A. Fairness, Reasonableness and Adequacy of the Settlement from the Standpoint of the Settlement Class.**

Regarding the fairness, reasonableness, and adequacy of the Settlement from the standpoint of the Settlement Class, Judge Castel explained as follows:

Rule 23(e) provides that “[t]he claims ... of a certified class ... may be settled, voluntarily dismissed, or compromised only with the court's approval.” Rule 23(e)(2) provides that if a proposed settlement “would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether” certain specific factors are satisfied. The Advisory Committee's notes on Rule 23(e)(2) state that the goal of the amendment “is not to displace any factor” previously adopted by any United States Court of Appeals, “but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.” The Advisory Committee explained that in certain jurisdictions, lengthy, multifactor tests risked distracting courts and parties from focusing on the key issues in a settlement review.

Many of the requirements set forth in the amendments to Rule 23(e)(2) have long been used in the nine-factor test adopted by City of *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). To the extent that certain of the Grinnell factors are not encompassed by Rule 23(e)(2), the Court will discuss them separately.

The Court will first review the factors set forth by Rule 23(e)(2), and then address the additional *Grinnell* factors.

*Id.* at \*6.

**B. Rule 23(e)(2)(A): Whether Class Representatives and Class Counsel Have Adequately Represented the Class.**

Regarding whether the class representative and Class Counsel have adequately represented the Settlement Class (Rule 23(e)(2)(A)), Plaintiff has submitted his declaration detailing his participation in this action, including reviewing the complaint and confirming the accuracy of the allegations therein, reviewing and approving the Settlement, and, throughout this action, communicating with Class Counsel regarding its status and any information needed from him. Declaration of Michael Everetts ¶¶ 2-4, attached hereto as **Exhibit C**. Class Counsel investigated publicly available information about the Data Breach; prepared the complaint; responded to Defendant's request for a pre-motion conference regarding its anticipated motion to dismiss, which challenged Plaintiff's Article III standing and whether Plaintiff alleged viable claims for negligence, breach of an implied contract, and breach of confidence; mediated Plaintiff's claims in person in New York; negotiated a term sheet and, later, a formal settlement agreement; and, ultimately, were able to obtain benefits for individuals whose information was not potentially impacted (*i.e.*, for time or money spent in response to receiving notice of the Data Breach) and significantly better benefits for those whose information was potentially impacted. Maxey Decl. ¶ 10. This weighs in favor of approving the proposed Settlement. *See, e.g., In re Hudson's Bay*, 2022 WL 2063864, at \*7 (concluding this factor weighed in favor of approving the proposed settlement where (i) the class representatives submitted declarations describing their participation in the action, including reviewing drafts of pleadings, conferring with counsel before mediation, discussing and executing the settlement agreement, closely following developments in the case, and closely reviewing relevant case documents and (ii) the plaintiffs' counsel drafted a consolidated pleading, responded to a motion to dismiss that was granted in part and denied in part, and responded to a second motion to dismiss that had not yet been resolved when the parties settled the case).

**C. Rule 23(e)(2)(B): The Settlement Was Negotiated at Arm's Length.**

Regarding whether the Settlement was negotiated at arm's length (Rule 23(e)(2)(B)), prior to the Court ruling on the pre-motion conference, the parties engaged in mediation with mediator Andrew Nadolna, who has over 25 years of experience in mediation. Yanchunis Decl. ¶ 16. In advance of the mediation, the parties submitted mediation briefs advancing their respective positions on the merits of the claims and class certification. *Id.* On June 2, 2022, the parties conducted a second session with Mr. Nadolna. *Id.* Over the ensuing months, the parties continued to negotiate the terms of a potential settlement. *Id.* After coming to an agreement in principle, the parties finalized the terms of their Settlement Agreement including the attached exhibits. *Id.* After extensive arm's length settlement negotiations, the parties were able to reach an agreement. *Id.* This weighs in favor of approving the proposed Settlement. *See, e.g., In re Hudson's Bay*, 2022 WL 2063864, at \*7 (concluding this factor weighed in favor of approving the proposed settlement where “[t]he parties retained [a] retired Judge ... as a private mediator, ... held one full-day, in-person mediation session[, ]... reached a tentative agreement in principle at the close of that session and agreed to a Memorandum of Understanding[, ] and thereafter continued to negotiate details of the Settlement Agreement”).

**D. Rule 23(e)(2)(C): The Relief Provided to the Class Is Adequate.**

**1. Rule 23(e)(2)(C)(i): Costs, Risks and Delay of Trial and Appeal.**

Regarding the costs, risks, and delay of trial and appeal (Rule 23(e)(2)(C)(i)), this action did not settle until after PTHC filed a request for a pre-motion conference regarding its anticipated motion to dismiss, which challenged Plaintiff's Article III standing and whether Plaintiff alleged viable claims for negligence, breach of an implied contract, and breach of confidence. (ECF No. 11). After Plaintiff filed his response (ECF No. 13) and the Court held the pre-motion conference, directing the Parties “to attend either private mediation or EDNY mediation” (ECF No. 20), the

Parties proceeded to mediation. Had this action not resolved at mediation, Plaintiff would have faced “the attendant risks and uncertainty of litigation, as well as the difficulties and delays inherent in such litigation including the challenges to certification of a class.” Yanchunis Decl. ¶ 22. Plaintiff would have also incurred “high cost and expense, including the cost of cyber and damage experts.” *Id.* Finally, continuing this action would have raised “the risks and delay of trial and associated appeals.” *Id.* ¶ 24. This weighs in favor of approving the proposed Settlement. *See, e.g., In re Hudson’s Bay*, 2022 WL 2063864, at \*7-8 (concluding this factor weighed in favor of approving the proposed settlement where “[t]he facts of the case involve[d] data-security issues,” “the Court granted in part and denied in part the motion to dismiss,” a second motion to dismiss “disputed whether plaintiffs had adequately alleged injuries in fact and whether they had plausibly stated a claim for relief,” “[i]n the event that some portion of plaintiffs’ claims survived the defendants’ motion to dismiss, the case would likely have required extensive document discovery, a contested motion for class certification, and a summary judgment motion, followed by the trial of any surviving claims,” and “[c]ontinued litigation, including discovery, adjudication of a summary judgment motion, and trial, would have prolonged the litigation and significantly increased the parties’ expenses”).

**2. Rule 23(e)(2)(C)(ii): Effectiveness of the Proposed Method of Distributing Relief to the Class.**

Regarding the effectiveness of the proposed method of distributing relief to the class (Rule 23(e)(2)(C)(ii), the Settlement proposed two tiers of relief depending on whether a Settlement Class Member is a member of the Exposure Class or the Non-Exposure Class. Exposure Class members may recover up to \$7,500.00 for unreimbursed costs or expenditures that are fairly traceable to the security breach and payment for up to three (3) hours of time spent remedying issues related to the security breach at Twenty Five Dollars (\$25) per hour. Non-Exposure Class

Members may recover up to \$125 per Non-Exposure Class Member for unreimbursed costs or expenditures that are fairly traceable to receipt of notice from Defendant of the security breach and payment for up to three (3) hours of time spent remedying issues related to the receipt of notice from Defendant of the security breach at Twenty Five Dollars (\$25) per hour. This weighs in favor of approving the proposed Settlement. *See, e.g., In re Hudson's Bay*, 2022 WL 2063864, at \*8 (“conclud[ing] that the plan of allocation [wa]s designed to fairly allocate payment to members of the settlement class” because “[a] payment of \$30 is fair, reasonable and adequate compensation to a retail customer who spent some time monitoring financial accounts following a data breach but did not incur additional losses, such as fraudulent charges or withdrawals”).

**3. Rule 23(e)(2)(C)(iii): The Terms of the Proposed Attorneys’ Fees, Including the Timing of Payment.**

Regarding the terms of the proposed attorney’s fees, including the timing of payment (Rule 23(e)(2)(C)(iii), Plaintiff has filed a separate motion regarding attorney’s fees (ECF No. 40) and, as directed in the Preliminary Approval Order (ECF No. 39 at 5), a supplemental motion for attorney’s fees, costs, expenses, and service award (ECF No. 42).

**4. Rule 23(e)(2)(C)(iv): Any Agreement Required to be Identified under Rule 23(e)(3).**

Regarding any agreement required to be identified under Rule 23(e)(3), no agreements have been made in connection with the proposed Settlement apart from those identified in this motion and, as referenced in the Settlement Agreement, the Parties agreement that PTHC may void the Settlement Agreement in the event there are more opt-outs than listed in a separate letter agreement (S.A. ¶ 4.4). *Maxey Decl.*) ¶ 6. This weighs in favor of approving the proposed Settlement. *See In re Hudson's Bay*, 2022 WL 2063864, at \*9 (concluding “[t]he parties have adequately identified their agreement pursuant to Rule 23(e)(3)” where the plaintiffs’ counsel made a similar assertion).

**5. Rule 23(e)(2)(C): Whether the Proposal Treats Class Members Equitably Relative to Each Other.**

Regarding whether the proposal treats class members equitably relative to each other (Rule 23(e)(2)(C)), it allows Exposure Class members, whose information was potentially exposed in the Data Breach, to obtain reimbursement for unreimbursed costs or expenditures that are fairly traceable to the security breach and for time spent remediating issues related to the security breach. It allows Non-Exposure Class Members, who received notice of the Data Breach but whose information was not potentially exposed in the Data Breach, to obtain reimbursement for unreimbursed costs or expenditures that are fairly traceable to receipt of notice from Defendant and for time spent remediating issues related to the receipt of notice from Defendant of the security breach. This weighs in favor of approving the proposed Settlement. *See In re Hudson's Bay*, 2022 WL 2063864, at \*9 (concluding “[t]he plan of allocation compensates members of the class equitably relative to each other” where it “was designed to provide equal treatment to those who did not incur out-of-pocket expenses while also allowing for individualized compensation to class members who incurred expenses as a result of the breach”).

**E. The *Grinnell* Factors.**

**1. The reaction of the class to the settlement.**

Regarding the reaction of the class to the settlement, there have been two (2) requests for exclusion and no objections out of 743,888 notice recipients. This weighs in favor of approving the proposed Settlement. *See In re Hudson's Bay*, 2022 WL 2063864, at \*9 (concluding this factor weighed in favor of approval where there were no requests for exclusion or objections); *see, e.g., In re Canon U.S.A. Data Breach Litig.*, No. 1:20-cv-06239-AMD-SJB, ECF No. 787 at 4 (E.D.N.Y. May 9, 2024) (Donnelly, J.) (granting final approval of data breach class action settlement where 2 class members sought exclusion and none objected); *In re Waste Mgmt. Data*



*Breach Litig.*, No. 1:21-CV-06199-DLC, 2024 WL 1134736, at \*1-4 & Ex. A (S.D.N.Y. Mar. 15, 2024) (Cote, J.) (granting final approval of data breach class action settlement where 27 class members sought exclusion); *Torretto v. Donnelley Fin. Sols., Inc.*, No. 1:20-CV-02667-GHW, 2023 WL 123201, at \*2 (S.D.N.Y. Jan. 5, 2023) (Woods, J.) (granting final approval of data breach class action settlement where 1 class members sought exclusion and none objected).

**2. The size of settlement in the range of possible recovery.**

Regarding the size of the settlement in the range of possible recovery, the range of possible recovery for the Non-Exposure Class is challenging to fairly estimate because most data breach settlements do not obtain relief for individuals who received notice of a data breach but did not have their personal information exposed. The fact that Plaintiff was able to obtain benefits for these individuals should weigh in favor of approving the proposed Settlement. As for the Exposure Class, the benefits obtained via the Settlement are comparable to those obtained via other data breach class action settlements in this Circuit. *See, e.g., Torretto*, 2023 WL 123201, at \*3 (“Claimants were able to submit claims for Out-of-Pocket Losses and Documented or Attested Time”); *In re Hudson’s Bay*, 2022 WL 2063864, at \*1 (“The settlement provides for a \$30 payment to any ‘Tier 1’ claimant who ... confirms that he or she spent some amount of time monitoring account information after the breach. A ‘Tier 2’ claimant will be reimbursed for documented out-of-pocket expenses incurred as a result of the breach, such as costs and expenses related to identity theft or fraud, late fees, and unauthorized charges and withdrawals, in an amount not to exceed \$5,000 per claimant.”). This weighs in favor of approving the proposed Settlement. *See, e.g., id.* at \*10 (concluding this factor weighed in favor of approval where the settlement payments were “consistent with payments in similar data-breach settlements”).

**3. Risks of Maintaining the Class Action through Trial.**

Regarding the risks of maintaining the class action through trial, PTHC would likely have

opposed any motion for class certification, thus increasing the parties' expenses and further delaying proceedings. Maxey Decl. ¶ 7. Moreover, Class Counsel is unaware of any data breach class actions that have made it to trial, making it particularly challenging to assess the likelihood of each potential outcome. *Id.* ¶ 8. This weighs in favor of approving the proposed Settlement. *See, e.g., In re Hudson's Bay*, 2022 WL 2063864, at \*10 (concluding this factor weighed in favor of approval where "Defendants would likely have opposed any motion for class certification. A contested motion would have increased the parties' expenses and further delayed proceedings. Defendants likely would have urged that individualized proof of cardholder transactions and individual plaintiffs' injuries caused by the breach were more substantial than the generalized proof required to establish plaintiffs' claims. As noted, the parties point to no data breach class actions that have been resolved at trial").

#### **4. The Ability of Defendants to Withstand Greater Judgment.**

Regarding the ability of PTHC to withstand greater judgment, Class Counsel obtained the proposed settlement benefits without regard to PTHC's ability to withstand a greater judgment; in other words, the benefits were not compromised due to PTHC's financial condition. Maxey Decl. ¶ 9. This weighs in favor of approving the proposed Settlement.

#### **F. Notice to the Class.**

"Rule 23(c)(2)(B) requires potential class members to receive 'the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.'" *In re Hudson's Bay*, 2022 WL 2063864, at \*10. In *Hudson's Bay*, the Court approved notice via "banner advertisements on the internet and 'earned media' obtained through a press release sent to traditional and online media outlets." *Id.* at \*10-11.

Here, the notice was superior to that, including not only notice via the settlement website, but also directly mailed notice to 743,888 class members. Fenwick Decl. ¶ 8. *See, e.g., In re Wasdte Management Data Breach Litig.*, 2024 WL 1134736, at \*1 (granting final approval after finding notice to class members was properly disseminated via postcard notice and the settlement website); *Torretto*, 2023 WL 123201, at \*3 (granting final approval of data breach class action settlement after finding notice to class members was properly disseminated via directly mailed postcard notice).

### **V. Conclusion**

Considering the factors bearing on the fairness, adequacy, and reasonableness of the settlement, the Court should approve the notice to class members and find that the settlement meets the standard for final approval under Rule 23(e). Plaintiff respectfully requests the Court enter the order proposed by the Parties granting final approval and certifying the Settlement Class; grant Plaintiff's Unopposed Initial Motion for Service Award and Award of Attorney's Fees and Litigation Costs (ECF No. 40), as supplemented by Plaintiff's Supplemental Motion for Service Award and Award of Attorney's Fees and Litigation Costs (ECF No. 42); and enter a final judgment dismissing this case.

Dated: July 1, 2024

Respectfully submitted,

*/s/ Ryan D. Maxey*

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 107 N. 11th St. #402  
 Tampa, FL 33602  
 (813) 448-1125  
 ryan@maxeyfirm.com

*\* admitted pro hac vice*

***Attorneys for Plaintiff and the Proposed Class***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 1, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using CM/ECF. Copies of the foregoing document will be served upon counsel via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Ryan D. Maxey

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MICHAEL EVERETTS,

on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

Case No.: 2:21-cv-02061 (JMA) (ARL)

**SUPPLEMENTAL DECLARATION OF CO-CLASS COUNSEL RYAN D. MAXEY IN  
SUPPORT OF PLAINTIFF’S UNOPPOSED SUPPLEMENTAL MOTION FOR  
SERVICE AWARD AND AWARD OF ATTORNEY’S FEES AND LITIGATION COSTS  
AND PLAINTIFF’S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

I, Ryan D. Maxey, being competent to testify, make the following declaration:

1. I am currently the owner and principal member of Maxey Law Firm, P.A. (“Maxey Firm”). I am co-Class Counsel for Plaintiff. I submit this supplemental declaration in support of Plaintiff’s Unopposed Supplemental Motion for Service Award and Award of Attorney’s Fees and Litigation Costs and Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so. A true and correct copy of the Settlement Agreement (“S.A.”) was filed with the Court (ECF No. 37-1).

2. I incorporate by reference my declaration in support of Plaintiff's Unopposed Initial Motion for Service Award and Award of Attorney's Fees and Litigation Costs (ECF 41-1) (the "Initial Declaration").

3. I have confirmed with the vendor of Identity Defense Total Service that two (2) years of this service has a retail value of \$479.76 (\$19.99 per month with no discount for purchasing two (2) years).

4. It is Class Counsel's understanding based on information provided by Defendant that the initial cost for PTHC's implementation of certain security was approximately \$700,000, as follows: (i) \$223,000 for enhanced email platform licenses, (ii) \$38,193 for implementing multi-factor authentication, (iii) \$67,880 for cybersecurity awareness training, (iv) \$128,100 for endpoint detection, monitoring, and response systems, (v) \$209,800 for additional dedicated security resources, (vi) \$40,000 for annual risk management assessments and penetration testing by third-party. In addition to these initial costs, PTHC incurred and will incur: (i) approximately \$300,000 in man hours for implementing and maintaining these changes and (ii) approximately \$700,000 in annual subscription fees and vendor charges, for a total approximate investment by PTHC of \$1.7M to date. Id.

5. I update paragraph 3 of my Initial Declaration to reflect work performed in connection with the supplemental fee motion and the motion for final approval of the Settlement, as follows: To date, the efforts of attorneys John Yanchunis, Ryan Maxey, Patrick Barthle, and Kenya Reddy and paralegal Jennifer Cabezas on behalf of Plaintiff and Class Members include the following:

- Investigating the data breach and other factual allegations in the complaint,
- Preparing the complaint,

- Analyzing PTHC's letter requesting a pre-motion conference regarding its anticipated motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) and preparing a response to same,
- Attending the Rule 26(f) conference and preparing the Rule 26(f) Report,
- Preparing for and attending the pre-motion conference regarding PTHC's anticipated motion to dismiss;
- Preparing a mediation statement,
- Traveling from Florida for and attending an in-person mediation in New York (attorneys Maxey and Barthle),
- Attending follow-up telephonic conferences with the mediator,
- Negotiating and preparing settlement term sheets,
- Negotiating and preparing the Settlement Agreement, and the exhibits thereto, including the claim form, the short form notice, the long form notice, and the proposed order granting preliminary approval,
- Preparing the preliminary approval motion and the declaration of counsel in support thereof,
- Preparing the initial motion for service award and attorney's fees and litigation costs and the declaration in support thereof,
- Preparing the supplemental motion for service award and attorney's fees and litigation costs and this declaration in support thereof, and
- Preparing the motion for final approval of the Settlement and this declaration in support thereof.



The hours and rates of each of these attorneys and professionals are as follows:

***Morgan & Morgan***

<b>Name</b>	<b>Role</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
Ryan Maxey	Attorney	115.90	\$800	\$92,720.00
John Yanchunis	Attorney	48.70	\$1,600	\$77,920.00
Patrick Barthle	Attorney	41.00	\$800	\$32,800.00
Kenya Reddy	Attorney	27.10	\$1,000	\$27,100.00
Jennifer Cabezas	Paralegal	7.50	\$225	\$1,575.00
<b>Total:</b>				\$232,115.00

***Maxey Law Firm (since July 2023)***<sup>1</sup>

<b>Name</b>	<b>Role</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
Ryan Maxey	Attorney	36.5	\$800	\$29,200.00

**TOTAL HOURS: 276.2**

**TOTAL LODESTAR: \$261,315.00**

6. No agreements have been made in connection with the proposed Settlement apart from those identified in this motion and, as referenced in the Settlement Agreement, the Parties agreement that PTHC may void the Settlement Agreement in the event there are more opt-outs than listed in a separate letter agreement (S.A. ¶ 4.4).

---

<sup>1</sup> Attorney Ryan Maxey started his own law firm in July 2023 but continued to work on this case.

7. Based on my experience, had Plaintiff eventually filed a motion for class certification, PTHC would likely have opposed it, thus increasing the parties' expenses and further delaying proceedings.

8. I am unaware of any data breach class actions that have made it to trial, making it particularly challenging to assess the likelihood of each potential outcome.

9. Regarding the ability of PTHC to withstand greater judgment, Class Counsel obtained the proposed settlement benefits without regard to PTHC's ability to withstand a greater judgment; in other words, the benefits were not compromised due to PTHC's financial condition.

10. Class Counsel investigated publicly available information about the Data Breach; prepared the complaint; responded to Defendant's request for a pre-motion conference regarding its anticipated motion to dismiss, which challenged Plaintiff's Article III standing and whether Plaintiff alleged viable claims for negligence, breach of an implied contract, and breach of confidence; mediated Plaintiff's claims in person in New York; negotiated a term sheet and, later, a formal settlement agreement; and, ultimately, were able to obtain benefits for individuals whose information was not potentially impacted (*i.e.*, for time or money spent in response to receiving notice of the Data Breach) and significantly better benefits for those whose information was potentially impacted.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 1, 2024

/s/ Ryan D. Maxey  
Ryan D. Maxey

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MICHAEL EVERETTS,  
on behalf of himself and all others similarly  
situated,

Plaintiff,

v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

Case No.: 2:21-cv-02061 (JMA) (ARL)

CLASS ACTION

**DECLARATION OF  
SCOTT M. FENWICK OF KROLL  
SETTLEMENT ADMINISTRATION LLC  
IN CONNECTION WITH FINAL  
APPROVAL OF SETTLEMENT**

Date: July 22, 2024

Time: 10:00 a.m.

Dept: Courtroom 920

The Hon. Joan M. Azrack

I, Scott M. Fenwick, declare as follows:

### **INTRODUCTION**

1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),<sup>1</sup> the Claims Administrator<sup>2</sup> appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval of the settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

### **BACKGROUND**

3. Kroll was appointed as the Claims Administrator to provide notification and Claims Administration services in connection with the Settlement Agreement entered into this Litigation. Kroll’s duties in connection with the settlement have and will include: (a) creating a settlement website with online claim filing capabilities; (b) establishing a toll-free telephone number; (c) establishing a post office box for the receipt of mail; (d) receiving and analyzing the Settlement Class Member contact list (the “Class List”) from PTHC’s counsel; (e) preparing and sending the Short-Form Notice via first-class mail; (f) receiving and processing mail from the United States Postal Service (“USPS”) with forwarding addresses; (g) receiving and processing undeliverable mail, without a forwarding address, from the USPS; (h) receiving and processing Claim Forms;

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

<sup>2</sup> The Settlement Agreement and Preliminary Approval Order appoint “Kroll” as the Claims Administrator. Kroll Settlement Administration LLC is the full legal name of the Claims Administrator in this Litigation.

(i) receiving and processing requests for exclusion; and (j) such other tasks as counsel for the Parties or the Court request Kroll to perform.

### **NOTICE PROGRAM**

#### **Data and Case Setup**

4. On January 29, 2024, Kroll created a dedicated settlement website entitled [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com) (the “Settlement Website”). The Settlement Website “went live” on February 21, 2024, and contains information about the settlement, including important dates and deadlines such as the Objection and Opt-Out Dates, the Claims Deadline, and the Final Fairness Hearing date, answers to frequently asked questions, and contact information for the Claim Administrator. The Settlement Website also contains downloadable copies of the Settlement Agreement, Preliminary Approval Order, Class Action Complaint and accompanying exhibits, Claim Form, and Long-Form Notice, and allowed Settlement Class Members an opportunity to file a Claim Form online.

5. On January 29, 2024, Kroll established a toll-free telephone number, (833) 462-3481, for Settlement Class Members to call and obtain additional information regarding the settlement through an Interactive Voice Response (“IVR”) system and/or by being connected to a live operator. As of July 1, 2024, the IVR system has received 3,404 calls, and 106 callers have been connected to live operators.

6. On January 29, 2024, Kroll designated a post office box with the mailing address *Personal Touch Holding Corp.*, c/o Kroll Settlement Administration LLC, PO Box 225391, New York, NY 10150-5391, in order to receive requests for exclusion, Claim Forms, and correspondence from Settlement Class Members.

7. On February 5, 2024, Kroll received one (1) data file from PTHC’s counsel. The file contained 753,107 names and physical mailing addresses. Kroll undertook several steps to reconcile the list and compile the eventual Class List for the mailing of Short-Form Notices. Kroll identified and removed 8,627 duplicate records. As a result of this process, Kroll was able to identify 744,480 unique records. Of these unique records, 592 contained an invalid physical

mailing address. The eventual Class List contained records for 743,888 Settlement Class Members to whom Short-Form Notices could be mailed. Additionally, in an effort to ensure that Short-Form Notices would be deliverable to Settlement Class Members, Kroll ran the Class List through the USPS's National Change of Address ("NCOA") database and updated the Class List with address changes received from the NCOA.

**The Notice Program**

8. On February 21, 2024, Kroll caused 743,888 Short-Form Notices to be mailed via first-class mail. A true and correct copy of the Short-Form Notice, along with the Long-Form Notice and Claim Form, are attached hereto as **Exhibits A, B, and C**, respectively.

**NOTICE PROGRAM REACH**

9. As of July 1, 2024, 1,397 Short-Form Notices were returned by the USPS with a forwarding address. Of those, 1,214 Short-Form Notices were automatically re-mailed to the updated addresses provided by the USPS. The remaining 183 Short-Form Notices were re-mailed by Kroll to the updated address provided by the USPS.

10. As of July 1, 2024, 143,256 Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll ran 143,193 undeliverable records through an advanced address search. The advanced address search produced 91,676 updated addresses. Kroll has re-mailed Short-Form Notices to the 91,676 updated addresses obtained from the advanced address search. Of the 91,676 re-mailed Short-Form Notices, 23,832 have been returned as undeliverable a second time.

11. Based on the foregoing, following all Short-Form Notice re-mailings, Kroll has reason to believe that Short-Form Notices likely reached 668,476 of the 743,488 persons to whom Short-Form Notice was mailed, which equates to a reach rate of the direct mail Notice of approximately 89.86%. This reach rate is consistent with other court-approved, best-practicable

notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches<sup>3</sup> over 70% of targeted class members is considered a high percentage and the “norm” of a notice campaign.<sup>4</sup> The table below provides an overview of dissemination results for the direct Notice Program.

<b>Direct Notice Program Dissemination &amp; Reach</b>		
<b>Description</b>	<b>Volume of Settlement Class Members</b>	<b>Percentage of Settlement Class Members</b>
Settlement Class Members	743,888	100.0%
<b>Initial Notice Mailing</b>		
(+) Notices Mailed (Initial Campaign)	743,888	100.0%
(-) Total Notices returned as undeliverable	(143,256)	19.26%
<b>Supplemental Notice Mailing</b>		
(+) Total Unique Notices Re-mailed	91,676	12.32%
(-) Total Undeliverable (Re-Mailed) Notices	(23,832)	3.2%
<b>Direct Notice Program Reach</b>		
(=) Likely Received Direct Notice	668,476	89.86%

### **CLAIM ACTIVITY**

12. The Claims Deadline was May 21, 2024.

13. As of July 1, 2024, Kroll has received 252 timely Claim Forms through the mail and 2,472 Claim Forms filed electronically through the Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms.

14. To prevent Claim Forms from being filed by individuals outside the Settlement Class and to curtail fraud, Settlement Class Members were provided a unique “Class Member ID” on their respective Short-Form Notices. The Class Member ID was required for Settlement Class Members to file a Claim Form online.

<sup>3</sup> FED. JUD. CTR., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide suggests that the minimum threshold for adequate notice is 70%.

<sup>4</sup> Barbara Rothstein and Thomas Willging, *Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges*, at 27 (3d Ed. 2010).

15. As of July 1, 2024, Kroll has received nine (9) late Claim Forms.

16. As of July 1, 2024, Kroll has validated 2,039 claims with an aggregate estimated value of \$98,209.88. The following is a summary of the 2,039 Approved Claims and types of benefits claimed therein<sup>5</sup>:

i. Exposure Class Approved Claims:

a. *Attested Time* (calculated at \$25 per hour up to three (3) hours): 893 Approved Claims with an aggregate estimated value of \$60,275.

b. *Out-of-Pocket Losses Approved Claims*: four (4) Approved Claims with an aggregate estimated value of \$1,009.88.

c. *Identity Defense Total Service*: 620 Approved Claims

ii. Non-Exposure Class Approved Claims:

a. *Attested Time* (calculated at \$25 per hour up to three (3) hours): 585 Approved Claims with an aggregate estimated value of \$36,850.

b. *Out-of-Pocket Losses Approved Claims*: one (1) Approved Claim with an estimated value of \$75.

c. *Identity Defense Total Service*: 531 Approved Claims

**EXCLUSIONS AND OBJECTIONS**

17. The Opt-Out Date and Objection Date was May 21, 2024.

18. Kroll has received three (3) timely requests for exclusion. The Opt-Out List is attached hereto as **Exhibit D**. Settlement Class Members were not instructed to submit their objection to the Claims Administrator, and none have been received by Kroll.

**COSTS OF NOTICE PROGRAM**

19. 24. As of July 1, 2024, Kroll has billed \$369,030.80 for services and fees incurred in the administration of this matter. Kroll estimates that it will bill an additional \$170,000 to complete the administration of this settlement. The current estimate is subject to change

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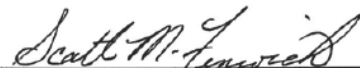
<sup>5</sup> Claimants had the ability to submit claims for multiple benefit types.



depending on factors such as the number of Claim Forms remaining to be reviewed, number of Claim Forms filed, and/or any Claims Administration scope change not currently under consideration. This estimate is based on Kroll's many years of experience administering class action settlements.

**CERTIFICATION**

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on July 1, 2024, in East Palestine, Ohio.

  
\_\_\_\_\_  
SCOTT M. FENWICK

# Exhibit A

Personal Touch Holding Corp Settlement  
c/o Kroll Settlement Administration  
P.O. Box 225391  
New York, NY 10150-5391

FIRST CLASS MAIL  
U.S. POSTAGE PAID  
CITY, ST  
PERMIT NO. XXXX

Electronic Service Requested

<<Barcode>>

Class Member ID: <<Refnum>>

**Postal Service: Please do not mark or cover barcode**

<<FirstName>> <<LastName>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>-<<zip4>>

Notice of Proposed Settlement of Class Action

**If you received a notice of Data Breach regarding the Data Breach from Personal Touch Holding Corp. ("PTHC") on or around March 24, 2021, you may be eligible for a class action settlement payment.**

A settlement has been reached in a class action lawsuit about a Data Breach that occurred in or about January 2021, which potentially exposed personally identifiable information ("PII") and/or protected health information ("PHI") of patients and employees of PTHC or its subsidiaries, (the "Data Breach"). The lawsuit alleges that PTHC was responsible for the Data Breach because it did not take appropriate care to protect PII and PHI from unauthorized disclosure. The lawsuit is called *Michael Everetts v. Personal Touch Holding Corp.*, Case No. 2:21-cv-02061 (JMA) (ARL), pending in the United States District Court for the Eastern District of New York (the "Litigation"). PTHC denies the claims and denies any wrongdoing.

**PTHC records show you are a likely a Settlement Class Member.** Individuals whose information **was** potentially exposed in the Data Breach may submit a Settlement Claim of up to \$7,500 for documented unreimbursed, Out-of-Pocket Losses and Attested Time fairly traceable to the Data Breach. Individuals whose information **was not** potentially exposed in the Data Breach may submit a Settlement Claim for documented unreimbursed, Out-of-Pocket Losses of up to \$125 and Attested Time fairly traceable to receiving notice of the Data Breach. The settlement also includes two years of Identity Defense Total Service for individuals whose PII or PHI was potentially exposed in the Data Breach.

**If you are a Settlement Class Member and you want to receive any benefits from the settlement, you must complete and submit a Claim Form along with any required supporting information.**

**Claim Forms can be found and completed on the website, [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com).**

**The Claims Deadline to submit a Claim Form is May 21, 2024.**

Settlement Class Members may also request exclusion from the settlement or object to it. Requests for exclusion are due by the Opt-Out Date of **May 21, 2024**. Settlement Class Members who do not request exclusion can object to the settlement. Objections are due by the Objection Date of **May 21, 2024**. The Court will hold a Final Fairness Hearing on **July 22, 2024 at 10:00 a.m.** at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722, Courtroom 920, to consider whether to approve the settlement. The Court will hear objections, determine if the settlement is fair, and consider Proposed Class Counsel's request for attorneys' fees, costs, and expenses of \$510,000 and service award of up to \$2,500 for the Representative Plaintiff. You or your own lawyer may ask to appear at the hearing to be heard by the Court, but you do not have to. The motion for attorneys' fees and costs and service awards for the Representative Plaintiff will be posted on the website after it is filed with the Court.

The Court has appointed the following Proposed Class Counsel to represent the Settlement Class in this Litigation: John A. Yanchunis of Morgan & Morgan Complex Litigation Group, 201 N. Franklin St., 7th Floor, Tampa, Florida 33602 and Ryan D. Maxey of Maxey Law Firm, 107 N. 11th St. #402, Tampa, FL 33602.

**This is only a summary.** For detailed information visit [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com) or call **(833) 462-3481**. You may contact the Claims Administrator at Personal Touch Holding Corp. Settlement, c/o Kroll Settlement Administration, PO Box 225391, New York, NY, 10150-5391.

Postage  
Required

***Personal Touch Holding Corp. Settlement***

c/o Kroll Settlement Administration

P.O. Box 225391

New York, NY 10150-5391

ID Number: <<Refnum>>

### Address Update

If you have an address different from where this postcard was mailed to, please write your correct address and email below and return this portion to the address provided on the other side.

**\*\*THIS NOTICE IS NOT A CLAIM FORM\*\***

**DO NOT USE THIS POSTCARD TO FILE A CLAIM, AN EXCLUSION OR OBJECTION.**

Name: \_\_\_\_\_  
                First Name    M.I.                  Last Name

Street Address: \_\_\_\_\_

Street Address 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Email Address: \_\_\_\_\_@\_\_\_\_\_

# Exhibit B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

**If you received a notice of Data Breach regarding the Data Breach from Personal Touch Holding Corp. (“PTHC”) on or around March 24, 2021, you may be eligible for a class action settlement payment.**

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

- A settlement has been reached in a class action lawsuit about a Data Breach that occurred in or around January 2021, which potentially exposed personally identifiable information (“PII”) and/or protected health information (“PHI”) of patients and employees of PTHC or its subsidiaries (the “Data Breach”).
- PTHC, through its subsidiaries, provides home health and home care personnel and related services to individuals in their homes. The circumstances giving rise to this case occurred in or about January 2021 and involved an unauthorized person who accessed PTHC’s private cloud hosted by its managed service providers and may have accessed private cloud business records of PTHC and its direct and indirect subsidiaries. The exposed information may have included medical treatment information, insurance card and health plan benefit numbers, medical record numbers, first and last name, address, telephone numbers, date of birth, Social Security Numbers, and financial information, including check copies, credit card numbers, and bank account information. Subsequently, a lawsuit was filed against PTHC, alleging that it did not take appropriate care to protect the patients and employees from the Data Breach.
- PTHC denies all of the Plaintiff’s claims in the lawsuit and maintains it did not do anything wrong but has agreed to settle the case to avoid the expense and burdens of litigation.
- The settlement includes all Persons to whom PTHC sent notification, whether by direct written notice or substitute notice, that their PII and/or PHI may have been or was exposed to unauthorized third parties as a result of the Data Breach.
- The settlement provides payments to individuals who submit Approved Claims for Out-of-Pocket Losses and Attested Time that are fairly traceable to the Data Breach or fairly traceable to receiving notice of the Data Breach.
- The settlement also includes two years of Identity Defense Total Service for individuals whose PII or PHI was potentially exposed in the Data Breach. You must submit a Settlement Claim to receive this benefit.

**Your legal rights are affected even if you do nothing. Read this Notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Submit a Claim</b>	The only way to get a payment and/or credit monitoring. You must submit a Settlement Claim by the Claims Deadline, <b>May 21, 2024.</b>
<b>Ask to be Excluded</b>	Get no payment. The only option that allows you to sue PTHC over the claims resolved by this settlement. You must exclude yourself by the Opt-Out Date of <b>May 21, 2024.</b>
<b>Object</b>	Write to the Court about why you do not like the settlement. You must object by the Objection Date of <b>May 21, 2024.</b>
<b>Do Nothing</b>	Get no payment. Give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the settlement. Payments will only be made after the Court grants final approval of the settlement and after any appeals are resolved.



**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION.....PAGE 3**

1. Why was this Notice issued?

2. What is this lawsuit about?

3. Why is this lawsuit a class action?

4. Why is there a settlement?

**WHO IS IN THE SETTLEMENT?..... PAGE 3**

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

6. What if I am not sure whether I am included in the settlement?

**THE SETTLEMENT BENEFITS ..... PAGE 4-5**

7. What does the settlement provide?

8. What payments are available for individuals whose personally identifiable information or protected health information *was* potentially exposed in the Data Breach?

9. What payments are available for individuals whose personally identifiable information or protected health information *was not* potentially exposed in the Data Breach?

**HOW TO GET BENEFITS .....PAGE 5**

10. How do I get benefits?

11. How will Settlement Claims be decided?

**REMAINING IN THE SETTLEMENT .....PAGE 5**

12. Do I need to do anything to remain in the settlement?

13. What am I giving up as part of the settlement?

**EXCLUDING YOURSELF FROM THE SETTLEMENT .....PAGE 5-6**

14. If I exclude myself, can I get a payment from this settlement?

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

16. How do I exclude myself from the settlement?

**THE LAWYERS REPRESENTING YOU .....PAGE 6**

17. Do I have a lawyer in this case?

18. How will the lawyers be paid?

**OBJECTING TO THE SETTLEMENT..... PAGE 6-7**

19. How do I tell the Court that I do not like the settlement?

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

**THE COURT’S FAIRNESS HEARING .....PAGE 7-8**

21. When and where will the Court decide whether to approve the settlement?

22. Do I have to attend the hearing?

23. May I speak at the hearing?

**IF YOU DO NOTHING .....PAGE 8**

24. What happens if I do nothing?

**GETTING MORE INFORMATION.....PAGE 8**

25. How do I get more information?

## BASIC INFORMATION

### 1. Why was this Notice issued?

The Court authorized this Notice because you have a right to know about the proposed settlement in this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the settlement. This Notice explains the legal rights and options that you may exercise before the Court decides whether to approve the settlement.

This matter involves a lawsuit styled *Everetts v. Personal Touch Holding Corp.*, in the United States District Court for the Eastern District of New York, Case No. 2:21-cv-02061 (the “Litigation”). The Person who sued is called the Plaintiff. PTHC is called the Defendant.

### 2. What is this Litigation about?

The Litigation claims that PTHC (“Defendant”) was responsible for the Data Breach and asserts claims such as: negligence, breach of contract, and breach of confidence. The Litigation seeks compensation for people who experienced unreimbursed, documented Out-of-Pocket Expenses, fraudulent charges, and/or Attested Time related the Data Breach or to receiving notice of the Data Breach.

PTHC denies all of the Plaintiff’s claims and maintains it did not do anything wrong.

### 3. Why is this Litigation a class action?

In a class action, one person called the “Representative Plaintiff” sues on behalf of all people who have similar claims. All of these people together are the “Settlement Class” or “Settlement Class Members.” In this case, the Representative Plaintiff is Michael Everetts. One Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

### 4. Why is there a settlement?

By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid timely Claim Forms will get compensation. The Representative Plaintiff and his attorneys believe the settlement is fair, reasonable, and adequate and, thus, best for the Settlement Class and its members. The settlement does NOT mean that PTHC did anything wrong.

## WHO IS IN THE SETTLEMENT?

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

You are included in the Settlement Class if you are a Person to whom PTHC sent notification, whether by direct written notice or substitute notice, on or about March 24, 2021, that PII and/or PHI may have been exposed to unauthorized third parties as a result of the Data Breach occurring in or about January 2021.

Specifically excluded from the Settlement Class are: (i) PTHC and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class;

(iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other individual found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity involved in the Data Breach or who pleads *nolo contendere* to any such charge.

### 6. What if I am not sure whether I am included in the settlement?

If you are not sure whether you are included in the settlement, you may call (833) 462-3481 with questions or visit [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com). You may also write with questions to Personal Touch Holding Corp., c/o Kroll Settlement Administration, PO Box 225391, New York, NY 10150-5391. Please do not contact the Court with questions.

## THE SETTLEMENT BENEFITS

### 7. What does the settlement provide?

The settlement will provide payments to people who submit valid timely Claim Forms. There are two types of general payments that are available:

- (1) Reimbursement for Out-of-Pocket Losses and Attested Time for individuals whose PII or PHI *was* potentially exposed in the Data Breach (Question 8) and
- (2) Reimbursement for Out-of-Pocket Losses and Attested Time for individuals whose PII or PHI *was not* potentially exposed in the Data Breach (Question 9).

You must provide proof of your Settlement Class membership in the form of either (1) the unique identifier provided in the Notice you received by postcard or e-mail; or (2) name and physical address you provided to PTHC or its subsidiaries for healthcare or employment purposes.

If you provide a bill or payment card statement as part of required proof for any part of your Settlement Claim, you may redact unrelated transactions and all but the first four and last four digits of any account number. In order to claim each type of payment, you must provide related documentation with the Claim Form, and the expense for which you are submitting a Claim Form cannot have been reimbursed through any other source.

For individuals whose PII or PHI was potentially exposed in the Data Breach, the settlement also includes Identity Defense Total Service for a period of 2 years from the effective date of the settlement. You must submit a Settlement Claim to receive this benefit.

Finally, as part of the settlement, PTHC has agreed to adjust its internal controls and systems to further secure its PII and PHI. More details are provided in the Settlement Agreement, which is available at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com).

### 8. What payments are available for individuals whose personally identifiable information or protected health information *was* potentially exposed in the Data Breach?

Settlement Class Members whose PII or PHI *was* potentially exposed in the Data Breach are each eligible to receive reimbursement of up to \$7,500

(in total, per person) for the following categories of unreimbursed, Out-of-Pocket Losses and Attested Time fairly traceable to the Data Breach, including:

- unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Settlement Class Member's personal information;
- other miscellaneous expenses incurred related to any Out-of-Pocket Expense such as notary, fax, postage, copying, mileage, bank, and long-distance telephone charges;
- credit monitoring or other mitigative costs that were incurred on or after January 20, 2021, through the date of the Settlement Class Member's claim submission;
- unpaid time off work to address issues fairly traceable to the Data Breach at the actual hourly rate of that Settlement Class Member;
- up to three (3) hours of unreimbursed Attested Time (at \$25 per hour) spent remedying issues related to the Data Breach.

### 9. What payments are available for individuals whose personally identifiable information or protected health information *was not* potentially exposed in the Data Breach?

Settlement Class Members whose PII or PHI *was not* potentially exposed in the Data Breach are each eligible to receive reimbursement for the following categories of unreimbursed, Out-of-Pocket Losses up to a cap of One Hundred Twenty-Five Dollars (\$125) and Attested Time fairly traceable to receiving notice of the Data Breach, including:

- miscellaneous expenses incurred related to any Out-of- Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and
- credit monitoring or other mitigative costs that were incurred on or after January 20, 2021 (or the earliest verifiable date of receipt of notice from Defendant of the Data Breach) through the date of the Settlement Class Member's claim submission.

## HOW TO GET BENEFITS

### 10. How do I get benefits?

To ask for a payment or, if applicable, to sign up for credit monitoring, you must complete and submit a Claim Form. Claim Forms are available at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com), or you may request one by mail by calling (833) 462-3481. Read the instructions carefully, fill out the Claim Form, and mail it postmarked no later than **May 21, 2024** to:

Personal Touch Holding Corp.  
c/o Kroll Settlement Administration  
PO Box 225391  
New York, NY 10150-5391

### 11. How will Settlement Claims be decided?

The Claims Administrator will decide in their professional judgment whether the information provided on a Claim Form is complete, timely and valid. The Claims Administrator may require additional information from any claimant. If the required information is not provided timely, the Settlement Claim will be considered invalid and will not be paid.

## REMAINING IN THE SETTLEMENT

### 12. 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 a payment you must submit a Claim Form postmarked by **May 21, 2024**.

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

If the settlement becomes final, you will give up your right to sue for the claims being resolved by this settlement. The specific claims you are giving up are described in Section 1.27 of the Settlement Agreement. You will be “releasing” PTHC and all related people or entities as described in Sections 1.26 and 1.28 of the Settlement Agreement. The Settlement Agreement is available at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com).

The Settlement Agreement describes the Released Claims with specific descriptions, so read it carefully. If you have any questions you can talk to the law firm listed in Question 17 for free or, you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue PTHC about issues in this case, 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.

### 14. If I exclude myself, can I get a payment from this settlement?

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

**15. If I do not exclude myself, can I sue PTHC for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue 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. If you exclude yourself, do not submit a Claim Form to ask for a payment.

**16. How do I exclude myself from the Settlement?**

To exclude yourself, send a letter that says you want to be excluded from the settlement in the Litigation styled *Everetts v. Personal Touch Holding Corp.*, in the United States District Court for the Eastern District of New York, Case No. 2:21-cv-02061. Include your name, address, and signature. You must mail your exclusion request postmarked by **May 21, 2024**, to:

Personal Touch Holding Corp. Settlement Exclusions  
c/o Kroll Settlement Administration  
PO Box 225391  
New York, NY 10150-5391

**THE LAWYERS REPRESENTING YOU**

**17. Do I have a lawyer in this case?**

Yes. The Court appointed the following lawyers as “Proposed Class Counsel”: John A. Yanchunis of MORGAN & MORGAN COMPLEX LITIGATION GROUP, 201 N. Franklin St., 7th Floor, Tampa, Florida 33602 and Ryan D. Maxey of Maxey Law Firm, P.A., 107 N. 11th St. #402 Tampa, Florida, 33602.

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

**18. How will the lawyers be paid?**

Proposed Class Counsel will request the Court’s approval of an award for attorneys’ fees and reasonable costs and expenses of up to \$510,000. Proposed Class Counsel will also request approval of a service award of \$2,500 for the Representative Plaintiff. Any amount that the Court awards for attorneys’ fees, costs, expenses, and a service award will be paid separately per the terms of the Settlement Agreement and will not reduce the amount of payments to Settlement Class Members who submit Approved Claims.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the settlement or some part of it.

**19. How do I tell the Court that I do not like the settlement?**

You can object to the settlement if you do not like it or some part of it. The Court will consider your views. To do so, you must **file** a written objection in this case, *Everetts v. Personal Touch Holding Corp.*, in the United States District Court for the Eastern District of New York, Case No. 2:21-cv-02061, with the Clerk of the Court at the address below.

Your objection must include all of the following:

- the name or caption of this Litigation;
- your full name, address, telephone number, and e-mail address (if any);
- information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class, which is described in response to Question 5;

- a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe is applicable;
- the identity of all counsel representing you, if any, in connection with your objection;
- a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing;
- a statement identifying all class action settlements objected to by the Settlement Class Member in the previous 5 years; and
- your signature or the signature of your duly authorized attorney or other duly authorized representative.

To be timely, your objection must be **filed** with the Clerk of the Court for the United States District Court for the Eastern District of New York no later than **May 21, 2024**.

In addition, you must **mail** a copy of your objection to both Proposed Class Counsel and PTHC’s counsel, postmarked no later than **May 21, 2024**:

<b>Court</b>	<b>Proposed Class Counsel</b>	<b>PTHC’s Counsel</b>
Clerk of the Court United States District Court for the New York Eastern District 100 Federal Plaza Central Islip, NY 11722	John A. Yanchunis  MORGAN & MORGAN COMPLEX LITIGATION GROUP 201 N. Franklin St., 7 <sup>th</sup> Floor, Tampa, Florida 33602  Ryan D. Maxey Maxey Law Firm, P.A. 107 N. 11th St. #402 Tampa, Florida, 33602	RUSKIN MOSCOU FALTISCHEK, P.C. Jonathan C. Sullivan, Esq. Michael A.H. Schoenberg, Esq. 1425 RXR Plaza East Tower, 15 <sup>th</sup> Floor Uniondale, New York 11566

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

Objecting is telling the Court that you do not like the settlement and why you do not think it should be approved. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**THE COURT’S FINAL FAIRNESS HEARING**

The Court will hold a hearing to decide whether to grant final approval of the settlement.

**21. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Final Fairness Hearing at 10:00 a.m. on **July 22, 2024**, at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722, Courtroom 920 (or by Zoom if the Court so orders). The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com) or call (833) 462-3481. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys’ fees and reasonable costs and expenses, as well as the request for an service award for the Representative Plaintiff. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.



**22. Do I have to attend the hearing?**

No. Proposed Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 19, the Court will consider it.

**23. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must file an objection according to the instructions in Question 19, including all the information required therein. Your objection must be **filed** with the Clerk of Court for the United States District Court for the Eastern District of New York by mailing it postmarked no later than **May 21, 2024**. In addition, you must **mail** a copy of your objection to both Class Counsel and PTHC's counsel listed in Question 19, postmarked no later than **May 21, 2024**.

**IF YOU DO NOTHING**

**24. What happens if I do nothing?**

If you do nothing, you will get no benefits from this settlement. Unless you exclude yourself, after the settlement is granted final approval and the Judgment becomes Final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the legal issues in this case, ever again against PTHC or any related people or entities as described in Sections 1.26 and 1.28 of the Settlement Agreement. The Settlement Agreement is available at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com).

**GETTING MORE INFORMATION**

**25. How do I get more information?**

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com). You may also write with questions to the Claims Administrator, Personal Touch Holding Corp., c/o Kroll Settlement Administration, PO Box 225391, New York, NY 10150-5391. You can also get a Claim Form at the website, or by calling the toll-free number, (833) 462-3481.

# Exhibit C





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## **PERSONAL TOUCH HOLDING CORP. SETTLEMENT CLAIM FORM**

**This Claim Form should be filled out online or submitted by mail if you received a notice of Data Breach regarding the Data Breach from Personal Touch Holding Corp. (“PTHC”) on or around March 24, 2021, and you (i) had your personal information or protected health information potentially exposed in the Data Breach and had unreimbursed costs or expenditures that are fairly traceable to the Data Breach and/or time spent remedying issues related to the Data Breach, (ii) did not have your personal information or protected health information potentially exposed in the Data Breach and had unreimbursed costs or expenditures that are fairly traceable to receipt of notice from Defendant of the Data Breach and/or time spent remedying issues related to the receipt of notice from Defendant of the Data Breach, and/or (iii) had your personal information or protected health information potentially exposed in the Data Breach and would like credit monitoring services and identity theft insurance. You may get a check or electronic payment if you fill out this Claim Form, if the settlement is approved, and if you are found to be eligible for a payment.**

The settlement Notice describes your legal rights and options. To obtain the settlement Notice and find more information regarding your legal rights and options, please visit the official settlement website, [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com), or call toll-free (833) 462-3481.

If you wish to submit a Settlement Claim for a settlement payment electronically, you may go online to the settlement website, [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com), and follow the instructions on the “Submit a Claim” page.

If you wish to submit a Settlement Claim for a settlement payment via standard mail, you need to provide the information requested below and mail this Claim Form to Personal Touch Holding Corp., c/o Kroll Settlement Administration, PO Box 225391, New York, NY 10150-5391, postmarked by **May 21, 2024**. Please print clearly in blue or black ink.



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**1. SETTLEMENT CLASS MEMBER INFORMATION**

*Required Information:*

\_\_\_\_\_  
First Name MI Last Name

\_\_\_\_\_  
Address 1

\_\_\_\_\_  
Address 2

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Country

( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_  
Phone Number

\_\_\_\_\_  
E-mail @

**PAYMENT ELIGIBILITY INFORMATION**

To prepare for this section of the Claim Form, please review the settlement Notice and the Settlement Agreement (available for download at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com)) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed.

To help us determine if you are entitled to a settlement payment, please provide as much information as possible.

**A. Verification of Class Membership**

You are only eligible to file a Settlement Claim if you are a person to whom PTHC sent notification, whether by direct written notice or substitute notice, that personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Data Breach occurring in or about January 2021.

By submitting a Settlement Claim and signing the certification below, you are verifying that you were notified by mail or via substitute notice of the Data Breach announced by PTHC on or about March 24, 2021.



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In addition, to allow the Claims Administrator to confirm your membership in the Settlement Class, you must provide either:

- (1) The Class Member ID provided in the Notice you received by postcard or e-mail  
or
- (2) name and physical address you provided to PTHC for healthcare or employment related purposes. Thus, please **EITHER:**

(1) Provide the Class Member ID provided in the Notice you received:

7 1 2 7 8 \_\_\_\_\_

**OR**

(2) Provide your name \_\_\_\_\_

and physical address you provided to PTHC for healthcare or employment related purposes:

\_\_\_\_\_

**DOCUMENTATION IS REQUIRED**

B. Out-Of-Pocket Losses and Attested Time

Check the box for each category of Out-of-Pocket Losses or Attested Time that you incurred as a result of the Data Breach. Please be sure to fill in the total amount you are claiming for each category and attach the required documentation as described in **bold type** (if you are asked to provide account statements as part of required proof for any part of your claim, you may redact unrelated transactions and all but the first four and last four digits of any account number). Please round total amounts down or up to the nearest dollar.

I. Expenses and Time Fairly Traceable to the Data Breach

Only complete section I if **your personally identifiable information or protected health information was potentially exposed in the Data Breach**, and you incurred expenses that are fairly traceable to the Data Breach, you may be entitled to compensation for these expenses. **If your information was NOT exposed, skip this section.** To obtain reimbursement under this category, you must attest to the following:

I attest I incurred unreimbursed fees or other charges from your bank or credit card company incurred from January 20, 2021 to May 21, 2024 (the “Claims Deadline”) due to the Data Breach.

DATE	DESCRIPTION	AMOUNT
____ / ____ / ____		
____ / ____ / ____		

Examples: Unreimbursed overdraft fees, over-the-limit fees, late fees, or charges due to insufficient funds or interest.

**Documentation Required: A copy of a bank or credit card statement or other proof of claimed fees or charges (you may redact unrelated transactions and all but the first four and last four digits of any account number)**



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I attest I incurred unreimbursed fees relating to your account being frozen or unavailable incurred from January 20, 2021 to May 21, 2024 due to the Data Breach.

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

Examples: You were charged interest by a payday lender due to card cancellation or due to an over-limit situation, or you had to pay a fee for a money order or other form of alternative payment because you could not use your debit or credit card, and these charges and payments were not reimbursed.

**Documentation Required: Attach a copy of receipts, bank statements, credit card statements, or other proof that you had to pay these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).**

I attest I incurred unreimbursed fees or other charges relating to the reissuance of your credit or debit card incurred from January 20, 2021 to May 21, 2024 due to the Data Breach.

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

Examples: Unreimbursed fees that your bank charged you because you requested a new credit or debit card.

**Documentation Required: Attach a copy of a bank or credit card statement or other receipt showing these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).**

I attest I incurred other unreimbursed incidental telephone, internet, mileage or postage expenses directly related to the Data Breach incurred from January 20, 2021, to May 21, 2024 due to the Data Breach.

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

Examples: Unreimbursed long distance phone charges, cell phone charges (only if charged by the minute), or data charges (only if charged based on the amount of data used).

**Documentation Required: Attach a copy of the bill from your telephone company, mobile phone company, or internet service provider that shows the charges (you may redact unrelated transactions and all but the first four and last four digits of any account number).**



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I attest I purchased credit reports or credit monitoring charges purchased from January 20, 2021, to May 21, 2024 due to the Data Breach. This category is limited to services purchased primarily as a result of the Data Breach and if purchased from January 20, 2021, to May 21, 2024.

To obtain reimbursement under this category, you must attest to the following:

I attest I purchased credit reports from January 20, 2021, to May 21, 2024, primarily due to the Data Breach and not for other purposes.

DATE	Cost
___ ___ / ___ ___ / ___ ___	\$ _____
___ ___ / ___ ___ / ___ ___	\$ _____

Examples: The cost of a credit report(s) that you purchased after hearing about the Data Security Incident.

**Documentation Required: Attach a copy of a receipt or other proof of purchase for each product or service purchased (you may redact unrelated transactions).**

I attest I incurred between one (1) and three (3) hours of time spent monitoring accounts or otherwise dealing with the aftermath / clean-up of the Data Breach from January 20, 2021 to May 21, 2024 (round down to the nearest hour and check only one box).

- 1 Hour     
  2 Hours     
  3 Hours

Examples: You spent at least one (1) full hour calling customer service lines, writing letters or e-mails, or on the internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Check all activities, below, which apply.

- Time spent obtaining credit reports.
- Time spent dealing with a credit freeze.
- Time spent dealing with bank or credit card fee issues.
- Time spent monitoring accounts.
- Other

If you choose any of the options above, please provide a brief description of (1) the actions taken in response to the Data Breach; and (2) the time associated with each action.

Description: \_\_\_\_\_  
 \_\_\_\_\_





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To recover for Attested Time under this section, you must select one of the boxes above and provide a narrative description of the activities performed during the time claimed, and you must have at least one hour of lost time in order to claim this benefit.

**Attestation (You must check the box below to obtain compensation for Attested Time)**

I attest under penalty of perjury that I spent the number of hours claimed above making reasonable efforts to deal with the Data Security Incident.

II. Expenses and Time Fairly Traceable to Receiving Notice of the Data Breach

If you completed section I, do not complete this section. If your personally identifiable information or protected health information *was not* potentially exposed in the Data Breach, and you incurred expenses or spent time as a result of receiving the notice of Data Breach, you may be entitled to compensation for these expenses. To obtain reimbursement under this category, you must attest to the following:

I attest the timing of the loss occurred from January 20, 2021, to the May 21, 2024.

I attest I incurred the miscellaneous expenses incurred related to any Out-of-Pocket Losses such as notary, fax, postage, copying, mileage, and long-distance telephone charges

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

I attest I incurred credit monitoring or other mitigative costs that were incurred on or after January 20, 2021.

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

I attest I incurred between one (1) and three (3) hours of time spent remedying issues related to the receipt of notice from Defendant of the Data Breach from January 20, 2021, to May 21, 2024 (round down to the nearest hour), which has not already been claimed in Section I, above. (round down to the nearest hour and check only one box).

1 Hour

2 Hours

3 Hours



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Examples: You spent at least one (1) full hour calling customer service lines, writing letters or e-mails, or on the internet in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Check all activities, below, which apply.

- Calling bank/credit card customer service lines regarding potential fraudulent transactions.
- Time on the internet checking for potential fraudulent transactions.
- Time on the internet updating automatic payment programs due to new card issuance.
- Calling credit reporting bureaus regarding potential fraudulent transactions and/or credit monitoring.
- Other.

If you choose any of the options above, please provide a brief description of (1) the actions taken in response to the Data Breach; and (2) the time associated with each action. \_\_\_\_\_

**To recover for lost time under this section, you must select one of the boxes above and provide a narrative description of the activities performed during the time claimed, and you must have at least one hour of lost time in order to claim this benefit.**

**Attestation (You must check the box below to obtain compensation for Attested Time)**

**I attest under penalty of perjury that I spent the number of hours claimed above making reasonable efforts to deal with the Data Breach.**

III. Identity Defense Total Service

All Settlement Class Members whose personally identifiable information or protected health information was potentially exposed in the Data Breach are eligible to receive two (2) years of Identity Defense Total Service.

Do you wish to sign up for free Identity Defense Total Service?

Yes, I want to sign up to receive free Identity Defense Total Service.

Email Address: \_\_\_\_\_@\_\_\_\_\_

If you select “yes” for this option, you will need to follow instructions and use an activation code that you receive after the settlement is Final. Identity Defense Total Service will not begin until you use your activation code to enroll. Activation instructions will be provided to your email address or, if you do not have an email address, to your home address. If you do not select “yes” for this option, then you will not receive free Identity Defense Total Services.



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C. Certification

I declare under penalty of perjury under the laws of the United States that the information supplied in this Claim Form by the undersigned is true and correct to the best of my recollection, and that this form was executed at \_\_\_\_\_ [City], \_\_\_\_\_ [ State] on the date set forth below:

I understand that I may be asked to provide supplemental information by the Claims Administrator before my Settlement Claim will be considered complete and valid.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

D. Submission Instruction

Once you've completed all applicable sections, please mail this Claim Form and all required supporting documentation to the address provided below, postmarked by **May 21, 2024**.

Personal Touch Holding Corp.  
c/o Kroll Settlement Administration  
PO Box 225391  
New York, NY 10150-5391



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# Exhibit D

### **Exclusion List**

<b>Count</b>	<b>Record Identification Number</b>
1	71278CR68BZWM
2	712789WPG7D6J
3	71278CPNH5NJW

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MICHAEL EVERETTS,

on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

Case No.: 2:21-cv-02061 (JMA) (ARL)

**DECLARATION OF MICHAEL EVERETTS IN SUPPORT OF  
PLAINTIFF’S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

I, Michael Everetts, being competent to testify, make the following declaration:

1. I am the Plaintiff in the above-captioned matter. In the Preliminary Approval Order (ECF No. 39), the Court found that I would likely satisfy the requirements of Rule 23(e)(2)(A) and be appointed as the Settlement Class representative.
2. Prior to Class Counsel filing the complaint in this action, I reviewed the allegations and confirmed their accuracy.
3. I reviewed and approved the Settlement entered into in this Action.
4. Throughout this action, I have communicated with Class Counsel regarding its status and any information needed from me.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 7/1/2024

DocuSigned by:  
*Mike Everetts*  
00067B009A5B4EA...  
\_\_\_\_\_  
Michael Everetts