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17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE DISTRICT OF ARIZONA**

18 **Daniel Davila**, individually and on behalf  
19 of all similarly situated persons,

20 Plaintiff,

21 v.

22 **New Enchantment Group, LLC**,

23 Defendant.

No. 2:23-cv-01098-PHX-SRB

**PLAINTIFF'S UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
MEMORANDUM OF LAW IN  
SUPPORT**

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## I. INTRODUCTION

Plaintiff Daniel Davila (“Plaintiff”) individually and on behalf of the putative class, moves pursuant to Federal Rule of Civil Procedure 23(e) for an Order: (i) granting preliminary approval of the proposed class action settlement; (ii) preliminarily certifying a class for purposes of settlement; (iii) appointing Plaintiff as a Class Representative; (iv) appointing William B. Federman and Kennedy M. Brian of Federman & Sherwood as Settlement Class Counsel; (v) approving the Parties’ proposed form and method of giving notice of the pendency of this Action and the Settlement to the Settlement Class; (vi) directing that notice be given to the Settlement Class; (vii) scheduling a final hearing at which time the Court will consider the request for final approval of the Settlement and request for Attorneys’ Fees, Expenses, and Service Award to Plaintiff; and (viii) granting such other relief and further relief as the Court deems just and proper.<sup>1</sup> Defendant New Enchantment Group, LLC (“NEG” or “Defendant”) does not oppose Plaintiff’s Motion. For the reasons set forth herein, the Settlement is fair, reasonable, and adequate, and the Court should grant preliminary approval of the Settlement.

## II. STATEMENT OF FACTS

This litigation arises from a data security incident that took place on Defendant’s systems between October 3, 2022, through October 4, 2022 (“Data Breach” or “Breach”) through which an unauthorized actor gained access to certain files containing Plaintiff’s and Class Members’ personal information that included, depending on each individual, their names in combination with Social Security Numbers, driver’s license numbers, financial account numbers or credit/debit card numbers, and/or health insurance information (collectively, “Private Information”). (Compl., ¶¶ 2, 23, 42). Plaintiff alleges that because of the Data Breach cybercriminals accessed and acquired Plaintiff’s and Settlement Class Members’ Private Information from NEG’s network. (*Id.* ¶ 2). Upon

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<sup>1</sup> The Class Action Settlement Agreement is attached hereto as **Exhibit A**. Unless otherwise noted capitalized terms have the same meaning assigned to them in the Settlement Agreement (“SA”).



1 discovering the Data Breach, Defendant provided notice of the Breach to affected  
2 individuals on February 28, 2023, and June 6, 2023. (SA, p. 1).

### 3 **III. PROCEDURAL HISTORY**

4 After receiving notice of the Data Breach, Plaintiff filed a class action lawsuit  
5 against NEG based on its alleged disclosure of his Private Information. (*See generally*,  
6 Compl.). The Complaint alleges the following causes of action: (i) negligence; (ii) breach  
7 of implied contract; (iii) unjust enrichment; and (iv) violations of the Arizona Consumer  
8 Fraud Act. (*Id.*). In response to the Complaint, NEG filed a Motion to Dismiss (ECF No.  
9 10), which was denied on April 25, 2024. (ECF No. 23). Thereafter, the Parties submitted  
10 a Case Management Report (ECF No. 26), attended a scheduling conference with the  
11 Court, and exchanged initial disclosures. Plaintiff issued requests for production of  
12 documents, requests for admission, and interrogatories to NEG on July 19, 2024.

13 On August 15, 2024, after an informal exchange of discovery requests,  
14 information, and production of documents by NEG to Plaintiff's counsel, the Parties  
15 participated in a full-day mediation before experienced mediator, Hon. Judge David E.  
16 Jones (Ret.). The Parties were able to reach a settlement, which is memorialized in the  
17 Settlement Agreement and attached exhibits (collectively, the "Settlement" or  
18 "Settlement Agreement") (attached hereto as **Exhibit A**). The Parties worked together to  
19 finalize the Settlement Agreement and exhibits thereto in the weeks following the  
20 mediation.

### 21 **IV. THE SETTLEMENT TERMS**

#### 22 **A. Proposed Settlement Class**

23 The Settlement Class is defined as: the 5,568 individuals identified by Defendant  
24 as having personally identifiable information compromised by the Data Breach and to  
25 whom Defendant provided written or substitute notice of the Data Breach on either  
26 February 28, 2023, or June 6, 2023. (SA, ¶ 35). The Settlement Class will not include  
27 Defendant or its parents, subsidiaries, divisions, or affiliates, or their respective  
successors or predecessors, or any entity in which Defendant or its parents has a

controlling interest, or any of their current or former officers and directors; any judge providing over the Lawsuit and members of their families; persons who properly execute and file a timely request for exclusion from the Settlement Class; persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; Plaintiff's counsel, Class Counsel, and Defendant's Counsel; and the legal representatives, successors, and assigns of any such excluded persons. (*Id.*).

The Settlement provides a favorable result for the Settlement Class in the form of (1) Credit Monitoring Services; and either (2) reimbursement for Attested Time, Out-of-Pocket Costs, and/or Financial Losses; or (3) an Alternative Cash Payment. (*Id.* ¶ 41). Unless a Settlement Class Member elects to receive an Alternative Cash Payment, Defendant will provide compensation to Settlement Class Members for Attested Time of up to five (5) hours at a rate of \$30.00 per hour (a maximum amount of \$150.00) for time spent remedying issues related to the Data Breach (*Id.* ¶ 42), Out-of-Pocket Costs up to \$500.00 (*Id.* ¶ 43), and Financial Losses up to \$4,000.00 (*Id.* ¶ 44). Alternatively, in lieu of a Settlement Class Member electing to receive compensation for Attested Time, Out-of-Pocket Costs, or Financial Losses, Settlement Class Members may elect to receive an Alternative Cash Payment of \$75.00. (*Id.* ¶ 45). Regardless of the payment option selected, all Settlement Class Members are eligible to receive two (2) years of Credit Monitoring Services that provide monitoring with the three (3) major credit bureaus (Experian, Equifax, and Transunion), alerts about changes in information to the credit report, dark web scanning for personal information, identify theft insurance, and access to assistance to help investigate and resolve any issues. (*Id.* ¶¶ 11, 46). There is no aggregate monetary cap on the payout of the claims made by Settlement Class Members.

#### **B. Class Notice and Settlement Administration**

Notice will be paid for by Defendant separate and apart from the benefits made available to Settlement Class Members. (*Id.* ¶¶ 22, 55). Notice will be given to the Settlement Class via individual direct notice, which will be given by mailing the Postcard Notice notices to the Settlement Class Members. (*Id.* ¶ 55(a)). Defendant will also publish

notice of the settlement on its website for a period of sixty (60) days. (*Id.* ¶ 55(b)). A Long Form Notice will also be posted on the Settlement Website, along with other important documents such as the Settlement Agreement and the motions for final approval and for attorney’s fees and expenses. (*Id.* ¶ 55(c)). The Claims Period will last sixty (60) days from the date of Notice. (*Id.* ¶ 55). If the claims rate is below two percent (2.0%) thirty (30) days before the Claims Deadline, Class Counsel will have the option to direct the Settlement Administrator to issue a single-sided postcard reminder notice to the Settlement Class Members. (*Id.*). The notice documents are clear and concise and directly apprise Class Members of all the information they need to know to make a claim, opt-out, or object to the Settlement. (*Id.* at Exs. 1–4).

### **C. Attorneys’ Fees and Expenses**

The Parties agreed that, as part of the Settlement, proposed Settlement Class Counsel will seek an award of reasonable attorneys’ fees and reimbursement of litigation expenses to be paid by Defendant. (*Id.* ¶ 74). As explained in the Notices, the attorneys’ fees, costs, and expenses to be requested by proposed Class Counsel will not exceed \$282,500, the payment of which will not impact the benefits made available to the Settlement Class. (*Id.*). Notably, the discussion of attorneys’ fees and costs did not take place until after the Parties agreed to all material settlement terms. (*See* Declaration in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (“Counsel Decl.”), ¶¶ 5, 14 (attached hereto as **Exhibit B**)). Class Counsel respectfully submit that this fee request is within the range of reasonableness for settlements of this nature and size. (*Id.* ¶ 14.). Plaintiff and Class Counsel will submit a fulsome motion supporting the fee request prior to the Final Approval Hearing.

### **D. Service Award**

In recognition of Plaintiff’s time and effort expended in pursuing the litigation and in fulfilling his obligations and responsibilities as a representative of the Class, proposed Class Counsel will ask the Court to approve a Service Award of \$1,500.00 for Plaintiff. (SA, ¶ 72). The amount requested is presumptively reasonable and is directly in line with

the amount this Court awarded in a similar data privacy case. *Perez, et al. v. Carvin Wilson Software, LLC*, No. CV-23-00792, ECF No. 53 (D. Ariz.) (approving service awards of \$1,500.00).

## V. LEGAL AUTHORITY

Plaintiff brings this Motion pursuant to Federal Rule Civil Procedure 23(e), under which court approval is required to finalize a class action settlement. Courts, including those in this Circuit, endorse a three-step procedure for approval of class action settlements: (1) preliminary approval of the proposed settlement, followed by (2) dissemination of court-approved notice to the class, and (3) a final fairness hearing at which class members may be heard regarding the settlement and at which evidence may be heard regarding the fairness, adequacy, and reasonableness of the settlement. *Manual for Complex Litigation (Fourth)* (2004) § 21.63.

Plaintiff requests the Court take the first step and grant preliminary approval of the proposed Settlement Agreement.

## VI. ARGUMENT

Federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”); 4 Newberg on Class Actions § 11.41 (4th ed. 2002) (citing cases). The *Manual for Complex Litigation (Fourth)* advises that in cases presented for both preliminary approval and class certification, the “judge should make a preliminary determination that the proposed class satisfies the criteria.” *Id.* § 21.632.

### A. The Settlement Satisfies Rule 23(a)

Before assessing the Parties’ Settlement, the Court should first confirm the underlying Settlement Class meets the requirements of Rule 23(a). *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Manual for Complex Litigation (Fourth)*, §

21.632. The requirements are: numerosity, commonality, typicality, and adequacy—each of which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011).

### 1. The Proposed Class is Sufficiently Numerous

While there is no fixed point where the numerosity requirement is met, Courts find numerosity where there are so many class members as to make joinder impracticable. *See* Fed. R. Civ. P. 23(a)(1). “Where the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied.” *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982). Generally, Courts will find numerosity is satisfied where a class includes at least 40 members. *Holly v. Alta Newport Hospital*, No.2:19-cv-07496, 2020 WL 1853308, at \*7 (April 10, 2020). The proposed Settlement encompasses 5,568 individuals. (SA, ¶ 35). The proposed Settlement class easily satisfies Rule 23’s numerosity requirement. Joinder of the individuals is impracticable, therefore, the numerosity prong is satisfied.

### 2. The Settlement Class Satisfies Commonality

The Settlement Class also satisfies the commonality requirement, which requires that class members’ claims “depend upon a common contention.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, as in most data breach cases, “[t]hese common issues all center on [Defendant’s] conduct, satisfying the commonality requirement.” *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 6902351, at \*2 (N.D. Ga. Aug. 23, 2016). Indeed, common questions include, *inter alia*, whether Class Members’ Private Information was compromised in the Data Breach; whether NEG owed a duty to Plaintiff and Class Members to protect their Private Information; whether NEG breached its duties; and whether NEG violated the common law and statutory violations alleged. Thus, the commonality requirement is met.

### 3. Plaintiff’s Claims are Typical to those of the Class

Plaintiff satisfies the typicality requirement of Rule 23 because his claims, which are based on Defendant’s alleged failure to protect the Private Information of Plaintiff

and all Class Members, are “reasonably coextensive with those of the absent class members.” *See* Fed. R. Civ. P. 23(a)(3); *Meyer v Portfolio Recovery Associates*, 707 F.3d 943, 1041-42 (9th Cir. 2012) (upholding typicality finding). Plaintiff alleges his Private Information was compromised, and that he was therefore impacted by the same inadequate data security that harmed the rest of the Class. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) (“[I]t is sufficient for typicality if the plaintiff endured a course of conduct directed against the class.”). Thus, typicality is met here.

#### 4. Plaintiff Will Adequately Protect the Interests of the Class

The adequacy requirement of Rule 23 is satisfied where (1) there are no antagonistic or conflicting interests between the named plaintiff and their counsel and the absent class members; and (2) the named plaintiff and their counsel will vigorously prosecute the action on behalf of the class. Fed. R. Civ. P. 23(a)(4); *see also Ellis*, 657 F.3d at 985 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Here, Plaintiff is a member of the Class who allegedly experienced the same injuries and seeks, like other Class Members, compensation for NEG’s alleged data security shortcomings. Plaintiff has no conflicts of interest with other Class Members, is subject to no unique defenses, and he and his counsel have and continue to vigorously prosecute this case on behalf of the Class.

Further, counsel for Plaintiff have years of experience as vigorous class action litigators and are well suited to advocate on behalf of the Class. (*See* Counsel Decl. ¶ 15). Thus, Plaintiff satisfies the requirement of adequacy.

#### B. The Requirements of Rule 23(b)(3) are Met for Purposes of Settlement.

Plaintiff alleges that the Settlement Class is maintainable for purposes of settlement under Rule 23(b)(3), as common questions predominate over questions affecting only individual members and class resolution is superior to other available methods for a fair and efficient resolution. *Id.*

The predominance requirement “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. As

discussed above, common questions predominate over any questions affecting only individual members. Plaintiff's claims depend on whether NEG used reasonable data security to protect his and the Class's Private Information. That question can be resolved, for purposes of settlement, using the same evidence for all Class Members, and thus is precisely the type of predominant question that makes a class-wide settlement worthwhile. *See Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) ("When 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3)'" (citation omitted)).

Further, class-wide resolution is the only practical method of addressing the alleged violations at issue in this case. There are thousands of Class Members with modest individual claims, most of whom likely lack the resources necessary to seek individual legal redress. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) ("Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification."). Because the claims are being certified for purposes of settlement, there are no issues with manageability, and resolution of thousands of claims in one action is far superior to individual lawsuits and promotes consistency and efficiency of adjudication. *See Malta v. Fed. Home Loan Mortg. Corp.*, No. 10-CV-1290 BEN NLS, 2013 WL 444619, at \*3 (S.D. Cal. Feb. 5, 2013) (predominance met where "considerations of judicial economy favor litigating a predominant common issue once in a class action instead of many times in separate lawsuits" and the "small individual claims of class members" made it "unlikely that individual actions will be filed").

Accordingly, certification of the Class for purposes of settlement is appropriate.

**C. The Settlement Should be Preliminarily Approved Pursuant to Rule 23(e).**

"[U]nder Rule 23(e)(1), the issue at preliminary approval turns on whether the Court 'will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.'" *Reyes v. Experian Info. Sols., Inc.*, No. SACV1600563AGAFMX, 2020 WL 466638, at \*1 (C.D. Cal. Jan. 27, 2020). If the



1 parties make a sufficient showing that the Court will likely be able to “approve the  
2 proposal” and “certify the class for purposes of judgment on the proposal,” “[t]he court  
3 must direct notice in a reasonable manner to all class members who would be bound by  
4 the proposal.” Fed. R. Civ. P. 23(e).

5 “In evaluating a proposed settlement at the preliminary approval stage, . . . the  
6 relevant inquiry is whether the settlement ‘falls within the range of possible approval’ or  
7 ‘within the range of reasonableness.’” *Bykov v. DC Trans. Services, Inc.*, No. 2:18-cv-  
8 1692, 2019 WL 1430984, at \*2 (E.D. Cal. Mar. 29, 2019). The Ninth Circuit has identified  
9 nine (9) factors to consider in analyzing the fairness, reasonableness, and adequacy of a  
10 class settlement: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity,  
11 and likely duration of further litigation; (3) the risk of maintaining class action status  
12 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery  
13 completed and the stage of the proceedings; (6) the views of counsel; (7) the presence of  
14 a governmental participant; (8) the reaction of the class members to the proposed  
15 settlement and; (9) whether the settlement is a product of collusion among the parties. *In*  
16 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); *see also*  
17 *Hanlon*, 150 F.3d at 1026. Rule 23(e) requires a court to consider additional factors,  
18 including that the class representative and class counsel have adequately represented the  
19 class, and that the settlement treats class members equitably. Fed. R. Civ. P. 23(e).

20 In applying these factors, this Court should be guided foremost by the principle  
21 that settlements of class actions are highly favored by federal courts. *Franklin v. Kaypro*  
22 *Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989).

23 Here, the relevant factors support the conclusion that the Settlement is  
24 fundamentally fair, reasonable, and adequate, and should be preliminarily approved.

### 25 **1. The Strength of Plaintiff’s Case**

26 Plaintiff believes his claims are viable and that he has a reasonably good chance  
27 of proving that NEG’s data security was inadequate and that, if he establishes that central  
fact, Defendant is likely to be found liable under at least some of the liability theories and



1 statutory and common law claims Plaintiff pled in his Complaint. However, while  
 2 Plaintiff believes he has strong claims and would be able to prevail, he also recognizes  
 3 that success is not guaranteed. It is “plainly reasonable for the parties at this stage to agree  
 4 that the actual recovery realized and risks avoided here outweigh the opportunity to  
 5 pursue potentially more favorable results through full adjudication.” *Dennis v. Kellogg*  
 6 *Co.*, No. 09-cv-1786, 2013 WL 6055326, at \*3 (S.D. Cal. Nov. 14, 2013). “Here, as with  
 7 most class actions, there was risk to both sides in continuing towards trial. The settlement  
 8 avoids uncertainty for all parties involved.” *Chester v. TJX Cos.*, No. 5:15-cv-01437-  
 9 ODW(DTB), 2017 WL 6205788, at \*6 (C.D. Cal. Dec. 5, 2017). Given the heavy  
 10 obstacles and inherent risks Plaintiff faced with respect to the novel claims brought in  
 11 data breach class actions, including class certification, summary judgment, and trial, the  
 12 substantial benefits the Settlement provides favors preliminary approval.

## 13 **2. The Risk, Expense, Complexity, and Likely Duration of Further** 14 **Litigation**

15 While Plaintiff believes his case is strong, all cases, including this one, are subject  
 16 to substantial risk. This case involves a proposed class of over 5,000 individuals (each of  
 17 whom, NEG would argue, needs to establish cognizable harm and causation); a  
 18 complicated and technical factual background; and a motivated Defendant that has  
 19 already provided at least some relief to the potentially affected individuals in the form of  
 20 free credit monitoring.

21 Historically, data breach cases face substantial hurdles in surviving even the  
 22 pleading stage. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060  
 23 (RMB) (RLE), 2010 U.S. Dist. LEXIS 71996, at \*2–4 (S.D.N.Y. June 25, 2010)  
 24 (collecting cases). Even cases of similar wide-spread notoriety and implicating data  
 25 similar to the data at issue here have been found wanting at the district court level. *In re*  
 26 *U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017)  
 27 (“The Court is not persuaded that the factual allegations in the complaints are sufficient  
 to establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019)

(holding that plaintiff had standing to bring a data breach lawsuit).

To the extent the law has gradually accepted this relatively new type of litigation over time, the path to a class-wide monetary judgment remains unforged, particularly in the area of damages. For now, data breach cases are among the riskiest and most uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. The damages methodologies, while theoretically sound in Plaintiff's view, remain largely untested in a disputed class certification setting and unproven in front of a jury. And as in any data breach case, establishing causation on a class-wide basis is rife with uncertainty.

Each risk, by itself, could impede the successful prosecution of these claims at trial and in an eventual appeal, which would result in no recovery for the class. "Regardless of the risk, litigation is always expensive, and both sides would bear those costs if the litigation continued." *Paz v. AG Adriano Goldschmeid, Inc.*, No. 14CV1372DMS(DHB), 2016 WL 4427439, at \*5 (S.D. Cal. Feb. 29, 2016). Thus, this factor favors approval.

### **3. The Risk of Maintaining Class Action Status Through Trial**

Plaintiff acknowledges that if he were to proceed to litigate his claims through trial, he and the Class would encounter risks in obtaining and maintaining certification of the Class. The Class has not been certified, and Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiff "necessarily risk[s] losing class action status." *Grimm v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK, 2014 WL 1274376, at \*10 (C.D. Cal. Sept. 24, 2014). Class certification in contested consumer data breach cases is not common—first occurring in *Smith v. Triad of Ala., LLC*, No. 1:14-CV-324-WKW, 2017 U.S. Dist. LEXIS 38574, at \*45–46 (M.D. Ala. Mar. 17, 2017), and recently in *In re Brinker Data Incident Litig.*, No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021), where a class was certified over objection to plaintiffs' damage calculation. Thus, the dearth of direct precedent adds to the risks posed by continued litigation and this factor favors approval.

#### 4. The Amount Offered in Settlement

In light of the substantial risks and uncertainties presented by data breach litigation generally and this litigation specifically, the value of the Settlement strongly favors approval. The Settlement makes significant relief available to Settlement Class Members in the form of Credit Monitoring Services, Out-of-Pocket Costs, Financial Losses, Attested Time, and Alternative Cash Payments. (SA, ¶¶ 41–46). This is a strong result for the Class and is on par with or exceeds that of other data breach settlements.<sup>2</sup> These comparisons are not intended to disparage the settlements achieved in those cases, but to underscore that Plaintiff has achieved an excellent resolution for the Settlement Class.

Because the Settlement here is similar to, or exceeds, other settlements reached and approved in similar cases, this factor reflects that the settlement is fair. *See Calderon v. Wolf Firm*, No. SACV 16-1622-JLS, 2018 WL 6843723, at \*7–8 (C.D. Cal. Mar. 13, 2018) (comparing class settlement with other settlements in similar cases). In light of the

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<sup>2</sup> See, e.g., *Fehlen v. Accellion, Inc.*, Case No. 21-cv-01353 (N.D. Cal.) (settlement of \$8.1 million for 9.2 million class members who had their Social Security Numbers compromised; \$0.90 per class member); *Dickey's Barbeque Restaurants, Inc.*, Case No. 20-cv-3424 (N.D. Tex.), ECF No. 62 (data breach class action involving more than 3 million people that settled for \$2.3 million, or \$0.76 per person); *In re: Capital One Consumer Data Breach Litigation*, MDL No. 1:19md2915 (AJT/JFA) Doc. 2251 (Memo in Support of Final Approval), page 1 (\$190 million common fund settlement for a class of approximately 98 million, or \$1.93 per person); *Cochran v. Accellion, Inc., et al.*, No. 5:21-cv-01887 (N.D. Cal.), ECF No. 32 (June 30, 2021) (\$5 million settlement fund for 3.82 million class members or approximately \$1.31 per member); *Adlouni v. UCLA Health Systems Auxiliary, et al.*, No. BC 589243 (Cal. Super. Ct. June 28, 2019) (\$2 million settlement in medical information data breach for approximately 4,500,000 class members; 44 cents per member); *In re Anthem, Inc. Data Breach Litig.*, No. 5:15-md-02617 (N.D. Cal. Aug. 15, 2018) (\$115 million settlement in medical information data breach for 79,200,000 class members; \$1.45 per member); *In re The Home Depot, Inc. Customer Data Sec. Breach Litig.*, No. 1:14-MD02583, 2016 WL 6902351, at \*7 (N.D. Ga. Aug. 23, 2016) and ECF No. 181-2 ¶¶ 22, 38 (\$13 million settlement for approximately 40 million class members; 32.5 cents per class member); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-2522, 2017 WL 2178306, at \*\*1- 2 (D. Minn. May 17, 2017) (\$10 million settlement for nearly 100 million class members; 10 cents per member); *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 582 (N.D. Cal. 2015) (\$1.25 million settlement for approximately 6.4 million class members; 20 cents per member).

difficulties and expenses Class Members would face pursuing individual claims, as well as the risk that some Class Members may be unaware of their claims, this settlement is appropriate. *See id.* Accordingly, this factor favors approval.

### 5. The Extent of Discovery Completed and the Stage of Proceedings

Before entering into settlement discussions on behalf of class members, counsel should have “sufficient information to make an informed decision.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Here, Plaintiff’s Counsel vigorously and aggressively gathered information regarding the Data Breach—including publicly-available documents concerning announcements of the Data Breach as well as obtaining an expert to search the dark web. (Counsel Decl. ¶ 6). The Parties also informally exchanged non-public information concerning the Data Incident, its scope, and remedial measures being undertaken by NEG. (*Id.*). In preparation for mediation, Class Counsel reviewed all documents produced by Defendant, as well as its responses to Plaintiff’s requests for information. (*Id.*). Here, the litigation proceeded to the point where “the parties have sufficient information to make an informed decision about settlement,” including a realistic assessment of the strengths and weakness of their respective cases. *See Linney*, 151 F.3d at 1239.

### 6. The Experience and Views of Counsel

Class Counsel have substantial experience litigating complex class cases of various types, including data breach cases such as this one. (*See* Counsel Decl., ¶ 16, Ex. 1 (resumé of Federman & Sherwood)). Class Counsel’s experience in similar types of privacy and data protection cases provided substantive knowledge on the subject to enable Class Counsel to represent Plaintiff’s and Class Members’ interests. Having worked on behalf of the putative Class since the Data Breach was first announced, evaluated the legal and factual disputes, and dedicated significant time and monetary resources to this litigation, proposed Class Counsel fully endorse the Settlement achieved. (*Id.* ¶¶ 16, 19). A great deal of weight is to be accorded to the recommendation of experienced counsel, who are most closely acquainted with the facts of the underlying litigation. *See, e.g.,*

*Norton v. Maximus, Inc.*, No. CV 1:14-0030 WBS, 2017 WL 1424636, at \*6 (D. Idaho Apr. 17, 2017); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this factor supports approval.

### **7. Governmental Participants**

There is no governmental participant in this matter. This factor is neutral.

### **8. The Reaction of the Class Members to the Proposed Settlement**

Because notice has not yet been given to the Class, this factor is not yet implicated.

### **9. Lack of Collusion Among the Parties**

Through the assistance of a neutral mediator and a full-day mediation, the Parties negotiated a substantial, multifaceted Settlement, as described above. (Counsel Decl. ¶¶ 4–5). Class Counsel and NEG's counsel are well-versed in handling data breach class actions such as this one and fully understand the values recovered in similar cases. The assistance of a respected third-party mediator here is also evidence of a lack of collusion. *Ogbuehi v. Comcast of Cal./Colo./Fla./Or., Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014). Therefore, the Court can be assured that the negotiations were not collusive.

### **10. The Settlement Treats Settlement Class Members Equitably**

Finally, Rule 23(e)(2)(D) requires that this Court confirm that the Settlement treats all Class Members as equitably as possible under the circumstances. In considering whether this factor weighs in favor of approval, the Court must determine whether the Settlement “improperly grant[s] preferential treatment to class representatives or segments of the class.” *Hudson v. Libre Technology Inc.*, No. 3:18-cv-1371-GPC-KSC, 2020 WL 2467060, \*9 (S.D. Cal. May 13, 2020) (citations omitted).

Here, the Settlement treats all Class Members equitably. Each Class Member has the opportunity to make the same claims for benefits under the Settlement. While Plaintiff will seek approval of a Service Award from this Court, as will be further explained in Plaintiff's eventual motion for attorneys' fees and service award, the contemplated award is in line with those granted in similar cases, is presumptively reasonable, and does not call into question Plaintiff's adequacy or the validity of the Settlement. As such, this

factor also weighs in favor of approval.

## VII. THE COURT SHOULD APPROVE THE PROPOSED NOTICE PROGRAM

Rule 23 requires that before final approval, the “court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.” *Id.*

Such notice must be the “best notice practicable,” *see* Fed. R. Civ. P. 23(c)(2)(B), which means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). To satisfy due process, notice to class members must be the best practicable, and reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class settlement notices must present information about a proposed settlement simply, neutrally, and understandably. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019). Notice is adequate if it generally describes the terms of the class action settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard. *Id.*

Here, and following a competitive bidding process, the Parties agreed to a robust notice program to be administered by a well-respected third-party class administrator—A.B. Data—which will use all reasonable efforts to provide direct and individual notice to each potential Settlement Class Member via direct U.S. mail. (SA, ¶ 55(a)). The Claims Period will last for 60 days from the date of Notice. (*Id.* ¶ 55). If the claims rate is below 2.0% 30 days before the Claims Deadline, Class Counsel will have the option to direct the Settlement Administrator to issue a single-sided postcard reminder notice to the Settlement Class Members. (*Id.*).



1 The costs of administering the Settlement will be paid by NEG. (*Id.*). The Notices  
2 and Claim Form negotiated by the Parties are clear and concise and inform Settlement  
3 Class Members of their rights and options under the Settlement, including detailed  
4 instructions on how to make a claim, object to the Settlement, or opt-out of the Settlement.  
5 (*Id.* at Exs. 1–4).

6 In addition to the direct notice, Defendant will publish the Website Notice on its  
7 website and continuously maintain it there for a period of 60 days from the date of Notice  
8 as a form of alternate notice to the Settlement Class Members and substitute notice to  
9 those Settlement Class Members for whom Defendant and the Settlement Administrator  
10 are unable to locate mailing addresses for sending the Postcard Notice. (*Id.* ¶ 55(b)). The  
11 Settlement Administrator will also establish a dedicated Settlement Website and will  
12 maintain and update the website throughout the Claims Period, with the forms of Postcard  
13 Notice, Long Notice, and Claim Forms approved by the Court, as well as the Settlement  
14 Agreement. (*Id.* ¶ 55(c)).

15 Plaintiff negotiated a notice program that is reasonably calculated under all the  
16 circumstances to apprise Class Members of the pendency of the action and afford them  
17 an opportunity to present their objections. Class Members may object to the Settlement  
18 or exclude themselves from the Settlement within 45 days of the Notice Deadline. (*Id.* ¶¶  
19 56–57).

20 Because the notice plan ensures that Settlement Class Members’ due process rights  
21 are amply protected, this Court should approve it. *See Hartranft v. TVI, Inc.*, No. 15-  
22 01081-CJC-DFM, 2019 WL 1746137, at \*3 (C.D. Cal. Apr. 18, 2019) (“The Court finds  
23 that the Class Notice and the manner of its dissemination described in Paragraph 7 above  
24 and Section VIII of the Agreement constitutes the best practicable notice under the  
25 circumstances and is reasonably calculated, under all the circumstances, to apprise  
26 Settlement Class Members of the pendency of this action, the terms of the Agreement,  
27 and their right to object to or exclude themselves from the Settlement Class.”); *see also*  
*Spencer v. #1 A LifeSafer of Ariz., LLC*, No. CV-18-02225-PHX-BSB, 2019 WL

1034451, at \*3 (D. Ariz. Mar. 4, 2019) (Bade, J.) (preliminarily approving class action settlement and finding “that the proposed notice program is clearly designed to advise the Class Members of their rights.”).

#### A. Appointment of the Settlement Administrator

In connection with implementation of the Notice Program and administration of the settlement benefits, the Parties request that the Court appoint A.B. Data to serve as the Settlement Administrator. A.B. Data has a trusted and proven track record of supporting thousands of class action administrations. (Counsel Decl. ¶ 9).

#### B. Appointment of Settlement Class Counsel

Under Rule 23, “a court that certifies a class must appoint class counsel [who must] fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). In making this determination, courts generally consider the following attributes: the proposed class counsel’s (1) work in identifying or investigating potential claims, (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case, (3) knowledge of the applicable law, and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i–iv).

Here, proposed Class Counsel have extensive experience prosecuting class actions and other complex cases, and specifically data breach cases. (See Counsel Decl. ¶ 16; Ex. 1). Accordingly, the Court should appoint William B. Federman and Kennedy M. Brian of Federman & Sherwood as Class Counsel.

### VIII. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests this Court grant Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement and enter the Proposed Order attached hereto as **Exhibit C**.

Date: October 10, 2024

Respectfully Submitted,

/s/: William B. Federman

William B. Federman\*

Kennedy M. Brian

**FEDERMAN & SHERWOOD**



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*\*Admitted pro hac vice*

***Proposed Settlement Class Counsel for  
Plaintiff and the Class***

**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2024, I electronically filed the foregoing document using the Court's electronic filing system, which will notify all counsel of record authorized to receive such filings.

/s/: William B. Federman

# EXHIBIT A

## **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), dated September 25, 2024, is made and entered into by and between Daniel Davila, individually and on behalf of Participating Settlement Class Members (as defined in Paragraph 27) (together, “Plaintiffs”), and New Enchantment Group, LLC (“Defendant”) (collectively, the “Parties”), in the action styled *Davila et al. v. New Enchantment Group, LLC*, Case No. 2:23-cv-01098-SRB, pending in the United States District Court for the District of Arizona (the “Action”).

### **RECITALS**

WHEREAS, on June 14, 2023, the Action was filed against Defendant in the United States District Court for the District of Arizona;

WHEREAS, the Action is based on and arises from an unauthorized access to Defendant’s network and data breach that occurred on October 3–4, 2022, and about which Defendant provided notice to affected individuals on February 28, 2023, and June 6, 2023, and which is the subject of the allegations and claims in the Action (the “Data Breach”);

WHEREAS, Defendant denies: (a) the allegations and all liability with respect to any and all facts and claims alleged in the Action; (b) that the class representative(s) in the Action and the class they purport to represent have suffered any injury or damage and that any alleged injury or damage was caused by the Data Breach or any other act or omission of Defendant; and (c) that the Action satisfies the requirements to be certified or tried as a class action under the Federal Rules of Civil Procedure Rule 23;

WHEREAS, the Parties agreed to engage the Honorable David E. Jones (Ret.) of Resolute Systems, LLC as a mediator to oversee settlement negotiations in the Action. In advance of formal mediation, Defendant provided informal discovery related to the merits of Plaintiffs’ claims and class certification and the Parties discussed their respective positions on the merits of the claims and class certification; and

WHEREAS, following extensive arm’s length settlement negotiations, conducted through Judge Jones that included a mediation session on August 15, 2024, the Parties agreed to a term sheet setting forth the essential terms of this Agreement;

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, and without any admission or concession by either Party, the Parties agree to a full, complete, and final settlement and resolution of the Action, subject to Court approval, on the following terms and conditions:

### **I. DEFINITIONS**

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. “Action” means *Davila et al. v. New Enchantment Group, LLC*, Case No. 2:23-cv-01098-SRB, pending in the United States District Court for the District of Arizona.

2. “Alternative Cash Payment” means an Alternative Cash Payment of \$75.00 in lieu of any claims for Attested Time, Out-of-Pocket Expenses, and Financial Losses.

3. “Approved Claim” means a Claim Form timely submitted by a Participating Settlement Member that has been approved by the Settlement Administrator.

4. “Attested Time” means time spent remedying issues related to the Data Breach, if at least one full hour was spent, upon submission of an attestation detailing how and why the time was spent.

5. “Claim Form” or “Claim” means the form(s) Participating Settlement Class Members must submit to be eligible for reimbursement of Attested Time, Out-of-Pocket Costs, or Financial Losses, and/or to claim an Alternative Cash Payment and/or Credit Monitoring Services under the terms of the Settlement, which is attached hereto as **Exhibit 1**.

6. “Claims Deadline” means the last day to submit a timely Claim Form(s), which will occur 60 days from the Notice Deadline.

7. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive Settlement benefits, which will end on the Claims Deadline.

8. “Class Counsel” means William B. Federman and Kennedy M. Brian with the law firm of Federman & Sherwood.

9. “Class Representative” means Daniel Davila.

10. “Court” means the Honorable Susan R. Bolton in the United States District Court for the District of Arizona, or such other judge to whom the Action may hereafter be assigned.

11. “Credit Monitoring Services” means two (2) years of credit monitoring services that provide monitoring of one’s credit report with the three major credit bureaus (Experian, Equifax, and Transunion), alerts about changes in information to the credit report, dark web scanning for personal information, and identify theft insurance, and access to assistance to help investigate and resolve any issues.

12. “Data Breach” means the data breach alleged in the Class Action Complaint in the Action, which occurred on or about October 3–4, 2022 and for which Defendant provided notice to affected individuals on or about February 28, 2023, and on or about June 6, 2023.

13. “Defendant’s Counsel” means Freeman Mathis & Gary, LLP.

14. “Effective Date” means one (1) business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment or one (1) business day following entry of the Final Approval Order and Judgment if no parties have standing to appeal and no objections have been filed to the Agreement; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, one (1) business day after the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.

15. “Fee Application” means any motion for an award of attorneys’ fees, Litigation Costs and Expenses, and Service Award Payments as set forth in Paragraphs 72 and 74.

16. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel, in an amount to be determined and subject to approval by the Court, but which in no event shall exceed the total sum of \$282,500.00.

17. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, otherwise satisfies the settlement-related provisions of Federal Rules of Civil Procedure 23 and 58, and is consistent with all material provisions of this Settlement Agreement. Class Counsel and Defendant’s Counsel will work together on a proposed Final Approval Order and Judgment, which Defendant must approve before filing.

18. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

19. “Financial Losses” means proven monetary losses arising from financial fraud or identity theft, if: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss is fairly traceable to the Data Breach; (3) the loss occurred between October 3, 2022, and the Claims Deadline; (4) the loss is not already covered as Attested Time or an Out-of-Pocket Expense; and (5) the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss.

20. “Litigation Costs and Expenses” means reasonable costs and expenses actually incurred by Class Counsel in connection with commencing, prosecuting, and settling the Action, in an amount to be determined and subject to approval by the Court.

21. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order, and which shall include the Postcard

Notice (**Exhibit 2**) mailed to Settlement Class Members for whom Defendant has mailing addresses, the Website Notice (**Exhibit 3**) on Defendant's website for a period of 60 days from the date of the Notice Deadline, and the Longform Notice (**Exhibit 4**) to be posted on the Settlement Website.

22. "Notice and Administrative Expenses" means the fees and expenses incurred and charged by the Settlement Administrator for administering the terms of this Agreement, including, but not limited to, all expenses or costs associated with providing Notice to the Settlement Class; locating Settlement Class Members; processing claims; determining the eligibility of any person to be a Settlement Class Member; and administering, calculating, and distributing the Settlement funds to Settlement Class Members.

23. "Notice Deadline" means the last day by which Notice must be issued to the Settlement Class Members and will occur 45 days after entry of the Preliminary Approval Order.

24. "Objection Deadline" is the last day on which a Settlement Class Member may file an objection to the Settlement or Fee Application, which will be forty-five (45) days after the Notice Deadline.

25. "Opt-Out Deadline" is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be forty-five (45) days after the Notice Deadline.

26. "Out-of-Pocket Costs" means the following documented costs or expenditures that a Settlement Class Member actually incurred because of the Data Breach, that have not already been reimbursed by a third party, and which were incurred between the date of notice of the Data Breach to the Settlement Class Member and the date of the Preliminary Approval Order: (1) bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, copying, or gasoline for local travel; (2) professional fees including attorneys' fees, accountants' fees, notary fees, and fees for credit repair services; and (3) costs for additional credit reports, credit monitoring, or other identity theft insurance products.

27. "Participating Settlement Class Member" means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline.

28. "Preliminary Approval Order" means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23, and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, that is consistent with all material provisions of this Settlement Agreement. Class Counsel and Defendant's Counsel will work together on a Motion for Preliminary Approval and accompanying proposed Preliminary Approval Order, both of which Defendant must approve before they are filed by Class Counsel.

29. “Released Claims” means any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits, demands, or petitions, and any allegations of wrongdoing, demands for legal, equitable, or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys’ fees, costs, interest or expenses) that the Releasors (as defined in Paragraph 39) had, have, or may claim now or in the future to have (including, but not limited to, assigned claims and any and all “Unknown Claims” as defined in Paragraph 70) that are based on, arise out of, or are in any way related to the Data Breach, including, but not limited to, all claims or facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged, argued, raised, or asserted in the Action, or which could have been alleged, argued, raised, or asserted in the Action or any other proceeding.

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

31. “Service Award Payment” means compensation awarded by the Court and paid to the Settlement Class Representative in recognition of his role in this litigation, which shall not exceed \$1,500.00 to the Settlement Class Representative, as approved by the Court.

32. “Settlement” means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

33. “Settlement Administration Costs” shall mean the costs incurred by the Settlement Administrator, including the Notice and Administrative Expenses.

34. “Settlement Administrator” means A.B. Data, Ltd., subject to Court approval. Class Counsel and Defendant’s Counsel may, by agreement, substitute a different Settlement Administrator, subject to Court approval.

35. “Settlement Class” means the 5,568 individuals identified by Defendant as having personally identifiable information compromised by the Data Breach and to whom Defendant provided written or substitute notice of the Data Breach on either February 28, 2023, or June 6, 2023. The Settlement Class shall not include Defendant or its parents, subsidiaries, divisions, or affiliates, or their respective successors or predecessors, or any entity in which Defendant or its parents has a controlling interest, or any of their current or former officers and directors; any judge providing over the Lawsuit and members of their families; persons who properly execute and file a timely request for exclusion from the Settlement Class; persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; Plaintiffs’ counsel, Class Counsel, and Defendant’s Counsel; and the legal representatives, successors, and assigns of any such excluded persons.



36. “Settlement Class List” means the list generated by Defendant containing the full names, current or last known mailing addresses, and birthdates for Settlement Class members under the age of 18 (if known), for all persons who fall under the definition of the Settlement Class, which Defendant shall provide to the Settlement Administrator within 30 days after entry of the Preliminary Approval Order.

37. “Settlement Class Member” means an individual who falls within the definition of the Settlement Class.

38. “Settlement Payment” or “Settlement Check” means the payment to be made via mailed check and/or electronic payment to a Participating Settlement Class Member pursuant to Paragraphs 49–53.

39. “Settlement Website” means the website the Settlement Administrator will establish as soon as practicable after entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Long Form Notice, this Agreement, Plaintiffs’ motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs’ Fee Application, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number, email address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least thirty (30) days after all Settlement Payments have been distributed.

## **II. COMPENSATION AND BENEFITS TO SETTLEMENT CLASS MEMBERS**

40. **Submission of Claim Forms.** Settlement Class Members must timely submit a valid Claim Form to the Settlement Administrator electronically via the Settlement Website during the Claims Period and on or before the Claims Deadline, or via mail, postmarked during the Claims Period and on or before the Claims Deadline, in order to receive a settlement benefit. Claims will be subject to review for completeness and plausibility by the Settlement Administrator. For claims deemed invalid, the Settlement Administrator will provide claimants with an opportunity to cure in the manner set forth below.

41. **Compensation and Benefits Available.** Settlement Class Members may elect to file a claim for (1) Credit Monitoring Services; and either (2) reimbursement for Attested Time, Out-of-Pocket Costs, and/or Financial Losses; or (3) an Alternative Cash Payment.

42. **Reimbursement for Attested Time.** Unless a claim is made for an Alternative Cash Payment, Defendant will provide compensation to Settlement Class Members for Attested Time of up to five (5) hours of time at a rate of \$30.00 per hour (up to a maximum amount of \$150.00) for time spent remediating issues related to the Data Breach, if at least one full hour was spent, upon



submission of a timely and valid Claim Form with an attestation detailing how and why the time was spent.

**43. Reimbursement of Out-of-Pocket Costs.** Unless a claim is made for an Alternative Cash Payment, Defendant will provide compensation to Settlement Class Members for Out-of-Pocket Costs up to a maximum amount of \$500.00 that were actually incurred because of the Data Breach, upon submission of a timely and valid Claim Form with supporting documentation establishing the Out-of-Pocket Costs within the requirements of the term Out-of-Pocket Costs as defined herein.

**44. Compensation for Financial Losses.** Unless a claim is made for an Alternative Cash Payment, Defendant will provide compensation to Settlement Class Members for Financial Losses up to a maximum amount of \$4,000.00 upon submission of a timely and valid Claim Form with supporting documentation establishing the Financial Losses within the requirements of the term Financial Losses as defined herein.

**45. Alternative Cash Payment.** In lieu of any claims for Attested Time, Out-of-Pocket Costs, or Financial Losses, Defendant will provide compensation to Settlement Class Members for an Alternative Cash Payment of \$75.00, upon submission of a timely and valid Claim Form and conditioned upon the Settlement Class Member not making any claims or receiving any reimbursement or compensation for Attested Time, Out-of-Pocket Expenses, or Financial Losses.

**46. Credit Monitoring Services.** In addition to any claim for Attested Time, Out-of-Pocket Costs, Financial Losses, or an Alternative Cash Payment, Defendant will offer Settlement Class Members the option to enroll in Credit Monitoring Services, to be paid for by the Defendant, upon submission of a timely and valid Claim Form.

**47. Assessing Claims.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met, and whether sufficient documentation has been provided, to award payments for Attested Time, Out-of-Pocket Costs, Financial Losses, or Alternative Cash Payments, but may consult with Class Counsel and Defendant's Counsel in making individual determinations. The Settlement Administrator also may contact any Settlement Class Member (by email, telephone, or U.S. mail) to seek clarification regarding a submitted claim before deciding its validity. Where applicable, in assessing what qualifies as "fairly traceable" to the Data Breach, the Settlement Administrator will consider (i) whether the timing of the loss occurred on or after October 3, 2022 (or for reimbursement of credit monitoring service costs, if they were incurred after the date on which Defendant notified the Settlement Class Member of the Data Breach on either February 28, 2023, or June 6, 2023); and (ii) whether the personal information used to commit identity theft or fraud consisted of the type of personal information identified in Defendant's notices of the Data Breach.

48. **Disputes.** To the extent the Settlement Administrator determines a claim is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member 21 days to cure the deficiencies. Such notifications shall be sent via email, unless the claimant did not provide an email address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within 10 days of the determination. The Settlement Administrator may consult with Class Counsel and Defendant's Counsel in making such determinations.

### **III. PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS**

49. **Payment Timing.** Payments for Approved Claims for Attested Time, Out-of-Pocket Costs, Financial Losses, and Alternative Cash Payments shall be issued in the form of a check ("Settlement Check") mailed as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date.

50. **Timing.** Settlement Checks shall bear in the legend that they expire if not negotiated within one hundred and eighty (180) days of their date of issue.

51. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within 30 days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to email or call the Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for 90 days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

52. **Uncashed Checks.** To the extent that a Settlement Check is not cashed within 180 days after the date of issue, the Settlement Administrator shall: (1) attempt to contact the Participating Settlement Class Member by email and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Participating Settlement Class Member using advanced address searches or other reasonable methods; and (3) mailing the Participating Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Upon request of a Participating Settlement Class Member, the Settlement Administrator may re-issue a check for up to an additional 90-day period following the original 180-day period. Any reissued Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for 90 days from the date of their issuance and may thereafter

automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

**53. Deceased Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Participating Settlement Class Member's estate upon receiving proof the Participating Settlement Class Member is deceased and after consultation with Class Counsel and Defendant's Counsel.

#### IV. SETTLEMENT CLASS NOTICE

**54. Notice.** Within 30 days after the date of entry of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within 45 days after the date of entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class.

**55. Manner of Giving Notice.** Subject to Court approval, the Settlement Administrator will provide Notice to the Settlement Class Members as described herein. The cost of such notice will be paid from the Notice and Administration Expenses. The Claims Period will last for 60 days from the date of Notice. If the claims rate is below 2.0% 30 days before the Claims Deadline, Class Counsel shall have the option to direct the Settlement Administrator to issue a single-sided postcard reminder notice to the Settlement Class Members.

a. Postcard Notice. As soon as practicable, but no later than the Notice Deadline, the Settlement Administrator shall disseminate the Postcard Notice via First Class Mail to all Settlement Class Members whose mailing addresses are known to Defendant. Before mailing the Postcard Notice, the Settlement Administrator will update the addresses provided by Defendant with the National Change of Address database. It shall be conclusively presumed that the intended recipients received the Postcard Notice if the mailed Postcard Notices have not been returned to the Settlement Administrator as undeliverable within 15 days of mailing.

b. Notice on Defendant's Website. By no later than the Notice Deadline, Defendant will publish the Website Notice on its website and continuously maintain it there for a period of 60 days from the date of Notice as a form of alternate notice to the Settlement Class Members and substitute notice to those Settlement Class Members for whom Defendant and the Settlement Administrator are unable to locate mailing addresses for sending the Postcard Notice.

c. Long Form Notice and the Settlement Website. Prior to the date on which the Settlement Administrator initiates the Notice, the Settlement Administrator shall establish the Settlement Website. The Parties shall meet and confer and choose a mutually acceptable URL for the Settlement Website. The Settlement Website shall remain

accessible until 30 days after the Settlement Administrator has completed its obligations under the Settlement Agreement. The Settlement Website shall contain: the Settlement Agreement; contact information for Class Counsel and Defendant's Counsel; contact information for the Settlement Administrator; the publicly filed motion for preliminary approval, motion for final approval and for attorneys' fees and expenses (when they become available); the signed preliminary approval order; and a downloadable and online version of the Claim Form and Longform Notice.

## **V. OPT-OUTS AND OBJECTIONS**

**56. Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than 45 days after the Notice Deadline. The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

**57. Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee Application by submitting written objections to the Settlement Administrator postmarked no later than 45 days after the Notice Deadline. The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

## **VI. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

**58. Settlement Administration Process.** After the Court enters the Preliminary Approval Order, the Settlement Administrator will provide Notice to the Settlement Class Members in accordance with this Agreement. Defendant will cooperate in providing the Settlement Administrator contact information for the Settlement Class Members, which will be kept strictly confidential between the Settlement Administrator, Defendant, and Class Counsel. After the Court

enters the Final Approval Order, the Settlement Administrator shall issue Settlement Checks on the Approved Claims.

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

- a. Administering, and overseeing the Settlement funds provided by Defendant to be paid Approved Claims;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Providing Notice to Settlement Class Members via U.S. mail;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- f. Responding to any mailed or emailed Settlement Class Member inquiries within one business day;
- g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members and transmitting to Class Counsel and Defendant's Counsel a list of Approved Claims both periodically during the Claims Period and after the Claims Deadline;
- h. Receiving Requests for Exclusion and Objections from Settlement Class Members and providing Class Counsel and Defendant's Counsel a copy thereof no later than three days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, Objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Defendant's Counsel;
- i. Working with the provider of Credit Monitoring Services to receive and send activation codes within 30 days of the Effective Date;
- j. After the Effective Date, processing and transmitting Settlement Checks to Participating Settlement Class Members;

k. Providing weekly or other periodic reports to Class Counsel and Defendant's Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments;

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

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

**60. Limitation of Liability.** The Parties, Class Counsel, and Defendant's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement funds; (iii) the formulation, design or terms of the disbursement of the Settlement funds; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement funds; or (v) the payment or withholding of any Taxes and Tax-Related Expenses.

**61. Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Defendant's Counsel for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement funds; (iii) the formulation, design or terms of the disbursement of the Settlement funds; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement funds; (v) any losses suffered by, or fluctuations in the value of the Settlement funds; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

**62. Settlement Administration Fees.** All settlement administration fees, including the Notice and Administrative Expenses, will be paid by Defendant.

## **VII. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

**63. Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date.



64. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of the settlement within 21 days of its execution, which shall be subject to review and approval by Defendant's Counsel before filing by Class Counsel.

65. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline. The motion for final approval and proposed Final Approval Order shall be subject to review and approval by Defendant's Counsel before filing by Class Counsel.

66. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

#### **VIII. MODIFICATION AND TERMINATION**

67. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

68. **Decertification of the Settlement Class if Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order and Judgment; or (2) the Effective Date does not occur, the certification of the Settlement Class shall be void. Defendant reserves the right to contest class certification for all other purposes. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition, the fact that Defendant did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification.

## **IX. RELEASES**

**69. The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns (collectively, the “Releasors”) shall be deemed to have released, acquitted, and forever discharged any and all Released Claims against Defendant and all of its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, and departments (including but not limited to Tanzerra Resorts, LLC; Boynton Canyon Management Company; Carter Creek Management Company, and 360 Bahamas Ltd.) as well as any and all of their respective past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees, and all their predecessors, successors, and assigns, in their individual and official capacities, both jointly and severally (collectively, the “Releasees”). For the avoidance of any doubt, the Released Claims against the Releasees include all claims based on, arising out of, or relating to the Data Breach, including but not limited to, all claims asserted, or which could have been asserted, in the Action, to the fullest extent permitted by law

**70. Unknown Claims.** The Released Claims also include the release of Unknown Claims. “Unknown Claims” means claims that could have been raised in the Action and that any of the Releasors do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Releasees of any of the foregoing or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasors shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

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

Upon the Effective Date, each of the Releasors shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Releasors acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.



**71. Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Releasors shall be enjoined from prosecuting any of the Released Claims in any proceeding against any of the Releasees or based on any actions taken by any of the Releasees that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

#### **X. SERVICE AWARD PAYMENTS**

**72. Service Award Payments.** At least 14 days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application that will include a request for a Service Award Payment for the Settlement Class Representative in recognition for his contributions to this Action. The Settlement Class Representative shall request, and Defendant agrees to pay if approved by the Court, a service award up to \$1,500.00, subject to Court approval. This Service Award Payment shall be separate and apart from any other benefits available to the Settlement Class Representative and Participating Settlement Class Members under the terms of this Agreement. The Settlement Administrator shall make the Service Award Payment to the Settlement Class Representative from the Settlement funds. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than 30 days after the Effective Date.

**73. No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of the Service Award Payment or other service awards in the amount requested or at all, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Service Award Payment or other service awards shall constitute grounds for termination of this Agreement.

#### **XI. ATTORNEYS' FEES, COSTS, EXPENSES**

**74. Attorneys' Fees and Costs and Expenses.** At least 14 days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application for an award of attorneys' fees and Litigation Costs and Expenses to be paid from the Settlement funds. Class Counsel agrees it will not seek or accept an award of attorneys' fees and Litigation Costs and Expenses of a combined total amount over \$282,500.00, and Defendant agrees it will not oppose a Fee Application up to that amount. Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class Counsel shall provide to Defendant and the Settlement Administrator a properly completed and duly executed IRS Form W-9.

**75. Allocation.** Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiffs' counsel and any other attorneys. Defendant shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

**76. No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the Fee Application or other requests by Class Counsel for payment of its attorneys' fees or Litigation Costs and Expenses in the amount requested or at all, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court to pay less than the amount of attorneys' fees or Litigation Costs and Expenses sought by Class Counsel, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Fee Award and Costs or other requests by Class Counsel for its attorneys' fees and Litigation Costs and Expenses shall constitute grounds for termination of this Agreement.

## **XII. NO ADMISSION OF LIABILITY**

**77. No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever. The Releasors, Class Counsel, and Plaintiffs' Counsel expressly acknowledge and agree that Defendant has entered into this Agreement solely for convenience and the avoidance of litigation and that its decision to do so is not and shall not ever be asserted or construed as an admission of liability or wrongdoing of any kind, or that any of the allegations or claims asserted in the Action or released within the Released Claims have any factual or legal merit of any kind, all of which Defendant expressly denies.

**78. No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Defendant in the Action or in any proceeding in any court, administrative agency or other tribunal.

## **XIII. MISCELLANEOUS**

**79. Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

**80. Execution in Counterparts.** This Agreement shall become effective upon its execution by the Parties, Class Counsel, and counsel for Defendant. The Agreement may be executed by electronic means or in writing, and the electronic, scanned, or faxed images of signatures shall be sufficient and deemed the equivalent of originals. In addition, the Agreement may be executed in counterparts, with each counterpart being deemed an original, and execution of the counterparts having the same force and effect as if all Parties had signed the same instrument.

**81. No Construction Against the Drafter.** This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement. The Settlement Class Representative and Defendant each acknowledge that each have been advised and are represented by legal counsel of his or her own choosing throughout the negotiations preceding execution of this Agreement and have executed the Agreement after having been so advised.

**82. Entire Agreement and Modification.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties regarding the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, and, once a motion for Preliminary Approval has been filed, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent agreement of the Parties.

*~ Signatures on following page ~*

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

**DANIEL DAVILA**, individually and as Class Representative  
on behalf of Participa <sup>Signed by:</sup> Daniel Davila lass Members

Signature: \_\_\_\_\_

Date: 9/25/2024

**FEDERMAN & SHERWOOD**, as Class Counsel

By: 

Name: William B. Federman

Date: 9/25/2024

**NEW ENCHANTMENT GROUP, LLC**, Defendant

By: 

Name: Oscar L. Tang

Title: President, Vencura Ltd., Manager

Date: 9/27/2024

**FREEMAN MATHIS & GARY, LLP**, as Defendant's Counsel

By: 

Name: David A. Cole

Date: 09/27/2024

# EXHIBIT 1

Your claim must be  
submitted online or  
postmarked by:  
DATE

**CLAIM FORM FOR NEW ENCHANTMENT, LLC**  
**DATA BREACH CLASS ACTION SETTLEMENT**

DAVILA, ET AL. V. NEW ENCHANTMENT GROUP, LLC  
Case No. 2:23-cv-01098-SRB  
United States District Court for the District of Arizona

NEW  
ENCHANTMENT  
GROUP, LLC

**USE THIS FORM ONLY IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS**  
**TO MAKE A CLAIM FOR A CASH PAYMENT OR UNREIMBURSED LOSSES**

**GENERAL INSTRUCTIONS**

If you are a member of the Settlement Class, you are eligible to complete this Claim Form to claim (1) Credit Monitoring Services; and either (2) reimbursement for Attested Time, Out-of-Pocket Costs, and/or Financial Losses; or (3) an Alternative Cash Payment. Please refer to the Notice posted on the Settlement Website [\[URL\]](#), for more information on submitting a Claim Form and information on the limits and requirements applicable to these claims.

**To receive any of these benefits, you must submit the Claim Form below by [DATE](#).**

This Claim Form may be submitted electronically via the Settlement Website at [\[URL\]](#) or completed and mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, including any supporting documentation, by U.S. mail to:

*Davila, et al. v. New Enchantment Group, LLC*  
c/o A.B. Data, Ltd.  
[PO Box xxxx](#)  
[City, State Zip](#)

**I. SETTLEMENT CLASS MEMBER NAME AND CONTACT INFORMATION**

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

First Name

Last Name

Address 1

Address 2

City

State

Zip Code

Email Address (optional): \_\_\_\_\_ @ \_\_\_\_\_

Telephone Number: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

Questions? Go to [\[URL\]](#) or call [\[PHONE NUMBER\]](#).

Your claim must be  
submitted online or  
postmarked by:  
DATE

**CLAIM FORM FOR NEW ENCHANTMENT, LLC**  
**DATA BREACH CLASS ACTION SETTLEMENT**

*DAVILA, ET AL. V. NEW ENCHANTMENT GROUP, LLC*  
Case No. 2:23-cv-01098-SRB  
United States District Court for the District of Arizona

**NEW  
ENCHANTMENT  
GROUP, LLC**

## II. PROOF OF CLASS MEMBERSHIP

☐

Check this box to certify that you are a person residing in the United States to whom New Enchantment Group, LLC sent its notice of a Data Security Incident on either February 28, 2023, or June 6, 2023.

Enter the Class Member ID Number provided on your postcard Notice or the last four digits of your Social Security Number:

Class Member ID : xxxx \_\_\_\_\_

Social Security Number (last four digits only): \_\_\_\_\_

## III. CREDIT MONITORING SERVICES

☐

Check this box if you wish to receive free Credit Monitoring Services at all three credit bureaus. If you check this box, you will be offered two years of Credit Monitoring Services.

## IV. COMPENSATION FOR ATTESTED TIME

Settlement Class Members who have spent time dealing with the Data Breach may claim up to five (5) hours for Attested Time at a rate of \$30.00 per hour.

Hours claimed (up to 5 hours – check one box) ☐ 1 Hour ☐ 2 Hours ☐ 3 Hours ☐ 4 Hours ☐ 5 Hours

☐

I attest and affirm under penalty of perjury that the time I have claimed above as Attested Time was spent related to the Data Breach.

**To receive this payment, you must describe what you did and how the claimed Attested Time was spent related to the Data Breach. Check all activities below that apply.**

☐

Calling bank/credit card customer service lines regarding fraudulent transactions.

☐

Writing letters or e-mails to banks/credit card companies to have fraudulent transactions reversed.

☐

Time on the internet verifying fraudulent transactions.

☐

Time on the internet updating automatic payment programs due to new card issuance.

Your claim must be  
submitted online or  
postmarked by:  
DATE

**CLAIM FORM FOR NEW ENCHANTMENT, LLC**  
**DATA BREACH CLASS ACTION SETTLEMENT**

DAVILA, ET AL. V. NEW ENCHANTMENT GROUP, LLC  
Case No. 2:23-cv-01098-SRB  
United States District Court for the District of Arizona

**NEW  
ENCHANTMENT  
GROUP, LLC**

- ☐ Calling credit reporting bureaus regarding fraudulent transactions and/or credit monitoring.
- ☐ Writing letters or e-mails to credit reporting bureaus regarding correction of credit reports.
- ☐ Other. Provide description(s) here: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**V. REIMBURSEMENT FOR OUT-OF-POCKET COSTS**

Members of the Settlement Class who submit a valid Claim using this Claim Form are eligible for reimbursement of **documented** Out-of-Pocket Costs, not to exceed \$500.00 per Settlement Class Member, that were incurred because of the Data Breach. **You must submit documentation to obtain this reimbursement.**

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss
<input type="radio"/> Out-of-Pocket Expenses incurred because of the Data Breach.	____/____/____ (mm/dd/yy)	\$ _____

“Out-of-Pocket Costs” means the following documented costs or expenditures that a Settlement Class Member actually incurred because of the Data Breach, that have not already been reimbursed by a third party, and which were incurred between the date of notice of the Data Breach to the Settlement Class Member and the date of the Preliminary Approval Order: (1) bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, copying, or gasoline for local travel; (2) professional fees including attorneys’ fees, accountants’ fees, notary fees, and fees for credit repair services; and (3) costs for additional credit reports, credit monitoring, or other identity theft insurance products.

**VI. REIMBURSEMENT FOR FINANCIAL LOSSES**

Settlement Class Members who were a victim of actual documented identity theft may submit a Claim Form for reimbursement of **documented and proven** Financial Losses, not to exceed \$4,000.00 per Settlement Class Member, that were incurred because of the Data Breach.

“Financial Losses” means proven monetary losses arising from financial fraud or identity theft, if: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss is fairly traceable to the Data Breach; (3) the loss occurred between October 3, 2022, and the Claims Deadline; (4) the loss is not already covered as Attested Time or an Out-of-Pocket Expense; and (5) the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss. **You must submit documentation to obtain this reimbursement.**





Your claim must be  
submitted online or  
postmarked by:  
DATE

**CLAIM FORM FOR NEW ENCHANTMENT, LLC**  
**DATA BREACH CLASS ACTION SETTLEMENT**

*DAVILA, ET AL. V. NEW ENCHANTMENT GROUP, LLC*  
Case No. 2:23-cv-01098-SRB  
United States District Court for the District of Arizona

**NEW  
ENCHANTMENT  
GROUP, LLC**

**V. PAYMENT SELECTION**

If you would like to elect to receive your Settlement payment through electronic transfer, please visit the website and file your Claim Form online. The Settlement Website includes a step-by-step guide for you to complete the electronic payment option.

**VI. ATTESTATION & SIGNATURE**

I swear and affirm under the laws of my state that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

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

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

# EXHIBIT 2

**Exhibit 2 – Postcard Notice**

**A proposed Settlement has been reached in a class action lawsuit  
known as *Davila et al. v. New Enchantment Group, LLC*, Case No. 2:23-cv-01098-SRB,  
("Lawsuit"), filed in the United States District Court for the District of Arizona**

**What is this about?** This Lawsuit against New Enchantment Group, LLC ("NEG") is based on the unauthorized access to NEG's computer network that occurred on or around October 3–4, 2022, and about which NEG notified affected individuals on or about February 28, 2023, and June 6, 2023 (the "Data Breach"). The claims asserted are based on allegations that files accessed or acquired during the Data Breach contained personally identifiable information about certain individuals, including names, dates of birth, Social Security numbers, tax identification numbers, driver's license numbers, state/national identification numbers, passport numbers, financial account numbers, credit/debit card numbers (with or without expiration date/CVV/security code), medical treatment or diagnosis information, biometric data, and health insurance information. NEG disagrees with Plaintiffs' claims and denies any wrongdoing.

**Who is a Settlement Class Member?** You are a Settlement Class Member if you are a person who NEG identified as having personally identifiable information compromised by the Data Breach and to whom NEG provided written or substitute notice of the Data Breach on either February 28, 2023, or June 6, 2023.

**What are the benefits?** The Settlement provides the following benefits:

- Two years of free, triple-bureau Credit Monitoring Service; and
- Either reimbursement for Attested Time (up to \$150), Out-of-Pocket Costs (up to \$500), and/or Financial Losses (up to \$4,000); or an Alternative Cash Payment of \$75.00 in lieu of reimbursement for Attested Time, Out-of-Pocket Costs, and/or Financial Losses.

**How to make a claim?** To receive benefits from the Settlement, you must submit a Claim Form online at [URL] by [date] or by mail postmarked by [date] and mailed to the Claims Administrator's address below.

**What are my other rights?**

- Do nothing: If you do nothing, you remain in the Settlement. You give up your rights to sue, but you will not get any money or benefits; you must submit a Claim Form to get money or benefits.
- Exclude yourself: You can get out of the Settlement and keep your right to sue about the claims in this Lawsuit, but you will not get any money or benefits from the Settlement. You must submit an Opt-Out Request to the Claims Administrator by [date].
- Object: You can stay in the Settlement, but tell the Court why you think the Settlement should not be approved. Objections must be submitted by [date]. Detailed instructions on how to file a Claim Form, exclude yourself, or object are on the Settlement Website at [URL]. The Court will hold the Final Approval Hearing on [date] at [time] to consider whether the proposed Settlement is fair, reasonable, and adequate, to consider an award of combined attorneys' fees, costs, and expenses of up to \$282,500 and request a service award of \$1,500 to the Settlement Class Representative, and to consider whether and if it should be approved. You may attend the hearing, but you don't have to.

**This is only a summary.** For additional information, including a copy of the Settlement Agreement, Notice, Claim Form, Settlement Class Counsel's application for attorneys' fees and expenses, and other documents, visit [URL] or call [phone]. You may also contact the Claims Administrator at New Enchantment Group, c/o AB Data, [address].

# EXHIBIT 3

**Exhibit 3 – NEG Website Notice****Notice of Proposed Class Action Lawsuit Settlement**

**New Enchantment Group, LLC (“NEG”) is providing this notice to notify potentially affected individuals about a proposed Settlement that has been reached in a class action lawsuit known as *Davila et al. v. New Enchantment Group, LLC*, Case No. 2:23-cv-01098-SRB, (“Lawsuit”), filed in the United States District Court for the District of Arizona.**

**What is this about?** The Lawsuit against NEG is based on the unauthorized access to NEG’s computer network that occurred on or around October 3–4, 2022, and about which NEG notified affected individuals on or about February 28, 2023, and June 6, 2023 (the “Data Breach”). The claims asserted are based on allegations that files accessed or acquired during the Data Breach contained personally identifiable information about certain individuals, including names, dates of birth, Social Security numbers, tax identification numbers, driver’s license numbers, state/national identification numbers, passport numbers, financial account numbers, credit/debit card numbers (with or without expiration date/CVV/security code), medical treatment or diagnosis information, biometric data, and health insurance information. NEG disagrees with Plaintiffs’ claims and denies any wrongdoing.

**Who is a Settlement Class Member?** You are a Settlement Class Member if you are a person who NEG identified as having personally identifiable information compromised by the Data Breach and to whom NEG provided written or substitute notice of the Data Breach on either February 28, 2023, or June 6, 2023.

**What are the benefits?** The Settlement provides the following benefits:

- Two years of free, triple-bureau Credit Monitoring Services; and
- Either (a) reimbursement for Attested Time (up to \$150), Out-of-Pocket Costs (up to \$500), and/or Financial Losses (up to \$4,000); or (b) an Alternative Cash Payment of \$75.00.

**How to make a claim?** To receive benefits from the Settlement, you must submit a Claim Form online at [URL] by [date] or by mail postmarked by [date] and mailed to the Claims Administrator’s address below.

**What are my other rights?**

- **Do nothing:** If you do nothing, you remain in the Settlement. You give up your right to sue, but you will not get any money or benefits; you must submit a Claim Form to get money or benefits.
- **Exclude yourself:** You can get out of the Settlement and keep your right to sue about the claims in this Lawsuit, but you will not get any money or benefits from the Settlement. You must submit an Opt-Out Request to the Claims Administrator by [date].
- **Object:** You can stay in the Settlement but tell the Court why you think the Settlement should not be approved. Objections must be submitted by [date]. Detailed instructions on how to file a Claim Form, exclude yourself, or object are on the Settlement Website at [URL]. The Court will hold the Final Approval Hearing on [date] at [time] to consider whether the proposed Settlement is fair, reasonable, and adequate, to consider an award of combined attorneys’ fees, costs, and expenses of up to \$282,500 and request a service award of \$1,500 to the Settlement Class Representative, and to consider whether and if it should be approved. You may attend the hearing, but you don’t have to.

**This is only a summary.** For additional information, including a copy of the Settlement Agreement, Notice, Claim Form, Settlement Class Counsel’s application for attorneys’ fees and expenses, and other documents, visit [URL] or call [phone]. You may also contact the Claims Administrator at A.B. Data, Ltd., [address].

# EXHIBIT 4

**Exhibit 4 – Long Form Notice**

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

**If New Enchantment Group, LLC Notified You Of A Data Breach,  
You May Be Eligible For Benefits From A Class Action Settlement.**

- A proposed settlement has been reached in a class action lawsuit known as *Davila et al. v. New Enchantment Group, LLC*, Case No. 2:23-cv-01098-SRB, (“Lawsuit”), filed in the United States District Court for the District of Arizona.
- The Lawsuit against NEG is based on the unauthorized access to NEG’s computer network that occurred on or around October 3–4, 2022, and about which NEG notified affected individuals on or about February 28, 2023, and June 6, 2023 (the “Data Breach”). The claims asserted are based on allegations that files accessed or acquired during the Data Breach contained personally identifiable information about certain individuals, including names, dates of birth, Social Security numbers, tax identification numbers, driver’s license numbers, state/national identification numbers, passport numbers, financial account numbers, credit/debit card numbers (with or without expiration date/CVV/security code), medical treatment or diagnosis information, biometric data, and health insurance information. NEG disagrees with Plaintiffs’ claims and denies any wrongdoing.
- Settlement Class Members can receive the following benefits from the Settlement: (1) two years of free, triple-bureau Credit Monitoring Services; and either (2) reimbursement for Attested Time (up to \$150), Out-of-Pocket Costs (up to \$500), and/or Financial Losses (up to \$4,000); or (3) an Alternative Cash Payment of \$75.00.
- You are included in this Settlement as a Settlement Class Member if you are a person who NEG identified as having personally identifiable information compromised by the Data Breach and to whom NEG provided written or substitute notice of the Data Breach on either February 28, 2023, or June 6, 2023.
- Your legal rights are affected regardless of whether you do or do not act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS &amp; OPTIONS IN THIS SETTLEMENT</b>	
<b>Submit a Claim Form</b>	<p><b>You must submit a valid Claim Form to get money or benefits from this Settlement.</b></p> <p>Claim Forms must be submitted online by &lt;&lt;DATE&gt;&gt; or, if mailed, postmarked no later than &lt;&lt;DATE&gt;&gt;.</p>
<b>Do Nothing</b>	<p>If you do nothing, you remain in the Settlement.</p> <p>You give up your rights to sue and you will not get any money or benefits.</p>
<b>Exclude Yourself</b>	<p><b>Get out of the Settlement. Get no money. Keep your rights.</b></p> <p>This is the only option that allows you to keep your right to sue about the claims in this Lawsuit. You will not get any money or credit monitoring from the Settlement.</p> <p>Your Opt-Out Request must be postmarked no later than &lt;&lt;DATE&gt;&gt;.</p>
<b>File an Objection</b>	<p>Stay in the Settlement but tell the Court why you think the Settlement should not be approved. Objections must be postmarked no later than &lt;&lt;DATE&gt;&gt;.</p>
<b>Go to a Hearing</b>	<p>You can ask to speak in Court about the fairness of the Settlement, at your own expense. See Question 18 for more details. The Final Approval Hearing is scheduled for &lt;&lt;DATE&gt;&gt;, at &lt;&lt;TIME&gt;&gt;.</p>



## Exhibit 4 – Long Form Notice

### WHAT THIS NOTICE CONTAINS

#### **Basic Information ..... Page 3**

1. How do I know if I am affected by the Lawsuit and Settlement?
2. What is this case about?
3. Why is there a Settlement?
4. Why is this a class action?
5. How do I know if I am included in the Settlement?

#### **The Settlement Benefits ..... Pages 4–5**

6. What does this Settlement provide?
7. How to submit a Claim Form.
8. What am I giving up as part of the Settlement?
9. Will the Settlement Class Representatives receive compensation?

#### **Exclude Yourself ..... Pages 5–6**

10. How do I exclude myself from the Settlement?
11. If I do not exclude myself, can I sue later?
12. What happens if I do nothing at all?

#### **The Lawyers Representing You ..... Page 6**

13. Do I have a lawyer in the case?
14. How will the lawyers be paid?

#### **Objecting to the Settlement ..... Pages 6-7**

15. How do I tell the Court that I do not like the Settlement?
16. What is the difference between objecting and asking to be excluded?

#### **The Final Approval Hearing..... Pages 7–8**

17. When and where will the Court decide whether to approve the Settlement?
18. Do I have to come to the hearing?
19. May I speak at the hearing?

#### **Get More Information ..... Page 8**

20. How do I get more information about the Settlement?

**Exhibit 4 – Long Form Notice****BASIC INFORMATION****1. How do I know if I am affected by the Lawsuit and Settlement?**

You are a Settlement Class Member if you are a person who NEG identified as having personally identifiable information compromised by the Data Breach and to whom NEG provided written or substitute notice of the Data Breach on either February 28, 2023, or June 6, 2023

The Settlement Class excludes: NEG as well as its parents, subsidiaries, divisions, or affiliates, or their respective successors or predecessors, or any entity in which NEG or its parents has a controlling interest, or any of their current or former officers and directors; any judge providing over the Lawsuit and members of their families; persons who properly execute and file a timely request for exclusion from the Settlement Class; persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; Plaintiffs' counsel and Defendants' counsel; and the legal representatives, successors, and assigns of any such excluded persons.

This Notice explains the nature of the Lawsuit and claims being settled, your legal rights, and the benefits to the Settlement Class.

**2. What is this case about?**

This case is known as known as *Davila et al. v. New Enchantment Group, LLC*, Case No. 2:23-cv-01098-SRB, ("Lawsuit"), and it is filed in the United States District Court for the District of Arizona. The person who sued is called the "Plaintiff" and the company he sued, New Enchantment Group, LLC, is known as the "Defendant" in this case. New Enchantment Group, LLC will be called "Defendant" in this Notice.

Plaintiff filed a lawsuit against Defendant, individually, and on behalf of anyone whose personally identifiable information was potentially impacted because of the Data Breach.

The Lawsuit against Defendant is based on the unauthorized access to Defendant's computer network that occurred on or around October 3–4, 2022, and about which NEG notified affected individuals on or about February 28, 2023, and June 6, 2023 (the "Data Breach"). The claims asserted are based on allegations that files accessed or acquired during the Data Breach contained personally identifiable information about certain individuals, including names, dates of birth, Social Security numbers, tax identification numbers, driver's license numbers, state/national identification numbers, passport numbers, financial account numbers, credit/debit card numbers (with or without expiration date/CVV/security code), medical treatment or diagnosis information, biometric data, and health insurance information. Defendant disagrees with Plaintiff's claims and denies any wrongdoing.

**3. Why is there a Settlement?**

By agreeing to settle, both sides avoid the cost, disruption, and distraction of further litigation. The Plaintiff/Class Representative, Defendant, and their attorneys believe the proposed Settlement is fair, reasonable, and adequate and, thus, in the best interests of Settlement Class Members. The Court did not decide in favor of the Plaintiff or Defendant. Full details about the proposed Settlement are found in the Settlement Agreement available at [\[URL\]](#).

**4. Why is this a class action?**

In a class action, one or more people called a "Class Representative" sue on behalf of all people who have similar claims. All these people together are the "Settlement Class" or "Settlement Class Members."

**Exhibit 4 – Long Form Notice****5. How do I know if I am included in the Settlement?**

You are included in the Settlement if you are a person who Defendant identified as having personally identifiable information compromised by the Data Breach and to whom Defendant provided written or substitute notice of the Data Breach on either February 28, 2023, or June 6, 2023.

If you are not sure whether you are included as a Settlement Class Member, or have any other questions about the Settlement, visit [URL](#), call toll free [Phone number](#), or write to [Address](#).

**THE SETTLEMENT BENEFITS****6. What does this Settlement provide?**

The proposed Settlement will provide the following benefits to Settlement Class Members:

**Credit Monitoring Services:** two (2) years of credit monitoring services that provide monitoring of the credit report with the three major credit bureaus (Experian, Equifax, and Transunion), alerts about changes in information to the credit report, dark web scanning for personal information, and identify theft insurance, and access to assistance to help investigate and resolve any issues.

**Reimbursement for “Attested Time”:** Unless a claim is made for an Alternative Cash Payment (see below), reimbursement of up to five (5) hours at a rate of \$30.00 per hour of time spent remedying issues related to the Data Breach, if at least one full hour was spent, upon submission of an attestation detailing how and why the time was spent.

**Reimbursement for “Out-of-Pocket Costs”:** Unless a claim is made for an Alternative Cash Payment (see below), reimbursement of up to \$500.00 of any of the following documented costs or expenditures that a Settlement Class Member actually incurred because of the Data Breach, that have not already been reimbursed by a third party, and which were incurred between the date of notice of the Data Breach to the Settlement Class Member and the date of the [Preliminary Approval Order](#): (1) bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, copying, or gasoline for local travel; (2) professional fees including attorneys’ fees, accountants’ fees, notary fees, and fees for credit repair services; and (3) costs for additional credit reports, credit monitoring, or other identity theft insurance products.

**Reimbursement for “Financial Losses”:** Unless a claim is made for an Alternative Cash Payment (see below), reimbursement of up to \$4,000.00 for proven monetary losses arising from financial fraud or identity theft, if: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss is fairly traceable to the Data Breach; (3) the loss occurred between October 3, 2022, and the Claims Deadline; (4) the loss is not already covered as Attested Time or an Out-of-Pocket Expense; and (5) the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss.

**Alternative Cash Payment:** In lieu of any claims for Attested Time, Out-of-Pocket Costs, or Financial Losses, Defendant will provide compensation to Settlement Class Members for an Alternative Cash Payment of \$75.00, upon submission of a timely and valid Claim Form and conditioned upon the Settlement Class Member not making any claims or receiving any reimbursement or compensation for Attested Time, Out-of-Pocket Expenses, or Financial Losses.

To receive any of the payments or benefits described above, Settlement Class Members must submit a valid and timely Claim Form, including necessary supporting documentation, to the Settlement Administrator by the Claims Deadline.

## Exhibit 4 – Long Form Notice

### 7. How to submit a Claim Form

All Claim Forms will be reviewed by the Claims Administrator for completeness and plausibility. You must file a Claim Form to get money from the proposed Settlement. Claim Forms must be submitted online by <<DATE>> or postmarked no later than <<DATE>>. You can download a Claim Form at URL or you can call the Claims Administrator at <<PHONE NUMBER>> for a Claim Form.

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

If you stay in the Settlement Class, you will be eligible to receive benefits, but you will not be able to sue Defendant or its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, and departments (including but not limited to Tanzerra Resorts, LLC; Boynton Canyon Management Company; Carter Creek Management Company, and 360 Bahamas Ltd.) as well as any and all of their respective past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees, and all their predecessors, successors, and assigns, in their individual and official capacities, both jointly and severally, (collectively the “Releasees”) regarding the Data Breach or claims in the Lawsuit.

The Settlement Agreement, which includes all provisions about settled claims, releases, and the Releasees, is available at URL.

The only way to keep the right to sue is to exclude yourself (see Question 10), otherwise you will be included in the Settlement Class, and, if the Settlement is approved, you give up the right to sue for the claims in this case.

### 9. Will the Settlement Class Representatives receive compensation?

Yes. If approved by the Court, the Settlement Class Representative will receive a Service award of up to \$1,500, to compensate him for services and efforts in bringing the Lawsuit. The Court will make the final decision as to the amount, if any, to be paid to the Settlement Class Representative.

## EXCLUDE YOURSELF

### 10. How do I exclude myself from the Settlement?

If you do not want to be included in the Settlement, you must send a timely written Opt-Out Request, stating your full name, address, and telephone number. Your Opt-Out Request must be personally signed by you and contain your original signature (or the original signature of a Person previously authorized by law, such as a trustee, guardian, or Person acting under power of attorney to act on your behalf with respect to a claim or right, such as those in the Lawsuit). Your request must also clearly manifest your intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement.

Your written Opt-Out Request must be postmarked no later than <<DATE>> to: *Davila et al. v. New Enchantment Group, LLC*, c/o A.B. Data, Ltd., PO Box #####, City, State #####-#####

Instructions on how to submit an Opt-Out Request are available at URL or from the Settlement Administrator by calling <<PHONE NUMBER>>.

If you exclude yourself, you will not be able to receive any cash benefit or reimbursement of documented out-of-pocket expenses from the Settlement, and you cannot object to the Settlement at the Final

**Exhibit 4 – Long Form Notice**

Approval Hearing. You will not be legally bound by anything that happens in the Lawsuit, and you will keep your right to sue Defendants on your own for the claims that this Settlement resolves.

**11. If I do not exclude myself, can I sue later?**

No. If you do not exclude yourself from the Settlement, and the Settlement is approved by the Court, you forever give up the right to sue the Releasees (listed in Question 8) for the claims this Settlement resolves.

**12. What happens if I do nothing at all?**

If you do nothing, you will be bound by the Settlement if the Court approves it, you will not get any money from the Settlement, you will not be able to start or proceed with a lawsuit, or be part of any other lawsuit against the Releasees (listed in Question 8) about the settled claims in this case at any time.

**THE LAWYERS REPRESENTING YOU****13. Do I have a lawyer in the case?**

Yes. William B. Federman and Kennedy M. Brian with the law firm of Federman & Sherwood (called “Settlement Class Counsel”) represent the interests of all Settlement Class Members in this case. 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.

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

Settlement Class Counsel will apply to the Court for an award of combined attorneys’ fees, costs, and expenses in an amount not to exceed \$282,500.00. A copy of Settlement Class Counsel’s Motion for attorneys’ fees, costs, expenses, and Service Award for Settlement Class Representatives will be posted on the Settlement Website, [URL](#), before the Final Approval Hearing. The Court will make the final decisions as to the amounts to be paid to Settlement Class Counsel and may award less than the amount requested by Settlement Class Counsel.

**OBJECTING TO THE SETTLEMENT****15. How do I tell the Court that I do not like the Settlement?**

If you want to tell the Court that you do not agree with the proposed Settlement or some part of it, you must file an Objection with the Court telling it why you do not think the Settlement should be approved.

Objections must be submitted in writing and include all the following information:

- a) State the objecting Settlement Class Member’s full name, current address, telephone number, and email address (if any);
- b) Contain the objecting Settlement Class Member’s original signature;
- c) Set forth information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (*e.g.*, copy of the Notice or copy of original notice of the Data Security Incident);
- d) Set forth a statement of all grounds for the Objection, including any legal support for the Objection that the objector believes applicable;
- e) Identify all counsel representing the objector;

**Exhibit 4 – Long Form Notice**

- f) State whether the objector and/or his or her counsel will appear at the Final Approval Hearing, and;
- g) Contain the signature of the objector's duly authorized attorney or other duly authorized representative (if any), along with documentation setting forth such representation.

Your Objection must be filed with the Clerk of Court and include the case name and docket number, *Davila et al. v. New Enchantment Group, LLC*, Case No. 2:23-cv-01098-SRB, pending in the United States District Court for the District of Arizona, to be received no later than **DATE** at:

Attn: Clerk of the Court  
 United States District Court District of Arizona - Phoenix Division  
 Sandra Day O'Connor U.S. Courthouse, Suite 130  
 401 West Washington Street, SPC 1  
 Phoenix, AZ 85003-2118

In addition, you must concurrently mail or hand deliver a copy of your objection to Settlement Class Counsel and Defendants' Counsel, postmarked no later than **<<DATE>>**:

<b>CLASS COUNSEL</b>	<b>Sheffield (DEFENSE) COUNSEL</b>
Federman & Sherwood c/o William B. Federman and Kennedy M. Brian 10205 N Pennsylvania Ave. Oklahoma City, OK 73120	Freeman Mathis & Gary, LLP c/o David A. Cole 100 Galleria Parkway, Suite 1600 Atlanta, GA 30339

In addition, if the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file with the Court, and mail or hand-deliver to Settlement Class Counsel and Defendants' Counsel, a notice of appearance no later than forty-five (45) days after the Notice Deadline. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, the notice of appearance filed with the Court must also:

- a) Identify the attorney(s) representing the objector who will appear at the Final Approval Hearing;
- b) Include each such attorney's name, address, phone number, email address, state bar(s) to which counsel is admitted, as well as associated state bar numbers;
- c) Include a list identifying all objections each counsel has filed to class action settlements in the past three (3) years, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney, and;
- d) If the objecting Settlement Class Member intends to request permission from the Court to call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must provide a list of any such witnesses together with a brief summary of each witness's expected testimony at least thirty (30) days before the Final Approval Hearing.

If you do not submit your Objection with all requirements, or if your Objection is not received by **<<DATE>>**, you will be considered to have waived all Objections and will not be entitled to speak at the Final Approval Hearing.

**Exhibit 4 – Long Form Notice****16. What is the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**THE FINAL APPROVAL HEARING****17. When and where will the Court decide whether to approve the Settlement?**

The Court will hold the Final Approval Hearing on <<DATE>>, at <<TIME>> in the United States District Court District of Arizona - Phoenix Division, and may also be held virtually. The hearing may be moved to a different date, time, or location without additional notice, so it is recommended that you periodically check [URL](#) for updated information.

At the hearing, the Court will consider whether the proposed Settlement is fair, reasonable, adequate, and is in the best interests of Settlement Class Members, and if it should be finally approved. If there are valid Objections, the Court will consider them and will listen to people who have asked to speak at the hearing if the request was made properly. The Court will also consider the award of attorneys' fees, costs, and expenses to Settlement Class Counsel and the request for a Service award to the Settlement Class Representatives.

**18. Do I have to come to the hearing?**

No. You are not required to come to the Final Approval Hearing. However, you are welcome to attend the hearing at your own expense.

If you submit an Objection, you do not have to come to the hearing to talk about it. If your Objection was submitted properly and on time, the Court will consider it. You also may pay your own lawyer to attend the Final Approval Hearing, but that is not necessary. However, you must follow the requirements for making objections in Question 15, including the requirements for making appearances at the hearing.

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

Yes. You can speak at the Final Approval Hearing, but you must ask the Court for permission. To request permission to speak, you must file an Objection according to the instructions in Question 15, including all the information required for you to make an appearance at the hearing. You cannot speak at the hearing if you exclude yourself from the Settlement.

**GET MORE INFORMATION****20. How do I get more information about the Settlement?**

This is only a summary of the proposed Settlement. If you want additional information about this Lawsuit, including a copy of the Settlement Agreement, the Complaint, the Court's Preliminary Approval Order, Settlement Class Counsel's Motion for attorneys' fees, costs, expenses, and Service award for Settlement Class Representatives, and more, please visit [URL](#) or call <<PHONE NUMBER>>. You may also contact the Claims Administrator at [Address](#).



**Exhibit 4 – Long Form Notice**

**PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR LITIGATION TO THE  
CLERK OF THE COURT, THE JUDGE, DEFENDANTS, OR DEFENDANTS' COUNSEL.**

# **EXHIBIT B**

1 Cristina Perez Hesano (#027023)  
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21 *Attorneys for Plaintiff and the*  
22 *Putative Class*

23 **IN THE UNITED STATES DISTRICT COURT**  
24 **FOR THE DISTRICT OF ARIZONA**

25 **Daniel Davila**, individually and on behalf  
26 of all similarly situated persons,

27 Plaintiff,

28 v.

**New Enchantment Group, LLC,**

Defendant.

No. 2:23-cv-01098-PHX-SRB

**DECLARATION IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

1 I, **William B. Federman**, declare under penalty of perjury as follows:

2 1. I am an attorney duly admitted to the bars of the states of Texas, Oklahoma,  
3 and New York. I am admitted to practice *pro hac vice* before this Court. I am a founder  
4 and managing member of the law firm Federman & Sherwood.

5 2. I submit this declaration in support of Plaintiff's Unopposed Motion for  
6 Preliminary Approval of Class Action Settlement.

7 3. Plaintiff Daniel Davila ("Plaintiff") and Defendant New Enchantment  
8 Group, LLC ("NEG" or "Defendant") have reached an agreement to settle this Action  
9 pursuant to the terms of the Settlement Agreement.<sup>1</sup>

10 4. The Settlement provides substantial benefits to the Settlement Class,  
11 including: (1) Credit Monitoring Services; and either (2) reimbursement for Attested Time,  
12 Out-of-Pocket Costs, and/or Financial Losses; or (3) an Alternative Cash Payment. (SA, ¶  
13 41). Unless a Settlement Class Member elects to receive an Alternative Cash Payment,  
14 Defendant will provide compensation to Settlement Class Members for Attested Time of  
15 up to five (5) hours of time at a rate of \$30.00 per hour (up to a maximum amount of  
16 \$150.00) for time spent remedying issues related to the Data Breach (*Id.* ¶ 42), Out-of-  
17 Pocket Costs up to \$500.00 (*Id.* ¶ 43), and Financial Losses up to \$4,000.00 (*Id.* ¶ 44).  
18 Alternatively, in lieu of a Settlement Class Member electing to receive compensation for  
19 Attested Time, Out-of-Pocket Costs, or Financial Losses, Settlement Class Members may  
20 elect to receive an Alternative Cash Payment of \$75.00. (*Id.* ¶ 45). Regardless of the  
21 payment option selected, all Settlement Class Members are eligible to receive two (2) years  
22 of Credit Monitoring Services that provide monitoring with the three (3) major credit  
23 bureaus (Experian, Equifax, and Transunion), alerts about changes in information to the  
24 credit report, dark web scanning for personal information, identify theft insurance, and  
25

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26  
27 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings set forth in the  
28 Settlement Agreement. The Settlement Agreement is attached as **Exhibit A** to Plaintiff's  
Unopposed Motion for Preliminary Approval of Class Action Settlement.

1 access to assistance to help investigate and resolve any issues. (*Id.* ¶¶ 11, 46). There is no  
2 aggregate monetary cap on the claims that can be made by Settlement Class Members.

3 5. The proposed Settlement was agreed to following extensive arm's-length  
4 settlement discussions between the Parties, including a full-day mediation session on  
5 August 15, 2024, assisted by the highly respected mediator, Hon. Judge David E. Jones  
6 (Ret.). The Parties agreed to the essential terms of the Settlement at the mediation. In the  
7 days that followed, the Parties negotiated a Service Award and payment of attorney's fees  
8 and expenses, both subject to Court approval. Importantly, the Parties did not discuss  
9 payment of a Service Award nor attorney's fees and expenses until after the principal terms  
10 of the Settlement were agreed to.

11 6. In advance of formal mediation, Defendant produced informal discovery  
12 related to the Data Breach and the Parties provided their respective positions on the merits  
13 of the claims and class certification. Proposed Settlement Class Counsel vigorously and  
14 aggressively gathered information regarding the Data Breach—including publicly-  
15 available documents concerning announcements of the Data Breach as well as obtaining  
16 an expert to search the dark web. The Parties also informally exchanged non-public  
17 information concerning the Data Incident, its scope, and remedial measures being  
18 undertaken by NEG.

19 7. The Settlement was achieved only after a thorough investigation that  
20 culminated in the consideration of relevant informal discovery, the preparation of a detailed  
21 mediation statement, and weeks of settlement negotiations. By the time the Settlement in  
22 principle was reached, Plaintiff and Proposed Settlement Class Counsel were well  
23 informed of the strengths and weaknesses of the Action.

24 8. This Settlement is an excellent result for Plaintiff and the Class, particularly  
25 in light of the challenges posed and the inherent risks attendant to protracted and complex  
26 litigation. Given the heavy obstacles and inherent risks Plaintiff faced with respect to the  
27 novel claims brought in data breach class actions, including class certification, summary  
28

1 judgment, and trial, the substantial benefits the Settlement provides favors preliminary  
2 approval of the Settlement.

3 9. After the Settlement was reached, Proposed Settlement Class Counsel  
4 undertook a competitive bidding process to achieve an excellent Settlement Administrator  
5 for the Class. The Parties selected A.B. Data. A.B. Data is a well-known firm with a history  
6 of successfully administering many class action settlements, including other data breach  
7 settlements. The Parties selected A.B. Data after considering bids from multiple  
8 administration firms and believe that A.B. Data will be able to meet the obligations  
9 imposed on the Settlement Administrator under the settlement for a reasonable cost.

10 10. As a further benefit to the Settlement Class, Notice will be paid for by  
11 Defendant. A.B. Data will use all reasonable efforts to provide direct and individual notice  
12 to each potential Settlement Class Member via direct U.S. mail. (SA, ¶ 55(a)). The Claims  
13 Period will last for 60 days from the date of Notice. (*Id.* ¶ 55). If the claims rate is below  
14 2.0% 30 days before the Claims Deadline, Class Counsel will have the option to direct the  
15 Settlement Administrator to issue a single-sided postcard reminder notice to the Settlement  
16 Class Members. (*Id.*).

17 11. In addition to the direct notice, Defendant will publish the Website Notice  
18 on its website and continuously maintain it there for a period of 60 days from the date of  
19 Notice as a form of alternate notice to the Settlement Class Members and substitute notice  
20 to those Settlement Class Members for whom Defendant and the Settlement Administrator  
21 are unable to locate mailing addresses for sending the Postcard Notice. (*Id.* ¶ 55(b)). The  
22 Settlement Administrator will also establish a dedicated Settlement Website and will  
23 maintain and update the website throughout the Claims Period, with the forms of Postcard  
24 Notice, Long Notice, and Claim Forms approved by the Court, as well as the Settlement  
25 Agreement. (*Id.* ¶ 55(c)).

26 12. Proposed Settlement Class Counsel negotiated a notice program that is  
27 reasonably calculated under all the circumstances to apprise Class Members of the  
28

1 pendency of the action and afford them an opportunity to present their objections. Class  
2 Members may object to the Settlement or exclude themselves from the Settlement within  
3 45 days of the Notice Deadline. (*Id.* ¶¶ 56–57).

4 13. The notice documents are clear and concise and directly apprise Class  
5 Members of all the information they need to know to make a claim or to opt-out or object  
6 to the Settlement.

7 14. The Parties agreed that, as part of the Settlement, Proposed Settlement Class  
8 Counsel will seek an award of attorneys’ fees and expenses not to exceed \$282,500. (*Id.* ¶  
9 74). The Notices inform the Settlement Class that Proposed Settlement Class Counsel will  
10 be seeking such fees and costs. As mentioned above, the discussion of attorneys’ fees and  
11 costs did not take place until after the Parties agreed to all material settlement terms. Class  
12 Counsel’s fee request is well within the range of reasonableness for Settlements of this  
13 nature and size.

14 15. In recognition of Plaintiff’s time and effort expended in pursuing the  
15 litigation and in fulfilling his obligations and responsibilities as a representative of the  
16 Class, Proposed Settlement Class Counsel will ask the Court to approve a Service Award  
17 of \$1,500.00 for Plaintiff. (*Id.* ¶ 74). The Notices inform the Settlement Class that Proposed  
18 Settlement Class Counsel will seek a Service Award for Plaintiff.

19 16. It is Proposed Settlement Class Counsel’s opinion that the Settlement is fair,  
20 reasonable, and adequate considering the financial challenges presented as well as the risks  
21 and delays attendant to further protracted litigation. This view is informed by Proposed  
22 Settlement Class Counsel’s decades of work litigating complex actions. Proposed  
23 Settlement Class Counsel have extensive experience in successfully litigating data breach  
24 class actions. *See Exhibit 1* (resumé of Federman & Sherwood).

25 17. Proposed Settlement Class Counsel represent that there are no agreements  
26 related to the settlement other than those reflected in the Settlement Agreement itself and  
27  
28



1 an agreement with A.B. Data to perform notice and settlement administration services if  
2 this Motion is granted by the Court.

3 18. The Settlement Class Representative has also demonstrated his adequacy by:  
4 (i) selecting well-qualified Counsel; (ii) producing information and documents to Proposed  
5 Settlement Class Counsel to permit investigation and development of the Complaint; (iii)  
6 being available as needed throughout the litigation; and (iv) monitoring the Litigation.  
7 Plaintiff does not have any interests antagonistic to other Class Members. The Settlement  
8 Class Representative supports the Settlement reached.

9 19. It is my opinion that the proposed class action Settlement is fair, reasonable,  
10 and adequate and is an outstanding result for the Settlement Class Members in light of the  
11 significant challenges faced.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Dated: October 10, 2024

14 Respectfully submitted,

15 /s/: William B. Federman

16 William B. Federman\*

17 Kennedy M. Brian\*

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24 \*Admitted pro hac vice

25 ***Proposed Settlement Class Counsel for***  
26 ***Plaintiff and the Class***  
27  
28

# EXHIBIT 1

## FEDERMAN & SHERWOOD

(An Association of Attorneys and Professional Corporations)

10205 N. PENNSYLVANIA AVENUE  
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TELEPHONE: 405-235-1560  
FACSIMILE: 405-239-2112

212 W. SPRING VALLEY ROAD  
RICHARDSON, TEXAS 75081  
TELEPHONE: 214- 696-1100  
FACSIMILE: 214-740-0112

### FIRM RESUME

**WILLIAM B. FEDERMAN.** Education: Boston University (B.A., cum laude, 1979); University of Tulsa (J.D., 1982); Phi Alpha Delta (Treasurer, 1980-1982). Admitted to practice: United States District Courts for the following Districts: Western, Northern and Eastern, Oklahoma; Eastern, Northern, Southern, and Western, New York; Southern, Northern, Eastern and Western, Texas; Eastern and Western, Arkansas; District of Columbia; District of Colorado; Central and Northern Districts of Illinois; Northern District of Ohio; District of Nebraska; Eastern and Western Districts of Michigan; Eastern District of Wisconsin; United States Court of Appeals for the following Circuits: First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh and Federal; and United States Supreme Court. Lectures/Publications: *"Class Actions, New Rules and Data Breach Cases,"* 40<sup>th</sup> Annual OCBA Winter Seminar 2019; *"A Case Study of Ethical Issues in Complex Litigation and Trends in Class Certification,"* 39<sup>th</sup> Annual OCBA Winter Seminar, 2018; *"Talkin' About Insurance Coverage and Complex Litigation: What Every Lawyer and Client Should Know,"* 38<sup>th</sup> Annual OCBA Winter Seminar, 2017; *"Securities Litigation: Using Data to Make the Case,"* by Bloomberg BNA, 2016; *"The Changing Landscape for Prosecution of Financial Claims Involving Insolvent Companies"* 37<sup>th</sup> Annual OCBA Winter Seminar, 2016; *"Current Status of Securities Class Actions: Where are the Courts Taking Us?"* Houston Bar Association, 2014. *"Class & Derivative Actions and Securities Litigation,"* 2013 Annual Meeting of the American Bar Association; *"Litigation and Employment Law Update,"* Securities Industry Association Compliance and Legal Division; *"Inside a Disclosure Crisis,"* 30<sup>th</sup> Annual Northwest Securities Institute Annual Meeting and sponsored by the Washington Bar Association; *"Managing Directors' Liability,"* 3<sup>rd</sup> Annual Energy Industry Directors Conference and sponsored by Rice University; *"Executive Liability - 2009 D & O Market Trends,"* Chartis Insurance; *"Derivative Actions and Protecting the Corporation – Critical Issues in Today's Banking,"* Oklahoma Bar Association and the Oklahoma Bankers Association; *"Arbitration - What Is It? Why Should a Lawyer Suggest or Use It?,"* Oklahoma Bar Association; *"The Attorney and Accountant as Targets in Failed Financial Institution Litigation,"* American Bar Association Trial Practice Committee; *"Effective Arbitration in the 1990's - Adapting to Build a Successful Practice,"* Oklahoma County Bar Association; *"Current Issues in Direct Investments and Limited Partnerships: The Litigation Scene From All Perspectives,"* American Bar Association Litigation Section; *"Stockbroker Litigation and Arbitration,"* Securities Arbitration Institute. Author: *"Who's Minding the Store: The Corporate Attorney-Client Privilege,"* 52 O.B.J. 1244, 1981; *"Potential Liability From Indirect Remuneration in Private Oil and Gas Offerings,"* 11 Sec. Reg. L.J. 135, 1983; *"Capitalism and Reality Meet in the Courts. . . Finally,"* 59 O.B.J. 3537, 1987; *"Class Actions, New Rules & Data Breach Cases,"* Annual OCBA Winter Seminar, 2019. Membership: Arbitration Panel, New York Stock Exchange; Federal Bar Association; Oklahoma County Bar Association (Committee on Professionalism, 1987-1990); Oklahoma Bar Association (Civil Procedure/Evidence Code, Lawyers Helping Lawyers Assistance Program and Rules of Professional Conduct Committees, 2017-2020); American Bar Association (Committee on Securities Litigation and Corporate Counsel); American Inns of Court (Barrister 1990-1993 and Master 2002-2004); inducted into the Outstanding Lawyers of America, 2003; received the Martindale-Hubbell peer review rating of AV Preeminent in both ethical standards and legal ability; recognized as one of the "Top Lawyers of 2013" for excellence and achievements in the legal community; Litigation Counsel of America (Trial Lawyer & Appellate Lawyer Honorary Society). Awards/Honors: Securities Litigation and Arbitration Law Firm of the Year in Oklahoma – 2018 (Global Law Experts Annual Awards); Securities Litigation and Arbitration Law Firm of the Year in Oklahoma – 2019, 2020 (Corporate INTL Magazine); Oklahoma Super Lawyers list by Thomson Reuters – 2019;

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Recognized for Exceptional Service and Outstanding Performance on behalf of the Federal Bar Association (Oklahoma City Chapter) Pro Bono Program – 2018-2019, 2020, Oklahoma Super Lawyer for 2022.

**STUART W. EMMONS. (In Memoriam)** Education: University of Oklahoma (J.D., 1987, with distinction); University of Oklahoma (B.B.A., Accounting, 1984, with distinction). Admitted to practice: 1987, Oklahoma; 1987, U.S. District Court for the Western District of Oklahoma; 1990, U.S. District Court for the Northern District of Oklahoma; 1992, U.S. Court of Appeals, Tenth Circuit; 1994, U.S. Court of Appeals, Eighth Circuit; U.S. Patent and Trademark Office; 2002, U.S. District Court for the District of Colorado; U.S. District Court for the Southern District of Texas; 2003, U.S. Court of Appeals, Second Circuit; 2004, U.S. District Court for the Northern District of Texas; U.S. Court of Appeals, Fifth Circuit; 2005, United States Supreme Court; 2005 U.S. Court of Appeals, Fourth Circuit; 2015, U.S. Court of Appeals, First Circuit; 2016, U.S. Court of Appeals, Ninth Circuit and U.S. Court of Appeals for the First Circuit. 1988-1989, Law Clerk to the Hon. Layn R. Phillips, U.S. District Court for the Western District of Oklahoma. Published Decisions: *American Fidelity Assurance Company v. The Bank of New York Mellon*, 810 F.3d 1234 (10<sup>th</sup> Cir. 2016); *Paul Spitzberg v. Houston American Energy Corporation, et al.*, 758 F.3d 676 (5<sup>th</sup> Cir. 2014); *Patipan Nakkhumpun v. Daniel J. Taylor, et al.*, 782 F.3d 1142 (10<sup>th</sup> Cir. 2015); Membership: Oklahoma County and Oklahoma Bar Associations.

**SARA E. COLLIER.** Education: Oklahoma Christian University (B.S. 2000); Oklahoma City University School of Law (J.D., 2004). Admitted to practice: Oklahoma, 2005; U.S. District Courts for the Western, Eastern and Northern Districts of Oklahoma, 2007; U.S. District Court for the Southern District of Texas, 2007, United States Court of Appeals for Veterans Claims in Washington, DC. Membership: Oklahoma Bar Association, American Bar Association. Ms. Collier focuses her practice on shareholder rights and shareholder derivative actions in state and federal courts.

**KENNEDY M. BRIAN.** Education: University of Central Oklahoma (B.M. in Musical Theater, 2018, cum laude; Minor in Real Estate Finance), University of Oklahoma (J.D., 2021; Dean's Honor Roll; Academic Achievement Award, Trial Techniques; 1L Moot Court Competition Distinguished Speaker Award; American Indian Law Review). Admitted to practice: Oklahoma 2021; U.S. District Court for the Eastern District of Oklahoma, 2022; U.S. District Court for the Western District of Oklahoma, 2022; U.S. District Court for the Northern District of Oklahoma, 2023; U.S. District Court for the Northern District of Texas, 2024; U.S. District Court for the Southern District of Texas, 2024; U.S. District Court for the Eastern District of Texas, 2024. Membership: Oklahoma Bar Association; Federal Bar Association; Junior League of Oklahoma City; Oklahoma County Bar Association. Ms. Brian focuses her practice on complex class action litigation, including consumer and data breach cases in state and federal courts across the nation.

**JESSICA A. WILKES.** Education: Oklahoma State University (B.S. in Finance, Economics, and Economics, with honors, 2018, magna cum laude), Baylor University School of Law (J.D. 2021, cum laude; Dean's Academic Excellence Full-Tuition Scholarship; Baylor Law Review, Technical Editor & Alumni Relations Coordinator; Research Assistant for Dean and Professors; Baylor Barrister Society; Mock Trial Team; Baylor Public Interest Society; Student Bar Association). Admitted to practice: Oklahoma 2021; U.S. District Court for the Eastern District of Oklahoma, 2021; U.S. District Court for the Western District of Oklahoma, 2021; U.S. District Court for the Northern District of Oklahoma, 2021; 10<sup>th</sup> Circuit Court of Appeals, 2021; U.S. District Court for the District of Colorado, 2024; U.S. District Court for the Northern District of Texas, 2024; U.S. District Court for the Southern District of Texas, 2024; U.S. District Court for the Eastern District of Texas, 2024. Membership: Oklahoma Bar Association; Friends of Trivera; Junior League of Oklahoma City. Ms. Wilkes focuses her practice on complex class action litigation, including consumer, data breach, and securities cases in state and federal courts across the nation. Ms. Wilkes has experience in and engages in trial and appellate work.

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Page 3

Prior to joining Federman & Sherwood, Ms. Wilkes actively practiced in litigation for the Oklahoma Attorney General's Office.

**TANNER R. HILTON.** Education: Texas A&M University (B.S. in Political Science, 2019); Oklahoma City University School of Law (J.D., 2022; Dean's List Spring of 2021; Order of the Barristers; Native American Law Student Association Moot Court Team, 2020-2022; CALI Award for Secured Transactions (2021)). Mr. Hilton graduated from Oklahoma City University School of Law in May of 2022. Admitted to practice: Oklahoma 2023; U.S. District Court for the Western District of Oklahoma, 2024; U.S. District Court for the Eastern District of Oklahoma, 2024; U.S. District Court for the Northern District of Oklahoma, 2024; U.S. District Court for the Eastern District of Texas, 2024; U.S. District Court for the Southern District of Texas, 2024; U.S. District Court for the Northern District of Texas, 2024. Membership: Oklahoma Bar Association, Federal Bar Association, and Order of the Barristers. Mr. Hilton's primary focus is in complex and class action litigation, including federal securities class actions, data breaches, and consumer class actions.

**ALEX J. EPHRAIM.** Education: University of Colorado – Denver (B.A. Political Science – Public Policy Analysis, 2018, summa cum laude, honor society, dean's list); University of Missouri – Kansas City School of Law (J.D. 2021; Second Century scholarship recipient, mock trial team, dean's list). Admitted to practice: Oklahoma, 2022; U.S. District Court for the Eastern District of Oklahoma, 2022; U.S. District Court for the Western District of Oklahoma, 2022; U.S. District Court for the Northern District of Oklahoma, 2022; U.S. District Court for the Southern District of New York, 2024; U.S. District Court for the Southern District of Texas, 2024; U.S. District Court for the Eastern District of Texas, 2024. Membership: Oklahoma Bar Association, Oklahoma County Bar Association, Federal Bar Association. Mr. Ephraim focuses his practice on complex class action litigation, including securities class actions, data breach, and consumer class actions.

**JONATHAN J. HERRERA.** Education: Austin College (B.A. in Business and Spanish, 2010, with Honors), University of Oklahoma College of Law (J.D., 2018, with Honors; Dean's Honor Roll, Order of the Solicitors, Hispanic National Bar Association President, 3L Service Award, Moot Court Competition Team Captain, Top Speaker Award). Admitted to practice: Oklahoma 2018. Membership: Oklahoma Bar Association; Oklahoma County Bar Association; Hispanic National Bar Association; OBA Law School Committee; OBA Awards Committee. Mr. Herrera is a transactional attorney whose multi-faceted practice encompasses a broad range of business litigation and disputes, including data breach and consumer class actions. He represents clients in complex business and commercial disputes in state and federal courts and administrative proceedings. Prior to joining Federman & Sherwood, Mr. Herrera practiced Criminal Defense in Oklahoma for over 5 years achieving successful outcomes for clients throughout Oklahoma.

#### **OF COUNSEL:**

**JOHN CHARLES SHERWOOD. (In Memoriam)** Education: Texas Christian University, (BBA, magna cum laude, 1981); Baylor School of Law (J.D., 1984). Areas of Practice: Litigation. Board Certified: Civil Trial Law, Personal Injury Trial Law, Texas Board of Legal Specialization. Organizations: Texas Trial Lawyers, Association of Trial Lawyers of America, Dallas Trial Lawyers Association, Dallas Bar Association, Former Chairperson of the Solo and Small Firm Section of the Dallas Bar Association (1999), Member of the College of the State Bar of Texas and founding President of Citizens For a Fair Judiciary (Political Action Committee). Licenses and Courts of Practice: Member of the State Bar of Texas, National Board of Trial Advocacy, Licensed as a Certified Public Accountant by the Texas State Board of Public Accountancy, admitted to practice before the United States Tax Court, United States District Court, Northern District of Texas, United States Fifth Circuit Court of Appeals, and the United States Supreme Court. Papers Presented: *Other People's Money*, Presented to the Dallas Bar

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Association, Solo and Small Firm Section; Recognition: "Top Attorneys in Texas, Business Litigation," (2012).

**JOSHUA D. WELLS.** Education: Oklahoma Baptist University (B.A. 2004); Oklahoma City University College of Law (J.D. 2008) (Dean's List, Faculty Honor Roll, OCU American Trial Lawyers Association Moot Court Team, 2008; Staff Member, Law Review, 2006-07; Executive Editor, Law Review, 2007-08). Admitted to practice: Oklahoma, 2008; U. S. District Court for the Western District of Oklahoma; 2009, U.S. District Court for the Eastern District of Oklahoma; 2011, U.S. District Court for the Northern District of Oklahoma; 2012, U.S. Court of Appeals for the Tenth Circuit; 2016, U.S. Court of Appeals, Fourth Circuit. Membership: Oklahoma Bar Association; Federal Bar Association; American Bar Association. Publication: *Stuck in the Mire: The Incomprehensible Labor Law*, 34 Okla. City U.L. Rev. 131 (2009). Experience: Research Assistant to J. William Conger, General Counsel and Distinguished Lecturer of Law, Oklahoma City University and President of the Oklahoma Bar Association (2007-08). General Counsel for Reaching Souls International (2013-2016). Mr. Wells has significant experience in complex and class action litigation in various state and federal courts, with more than a decade of experience protecting consumer and shareholder rights. Mr. Wells knows how to efficiently prosecute complex cases to conclusion and practices in areas of estate planning, probate, and guardianships for both children and adults. He is the recipient of the Federal Bar Association Pro Bono Exceptional Service Award (2019) and is a leader in his church.

#### **PARALEGALS:**

**SHARON J. KING.** Ms. King has worked in the legal community for over twenty years, after having worked in the securities and insurance industry for over fifteen years. She primarily works on insurance and civil litigation.

**JANE E. ADAMS.** Mrs. Adams has over 25 years of Administrative and Finance experience focusing her career on Human Resources. Additionally, she has first-hand experience with FEMA response as well as government contractual administration.

**TIFFANY R. PEINTNER.** Mrs. Peintner has worked in the legal community for over fifteen years. Before joining Federman & Sherwood, Mrs. Peintner worked in patent law, oil and gas, probate, banking and real estate, family law, personal injury and insurance defense. She works in securities and civil litigation for the firm.

**FRANDELIND V. TRAYLOR.** Mrs. Traylor has worked in the legal community for over fifteen years. She provides class action, securities and derivative litigation, and product liability support for the firm.

**LACRISTA A. BAGLEY.** Ms. Bagley has worked in the legal community for over twenty years. Before joining Federman & Sherwood, Ms. Bagley worked primarily in bankruptcy law that focused on Chapter 11's and corporate liquidations. She has previous experience with estate planning, family law, civil defense, personal injury and medical malpractice. She works in derivatives and civil litigation for the firm.

**TASHIA D. POORE.** Ms. Poore has worked in the legal community for over fifteen years. Before joining Federman & Sherwood, Ms. Poore worked in complex civil litigation, real estate and transactions, oil & gas, trusts and estate planning, banking and construction law. She works in the areas of data breach, shareholder derivative litigation, securities and complex litigation for the firm.



## SELECT CASES WHERE FEDERMAN &amp; SHERWOOD HAS SERVED AS LEAD OR CO-LEAD COUNSEL

CONSUMER CLASS ACTIONS	COURT
Accreditation Commission for Education in Nursing (Data Breach)	USDC Northern District of Georgia
Albany ENT & Allergy	Supreme Courts of the State of New York, Albany County
Altice USA, Inc. (Data Breach)	USDC Southern District of New York
Artech, LLC (Data Breach)	USDC Northern District of California
AssistRx, et al (Data Breach)	USDC Middle District of Florida
AT&T Services Inc.	USDC Northern District of Texas
Avem Health Partners, Inc. (Data Breach)	USDC Western District of Oklahoma
BHI Energy Services	USDC District of Massachusetts
Brinker International, Inc. (Chili's) (Data Breach)	USDC Middle District of Florida
Bryan Cave Leighton Paisner LLP Data Breach Litigation	USDC Northern District of Illinois
Burgerville, LLC (Data Breach)	Circuit Court, State of Oregon, Multnomah County
Carvin Wilson Software, LLC (Data Breach)	USDC District of Arizona
CentralSquare Technologies, LLC (Data Breach)	USDC Southern District of Florida
Christie Business Holdings Company PC (Data Breach)	USDC Central District of Illinois
Colorado Dept. of Health Care Policy & Financing/IBM (Data Breach)	District Court, City and County of Denver, State of Colorado
Dakota Growers Pasta Company, Inc. (Food Mislabeling)	USDC District of Minnesota/District of New Jersey
Dell, Inc. (Data Breach)	USDC Western District of Texas
Filters Fast, LLC (Data Breach)	USDC Western District of Wisconsin
Golden Corral Corporation (Data Breach) (PEC)	USDC Eastern District of North Carolina
Hy-Vee, Inc. (Data Breach)	USDC Central District of Illinois
Intelliheartx (Data Breach) (Executive Lead Counsel)	USDC Northern District of Ohio
Johns Hopkins Health System & Johns Hopkins University (Data Breach) (Interim Lead Counsel)	Circuit Court of Maryland for Baltimore City
Lansing Community College (Data Breach) (PSC)	USDC Western District of Michigan
LeafFilterNorth, LLC/LeafFilter North of Texas, LLC (Data Breach)	USDC Western District of Texas
Lime Crime, Inc. (Data Breach)	USDC Central District of California
Medical Review Institute of America, LLC (Data Breach)	USDC District of Utah
Mednax Services, Inc. (Data Breach)	USDC Southern District of Florida
MedQ, Inc. (Data Breach)	USDC Eastern District of Texas
Mercer University (Data Breach)	USDC Middle District of Georgia
MidFirst Bank and Midland Financial Co. (Data Breach)	USDC Western District of Oklahoma
Morris Hospital (Data Breach)	Circuit Court of the Thirteenth Judicial Circuit Grundy, County, Illinois
Infosys McCamish Systems, LLC (Data Breach) (Plaintiffs' Interim Executive Committee)	USDC Northern District of Georgia
In re: Navvis & Company, LLC Data Breach Litigation (Data Breach)	USDC Eastern District of Missouri
OneTouchPoint (Data Breach) (PSC)	USDC Eastern District of Wisconsin
In Re: Orrick, Herrington & Sutcliffe Data Breach Litigation (Data Breach) (Interim Lead Counsel)	USDC Northern District of California
Peachtree Orthopaedic Clinic, P.A. (Data Breach)	Superior Court of Forsyth County, State of Georgia
Peco Foods, Inc. (Data Breach) (Plaintiffs' Executive Committee)	USDC Northern District of Alabama
Physician's Business Office, Inc. (Data Breach)	In the Circuit Court of Wood County, West Virginia
PracticeMax (Data Breach)	USDC District of Arizona
Progressive Casualty Insurance (Data Breach)	USDC Northern District of Ohio
In re: QTC Commercial Services, LLC d/b/a IMX Medical Management Services, LLP Data Breach Litigation (Data Breach)	USDC Eastern District of Pennsylvania
Skidmore College (Data Breach)	USDC Northern District of New York
Smile Brands (Data Breach)	USDC Central District of California
Snap Finance (Data Breach)	USDC District of Utah
Solara Medical Supplies, LLC (Data Breach)	USDC Southern District of California
Sysco Corporation (Data Breach) (PSC)	USDC Southern District of Texas
TD Ameritrade, Inc. (Data Breach)	USDC District of Nebraska
TMX Finance Corporation Services, Inc. (Data Breach) (PSC)	USDC Southern District of Georgia
Wichita State University (Data Breach)	USDC District of Kansas
Yuma Regional Medical Center (Data Breach)	USDC District of Arizona
Zeroed-In Technologies, LLC (Data Breach) (Executive Committee)	USDC Middle District of Florida
<b>SHAREHOLDER DERIVATIVE CASES</b>	
Abercrombie & Fitch Company	USDC Southern District of Ohio
American Superconductor Corporation	Superior Court, Commonwealth of Massachusetts
Antares Pharma, Inc.	USDC District of New Jersey
In Re: Archer-Daniels-Midland Company Derivative Litigation	USDC District of Delaware
Arrowhead Research Corporation	Superior Court, State of California, County of Los Angeles
Carrier Access Corporation	USDC District of Colorado
Catalina Marketing Corporation	Chancery Court of the State of Delaware

## SELECT CASES WHERE FEDERMAN &amp; SHERWOOD HAS SERVED AS LEAD OR CO-LEAD COUNSEL

Cell Therapeutics, Inc.	USDC Western District of Washington
Computer Associates	USDC Eastern District of New York
Delcath Systems, Inc.	USDC Southern District of New York
Dendreon Corporation	USDC Western District of Washington
Digital Turbine, Inc.	USDC Western District of Texas
Doral Financial Corporation	USDC Southern District of New York
Dynavax Technologies Corporation	Superior Court of the State of California; county of Alameda
First BanCorp.	USDC District of Puerto Rico
Flowers Foods, Inc.	USDC Middle District of Georgia
Genta, Inc.	USDC District of New Jersey
GMX Resources, Inc.	District Court of Oklahoma County, Oklahoma
Great Lakes Dredge & Dock Corporation	Circuit Court of Illinois, Dupage County Chancery Division
Host America Corporation	USDC District of Connecticut
Motricity Inc.	USDC Western District of Washington
NutraCea	Superior Court of Maricopa County, Arizona
Nuverra Environmental Solutions, Inc.	Superior Court of Maricopa County, Arizona
Nyfix, Inc.	USDC District of Connecticut
OCA, Inc.	USDC Eastern District of Louisiana
ONEOK, Inc.	District Court of Tulsa County, Oklahoma
PainCareHoldings, Inc.	USDC Middle District of Florida
Seitel, Inc.	USDC Southern District of Texas
Southwest Airlines	USDC Northern District of Texas
Spectrum Pharmaceuticals, Inc.	USDC District of Nevada
The Spectranetics Corporation	USDC District of Colorado
ValueClick, Inc.	USDC Central District of California
Zix Corporation	USDC Northern District of Texas
<b>SECURITIES CLASS ACTIONS</b>	
Automatic Data Processing, Inc. (ADP)	USDC District of New Jersey
Amyris, Inc.	USDC, Northern District of California
Bellicum Pharmaceuticals, Inc.	USDC Southern District of Texas
Broadwind Energy, Inc.	USDC Northern District of Illinois
China Valves Technology, Inc.	USDC Southern District of New York
Cryo-Cell International, Inc.	USDC Middle District of Florida
Delta Petroleum, Inc.	USDC District of Colorado
Direxion Shares ETF Trust	USDC Southern District of New York
EnerI, Inc.	USDC Southern District of New York
Exide Technologies	USDC Central District of California
Galena Biopharma, Inc.	USDC District of New Jersey
Houston American Energy Corp.	USDC Southern District of Texas
Image Innovations Holdings, Inc.	USDC Southern District of New York
IZEA, Inc.	USDC Central District of California
Motive, Inc.	USDC Western District of Texas
Quest Energy Partners LP	USDC Western District of Oklahoma
Secure Computing Corporation	USDC Northern District of California
Superconductor Technologies, Inc.	USDC Central District of California
UTi Worldwide, Inc.	USDC Central District of California
Unistar Financial Service Corp.	USDC Northern District of Texas
<b>MDL PROCEEDINGS</b>	
In re: Farmers Insurance Co. (Co-Lead and Liaison Counsel)	USDC Western District of Oklahoma
In re: Fortra File Transfer (Sub-Group Lead Counsel for Intellihartx)	USDC Southern District of Florida
In re: Home Depot, Inc. (Executive Committee)	USDC Northern District of Georgia
In re: Mednax Services Inc. (Data Breach – Co-Lead Counsel)	USDC Southern District of Florida
In re: Premiera Blue Cross (Data Breach–Participating Counsel)	USDC District of Oregon
In re: Samsung Electronics America, Inc.(Co-Lead Counsel)	USDC Western District of Oklahoma
In re: The Sonic Corp. (Co-Lead Counsel)	USDC Northern District of Ohio
<b>DEAL CASES (MERGERS)</b>	
Easylink Services International Corp.	Superior Court of Gwinnett County, Georgia
Genon Energy, Inc.	Chancery Court of the State of Delaware
Lawson Software, Inc.	Chancery Court of the State of Delaware
Network Engines, Inc.	Chancery Court of the State of Delaware
Paetec Holding Corp. Shareholder Litig.	Chancery Court of the State of Delaware
Williams Pipeline Partners, L.P.	District Court of Tulsa County, Oklahoma
Xeta Technologies, Inc.	District Court of Tulsa County, Oklahoma



# EXHIBIT C

**Daniel Davila**, individually and on behalf  
of all similarly situated persons,

Plaintiff,

**New Enchantment Group, LLC,**

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Having fully considered the issue; the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

the 5,568 individuals identified by Defendant as having personally identifiable

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1 information compromised by the Data Breach and to whom Defendant provided  
2 written or substitute notice of the Data Breach on either February 28, 2023, or June  
3 6, 2023.

4 The Settlement Class shall not include Defendant or its parents, subsidiaries, divisions, or  
5 affiliates, or their respective successors or predecessors, or any entity in which Defendant  
6 or its parents has a controlling interest, or any of their current or former officers and  
7 directors; any judge providing over the Lawsuit and members of their families; persons  
8 who properly execute and file a timely request for exclusion from the Settlement Class;  
9 persons whose claims in this matter have been finally adjudicated on the merits or  
10 otherwise released; Plaintiff's counsel, Class Counsel, and Defendant's Counsel; and the  
11 legal representatives, successors, and assigns of any such excluded persons.  
12

13  
14 Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving  
15 notice is justified. The Court finds that it will likely be able to approve the proposed  
16 Settlement as fair, reasonable, and adequate. The Court also finds that it will likely be able  
17 to certify the Settlement Class for purposes of judgment on the Settlement because it meets  
18 all the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the  
19 Court finds for settlement purposes that: (a) the Settlement Class is so numerous that  
20 joinder of all Settlement Class Members would be impracticable; (b) there are issues of  
21 law and fact that are common to the Settlement Class; (c) the claims of the Class  
22 Representative are typical of and arise from the same operative facts and the Class  
23 Representative seeks similar relief as the claims of the Settlement Class Members; (d) the  
24 Class Representative will fairly and adequately protect the interests of the Settlement Class  
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1 as the Class Representative has no interests antagonistic to or in conflict with the  
2 Settlement Class and has retained experienced and competent counsel to prosecute this  
3 Litigation on behalf of the Settlement Class; (e) questions of law or fact common to  
4 Settlement Class Members predominate over any questions affecting only individual  
5 members; and (f) a class action and class settlement is superior to other methods available  
6 for a fair and efficient resolution of this Litigation.  
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9       2.     **Settlement Class Representative and Settlement Class Counsel.** The  
10 Court finds that Plaintiff will likely satisfy the requirements of Rule 23(e)(2)(A) and should  
11 be appointed as the Class Representative. Additionally, the Court finds that William B.  
12 Federman and Kennedy M. Brian of Federman & Sherwood will likely satisfy the  
13 requirements of Rule 23(e)(2)(A) and should be appointed as Class Counsel pursuant to  
14 Rule 23(g)(1).  
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16

17       3.     **Preliminary Settlement Approval.** Upon preliminary review, the Court  
18 finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the  
19 Settlement to the Settlement Class and accordingly is preliminarily approved. In making  
20 this determination, the Court has considered the monetary and non-monetary benefits  
21 provided to the Settlement Class through the Settlement, the specific risks faced by the  
22 Settlement Class in prevailing on their claims, the good faith, arms' length negotiations  
23 between the Parties and absence of any collusion in the Settlement, the effectiveness of the  
24 proposed method for distributing relief to the Settlement Class, the proposed manner of  
25 allocating benefits to Settlement Class Members, the Settlement treats the Settlement Class  
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Members equitably, and all of the other factors required by Rule 23 and relevant case law.

4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_\_\_, 202\_\_, at 401 W. Washington St., Suite 130, SPC 1 Phoenix, AZ 85003-2118, where the Court will determine, among other things, whether: (a) this Action should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (b) the Settlement should be approved as fair, reasonable, and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members (who have not timely and validly excluded themselves from the Settlement) should be bound by the releases set forth in the Settlement Agreement; (e) the application of Class Counsel for an award of Attorneys' Fees, Costs, and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the application of the Class Representative for a Service Award should be approved.

6. **Settlement Administrator.** The Court appoints A.B. Data as the Settlement Administrator, with responsibility for class notice and settlement administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

1           7.     **Notice.** The proposed notice program set forth in the Settlement Agreement  
2 and the Notices and Claim Form attached to the Settlement Agreement as **Exhibits 1, 2, 3,**  
3 **and 4** are hereby approved. Non-material modifications to these Exhibits may be made by  
4 the Settlement Administrator in consultation and agreement with the Parties, but without  
5 further order of the Court.  
6

7           8.     **Findings Concerning Notice.** The Court finds that the proposed form,  
8 content, and method of giving Notice to the Settlement Class as described in the Notice  
9 program and the Settlement Agreement and its exhibits: (a) will constitute the best  
10 practicable notice to the Settlement Class; (b) are reasonably calculated, under the  
11 circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the  
12 terms of the proposed Settlement, and their rights under the proposed Settlement, including,  
13 but not limited to, their rights to object to or exclude themselves from the proposed  
14 Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable  
15 and constitute due, adequate, and sufficient notice to all Settlement Class Members and  
16 other persons entitled to receive notice; (d) meet all applicable requirements of law,  
17 including Federal Rule of Civil Procedure 23(c); and (e) and meet the requirements of the  
18 Due Process Clause(s) of the United States. The Court further finds that the Notice  
19 provided for in the Settlement Agreement is written in plain language, uses simple  
20 terminology, and is designed to be readily understandable by Settlement Class Members.  
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22           The Settlement Administrator is directed to carry out the Notice program in  
23 conformance with the Settlement Agreement.  
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1           9.     **Class Action Fairness Act Notice.** Within ten (10) days after the filing of  
2 this Settlement Agreement with the Court, the Settlement Administrator acting on behalf  
3 of Defendant shall have served or caused to be served a notice of the proposed Settlement  
4 on appropriate officials in accordance with the requirements under the Class Action  
5 Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).  
6

7           10.    **Exclusion from Class.** Any Settlement Class Member who wishes to be  
8 excluded from the Settlement Class must individually sign and timely submit written notice  
9 of such intent to the designated Post Office box established by the Settlement Administrator  
10 in the manner provided in the Notice. The written notice must clearly manifest a Person’s  
11 intent to be excluded from the Settlement Class. To be effective, such requests for  
12 exclusion must be postmarked no later than the Opt-Out Date, which is no later than forty-  
13 five (45) days after the Notice Deadline, as stated in the Notice.  
14

15           The Settlement Administrator shall promptly furnish to Class Counsel and to  
16 Defendant’s counsel a complete list of all timely and valid requests for exclusion (the “Opt-  
17 Out List”).  
18

19           If a Final Order and Judgment is entered, all Persons falling within the definition of  
20 the Settlement Class who do not request to be excluded from the Settlement Class shall be  
21 bound by the terms of this Settlement Agreement and the Final Order and Judgment. All  
22 Persons who submit valid and timely notices of their intent to be excluded from the  
23 Settlement Class shall not receive any cash benefits of and/or be bound by the terms of the  
24 Settlement Agreement.  
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1           11.    **Objections and Appearances.** A Settlement Class Member (who does not  
2 submit a timely written request for exclusion) desiring to object to the Settlement  
3 Agreement may submit a timely written notice of his or her objection by the Objection  
4 Date and as stated in the Notice. The Notice shall instruct Settlement Class Members who  
5 wish to object to the Settlement Agreement to send their written objections to the  
6 Settlement Administrator at the address indicated in the Postcard Notice and Long Notice.  
7 The Notice shall advise Settlement Class Members of the deadline for submission of any  
8 objections—the “Objection Date.” Any such notices of an intent to object to the Settlement  
9 Agreement must be written and must include all of the following: (i) the name of the  
10 proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and  
11 telephone number; (iii) a statement of the specific grounds for the objection, as well as any  
12 documents supporting the objection; (iv) a statement as to whether the objection applies  
13 only to the objector, to a specific subset of the class, or to the entire class; (v) the identity  
14 of any attorneys representing the objector; (vi) a statement regarding whether the  
15 Settlement Class Member (or his/her attorney) intends to appear at the Final Approval  
16 Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class  
17 Member’s attorney.

18           Notwithstanding the foregoing, any Settlement Class Member who timely submits  
19 a written notice of objection and attends the Final Approval Hearing may so state their  
20 objection at that time, subject to the Court’s approval.

21           Any Settlement Class Member who fails to comply with the requirements for  
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1 objecting shall waive and forfeit any and all rights he or she may have to appear separately  
2 and/or to object to the Settlement Agreement and shall be bound by all the terms of the  
3 Settlement Agreement and by all proceedings, orders, and judgments in the Action. The  
4 provisions stated in the Settlement Agreement be the exclusive means for any challenge to  
5 the Settlement Agreement. Any challenge to the Settlement Agreement, the final order  
6 approving this Settlement Agreement, or the Final Order and Judgment to be entered upon  
7 final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure  
8 and not through a collateral attack.  
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11 12. **Claims Process.** Settlement Class Counsel and Defendant have created a  
12 process for Settlement Class Members to claim benefits under the Settlement. The Court  
13 preliminarily approves this process and directs the Settlement Administrator to make the  
14 Claim Form or its substantial equivalent available to Settlement Class Members in the  
15 manner specified in the Notice.  
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18 The Settlement Administrator will be responsible for effectuating the claims  
19 process. Settlement Class Members who qualify for and wish to submit a Claim Form shall  
20 do so in accordance with the requirement and procedures specified in the Notice and the  
21 Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members  
22 who qualify for any benefit under the Settlement but fail to submit a claim in accordance  
23 with the requirements and procedures specified in the Notice and the Claim Form shall be  
24 forever barred from receiving any such benefit, but will in all other respects be subject to  
25 and bound by the provisions in the Final Order and Judgment, including the releases  
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1 contained therein.

2 13. **Termination of Settlement.** This Preliminary Approval Order shall become  
3 null and void and shall be without prejudice to the rights of the Parties, all of whom shall  
4 be restored to their respective positions existing before the Court entered this Preliminary  
5 Approval Order and before they entered the Settlement Agreement, if (1) the Court does  
6 not issue the Preliminary Approval Order or Final Approval Order and Judgment; or (2)  
7 the Effective Date does not occur, the certification of the Settlement Class shall be void.  
8

9 14. **Use of Order.** This Preliminary Approval Order shall be of no force or effect  
10 if the Final Order and Judgment is not entered or there is no Effective Date and shall not  
11 be construed or used as an admission, concession, or declaration by or against Defendant  
12 of any fault, wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order  
13 be construed or used as an admission, concession, or declaration by or against the Class  
14 Representatives or any other Settlement Class Member that his or her claims lack merit or  
15 that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party  
16 of any defense or claims they may have in this Litigation or in any other lawsuit.  
17

18 15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue  
19 the Final Fairness Hearing and related deadlines without further written notice to the  
20 Settlement Class. If the Court alters any of those dates or times, the revised dates and times  
21 shall be posted on the Settlement Website maintained by the Settlement Administrator. The  
22 Court may approve the Settlement, with such modifications as may be agreed upon by the  
23 Parties, if appropriate, without further notice to the Settlement Class.  
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1           16.    **Stay of Litigation.** All proceedings in the Action, other than those related to  
2 approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by  
3 Settlement Class Members concerning the Released Claims are hereby enjoined and stayed  
4 pending Final Approval of the Settlement Agreement.  
5

6           17.    **Schedule and Deadlines.** The Court orders the following schedule of dates  
7 for the specified actions/further proceedings:  
8

9                                   **SETTLEMENT TIMELINE**

Event	Deadline
NEG provides list of Settlement Class Members to the Settlement Administrator	30 days after entry of the Preliminary Approval Order
Settlement Administrator to Provide CAFA Notice Required by 28 U.S.C. § 1715(b)	Within 10 days of filing of the Preliminary Approval Motion
Notice Date	45 days after the entry of the Preliminary Approval Order
Notice on Defendant's Website	No later than the Notice Deadline for a period of 60 days.
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation	14 days before the Objection and Opt-Out Deadlines

Expenses, and Class Representative Service Award	
Objection Deadline	45 days after the Notice Deadline
Opt-Out Deadline	45 days after the Notice Deadline
Claims Deadline	60 days after the Notice Deadline
Final Approval Hearing	_____, 202____ (at least 120 days after entry of the Preliminary Approval Order)
Motion for Final Approval	14 days before the Final Approval Hearing
Effective Date	one (1) business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment or one (1) business day following entry of the Final Approval Order and Judgment if no parties have standing to appeal and no objections have been filed to the Agreement; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, one (1) business day after the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.

1 2 3 4	Payment of Attorneys' Fees and Expenses Class Representative Service Award	21 days after the Effective Date
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5 Date: \_\_\_\_\_

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HON. DISTRICT JUDGE