

Cristina Perez Hesano (#027023)
Cperez@perezlawgroup.com
PEREZ LAW GROUP, PLLC
7508 N. 59th Avenue
Glendale, AZ 85301
Telephone: 602.730.7100
Fax: 623.235.6173

William B. Federman
OK Bar No. 2853
(admitted *pro hac vice*)
Kennedy M. Brian
(admitted *pro hac vice*)
OK Bar No. 34617
wbf@federmanlaw.com
kpb@federmanlaw.com
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120
Telephone: (405) 235-1560
Fax: (405) 239-2112

*Attorneys for Plaintiff and the
Putative Class*

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

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

Plaintiff,

v.

New Enchantment Group, LLC,

Defendant.

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

**PLAINTIFF'S UNOPPOSED MOTION
FOR FINAL 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 for an order granting final approval of the class action settlement (“Settlement”) preliminarily approved by this Court on October 29, 2024 (ECF No. 33), between Plaintiff and Defendant New Enchantment Group, LLC (“NEG” or “Defendant”).¹ NEG does not oppose the relief sought in this Motion.

As explained below, the Court should grant final approval to the Settlement as a fair, reasonable, and adequate compromise in lieu of the costly, risky, and lengthy prospect of continued litigation. The Settlement provides substantial and immediate benefits that are specifically designed to combat the harm Plaintiff alleges in this action. If final approval is granted, the Settlement will successfully resolve the claims of approximately 5,568 individuals who were potentially impacted by the Data Breach.

The Settlement provides a robust benefits package to Settlement Class Members. Through the Settlement, all Settlement Class Members have the opportunity to submit 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. (SA, ¶ 41).² Specifically, 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 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

¹ A proposed order is submitted herewith as **Exhibit 1**.

² The Settlement Agreement (“SA”) is attached to Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law in Support as Exhibit A. (ECF No. 32-1).

1 selected, all Settlement Class Members are eligible to receive two (2) years of Credit
 2 Monitoring Services that provide monitoring with the three (3) major credit bureaus
 3 (Experian, Equifax, and Transunion), alerts about changes in information to the credit
 4 report, dark web scanning for personal information, identify theft insurance, and access
 5 to assistance to help investigate and resolve any issues. (*Id.* ¶¶ 11, 46). Most importantly,
 6 there is no aggregate monetary cap on the payout of the claims made by Settlement Class
 7 Members. All valid, timely, and Approved Claims will be paid. This is an exceptional
 8 result that provides significant relief to the Settlement Class.

9 The Parties reached this Settlement—providing meaningful benefits for the
 10 Settlement Class—only after an extensive investigation, overcoming a motion to dismiss
 11 in its entirety, hard-fought litigation, and arm’s-length negotiations. Although Plaintiff and
 12 Settlement Class Counsel³ believe in the merits of the claims asserted, Defendant denies
 13 all charges of wrongdoing or liability. Plaintiff’s claims involve the intricacies of data
 14 security litigation (a fast-developing area in the law), and Plaintiff would face serious risks
 15 at each stage of litigation. Against these risks, Class Counsel secured a very favorable
 16 Settlement for the Class.

17 After this Court granted preliminary approval, the Settlement Administrator (A.B.
 18 Data, Ltd.)—with the help of the Parties—disseminated Notice to the Settlement Class as
 19 set forth in the Settlement Agreement. For the Settlement Class Members for whom NEG
 20 had valid mailing addresses,⁴ a Postcard Notice, providing important details about the
 21 Settlement, was provided directly to Settlement Class Members via first-class mail. (*See*
 22 Declaration of Kayla Kopetsky in Support of Final Approval of Class Action Settlement
 23 (“Notice Decl.”), ¶ 7, attached hereto as **Exhibit 2**). The Postcard Notice reached
 24

25 ³ “Settlement Class Counsel” or “Class Counsel” refers to William B. Federman and
 26 Kennedy M. Brian of Federman & Sherwood.

27 ⁴ The Settlement Class is comprised of approximately 5,568 individuals. (SA, ¶ 35). NEG
 28 had valid mailing addresses for 4,901 unique Settlement Class Members and did not have
 mailing addresses for an additional 755 unique Settlement Class Members. (Notice Decl.,
 ¶ 5).

1 approximately 98.6% of the Settlement Class Members who were sent the Postcard Notice.
2 (*Id.* ¶ 9). To account for the small number of individuals for whom NEG did not have
3 mailing addresses, NEG posted notice of the Settlement on its website for 60 days, in
4 accordance with the Settlement Agreement. (SA, ¶ 55(b)). Although not required by the
5 Settlement Agreement, Federman & Sherwood also posted a press release on the firm's
6 website, providing a link to the Settlement Website.⁵ On January 24, 2025, a Reminder
7 Postcard Notice was mailed to the Settlement Class Members who had not yet submitted a
8 claim and for which Defendant had a valid mailing address. (Notice Decl., ¶ 10). The
9 Postcard Notice, Claim Form, Long Form Notice, and Settlement Website⁶ were written in
10 plain language, providing each Settlement Class Member with information on how to make
11 a claim, how to opt-out, and how object to the Settlement. (*Id.* at Exhibits B–C). Out of
12 approximately 5,568 Settlement Class Members, absolutely *no* Settlement Class Members
13 have sought to be excluded from the Settlement, and *no* Settlement Class Members have
14 objected to any aspect of the Settlement. (*Id.* ¶¶ 21–22). In sum, the Settlement Class
15 received adequate notice of the Settlement, and the terms of the Settlement were well
16 received by the Class.

17 For the reasons set forth herein, the Settlement is fair, reasonable, and adequate,
18 and the Court should grant final approval of the Settlement.

19 II. SUMMARY OF THE LITIGATION AND THE SETTLEMENT

20 In the interest of efficiency, for the complete factual and procedural background
21 underpinning this case and an in-depth description of the Settlement terms, Plaintiff refers
22 the Court to and hereby incorporate by reference Plaintiff's Unopposed Motion for
23 Preliminary Approval of Class Action Settlement and Memorandum of Law in Support
24 (ECF No. 32) and Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Service
25 Award and Memorandum of Law in Support (ECF No. 34).

27 ⁵ <https://www.federmanlaw.com/blog/federman-sherwood-announces-preliminary-approval-of-settlement-in-new-enchament-group-class-action/>.

28 ⁶ <https://newenchamentsettlement.com/home/>.

1 III. LEGAL AUTHORITY

2 Plaintiff brings this Motion pursuant to Federal Rule Civil Procedure (“Rule”) 23(e),
3 under which Court approval is required to finalize a class action settlement. In determining
4 whether to finally approve a class action settlement, the Court must evaluate the Settlement
5 under Rule 23(a–b) and Rule 23(e)(2).

6 Under the standards of Rule 23(a) and (b) the Court must determine that the
7 Settlement Class, as defined by the Settlement Agreement, is certifiable. This Court
8 considered and granted preliminary approval of class certification in its Order Granting
9 Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement. (ECF
10 No. 33). For the same reasons described in Plaintiffs’ Unopposed Motion for Preliminary
11 Approval of Class Action Settlement (ECF No. 32), this Court should certify the class for
12 purposes of final approval of the settlement.

13 Next, the Settlement must be approved under Rule 23(e)(2). In doing so, the Court
14 must determine, after holding a final hearing, that it is fair, adequate, and reasonable. When
15 making this determination, the Court must consider whether:

- 16 (A) the class representatives and class counsel have adequately
- 17 represented the class;
- 18 (B) the proposal was negotiated at arm’s length;
- 19 (C) the relief provided for the class is adequate, taking into account:
 - 20 (i) the costs, risks, and delay of trial and appeal;
 - 21 (ii) the effectiveness of any proposed method of distributing
 - 22 relief to the class, including the method of processing class-
 - 23 member claims;
 - 24 (iii) the terms of any proposed award of attorney’s fees,
 - 25 including timing of payment; and
 - 26 (iv) any agreement required to be identified under Rule
 - 27 23(e)(3); and
 - 28 (D) the proposal treats class members equitably relative to each other.

25 Fed. R. Civ. P. 23(e)(2).

26 In addition to the Rule 23(e)(2) factors, courts in the Ninth Circuit look to nine (9)
27 factors in making this determination: (1) the strength of the plaintiff’s case; (2) the risk,
28 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining

class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; (8) the reaction of the class members to the proposed settlement; and (9) whether the settlement is a product of collusion among the parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

IV. ARGUMENT

A. The Settlement Satisfies Rule 23(a).

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

The Court previously preliminarily certified the Settlement Class for Settlement purposes only. (ECF No. 33). Nothing has changed to affect the propriety of certification of the Settlement Class; thus, the Settlement Class should receive final certification. *See Zwicky v. Diamond Resorts Inc.*, No. CV-20-02322-PHX-DJH, 2024 WL 1717553, at *4 (D. Ariz. Apr. 22, 2024) (incorporating the court's analysis from the preliminary approval order into the final approval order where “no facts that would affect these requirements ha[d] changed”); *Howard v. Web.com Grp. Inc.*, No. CV-19-00513-PHX-DJH, 2021 WL 2637497, at *1 (D. Ariz. Mar. 16, 2021) (same); *Arrison v. Walmart Inc.*, No. CV-21-00481-PHX-SMB, 2024 WL 3413968, at *1 (D. Ariz. July 15, 2024) (same).

1. The Proposed Class is Sufficiently Numerous.

Numerosity is satisfied where the “class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Settlement Class encompasses approximately 5,568 individuals. (SA, ¶ 35). Therefore, Rule 23's numerosity requirement is easily satisfied because joinder of all 5,568 individuals is impracticable.

1 *Saliba v. KS Statebank Corp.*, No. CV-20-00503-PHX-JAT, 2021 WL 4775105, at *1 (D.
2 Ariz. Oct. 13, 2021) (finding class of approximately 360 individuals met numerosity
3 requirement).

4 **2. The Settlement Class Satisfies Commonality.**

5 The Settlement Class also satisfies the commonality prong, which requires that
6 class members' claims "depend upon a common contention." *Wal-Mart Stores, Inc. v.*
7 *Dukes*, 564 U.S. 338, 350 (2011). Here, as in most data breach cases, "[t]hese common
8 issues all center on [Defendant's] conduct, satisfying the commonality requirement." *In*
9 *re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT,
10 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016). Indeed, common questions include,
11 *inter alia*, whether Class Members' personal information was compromised in the Data
12 Breach; whether NEG owed a duty to Plaintiff and Class Members to protect their
13 personal information; whether NEG breached its duties; and whether NEG violated the
14 common law and statutory violations alleged. Thus, the commonality requirement is met.

15 **3. Plaintiff's Claims are Typical to those of the Class.**

16 The typicality requirement of Rule 23 is also met because Plaintiff's claims—
17 which are based on Defendant's alleged failure to protect the personal information of
18 Plaintiff and all Class Members—are "reasonably coextensive with those of the absent
19 class members." *See* Fed. R. Civ. P. 23(a)(3); *Meyer v Portfolio Recovery Associates*, 707
20 F.3d 943, 1041-42 (9th Cir. 2012) (upholding typicality finding). Plaintiff alleges his
21 personal information was compromised, and that he was therefore impacted by the same
22 allegedly inadequate data security that harmed the rest of the Class. *See Just Film, Inc. v.*
23 *Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) ("[I]t is sufficient for typicality if the plaintiff
24 endured a course of conduct directed against the class."). Accordingly, typicality is met
25 here.

26 **4. Plaintiff Will Adequately Protect the Interests of the Class.**

27 The last prong under Rule 23(a), the "adequacy" requirement, is satisfied where
28 (1) there are no antagonistic or conflicting interests between the named plaintiff and their

1 counsel and the absent class members; and (2) the named plaintiff and their counsel will
2 vigorously prosecute the action on behalf of the class. Fed. R. Civ. P. 23(a)(4); *see also*
3 *Ellis*, 657 F.3d at 985 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.
4 1998)). Plaintiff and Class Counsel met these conditions at the preliminary approval stage
5 and continue to meet them now.

6 Plaintiff is a member of the Class who allegedly experienced the same injuries
7 resulting from the Data Breach and seeks, like the other Class Members, compensation
8 for NEG's alleged data security shortcomings. Plaintiff has no conflicts of interest with
9 other Class Members, is subject to no unique defenses, and he and his counsel have and
10 continue to vigorously prosecute this case on behalf of the Class. Further, counsel for
11 Plaintiff have years of experience as vigorous class action litigators and are well suited to
12 advocate on behalf of the Class. (See ECF No. 32-2). As such, Plaintiff's "interest in this
13 litigation is coextensive with that of the unnamed class members," and he is "perfectly
14 capable of vigorously prosecuting this action through their well-qualified counsel."
15 *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D. 360, 365 (D. Ariz. 2009) (citation omitted).

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

17 The Settlement Class is maintainable for purposes of settlement under Rule
18 23(b)(3), because common questions predominate over questions affecting only
19 individual members and class resolution is superior to other available methods for a fair
20 and efficient resolution. *Id.*

21 The predominance requirement "tests whether proposed classes are sufficiently
22 cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. As
23 discussed above, common questions predominate over any questions affecting only
24 individual members. Plaintiff's claims depend on whether NEG used reasonable data
25 security to protect his and the Class's personal information. That question can be resolved,
26 for purposes of settlement, using the same evidence for all Class Members, and thus is
27 precisely the type of question that makes a class-wide settlement worthwhile. *See Tyson*
28 *Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) ("When 'one or more of the

1 central issues in the action are common to the class and can be said to predominate, the
 2 action may be considered proper under Rule 23(b)(3)”) (citation omitted); *In re*
 3 *23andMe, Inc. Customer Data Sec. Breach Litig.*, No. 24-MD-03098-EMC, 2024 WL
 4 4982986, at *14 (N.D. Cal. Dec. 4, 2024) (“Common questions predominate over
 5 individual ones: the class claims, for instance, revolve around the data breach to which
 6 all class members were subject as well as 23andMe's security policies and response to the
 7 data breach.”).

8 Further, class-wide resolution is the only practical method of addressing the
 9 alleged violations at issue in this case. There are over 5,000 Class Members with modest
 10 individual claims, most of whom likely lack the resources necessary to seek individual
 11 legal redress. Class-wide resolution is appropriate vehicle to adjudicate these claims. *See*
 12 *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“Where
 13 recovery on an individual basis would be dwarfed by the cost of litigating on an individual
 14 basis, this factor weighs in favor of class certification.”). Because the claims are being
 15 certified for purposes of settlement, there are no issues with manageability, and resolution
 16 of thousands of claims in one action is far superior to individual lawsuits and promotes
 17 consistency and efficiency of adjudication. *See Malta v. Fed. Home Loan Mortg. Corp.*,
 18 No. 10-CV-1290 BEN NLS, 2013 WL 444619, at *3 (S.D. Cal. Feb. 5, 2013)
 19 (predominance met where “considerations of judicial economy favor litigating a
 20 predominant common issue once in a class action instead of many times in separate
 21 lawsuits” and the “small individual claims of class members” made it “unlikely that
 22 individual actions will be filed”).

23 Accordingly, certification of the Class for purposes of settlement remains
 24 appropriate.

25 **C. The Settlement Should be Approved Pursuant to the Rule 23(e) Factors** 26 **and the Ninth Circuit’s Additional Factors.**

27 **1. The Strength of Plaintiff’s Case.**

28 The first factor the Court must evaluate is the strength of the plaintiff’s case.
 Plaintiff believes his claims are viable and that he has a reasonably good chance of

1 proving that NEG's data security was inadequate and that, if he establishes that central
 2 fact, Defendant is likely to be found liable under at least some of the liability theories and
 3 statutory and common law claims Plaintiff pled in his Complaint. While Plaintiff believes
 4 he has strong claims and would be able to prevail, he also recognizes that success is not
 5 guaranteed. *See, e.g., Bozek v. Arizona Lab. Force Inc.*, No. CV-24-00210-PHX-SMB,
 6 2025 WL 264174 (D. Ariz. Jan. 22, 2025) (dismissing all but one claim in a recent data
 7 breach case); *Johnson v. Yuma Reg'l Med. Ctr.*, No. CV-22-01061-PHX-SMB, 2024 WL
 8 4803881 (D. Ariz. Nov. 15, 2024) (dismissing data breach case in its entirety). It is
 9 "plainly reasonable for the parties at this stage to agree that the actual recovery realized
 10 and risks avoided here outweigh the opportunity to pursue potentially more favorable
 11 results through full adjudication." *Dennis v. Kellogg Co.*, No. 09-cv-1786, 2013 WL
 12 6055326, at *3 (S.D. Cal. Nov. 14, 2013). "Here, as with most class actions, there was
 13 risk to both sides in continuing towards trial. The settlement avoids uncertainty for all
 14 parties involved." *Chester v. TJX Cos.*, No. 5:15-cv-01437-ODW(DTB), 2017 WL
 15 6205788, at *6 (C.D. Cal. Dec. 5, 2017). Given the heavy obstacles and inherent risks
 16 Plaintiff faced with respect to the novel claims brought in data breach class actions,
 17 including class certification, summary judgment, and trial, the substantial benefits the
 18 Settlement provides favors final approval. *See Reid v. I.C. Sys. Inc.*, No. CV-12-02661-
 19 PHX-ROS, 2018 WL 11352039, at *1 (D. Ariz. July 27, 2018), *aff'd*, 795 F. App'x 509
 20 (9th Cir. 2019) ("While Plaintiff maintains it would have overcome these hurdles, it
 21 appears that approving this settlement will be a good result for class members.").

22 **2. The Risk, Expense, Complexity, and Likely Duration of Further** 23 **Litigation.**

24 While Plaintiff and Class Counsel believe this case has merit, the risk in this case
 25 was profound. "The issues in this data breach case are complex and novel. They are a
 26 different outside the scope of what a general practitioner is capable of litigating." *Smith*
 27 *v. Kaye-Smith Enterprises, Inc.*, No. 3:22-CV-1499-AR, 2025 WL 72138, at *3 (D. Or.
 28 Jan. 10, 2025). "In general, data breach class actions present relatively uncharted

territory, and rarely reach class certification proceedings.” *Harbour v. California Health & Wellness Plan*, No. 5:21-CV-03322-EJD, 2024 WL 171192, at *7 (N.D. Cal. Jan. 16, 2024) (citation omitted). “[C]oming up with a feasible trial plan would be difficult given that no data breach case for damages has ever proceeded to trial.” *Hashemi v. Bosley, Inc.*, 2022 WL 18278431, at *4 (C.D. Cal. Nov. 21, 2022).

This case involves a proposed class of over 5,000 individuals (each of whom, NEG would argue, needs to establish cognizable harm and causation); a complicated and technical factual background; and a motivated Defendant that has already provided at least some relief to the potentially affected individuals in the form of free credit monitoring. There is no question that Defendant would have raised every available argument to avoid an adverse judgment had litigation continued.

Additionally, the costs of pursuing this litigation would be substantial. Although the Parties began engaging in discovery, discovery had only just begun. Numerous depositions, document production, and other written discovery would be required if the case continued. Extensive and expensive expert discovery would also be necessary. There would also be significant costs and risks associated with class certification, summary judgment, and trial. *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007) (“Additional consideration of increased expenses of fact and expert discovery and the inherent risks of proceeding to summary judgment, trial and appeal also support the settlement.”). “The Settlement removes all of these costs and risks by ensuring class members a recovery that is certain and immediate, eliminating the risk that class members would be left without any recovery at all.” *Farrar v. Workhorse Grp., Inc.*, No. CV2102072CJCPVCX, 2023 WL 5505981, at *7 (C.D. Cal. July 24, 2023) (internal quotation marks and citation omitted). Accordingly, this factor weighs in favor of final approval.

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

The third factor requires the Court to assess the risk of maintaining class action status through trial. Here, if Plaintiff were to continue litigation 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 would certainly oppose certification if the case were to proceed. “Historically, data breach cases have experienced minimal success in moving for class certification.” *Cheryl Gaston v. FabFitFun, Inc.*, No. 2:20-CV-09534-RGK-E, 2021 WL 6496734, at *3 (C.D. Cal. Dec. 9, 2021). In fact, class certification in data breach cases is uncommon and is often a hurdle that cannot be overcome. *See In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-MN-02972-JFA, 2024 WL 2155221 (D.S.C. May 14, 2024) (denying class certification in data breach case); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013) (denying class certification); *Adkins v. Facebook, Inc.*, 424 F.Supp.3d 686 (N.D. Cal. 2019) (granting motion to certify injunctive only class, but denying motion to certify damages and issues classes in data breach class action); *see also In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-MN-02972-JFA, 2024 WL 5247287 (D.S.C. Dec. 30, 2024) (denying motion for leave to file a renewed motion for class certification). Thus, the difficulty of obtaining and maintaining class certification through trial supports final approval of the settlement. *See In re Netflix Privacy Litig.*, 2013 WL 1120801, at *6 (N.D. Cal. Mar. 18, 2013) (“The notion that a district court could decertify a class at any time is one that weighs in favor of settlement.” (citation omitted)).

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 two (2) years of Credit Monitoring Services, reimbursement of Out-of-Pocket Costs up to \$500.00, reimbursement of Financial Losses up to \$4,000.00, reimbursement for Attested Time up to \$150.00, or an Alternative Cash Payment of \$75.00. (SA, ¶¶ 11, 41–46). Moreover, the Settlement is uncapped, which means that every Settlement Class Member who submits a timely, valid, and Approved Claim will receive compensation for the entirety of their claim. This is a favorable difference from a common fund settlement or a capped claims-made settlement where Settlement Class

1 Members run the risk of having their claims reduced because there is a limited amount of
2 funds available to pay Settlement Class Members' claims.

3 Moreover, this Settlement is a strong result for the Class and is on par with or
4 exceeds that of other data privacy settlements. *See, e.g., Bowdle v. King's Seafood Co.,*
5 *LLC*, No. SACV2101784CJCJDEX, 2022 WL 19235264 (C.D. Cal. Oct. 19, 2022)
6 (capped claims-made settlement of \$350,000 for 2,875 settlement class members);
7 *Gaston*, 2021 WL 6496734 (settlement of \$625,000 for approximately 441,160 settlement
8 class members); *Pygin v. Bombas, LLC*, No. 20-CV-04412-JSW, 2021 WL 6496777
9 (N.D. Cal. Nov. 29, 2021) (settlement fund of \$225,000 for approximately 83,000
10 Settlement Class Members); *Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG (JEMX),
11 2018 WL 11358228 (C.D. Cal. Apr. 2, 2018) (settlement of \$110,00 for approximately
12 107,726 class members). These comparisons are not intended to disparage the settlements
13 achieved in those cases, but to underscore that Plaintiff and Class Counsel achieved an
14 excellent resolution for the Settlement Class. Because the Settlement here is similar to, or
15 exceeds, other settlements reached and approved in similar cases, this factor reflects that
16 the settlement is fair, adequate, and reasonable. *See Calderon v. Wolf Firm*, No. SACV
17 16-1622-JLS, 2018 WL 6843723, at *7–8 (C.D. Cal. Mar. 13, 2018) (comparing class
18 settlement with other settlements in similar cases).

18 **5. The Extent of Discovery Completed and the Stage of Proceedings**

19 The fifth factor evaluates the extent of discovery completed and the stage of the
20 proceedings. Before entering into settlement discussions on behalf of class members,
21 counsel should have “sufficient information to make an informed decision.” *Linney v.*
22 *Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Here, Class Counsel
23 thoroughly evaluated the strengths and weaknesses of the case before reaching a
24 settlement. Class Counsel vigorously and aggressively gathered information regarding
25 the Data Breach—including publicly-available documents concerning announcements of
26 the Data Breach as well as obtaining an expert to search the dark web for information
27 pertaining to the Data Breach. (ECF No. 32-2, ¶ 6). The Parties also informally exchanged
28 non-public information concerning the Data Breach, its scope, and remedial measures

being undertaken by NEG. (*Id.*). In preparation for mediation, Class Counsel reviewed all documents produced by NEG, as well as its responses to Plaintiff's requests for information. (*Id.*). Additionally, Class Counsel thoroughly evaluated the strengths and weaknesses of the case when preparing their response and arguing in opposition to Defendant's Motion to Dismiss and preparing the mediation statement. In sum, the litigation proceeded to the point where "the parties ha[d] sufficient information to make an informed decision about settlement," including a realistic assessment of the strengths and weakness. *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* ECF No. 32-2, ¶ 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 In re Washington Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989), *aff'd sub nom. Class Plaintiffs v. City of Seattle*, 955 F.2d 1268 (9th Cir. 1992) ("Counsels' opinions warrant great weight both because of their considerable familiarity with this litigation and because of their extensive experience in similar actions." (citation omitted)); *Reid v. I.C. Sys. Inc.*, No. CV-12-02661-PHX-ROS, 2018 WL 11352039, at *3 (D. Ariz. July 27, 2018), *aff'd*, 795 F. App'x 509 (9th Cir. 2019) (noting class counsel's recommendations are given a presumption of reasonableness). Thus, this factor supports approval as well.

7. Governmental Participants.

There are no governmental participants in this matter.

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

The eighth factor weighs in favor of final approval because the Settlement has received a positive reaction from the Settlement Class. The deadline to request exclusion from the Settlement or file an objection to the Settlement was January 27, 2025. (Notice Decl., ¶¶ 21–22). Absolutely *no* Settlement Class Members objected to the Settlement and absolutely *no* Settlement Class Members requested exclusion. (*Id.*). The lack of any degree of opposition to the Settlement supports final approval. *See Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“The absence of a single objection to the Proposed Settlement provides further support for final approval of the Proposed Settlement.”); *In re Apollo Grp. Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at *3 (D. Ariz. Apr. 20, 2012) (“There have been no objections from Class Members or potential class members, which itself is compelling evidence that the Proposed Settlement is fair, just, reasonable, and adequate.”); *Wood v. Ionatron, Inc.*, No. CV 06-354-TUC-CKJ, 2009 WL 10673479, at *5 (D. Ariz. Sept. 28, 2009) (finding the reaction of the settlement class supported final approval where there were no objections and only one request for exclusion).

Moreover, the Settlement also received a favorable claims rate. The deadline to submit a claim was February 11, 2025. As of the date of the Settlement Administrator’s Declaration, the claims rate was 3.5%. (*Id.* ¶ 20). Due to the speed at which mail is delivered, timely postmarked claims may be received via USPS subsequent to this Motion, causing the claims rate to increase. (*Id.* ¶ 19). Nonetheless, the current claims rate is in line with the claims rate in other data breach settlements and has also exceeded many claims rates that have received final approval. *See Carter v. Vivendi Ticketing US LLC*, No. SACV2201981CJCDFMX, 2023 WL 8153712, at *9 (C.D. Cal. Oct. 30, 2023) (“To begin, the 1.6% claims rate is in line with claims rates in other data breach class action settlements that courts have approved.”); *Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 599 (N.D. Cal. 2020) (granting final approval with 0.83% claims rate, stating that the rate was “on par with other consumer cases, and d[id] not otherwise weigh against approval”); *Weisenberger v. Ameritas Mut. Holding Co.*, No. 4:21-CV-3156,

2024 WL 3903550, at *3 (D. Neb. Aug. 21, 2024) (approving claims rate of approximately 1.25% and noting that it was not unusual for a data breach case); *In re Forefront Data Breach Litig.*, No. 21-CV-887, 2023 WL 6215366, at *4 (E.D. Wis. Mar. 22, 2023) (“A claims rate of 1.46% is generally in line with the rate experienced in other data breach class actions.”); *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-md-2522, 2017 WL 2178306, at *1–2 (D. Minn. May 17, 2017), *aff’d*, 892 F.3d 968 (8th Cir. 2018) (approving settlement with roughly 0.23% claims rate).

Therefore, the positive reaction to the Settlement from the Settlement Class Members militates in favor of final approval.

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. (ECF No. 32-2, ¶¶ 4–5). Class Counsel and NEG’s counsel are well-versed in handling data breach class actions and negotiated a settlement that takes into account both the strengths and weaknesses of the case, while providing a timely favorable result for the Settlement Class. Therefore, the Court can be assured that the negotiations that took place were not the product of collusion and were conducted at arm's length. *See In re LifeLock, Inc. Mktg. & Sales Pracs. Litig.*, No. MDL 08-1977-MHM, 2010 WL 11627648, at *4 (D. Ariz. Aug. 31, 2010) (“[T]he Parties' counsel—who have demonstrated their substantial experience in litigating class actions and other complex litigation—support this settlement and have demonstrated that the settlement is the product of extensive arm's-length negotiations. These considerations also weigh in favor of final approval.”).

10. The Settlement Treats Settlement Class Members Equitably

In accordance with Rule 23(e)(2)(c)(ii) and Rule 23(e)(2)(D), the proposed distribution process will be equitable and effective. Each Class Member has the opportunity to make the same claims for benefits under the Settlement. The available relief was clearly detailed in the notice documents, which were provided to the Settlement Class Members, laying out the benefits to which they are entitled. (Notice Decl., at

Exhibits B–C). Settlement Class Members were able to submit their claims through a simple online form or by mail during a sufficiently long claims period. (*Id.* ¶ 14). The task of validating these claims will be delegated to the Settlement Administrator, A.B. Data, a neutral party which has significant experience processing these claims in similar cases. Thus, the only difference in treatment among Class Members is that those who incurred and submitted claims for Out-of-Pocket Costs, Financial Losses, and Attested Time will appropriately and equitably receive payments in proportion to the amount of their losses. (SA, ¶¶ 42–44). Thus, the method of distributing the relief is equitable and effective, and the proposed Settlement is fair, adequate, and reasonable under this factor.

V. THE NOTICE PROGRAM COMPORTED WITH DUE PROCESS

Lastly, the Court should find that the notice program satisfied due process. To satisfy due process, notice to class members must be the best practicable, and reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Fed. R. Civ. P. 23(e); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Notice provided to the class must be sufficient to allow class members “a full and fair opportunity to consider the proposed decree and develop a response.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). While individual notice should be provided where class members can be located and identified through reasonable effort, notice may also be provided by U.S. Mail, electronic mail or other appropriate means. Fed. R. Civ. P. 23(c)(2)(B).

As outlined in the Settlement Administrator’s declaration, pursuant to the Court’s Order granting Preliminary Approval (ECF No. 33), CAFA notice was sent on November 4, 2024. (Notice Decl., ¶ 4). Notice was also disseminated to the Settlement Class. On October 31, 2024, A.B. Data received an electronic data file containing the names and mailing addresses for 4,901 unique Settlement Class Members. (*Id.* ¶ 5). Additionally, the data file contained names with no mailing address for 755 unique Settlement Class Members. (*Id.*). For the Settlement Class Members that had mailing addresses, A.B. Data

1 updated the addresses with the United States Postal Service’s NCOALink® database and
 2 mailed the Postcard Notice on December 13, 2024. (*Id.* ¶¶ 6–7). The Settlement
 3 Administrator estimates that the Postcard Notices had a reach rate of approximately 98.6%.
 4 (*Id.* ¶ 9). Furthermore, prior to the end of the Claims Period, a Reminder Postcard Notice
 5 was mailed to the Settlement Class Members who had not yet submitted a claim. (*Id.* ¶ 10).

6 To address the small number of Settlement Class Members for which NEG did not
 7 have a mailing address, NEG published notice of the Settlement on its website for sixty
 8 (60) days, pursuant to the Settlement Agreement. (SA, ¶ 55(b)). Although not required by
 9 the Settlement Agreement, Federman & Sherwood also posted a press release on the firm’s
 10 website, providing a link to the Settlement Website.⁷ In addition to the above, the
 11 Settlement Administrator maintained a Settlement Website, where relevant case deadlines
 12 and settlement documents could be viewed, and a toll-free telephone number Settlement
 13 Class Members could call to ask questions about the Settlement. (*Id.* ¶¶ 11–15).

14 In sum, the notice provided to the Settlement Class was robust, effective, and met
 15 all due process requirements, as well as the requirements of Rule 23(c). *See Espinosa v.*
 16 *United Student Aid Funds, Inc.*, 553 F.3d 1193, 1202 (9th Cir. 2008), *aff’d*, 559 U.S. 260
 17 (2010) (“The standard for what amounts to constitutionally adequate notice, however, is
 18 fairly low; it’s ‘notice reasonably calculated, under all the circumstances, to apprise
 19 interested parties of the pendency of the action and afford them an opportunity to present
 20 their objection.’”).

21 VI. CONCLUSION

22 Plaintiff respectfully requests the Court: (1) affirm certification of the Settlement
 23 Class; (2) affirm the appointment of Plaintiff as Class Representative; (3) affirm the
 24 appointment of Class Counsel; (4) grant final approval of the Settlement; (5) determine
 25 notice was provided in accordance with the Court’s Order Granting Preliminary Approval
 26 and due process; and (6) enter an order granting final approval of the class settlement.

27 _____
 28 ⁷ <https://www.federmanlaw.com/blog/federman-sherwood-announces-preliminary-approval-of-settlement-in-new-enchament-group-class-action/>.

1 Date: February 27, 2025

Respectfully Submitted,

2 /s/: William B. Federman

3 William B. Federman*

4 Kennedy M. Brian*

FEDERMAN & SHERWOOD

5 10205 N. Pennsylvania Ave.

6 Oklahoma City, OK 73120

7 T: (405) 235-1560

8 E: wbf@federmanlaw.com

9 E: kpb@federmanlaw.com

10 **Admitted pro hac vice*

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

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on February 27, 2025, I electronically filed the foregoing
14 document using the Court's electronic filing system, which will notify all counsel of
15 record authorized to receive such filings.

16 /s/: William B. Federman

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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

Plaintiff,

v.

New Enchantment Group, LLC,

Defendant.

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

**[PROPOSED] FINAL APPROVAL
AND JUDGMENT ORDER**

WHEREAS, Plaintiff Daniel Davila (“Plaintiff”), on behalf of himself and on behalf of all others similarly situated, by and through Class Counsel, Federman & Sherwood, having moved this Court for an Order granting final approval of class action settlement, and Defendant New Enchantment Group, LLC (“NEG” or “Defendant”), through its attorneys, Freeman Mathis & Gary, LLP, having appeared at the hearing;

WHEREAS, this Court granted preliminary approval of the parties’ Settlement Agreement in the above-captioned action (“Action”) on October 29, 2024 (“Preliminary Approval Order”);

WHEREAS, notice to the Settlement Class Members (“Class Members”) was sent in accordance with the Preliminary Approval Order providing an opportunity for Class Members to receive benefits under the Settlement Agreement, opt-out, or submit objections;

WHEREAS, no Class Members submitted an objection and no class members submitted an opt-out statement;

NOW, upon the reading of the Settlement Agreement and annexed exhibits; (ii) the Motion for Final Approval (ECF No. 35) and the Motion for Attorneys’ Fees, Costs, Expenses, and Service Awards (ECF No. 34), and after hearing counsel for all of the parties at the March 13, 2025, fairness hearing and after due deliberation having been held thereon, the Court grants final approval of the Settlement Agreement, and hereby find and orders for purposes of settlement only:

1 1. Capitalized terms used in this Order and Judgment and not otherwise defined herein
2 shall have the definitions assigned to them in the Settlement Agreement.

3 2. This Court has jurisdiction over the subject matter of the Action and over all parties
4 to the Action, including all Class Members with respect to the following Class certified under
5 Rule 23 of the Federal Rules of Civil Procedure:

6
7 the 5,568 individuals identified by Defendant as having personally identifiable
8 information compromised by the Data Breach and to whom Defendant provided
9 written or substitute notice of the Data Breach on either February 28, 2023, or June
6, 2023.

10 3. The Court hereby fully, finally and unconditionally approves the Settlement
11 embodied in the Settlement Agreement as being a fair, reasonable and adequate settlement and
12 compromise of the claims asserted in the Action.

13 4. The Class Members have been given proper and adequate notice of the Settlement,
14 fairness hearing, Class Counsel's application for attorneys' fees, and the service award to the
15 Settlement Class Representatives.

16 5. An affidavit or declaration of the Settlement Administrator's compliance with the
17 Notice process has been filed with the Court. The Notice process as set forth in the Settlement
18 Agreement and ordered in the Preliminary Approval Order constitutes the best notice practicable
19 under the circumstances and constitutes valid, due, and sufficient notice to all Class Members in
20 accordance with the requirements of Federal Rule of Civil Procedure 23(c)(2).

21 6. The Court hereby orders that the Settlement Agreement shall be implemented in
22 accordance with its terms and conditions pursuant to the Settlement Agreement.

23 7. In accordance with the Settlement Agreement, Class Counsel is hereby awarded
24 attorneys' fees, costs, and expenses in the amount of \$282,500.00, to be paid as specified in the
25 Settlement Agreement.

26 8. In accordance with the Settlement Agreement, the Settlement Class Representative
27
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1 is hereby awarded \$1,500.00, to be paid as specified in the Settlement Agreement.

2 9. Upon the Effective Date, the Action shall be and hereby is dismissed with prejudice
3 in its entirety as to the Defendant, with each party to bear their own costs and attorneys' fees,
4 except as provided in the Settlement Agreement, and all the claims of the Settlement Class
5 Members shall be, and hereby are, dismissed and released pursuant to the Settlement Agreement.

6 10. Each Settlement Class Member is bound by this Judgment and Order, including,
7 without limitation, the release of certain claims as set forth in the Settlement Agreement.

8 11. As of the final date of the opt-out period, no opt-outs were received.

9 12. As of the final date of the objection period, no objections were received.

10 13. The Court has considered all the documents filed in support of the Settlement, and
11 has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the
12 Final Approval Hearing, all other papers and documents comprising the record herein, and all oral
13 arguments presented to the Court.

14 14. This Judgment and Order, and the Settlement Agreement, and all papers related
15 thereto, are not, and shall not be construed to be, an admission by the Defendant of any liability,
16 claim or wrongdoing in this Action or in any other proceeding.

17 15. In the event that the Settlement Agreement does not become effective in accordance
18 with the Settlement Agreement, then this Judgment and Order shall be rendered null and void to
19 the extent provided by and in accordance with the Settlement Agreement and shall be vacated,
20 and in such event, all orders entered in connection herewith shall be null and void to the extent
21 provided by and in accordance with the Settlement Agreement.

22 16. The Court hereby find that there is no just reason for delay of entry of this Judgment
23 and hereby directs its entry.

24 Without affecting the finality of this Judgment in any way, this Action shall remain open,
25 and the Court hereby retains continuing jurisdiction over (a) implementation of this Settlement
26 Agreement; (b) disposition of the settlement funds; and (c) all parties hereto for the purpose of

1 construing, enforcing and administering the Settlement Agreement and this Judgment.

2
3 **IT IS SO ORDERED** this ____ day of _____, 2025.

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6 Hon. Susan Bolton
7 United States District Judge
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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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

Plaintiff,

v.

New Enchantment Group, LLC,

Defendant.

No. CV-23-01098-PHX-SRB

Hon. Judge Susan R. Bolton

**DECLARATION OF KAYLA
KOPETSKY IN SUPPORT OF
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

I, Kayla Kopetsky, hereby declare as follows:

1. I am a Project Manager at A.B. Data, Ltd.’s Class Action Administration Division (“A.B. Data”), whose Corporate Office is located in Milwaukee, Wisconsin. This declaration (“Declaration”) is based upon my personal knowledge, and that of A.B. Data staff members, and if called as a witness, I could and would testify competently thereto.

2. I submit this Declaration in connection with the class action notice administration proceedings related to the above-captioned Action (the “Action”).

3. This Declaration details the steps that were taken to implement notice of the settlement as required by the Court’s Order Granting Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement entered October 29, 2024 (“Preliminary Approval Order”). Those steps included: (i) mailing the Court-approved Postcard Notice (“Notice”) to Settlement Class Members; and (ii) establishing a toll-free telephone number and case-specific website to address potential Settlement Class Member inquiries.

CAFA NOTICE

4. On November 4, 2024, in compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, A.B. Data caused the CAFA Notice, including a link and QR code to the CAFA Notice Packet, to be mailed via USPS Priority Mail or email to the Attorneys General of all U.S. States, the District of Columbia, and U.S. Territories. A true

and accurate copy of the CAFA Notice letter is attached hereto as **Exhibit A**.

DISSEMINATION OF NOTICE

5. On October 31, 2024, A.B. Data received an electronic data file containing the names and mailing addresses for 4,901 unique Settlement Class Members. Additionally, the data file contained names with no mailing address for 755 unique Settlement Class Members.

6. Prior to the mailing, A.B. Data also processed the Settlement Class Members' mailing addresses through the United States Postal Service's (the "USPS") NCOALink® database to update the mailing addresses with any registered moves and to standardize the mailing addresses to allow for maximum postage discounts.

7. On December 13, 2024, pursuant to the Preliminary Approval Order, the Notice was sent by USPS First-Class Mail to the 4,901 Settlement Class Members. A true and correct copy of the Notice is attached hereto as **Exhibit B**.

8. As of the date of this Declaration, A.B. Data has had 93 Notices to Settlement Class Members returned as undeliverable by the USPS. Tracing efforts to locate updated address data were made, resulting in the location of 26 updated addresses to which Notices were remailed.

9. Based on the foregoing, following all Postcard Notice re-mailings, A.B. Data has reason to believe that Postcard Notices likely reached 4,834 of the 4,901 to whom the Postcard Notice was mailed, which equates to a reach rate of the direct mail notice of approximately 98.6%. This reach rate is consistent with other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches¹ over 70% of targeted class members is considered a high

¹ Fed. Jud. Ctr., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide suggests that the minimum threshold for adequate notice is 70%.

percentage and the “norm” of a notice campaign.²

REMINDER NOTICE

10. Pursuant to the terms of the Settlement Agreement, on January 24, 2025, A.B. Data mailed a Reminder Postcard Notice via First-Class Mail to 4,781 Potential Settlement Class Members who had not yet submitted a Claim. A true and correct copy of the Reminder Postcard Notice is attached hereto as **Exhibit C**.

WEBSITE AND TELEPHONE

11. Prior to commencing notice, A.B. Data established a case-specific toll-free telephone number (877-316-0125) to answer questions regarding the Settlement. On December 13, 2024, A.B. Data established an interactive voice response (“IVR”) system to provide summary information to frequently asked questions specific to the Settlement. This also provided callers with the opportunity to speak with a live customer support representative during normal business hours or, if calling after hours, callers could leave a message which was returned by a Claimant Services Representative.

12. As of the date of this Declaration, a total of 24 calls have been placed to the toll-free number, with 14 of those being transferred to a Claimant Services Representative.

13. On December 13, 2024, A.B. Data established a case-specific Settlement Website, www.newenchantmentsettlement.com. The Settlement Website includes case-specific information, including relevant deadlines and downloadable versions of the Preliminary Approval Order, Settlement Agreement, Long-Form Notice, Claim Form, and other relevant documents.

14. The Settlement Website also included functionality for Settlement Class Members to submit their Claim Form online. A downloadable Claim Form was also available in PDF format whereby Potential Settlement Class Members could obtain, complete, and mail their claim to the Settlement Administrator.

² Barbara Rothstein and Thomas Willging, Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges, at 27 (3d Ed. 2010).

1 15. As of the date of this Declaration, the Settlement Website has had 970 visits.

2 **CLAIMS**

3 16. As of the date of this Declaration, a total of 247 timely-submitted Claims
4 have been received.

5 17. Of the 247 Claims received, twelve were duplicates, nine were blank, and 32 were
6 from non-Settlement Class Members. A total of 194 valid timely claims remain.

7 18. Of the 194 valid and timely claims, 122 Settlement Class Members selected
8 the Alternative Cash Payment (78 also included Credit Monitoring), 34 Settlement
9 Class Members selected Attested Time (27 also included Credit Monitoring), 36
10 Settlement Class Member selected to receive Credit Monitoring only, and two
11 claims were submitted without selecting a settlement award option. Claims that did not
12 select a settlement award option on the Claim Form have been determined to be
13 deficient and will be sent a Notice of Deficiency requiring that a settlement award option
14 be selected.

15 19. Due to the speed at which mail is delivered, timely postmarked claims may
16 be received via USPS subsequent to this Declaration.

17 20. Subject to a final audit, the current claims rate is 3.5%. This claims rate is
18 in line with the typical claims rate of a data breach class action settlement.

19 **OBJECTIONS**

20 21. Pursuant to the terms of the Settlement Agreement, Settlement
21 Class Members had the opportunity to object to the Settlement by January 27,
22 2025. As of the date of this Declaration, A.B. Data has not received any written
23 objections or comments related to the Settlement.

24 **OPT OUTS**

25 22. Pursuant to the terms of the Settlement Agreement, Settlement
26 Class Members had the opportunity to exclude themselves or “opt-out” of the
27 Settlement by January 27, 2025. As of the date of this Declaration, A.B. Data has
28 not received any requests to opt out of the Settlement. 4

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

2 Executed this 27th day of February 2025 in Milwaukee, WI.

3 

4
5 Kayla Kopetsky

EXHIBIT A

A.B. DATA, LTD.

Class Action Administration



November 4, 2024

Attorney General of the United States
Attorneys General of the States and Territories

Re: Notice of Proposed Class Action Settlement in *Davila, et al. v. New Enchantment Group, LLC*, United States District Court for the District of Arizona, No. 2:23-cv-01098.

Dear Attorneys General:

A.B. Data, Ltd., class action Settlement Administrator, on behalf of New Enchantment Group, LLC (NEG), the defendant in the above-referenced action (“Defendant”), hereby provides the following notice pursuant to Section 1715 of the Class Action Fairness Act (28 U.S.C. § 1715).

On June 14, 2023, Plaintiffs filed a Class Action Complaint asserting claims of negligence, breach of implied contract, unjust enrichment, and violation of the Arizona Consumer Fraud Act.

The Defendants deny they violated any law and dispute Plaintiffs’ allegations but have agreed to the Settlement to avoid the expenses and uncertainties associated with continuing this case.

After engaging in settlement negotiations before the Hon. Judge David E. Jones (Ret.), the parties have reached an agreement to settle this case. On October 10, 2024, the parties filed their Claim Form, Website and Postcard Notice and Class Action Settlement Agreement and Release (“Settlement”) with the Court, along with Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law in Support, and the proposed order granting preliminary approval and notice documents, which include instructions for submitting a claim, requesting exclusion and objecting to the settlement.

COMPLIANCE WITH 28 U.S.C. § 1715

Each of the requirements of notice pursuant to 28 U.S.C. § 1715(b)(1) – (8) is addressed below. All referenced exhibits are provided electronically at <https://bit.ly/NewEnchantmentCAFA> or by scanning this QR code:



To be added to our email list to receive CAFA correspondence digitally, please email help@abdataclassaction.com and we will add you to our email list.

1. **28 U.S.C. § 1715(b)(1) – Complaint and Related Materials:** Plaintiffs’ June 14, 2023, Class Action Complaint.
2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** The Court has scheduled a Final Approval Hearing to consider the parties’ proposed Settlement before the Honorable Susan R. Bolton of the District of Arizona to be held on March 13, 2025, at 11:00 a.m.
3. Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law in Support.
4. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** Proposed Website Notice, Postcard Notices and Claim Form.
5. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** The Parties’ Class Action Settlement Agreement and Release (“Settlement Agreement”).
6. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement:** Other than the Settlement Agreement referenced above, there are no contemporaneous agreements between counsel for Plaintiffs and counsel for Defendants.
7. **28 U.S.C. § 1715(b)(6) – Final Judgment:** No final judgment or notice of dismissal have yet been entered in this case, as of the date of this notice.
8. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members:** The Class List is comprised of “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.” Whereas Settlement Class Members must make a claim to receive Settlement Benefits the exact share allocation to each Settlement Class Member is not known, however, a breakdown by state with estimated percentage shares is included with the documentation.

9. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** On April 25, 2024, the Court issued an Order denying Defendant’s Motion to Dismiss. On October 29, 2024, the Court issued an Order Approving Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement. There are no other opinions available as of the date of this Notice.

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact the undersigned immediately so that Defendants can address any concerns or questions you may have.

Sincerely,

A.B. Data, Ltd.

Class action Settlement Administrator on behalf of Defendants



A.B. DATA, LTD.

abdataclassaction.com

New York | Washington, D.C. | Chicago | West Palm Beach | Milwaukee

EXHIBIT B

Court Approved Legal Notice
Davila et al. v. New Enchantment
Group, LLC, Case No. 2:23-cv-01098

**United States District Court for the
District of Arizona**

You Can Get Two years of free, triple-bureau Credit Monitoring Service; and Either reimbursement for Attested Time, Out-of-Pocket Costs, and/or Financial Losses; or an Alternative Cash Payment.

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

IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU ARE ENTITLED TO CLAIM BENEFITS AND YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER OR NOT YOU TAKE ACTION.

www.NewEnchantmentSettlement.com
1-877-316-0125

New Enchantment Settlement Administrator
PO Box 173106
Milwaukee, WI 53217

Postal Service: Please do not mark bar code

Unique ID: F [REDACTED]
Pin: 3 [REDACTED]

*****AUTO**SCH 5-DIGIT 2 [REDACTED]

S [REDACTED] M [REDACTED]

P [REDACTED] E [REDACTED]

[REDACTED] 2 [REDACTED]

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 using the Unique ID and PIN located above your name and address on the front of this Notice at www.newenchantmentsettlement.com by February 11, 2025, or by mail postmarked by February 11, 2025 and mailed to the Claims Administrator at New Enchantment Group, c/o AB Data, P.O. Box 173106 Milwaukee, WI 53217.

54910_NewEnchantment_KK_DBLPST

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 **January 27, 2025**.

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 **January 27, 2025**.

Detailed instructions on how to file a Claim Form, exclude yourself, or object are on the Settlement Website at www.newenchantmentsettlement.com. The Court will hold the Final Approval Hearing on **March 13, 2025**, at **11:00 AM MT** 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 www.newenchantmentsettlement.com, email info@newenchantmentsettlement.com or call 1-877-316-0125. You may also contact the Claims Administrator at New Enchantment Group, c/o AB Data, P.O. Box 173106 Milwaukee, WI 53217.

If your contact information needs to be updated, please fill out the information below and return to claims administrator.

Updated Address

City

State

Zip Code

Place
Stamp
Here

New Enchantment Settlement Administrator
PO Box 173106
Milwaukee, WI 53217

EXHIBIT C

New Enchantment Settlement Administrator

P.O. Box 173106

Milwaukee, WI 53217

FIRST CLASS MAIL
U.S. POSTAGE
PAID
MILWAUKEE, WI
PERMIT NO 3780

[REDACTED]

Claimant ID #: 8

Unique ID C

PIN R

M

1 N K

S 8

REMINDER NOTICE

Davila et al. v. New Enchantment Group, LLC, Case No. 2:23-cv-01098 (D. Ariz.)

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

OUR RECORDS INDICATE YOU WERE SENT A NOTICE OF SETTLEMENT BUT HAVE NOT YET
FILED A CLAIM.

What is this about? A settlement has been reached in a lawsuit against New Enchantment Group, LLC (“NEG”) arising from an incident involving unauthorized access to NEG’s computer network (the “Data Breach”). The lawsuit alleged certain files containing personally identifiable information were accessed during the Data Breach. 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? 2 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 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 using the Unique ID and PIN at www.newenchantmentsettlement.com by **February 11, 2025**, or by mail postmarked by **February 11, 2025**, and mailed to the Claims Administrator at New Enchantment Group, c/o AB Data, P.O. Box 173106 Milwaukee, WI 53217.

What are my other rights? Detailed instructions on how to file a Claim Form, exclude yourself, or object are on the Settlement Website at www.newenchantmentsettlement.com. The Court will hold the Final Approval Hearing on **March 13, 2025, at 11:00 AM MST**.

This is only a summary. For additional information, including deadlines, a copy of the Settlement Agreement, Notice, Claim Form, Settlement Class Counsel’s application for attorneys’ fees and expenses, and other documents, visit www.newenchantmentsettlement.com, email info@newenchantmentsettlement.com, or call 1-877-316-0125.