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IN THE SUPREME COURT OF THE STATE OF DELAWARE

PHILADELPHIA INDEMNITY INSURANCE COMPANY, ACADIA INSURANCE COMPANY, and UNION INSURANCE COMPANY Plaintiffs-Below/Appellants, v. BLACKBAUD, INC., Defendant-Below, Appellee.	:	C.A. No. 198, 2025 **Appeal from the Superior Court of the State of Delaware, C.A. No. N22C-12-141 KMM (CCLD)**

CORRECTED REPLY BRIEF OF APPELLANTS

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INTRODUCTION

As alleged in Plaintiffs'[1] operative Amended Complaint ("Complaint"), Blackbaud breached its Blackbaud Solutions Agreements (the "BS Agreements") when it failed to maintain commercially reasonable cybersecurity protections, enabling the February 7, 2020, ransomware attack on Blackbaud's computer system (the "Data Breach"). As a result of Blackbaud's failures to perform these contractual duties under the BS Agreements, the Plaintiffs' insureds ("Insureds") incurred damages, including costs and expenses in connection with investigating and responding to the Data Breach ("Remediation Expenses"). To the extent covered by insurance policies issued by Plaintiffs, they now have contractual and equitable subrogation rights, including recovery rights, under the BS Agreements. Plaintiffs seek to recoup those damages that stem directly from the breach of the BS Agreements by Blackbaud.

In its Answering Brief, Blackbaud rarely addressed Plaintiffs' actual arguments set forth in their Opening Brief, but instead often attacked "strawman" arguments it attributed to Plaintiffs. In fact, Blackbaud cited to Plaintiffs' Opening Brief only a handful of times, and usually only when agreeing with an undisputed or

[1] In accord with Supreme Court Rule 14(b)(v), the Appellants are referred to as "Plaintiffs" throughout this Reply Brief.

immaterial factual point noted therein. Thus, many of Plaintiffs' allegations and arguments on appeal were never actually addressed by Blackbaud.

With Blackbaud arguing past Plaintiffs in this manner, Plaintiffs have no choice but to repeat in this Reply Brief what was actually alleged in the Complaint (as compared to what Blackbaud claims was alleged) and explain why such allegations were perfectly sufficient under Delaware pleading standards. Similarly, Plaintiffs are regrettably compelled to identify numerous arguments that Blackbaud wrongly claims were made by Plaintiffs below and on appeal, but were not.

Fortunately, there is a clear record of the lengthy and substantive Complaint itself on which this Court can focus rather than Blackbaud's slanted and inaccurate rendition of Plaintiffs' claims. Plaintiffs respectfully submit that, upon a careful and considered review of the Complaint, this Court should find that the Superior Court erred in holding that Plaintiffs failed to adequately assert a claim for breach of contract under the minimal notice pleading requirements of Superior Court Civil Rules 8 and 12(b)(6).

MISCHARACTERIZATIONS AS TO THE COMPLAINT

Blackbaud entered into identical BS Agreements with each of the Insureds for the provision of certain Blackbaud solutions and services. (A0067 (¶¶26-28)), Op. at 1).[2] In the BS Agreements, Blackbaud committed to "maintain administrative, physical, and technical safeguards designed to (i) protect against anticipated threats or hazards to the security of Your Confidential Information, and (ii) to protect against unauthorized access to or use of Confidential Information that could materially harm You[,]" and to "at all times maintain commercially reasonable information security procedures and standards." (A0177, §6.a.). The BS Agreements also provided that Blackbaud "had implemented commercially reasonable, written policies and procedures addressing potential Security Breaches and ha[s] a breach response plan in place." (*Id.* §6.b.). Plaintiffs set forth in great detail in the Complaint how these material contractual provisions had been breached and led to the Data Breach and all of Plaintiffs' damages.

Blackbaud, which devotes less than a page of its "Statement of Facts" section to "Plaintiff's Allegations," nonetheless mischaracterizes therein the allegations of breach of the BS Agreements' provisions, asserting that: "Plaintiffs presume that the

[2] The Complaint and Exhibits 1-5 thereto are attached as A0061-0197 to the Appendix filed with Plaintiffs' Opening Brief. The Opinion and Order below dated April 3, 2025 was attached to the Opening Brief as Exhibit A and is cited herein as "Op.".

mere occurrence of the Incident means that Blackbaud breached Sections 6(a) and (b) ("commercially reasonable" security measures)…" (Answering Brief at 10) To the contrary, Plaintiffs made no such presumption and set forth in great detail in paragraphs 177-182 of the Complaint how such contractual security obligations had been breached and led to the Data Breach (A0101-103 (¶¶177-182(a)-(p)).[3]

On July 16, 2020, Blackbaud issued a public notice of the Data Breach on its website. (A0076 (¶79)). While Blackbaud minimized the extent of the incident therein, Blackbaud nonetheless directed all of its customers to an incident response resource page on its website and provided them with a "Toolkit" that instructed them as to the necessity of conducting their own independent investigations. (A0094-96 (¶¶145-149). More broadly, it directly instructed the Insureds to undertake required "next steps," such as investigating the data involved, consulting with legal counsel and possibly notifying donors. (*Id.*) These are the exact required "next steps" that the Insureds then undertook and form the damages herein. These included "initial analysis and investigation …, *irrespective* of what data was later determined to be

[3] In numerous other areas of the Complaint, Plaintiffs set forth other bases for Blackbaud's breach of these contractual security provisions. For example, as noted in the Complaint, Blackbaud itself retained Kudelski Security to investigate the incident and that company issued a report finding that Blackbaud did not have proper cybersecurity measures in place (allowing unauthorized access, creation of administrator accounts, free movement, and exfiltration of confidential information). (A0073-74 (¶¶59-64)).

affected and *irrespective* of what laws were eventually determined by legal counsel to apply to such data." (A0236 (emphasis in original); A0092 (¶139)).

In its cursory summary of the Complaint's allegations set forth in its "Statement of Facts," Blackbaud mischaracterized the relevant facts and allegations concerning the basis on which the Insureds incurred these damages (alluding to them as "voluntary" or "elective")[4]:

> According to Plaintiffs, the Insureds received the July Notice, which stated that "no personal information about [their] constituents was accessed." Plaintiffs allege that the Insureds then chose to incur hundreds of thousands of dollars in "Remediation Expenses," claiming that they were "forced to undertake independent investigations into the Incident to meet their legal obligations to investigate and notify affected Consumers[.]"

Answering Brief at 10. While Blackbaud looks to mischaracterize the damages incurred here as voluntary or as somehow not caused by the Data Breach, such arguments written by its defense attorneys today are contradicted by its own Toolkit issued at the time of the Data Breach.[5]

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[4] *See, e.g.,* Answering Brief at 2. Blackbaud introduced a number of unsupported and uncited mischaracterizations like this into its "Nature of Proceedings" section at the outset of its brief, despite the fact that such section is supposed to be reserved for a "statement of the nature of the proceeding and the judgment or order sought to be reviewed." Supr. Ct. Civ. R. 14(b)(iii).

[5] Blackbaud similarly mischaracterizes Plaintiffs' references to the Toolkit: "Plaintiffs also suggest that the Toolkit creates a basis for incurring the Remediation Expenses but, as the Superior Court correctly identified, the Toolkit is not a contract between Blackbaud and any Insured, and cannot be the basis for Plaintiffs' contract claims." Answering Brief at 38. Instead, as noted above, the Complaint alleged straightforwardly that the Remediation Expenses were proximately caused by the

In performing these investigations, the Insureds each incurred a similar set of such costs and expenses - for computer forensic firms, legal counsel to investigate as to the scope of the Data Breach and as to any necessary notification requirements, and the costs of notification to certain individual. (A0091-94 (¶¶139-140)). Those damages amounted collectively to more than $600,000. (A0094 (¶¶141-142).

Blackbaud combined and continued both of the above mischaracterizations of the Complaint's actual allegations in its "Procedural History" section: "Plaintiffs' allegations turn on the theory that, because Blackbaud was attacked by cybercriminals, Blackbaud must reimburse Plaintiffs for every elective Expense that the Insureds unilaterally decided to incur, despite lacking any contractual basis for doing so." (Answering Brief at 13) Again, Blackbaud intentionally ignored the Complaint's allegations as to specific contractual provisions noted above that were breached and that led to the Data Breach, and as to the necessity of incurring the post-Data Breach expenses.

When the actual allegations of the Complaint are considered, they fully comply with the Delaware Superior Court pleading standards.

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breaches of the contract and the Data Breach. *See, e.g.,* Complaint (A0104 (¶191)). While no further support to such allegations would be necessary, Plaintiffs simply buttressed these allegations by noting that Blackbaud's own Toolkit also identified these Remediation Expenses as necessary to incur as a result of the Data Breach.

ARGUMENT

I. Blackbaud Ignored Rule 8's Pleading Standards

Despite the fact that Plaintiffs' Complaint was dismissed entirely based upon a determination that the claims therein had been inadequately plead, Blackbaud's Answering Brief fails to address the applicable liberal pleading standards, omitting any reference to those standards or any analysis comparing the Complaint's allegations to the requirements those standards impose.

To properly plead a claim under Superior Court Civil Rule 8(a), a plaintiff must merely provide "(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the party deems itself entitled." Under this notice pleading standard in Delaware, "for a complaint to survive a motion to dismiss, it need only give 'general notice of the claim asserted.'" *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005). Further, damages, and issue for the Superior Court here "may be pled **generally**," and a party merely must "allege facts raising a **reasonable inference** that damages are causally related to the alleged misconduct." *Spring League, LLC v. Frost Brown Todd LLP*, 2024 WL 4442006, at *2 (Del. Super. Oct. 8, 2024) (emphases added) (citations omitted).

In Blackbaud's 56-page Answering Brief, it never mentioned Rule 8's controlling pleading standards, likely because Plaintiffs' Complaint obviously met those liberal standards. Dismissal is appropriate under Rule 8 standards only where it

"appears with reasonable certainty that, under any set of facts that could be proven to support the claims asserted, the plaintiff would not be entitled to relief." *Clinton v. Enterpr. Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009).

II. The Complaint Did Not Impermissibly Aggregate the Insureds' Claims without Providing Sufficient Allegations in Support of Each Insured's Claim

In their Opening Brief, Plaintiffs set forth in detail how the Complaint alleged specific facts as to each Insured to establish the existence of a contract, breaches of each contract, and damages resulting from each breach – thereby stating a *prima facie* claim for breach of contract on behalf of each Insured individually. These allegations, both collectively and individually, satisfied the pleading standards in Rules 8 and 12(b)(6). *See* Opening Brief, pp. 18-19 (contracts); pp. 19-21 (breaches); and pp. 21-27 (damages). Plaintiffs do not reiterate that detailed analysis here, but a review of the Opening Brief confirms the sufficiency and strength of the Complaint.

Blackbaud's Answering Brief ignored Plaintiffs' detailed explanation of how the Complaint sufficiently alleged facts to support the requisite elements of each Insured's breach of contract claim. Instead, Blackbaud just asserted (without supporting references to the Complaint) that the, "Complaint fails to properly allege subrogation claims because it fails to provide any factual support for each Insured's claims." (Answering Brief at 15) This assertion was erroneously buttressed by the related and unsupported argument that because the "Complaint failed to give the defendant 'fair notice' of the claim being asserted against him (sic) it was properly dismissed." *Id.* (citation omitted). Tellingly, Blackbaud did not describe the facts for which it purportedly was not given "fair notice," and/or why they were material.

Blackbaud instead chose to simply repeat the most suspect parts of the trial court's opinion, and then to adopt and expand upon the trial court's inaccurate finding that the Complaint did "not allege [necessary] Insured-specific facts." (Op. at 21). As reviewed in the Opening Brief, the Superior Court, without ever explaining why an additional level of detail was necessary under Delaware's notice pleading standard, identified certain areas it felt required more detail for each Insured:

- "[Plaintiffs] allege that the Insureds investigated what data they stored, but do not identify the data stored by each." (*Id*. at 21).
- "There are no allegations that any Insured stored bank account information or social security numbers - the very information that was allegedly compromised - or that any Insured received the supplemental Blackbaud notice." (*Id*.).
- "[Plaintiffs] do not allege what privacy law requirements any Insured allegedly had to satisfy," and "The amended complaints do not allege which, if any, of the listed laws applied to each Insured." (*Id*. at 22).
- "[Complaint does] not include Insured-specific factual allegations of the type(s) of Expenses allegedly incurred." (*Id*.).

The Superior Court further noted that, "[w]ithout providing the factual information for each Insured's claim, Blackbaud, and the Court, cannot assess whether the subrogor-Insureds have a valid claim against Blackbaud." (*Id.* at 22). It is inexplicable substantively (and under Delaware's notice pleading standards) how the absence of these extra facts (especially when the Complaint was to be viewed in the light most favorable to Plaintiffs) could ever affect the validity of Plaintiffs' claims.

To support this argument, which germinated from an inaccurate premise as to what the Complaint actually alleged, Blackbaud reviewed a number of New York state decisions addressing markedly different aggregated health care subrogation claims, all of which had been addressed and distinguished by Plaintiffs in the Opening Brief. (Opening Brief at 30-33). Blackbaud and the Superior Court acknowledged that there was no support under Delaware law (caselaw or Court rules) for the Superior Court's imposition of a higher pleading standard requiring Plaintiffs to plead Insured-by-Insured claims with any greater factual particularity than the Complaint provided. (Op. at 22-25, Answering Brief at 16-18) Nonetheless, the Superior Court relied on three New York cases cited by Blackbaud to support its conclusion that Plaintiffs had failed to adequately plead a claim under Delaware law, quoting "'[a]t the very least,' … plaintiffs were required to identify subrogors '*and those subrogors' claims so that defendants would have the opportunity to assert defenses against those claims.*'" (Op. at 23) (quoting *Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris USA Inc.*, 344 F.3d 211, 218 (2d Cir. 2003); *A.O. Fox Mem'l Hosp. v. Am. Tobacco Co., Inc.*, 754 N.Y.S.2d 368, 414 (N.Y. App. 2003)) (emphasis in original); *see also* Op. at 23, n.79 (quoting *Blue Cross*, 344 F.3d at 217-18; *A.O. Fox Mem'l Hosp.*, 754 N.Y.S.2d at 414; *E. States Health & Welfare Fund v. Philip Morris USA Inc.*, 719 N.Y.S.2d 240 (N.Y. 2000)).

However, Plaintiffs did, in fact, identify all affected Insureds in their Complaint, and nothing in those decisions based upon New York's pleading standards even require a plaintiff "to separately plead the claims of each Insured, supported by Insured-particular facts." (Op. at 25). Moreover, those cases were distinguished by New York's highest court in the *Lawyers' Fund For Client Protection of State of New York v. JP Morgan Chase Bank, N.A.,* 915 N.Y.S.2d 741 (N.Y. App. 2011), which observed that "the claims in those cases were dismissed not merely because the injured persons had not been identified, but because they could not be identified in a manner appropriate to a subrogation claim." 915 N.Y.S.2d at 743 (emphasis added)(citing *Blue Cross*, 344 F.3d at 217-18; *A.O. Fox Mem'l Hosp.*, 754 N.Y.S.2d at 368; *E. States Health & Welfare Fund*, 719 N.Y.S.2d at 240). In those cases, "[t]he separate claims asserted on behalf of the injured persons involved such a high degree of individualized inquiry that … they '[could not] properly be considered to be subrogated.'" *Lawyers' Fund*, 915 N.Y.S.2d at 743.

In *Lawyers' Fund,* the court held instead "that plaintiff's original complaint provided defendant with notice of the facts, transactions and occurrences to be proven" because it "stated the number of claimants, the time frame within which their losses occurred, and the **aggregate** amount of their damages, and that, after being reimbursed, the subrogors each signed an agreement transferring their claim to plaintiff." *Id.* (emphasis added). In finding that the motion to dismiss in *Lawyers'*

Fund was properly denied, the court found, much like the facts here, that "[e]ach claimant was injured in the same way, each claimant's subrogation relationship to plaintiff arose in the same way, and the specific acts and omissions by defendant which were alleged to have caused claimants' losses were the same." *Id.*

In its Answering Brief, Blackbaud sought to avoid the *Lawyers' Fund* decision by again mischaracterizing the Complaint's actual allegations. (Answering Brief at 20-21). Blackbaud's purported distinction was that the Complaint does not "allege that all 19 Insureds incurred the same Remediation Expenses; in fact, they allege that the Insureds each had different types of Affected Data, different legal obligations, and thus different Expenses." *Id.* However, these are neither factually accurate nor material distinctions. All Insureds suffered a combination of the same set (or subset) of three types of damages (forensic costs, legal fees, and notification costs), and they were all proximately caused in the exact same manner. As explained at length in the Opening Brief, different data maintained by different Insureds was legally irrelevant to the incurring of the Remediation Expenses, or to the sufficiency of the Complaint's allegations.

Overall, there was no need for any greater detail to be provided on an Insured-by-Insured basis for Plaintiffs to adequately plead their breaches of contract in this case, and the Superior Court erred when it decided otherwise.[6]

[6] Of course, if the only pleading issue was a failure to detail the specific amount of damages incurred by each Insured in each category of such stated damages (which is not required under Delaware pleadings standards, Sup. Ct. Civ. R 9(g)), then the Superior Court – which had never previously identified this as an issue – could have permitted Plaintiffs to amend their pleadings to simply add a breakdown of such individual damage amounts, which had already been provided to Blackbaud directly. (A0098, Complaint, n. 38; Opening Brief at 27, n. 5).

III. The Complaint Properly Alleged Proximate Cause

In its Answering Brief, Blackbaud argued in support of the Superior Court's determination that the Complaint failed to adequately allege proximate causation linking the Insureds' Remediation Expenses (i.e., damages) to the breach of the BS Agreements. (Op. at 25-32). As explained in the Opening Brief, this was a strange and baseless conclusion to reach considering the numerous allegations in the Complaint that the Data Breach - which arose from the breach of the contractual requirement to provide commercially reasonable security – caused the Insureds to incur the noted expenses. Further, the Superior Court itself at oral argument succinctly explained the proximate causation allegations to defense counsel, as reflected in the transcript portion quoted in the Opening Brief. (Opening Brief at 26 (quoting from A0360-361)). Moreover, there would have been no basis at all for the numerous Insureds to each incur such investigative and legal expenses if not for the Data Breach, which Plaintiffs clearly alleged to have arisen from the contractual breaches.

While recognizing the proper simple standard to adequately plead proximate causation (merely "a factual basis to relate the alleged injury to the breach"[7]), Blackbaud claims the "Complaint does not come close to satisfying this standard."[8]

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[7] *Wellgistics, LLC v. Welgo, Inc.*, 2024 WL 113967, at *5 (Del. Super. Jan. 9, 2024).

[8] Answering Brief at 24.

Blackbaud reads this standard too conservatively and ignores another companion pleading standard that a Complaint need only "allege facts raising a **reasonable inference** that damages are causally related to the alleged misconduct." *Spring League, LLC v. Frost Brown Todd LLP*, 2024 WL 4442006, at *2 (Del. Super. Oct. 8, 2024) (emphasis added).

To support its overzealous position, Blackbaud completely ignores Plaintiffs' explication of the proximate causation allegations in the Complaint – as explained by the Superior Court itself in the quoted oral argument passage above. Instead, Blackbaud makes three baseless arguments: "(1) No provision of the Contracts allows Plaintiffs to recover the Remediation Expenses; (2) Plaintiffs' interpretation of the Contracts is unreasonable as a matter of law; and (3) the First Amended Complaint lacks factual allegations of proximate cause."[9] They are addressed here below in order.

[9] Answering Brief at 25.

A. The Contracts allow Plaintiffs to Recover Remediation Expenses

In its first argument as to proximate causation (*see* Answering Brief at 25-26), Blackbaud asserts that there is nothing in the BS Agreements specifically stating what damages the Insureds were entitled to receive when Blackbaud breached its responsibilities under Sections 6(a) and 6(b) to provide "commercially reasonable" security measures and, therefore, the Insureds cannot recover any damages proximately caused by such breaches. Significantly, the only citation provided in support of this proposition that is not supported by Delaware law is *Talkdesk, Inc. v. DM Trans, LLC*, 2024 WL 2799307, at *5 (Del. Super. Ct. May 31, 2024), but only for the undisputed proposition that any damages must be tied to a "contractual provision that the parties bargained for and agreed to." That is not at issue here because Plaintiffs have specifically alleged that the damages were proximately caused by the breach of Sections 6(a) and 6(b) of the BS Agreements. There simply is no basis for Blackbaud's contention that a breach of contract can only prevail if there is a remedies provision linked to the contractual provisions that are breached.

B. Plaintiffs' Interpretation of the Contracts Is Reasonable

In order to avoid this simple premise (contractual security provisions were breached, which led to Data Breach, which caused Remediation Expenses), Blackbaud tries to divert attention by pointing to Plaintiffs' additional claims about the breach of Section 6(d) of the BS Agreements (holding Blackbaud responsible to undertake mitigation efforts after a breach). A similar misplaced focus by the Superior Court on a mere additional basis for relief - as if it was the only breach of contract asserted - was addressed in Plaintiffs' Opening Brief. (Opening Brief at 34-35). Blackbaud nonetheless spends pages of its Answering Brief attacking this alleged Section 6(d) breach claim as if it were the only or primary contractual breach alleged by Plaintiffs. (Answering Brief at 26-30).

While Plaintiffs continue to believe that the Superior Court's limited interpretation of Section 6(d) of the BS Agreements was inaccurate, this has no bearing on whether Plaintiffs adequately plead that Blackbaud's breaches of Sections 6(a) and 6(b) of the BS Agreements were a proximate cause of the Data Breach and the Remediation Expenses that resulted therefrom. Such allegations in the Complaint are proper and stand on their own, and should have easily survived the underlying Motion to Dismiss.

C. The Complaint Properly Supports Proximate Causation Allegation

Blackbaud's final attack on the proximate causation allegations in the Complaint makes the general assertion that Plaintiffs did not "provide factual support for such an *attenuated* causal link between the alleged breaches and the Remediation Expenses." (Answering Brief at 30 (emphasis added)).

The only legal standard that Blackbaud suggested was violated comes from the *Wellgistics* decision, which merely identified the *de minimis* pleading standard that a complaint must provide some "factual basis to relate the alleged injury to the breach."[10] Blackbaud presumably focuses on the *Wellgistics* decision because it is a rare, outlier decision finding an inadequate factual basis. The absurdity of the proximate cause allegations in *Wellgistics* though are described by the court as follows:

> it is simply inconceivable, without factual support, that Wellgistics – as a lone actor in the vast national medication marketplace – could purchase so much of the Medication directly from Welgo's contract manufacturers to cause an increase in the national utilization rate, which caused [pharmacy benefit managers] to recommend a reduction in insurance coverage and insurers to limit coverage for the drug, and ultimately caused physicians to substantially reduce prescription levels.[11]

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[10] 2024 WL 113967, at *4. Blackbaud again ignored the companion pleading standard that a Complaint need only "allege facts raising a reasonable inference that damages are causally related to the alleged misconduct." *Spring League, LLC v. Frost Brown Todd LLP*, 2024 WL 4442006, at *2 (Del. Super. Oct. 8, 2024).

[11] *Id.* at *6.

There is not even a scant comparison to the circumstances here, where it was directly alleged that the breach of the contractual security provisions caused the Data Breach and its related Remediation Expenses.

Plaintiffs addressed in their Opening Brief (at pages 33-37) how and where the Superior Court simply got this issue wrong. Nonetheless, Blackbaud completely disregarded Plaintiffs' arguments as to how the Remediation Expenses were necessary and were directly caused by the Data Breach. Instead, Blackbaud just repeated the baseless assertion that in order to properly allege proximate causation Plaintiffs needed to identify the data stored by each Insured and the privacy statutes that controlled them.

As noted in the Opening Brief, such information would have had no effect on the Insureds' needs to undertake the post-Data Breach Remediation Expenses incurred. As alleged in the Complaint, all of the Insureds maintained some forms of personal data of their customers and donors ("including, but not limited to, protected health information ("PHI") and personally identifiable information ("PII"); as well as [other] proprietary and confidential information."). (A0068, ¶33). As alleged in the Complaint, as a result of notice of the Data Breach, these Insureds were compelled to undertake the forensic and legal investigations. Plaintiffs have accurately alleged that such corporate duties exist in the present day and with the

present data privacy law landscape, and were supported by Blackbaud's own Toolkit instructions providing exactly such guidance. (A0095-97, ¶¶149-155).[12]

In turn, the data eventually found to have been stored by each Insured and any of the numerous privacy statutes involved were irrelevant to whether or not Plaintiffs properly alleged a proximate cause under Delaware law between the breach of the contractual security provisions and the incurring of Remediation Expenses.

[12]After the Data Breach, over 100 Insureds (including the Insureds in the related litigation) spent millions of dollars to protect themselves and their customers/donors by undertaking what they believed where necessary post-breach investigations (both legal and forensic) – and such costly investigations matched up exactly with the guidance as to "next steps" provided by Blackbaud in its Toolkit. Nonetheless, Blackbaud asserts that the identical expensive investigative efforts by all of these customers were "voluntary" and not caused by the breaches. One would have to believe it was a collective mistake (by more than 100 Insureds and by Blackbaud) to determine that there was no causal connection between the Data Breach and the Remediation Expenses. Even putting aside such lack of logic, the Complaint affirmatively alleged "facts raising a reasonable inference that [the] damages are causally related to the alleged misconduct." *Spring League, LLC,* 2024 WL 4442006, at *2.

IV. Dismissal of the Complaint With Prejudice Was Improper

Leave to amend "shall be freely given where justice so requires." Super. Ct. Civ. R. 15(a). *See also Hart v. Parker*, 2021 WL 4824148, at *3 (Del. Super. Oct. 15, 2021) ("leave to amend should be freely given unless there is evidence of undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies, prejudice, futility, or the like."). In its Answering Brief, Blackbaud itself cited these standards, and nowhere did it allege any undue delay, bad faith, dilatory motive, prejudice or futility. Blackbaud instead asserts that because Plaintiffs purportedly failed to fix perceived pleading issues that had been twice raised by the Superior Court, Plaintiffs either could not fix them or should not be given a third attempt. Missing from that analysis is that the Superior Court dismissed the breach of contract claims in Plaintiffs' original complaint for markedly different reasons, and the amended operative Complaint resolved those issues.

In the Superior Court's March 27, 2024, Memorandum Opinion and Order dismissing the original complaint, the bases provided for dismissal were that there were: (1) no contracts (or an exemplar) attached to complaint; (2) no specific facts alleged to support that the contracts were breached; and (3) no facts alleged as to how alleged contractual provisions were breached. (A0050-55). In response, Plaintiffs greatly expanded the allegations in their Amended Complaint to address all of these issues, to attach exemplar contracts, and to provide the Toolkit in further support of

the proximate cause allegations. The Superior Court's issue regarding individualized Insured-by-Insured damage or data details was noted by the trial court only after Plaintiffs filed their Amended Complaint – i.e., it was raised just once by the Court. (*Id.*)

Putting aside that the Complaint's allegations actually do satisfy the applicable pleading standards, at the very least Plaintiffs should have been given the opportunity to amend their Complaint to provide the limited additional information that the Superior Court said was missing, which Plaintiffs requested before the Superior Court but were refused.

CONCLUSION

For all of the foregoing reasons, the Court should reverse the ruling below.

Dated: August 27, 2025

Respectfully submitted,

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