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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

22  
23 IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION

Case No.: 2:20-cv-00376-GMN

24 This Document Relates To: All actions.  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.  
  
Plaintiffs,  
  
v.  
  
MGM RESORTS INTERNATIONAL  
  
Defendant.

Master File No. 2:23-cv-01480-GMN  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**PLAINTIFFS’ UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND APPLICATION FOR ATTORNEYS’ FEES,  
COSTS, AND SERVICE AWARDS, AND MEMORANDUM OF LAW**

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1 Pursuant to Fed. R. Civ. P. 23, Plaintiffs<sup>1</sup> respectfully submit this Unopposed Motion for Final  
2 Approval of the Class Action Settlement and Application for Attorneys’ Fees, Costs, and Service  
3 Awards, and Memorandum of Law, supported by the Joint Declaration of Class Counsel (“Joint  
4 Decl.”), attached as *Exhibit B*, the Declaration of Cameron R. Azari, Esq. Regarding Implementation  
5 and Adequacy of Notice Program (“Admin Decl.”), attached as *Exhibit C*, and the Declaration of  
6 Brian T. Fitzpatrick, attached as *Exhibit D* (“Fitzpatrick Decl.”).

## 7 I. INTRODUCTION

8 On January 22, 2025, this Court preliminarily approved the Settlement,<sup>2</sup> which provides for  
9 substantial Settlement Class Member Benefits, including a non-reversionary, all cash \$45,000,000.00  
10 Settlement Fund, from which Settlement Class members may elect to receive Cash Payments and  
11 Financial Account Monitoring. (2019 ECF No. 244).<sup>3</sup> The Settlement Fund will be used to pay  
12 Settlement Class Member Benefits, any Court-awarded attorneys’ fees and costs to Class Counsel  
13 and Service Awards to the Class Representatives, and all Settlement Administration Costs.

14 The Settlement satisfies all the criteria for Final Approval. Consistent with the requirements  
15 of this Court’s Preliminary Approval Order, Amended Preliminary Approval Order, and the  
16 Settlement Agreement, Notice was properly effectuated to the Settlement Class. Admin Decl. ¶ 9.  
17 Currently, there are no objections and only 92 Settlement Class members have opted-out. *Id.* This  
18 overwhelmingly positive response affirms the Court’s initial conclusion that the Settlement is fair,  
19 reasonable, and adequate. (2019 ECF No. 244 at 13). Class Counsel has fully evaluated the strengths,  
20 weaknesses, and equities of the Parties’ respective positions and believe the proposed Settlement  
21 fairly resolves their respective differences. Joint Decl. ¶ 16.

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22  
23 <sup>1</sup> All capitalized terms used herein shall have the same meanings as those defined in Section II of the  
Settlement Agreement, attached as *Exhibit A*.

24 <sup>2</sup> The Court is aware that due to the overlapping classes and similarity in claims between the 2019  
25 Action and the 2023 Action, to preserve resources for all concerned (the Parties, Settlement Class  
26 members, and the Court), the Parties decided to resolve both actions in a single Settlement with one  
approval process before the Court.

27 <sup>3</sup> Record citations throughout this memorandum for case specific documents will be to either the 2019  
28 Action entry (“2019 ECF No. \_\_\_\_”) or the 2023 Action entry (“2023 ECF No. \_\_\_\_”), and when a  
document is filed in both Plaintiffs will cite to the 2019 Action record only.

1 Plaintiffs now move the Court for Final Approval and apply for an award of attorneys' fees,  
2 costs, and Service Awards. The Court should find the Settlement is within the range of reasonableness  
3 necessary to grant Final Approval under Fed. R. Civ. P. 23(e) and enter an order: (1) granting Final  
4 Approval of the Settlement; (2) affirming certification of the Settlement Class for settlement purposes,  
5 pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3); (3) reappointing the Plaintiffs as Class Representatives;  
6 (4) reappointing John Yanchunis, Doug McNamara, E. Michelle Drake, David Berger, J. Gerard  
7 Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow as Class Counsel for the  
8 Settlement Class; (5) awarding Service Awards to the Class Representatives; (6) awarding attorneys'  
9 fees and costs to Class Counsel; (7) affirming the appointment of the Settlement Administrator and  
10 approving the payment of Settlement Administration Costs; (8) overruling any timely objections, if  
11 any; and (9) entering final judgment dismissing the Actions with prejudice and reserving jurisdiction  
12 over Settlement implementation. A proposed Final Approval Order is attached as *Exhibit D*.

## 13 **II. PROCEDURAL HISTORY**

14 Defendant is a global gaming, hospitality, and entertainment company headquartered in Las  
15 Vegas, Nevada. In the course of operating its business, Defendant collects, maintains, and stores  
16 Private Information pertaining to its customers, including, but not limited to, names, contact  
17 information (such as telephone number, email address, and postal address), gender, dates of birth,  
18 driver's license numbers, passport numbers, and Social Security numbers.

### 19 **The 2019 Data Incident and 2019 Action**

20 In or about July 2019, unauthorized individuals accessed Defendant's network and  
21 downloaded certain customer data for approximately 37 million MGM guests. Joint Decl. ¶ 3.  
22 Defendant discovered the 2019 Data Incident on or about July 10, 2019. *Id.* According to Defendant,  
23 the unauthorized individuals acquired personally identifiable information including customers'  
24 names, postal addresses, telephone numbers, email addresses, dates of birth, and passport numbers.  
25 *Id.* However, for the vast majority of the victims, the exposure was limited to their name, postal  
26 address, email address, telephone number, and/or their date of birth. *Id.*

27 Defendant then began notifying the impacted individuals that their Private Information may  
28 have been impacted in the 2019 Data Incident. *Id.* ¶ 4. As a result, commencing on February 21, 2019,

1 Defendant was named in the first of eight class action lawsuits (2019 ECF No. 1), which were  
2 eventually consolidated into the 2019 Action before the Honorable Gloria M. Navarro. (2019 ECF  
3 No. 22, 86). The Court also appointed the 2019 Plaintiffs' interim class counsel. (2019 ECF No. 93.)

4 On April 2, 2021, the 2019 Plaintiffs filed a consolidated class action complaint, asserting  
5 claims for negligence, negligent misrepresentation, breach of implied contract, unjust enrichment,  
6 and various state consumer protection law violations. (2019 ECF No. 101). On June 1, 2021,  
7 Defendant filed a motion to dismiss the consolidated class action complaint, which was fully briefed.  
8 (2019 ECF No. 103, 109, 117). On August 13, 2021, Defendant filed a motion to stay discovery  
9 while the motion to dismiss was pending, which the 2019 Plaintiffs opposed, but the Court granted.  
10 (2019 ECF No. 115, 116, 120, 121). On November 2, 2022, the Court granted in part and denied in  
11 part Defendant's motion to dismiss. (2019 ECF No. 128). The Court upheld the 2019 Plaintiffs'  
12 claims for negligence, breach of implied contract, and violations of some state consumer protection  
13 laws, but dismissed claims for violations of other state consumer protection laws, negligent  
14 misrepresentation, and unjust enrichment. *Id.*

15 On December 19, 2022, Defendant answered the 2019 consolidated complaint, denying all  
16 material allegations and alleging affirmative defenses. (2019 ECF No. 136). Thereafter, the Parties in  
17 the 2019 Action engaged in substantial fact discovery, including written discovery, document  
18 production, depositions, and discovery motion practice. Joint Decl. ¶ 6. In connection therewith, the  
19 Parties filed a Stipulated Discovery Plan and Scheduling Order on December 12, 2022. (2019 ECF  
20 No. 133). On December 28, 2022, the Parties attended by telephone a Scheduling Conference  
21 regarding their Joint Discovery Plan and Scheduling Order. (2019 ECF No. 142). On December 29,  
22 2022, the Court entered a Scheduling Order, granting in part and denying in part the Parties' proposed  
23 discovery plan and scheduling order. (2019 ECF No. 143). On April 7, 2023, the Parties filed a joint  
24 stipulation and proposed protective order, which the Court entered on April 10, 2023. (2019 ECF  
25 Nos. 160, 161). On August 8, 2023, the Parties filed a joint stipulation for voluntary dismissal without  
26 prejudice of John Dvorak as a named plaintiff and proposed class representative, which the Court  
27 granted the same day. (2019 ECF Nos. 163, 164).

28 After the Parties had engaged in and completed significant discovery, the Parties filed a

1 stipulation and proposed order regarding modification of the discovery schedule, to complete  
2 depositions and resolve any outstanding discovery disputes. (2019 ECF No. 175). The Court entered  
3 the stipulation on November 8, 2023. (2019 ECF Nos. 180, 181). The 2019 Plaintiffs' counsel took  
4 six depositions (five MGM employees and one of a third-party) and defended seven named-Plaintiff  
5 depositions. Joint Decl. ¶ 7. Following Plaintiffs' counsel's review and coding of over 170,000 of the  
6 2019 Plaintiffs' documents, they produced thousands of responsive documents to the Defendant,  
7 while also reviewing and coding over 180,000 documents produced by the Defendant. *Id.*

8 On February 20, 2024, the 2019 Plaintiffs filed a motion to compel discovery regarding the  
9 2023 Data Breach. (2019 ECF No. 200). On March 15, 2024, the 2019 Plaintiffs filed a motion to  
10 compel Rule 30(b)(6) deposition testimony from Defendant. (2019 ECF No. 211). The Court denied  
11 both motions without prejudice on May 8, 2024. (2019 ECF No. 229). On March 15, 2024, the 2019  
12 Plaintiffs filed a motion to compel production regarding the 2019 Plaintiffs' Fourth Set of Requests  
13 for Production, which the Court denied on May 8, 2024. (2019 ECF Nos. 209, 230). On April 12,  
14 2024, the Court entered an Order granting the 2019 Parties' second request to modify the case  
15 management schedule. (2019 ECF No. 224).

### 16 **The 2023 Data Incident and 2023 Action**

17 Beginning on September 7, 2023, in a separate cybersecurity incident, unauthorized  
18 individuals accessed Defendant's network by impersonating an information technology administrator  
19 and gaining access to employees' network access credentials. Joint Decl. ¶ 8. Once inside the network,  
20 the unauthorized individuals locked down Defendant's network and further gained access to  
21 approximately 37 million customers' personally identifiable information, including, but not limited  
22 to MGM's customers and guests' names, addresses, telephone numbers, email addresses, dates of  
23 birth, driver's license numbers, passport numbers, military identification numbers, and in some cases,  
24 Social Security numbers. *Id.*

25 Similar to the 2019 Data Incident, the Defendant sent notice to the impacted individuals  
26 advising that their Private Information may have been involved in the 2023 Data Incident. Joint Decl.  
27 ¶ 9. As a result, commencing on September 21, 2023, the Defendant was named in the first of 14 class  
28 action lawsuits. (2023 ECF No. 1). On March 19, 2024, the 2023 Plaintiffs moved to consolidate the

1 cases. (2023 ECF No. 29). On March 22, 2024, the cases were consolidated into the 2023 Action  
2 before the Honorable Richard F. Boulware, II. (2023 ECF No. 32). On April 19, 2024, the 2023  
3 Plaintiffs moved for the appointment of interim lead counsel, which the Court granted on October 21,  
4 2024. (2023 ECF No. 42, 55).

5 The 2019 Plaintiffs filed notices of related cases on December 6, 2023 (2019 ECF No. 183)  
6 and December 20, 2023 (2019 ECF No. 185), seeking to relate several cases filed relating to the 2023  
7 Data Incident, which Defendant and 2023 Plaintiffs opposed. (2019 ECF Nos. 184, 186, 187, 188).

### 8 **The 2019 Plaintiffs and 2023 Plaintiffs Agreement to Work Cooperatively for Mediation**

9 In July 2024, the 2019 Plaintiffs and the 2023 Plaintiffs agreed to participate in a joint  
10 mediation with Defendant before an experienced data breach mediator, Bruce Friedman, Esq., with  
11 JAMS in Las Vegas on August 5, 2024. Joint Decl. ¶ 10. On July 9, 2024, the 2019 Parties filed a  
12 stipulation to stay the case pending mediation, which the Court granted that same day. (2019 ECF  
13 No. 237.) Before mediation, the 2019 Plaintiffs and the 2023 Plaintiffs propounded informal  
14 discovery requests to learn as much as possible about the 2019 Data Incident and the 2023 Data  
15 Incident. Joint Decl. ¶ 11. Through the provision of informal discovery, Plaintiffs in both cases were  
16 able to evaluate the merits of Defendant's position. *Id.* The Parties also exchanged detailed mediation  
17 briefs outlining their positions with respect to liability, damages, and settlement-related issues. *Id.*  
18 The mediation was canceled for various reasons. *Id.* Thereafter, the 2019 Plaintiffs and the 2023  
19 Plaintiffs decided to work together and collectively pursue a global settlement of the Actions. *Id.*

20 On August 14, 2024, Defendant withdrew its response to the 2019 Plaintiffs' notices of related  
21 cases. (2019 ECF No. 235). On September 18, 2024, the Court issued a Minute Order stating it would  
22 accept transfer of the consolidated cases in the 2023 Action. (2019 ECF No. 237).

23 The Parties rescheduled and participated in mediation for October 10, 2024, with Mr.  
24 Friedman, in Las Vegas. (*See* 2019 ECF No. 236). In advance of the mediation, Plaintiffs propounded  
25 additional informal discovery requests regarding the size and scope of the Data Incidents, including,  
26 but not limited to, the number of persons potentially impacted, the data elements impacted, and the  
27 geographical makeup of the putative classes. Joint Decl. ¶ 12. After a full day of negotiations, the  
28 Parties were unable to reach a settlement. Over the next several weeks, however, the Parties continued

1 to negotiate the contours of a potential global resolution. *Id.*

2 On October 31, 2024, the 2019 Plaintiffs filed a notice of settlement, notifying the Court that  
3 all Parties (including the 2023 Plaintiffs) were able to resolve the cases. (2019 ECF No. 238). On  
4 November 4, 2024, the Court entered a Minute Order requiring the Parties to file a joint status report  
5 every 60 days, beginning on December 2, 2024, informing the Court of the status of settlement. (2019  
6 ECF No. 239). On November 7, 2024, the Clerk of Court was directed to transfer the 2023 Action for  
7 all further proceedings (2023 ECF No. 57).

8 The Parties negotiated the terms of the Settlement Agreement over the next couple of months  
9 ultimately signing it on January 17, 2025. Joint Decl. ¶ 13. Plaintiffs filed their Motion for Preliminary  
10 Approval on January 17, 2025, in both the 2019 Action and 2023 Action (2019 ECF No. 243), and  
11 the Court granted Preliminary Approval on January 22, 2025. (ECF No. 244).

12 On January 30, 2024, Plaintiffs filed their Consolidated Class Action Complaint in the 2023  
13 Action, alleging negligence, negligence per se, breach of implied contract, unjust enrichment, breach  
14 of confidence, violation of California’s Unfair Competition Law, violation of the California  
15 Consumer Records Act, violation of the California Consumer Privacy Act, and violation of the  
16 Nevada Consumer Fraud Act. (2023 ECF No. 64).

17 On March 28, 2025, the Parties modified the Settlement Agreement by signing the  
18 Amendment to Settlement Agreement solely pertaining to one aspect of Notice, attached hereto as  
19 *Exhibit A-1*. On April 1, 2025, the Parties filed a Joint Motion to Approve Amendment to Settlement  
20 Agreement (ECF No. 250), and the Court granted the motion the same day (2019 ECF No. 251).

21 **III. SUMMARY OF THE SETTLEMENT**

22 **A. Settlement Class** – Plaintiffs seek Final Approval of the following Settlement Class:  
23 [A]ll persons in the United States whose Private Information was accessed during the  
24 Data Incidents.

25 In addition, there are three subclasses: Tier 1, Tier 2, and Tier 3. Agreement ¶¶ 84-86. Membership  
26 in the subclasses is determined based upon the type of data a Settlement Class Member had impacted  
27 in the Data Incidents. *Id.* Excluded from the Settlement Class are the judges presiding over the Actions  
28 and members of their direct families. *Id.* ¶ 76.

1           **B. Settlement Fund** – The Settlement provides for a non-reversionary \$45,000,000 all  
2 cash Settlement Fund. *Id.* ¶ 88. The Defendant has fully funded the Escrow Account after Preliminary  
3 Approval. Joint Decl. ¶ 14. The Settlement will be used to pay: (1) all Settlement Class Member  
4 Benefits; (2) any attorneys’ fees and costs awarded by the Court to Class Counsel and any Service  
5 Awards to the Class Representatives; and (3) all Settlement Administration Costs. Agreement ¶ 89.  
6 The Defendant is not required to make any other payments under this Settlement. *Id.* ¶ 88.

7           **C. Settlement Class Member Benefits** – All Settlement Class Members are eligible to  
8 submit a Claim for a Documented Loss Cash Payment in a maximum amount of \$15,000.00 per  
9 individual and Financial Account Monitoring. *Id.* ¶ 92. Additionally, Tier 1 Settlement Class  
10 Members may submit a Claim for a Tier 1 Cash Payment, Tier 2 Settlement Class Members for a Tier  
11 2 Cash Payment, and Tier 3 Settlement Class Members for a Tier 3 Cash Payment. *Id.* All Settlement  
12 Class Member Cash Payments may be subject to a *pro rata* increase or decrease, depending on the  
13 number of Valid Claims and the value of all Cash Payments claimed. *Id.* Settlement Class Members  
14 who do not submit a Valid Claim will release his or her claims against Defendant without receiving  
15 a Settlement Class Member Benefit. *Id.*

16                           ***Documented Loss Cash Payment***

17           All Settlement Class Members may submit a Claim Form for a Documented Loss Cash  
18 Payment for up to \$15,000.00 per Settlement Class Member upon presentment of documented losses  
19 fairly traceable to either Data Incident, and attest under penalty of perjury to incurring documented  
20 losses, supported by reasonable documentation. *Id.* These losses may include, without limitation,  
21 unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees,  
22 accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing  
23 credit with any credit reporting agency; credit monitoring costs incurred on or after the applicable  
24 Data Incident through the date of claim submission; and miscellaneous expenses such as notary,  
25 facsimile, postage, copying, mileage, and long-distance telephone charges. *Id.* The supporting  
26 documentation may include receipts or other documentation not “self-prepared” by the Claimant.  
27 “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive  
28 reimbursement, but can be considered to add clarity or support other submitted documentation. *Id.*

1 The lack of reasonable documentation supporting a loss, or if the Claim is rejected by the Settlement  
2 Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, will  
3 result in the rejection of the Claim for a Documented Loss Cash Payment. *Id.* ¶ 92.a.

4 ***Tiered Cash Payments***

5 In addition to a Document Loss Cash Payment, all eligible Settlement Class Members may  
6 elect a Tier Cash Payment, the amount of which is based upon whether they are a Tier 1, 2, or 3  
7 Settlement Class Member. *Id.* ¶ 92.b.-d. The tiers are determined by the type of data a Settlement  
8 Class Member had exposed in a Data Incident. The Notices provides a unique identifier which  
9 Settlement Class members can use on the Settlement Website to determine the applicable tier. *Id.*

10 **1. Tier 1 Cash Payment – \$75.00 for Tier 1 Settlement Class members**

11 In addition to a Documented Loss Cash Payment, Tier 1 Settlement Class Members may also  
12 elect to receive a Tier 1 Cash Payment, which is an estimated cash \$75.00 payment. *Id.* ¶ 92.b.

13 **2. Tier 2 Cash Payment – \$50.00 for Tier 2 Settlement Class members**

14 In addition to a Documented Loss Cash Payment, Tier 2 Settlement Class members may also  
15 elect to receive a Tier 2 Cash Payment, which is an estimated cash \$50.00 payment. *Id.* ¶ 92.c.

16 **3. Tier 3 Cash Payment – \$20.00 for Tier 3 Settlement Class members**

17 In addition to a Documented Loss Cash Payment, Tier 3 Settlement Class members may also  
18 elect to receive a Tier 3 Cash Payment which is an estimated cash \$20.00 payment. *Id.* ¶ 92.d.

19 ***Financial Account Monitoring***

20 In addition to electing a Cash Payment, all Settlement Class Members may elect to submit a  
21 Claim for Financial Account Monitoring consisting of identity theft protection and credit monitoring  
22 as follows: one year of CyEx Identity Defense Total with three-bureau monitoring and at least  
23 \$1,000,000 of fraud/identity theft insurance. *Id.* ¶ 92.e. The one-year period will commence when  
24 Settlement Class Members use their codes to activate the Financial Account Monitoring product. *Id.*

25 **D. Release** – In exchange for the Settlement Class Member Benefits, the Releasing Parties  
26 agree to Release the Release Parties from all claims arising out of the Data Incidents, the Actions, the  
27 information at issue in the Data Incidents, or the alleged violations of laws or regulations cited in the  
28 Complaints. The detailed Release language is found in Section XIII of the Agreement.

1           **E. Disposition of Residual Funds** – Any funds remaining in the Settlement Fund,  
2 including from uncashed checks, following the 180-day check negotiation period shall be distributed  
3 to a mutually agreeable *cy pres* recipient to be approved by the Court. *Id.* ¶ 128. The Parties propose  
4 the UNLV Cyber Clinic (<https://freecyberclinic.org/about>) as the recipient. Joint Decl. ¶ 20. That non-  
5 profit organization’s mission matches the Action’s goals to redress and protect consumer privacy  
6 rights by “striving to protect and educate small businesses while building the foundation for  
7 tomorrow’s cybersecurity professionals.” *Id.* (quoting <https://freecyberclinic.org/team>).

8           **F. Service Awards** – Pursuant to the Agreement, Class Counsel request Service Awards  
9 in the amount of \$10,000.00 each for those Plaintiffs that were deposed in the 2019 Action and  
10 \$3,500.00 each for those Plaintiffs that served in the 2023 Action. Agreement ¶ 125. The Notices  
11 advised The Settlement Class of the amount Class Counsel intended to seek. *Id.*, Ex. 1-4.

12           **G. Attorneys’ Fees and Costs** – Class Counsel request an award of attorneys’ fees of 30%  
13 of the Settlement Fund or \$13,500,000, plus reimbursement of costs. *Id.* ¶ 126. The Notices advise  
14 the Settlement Class of the amount of attorneys’ fees Class Counsel intended to seek. *Id.*, Ex. 1-4.

15 **IV. NOTICE PROGRAM, CLAIMS, OPT-OUTS AND OBJECTIONS**

16           **A. Notice Program** – On January 22, 2025, pursuant to the Preliminary Approval Order,  
17 Defendant provided the Settlement Administrator with the Class List. Admin Decl. ¶ 13. Thereafter,  
18 the Settlement Administrator implemented the Notice Program, sending Email Notice to Settlement  
19 Class members for whom a valid email address was available and sending Postcard Notice to non-  
20 Tiered and Tier 1, Tier 2, and Tier 3 Settlement Class members with an available mailing address for  
21 whom no valid email address is available. *Id.* ¶¶ 15-20. Publication Notice, consisting of digital  
22 notice, sponsored search listings, and an information release, was made to create awareness about the  
23 Settlement to those Settlement Class members who may not have seen the Notice. *Id.* ¶¶ 22-37. A  
24 Long Form Notice was available on the Settlement Website or by mail upon request from a Settlement  
25 Class member. *Id.* ¶¶ 21, 38. Lastly, a Settlement telephone line was established for Settlement Class  
26 members to obtain answers to frequently asked questions and a postal mailing address was established  
27 to allow Settlement Class members the opportunity to request additional information or ask questions.  
28 *Id.* ¶¶ 39-40.

1 Between February 20, 2025, and March 19, 2025, the Settlement Administrator initiated phase  
2 one of the Publication Notice plan which included banner advertisements on Google, Facebook,  
3 Instagram, Reddit and X. *Id.* ¶ 22. Phase 2 will continue to May 8, 2025 with the Settlement  
4 Administrator running the Publication Notice plan which includes running additional banner  
5 advertisements on the same platforms. *Id.* Search advertisements consisting of sponsored search  
6 listings for the Settlement Website began running on February 20, 2025, and will continue to run  
7 through June 3, 2025. *Id.* ¶ 35. Lastly, an informational release was published by the Settlement  
8 Administrator on February 20, 2025. *Id.* ¶¶ 36-37. More detail about the extensive Publication Notice  
9 is in the Settlement Administrator’s declaration. *Id.* ¶¶ 22-37.

10 Beginning February 20, 2025, the Settlement Administrator sent 48,057,202 Email Notices.  
11 *Id.* ¶ 15. Beginning April 16, 2025, the Settlement Administrator sent 4,978,730 Postcard Notices. *Id.*  
12 ¶ 18. In summary, as of April 28, 2025, individual Notice efforts have reached approximately 90% of  
13 the identified Settlement Class. *Id.* ¶ 46.

14 A Settlement Website ([www.mgmdatassettlement.com](http://www.mgmdatassettlement.com)) was established and went live on  
15 February 19, 2025. Admin Decl. ¶ 38. It serves as a portal for Settlement Class Members to submit  
16 Claim Forms to the Settlement Administrator and contains detailed information about the Actions,  
17 including important documents such as the Claim Form, Complaint, Long Form Notice, Settlement  
18 Agreement, Amendment to Settlement Agreement, Motion for Preliminary Approval, Preliminary  
19 Approval Order, and eventually the Motion for Final Approval and Application for Attorneys’ Fees,  
20 Costs, and Service Awards and the Final Approval. Order. *Id.* As of April 28, 2025, the Settlement  
21 Website had 793,819 unique visits and 3,297,945 page views. *Id.*

22 Also, on February 19, 2025, the Settlement Administrator established a toll-free telephone  
23 number (888.899.8358) for Settlement Class members to call for Settlement information and/or to  
24 request a Long Form Notice and Claim Form. *Id.* ¶ 39. As of April 28, 2025, there have been 10,571  
25 calls to the toll-free telephone number representing 21,193 minutes of use. *Id.*

26 A Long Form Notice and Claim Form were mailed on request via the toll-free telephone  
27 number or other means. *Id.* ¶ 21. As of April 28, 2025, the Settlement Administrator mailed 1,347  
28 Notice Packages with the Long Form Notice and Claim Form to Settlement Class members. *Id.*

1           **B. Claim Process** – The Claim Process was structured to ensure that all Settlement Class  
2 members had adequate time to review the Settlement terms, compile documents supporting their  
3 Claim, and decide whether to submit a Claim and to opt-out of or object to the Settlement. Joint Decl.  
4 ¶ 18. Settlement Class Members may continue to submit Claim Forms online or by mail prior to the  
5 June 3, 2025 Claim Form Deadline. *Id.* Settlement Class Members have the option of requesting an  
6 electronic payment or a traditional paper check on the Claim Form. *Id.* As of April 28, 2025, Epiq  
7 has received 414,415 Claim Forms (413,575 online and 940 paper). Admin Decl. ¶ 43. These numbers  
8 are preliminary. *Id.* Claim Forms are still subject to final audits, including full assessment of each  
9 Claim’s validity and a review for duplicate submissions. *Id.* Class Counsel will update the Court at  
10 the Final Approval Hearing as to the number of Claims.

11           **C. Objections and Opt-Outs** – The Objection and Opt-Out Periods end on May 19, 2025.  
12 *Id.* ¶ 41. As of May 2, 2025, there are no objections<sup>4</sup> and only 92 opt-out requests. *Id.* Plaintiffs will  
13 update the Court at the Final Approval Hearing if anyone objects or about any additional opt-outs.

## 14 **V. ARGUMENT**

### 15           **A. The Settlement Class Should Be Certified, and the Appointments of Class** 16           **Representatives, Class Counsel, and the Settlement Administrator Affirmed.**

17           The Motion for Preliminary Approval detailed the bases for certifying the Settlement Class  
18 pursuant to Fed. R. Civ. P. 23(a) and (b)(3). In compliance with Fed. R. Civ. P. 23(e), the Court’s  
19 Preliminary Approval Order details its findings for why it would be likely to certify the Settlement  
20 Class at the Final Approval stage, finding the following requirements were all met: ascertainability,  
21 numerosity, commonality, typicality, adequacy of representation, predominance, and superiority.  
22 (2019 ECF No. 244 at 13-19). Nothing has changed since Preliminary Approval was granted and the  
23 Settlement Class was provisionally certified. For brevity’s sake, Plaintiffs incorporate the Motion for  
24 Preliminary Approval by reference. (ECF No. 243 at 11-16).

25           Plaintiffs’ appointments as the Class Representatives should be affirmed as they remain

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26  
27 <sup>4</sup> Jeffrey L. Beckerleg’s submitted an objection to the Settlement Administrator, but after consultation  
28 with Class Counsel about the Settlement on April 25, 2025, he confirmed the withdrawal of his  
objection. Joint Decl. ¶ 45.

1 adequate. For the same reasons the Court found them adequate under Fed. R. Civ. P. 23(a)(4), the  
2 Court should also affirm the designation of John Yanchunis, Doug McNamara, E. Michelle Drake,  
3 David Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow  
4 as Class Counsel. Federal Rule of Civil Procedure 23(g)(1)(A)'s four factors for appointing class  
5 counsel are (1) "the work counsel has done in identifying or investigating potential claims in the  
6 action;" (2) "counsel's experience in handling class actions, other complex litigation, and the types  
7 of claims asserted in the action;" (3) "counsel's knowledge of the applicable law;" and (4) "the  
8 resources that counsel will commit to representing the class." The Court may also "consider any other  
9 matter pertinent to counsel's ability to fairly and adequately represent the interests of the class[.]"  
10 Fed. R. Civ. P. 23(g)(1)(B). Here, Class Counsel are qualified and competent leaders in the class  
11 action field with extensive experience prosecuting and resolving complex class actions, including  
12 data breach class actions. Before commencing litigation, they investigated the potential claims,  
13 interviewed potential plaintiffs, and gathered information regarding the Data Incident. Joint Decl. ¶  
14 37. Class Counsel has devoted substantial time and resources to this Action and will continue to do  
15 so. *Id.* ¶¶ 37-39. Finally, Epiq's appointment as the Settlement Administrator should be confirmed.

16 **B. The Settlement Should be Finally Approved.**

17 A class action may not be settled without the approval of the court. Fed. R. Civ. Proc. 23(e).  
18 The decision to approve or reject a proposed settlement "is committed to the sound discretion of the  
19 trial judge[.]" *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The Supreme Court  
20 has recognized the benefits of a proposed settlement of a class action can be realized only through the  
21 certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

22 In *Andersen v. Briad Restaurant Group LLC*, No. 2:14-cv-00786-GMN-BNW, 2022 WL  
23 181262, at \*2 (D. Nev. Jan. 19, 2022) (Navarro, J.), this Court observed:

24 The Ninth Circuit has declared that a strong judicial policy favors settlement of class  
25 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).  
26 However, a class action may not be settled without court approval. Fed. R. Civ. P.  
27 23(e). When the parties to a putative class action reach a settlement agreement prior  
28 to class certification, "courts must peruse the proposed compromise to ratify both the  
propriety of the certification and the fairness of the settlement." *Staton v. Boeing Co.*,  
327 F.3d 938, 952 (9th Cir. 2003). At the preliminary stage, the court must first assess  
whether a class exists. *Id.* (citing *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620,  
117 S. Ct. 2231, 138 L.Ed.2d 689 (1997)). Second, the court must determine whether

1 the proposed settlement “is fundamentally fair, adequate, and reasonable.” *Hanlon v.*  
 2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). If the court preliminarily certifies  
 3 the class and finds the proposed settlement fair to its members, the court schedules a  
 4 fairness hearing where it will make a final determination as to the fairness of the class  
 5 settlement. Third, the court must “direct notice in a reasonable manner to all class  
 6 members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).

7 The Preliminary Approval Order found the Court would likely finally approve the Settlement  
 8 (ECF No. 244 at 21), after considering and finding the Settlement is fair, adequate, and reasonable  
 9 under Fed. R. Civ. P. 23(e)(2) and the “*Churchill*” factors. Now, the Court should grant Final  
 10 Approval considering those same factors, being able to now judge the Settlement Class’s positive  
 11 reaction to the Settlement with no objections, only 77 opt-outs and hundreds of thousands of Claims  
 12 to date (the Claim Form Deadline is not until June 3, 2025).

13 The Rule 23(e)(2) factors are:

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

24 The “*Churchill*” factors include: “(1) the strength of the plaintiff’s case; (2) the risk, expense,  
 25 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status  
 26 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage  
 27 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental  
 28 participant; and (8) the reaction of the class members of the proposed settlement.” *In re Bluetooth*  
*Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill., L.L.C. v. Gen.*  
*Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). The Settlement warrants Final Approval under the Rule  
 23(e)(2) and *Churchill* factors, which Plaintiffs address together because they overlap.<sup>5</sup>

29 **1. Adequacy of Representation (Rule 23(e)(2)(A) and *Churchill* Factor 5)** – Both Class  
 30 Counsel and the Class Representatives have adequately represented the Settlement Class. Joint Decl.  
 31 ¶22. Class Counsel fully investigated and litigated the facts and legal claims before settling the Action

32 <sup>5</sup> The seventh *Churchill* factor is inapplicable because there is no government participant.

1 and used their experience in complex class action litigation, including similar data breach actions. *Id.*  
2 Their substantial efforts to vigorously litigate the Action are exhibited by the motion practice and  
3 extensive discovery that took place in the 2019 Action, and the Parties' participated in the exchange  
4 of necessary informal discovery related to the 2023 Action. *Id.* Their understanding of the Data  
5 Incidents, the Defendant's liability, and the scope of damages at issue, before attending a full-day  
6 mediation session with an experienced mediator, allowed for arm's length and good faith  
7 negotiations, without collusion. *Id.* ¶ 23.

8 The Class Representatives also have demonstrated their adequacy by (i) having a genuine  
9 personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii) producing  
10 information and documents to Class Counsel to permit investigation and development of the  
11 complaints; (iv) being available as needed, including to respond to discovery and in the case of the  
12 2019 Plaintiffs sitting for deposition; (v) monitoring the Actions; and (vi) reviewing the Settlement  
13 terms. *Id.* ¶ 24. Plaintiffs' respective interests are coextensive and do not conflict with the interests of  
14 the Settlement Class. *Id.* ¶ 25. Plaintiffs have the same interest in the Settlement relief, and the absent  
15 Settlement Class members have no diverging interests. *Id.*

16 **2. The Settlement Was Negotiated at Arm's Length (Rule 23(e)(2)(B) and *Churchill***  
17 **Factor 6)** – This Circuit puts “a good deal of stock in the product of arms-length, negotiated  
18 resolution.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (citing *Hanlon*, 150  
19 F.3d at 1027; *Officers for Justice v. Civ. Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). “An initial  
20 presumption of fairness is usually involved if the settlement is recommended by class counsel after  
21 arm's-length bargaining.” *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL  
22 1230826, at \*6 (N.D. Cal. Apr. 1, 2011), supplemented, No. C-06-05778 JCS, 2011 WL 1838562  
23 (N.D. Cal. May 13, 2011).

24 The Settlement is the result of good faith, informed, and arm's-length negotiations between  
25 experienced class action attorneys familiar with the legal and factual issues at stake. Joint Decl. ¶ 15.  
26 Class Counsel endorse the Settlement after they thoroughly investigated and analyzed Plaintiffs'  
27 claims; fully briefed the motion to dismiss the 2019 Data Incident claims, which the court denied in  
28 part and granted in part; engaged in substantial formal and informal discovery for the 2019 Data

1 Incident and informal discovery for the 2023 Data Incident; and consulted with data security experts,  
 2 enabling them to gain an understanding of the evidence related to central questions in the Actions and  
 3 preparing them for well-informed settlement negotiations. *Id.* The Settlement was reached with the  
 4 assistance of a well-respected and experienced mediator. *Id.* For these reasons and those discussed  
 5 related to attorneys' fees below, there was no fraud or collusion in settling.<sup>6</sup>

6 **3. The Adequacy of the Settlement Relief (Rule 23(e)(2)(C) and Churchill Factors 1-**  
 7 **4)** – Although Plaintiffs believe their claims are strong and meritorious and the Settlement Class  
 8 would ultimately prevail at trial, continued litigation against Defendant poses significant risks that  
 9 make any recovery for the Settlement Class uncertain. Joint Decl. ¶ 26. In assessing the degree of risk  
 10 of continued litigation, “the court evaluates the time and cost required.” *Adoma v. Univ. of Phoenix,*  
 11 *Inc.*, 913 F.Supp.2d 964, 976 (E.D. Cal. 2012). “[U]nless the settlement is clearly inadequate, its  
 12 acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Id.*  
 13 (quoting *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal.  
 14 2004)). “The parties . . . save themselves the time, expense, and inevitable risk of litigation. Naturally,  
 15 the agreement reached normally embodies a compromise; in exchange for the saving of cost and  
 16 elimination of risk, the parties each give up something that they might have won had they proceeded  
 17 with litigation.” *Officers for Justice*, 688 F.2d at 624 (citation omitted).

18 Data breach class actions are risky. *See, e.g., In re Fortra File Transfer Software Data Sec.*  
 19 *Breach Litigation*, No. 24-MD-03090-RAR, 2025 WL 457896, at \*9 (S.D. Fla. Feb. 11, 2025); *In re*  
 20 *Mednax Serv., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, 2024 WL 1554329, at \*7  
 21 (S.D. Fla. Apr. 10, 2024); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273  
 22 (11th Cir. 2021) (“Settlements also save the bench and bar time, money, and headaches”);  
 23 *FultonGreen v. Accolade, Inc.*, No. 18-274, 2019 WL 4677954, at \*8 (E.D. Pa. Sept. 24, 2019) (data  
 24 breach class actions are “a risky field of litigation because [they] are uncertain and class certification  
 25

26 <sup>6</sup> None of the so-called “*Bluetooth*” factors are of concern. *See In re Bluetooth*, 654 F.3d at 947. First,  
 27 Class Counsel will not receive a disproportionate distribution from the Settlement Fund. Second, there  
 28 is no clear-sailing arrangement regarding the attorneys’ fees Class Counsel will seek. Agreement ¶  
 127. Third, there is no provision that unawarded attorneys’ fees would revert to Defendant.

1 is rare”). *See also, e.g., In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-mn-02972-JFA,  
2 2024 WL 2155221 (D.S.C. May 14, 2024) (denying class certification in a data breach case). The  
3 Settlement’s fairness is underscored by considering the obstacles the Settlement Class would face in  
4 ultimately succeeding on the merits, and the expense and likely duration of the litigation.

5 Given the significant risks, the Settlement provides meaningful Settlement Class Member  
6 Benefits, including Cash Payments and Financial Account Monitoring. The Claim Form process and  
7 distribution of Settlement Class Member Benefits is fair, convenient, and effective. Settlement Class  
8 Members will promptly receive Cash Payments by electronic means or paper check issued by the  
9 Settlement Administrator and Financial Account Monitoring, if elected. Joint Decl. ¶ 18. The  
10 Settlement Administrator is highly qualified to manage the entire process. *See generally* Admin Decl.  
11 Thus, the Settlement provides Plaintiffs and Settlement Class Members significant benefits without  
12 facing further risk of not receiving any relief. *Andersen*, 2022 WL 181262 at \*7.

13 The attorneys’ fees do not impact the other Settlement terms, as Class Counsel and Defendant  
14 negotiated and reached agreement regarding attorneys’ fees and costs only after reaching agreement  
15 on all other material Settlement terms. Joint Decl. ¶ 27. The Settlement, including the Settlement  
16 Class Member Benefits, is also not contingent on approval of the attorneys’ fee or costs award to  
17 Class Counsel or the Service Awards. Agreement ¶ 127. As the Application for Attorneys’ Fees,  
18 Costs, and Service Awards details below, the 30% of the common Settlement Fund sought is within  
19 the typical range of acceptable attorneys’ fees in the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*,  
20 290 F.3d 1043, 1048 (9th Cir. 2002). Finally, there are no separate agreements to disclose under Rule  
21 23(e)(3)—all of the Parties’ agreements are in the Agreement, as amended. Joint Decl. ¶ 28.

22 The amount of the Settlement is well within the range of reasonableness for data breaches of  
23 this size and for the type of information at issue. *Id.* at ¶ 17. If approved, the Settlement will provide  
24 certain, substantial, and immediate relief to the Settlement Class. *Id.* This Settlement compares very  
25 favorably to the following approved common fund data breach settlements from around the country,  
26 given the types of data involved in the Data Incidents and class size: *In re T-Mobile Customer Data*  
27 *Sec. Breach Litig.*, No. 4:21-MD-03019-BCW, 2023 WL 11878508 (W.D. Mo. June 29, 2023)  
28 (\$350,000,000 for 100,000,000 class members); *In re Cap. One Consumer Data Sec. Breach Litig.*,

No. 1:19-md-2915 (AJT/JFA) E.D. Va. Sept. 13, 2022) (\$190,000,000 for 98,000,000 class members); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247 (11th Cir. 2021) (\$380,500,000 for 147,000,000 class members); *In re Yahoo! Inc. Customer Data Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811 (N.D. Cal. July 20, 2020) (\$117,500,000 for 194,000,000 class members); *In re Experian Data Breach Litig.*, No. 8:15-cv-01592 AG (DFMx), ECF No. 322 (C.D. Cal. May 10, 2019) (\$22,000,000 for 15,000,000 class members); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299 (N.D. Cal. 2018) (\$115,000,000 for 79,200,000 class members); *In re Target Corp Customer Data Sec. Breach Litig.*, No. 0:14-MD-02522, ECF Nos. 645, 791 (D. Minn.) (\$10,000,000 for 97,500,000 class members); *In re The Home Depot Inc Customer Data Sec. Breach Litig.*, No. 1:14-md-02583-TWT, 2016 WL 6902351 (N.D. Ga. Aug. 23, 2016) (\$13,000,000.00 for 61,000,000 class members). Thus, the fourth *Churchill* factor is also satisfied.

**4. The Equitable Treatment of Settlement Class Members (Rule 23(e)(2)(D))** – All Settlement Class Members are given an equal opportunity to claim Settlement Class Member Benefits. Specifically, each has the option to be reimbursed for documented losses up to \$15,000.00, may elect to receive an additional Cash Payment based upon their respective Settlement Class tier, and all may select Financial Account Monitoring. Joint Decl. ¶ 19. The tiering of additional flat Cash Payments reasonably assigns higher value to the more valuable categories of Private Information exfiltrated in the Data Incidents. *Id.* All Settlement Class Member Cash Payments may be subject to a *pro rata* increase or decrease, depending on the number of Valid Claims. *Id.* Thus, the Settlement Class Member Benefits distribution method will be equitable and effective. *Id.*

**5. The Reaction of the Settlement Class** – As indicated above, to date there are no objections and only 92 opt-outs. Admin Decl. ¶ 41. Given the Settlement Class consists of tens of millions of people, and the hundreds of thousands of Claims submitted to date, it is fair to say the Settlement Class has had an overwhelming positive response to the Settlement.

\*\*\*\*

Accordingly, the Court should find the Settlement is fair, reasonable, and adequately protects the interests of the Settlement Class members and grant Final Approval.

1           **C. Notice Was Adequate and Satisfies Rule 23 and Due Process Requirements**

2           The Court-approved Notice Program carried out by the Settlement Administrator conforms  
3 with the procedural and substantive requirements of due process and Rule 23. Admin Decl. ¶¶ 45-48;  
4 Joint Decl. ¶ 21. Settlement Class members received Notice of the settlement and have the opportunity  
5 to be heard and participate in the Action. *See* Fed. R. Civ. P. 23(c)(2)(B). The Court exercised its  
6 discretion to approve a reasonable Notice Program. As the Court held when granting Preliminary  
7 Approval, the Notice is the best notice practicable under the circumstances and constitutes due and  
8 sufficient notice of the Settlement to all Class Members. (ECF No. 244 at 26-27). The best notice  
9 practicable is that which “is reasonably calculated, under all of the circumstances, to apprise interested  
10 parties of the pendency of the action and afford them an opportunity to present their objections.”  
11 *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The Notices included, among  
12 other information: a description of the material terms of the Settlement; how to submit a Claim Form;  
13 the Claim Form Deadline; the last day to opt-out of the Settlement Class; the last day to object to the  
14 Settlement and/or Application for Attorneys’ fees, Costs, and Service Awards; the Final Approval  
15 Hearing date; and the Settlement Website address at which Settlement Class members may access  
16 this Agreement and other related documents and information. Admin Decl., Attachments 1-4, 6, 10-  
17 11. The Notice Program also included a toll-free number to ask Settlement-related questions and the  
18 Settlement Website containing relevant Settlement Information. *Id.* ¶ 39. Finally, the Notice Program  
19 satisfies the requirements of Rule 23(h)(1), as it notifies the Settlement Class that Class Counsel may  
20 apply to the Court for an award of attorneys’ fees of up to 30% of the Settlement Fund, plus  
21 reimbursement of costs.

22 **VI. APPLICATION FOR ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS**

23           The 2019 Action has been litigated for over five years and the 2023 Action is now entering  
24 year three. Joint Decl. ¶ 32. Class Counsel and the 2023 Action’s Plaintiffs’ Steering Committee have  
25 collectively expended thousands of hours and advanced hundreds of thousands of dollars to achieve  
26 this Settlement which includes substantial benefits for tens of millions of people. *Id.* To get to this  
27 point, Class Counsel had to defeat a motion to dismiss and engage in contested motion practice in the  
28 2019 Action and significant formal and informal discovery in the 2019 Action and 2023 Actions. *Id.*

1 ¶ 15. The result is favorable when compared to other data breach settlements involving similar types  
2 of data and considering the entirety of the Data Incidents. *Id.* ¶ 34. Class Counsel have not been  
3 compensated for their time, nor reimbursed for the significant costs they have incurred. *Id.* ¶ 36. They  
4 undertook enormous risk, agreeing to represent Plaintiffs on a fully contingent basis, knowing there  
5 was no guarantee they would be reimbursed for their time and out of pocket costs. *Id.* ¶ 35. Due to  
6 the uncertainty of the data breach litigation landscape and the mix of decisions in this Circuit and  
7 across the country, there was significant risk of nonpayment. *Id.* ¶ 36.

8 As compensation for the skill, commitment, and time they dedicated to litigating these  
9 challenging Actions, consistent with the Agreement, the Notices, and recognized class action practice  
10 and procedure, Class Counsel now respectfully request an award of attorneys' fees of \$13,500,000,  
11 which is equal to 30% of the \$45,000,000.00 Settlement Fund they obtained for the Settlement Class.  
12 *Id.* ¶ 40. The requested attorneys' fee award is within the range of reason under the factors considered  
13 in the Ninth Circuit. Additionally, Class Counsel request \$801,631.96 as reimbursement for their  
14 litigation costs necessarily incurred in representing the Plaintiffs and the Settlement Class in the  
15 Actions. *Id.* ¶ 41, 49-50. The Parties negotiated and reached agreement regarding attorneys' fees and  
16 costs only after agreeing to all other material Settlement terms. *Id.* ¶ 27.

17 Lastly, in recognition for their efforts and the successful results they achieved for the  
18 Settlement Class, Class Counsel request Service Awards for the Class Representatives in the amount  
19 of \$10,000 each for those 2019 Plaintiffs that were deposed and \$3,500 each for those 2023 Plaintiffs  
20 that were not. Joint Decl. ¶ 159. The Service Award amounts were negotiated by the Parties after all  
21 material terms of the Settlement. *Id.*

22 **A. The Attorneys' Fees Requested Are Reasonable Under Ninth Circuit Precedent**

23 **1. The Percentage of the Fund Method is Appropriate.**

24 Fed. R. Civ. P. 23(h) provides: “[i]n a certified class action, the court may award reasonable  
25 attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement.” The  
26 general rule in litigation is that each party must bear its own litigation costs. However, the common  
27 benefit doctrine is the exception. A common benefit is created when a private plaintiff and his or her  
28 lawyer create a claim to which others have a claim. When a party confers a substantial benefit upon

1 a class, counsel is entitled to an attorneys' fees based on the benefit conferred. *Boeing Co. v. Van*  
2 *Gemert*, 444 U.S. 472, 478 (1980). It removes a potential financial obstacle to a plaintiff's pursuit of  
3 a class claim and equitably distributes the fees and costs of successful litigation among all who gained  
4 from the plaintiff's efforts. The doctrine stems from the premise that those who receive the benefit of  
5 a lawsuit without contributing to its costs are "unjustly enriched" at the expense of the successful  
6 litigant. *Id.* As a result, the Supreme Court and the Ninth Circuit have recognized that "a litigant or a  
7 lawyer who recovers a common fund for the benefit of persons other than himself or his client is  
8 entitled to a reasonable attorneys' fee from the fund as a whole." *Staton v. Boeing*, 327 F.3d 938, 967  
9 (9th Cir. 2003) (quoting *Boeing Co.*, 444 U.S. at 478).

10 When determining an attorneys' fees award for creating a common fund, the Ninth Circuit  
11 recognizes the "percentage-of-the-fund method" and the "lodestar method." *Paul, Johnson, Alston*  
12 *& Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir. 1989). The former awards a percentage of the common  
13 fund created by the lawyers, while the latter award is based upon the number of hours reasonably  
14 spent by a reasonable hourly rate and then enhancing that figure, if necessary, to account for the risks  
15 associated with the representation. *Id.* Although both methods are approved and used, the percentage-  
16 of-the-fund method is preferable because it is simpler and it more closely aligns the interests of  
17 counsel and the class in that counsel directly benefits from increasing the size of the fund and working  
18 in an efficient manner. *Szyborski v. Ormat Technologies, Inc.*, No. No. 3:10-CV-132-RCJ, 2012  
19 WL 4960098, at \*3 (D. Nev. Oct. 16, 2012); Fitzpatrick Decl. ¶¶ 11-23. Because the benefit to the  
20 class is easily quantified in common-fund settlements, courts award attorneys' fees as a percentage  
21 of the common fund in lieu of the often more time-consuming task of calculating the lodestar. *In re*  
22 *Bluetooth*, 654 F.3d at 935; Fitzpatrick Decl. ¶ 12. Indeed, an attorneys' fee award as a percentage of  
23 a common fund established by a class action settlement is well-established in Ninth Circuit  
24 jurisprudence and is eminently appropriate here. *See Vizcaino*, 290 F.3d at 1047; *Six (6) Mexican*  
25 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul*, 886 F.2d at 272. *See*  
26 *also* Fitzpatrick Decl. ¶¶ 11-23.

27 Under the percentage-of-the-fund method, the Court first calculates the value of the  
28 Settlement benefits to the Settlement Class and then selects a percentage of that value to award Class

1 Counsel. Once the Court determines the value, the Court has the discretion to award a reasonable  
2 percentage. When determining a reasonable percentage, the Ninth Circuit recognizes 25% as a  
3 benchmark. However, that percentage is just for guidance and can be adjusted upward or downward  
4 based upon the circumstances of the case. *See Szymborski*, 2012 WL 4960098 at 3. The typical range  
5 of acceptable attorneys' fees is 20% to 33.33% of the total settlement. *Barbosa v. Cargill Meat Sol.*  
6 *Corp.*, 297 F.R.D. 431, 448 (9<sup>th</sup> Cir. 2000); *Daniels v. Aria Resort & Casino, LLC*, No. 2:20-CV-  
7 00453-GMN-DJA, 2023 WL 11910245, at \*2 (D. Nev. July 31, 2023). *See also* Fitzpatrick Decl. ¶¶  
8 14-23 (addressing Ninth Circuit jurisprudence and empirical and economic research pertaining to  
9 attorneys' fee awards in class actions).

10 For the reasons discussed below, in Class Counsel's Joint Declaration, and Professor  
11 Fitzpatrick's declaration, Class Counsel respectfully request the Court employ the percentage-of-the-  
12 fund method and award 30% of the common fund. Examples of cases in which this Court has awarded  
13 30% of a common fund include: *Hester v. Vision Airlines, Inc.*, No. 2:09-cv-00117-RLH-NJK, 2014  
14 WL 3547643 at \*11 (D. Nev. July 17, 2014) (finding class counsel "achieved an exceptionally  
15 favorable result for the members of the Settlement Classes by diligently pursuing this complex, and  
16 often times trying, litigation for years despite the substantial risk of no recovery"); *Szymborski v.*  
17 *Ormat Technologies, Inc.*, No. 3:10-CV-132-RCJ, 2012 WL 4960098, at \*3-4 (D. Nev. Oct. 16,  
18 2012) (noting class counsel "shouldered the risk of non-payment by taking the class action suit on a  
19 contingency fee basis."). A lodestar crosscheck analysis is offered should the Court choose to do so.

## 20 **2. Class Counsel's Percentage of the Fund Fee Request is Reasonable.**

21 Class Counsel's request for 30% of the \$45,000,000 common fund is reasonable in light of  
22 their efforts and the excellent results they obtained for the settlement Class. Fitzpatrick Decl. ¶¶ 14-  
23 23. The fee is only a little above the benchmark and the adjustment is warranted when considering  
24 the substantial risks they took and the significant value they created in a complex case involving two  
25 Data Incidents. The fee is justified under the pertinent factors and when viewed in comparison to the  
26 empirical data and the economics of class action litigation. When evaluating a fee award, the main  
27 inquiry is whether the end result is reasonable. *Powers v. Eichen*, 229 F.3d 1249, 1258 (9<sup>th</sup> Cir. 2000).  
28 When assessing whether the percentage requested is fair and reasonable, courts generally consider

1 the following factors: “(a) the results achieved; (b) the risk of the litigation; (c) the skill required; (d)  
2 the quality of the work performed; (e) the contingent nature of the fee and the financial burden; and  
3 (f) awards made in similar cases.” *Daniels*, 2023 WL 11910245, at \*2 (quoting *Vizcaino*, 290 F.3d at  
4 1047-1050). *See also* Fitzpatrick Decl. ¶ 14.

5 **a. Class Counsel’s Efforts Resulted in Substantial Benefits**

6 Without Class Counsel’s efforts to file and prosecute the Action, there would be no Settlement  
7 providing monetary benefits for the Settlement Class. Joint Decl. ¶ 33-34. When considering the  
8 issues Plaintiffs faced, a \$45,000,000 Settlement Fund that provides for meaningful cash recovery  
9 available for the entire Settlement Class is substantial. *Id.* ¶ 33. As this Court is well aware, the 2019  
10 Action was actively litigated. *Id.* ¶ 32. The 2019 Plaintiffs had to survive a motion to dismiss and  
11 engage in considerable discovery, including the production and review of hundreds of thousands of  
12 documents and the taking and defending of many depositions. *Id.* Not until the second data breach  
13 and the filing of the 2023 Action, requiring Caesars to defend two high profile cases, did Caesar’s  
14 agree to explore settlement. *Id.* At that point, Class Counsel for the 2019 Action had already spent  
15 thousands of hours of time working on the 2019 Action and incurred hundreds of thousands of dollars  
16 in costs with experts preparing for class certification and eventually trial. *Id.*

17 This Settlement was only possible once the 2019 Plaintiffs and the 2023 Plaintiffs agreed to  
18 work cooperatively for the best interest of those impacted in the Data Incidents. *Id.* Even then the  
19 original mediation date was cancelled, delaying the eventual mediation and later negotiations that  
20 allowed for the Settlement. *Id.* ¶¶ 10-13. Class Counsel’s efforts result in an all-cash fund of  
21 \$45,000,000 for Settlement Class members to apply for out-of-pocket documented losses up to  
22 \$15,000 each plus a separate Tiered Cash Payment, the amount of which is based upon the type of  
23 data they had impacted in the Data Incidents. *Id.* ¶ 33. Additionally, Settlement Class Members may  
24 elect to receive one year of Financial Account Monitoring— identity theft protection (with  
25 \$1,000,000 in insurance) and credit monitoring. *Id.*

26 The Settlement, which provides for substantial tangible benefits now (as opposed to years in  
27 the future, if at all) are the direct result of Class Counsel’s efforts. *Id.* ¶ 34. Defendant continues to  
28 maintain that Settlement Class members data was not exposed in any harmful way, and that for the

1 overwhelming majority of the Settlement Class Members their most sensitive Private Information  
2 was not impacted, making the recovery of \$45,000,000.00 outstanding. *Id.* The Settlement is  
3 favorable when compared to other data breach settlements involving similar types of data and  
4 considering the entirety of the Data Incidents. *Id.* See also Fitzpatrick Decl. ¶ 17.

5 **b. Plaintiffs Faced Significant Risks**

6 Plaintiffs and the Settlement Class faced serious litigation risks and could have ended up with  
7 nothing if they did not settle at this stage. Joint Decl. ¶ 43. The risk involved is emphasized by the  
8 fact that, historically, data breach class actions face substantial hurdles in surviving the class  
9 certification stage. *Id.* See also, e.g., *In re Blackbaud, Inc., Customer Data Breach Litig.*, No.: 3:20-  
10 mn-02972-JFA, 2024 WL 2155221 (D.S.C. May 14, 2024) (denying motion for class certification);  
11 *FultonGreen*, 2019 WL 4677954 at \*8 (data breach class actions are “a risky field of litigation because  
12 [they] are uncertain and class certification is rare”); *In re Hannaford Bros. Co. Customer Data Sec.*  
13 *Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013); Fitzpatrick Decl. ¶ 17. Further, maintaining class  
14 certification through trial is another overarching risk. Joint Decl. ¶ 43. But for this settlement, in  
15 addition to certifying and maintaining a class, Plaintiffs would have had time to overcome summary  
16 judgment, succeed at trial, and win on appeal to recover. *Id.* To date, no data breach has been tried  
17 and so the outcome is even more uncertain. *Id.* Considering Defendant has compelling defenses,  
18 continuing to pursue the Actions posed a significant risk for Plaintiffs and the Settlement Class. *Id.* ¶  
19 44. Thus, Class Counsel’s risks weigh in favor of Class Counsel’s requested fee.

20 **c. Counsel’s Experience Benefited the Settlement Class**

21 Class Counsel and the others appointed to the 2023 Action’s Plaintiffs’ Steering Committee  
22 are some of the most experienced data breach class action plaintiffs’ firms and attorneys in the  
23 country.<sup>7</sup> Joint Decl. ¶ 29. This formidable team of attorneys used their years of experience of  
24 handling privacy class actions in federal and state courts throughout the country to litigate the Actions  
25

26 <sup>7</sup> Class Counsel’s resumes outlining the depth of their experience are attached to the Motion for  
27 Preliminary Approval as Exhibits B1-9. (2019 ECF No. 243-2). As the Court has already considered  
28 them in conjunction with the appointment of Class Counsel at the preliminary approval stage, to avoid  
redundancy, Class Counsel did not attach them here.

1 here efficiently and to achieve a favorable resolution in the face of serious risks. *Id.*

2 Class Counsel are responsible for shaping much of the data breach jurisprudence that courts  
3 rely on today, including the favorable rulings from this Court on the Motion to Dismiss in the 2019  
4 Action, that no doubt would have been very persuasive to the Court in the 2023 Action. *Id.* ¶ 30. Their  
5 experience in developing the legal framework in this sector was invaluable in navigating through the  
6 complicated issues presented in these Actions. *Id.*

7 Class Counsel have led some of the most intricate multidistrict litigation privacy cases, and  
8 in so doing have worked with nearly every privacy expert, briefed and argued nearly every type of  
9 dispositive motion, argued for and obtained class certification, and settled some of the largest data  
10 breaches in history. *Id.* Their history of negotiating hundreds of settlements was critical here. *Id.*  
11 Combining overlapping classes from two separate data breaches into a single Settlement that fairly  
12 and equitably distributes funds based upon sensitivity of impacted data elements required experience  
13 and skills honed over many years. *Id.* ¶ 31. At the end of the day, the Settlement Class greatly  
14 benefited from Class Counsel's experience.

15 **d. Counsel Took the Case on a Contingency Assuming Financial Risks**

16 Class Counsel, the 2023 Action's Plaintiffs' Steering Committee, and additional Plaintiffs'  
17 counsel agreed to represent the Plaintiffs and the Settlement Class on a fully contingent basis,  
18 knowing they would have to advance time and out-of-pocket costs with no guarantee of recovery. *Id.*  
19 ¶ 35. In doing so, they forwent representing other clients in other cases so they could dedicate their  
20 resources to the Actions. *Id.* The organization of counsel ensured work was coordinated to maximize  
21 efficiency and minimize duplication of effort. *Id.*

22 Class Counsel devoted substantial time to investigating the claims. *Id.* ¶ 37. Class Counsel  
23 also expended resources researching and developing the legal claims at issue. *Id.* Substantial time and  
24 resources were also dedicated to working with experts, engaging in motion practice and in formal and  
25 informal discovery, including the taking and defending of many depositions and the production and  
26 review of thousands of pages of documents, and preparing for and attending a successful mediation.  
27 *Id.* ¶ 38. Significant time was then devoted to negotiating and drafting that Agreement, developing  
28 the Claim process, the Preliminary Approval process, and to all actions required thereafter pursuant

1 to the Preliminary Approval Order. *Id.* Class Counsel has also spent substantial time leading up to the  
2 filing of this Motion for Final Approval, addressing the implementation of the Notice Program, Claim  
3 process, and preparing this Motion. *Id.* ¶ 39. Time will also be spent preparing for and attending the  
4 Final Approval Hearing. *Id.* Finally, Class Counsel will devote substantial time to Settlement  
5 administration should Final Approval be granted to ensure Valid Claims are paid and the Settlement  
6 if fully implemented. *Id.* As Professor Fitzpatrick notes, the requested fee award is below the well-  
7 known and standard one-third contingent fee percentage seen in individual litigation, even with  
8 sophisticated clients. Fitzpatrick Decl. ¶ 20.

9 **e. The Fee Request is Consistent with Fee Awards in Similar Cases**

10 Given the facts and circumstances presented herein, the 30% fee award sought here is within  
11 the range of fees typically awarded in this Circuit and in data breach cases across the country. In the  
12 Ninth Circuit, the typical range of acceptable attorneys' fees is 20% to 33.3% of the settlement fund.  
13 *Barbosa v. Cargill Meat Sol. Corp.*, 297 F.R.D. 431, 448 (9th Cir. 2000); *Daniels*, 2023 WL  
14 11910245, at \*2. There are actually many examples of attorneys' fee awards of 33.33% or higher in  
15 data breach cases. *See, e.g., Garza v. HealthAlliance, Inc.*, No. 72450/2023 (NY Sup. Ct., Westchester  
16 Cty.) (approving 35% of common fund); *In re Planet Home Lending, LLC Data Breach*, No. 3:24-  
17 cv-127 (KAD) (D. Conn.), DE# 48 (approving one-third of common fund); *In re CorrectCare Data*  
18 *Breach Litig.*, No. 5:22-319-DCR, 2024 WL 4211480, at \*4 (E.D. Ky. Sept. 14, 2024) (same); *Kondo,*  
19 *et al. v. Creative Services, Inc.*, No. 1:22-cv-10438-DJC, DE# 39 (D. Mass. Sept. 7, 2023) (same); *In*  
20 *re Sovos Compliance Data Security Incident Litigation*, No. 1:23-cv-12100 (D. Mass.), DE# 12  
21 (same); *Alliance Ophthalmology, PLLC v. ECL Group, LLC*, Nos. 1:22-CV-296, 1:22-CV-468, 2024  
22 WL 3203226, at \*14-16 (M.D.N.C. June 27, 2024); *Abrams, et al. v. The Savannah College of Art*  
23 *and Design Inc.*, No. 1:22-cv-04297-LMM, DE# 29 (N.D. Ga. Sept. 23, 2023) (same); *Phelps, et al.*  
24 *v. Toyotetsu North America*, No. 6:22-cv-00106-CHB-HA, DE# 47 (E.D. Ky. Oct. 25, 2023) (same);  
25 *In re: Forefront Data Breach Litigation*, No. 1:21-cv-000887-LA, 2023 WL 6215366, at \*9 (E.D.  
26 Wis. Mar. 22, 2023) (same); and *Davidson v. Healthgrades Operating Company, Inc.*, No. 1:21-cv-  
27 01250-RBJ, DE# 50 (D. Colo. Aug. 22, 2022) (same). *See also* Fitzpatrick Decl. ¶ 16.

### 3. The Requested Fee Award Is Supported By a Lodestar Crosscheck

The Court is not obligated to perform a lodestar cross-check in evaluating the percentage of the fund to be awarded. *In re Google Referrer Header Privacy Litig.*, 869 F.3d 737 (9th Cir. 2017) (district court did but was not required to do a lodestar cross-check); *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 547 (9th Cir. 2016) (“a cross-check is entirely discretionary”). *See also* Fitzpatrick Decl. ¶21 (citing *Farrell v. Bank of Am. Corp., N.A.*, 827 F. App’x 628, 630 (9th Cir. 2020)). The foregoing should assuage the Court that using the percentage-of-the-fund method is appropriate without a cross-check. Nevertheless, recognizing this Court, at times, conducts a lodestar crosscheck, Class Counsel has provided the Court with the information needed to do so. The first step is to determine the lodestar amount, multiplying the Class Counsel’s total number of hours expended by their reasonable hourly rates. *Bluetooth*, 654 F.3d at 941-42. The second step requires the Court to consider a multiplier to add or subtract from the lodestar in light of the reasonableness factors addressed in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), which overlap with the factors considered under the percentage method.<sup>8</sup>

Class Counsel’s Joint Declaration evidences that they reasonably and collectively expended a total of 9,498.70 hours investigating, litigating, settling, and seeking settlement approval of both the 2019 Action and 2023 Action, inclusive of an estimate of 40 hours that they will spend to work to complete the Final Approval process and then spend post-Final Approval to distribute the Settlement benefits, along with the reasonable hourly rates for attorneys’ and paralegals. Joint Decl. ¶¶ 52-158 (providing firm-specific lodestar calculations for Class Counsel firms, 2023 Action Plaintiffs’ Steering Committee firms, and additional Plaintiffs’ firms).<sup>9</sup>

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<sup>8</sup> The *Kerr* factors include: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *Kerr*, 526 F.2d at 70.

<sup>9</sup> Should the Court request additional detail related to the hours spent prosecuting the Action, Class Counsel will submit records for *in camera* consideration. Joint Decl. ¶ 48.

1            “[T]he district court must determine a reasonable hourly rate considering the experience, skill,  
2 and reputation of the attorney requesting fees.” *Chalmers v. Los Angeles*, 796 F.2d 1205, 1210 (9th  
3 Cir. 1986). A “reasonable hourly rate is ordinarily the prevailing market rate in the relevant  
4 community.” *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016). The market for attorneys  
5 specializing in data breach class actions is far more developed outside of Nevada, as demonstrated by  
6 the Court’s appointment of counsel from around the country who have expertise in data privacy  
7 litigation to lead the Action, first on an interim basis and then as Class Counsel for the Settlement  
8 Class. “The court may consider rates outside the forum “if local counsel was unavailable, either  
9 because they are unwilling or unable to perform because they lack the degree of experience, expertise,  
10 or specialization required to handle properly the case.” *Yuga Labs, Inc. v. Hickman*, No. 2:23-CV-  
11 111 JCM (NJK), 2024 WL 2801495, at \*3 (D. Nev. May 31, 2024). (quoting *Camacho v. Bridgeport*  
12 *Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)).

13            “Affidavits of the plaintiff[s] attorney and other attorneys regarding prevailing fees in the  
14 community, and rate determinations in other cases, particularly those setting a rate for the plaintiff[s]  
15 attorney, are satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v.*  
16 *Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). In addition to affidavits and evidence, the  
17 court may also “rely on its own familiarity with the legal market.” *Ingram v. Oroudjian*, 647 F.3d  
18 925, 928 (9th Cir. 2011). Ninth Circuit precedent permits Class Counsel to base their lodestar  
19 calculations on current market rates in recognition that Class Counsel has taken this litigation as a  
20 contingent fee matter delaying any recovery until the outcome of the case. *Fischel v. Eq. Life Assur.*  
21 *Soc’y of the U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002); *Vizcaino*, 290 F.3d at 1050-51. Therefore, Class  
22 Counsel believe the Court is justified in relying on the attorney rates (\$260 to \$1,600) and paralegal  
23 rates (\$125 to \$500 ) presented in this Action for the crosscheck, *even if* the Court were to conclude  
24 that a lower number of hours or lower hourly rates would be more appropriate, a higher lodestar  
25 multiplier would still fall within the range of those routinely approved in this Circuit, and would  
26 continue to support the requested fee. *See, e.g., Abdullah v. U.S. Sec. Assocs., Inc.*, 2017 WL  
27 11630767, \*10 (C.D. Cal. Dec. 4, 2017) (approving fee award of one-third of common fund,  
28 explaining that even after reducing class counsel’s hourly rates and thereby using a more conservative

1 lodestar, the higher lodestar multiplier thus required was appropriate because “Class Counsel took  
2 this case on a contingent basis and achieved a significant recovery for the class.”); *Good Morning to*  
3 *You Prods. Corp. v. Warner/Chappell Music, Inc.*, 2016 WL 6156076, \*\*15–16 (C.D. Cal. Aug. 16,  
4 2016) (reducing class counsel’s lodestar but nonetheless approving one-third of common fund where  
5 the higher lodestar multiplier required still fell within the range of those frequently used).

6 Applying the requested rates to the total hours expended (inclusive of 40 estimated future  
7 hours to be spent in this Action) results in a \$7,503,023.21 lodestar. Joint Decl. ¶ 48. An award of  
8 \$13,500,000.00 would result in a reasonable lodestar multiplier of 1.80. *Id.* Multipliers in the 1.0 to  
9 4.0 range are acceptable in the Ninth Circuit. *See Vizcaino*, 290 F.3d at 1052-54 (approving a 3.65  
10 multiplier and noting the range of 1.0 to 4.0). *See also* Fitzpatrick Decl. ¶ 24 (noting multiplier in this  
11 Action, if considered by the Court, is reasonable given Ninth Circuit precedent and empirical  
12 research).

13 Class Counsel’s contingent representation, combined with the excellent results obtained in  
14 this risky litigation, and the quality of Class Counsel’s previous work and future work to be done,  
15 support application of the requested multiplier under the *Kerr* factors. 526 F.2d at 69-70. The cross-  
16 check should not be given undue weight given that Class Counsel maximized the value for the class  
17 under the circumstances, and the crosscheck should not be used to undermine the rationale of the  
18 preferred percentage method in a case like this. Entertaining a lodestar crosscheck does not create the  
19 best incentives for class action lawyers because it reintroduces the very same undesirable  
20 consequences of the lodestar method that the percentage method was designed to correct in the first  
21 place. Fitzpatrick Decl. ¶ 21 (“courts that entertain the lodestar crosscheck ultimately hurt class  
22 members by creating bad incentives for their lawyers”). As the Ninth Circuit has observed, if class  
23 counsel believe courts will cap the percentage awarded at some multiple of their lodestar, they will  
24 be incentivized to build a high lodestar. Doing so would breed *inefficiency, performance of*  
25 *unnecessary projects, delay results, and overbill and overstaff work* in order to justify what is already  
26 a reasonable fee award under the percentage method. *See Vizcaino*, 290 F.3d at 1050 n. 5 (“[I]t is  
27 widely recognized that the lodestar [cross-check] creates incentives for counsel to expend more hours  
28 than may be necessary on litigating a case so as to recover a reasonable fee . . . .”). The lodestar

1 crosscheck also caps the amount of compensation class counsel can receive from a settlement, thereby  
2 misaligning their incentives from those of class members that the percentage method was designed to  
3 correct in the first place, and blunting counsel's incentive to achieve the largest possible award for  
4 the class. *See* Fitzpatrick Decl. ¶ 21-23.

5 Giving due consideration to the foregoing, the Court should conclude that a lodestar cross-  
6 check against the \$13,500,000.00 attorneys' fee award Class Counsel request supports that award, in  
7 recognition of Class Counsel's achievements for the Settlement Class. Fitzpatrick Decl. ¶ 24.  
8 Therefore, Class Counsel respectfully requests the Court grant this attorneys' fee award.

9 **B. The Litigation Costs are Reasonable**

10 Class Counsel additionally requests the Court grant its request for reimbursement of  
11 \$801,631.96 in costs reasonably incurred in connection with the prosecution of the Actions. Class  
12 Counsel assumed the risk of advancing the costs without knowing whether they would be reimbursed.  
13 Joint Decl. ¶ 35. These costs are set forth by category of expense in the Joint Declaration of Class  
14 Counsel. *Id.* ¶¶ 49, 50, 57, 62, 67, 73, 78, 83, 88, 93, 98, 103, 108, 113, 118, 123, 128, 133, 138, 143,  
15 148, 153, 158. The costs, which include filing fees, service fees, expert fees, deposition fees,  
16 deposition transcript fees, mediation fees, and travel and accommodations (billed at half) are  
17 reasonable, customary, and reimbursable. *See Gonzalez-Rodriguez v. Mariana's Enter., et. al.*, No.  
18 2:15-cv-00152-JCM-PAL, 2016 WL 3869870, at \* 10 (D. Nev. July 14, 2016) (noting there is no  
19 doubt that an attorney who creates a common fund for a class is entitled to reimbursement of  
20 reasonable expenses from that fund). *See also Int'l Broth. of Elec. Workers Local 697 Pension Fund*  
21 *v. Int'l Game Tech., Inc.*, No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at \* 5 (D. Nev. Oct.  
22 19, 2012 (awarding reimbursement of costs, including fees for investigators, depositions,  
23 computerized research, travel, copying, and filing fees). The Notices advised the Settlement Class  
24 that Class Counsel would be seeking cost reimbursement, and not a single member objects. Joint  
25 Decl. ¶ 45. As these costs were reasonably and necessarily incurred, the Court should approve  
26 reimbursement of the requested costs out of the Settlement Fund.

27 **C. The Service Awards Are Reasonable**

28 Class Counsel request Service Awards for the Class Representatives in recognition of their

1 initiating the Actions and serving as Class Representatives on behalf of the Settlement Class.  
2 Specifically, Class Counsel request \$10,000.00 for those Class Representatives that were deposed by  
3 the Defendant and \$3,500.00 for those who were not. The Service Award amounts were negotiated  
4 by the Parties after all material terms of the Settlement, so they will not impact the recovery available  
5 to the Settlement Class. Joint Decl. ¶ 159. The Notice advised the Settlement Class that Class Counsel  
6 intended on seeking these amounts and not a single Settlement Class Member has objected. *Id.*;  
7 Admin Decl., Attachments 1-4, 6, 10, 11.

8 The Ninth Circuit has “repeatedly held that reasonable incentive awards to class  
9 representatives are permitted.” *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 785 (9th  
10 Cir. 2022) (quotation marks and citation omitted). Indeed, service awards are “fairly typical in class  
11 action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948 (9th Cir. 2009). Service Awards are  
12 intended to compensate class representatives for work done on behalf of the class, to make up for  
13 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their  
14 willingness to act as a private attorney general. *Id.* at 958-59.

15 Here, the Class Representatives were essential in securing relief for the Settlement Class. Joint  
16 Decl. ¶ 160. They undertook personal risk to do so and worked closely with Class Counsel throughout  
17 the Action. *Id.* The Plaintiffs in the 2019 Action were subject to aggressive discovery by the  
18 Defendant. *Id.* They assisted with responding to written discovery, produced personal information,  
19 and sat for deposition. *Id.* The plaintiffs in the 2023 Action were not deposed, but they were prepared  
20 to do whatever was reasonably necessary for the benefit of the Settlement Class. *Id.* All Class  
21 Representatives were instrumental in Class Counsel’s investigation of the Data Incidents, stayed in  
22 communication with Class Counsel, and remained involved in the entire process. *Id.* They each  
23 reviewed the Settlement Agreement and agreed to the terms of the Settlement. *Id.* The Class  
24 Representatives commitment to the Settlement Class’ interests and desire to hold the Defendant  
25 accountable was essential to the successful prosecution of this class action and warrants the  
26 reasonable Service Awards requested here. *Id.*

27 Service awards for the requested amounts are routinely approved in this Circuit and in this  
28 Court. *See, e.g. In re Mego Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (awarding \$10,000

1 incentive awards to two named plaintiffs); *Lee v. Enterprise Leasing Co.-West*, No. 3:10–CV–00326–  
2 LRH–WGC, 2015 WL 2345540 (D. Nev. May 15, 2015) (\$10,000 awarded to each plaintiff).

3 Consequently, for their service to the Settlement Class, Ryan Bohlim, Duke Hwynn, Larry  
4 Lawter, Kerry Shapiro, Gennady Simkin, Robert Taylor, and Victor Wukovits should be awarded  
5 \$10,000.00 each, and Tonya Owens, Emily Kirwan, David Zussman, David Lackey, Michael Pircio,  
6 David Terezo, Ronald G. Rundell, Laura Willis Abrigo, Anita Johnson, Paul Zari, Michael Manson,  
7 Kyle Sloan, Michelle Righetti, Edgar Mejia, and DuJun Johnson should be awarded \$3,500.00 each.

8 **D. The Settlement Administration Costs Are Reasonable**

9 In granting Final Approval to the Settlement, the Court should also approve the payment of  
10 the Settlement Administration Costs from the Settlement Fund pursuant to the Agreement. Agreement  
11 ¶ 89. The robust Notice Program required for this Settlement to the Rule 23 and due process  
12 requirements has been completed, and the Settlement Administrator will then implement the  
13 Settlement terms by distributing the Document Loss Payments, Tiered Cash Payments, and Financial  
14 Account Monitoring. For this work, the Court should approve the payment of estimated Settlement  
15 Administration Costs totaling \$6,997,408.00. Admin Decl. ¶ 44.

16 **VII. CONCLUSION**

17 Plaintiffs respectfully request the Court enter an order: (1) granting Final Approval to the  
18 Settlement; (2) affirming certification of the Settlement Class for settlement purposes, pursuant to  
19 Fed. R. Civ. P. 23(a) and 23(b)(3); (3) confirming the appointment of Plaintiffs as Class  
20 Representatives; (4) reappointment of John Yanchunis, Doug McNamara, E. Michelle Drake, David  
21 Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow as Class  
22 Counsel; (5) awarding Service Awards to the Class Representatives; (6) awarding attorneys’ fees and  
23 costs to Class Counsel; (7) affirming the appointment of the Settlement Administrator and approving  
24 the payment of Settlement Administration Costs; (8) overruling timely objections, if any; and (9)  
25 entering final judgment dismissing the Action with prejudice and reserving jurisdiction over  
26 Settlement implementation. Plaintiffs attached a proposed Final Approval order as *Exhibit E*.

1 Dated: May 2, 2025.

Respectfully submitted,

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*Class Counsel*

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION

Case No.: 2:20-cv-00376-GMN

This Document Relates To: All actions.

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.

Plaintiffs,

v.

MGM RESORTS INTERNATIONAL, et al.

Defendants.

Master File No. 2:23-cv-01480-RFB  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23-cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv-1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**SETTLEMENT AGREEMENT**

This Settlement Agreement<sup>1</sup> is entered into between Plaintiffs, on behalf of themselves and the Settlement Class, on the one hand, and Defendant, on the other hand, as of the last date signed below. The Parties hereby agree to the following terms in full settlement of the Actions, subject to a Final Approval Order entered by the Court.

**I. Background**

**2019 Data Incident**

1. Defendant is a global gaming, hospitality, and entertainment company headquartered in Las Vegas, Nevada.

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those defined in Section II below.

2. In the course of operating its business, Defendant collects certain information pertaining to its customers.

3. In or about July 2019, unauthorized individuals accessed Defendant's network and downloaded certain customer data for approximately 37 million MGM guests. Defendant discovered the 2019 Data Incident on or about July 10, 2019. For the vast majority of customers, the exposure was limited to their name, postal address, email address, telephone number, and/or date of birth.

4. Following the 2019 Data Incident, and commencing on February 21, 2020, Defendant was named in the first of eight class action lawsuits (ECF No. 1), which were eventually consolidated into the 2019 Action before the Honorable Gloria M. Navarro. (ECF No. 22, 86). The Court also appointed interim class counsel. (ECF No. 93.)

5. On April 2, 2021, the 2019 Plaintiffs filed a consolidated class action complaint against Defendant, asserting claims for negligence, negligent misrepresentation, breach of implied contract, unjust enrichment, and violations of various state consumer protection laws. (ECF No. 101.)

6. On June 1, 2021, Defendant filed a motion to dismiss the consolidated class action complaint. (ECF No. 103.)

7. On November 2, 2022, the Court granted in part and denied in part Defendant's motion to dismiss. (ECF No. 128.)

8. After the Court's ruling on Defendant's motion to dismiss, the Parties in the 2019 Action engaged in substantial fact discovery, including written discovery, document production, depositions, and motion practice.

9. The 2019 Plaintiffs filed notices of related cases on December 6, 2023 (2020 ECF

No. 183) and December 20, 2023 (2020 ECF No. 185), seeking to relate several cases filed concerning the 2023 Data Incident, which Defendant and the 2023 Plaintiffs opposed. (ECF Nos. 184, 186, 187, 188.)

10. On August 14, 2024, Defendant filed a notice of withdrawal of its response to the 2019 Plaintiffs' notices of related cases. (ECF No. 235.)

### **The 2023 Data Incident**

11. Beginning on September 8, 2023, in a separate cybersecurity incident, unauthorized individuals accessed Defendant's network and further gained access to certain customer data for approximately 75 million of Defendant's guests.

12. Following the 2023 Data Incident, the Defendant was named in 16 class action lawsuits. (2023 ECF No. 1.)

13. On March 22, 2024, the Court consolidated the cases into the 2023 Action before the Honorable Richard F. Boulware, II. (2023 ECF No. 32.)

14. The Court granted the 2023 Plaintiffs' motion for appointment of interim lead counsel on October 22, 2024. (2023 ECF No. 55.)

### **2019 Plaintiffs and 2023 Plaintiffs' Agreement to Work Cooperatively**

15. In July 2023, the 2019 Plaintiffs and the 2023 Plaintiffs agreed to participate in a joint mediation with Defendant before an experienced data breach mediator, Bruce Friedman, with JAMS in Las Vegas. In advance of the mediation, the 2019 Plaintiffs and the 2023 Plaintiffs propounded informal discovery requests. Through the provision of informal discovery, Plaintiffs in both cases were able to evaluate the merits of Defendant's position. The Parties also exchanged detailed mediation briefs outlining their positions with respect to liability, damages, and settlement-related issues. The mediation was canceled for various reasons.

16. On October 10, 2024, the Parties participated in an all-day mediation in Las Vegas. In advance of the mediation, Plaintiffs propounded additional informal discovery requests regarding the size and scope of the Data Incidents, including, but not limited to, the number of people potentially impacted, the data elements impacted, and the geographical makeup of the putative classes.

17. After a full day of negotiations, the Parties were unable to reach a settlement. Over the next several weeks, however, the Parties continued to negotiate the contours of a potential global resolution.

18. On October 31, 2024, the 2019 Plaintiffs filed a notice of settlement, notifying the Court that all Parties (including the 2023 Plaintiffs) were able to resolve the Actions. (ECF No. 238.)

19. On November 7, 2024, Judge Boulware transferred the 2023 Action to Judge Navarro. (2023 ECF No. 57.)

20. The Parties now agree to settle the Actions entirely, without any admission of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the Data Incidents and the allegations made in the Complaints, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to their business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaints, and disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaints. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or

other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to recover on the claims in the Complaints, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede that the claims alleged in the Complaints lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt and sufficient of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

**II. Definitions**

21. “Actions” means the 2019 Action and the 2023 Action, collectively.

22. “2019 Action” means the lawsuit addressing the 2019 Data Incident entitled: *In re MGM Resorts International Data Breach Litigation*, Case No. 2:20-cv-00376-GMN-NJK, filed in the United States District Court for the District of Nevada.

23. “2023 Action” means the lawsuit addressing the 2023 Data Incident entitled: *Tanya Owens, et al. vs. MGM Resorts International, et al.*, Case No. 2:23-cv-01480-FRB, filed in the United States District Court for the District of Nevada, and all actions consolidated therewith, including: *Kirwan v. MGM Resorts International*, Case No. 2:23-cv-01481; *Zussman v. Vici Properties I LLC*, Case No. 2:23-cv-01537; *Lackey v. MGM Resorts International*, Case No. 2:23-cv-01549; *Pircio v. MGM Resorts International*, Case No. 2:23-cv-01550; *Terezo v. MGM Resorts International*, Case No. 2:23-cv-01577; *Rundell v. MGM Resorts International*, Case No. 2:23-cv-01698; *Zari v. MGM Resorts International*, Case No. 2:23-cv-01777; *Manson v. MGM Resorts International*, Case No. 2:23-cv-01826; *Albrigo v. MGM Resorts International*, Case No. 2:23-cv-

01981; *Sloan v. Vici Properties Inc.*, Case No. 2:23-cv-02042; *Righetti v. MGM Resorts International*, Case No. 2:23-cv-02064; *Mejia v. MGM Resorts International*, Case No. 2:24-cv-00081; *Lassoff v. MGM Resorts International*, Case No. 2:24-cv-00995; and *Cartagenova v. MGM Resorts International*, Case No. 2:24-cv-00999.

24. “2019 Complaint” means the Second Consolidated Class Action Complaint filed in the 2019 Action on November 4, 2022.

25. “2023 Complaints” means all complaints filed in the 2023 Action, and all actions consolidated therewith.

26. “2019 Data Incident” means the cybersecurity incident discovered by MGM on or about July 10, 2019.

27. “2023 Data Incident” means the cybersecurity incident discovered by MGM on or about September 9, 2023.

28. “2019 Plaintiffs” means Ryan Bohlim, Duke Hwynn, Larry Lawter, Kerri Shapiro, Gennady Simkin, Robert Taylor, and Victor Wukovits.

29. “2023 Plaintiffs” means Tonya Owens, Emily Kirwan, David Zussman, David Lackey, Michael Pircio, David Terezo, Ronald G. Rundell, Laura Willis Abrigo, Anita Johnson, Paul Zari, Michael Manson, Kyle Sloan, Michelle Righetti, Edgar Mejia, and DuJun Johnson.

30. “Application for Attorneys’ Fees, Costs, and Service Awards” means the application made with the Motion for Final Approval seeking Service Awards for Class Representatives and Class Counsel’s attorneys’ fees and reimbursement for costs, which shall be filed no later than 30 days before the end of the Objection Period.

31. “CAFA Notice” means the Class Action Fairness Act notice which shall be served

upon the appropriate state and federal officials, providing notice of the Settlement.

32. “Cash Payment” means the cash compensation paid to Settlement Class Members who submitted Valid Claims for a Documented Loss Cash Payment, Tier 1 Cash Payment, Tier 2 Cash Payment, or Tier 3 Cash Payment.

33. “Claim” means the submission of a Claim Form by a Claimant.

34. “Claim Form” means the proof of claim, substantially in the form attached hereto as *Exhibit 5*, which may be modified, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator.

35. “Claim Form Deadline” shall be 15 days before the initial scheduled Final Approval Hearing and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class member to be eligible for a Settlement Class Member Benefit.

36. “Claimant” means a Settlement Class Member who submits a Claim Form.

37. “Class Counsel” means: John Yanchunis of Morgan & Morgan Complex Litigation Group; E. Michelle Drake of Berger Montague PC; Doug McNamara of Cohen Milstein Sellers & Toll, PLLC; David Berger of Gibbs Law Group LLP; J. Gerard Stranch IV of Stranch, Jennings & Garvey, PLLC; Lynn Toops of Cohen & Malad LLP; James Pizzirusso of Hausfeld LLP; Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC; and Jeff Ostrow of Kopelowitz Ostrow P.A.

38. “Class List” means a list of all individuals in the Settlement Class. Defendant shall prepare and provide the Class List to the Settlement Administrator for Notice using information in its records. The Class List shall include, if available, Settlement Class members’ names, email addresses, postal addresses, and telephone numbers.

39. “Class Representatives” means all Plaintiffs who sign this Agreement.

40. “Complaints” means the 2019 Complaint and the 2023 Complaints.

41. “Court” means the United States District Court for the District of Nevada and the Judge(s) assigned to the Actions.

42. “Data Incidents” means the 2019 Data Incident and the 2023 Data Incident, collectively.

43. “Defendant” means MGM Resorts International or MGM.

44. “Defendant’s Counsel” means Neil Gilman, Jason Kim, and Ann Marie Mortimer of Hunton Andrews Kurth LLP for the 2019 Data Incident; Angela Agrusa, Andrew J. Hoffman, II, and Eric M. Roberts of DLA Piper LLP (US) for the 2023 Data Incident; and Todd L. Bice and Brianna Smith of Pisanelli Bice PLLC for the 2019 and 2023 Data Incidents.

45. “Documented Loss Cash Payment” means the Settlement Class Member Benefit that all Settlement Class members who incurred documented losses may elect under Section V herein.

46. “Email Notice” means the email notice of the Settlement, substantially in the form attached hereto as *Exhibit 1*, that the Settlement Administrator shall disseminate to the Settlement Class.

47. “Effective Date” means 10 days after the time for appeal of the Final Approval Order runs. If an appeal is filed, then the Effective Date shall be 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal and no other appeals are possible.

48. “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

49. “Financial Account Monitoring” means up to one year of three-bureau identity theft

protection and credit monitoring that Settlement Class Members may elect under Section V herein.

50. “Final Approval” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form attached to the Motion for Final Approval.

51. “Final Approval Hearing” means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, and Service Awards.

52. “Final Approval Order” means the final order that the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be substantially in a form attached hereto as *Exhibit 7*.

53. “Long Form Notice” means the long form notice of the Settlement, substantially in the form attached hereto as *Exhibit 4*, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail upon request made to the Settlement Administrator.

54. “MGM Resorts International” or “MGM” means Defendant.

55. “Motion for Final Approval” means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement.

56. “Motion for Preliminary Approval” means the motion that Plaintiffs shall file with the Court seeking Preliminary Approval of the Settlement.

57. “Notice” means the Email Notice, Postcard Notice, Publication Notice, and Long Form Notice that Plaintiffs and Class Counsel will ask the Court to approve in connection with the Motion for Preliminary Approval.

58. “Notice Program” means the methods provided for in this Agreement for giving Notice of the Settlement (Email Notice, Postcard Notice, Publication Notice, and Long Form

Notice), along with the Settlement Website and Settlement telephone line.

59. “Notice of Deficiency” means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

60. “Objection Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends 30 days before the initial scheduled Final Approval Hearing.

61. “Opt-Out Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends 30 days before the initial scheduled Final Approval Hearing.

62. “Party” means Plaintiffs and Defendant, individually, and “Parties” means Plaintiffs and Defendant, collectively.

63. “Plaintiffs” means the 2019 Plaintiffs and the 2023 Plaintiffs, collectively.

64. “Postcard Notice” means the postcard notice of the Settlement, substantially in the form attached hereto as *Exhibit 2*, that the Settlement Administrator shall disseminate to those members of the Settlement Class whose Email Notice bounces back or is undeliverable.

65. “Preliminary Approval” means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order.

66. “Preliminary Approval Order” means the order preliminarily approving the Settlement and proposed Notice Program, substantially in the form attached hereto as *Exhibit 6*.

67. “Publication Notice” means the Settlement notice, substantially in the forms attached hereto as *Exhibit 3*, that the Settlement Administrator shall digitally publish on the internet and on select social media platforms.

68. “Private Information” means Settlement Class members’ information that may have

been accessible in either Data Incident, such as names, telephone numbers, email addresses, dates of birth, gender, drivers' license numbers, passport numbers, military identification numbers, and Social Security numbers.

69. "Releases" means the releases and waiver set forth in Section XIII of this Agreement.

70. "Released Claims" means the claims described in Section XIII of this Agreement.

71. "Released Parties" means Defendant, and its present and former parents, subsidiaries, divisions, departments, worldwide affiliates, predecessors, successors and assigns, and any and all of their past, present, and future directors, officers, executives, officials, principals, stockholders, heirs, agents, insurers, reinsurers, members, attorneys, accountants, actuaries, fiduciaries, advisors, consultants, representatives, partners, joint venturers, licensees, licensors, independent contractors, subrogees, trustees, executors, administrators, employees, associated third Parties, predecessors, successors and assigns, and any other person acting on Defendant's behalf, in their capacity as such. It is understood that to the extent a Released Party is not a party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

72. "Releasing Parties" means (i) Plaintiffs and all Settlement Class Members, (ii) each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, affiliates, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, (iii) any entities in which a Plaintiff and/or other participating Settlement Class Member has or had a controlling interest or that has or had a controlling interest in him or her, (iv) any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of a Plaintiff and/or

any other Settlement Class Member, and all those who claim through them or on their behalf, and (v) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above persons or entities identified in (i)-(iv).

73. “Service Awards” shall mean the payment the Court may award the Plaintiffs who sign this Agreement for serving as Class Representatives.

74. “Settlement Administrator” means Epiq Class Action & Claims Solutions, Inc. or Epiq.

75. “Settlement Administration Costs” means all costs and fees of or incurred by the Settlement Administrator regarding Notice and Settlement administration.

76. “Settlement Class” means all persons in the United States whose Private Information was accessed during the Data Incidents. Excluded from the Settlement Class are the judges presiding over the Actions and members of their direct families.

77. “Settlement Class Member” means any member of the Settlement Class who has not opted-out of the Settlement.

78. “Settlement Class Member Benefit” means the Cash Payments and Financial Account Monitoring available to Settlement Class Members under the Settlement.

79. “Settlement Fund” means the non-reversionary \$45,000,000.00 all cash fund that Defendant has agreed to pay or cause to be paid under the terms of the Settlement.

80. “Settlement Website” means the website the Settlement Administrator will establish as a means for the Settlement Class members to submit Claim Forms and obtain notice and

information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, Application for Attorneys' Fees, Costs, and Service Awards, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website and URL may not include any of Defendant's logos or trademarks. The Settlement Website shall remain online and operable for six months after Final Approval.

81. "Tier 1 Cash Payment" means the Settlement Class Member Benefit consisting of an estimated \$75.00 cash payment (subject to *pro rata* increase or decrease) that Tier 1 Settlement Class Members may elect under Section V herein.

82. "Tier 2 Cash Payment" means the Settlement Class Member Benefit consisting of an estimated \$50.00 cash payment (subject to *pro rata* increase or decrease) that Tier 2 Settlement Class Members may elect under Section V herein.

83. "Tier 3 Cash Payment" means the Settlement Class Member Benefit consisting of an estimated \$20.00 cash payment (subject to *pro rata* increase or decrease) that Tier 3 Settlement Class Members may elect under Section V herein.

84. "Tier 1 Settlement Class member" means a member of the Settlement Class who had their Social Security number or military identification number exposed in the Data Incidents and who is eligible to make a Claim for a Tier 1 Cash Payment.

85. "Tier 2 Settlement Class member" means a member of the Settlement Class who had their passport number or driver's license number exposed in the Data Incidents, who is not also a Tier 1 Settlement Class member, and who is eligible to make a Claim for a Tier 2 Cash Payment.

86. "Tier 3 Settlement Class member" means a member of the Settlement Class who

had their name, postal address, and date of birth exposed in the Data Incidents, who is not also a Tier 1 or 2 Settlement Class member, and who is eligible to make a Claim for a Tier 3 Cash Payment.

87. “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Pacific Time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator’s Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

### **III. Settlement Fund**

88. Within 10 business days of Preliminary Approval, Defendant shall deposit \$45,000,000.00 in cash into the Escrow Account to establish the Settlement Fund. Once the Settlement Fund is fully funded with \$45,000,000.00, Defendant shall not be required to pay any more money under this Settlement.

89. The Settlement Fund shall be used to pay: (1) Settlement Class Member Benefits to those Settlement Class Members who submit Valid Claims; (2) any Service Awards awarded to Class Representatives; (3) any attorneys’ fees and costs awarded to Class Counsel; and (4) all Settlement Administration Costs.

90. The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1 at all times from the creation of the Escrow Account. All interest earned on the funds shall be for the benefit of the Settlement Class. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed on Defendant, Defendant’s Counsel, Plaintiffs, and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

#### **IV. Certification of the Settlement Class**

91. Plaintiffs shall propose and recommend to the Court that the Settlement Class be certified for Settlement purposes only under Rule 23(b)(3). Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that these Actions shall proceed as a class action settlement; provided however, that if a Final Approval Order is not issued or is reversed on appeal, then any certification shall be null and void and, for the avoidance of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Plaintiffs and Class Counsel shall not reference this Agreement or any negotiations leading to this Agreement in support of any subsequent motion for class certification of any class in the Actions.

## **V. Settlement Consideration**

92. All Settlement Class Members are eligible to submit a Claim for a Documented Loss Cash Payment and Financial Account Monitoring. Additionally, Tier 1 Settlement Class members may submit a Claim for a Tier 1 Cash Payment, Tier 2 Settlement Class members for a Tier 2 Cash Payment, and Tier 3 Settlement Class members for a Tier 3 Cash Payment. If a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims against Defendant without receiving a Settlement Class Member Benefit.

### **a. Documented Loss Cash Payment**

All Settlement Class Members may submit a Claim for a Documented Loss Cash Payment for up to \$15,000.00 per Settlement Class Member upon presentment of documented losses fairly traceable to either Data Incident. To receive a Documented Loss Cash Payment, a Settlement Class Member must elect Documented Loss Cash Payment on the Claim Form attesting under penalty of perjury to incurring documented losses. Settlement Class Members will be required to submit reasonable documentation supporting the losses. These losses may include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the applicable Data Incident through the date of claim submission; and miscellaneous expenses such as notary, facsimile, postage, copying, mileage, and long-distance telephone charges. Settlement Class Members with losses must submit documentation supporting their Claims. This can include receipts or other documentation not "self-prepared" by the claimant that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted

documentation. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if their Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, the Claim will be rejected.

**b. Tier 1 Cash Payment – \$75.00 for Tier 1 Settlement Class members**

In addition to a Documented Loss Cash Payment, Tier 1 Settlement Class Members may also elect to receive a Tier 1 Cash Payment, which is an estimated flat cash payment in the amount of \$75.00.

**c. Tier 2 Cash Payment – \$50.00 for Tier 2 Settlement Class members**

In addition to a Documented Loss Cash Payment, Tier 2 Settlement Class members may also elect to receive a Tier 2 Cash Payment, which is an estimated flat cash payment in the amount of \$50.00.

**d. Tier 3 Cash Payment – \$20.00 for Tier 3 Settlement Class members**

In addition to a Documented Loss Cash Payment, Tier 3 Settlement Class members may also elect to receive a Tier 3 Cash Payment which is an estimated flat cash payment in the amount of \$20.00.

**e. Financial Account Monitoring**

In addition to electing a Cash Payment, all Settlement Class Members may elect to submit a Claim for Financial Account Monitoring which is identity theft protection and credit monitoring as follows: one year of CyEx Identity Defense Total with three-bureau monitoring and at least \$1,000,000 of fraud/identity theft insurance. The one-year period will commence when Settlement Class Members use their activation codes.

***Pro Rata Adjustments on Cash Payments*** - Settlement Class Cash Payments will be subject to a *pro rata* increase from the Settlement Fund in the event the amount of Valid Claims is

insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of the Cash Payments will be reduced *pro rata* accordingly. For purposes of calculating the *pro rata* increase or decrease, the Settlement Administrator must distribute the funds in the Settlement Fund first for payment of Financial Account Monitoring. Then, the Settlement Administrator shall *pro rata* reduce the remaining amounts for payment Documented Loss Cash Payments and all other Cash Payments on an equal percentage basis.

**VI. Settlement Approval**

93. Upon execution of this Agreement by all Parties and Class Counsel, Class Counsel shall file a Motion for Preliminary Approval, after review by Defendant.

94. The Motion for Preliminary Approval shall, among other things, request the Court enter the Preliminary Approval Order, which will, at a minimum: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) appoint Class Counsel to represent the Settlement Class and the Plaintiffs as Class Representatives; (4) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (5) approve the Claim Form and Claim process; (6) approve the procedures for individuals in the Settlement Class to opt-out of or object to the Settlement; (7) stay the Actions and any related actions pending Final Approval of the Settlement; and (8) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Defendant's Counsel.

**VII. Settlement Administrator**

95. The Parties agree that, subject to Court approval, Epiq shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement

Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws.

96. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims process, administering the Settlement Fund, and distributing Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims.

97. The Settlement Administrator's duties include:

- a. Completing the Court-approved Notice Program by noticing the Settlement Class by Email Notice or Postcard Notice, initiating the Publication Notice, sending Long Form Notices and paper Claim Forms upon request from individuals in the Settlement Class, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;
- b. Establishing and maintaining the Settlement Fund in the Escrow Account;
- c. Establishing and maintaining a post office box to receive opt-out requests from the Settlement Class and objections from Settlement Class Members, and Claim Forms;
- d. Establishing and maintaining the Settlement Website to provide important information about the Settlement and electronic submission of Claim Forms;
- e. Establishing and maintaining an automated toll-free telephone line for the Settlement Class to call with Settlement-related inquiries, and answer frequently asked questions of individuals in the Settlement Class who call with or otherwise communicate such inquiries;
- f. Responding to any mailed Settlement Class member inquiries;

- g. Processing all opt-out requests from the Settlement Class;
- h. Providing weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;
  - i. In advance of the Final Approval Hearing, preparing a declaration confirming the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, providing the names of each individual in the Settlement Class who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;
  - j. Distributing, out of the Settlement Fund, Cash Payments by electronic means or by paper check;
  - k. Sending Settlement Class Members who elect Financial Account Monitoring emails instructing how to activate the Financial Account Monitoring service;
  - l. Paying Court-approved attorneys' fees, costs, and Service Awards out of the Settlement Fund;
  - m. Paying Settlement Administration Costs, including any required taxes, out of the Settlement Fund following approval by Class Counsel; and
  - n. Any other Settlement Administration function at the instruction of Class Counsel and Defendant's Counsel, including, but not limited to, verifying that the Settlement Fund has been properly administered and that the Cash Payments have been properly distributed.

98. The Notice Program and Notices will be reviewed and approved by the Settlement Administrator. The Notices may be revised if agreed upon by the Parties prior to submission to the Court for approval. Immaterial revisions to the Notices may also be made prior to dissemination of Notice.

**VIII. Notice to the Settlement Class**

99. Defendant will provide the Settlement Administrator with the Class List no later than 10 days after entry of the Preliminary Approval Order.

100. Within 30 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program, including initiating the Publication Notice and sending Email Notice to Settlement Class members.

101. The Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the last day of the Opt-Out Period for individuals in the Settlement Class to opt-out of the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Defendant's Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

102. The Settlement Administrator shall establish the Settlement Website no later than

the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claim Form that can be submitted directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

103. Pursuant to the Settlement Administrator's digital notice plan, Publication Notice shall be made in the form of banner advertisements on the internet and across select social media platforms for the purpose of creating awareness about the Settlement.

104. The Long Form Notice also shall include a procedure for individuals in the Settlement Class to opt-out of the Settlement; and the Email Notice shall direct individuals in the Settlement Class to review the Long Form Notice to obtain the opt-out instructions. Individuals in the Settlement Class may opt-out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-out request must be personally signed by the Settlement Class member and contain the name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any individual in the Settlement Class who does not timely and validly request to opt out shall be bound by the terms of this Agreement even if he or she does not submit a Valid Claim, and even if her or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Defendant relating to the Released Claims.

105. The Long Form Notice also shall include a procedure for the Settlement Class to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards, and the Email Notice shall direct the Settlement Class to review the Long Form Notice to obtain the objection instructions. Objections must be mailed to the Clerk of the Court, Class Counsel,

Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

106. For an objection to be considered by the Court, the objection must also set forth:
  - a. the objector's full name, mailing address, telephone number, and email address (if any);
  - b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
  - c. the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
  - d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
  - e. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections

that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

f. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

g. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

i. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

107. The Settlement Administrator shall perform reasonable physical address traces for those Email Notices that experience a hard bounce-back or are otherwise identified as undeliverable, incorrect, or are nonfunctional addresses. Those Settlement Class members whose physical addresses were identified will be sent a Postcard Notice no later than 60 days before the original date set for the Final Approval Hearing.

108. The Notice Program shall be completed no later than 45 days before the initial scheduled date set for the Final Approval Hearing.

109. If the Notice Program is not approved or is modified in a material way by the Court, Defendant shall have the right to unilaterally terminate the Settlement.

#### **IX. Claim Process and Disbursement of Cash Payments**

110. The Notice will explain to the Settlement Class that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

111. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

112. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

113. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of claims, and if there is, contact the Settlement Class Member in an effort to determine which Claim Form is the appropriate one for consideration.

114. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and

Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

115. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Claimant or Settlement Class Member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

116. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;

- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a timely and valid request to opt-out of the Settlement Class;
- g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;
- h. Failure to submit a Claim Form by the Claim Form Deadline; and/or
- i. The Claim Form otherwise does not comply with the requirements of this Settlement.

117. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

- a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication.
- b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this paragraph.
- c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants.
- d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

118. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the

decision, if requested by Class Counsel or Defendant's Counsel. Additionally, Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

119. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

120. The Settlement Administrator shall distribute the Settlement Class Member Benefits no later than 75 days after the Effective Date.

121. Cash Payments to Settlement Class Members will be made electronically or by paper check. Settlement Class Members who do not open their email or provide incorrect or incomplete electronic payment information shall receive a paper check in the mail. Settlement Class Members receiving payment by check shall have 180 days to negotiate the check.

122. The Settlement Administrator will send an email to Settlement Class Members with Valid Claims that elected Financial Account Monitoring with information on how to enroll in the program, including the activation code.

**X. Final Approval Order and Final Judgment**

123. Plaintiffs shall file their Motion for Final Approval of the Settlement inclusive of the Application for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service

Awards, provided the objector(s) submitted timely objections that meet all the requirements listed in the Agreement.

124. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Application for Attorneys' Fees, Costs, and Service Awards. Such Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Affirm the interim and/or conditional appointments of Class Representatives and Class Counsel;
- d. Determine that the Notice Program satisfies Due Process requirements;
- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; bar and enjoin all Releasing Parties from pursuing any Released Claims against Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- f. Release Defendant and the Released Parties from the Released Claims; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

**XI. Service Awards, Attorneys' Fees and Costs**

125. **Service Awards** – In recognition of the time and effort the Class Representatives

expended in pursuing the Actions and in fulfilling their obligations and responsibilities as Class Representatives, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel shall request a Service Award for the Class Representatives in the amount not to exceed \$10,000.00 each for Class Representatives who were deposed and \$3,500.00 each for other Class Representatives. If approved, the Service Awards shall be paid within 10 days after the Effective Date by the Settlement Administrator out of the Settlement Fund. The Service Award payments to the Class Representatives shall be separate and apart from their entitlement to benefits from the Settlement Fund.

126. **Attorneys' Fees and Costs** - Class Counsel shall apply to the Court for an award of attorneys' fees of up to 30% of the Settlement Fund, plus reimbursement of costs. The attorneys' fees and cost awards approved by the Court shall be paid within five days of Final Approval by the Settlement Administrator out of the Settlement Fund by wire transfer to an account designated by Class Counsel.

127. This Settlement is not contingent on the Court's approval of the request for attorneys' fees and costs or Service Awards, and if the Court denies the request or grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force. The provisions for attorneys' fees and costs and the Service Awards were not negotiated until after all material terms of the Settlement, and there is no agreement that Defendant will not oppose either request.

## **XII. Disposition of Residual Funds**

128. The Settlement is designed to exhaust the Settlement Fund. In the event there are funds remaining in the Settlement Fund, including from uncashed checks, within 45 days following the 180-day check negotiation period, the Parties will ask the Court to approve the distribution of

all remaining funds to a *cy pres* recipient agreed on by the Parties and approved by the Court.

### **XIII. Releases**

129. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully, finally, and irrevocably released and forever discharged the Released Parties of, and shall be forever barred from instituting, maintaining, or prosecuting, any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based upon, or relate to (a) the Data Incidents; (b) the Actions; (c) the information at issue in the Data Incidents or the alleged value thereof; or (d) any of the alleged violations of laws or regulations cited in the Complaints.

130. Plaintiffs and Settlement Class Members covenant and agree they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, whether on behalf of themselves or others, against any of the Released Parties in any jurisdiction.

131. Individuals in the Settlement Class who opt-out of the Settlement prior to the Opt-Out Period do not release their individual claims and will not obtain any benefits under the Settlement.

132. With respect to the Released Claims, Plaintiffs and Settlement Class Members understand and acknowledge it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs and Settlement Class Members took that into account in entering into this Agreement, and a portion of the consideration

and the mutual covenants contained herein, having been bargained for between Plaintiffs and Defendants with the knowledge of the possibility of such unknown claims for economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims. Consequently, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Settlement shall have, waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

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.

133. Plaintiffs or Settlement Class Members may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals agrees that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those individuals agrees and acknowledges that he or she shall be bound by this Agreement, including by the release herein and that all of their claims in the Actions shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a Cash

Payment or Financial Account Monitoring from the Settlement.

134. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

#### **XIV. Termination of Settlement**

135. This Agreement shall be subject to and is conditioned on the occurrence of all the following events:

a. Court approval of the Settlement consideration set forth in Section V and the Releases set forth in Section XIII of this Agreement;

b. The Court having entered the Preliminary Approval Order substantially in the form proposed by the Parties;

c. The Court having entered the Final Approval Order substantially in the form proposed by the Parties, and all objections, if any, being overruled, and all appeals taken from the Final Approval Order having been resolved in favor of Final Approval; and

d. The Effective Date having occurred.

136. If any of the conditions specified in the preceding paragraph are not met, then this Agreement may be cancelled and terminated. To the extent either Party elects to terminate the Agreement for failure by the Court to enter the Preliminary Approval Order or Final Approval Order substantially in the form proposed by the Parties, that Party must first, within seven days of entry of the order file a motion requesting that the Court modify or reconsider the relevant order

and then, within seven days of a ruling on that motion, inform the other Party of its election to terminate the Agreement. For the avoidance of doubt, any ruling by the Court related to Attorneys' Fees or Service Awards, even if subject to a motion to modify or reconsider, shall not be a basis for termination of Agreement.

137. Defendant shall have the option to terminate this Agreement if more than 5% of the Settlement Class opt-out of the Settlement. Defendant shall notify Class Counsel and the Court of its or their intent to terminate this Agreement pursuant to this paragraph within 10 days after the end of the Opt-Out Period, or the option to terminate shall be considered waived.

138. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Actions as if the Parties had not entered into this Agreement, and the Parties shall jointly file a status report in the Court seeking to reopen the Actions. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

139. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to Defendant. However, Defendant shall have no right to seek from Plaintiffs, Class Counsel, or the Settlement Administrator the Settlement Administration Costs paid by or on behalf of the Settlement Administrator. After payment of any Settlement Administration Costs that have been incurred and are due to be paid from the Settlement Fund, the Settlement Administrator shall return the balance of the Settlement Fund to Defendant within 21 days of termination.

**XV. Effect of Termination**

140. The grounds upon which this Agreement may be terminated are set forth in Section XIV. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, Defendant's, and Defendant's Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo ante* in the Actions as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

141. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Actions or any other action or proceeding for any purpose. In such event, all Parties to the Actions shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

**XVI. No Admission of Liability**

142. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Complaint. Defendant specifically denies that a class could or should be certified in either Action for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Actions.

143. Class Counsel believe the claims asserted in the Actions have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Actions. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted informal discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

144. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of 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.

145. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) 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 the Plaintiffs or the Settlement Class, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Actions or in any proceeding in any court, administrative agency, or other tribunal.

146. In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the

Releases contained herein.

**XVII. Miscellaneous Provisions**

147. Gender and Plurals. As used in this Agreement, the masculine or feminine gender, and the singular or plural number, shall each be deemed to include the other whenever the context so indicates.

148. Binding Effect. This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

149. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

150. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

151. Integration and No Reliance. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any party or any party's representative other than those set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind have been made by any party, except as provided for herein.

152. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

153. Governing Law. Except as otherwise provided herein, the Agreement shall be

construed in accordance with, and be governed by, the laws of the state of Nevada, without regard to the principles thereof regarding choice of law.

154. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required.

155. 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 also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

156. Notices. All notices provided for herein shall be sent by email with a hard copy sent by overnight mail to:

If to Plaintiffs or Class Counsel:

John A. Yanchunis  
**Morgan & Morgan Complex Business Division**  
201 N. Franklin Street, 7th Floor  
Tampa, FL 33602  
jyanchunis@ForThePeople.com

J. Gerard Stanch, IV  
**Stranch, Jennings & Garvey, PLLC**  
223. Rosa L. Parks Ave., Ste. #200  
Nashville, TN 32703  
gstranch@stranchlaw.com

If to Defendant or Defendant's Counsel:

Neil Gilman  
**Hunton Andrews Kurth LLP**  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
ngilman@huntonak.com

Eric M. Roberts  
**DLA Piper LLP (US)**  
444 West Lake Street, Ste. 900  
Chicago, IL 60606  
eric.roberts@us.dlapiper.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

157. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

158. No Waiver. The waiver by any party of any breach of this Agreement by another party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

159. Authority. Class Counsel (for Plaintiffs and the Settlement Class), and Defendant, represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and Defendant to all terms of this Agreement. Any person executing this Agreement

in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

160. Agreement Mutually Prepared. Neither Plaintiffs nor Defendant shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

161. Independent Investigation and Decision to Settle. The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and law made in connection with the Actions; and (b) that even if they may hereafter 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 Actions as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their counsel, consultants, and/or experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with the Actions pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

162. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically

warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

*Signature Page to Follow*

**PLAINTIFFS**

  
Ryan Bohlum (Jan 14, 2025 08:41 HST)

**RYAN BOHLIM**

  
Duke Hwynn (Jan 14, 2025 17:03 PST)

**DUKE HWYNN**

  
Larry James Lawter (Jan 14, 2025 19:44 EST)

**LARRY LAWTER**

  
Kerri Shapiro (Jan 14, 2025 14:04 EST)

**KERRI SHAPIRO**

  
Gennady Simkin (Jan 14, 2025 11:26 PST)

**GENNADY SIMKIN**

  
Robert Taylor

**ROBERT TAYLOR**

  
Victor Wukovits

**VICTOR WUKOVITS**

  
Tonya Owens (Jan 14, 2025 14:25 EST)


**TONYA OWENS**

  
Emily Kirwan

**EMILY KIRWAN**

  
David Zussman (Jan 16, 2025 11:55 CST)

**DAVID ZUSSMAN**

  
David Lackey (Jan 15, 2025 16:33 EST)

**DAVID LACKEY**

  
Michael Pircio (Jan 14, 2025 15:19 EST)

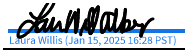
**MICHAEL PIRCIO**

  
David Terezo (Jan 17, 2025 10:46 EST)

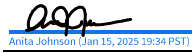
**DAVID TEREZO**

  
Ronald Gregory Rundell (Jan 15, 2025 18:36 MST)

**RONALD G. RUNDELL**

  
Laura Willis (Jan 15, 2025 10:29 PST)

**LAURA WILLIS**


  
Anita Johnson (Jan 15, 2025 19:34 PST)

**ANITA JOHNSON**

DocuSigned by:  
  
02F0E67057714C7...  
**PAUL ZARI**

  
Michael Manson (Jan 16, 2025 10:12 MST)

**MICHAEL MANSON**

  
Kyle Sloan (Jan 15, 2025 15:38 EST)

**KYLE SLOAN**

  
Michelle Righetti (Jan 15, 2025 09:00 PST)

**MICHELLE RIGHETTI**

  
EDGAR MEJIA (Jan 16, 2025 11:54 PST)

**EDGAR MEJIA**

  
DuJun Johnson (Jan 16, 2025 15:42 PST)

**DUJUN JOHNSON**

**CLASS COUNSEL**



[John Yanchunis \(Jan 14, 2025 08:40 PST\)](#)

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**JOHN YANCHUNIS**  
MORGAN & MORGAN  
COMPLEX LITIGATION GROUP



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**E. MICHELLE DRAKE**  
BERGER MONTAGUE PC



[douglas mcnamara \(Jan 14, 2025 12:38 EST\)](#)

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**DOUGLAS MCNAMARA**  
COHEN MILSTEIN  
SELLERS & TOLL PLLC



[David Berger \(Jan 14, 2025 17:21 PST\)](#)

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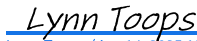
**DAVID BERGER**  
GIBBS LAW GROUP LLP



[Gerard stranch \(Jan 14, 2025 17:48 EST\)](#)

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**J. GERARD STRANCH, IV**  
STANCH, JENNINGS & GARVEY, PLLC



[Lynn Toops \(Jan 14, 2025 12:51 EST\)](#)

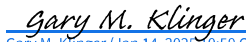
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**LYNN TOOPS**  
COHEN & MALAD, LLP



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**JAMES PIZZIRUSSO**  
HAUSFELD LLP



[Gary M. Klinger \(Jan 14, 2025 10:50 CST\)](#)

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**GARY M. KLINGER**  
MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN PLLC



[Jeffrey Ostrow \(Jan 14, 2025 11:28 EST\)](#)

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**JEFF OSTROW**  
KOPELOWITZ OSTROW P.A.

**DEFNDANT**

**MGM RESORTS INTERNATIONAL**



---

**ASHLEY EDDY**  
SENIOR VICE PRESIDENT AND  
LEGAL COUNSEL

**DEFENDANT'S COUNSEL**

---

**NEIL GILMAN**  
HUNTON ANDREWS KURTH LLP

---

**ERIC ROBERTS**  
DLA PIPER LLP (US)

**DEFENDANT**

**MGM RESORTS INTERNATIONAL**

---

**ASHLEY EDDY**  
SENIOR VICE PRESIDENT AND  
LEGAL COUNSEL

**DEFENDANT'S COUNSEL**

*Neil Gilman*  
Neil Gilman (Jan 17, 2025 13:44 EST)

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**NEIL GILMAN**  
HUNTON ANDREWS KURTH LLP

*Eric Roberts*  
Eric Roberts (Jan 17, 2025 12:48 CST)

---

**ERIC ROBERTS**  
DLA PIPER LLP (US)

**EXHIBIT 1  
(EMAIL NOTICE)**

FROM: EMAIL ADDRESS

TO: EMAIL ADDRESS

RE: MGM RESORTS INTERNATIONAL COURT ORDERED NOTICE OF CLASS ACTION SETTLEMENT

**If your Private Information was compromised as a result of one of two Data Incidents involving MGM Resorts International in or around July 2019, and/or in or around September 2023, you may be entitled to benefits from a settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

**You can learn more at: [www.XXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXX.com)**

A \$45 million settlement has been reached in two class action lawsuits against MGM Resorts International (“MGM” or “Defendant”) arising out of two Data Incidents, one that occurred in or around July 2019, and a second separate Data Incident that occurred in or around September 2023 (together, the “Data Incidents”). Varying amounts of Private Information of customers and guests of MGM were accessed in the Data Incidents. The Private Information included, names, addresses, telephone numbers, email addresses, dates of birth, drivers’ license numbers, passport numbers, and Social Security numbers. Only certain people had their Social Security numbers, passport numbers and/or drivers’ license numbers exposed.

The purpose of this Notice is to provide information about this Settlement and explain your rights and options.

**Who is Included?** You are receiving this Email Notice because data provided by MGM indicates your information was included in one of the Data Incidents and you are a Settlement Class member. The Settlement Class includes all persons in the United States whose Private Information was compromised as a result of the Data Incidents and who were sent notice by the Defendant of the Data Incidents.

**What Does the Settlement Provide?**

**Documented Loss Cash Payment.**

You may submit a timely and valid Claim Form and provide supporting documentation that you spent money or incurred losses related to the Data Incident for up to \$15,000.00. Please visit the website for information and examples on how to file for a Documented Loss Cash Payment.

**Tiered Cash Payments.**

Certain Settlement Class members are also eligible to receive a flat cash payment, without providing documentation, depending on what personal information may have been exposed in the Data Incidents. The three tiers of Cash Payments are listed below.

**Tier 1 Cash Payment** - If your Social Security number or military identification number was exposed, you may be eligible to receive an estimated \$75 flat cash payment.

**Tier 2 Cash Payment** – If your passport number or driver’s license number was exposed, you may be eligible to receive an estimated \$50 flat cash payment.

**Tier 3 Cash Payment** – If your name, address, and/or date of birth was exposed, you may be eligible to receive an estimated \$20 flat cash payment.

**According to data provided by MGM, you are eligible for a <<Tier 1>> Cash Payment**

Use this unique ID number <<UniqueID>> to file your Claim online

Your Cash Payment amount may be subject to a *pro rata* (a legal term meaning equal share) increase if the amount of Valid Claims received is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement, the amount of Cash Payments may be reduced *pro rata* accordingly.

**Financial Account Monitoring.**

In addition to the Cash Payments, you can file a Claim for one year of three-bureau identity theft protection, Financial Account Monitoring, and at least \$1,000,000 of fraud/identity theft insurance.

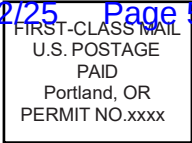
You must submit a timely and valid Claim Form online [here](#) or by mail postmarked by **Month XX, 20YY**.

**Other Options.** If you do not want to be legally bound by the Settlement, you must opt-out of the Settlement no later than **Month XX, 20YY**. If you do not opt-out, you will give up the right to sue and will release the Defendant and Released Parties about the legal claims in the lawsuits. If you do not opt out, you may object to the Settlement by **Month XX, 20YY**. The [Long Form Notice](#) on the Settlement Website has instructions on how to opt-out or object. If you do nothing, you will get no Settlement Class Member Benefits, and you will be bound by the Settlement and any judgments and orders. The Court will hold a Final Approval Hearing on **Month XX, 20YY**, to consider whether to approve the Settlement and Class Counsel’s request for attorneys’ fees of up to 30% of the \$45 million Settlement Fund, and reimbursement of their litigation costs. Class Counsel will also seek Service Awards for the Class Representatives. You or your lawyer may attend and ask to appear at the hearing, but you are not required to do so. The hearing may be held remotely, and if so, instructions will be at [www.XXXXX.com](#).

**This notice is a summary.** Learn more about the Settlement [here](#) or call toll free 1-XXX-XXX-XXXX.

**EXHIBIT 2  
(POSTCARD NOTICE)**

2:20-cv-00976-GMN-NJK  
MGM Data Incident Litigation  
Settlement Administrator  
PO Box XXXX  
Portland, OR 97XXX-XXXXX



Court-Approved Legal Notice

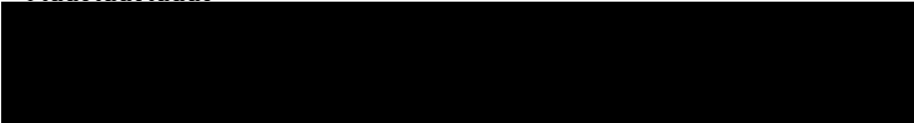
*In re MGM International Resorts Data Breach Litigation, 2:20-cv-00376-GMN-NJK and Tanya Owens et. al v. MGM Resorts International et al., 2:23-cv-01480-FRB*  
United States District Court for the District of Nevada

**If your Private Information was compromised as a result of one of two Data Incidents involving MGM Resorts International in or around July 2019, and/or in or around September 2023, you may be entitled to benefits from a Settlement.**

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

www.XXXXXXXXXXXXXXXXXX.com  
1-XXX-XXX-XXXX

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\$45 million Settlement has been realized in two class action lawsuits against MGM Resorts International (“Defendant”) arising out of two Data Incidents, one that occurred in or around July 2019, and a second one that occurred in or around September 2023 (together, the “Data Incidents”). Varying amounts of Private Information of customers and guests of Defendant were accessed in the Data Incidents. The Private Information included, names, addresses, telephone numbers, email addresses, dates of birth, drivers’ license numbers, passport numbers, Social Security numbers, and military identification numbers.

**Who is Included?** The Settlement Class includes all persons in the United States whose Private Information was compromised as a result of the Data Incidents and who were sent notice by the Defendant of the Data Incidents.

### **What does the Settlement Provide?**

**Documented Loss Cash Payment:** You can file a Claim Form with supporting documentation that you spent money or incurred losses related to the Data Incident for up to \$15,000.

**Tiered Cash Payment:** Certain Settlement Class Members are also eligible to receive a flat cash payment, without providing supporting documentation, depending on what personal information may have been exposed in the Data Incidents. There are three Tiers: (1) Tier 1 payments are estimated to be \$75; (2) Tier 2 payments are estimated to be \$50; and (3) Tier 3 payments are estimated to be \$20. All payments may be adjusted upward or downward depending on the amount of Valid Claims filed. Please visit the website for information on the 3 different Tiered Cash Payments.

### **According to data provided by MGM, you are eligible for a <<Tier 1>> Cash Payment**

Use this unique ID number <<UniqueID>> to file your Claim online

**Financial Account Monitoring:** In addition to Cash Payments, you can elect one year of Financial Account Monitoring.

You must submit your Claim Form online or by mail postmarked by **MONTH DD, 20YY**.

**Other Options.** If you do not want to be bound by the Settlement, you must opt-out by **MONTH DD, 20YY**. If you do not opt-out, you will give up the right to sue and will release the Defendant and Released Parties of legal claims in the lawsuits. If you do not opt-out, you may object to the Settlement by **MONTH DD, 20YY**. The Long Form Notice on the Settlement Website has instructions on how to opt-out or object. If you do nothing, you will get no Settlement Class Member Benefits, and you will be bound by the Settlement, any judgments, and orders. The Court will hold a Final Approval Hearing on **MONTH DD, 20YY**, to consider whether to approve the Settlement, the requested Service Awards, attorneys’ fees of up to 30% of the \$45 million Settlement Fund, costs, and any objections. You or your own attorney may attend and ask to appear at the hearing, but are not required to do so.

**This notice is a summary. Learn more about the Settlement at [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com), or by calling toll free 1-XXX-XXX-XXXX.**

**EXHIBIT 3**  
**(PUBLICATION NOTICE)**

*MGM Data Breach*  
*Banner Advertisements*

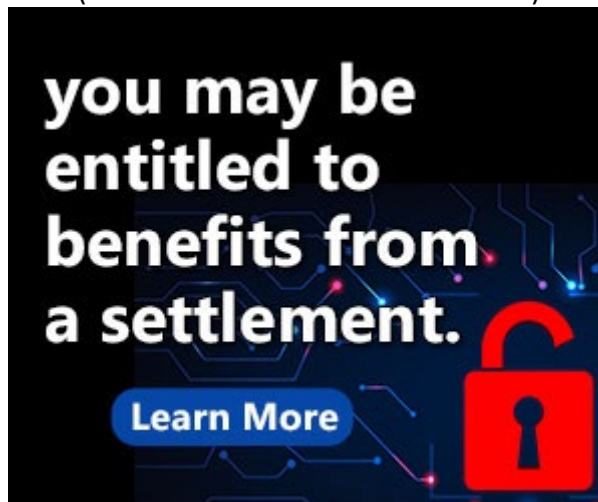
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**Option 1**

**300 x 250 Online Display Banner**  
(Frame 1 – on screen for 10 seconds)



(Frame 2 – on screen for 5 seconds)



**Facebook Newsfeed**  
(Static)

epiq Epiq  
Sponsored · 🌐

If your information was compromised as a result of the MGM Resorts Data Incidents, you may be entitled to settlement benefits.




www.url.com  
**MGM Resorts Data Incidents**

Learn more

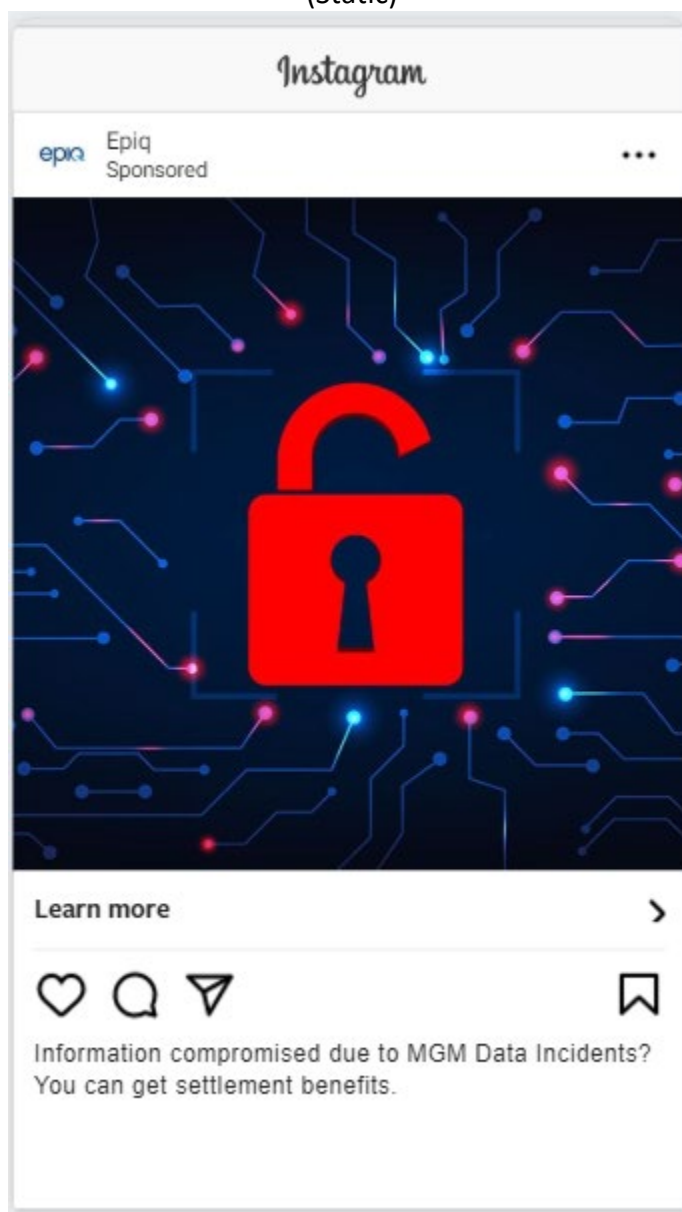
👍 Like    💬 Comment    ➦ Share

**Facebook Right Hand Column**  
(Static)



MGM Resorts Data Incidents  
www.url.com

**Instagram Newsfeed**  
(Static)



**300 x 250 Online Display Banner**  
(Frame 1 – on screen for 10 seconds)




(Frame 2 – on screen for 5 seconds)



epiq Epiq  
Sponsored · 🌐

✕ ⋮

If your information was compromised as a result of the MGM Resorts Data Incidents, you may be entitled to settlement benefits.




www.url.com  
**MGM Resorts Data Incidents**

Learn more

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👍 Like    💬 Comment    ➦ Share

Facebook Right Hand Column  
(Static)



MGM Resorts Data Incidents  
www.url.com

Instagram

epiq Epiq Sponsored



Learn more >

♡ 💬 📌 📌

Information compromised due to MGM Data Incidents?  
You can get settlement benefits.

**EXHIBIT 4  
(LONG FORM NOTICE)**

**If your Private Information was compromised as a result of one of two Data Incidents involving MGM Resorts International in or around July 2019, and/or in or around September 2023, you may be entitled to benefits from a settlement.**

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

- A \$45 million Settlement has been reached against MGM Resorts International (“MGM” or “Defendant”) arising out of two Data Incidents, one that occurred in or around July 2019, and a second separate Data Incident that occurred in or around September 2023 (together, the “Data Incidents”). Varying amounts of Private Information of customers and guests of MGM were accessed in the Data Incidents. The Private Information may have included, names, addresses, telephone numbers, email addresses, dates of birth, drivers’ license numbers, military identification numbers, passport numbers, and Social Security numbers. Only certain people had their Social Security numbers, passport numbers and/or drivers’ license numbers exposed.
- If you are a Settlement Class Member, you may be able to receive the following Settlement Class Member Benefits:

**Documented Loss Cash Payment:** You may submit a timely and valid Claim Form and provide supporting documentation that you spent money or incurred losses related to the Data Incident for up to \$15,000.00.

**Tiered Cash Payments:** Certain Settlement Class Members are also eligible to receive a flat cash payment, without providing documentation, depending on what personal information may have been exposed in the Data Incidents. A timely and Valid Claim required for Tiered Cash Payments also.

**Tier 1 Cash Payment** - If your Social Security number or military identification number was exposed, you may be eligible to receive an estimated \$75.00 flat cash payment.

**Tier 2 Cash Payment** – If your passport number or driver’s license number was exposed, you may be eligible to receive an estimated \$50.00 flat cash payment.

**Tier 3 Cash Payment** – If your name, address, and/or date of birth was exposed, you may be eligible to receive an estimated \$20.00 flat cash payment.

**Financial Account Monitoring:** In addition to the Cash Payments, all Settlement Class members are eligible for one year of Financial Account Monitoring, upon submission of a timely and Valid Claim.

Your Cash Payment may be subject to a *pro rata* (a legal term meaning equal share) increase or decrease. More information about this adjustment is found below.

**This Notice may affect your rights. Please read it carefully.**

Your Legal Rights and Options		Deadline
<b>SUBMIT A CLAIM FORM</b>	The only way to get Settlement Class Member Benefits is to submit a timely and valid Claim Form.	Submitted or Postmarked by: <b>MONTH DD, 20YY</b>
<b>OPT-OUT OF THE SETTLEMENT</b>	Get no Settlement Class Member Benefits. Keep your right to file your own lawsuit against the Released Parties about the legal claims in these lawsuits that are released by the Settlement.	Postmarked by: <b>MONTH DD, 20YY</b>
<b>OBJECT TO THE SETTLEMENT</b>	Stay in the Settlement, but tell the Court why you do not agree with the Settlement. You will still be bound by the Settlement if the Court approves it.	Postmarked by: <b>MONTH DD, 20YY</b>

**Questions? Go to [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

<b>Do NOTHING</b>	Get no Settlement Class Member Benefits. Give up your legal rights.	
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- These rights and options—and **the deadlines to exercise them**—are explained in this Notice. The Court must decide whether to approve the Settlement and the requested Service Awards and attorneys’ fees and Costs. Settlement Class Member Benefits will not be provided unless the Court approves the Settlement.

## BASIC INFORMATION

### 1. Why is this Notice being provided?

A court authorized this Notice because you have the right to know about the Settlement and about all of your rights and options before the Court decides whether to grant Final Approval of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

The Honorable Gloria M. Navarro of the United States District Court for the District of Nevada is overseeing the combined Settlement of two class action lawsuits. The lawsuits are known as *In re MGM International Resorts Data Breach Litigation*, Case No.: 2:20-cv-00376-GMN-NJK and *Tanya Owens, et al. v. MGM Resorts International, et al.*, Case No. 2:23-cv-01480-FRB (“lawsuits”). The individuals who filed these lawsuits are called the “Plaintiffs” and/or “Class Representatives” and the company sued, MGM Resorts International, is called the “Defendant.”

### 2. What are the lawsuits about?

Plaintiffs filed these lawsuits against Defendant, individually, and on behalf of customers and guests of Defendant whose Private Information, including but not limited to, names, addresses, telephone numbers, email addresses, dates of birth, drivers’ license numbers, passport numbers, and Social Security numbers was compromised as a result of two separate Data Incidents.

Plaintiffs allege that on or around July 2019, and again on or around September 2023, as a result of the Data Incidents, unauthorized individuals accessed Defendant’s network and their Private Information. Different Plaintiffs brought two separate lawsuits against Defendant arising out of each of the Data Incidents.

Defendant denies the legal claims in each lawsuit and denies any wrongdoing or liability. No court or other judicial entity has made any judgment or other determination of any wrongdoing by Defendant, or that any law has been violated. Instead, Plaintiffs and Defendant have agreed to a Settlement to avoid the risk, cost, and time of continuing the lawsuit.

### 3. Why is the lawsuit a class action?

In a class action, one or more people (called class representatives) sue on behalf of all people who have similar legal claims. Together, all these people are called a class or class members. One court resolves the issues for all Settlement Class members, except for those Settlement Class members who timely exclude themselves (opt-out) from the Settlement Class.

The Class Representatives in the lawsuits are the Plaintiffs who sued the Settlement Agreement.

### 4. Why is there a Settlement?

Sometime after each lawsuit was filed, the Plaintiffs in the lawsuit in the 2019 Data Incident and the Plaintiffs in the lawsuit in the 2023 Data Incident decided to work together and collectively pursue a

**Questions? Go to [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

global settlement of both lawsuits with the Defendant. Plaintiffs and Defendant do not agree about the legal claims made in the lawsuits. Neither lawsuit has not gone to trial, and the Court has not decided in favor of Plaintiffs or Defendant in either one. Instead, Plaintiffs and Defendant have agreed to settle the lawsuits together. The Class Representatives, Defendant, and their lawyers believe the Settlement is best for all Settlement Class members because of the benefits to the Settlement Class members and the risks and uncertainty associated with continuing either of the lawsuits.

## WHO IS INCLUDED IN THE SETTLEMENT?

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

The Settlement Class includes all persons in the United States whose Private Information was compromised as a result of the Data Incidents and who were sent notice by the Defendant of the Data Incidents.

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

Yes. Excluded from the Settlement Class are the judges presiding over the lawsuits and members of their direct families.

### 7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class member, you may go to the Settlement Website at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call the Settlement Administrator's toll-free number at 1-XXX-XXX-XXXX.

## THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

### 8. What does the Settlement provide?

If you are a Settlement Class member and you submit a timely and valid Claim Form, you may be eligible for the following Settlement Class Member Benefits:

#### **Documented Loss Cash Payment.**

You may submit a Claim Form with supporting documentation that you spent money or incurred losses related to the Data Incidents for up to \$15,000.00.

Examples of losses include, but are not limited to:

- Unreimbursed losses relating to fraud or identity theft;
- Professional fees including attorneys' fees, accountants' fees, and fees for credit repair services;
- Costs associated with freezing or unfreezing credit with any credit reporting agency;
- Credit monitoring costs that were incurred on or after the Data Incidents through the Claims Deadline; and
- Miscellaneous expenses such as notary, facsimile, postage, copying, mileage, and long-distance telephone charges.

Examples of supporting documentation include, but are not limited to:

**Questions? Go to [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

- credit card statements;
- bank statements;
- invoices;
- telephone records; and
- receipts

“Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. You will not be reimbursed for expenses if you have been reimbursed for the same expenses by another source.

### **Tiered Cash Payments.**

In addition to the Documented Loss Cash Payment, you may be eligible to receive a flat cash payment if you had certain information exposed in either of the 2019 or 2023 Data Incidents. If you were sent Notice of the Settlement by email or mail, your Notice informed you if you were likely eligible for a Tier 1, Tier 2 or Tier 3 Cash Payment.

**Tier 1 Cash Payment** - If your Social Security number or military identification number was exposed, you may be eligible to receive an estimated \$75.00 flat cash payment.

**Tier 2 Cash Payment** – If your passport number or driver’s license number was exposed, you may be eligible to receive an estimated \$50.00 flat cash payment.

**Tier 3 Cash Payment** – If your name, address, and/or date of birth was exposed, you may be eligible to receive an estimated \$20.00 flat cash payment.

Your Cash Payment may be subject to a *pro rata* (a legal term meaning equal share) increase from the Settlement Fund if the amount of Valid Claims is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of Cash Payments may be reduced *pro rata* accordingly.

### **Financial Account Monitoring.**

In addition to the Cash Payments, you may be eligible for one year of three-bureau identity theft protection, credit monitoring, and at least \$1,000,000 of fraud/identity theft insurance.

## **9. What am I giving up to receive Settlement benefits or stay in the Settlement Class?**

Unless you opt-out of the Settlement, you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes final, all Court orders and any judgments will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against the Released Parties about the legal issues in the lawsuits that are released by this Settlement. The specific rights you are giving up are called “Released Claims.”

## **10. What are the Released Claims?**

Section XIII of the Settlement Agreement describes the Released Claims and the Release, in necessary legal terminology, so please read these sections carefully. The complete Settlement Agreement is available at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com). For questions regarding the Release or Released Claims and what the language in the Settlement Agreement means, you can also contact Class Counsel listed in Question 14 for free, or you can talk to your own lawyer at your own expense.

**Questions? Go to [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

## HOW TO GET BENEFITS FROM THE SETTLEMENT

### 11. How do I make a Claim for Settlement Class Member Benefits?

You must submit a timely and valid Claim Form for the Settlement Benefits described in Question 8. Your Claim Form must be submitted online at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) by **MONTH DD, 20YY**, or mailed to the Settlement Administrator at the address on the Claim Form, **postmarked** by **MONTH DD, 20YY**. Claim Forms are also available on the Settlement Website at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or by calling 1-XXX-XXX-XXXX or by writing to:

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box XXXX  
Portland, OR 97XXX-XXXX

### 12. How do I know if I qualify for a Tier 1, Tier 2, or Tier 3 Cash Payment?

If you were sent Notice of the Settlement via email or mail, your Notice indicated whether you were eligible for a Tier 1, Tier 2, or Tier 3 Cash Payment. You were also provided with a unique ID number to help you easily file your Claim online at the Settlement Website. If you still have questions about your eligibility, visit [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX.

### 13. What happens if my contact information changes after I submit a Claim Form?

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by writing to:

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box XXXX  
Portland, OR 97XXX-XXXX

### 14. When will I receive my Settlement Class Member Benefits?

If you file a timely and valid Claim Form, the Settlement Class Member Benefits will be provided by the Settlement Administrator after the Settlement is approved by the Court and becomes final.

It may take time for the Settlement to be approved and become final. Please be patient and check [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) for updates.

## THE LAWYERS REPRESENTING YOU

### 15. Do I have a lawyer in this lawsuit?

Yes, the Court has appointed John Yanchunis of Morgan & Morgan Complex Litigation Group, E. Michelle Drake of Berger Montague PC, Doug McNamara of Cohen Milstein Sellers & Toll, PLLC, David Berger of Gibbs Law Group LLP, J. Gerard Stranch IV of Stranch, Jennings & Garvey, PLLC, Lynn Toops of Cohen & Malad LLP, James Pizzirusso of Hausfeld LLP, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and Jeff Ostrow of Kopelowitz Ostrow P.A. as Class Counsel to represent you and the Settlement Class for the purposes of this Settlement. You may hire

**Questions? Go to [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this lawsuit.

## 16. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award attorneys' fees and costs payable out of the \$45,000,000 Settlement Fund. They will seek 30% of the Settlement Fund in attorneys' fees and reimbursement of their litigation costs. Class Counsel will also ask the Court to approve Service Awards in the amount of \$10,000.00 each for those Class Representatives who had their depositions taken and \$3,500.00 each for all other Class Representatives. The Service Awards are for the Class Representatives' efforts in participating in the Actions and for achieving the Settlement. If awarded by the Court, the Attorneys' Fees, Costs, and the Service Awards will be paid from the Settlement Fund. The Court may award less than these amounts.

Class Counsel's Application for attorneys' fees, Costs, and Service Awards will be made available on the Settlement Website at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com).

## OPTING-OUT FROM THE SETTLEMENT

If you are a Settlement Class member and want to keep any right you may have to individually sue or continue to sue the Released Parties on your own based about the legal claims in the lawsuits or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting-out” of—the Settlement.

## 17. How do I opt-out of the Settlement?

To opt-out of the Settlement, you must mail a written request for exclusion, which includes the following:

- 1) Your name, address, telephone number, and email address (if any);
- 2) Your personal physical signature; and
- 3) A statement that you want to be excluded from the Settlement Class, such as “I hereby request to be excluded from the Settlement Class in *In re MGM International Resorts Data Breach Litigation*, Case No.: 2:20-cv-00376-GMN-NJK and *Tanya Owens, et al. v. MGM Resorts International, et al.*, Case No. 2:23-cv-01480-FRB.”

The opt-out request must be **mailed** to the Settlement Administrator at the following address, and be **postmarked** by **MONTH DD, 20YY**:

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box XXXX  
Portland, OR 97XXX-XXXX

**You cannot opt-out (exclude yourself) by telephone or by email.**

“Mass” or “class” requests for exclusion filed by third parties on behalf of a “mass” or “class” of Settlement Class members or multiple Settlement Class members where the opt-out has not been signed by each and every individual Settlement Class member will not be allowed.

## 18. If I opt-out can I still get anything from the Settlement?

**Questions? Go to [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

No. If you timely opt-out, you will not be entitled to receive Settlement Class Member Benefits, but you will not be bound by the Settlement or any judgment in the lawsuits. You can only get Settlement Class Member Benefits if you stay in the Settlement and submit a timely and valid Claim Form.

### 19. If I do not opt-out, can I sue Defendant for the same thing later?

No. Unless you timely opt-out, you give up any right to individually sue any of the Released Parties for the legal claims this Settlement resolves and Releases relating to the Data Incidents. You must opt-out of the lawsuits to start or continue with your own lawsuit or be part of any other lawsuit against the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## OBJECTING TO THE SETTLEMENT

### 20. How do I tell the Court that I object to the Settlement?

If you are a Settlement Class Member, you can tell the Court you object to all or any part of the Settlement.

To object, you must send your written objection by U.S. mail to the Clerk of Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator postmarked by or shipped by private courier (such as Federal Express) by **MONTH DD, 20YY**, stating you object to the Settlement in *In re MGM International Resorts Data Breach Litigation*, Case No.: 2:20-cv-00376-GMN-NJK and *Tanya Owens, et al. v. MGM Resorts International, et al.*, Case No. 2:23-cv-01480-FRB.

To file an objection, you cannot opt-out of the Settlement Class. Your objection must include all of the following information:

- 1) Your full name, address, telephone number, and email address (if any);
- 2) All grounds for the objection, accompanied by any legal support for the objection known to you as the objector or your own lawyer;
- 3) The number of times you have objected to a class action settlement within the 5 years preceding the date that you file the objection, the caption of each case in which you have made an objection, and a copy of any orders related to or ruling upon your prior objections that were issued by the trial and appellate courts in each listed case;
- 4) The identity of all lawyers representing you, including any former or current lawyers who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
- 5) The number of times in which your lawyer or your lawyer's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which your lawyer or the firm has made the objection and a copy of any orders related to or ruling upon your lawyer's or the lawyer's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which your lawyer's and/or lawyer's law firm have objected to a class action settlement within the preceding 5 years;
- 6) The identity of all lawyers (if any) representing you who will appear at the Final Approval Hearing;
- 7) A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- 8) A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- 9) Your signature as the objector (a lawyer's signature is not sufficient).

**Questions? Go to [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

To be timely, written notice of an objection including all of the information above must be mailed to the Clerk of Court, Class Counsel, Defendant’s Counsel and the Settlement Administrator by **MONTH DD 20YY**, at the following addresses:

COURT	CLASS COUNSEL	DEFENDANT’S COUNSEL	SETTLEMENT ADMINISTRATOR
Clerk U.S. District Court Lloyd D. George Federal Courthouse 333 Las Vegas Blvd South Las Vegas, NV 89101	John A. Yanchunis Morgan & Morgan 201 North Franklin Street, 7 <sup>th</sup> Floor Tampa, FL 33602  J. Gerard Stranch IV Stranch, Jennings, Garvey, PLLC 223 Rosa L. Parks Ave Suite 200 Nashville, TN 32703	Neil Gilman Hunton Andrews Kurth LLP 2200 Pennsylvania Avenue, NW Washington, DC 20037 ngilman@huntonak.com  Eric M. Roberts DLA Piper LLP (US) 444 West Lake Street Suite. 900 Chicago, IL 60606 eric.roberts@us.dlapiper.com	MGM Data Incident Litigation Settlement Administrator PO Box XXXX Portland, OR 97XXX- XXXX

If you fail to comply with the requirements for objecting as detailed above, you waive and forfeit any and all rights you may have to appear separately and/or to object to the Settlement and you will be bound by all the terms of the Settlement and by all proceedings, orders, and judgments in the lawsuits.

**21. What is the difference between objecting and asking to opt-out?**

Objecting is simply telling the Court you do not like something about the Settlement or the requested Attorneys’ Fees, Costs, or Service Awards. You can object only if you stay in the Settlement Class (meaning you do not opt-out of the Settlement). Opting-out of the Settlement is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you opt-out, you cannot object to the Settlement.

**THE FINAL APPROVAL HEARING**

The Court will hold a “Final Approval Hearing” to decide whether to approve the Settlement. You may attend and you may ask to speak if you file an objection by the deadline, but you do not have to.

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

The Court will hold a Final Approval Hearing on **MONTH DD, 20YY, at X:XX a.m./p.m.** before the Honorable **Gloria M. Navarro, II at the Lloyd D. George Federal Courthouse, 333 Las Vegas Blvd. South, Las Vegas, Nevada 89101**. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve the Settlement, Class Counsel’s Application for the Attorneys’ Fees, Costs, and Service Awards.

If there are objections that were filed by the deadline, the Court will consider them. If you file a timely objection, and you would like to speak at the hearing, the Court will also listen to you or your lawyer speak at the hearing, if you so request.

**Note:** The date and time of the Final Approval Hearing are subject to change without further notice to the Settlement Class. The Court may also decide to hold the hearing via video conference or by

telephone. You should check the Settlement Website [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) to confirm the date and time of the Final Approval Hearing has not changed.

### **23. Do I have to attend to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to attend the Final Approval Hearing to speak about it. As long as you file a written objection by the deadline, the Court will consider it.

### **24. May I speak at the Final Approval Hearing?**

Yes, as long as you do not opt-out and you file a timely written objection requesting to speak at the hearing, you can (but do not have to) participate and speak for yourself at the Final Approval Hearing. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

If you want to appear, or if you want your own lawyer instead of Class Counsel to speak for you at the hearing, you must follow all of the procedures for objecting to the Settlement listed in Question 19 above—and specifically include a statement whether you and your lawyer will appear at the Final Approval Hearing.

## **IF YOU DO NOTHING**

### **25. What happens if I do nothing at all?**

If you are a Settlement Class Member and you do nothing, you will not receive any of the Settlement Class Member Benefits, and you will give up rights explained in the “Opting-Out from the Settlement” section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against any of the Released Parties about the legal issues in this lawsuit that are released by the Settlement relating to the Data Incidents.

## **GETTING MORE INFORMATION**

### **26. How do I get more information?**

This Notice summarizes the Settlement. Complete details about the Settlement are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com). You may get additional information at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com), by calling toll-free 1-XXX-XXX-XXXX, or by writing to:

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box XXXX  
Portland, OR 97XXX-XXXX

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT’S  
CLERK OFFICE REGARDING THIS NOTICE.**

**Questions? Go to [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX**

**EXHIBIT 5  
(CLAIM FORM)**

MAIL ID

\*0000PLACEHOLDER0000\*

Must be postmarked or submitted online NO LATER THAN \_\_\_\_\_, 2025

MGM Data Incident Litigation Settlement Administrator P.O. BOX XXXX Portland, OR 97208-XXXX WWW.XXXXXXXXXXXXXXXXXX.COM

MGM Data Incident Litigation Claim Form

SETTLEMENT BENEFITS – WHAT YOU MAY GET

If you are a person in the United States whose Private Information was compromised in the MGM Data Incidents that occurred on July 10, 2019, and/or September 7, 2023, you may submit a Claim.

The easiest way to submit a Claim is online at www.XXXXXXX.com, or you can complete and mail this Claim Form to the mailing address above.

You may submit a Claim for one or more of these Settlement Class Member Benefits:

- 1. Financial Account Monitoring: Use the claim form to request free Financial Account Monitoring.
2. Documented Loss Cash Payment: If you spent unreimbursed money trying to avoid or recover from fraud or identity theft that you believe is fairly traceable to the Data Incidents, you can be reimbursed up to \$15,000.00. You must submit documents supporting your Claim.
3. Tiered Cash Payment. If you have been identified as a Tier 1, Tier 2, or Tier 3 Settlement Class member, you are also eligible to receive a flat cash payment. The three Tiers of Cash Payments are listed below.
- Tier 1 Cash Payment - If your Social Security number or military identification number was exposed, you may be eligible to receive an estimated \$75.00 flat cash payment.
- Tier 2 Cash Payment - If your passport number or driver's license number was exposed, you may be eligible to receive an estimated \$50.00 flat cash payment.
- Tier 3 Cash Payment - If you name, address, and date of birth was exposed, you may be eligible to receive an estimated \$20.00 flat cash payment.

Monetary compensation from this Settlement is available under Option 2, Documented Loss Cash Payment, and Option 3, Tiered Cash Payment.

All Settlement Class Members are eligible to file a Claim for Financial Account Monitoring and a Documented Loss Cash Payment, but not every Settlement Class Member is eligible to file a Claim for a Tiered Cash Payment.

Claims must be submitted online or mailed by \_\_\_\_\_, 2025. Use the address at the top of this form for mailed Claims.

Please note: The Settlement Administrator may contact you to request additional documents to process your Claim. Your Cash Payment amounts may increase or decrease depending on the number and amount of Valid Claims submitted.

For more information and complete instructions visit www. .com.

Please note that Settlement Class Member Benefits will be distributed only after the Settlement is approved by the Court and becomes final.

If your Claim for a Cash Payment is accepted, after the Settlement is approved, you will receive an email at the email address you provide prompting you to select how you would like to be paid. You can receive your Cash Payment via a variety of digital options such as digital debit card or PayPal, or you can elect to receive a paper check.

If you file a Valid Claim for Financial Account Monitoring, after the Settlement is approved, you will receive an email with a code and activation instructions at the email address you provide.

MAIL ID

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### Your Information

*We will use this information to contact you and process your Claim. It will not be used for any other purpose. If any of the following information changes, you must promptly notify the Settlement Administrator.*

First Name	Middle Initial	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Alternative Name(s) (If Any):

Unique ID (As shown on the notice you received):

Mailing Address (Required):

City	State	ZIP
<input type="text"/>	<input type="text"/>	<input type="text"/>

Phone Number:

 -  - 

Email Address:

Year of Birth:

MAIL  
ID

\*0000PLACEHOLDER0000\*

## Financial Account Monitoring

*You may be eligible to receive free financial account monitoring services.*

You can elect to submit a Claim for Financial Account Monitoring including identity theft protection and credit monitoring. This benefit includes one year of Cyex Identity Defense Total with three-bureau monitoring and at least \$1,000,000 of fraud/identity theft insurance. The one-year period will commence when you use your code to activate the Financial Account Monitoring.

*Please select Option 1 if you want the Financial Account Monitoring for which you are eligible.*

**Option 1, Financial Account Monitoring:** I want to receive free Financial Account Monitoring.

*If you select this option, you will be sent instructions and an activation code after the Settlement is final to your email address or home address. You won't be "upsold" any services by enrolling or otherwise asked to submit any payment for these services now or in the future.*

## Documented Loss Cash Payment: Money You Lost or Spent

If you lost or spent money trying to prevent or recover from fraud or identity theft that you believe is fairly traceable to the Data Incidents, and have not been reimbursed for that money, you can receive reimbursement for up to \$15,000.00.

It is important for you to send documents that show what happened and how much you lost or spent, so that you can be reimbursed.

*Please select Option 2 if you want to claim for Reimbursement of Out-of-Pocket Losses or Expenses.*

**Option 2, Documented Loss Cash Payment:** I have experienced a documented out-of-pocket loss related to the MGM Data Incidents. I am providing the necessary information and documentation.

To look up more details about how Cash Payments work, visit [www.XXXXXX.com](http://www.XXXXXX.com) or call toll-free 1-XXX-XXX-XXXX. You will find more information about the types of costs and losses that can be paid back to you, what documents you need to attach, and how the Settlement Administrator decides whether to approve your payment. *By filling out the boxes on the next page of this form, you are certifying that the money you spent doesn't relate to other data breaches.*

**You may make as many copies of the Claim Form pages as necessary to list all of your expenses. If you need more space to list your costs and losses, please submit additional pages of this Claim Form to provide that information.**



MAIL ID

\*0000PLACEHOLDER0000\*

### Tiered Cash Payment

If you have been identified as a Tier 1, Tier 2, or Tier 3 Settlement Class member, you are eligible to receive a flat cash payment. The three Tiers of Cash Payments are listed below.

**Tier 1 Cash Payment** - If your Social Security number was exposed, you may be eligible to receive an estimated \$75.00 flat cash payment.

**Tier 2 Cash Payment** – If your passport number or driver’s license number was exposed, you may be eligible to receive an estimated \$50.00 flat cash payment.

**Tier 3 Cash Payment** – If your name, address, and date of birth was exposed, you may be eligible to receive an estimated \$20.00 flat cash payment.

*Please select Option 3 if you want the Tiered Cash Payment for which you are eligible.*

**Option 3, Tiered Cash Payment: I am eligible to receive one of the Tiered Cash Payments based on the Notice I received, and I wish to claim the Tiered Cash Payment I am eligible for.**

*If you select this option, we will confirm your eligibility against MGM’s records. If you are not a Tier 1, Tier 2 or Tier 3 Settlement Class member, you will not receive a Tiered Cash payment. Only individuals whose Notice identified them as eligible will be able to claim this option.*

### Signature

I affirm under the laws of the United States that the information I have supplied in this form and any copies of documents that I am sending to support my claim are true and correct to the best of my knowledge.

I understand that I may be asked to provide more information by the Settlement Administrator before my claim is complete.

Print Name

Signature

Date: 

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**EXHIBIT 6**  
**(PRELIMINARY APPROVAL ORDER)**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION  
  
This Document Relates To: All actions.

Case No.: 2:20-cv-00376-GMN

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.  
  
Plaintiffs,  
  
v.  
  
MGM RESORTS INTERNATIONAL  
  
Defendant.

Master File No. 2:23-cv-01480-GMN  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Pending before the Court is Plaintiffs’<sup>1</sup> Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law, requesting the Court preliminarily certify the Settlement Class and preliminarily approve the Settlement. (ECF No. \_\_\_\_.) For the reasons set forth herein, the Motion for Preliminary Approval is **GRANTED**.

**I. INTRODUCTION**

Defendant is a global gaming, hospitality, and entertainment company headquartered in Las Vegas, Nevada. In the course of operating its business, Defendant collects, maintains, and stores Private Information pertaining to its customers, including, but not limited to, names, contact information (such as telephone numbers, email addresses, and postal addresses), gender, dates of birth, driver’s license numbers, passport numbers, and Social Security numbers.

<sup>1</sup> All capitalized terms used herein shall have the same meanings as those defined in Section II of the Settlement Agreement, attached to the Motion for Preliminary Approval as *Exhibit A*.

1 In July of 2019, and then again in September of 2023, Defendant’s computer systems were  
2 hacked in separate incidents by cybercriminals resulting in the unauthorized access of tens of millions  
3 of Defendant’s customers’ Private Information. Following the Data Incidents, Plaintiffs and  
4 Settlement Class members began receiving notices that their Private Information was potentially  
5 involved. Thereafter, lawsuits were filed against Defendant related to each incident.

6 To avoid the risk and expense of litigation, the Parties agreed to a global settlement to resolve  
7 Plaintiffs’ claims for both Data Incidents on a classwide basis.<sup>2</sup> As demonstrated below, the  
8 Settlement provides significant relief for the Settlement Class, including a non-reversionary all cash  
9 \$45,000,000.00 Settlement Fund and valuable non-monetary relief.

## 10 **II. BACKGROUND**

11 The Motion for Preliminary Approval details the history of the 2019 Action and the 2023  
12 Action. This Preliminary Approval Order highlights those facts, which support Preliminary Approval.

### 13 **The 2019 Action**

14 In or about July 2019, unauthorized individuals accessed Defendant’s network and  
15 downloaded certain customer data of approximately 37 million MGM guests. *See* Joint Declaration  
16 of Class Counsel attached to the Motion for Preliminary Approval as Exhibit B. Defendant discovered  
17 the 2019 Data Incident on or about July 10, 2019. *Id.* According to Defendant, the unauthorized  
18 individuals acquired personally identifiable information including customers’ names, postal  
19 addresses, telephone numbers, email addresses, dates of birth, and passport numbers. *Id.* However,  
20 for the vast majority of the victims, the exposure was limited to their names, postal addresses, email  
21 addresses, telephone numbers, and/or their dates of birth. *Id.*

22 Following the 2019 Data Incident and commencing on February 21, 2019, Defendant was  
23 named in the first of eight class action lawsuits (ECF No. 1), which were eventually consolidated into  
24

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25 <sup>2</sup> Due to this Court’s familiarity with the 2019 Data Incident and the similarity of the claims in both  
26 cases, including the overlapping classes, Plaintiffs’ counsel for the 2019 Action and the 2023 Action  
27 collectively determined it would be in the best interest of all concerned – the Plaintiffs, the Defendant,  
28 the putative classes, and the Court – to have this Court preside over both cases, which are now being  
joined for settlement purposes. The Court agrees that a single settlement process for the Actions  
makes sense as it will be more efficient and less expensive.

1 the 2019 Action. (ECF No. 22, 86). The Court also appointed the 2019 Plaintiffs' interim class  
2 counsel. (ECF No. 93.)

3 On April 2, 2021, the 2019 Plaintiffs filed a consolidated class action complaint, asserting  
4 claims for negligence, negligent misrepresentation, breach of implied contract, unjust enrichment,  
5 and various state consumer protection law violations. (ECF No. 101.).

6 On June 1, 2021, Defendant filed a motion to dismiss the consolidated class action complaint,  
7 which was fully briefed. (ECF No. 103, 109, 117.) On November 2, 2022, the Court granted in part  
8 and denied in part Defendant's motion to dismiss. (ECF No. 128.) The Court allowed the 2019  
9 Plaintiffs' claims for negligence, breach of implied contract, and violations of some state consumer  
10 protection laws, but dismissed claims for violations of other state consumer protection laws, negligent  
11 misrepresentation, and unjust enrichment. *Id.* On December 19, 2022, Defendant answered the 2019  
12 consolidated complaint, denying all material allegations and alleging affirmative defenses. (ECF No.  
13 136.)

14 After the Court's ruling on Defendant's motion to dismiss, the Parties in the 2019 Action  
15 engaged in substantial fact discovery, including written discovery, document production, depositions,  
16 and motion practice. *See* Joint Declaration.

17 The 2019 Plaintiffs filed notices of related cases on December 6, 2023 (ECF No. 183) and  
18 December 20, 2023 (ECF No. 185), seeking to relate several cases filed relating to the 2023 Data  
19 Incident, which Defendant and 2023 Plaintiffs opposed. (ECF Nos. 184, 186, 187, 188.)

20 On July 9, 2024, the 2019 Parties filed a stipulation to stay the case pending mediation, which  
21 the Court granted that same day. (ECF Nos. 233, 234.)

22 On August 14, 2024, Defendant filed a notice of withdrawal of its response to the 2019  
23 Plaintiffs' notices of related cases. (ECF No. 235.)

24 On September 18, 2024, the Court issued a Minute Order accepting transfer of the  
25 consolidated cases in the 2023 Action. (ECF No. 237.)

26 **The 2023 Action**

27 Beginning on September 7, 2023, in a separate cybersecurity incident, unauthorized  
28 individuals accessed Defendant's network by impersonating an information technology administrator

1 and gaining access to employees' network access credentials. *See* Joint Declaration. Once inside the  
2 network, the unauthorized individuals locked down Defendant's network and further gained access  
3 to approximately 37 million customers' personally identifiable information, including, but not limited  
4 to MGM's customers and guests' names, addresses, telephone numbers, email addresses, dates of  
5 birth, driver's license numbers, passport numbers, military identification numbers, and in some cases,  
6 Social Security numbers. *Id.*

7       Following the 2023 Data Incident, and commencing on September 21, 2023, the Defendant  
8 was named in the first of 14 class action lawsuits. (2023 ECF No. 1.)

9       On March 19, 2024, the 2023 Plaintiffs moved to consolidate the cases. (2020 ECF No. 29.)  
10 On March 22, 2024, the Court consolidated the cases into the 2023 Action before the Honorable  
11 Richard F. Boulware, II. (2023 ECF No. 32.)

12       On April 19, 2024, the 2023 Plaintiffs moved the Court for appointment of interim lead  
13 counsel, which the Court granted on October 21, 2024. (2023 ECF No. 42, 55.)

14       On March 19, 2024, the 2023 Plaintiffs filed their consolidated class action complaint against  
15 Defendant. (2023 ECF No. 29.)

16       **The 2019 Plaintiffs and 2023 Plaintiffs Agreement to Work Cooperatively for Mediation**

17       In July 2024, the 2019 Plaintiffs and the 2023 Plaintiffs agreed to participate in a joint  
18 mediation with Defendant before an experienced data breach mediator, Bruce Friedman, Esq., with  
19 JAMS in Las Vegas on August 5, 2024. *See* Joint Declaration. In advance of the mediation, the 2019  
20 Plaintiffs and the 2023 Plaintiffs propounded informal discovery requests to learn as much as possible  
21 about the 2019 Data Incident and the 2023 Data Incident. *Id.* Through the provision of informal  
22 discovery, Plaintiffs in both cases were able to evaluate the merits of Defendant's position. *Id.* The  
23 Parties also exchanged detailed mediation briefs outlining their positions with respect to liability,  
24 damages, and settlement-related issues. *Id.* The mediation was canceled for various reasons. *Id.*  
25 Thereafter, the 2019 Plaintiffs and the 2023 Plaintiffs decided to work together and collectively  
26 pursue a global settlement of the Actions. *Id.*

27       The Parties rescheduled and participated in mediation for October 10, 2024, with Mr.  
28 Friedman, in Las Vegas. (ECF No. 236.) In advance of the mediation, Plaintiffs propounded

1 additional informal discovery requests regarding the size and scope of the Data Incidents, including,  
2 but not limited to, the number of persons potentially impacted, the data elements impacted, and the  
3 geographical makeup of the putative classes. After a full day of negotiations, the Parties were unable  
4 to reach a settlement. Over the next several weeks, however, the Parties continued to negotiate the  
5 contours of a potential global resolution. *See* Joint Declaration.

6 On October 31, 2024, the 2019 Plaintiffs filed a notice of settlement, notifying the Court that  
7 all Parties (including the 2023 Plaintiffs) were able to resolve the cases. (ECF No. 238.)

8 On November 4, 2024, the Court entered a Minute Order requiring the Parties to file a joint  
9 status report every 60 days, beginning on December 2, 2024, informing the Court of the status of  
10 settlement. (ECF No. 239.)

11 On November 7, 2024, consistent with the September 18, 2024 Minute Order (ECF No. 237),  
12 the Clerk of Court was directed to transfer the 2023 Action for all further proceedings (2023 ECF No.  
13 57).

14 The Parties signed the Agreement which requires Plaintiffs to move for Preliminary Approval  
15 of the collective Settlement of the Actions.

### 16 **III. MATERIAL TERMS OF THE SETTLEMENT**

17 **A. Settlement Class** - Plaintiffs seek Preliminary Approval of the following Settlement  
18 Class:

19 [A]ll persons in the United States whose Private Information was accessed during the  
20 Data Incidents.

21 Excluded from the Settlement Class are the judges presiding over the Actions and members of their  
22 direct families. Agreement ¶ 76.

23 **B. Settlement Fund** - The Settlement provides for a non-reversionary \$45,000,000 all cash  
24 Settlement Fund, which will be fully funded by the Defendant within 10 business days of Preliminary  
25 Approval and used to pay: (1) all Settlement Class Member Benefits; (2) any attorneys' fees and costs  
26 awarded by the Court to Class Counsel and any Service Awards to the Class Representatives; and  
27 (3) all Settlement Administration Costs. *Id.* ¶ 89. Once Defendant funds the Settlement Fund,  
28 Defendant will not be required to make any other payments under this Settlement. *Id.* ¶ 88.

1           **C. Settlement Class Member Benefits** - All eligible Settlement Class members who may  
2 elect to receive Cash payments consisting of: (1) a Documented Loss Cash Payment in a maximum  
3 amount of \$15,000.000 per individual; and (2) a Tier 1, 2, or 3 Cash payment depending on whether  
4 they are a Tier 1, 2, or 3 Settlement Class Member; and (3) Financial Account Monitoring. *Id.* ¶ 92.  
5 All Settlement Class Member Cash Payments may be subject to a *pro rata* increase or decrease,  
6 depending on the number of Valid Claims and the value of all Cash Payments claimed. *Id.* If a  
7 Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release  
8 his or her claims against without receiving a Settlement Class Member Benefit. *Id.*

9                           ***Documented Loss Cash Payment***

10           All Settlement Class Members may submit a Claim Form for a Documented Loss Cash  
11 Payment for up to \$15,000.00 per Settlement Class Member upon presentment of documented losses  
12 fairly traceable to either Data Incident and attest under penalty of perjury to incurring documented  
13 losses, supported by reasonable documentation. These losses may include, without limitation,  
14 unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees,  
15 accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing  
16 credit with any credit reporting agency; credit monitoring costs incurred on or after the applicable  
17 Data Incident through the date of claim submission; and miscellaneous expenses such as notary,  
18 facsimile, postage, copying, mileage, and long-distance telephone charges. The supporting  
19 documentation may include receipts or other documentation not "self-prepared" by the Claimant.  
20 "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive  
21 reimbursement, but can be considered to add clarity or support other submitted documentation. The  
22 lack of reasonable documentation supporting a loss, or if the Claim is rejected by the Settlement  
23 Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, the  
24 Claim will be rejected. *Id.* ¶ 92.a.

25                           ***Tier Cash Payments***

26           In addition to a Documented Loss Cash Payment, all Settlement Class members may elect a  
27 Tier Cash Payment, which is a flat cash payment based on whether the Settlement Class member is  
28 a Tier 1 Settlement Class Member, Tier 2 Settlement Class Member, or Tier 3 Settlement Class

1 Member. The tiers are determined by the type of data a Settlement Class member had exposed in the  
2 Data Incidents. The Notice will provide a unique identifier that Settlement Class members can use  
3 on the Settlement Website to determine the applicable tier. *Id.* ¶ 92.b.-d.

4 **1. Tier 1 Cash Payment - \$75.00 for Tier 1 Settlement Class members**

5 In addition to a Documented Loss Cash Payment, Tier 1 Settlement Class Members may also  
6 elect to receive a Tier 1 Cash Payment, which is an estimated flat cash \$75.00 payment. *Id.* ¶ 92.b.

7 **2. Tier 2 Cash Payment - \$50.00 for Tier 2 Settlement Class members**

8 In addition to a Documented Loss Cash Payment, Tier 2 Settlement Class members may also  
9 elect to receive a Tier 2 Cash Payment, which is an estimated flat cash \$50.00 payment. *Id.* ¶ 92.c.

10 **3. Tier 3 Cash Payment - \$20.00 for Tier 3 Settlement Class members**

11 In addition to a Documented Loss Cash Payment, Tier 3 Settlement Class members may also  
12 elect to receive a Tier 3 Cash Payment which is an estimated flat cash \$20.00 payment. *Id.* ¶ 92.d.

13 ***Financial Account Monitoring***

14 In addition to electing a Cash Payment, all Settlement Class Members may elect to submit a  
15 Claim for Financial Account Monitoring consisting of identity theft protection and credit monitoring  
16 as follows: one year of CyEx Identity Defense Total with three-bureau monitoring and at least  
17 \$1,000,000 of fraud/identity theft insurance. The one-year period will commence when Settlement  
18 Class Members use their codes to activate the Financial Account Monitoring product. *Id.* ¶ 92.

19 **D. Settlement Class Notice** - The Parties have agreed on a comprehensive Notice  
20 Program, which includes Email Notice, Postcard Notice, Publication Notice, Long Form Notice, a  
21 Settlement Website, and Settlement telephone line for frequently asked questions. *Id.* § VIII.

22 Within 10 days of Preliminary Approval, Defendant will provide the Settlement Administrator  
23 with a Class List containing, if available, the Settlement Class members' names, email addresses,  
24 postal addresses, and telephone numbers. *Id.* ¶¶ 38, 99. Within 30 days of Preliminary Approval, the  
25 Settlement Administrator will initiate Publication Notice (digitally publish on the internet and on  
26 select social media platforms) and send Email Notice to all Settlement Class members for which an  
27 email address has been provided by Defendant. *Id.* ¶¶ 67, 100. Those Settlement Class Members  
28 whose Email Notice is undelivered or bounces back, as well as those Settlement Class members for

1 which email addresses are unknown, shall be sent a Postcard by U.S. Mail no later than 60 days before  
2 the original scheduled Final Approval Hearing date. *Id.* ¶ 107. Notice shall also be published on the  
3 Settlement Website and available by mail in a Long Form Notice upon request of the Settlement  
4 Administrator. *Id.* ¶¶ 53, 100. The Notice Program shall be completed 45 days before the original  
5 scheduled Final Approval Hearing. *Id.* ¶ 108.

6 Settlement Class members may review the Long Form Notice, key documents and dates, and  
7 answers to frequently asked questions on the Settlement Website, and they can also obtain answers  
8 to those frequently asked questions and request the Long Form Notice and Claim Form by calling a  
9 toll-free telephone number. *Id.* ¶¶ 97(d)-(e),101-102.

10 The Notice, in forms similar to those attached to the Agreement as Exhibits 1-4, will inform  
11 the Settlement Class of the general terms of the Settlement, including a description of the Actions,  
12 the identity of the Settlement Class, and what claims will be released. All Notices shall include, among  
13 other information: a description of the material terms; how to submit a Claim Form; the Claim Form  
14 Deadline; the Opt-Out deadline to be excluded from the Settlement Class; the Objection Deadline to  
15 object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards; the  
16 Final Approval Hearing date; and the Settlement Website address at which Settlement Class members  
17 may access the Agreement and other related documents and information. Additionally, the opt-out  
18 procedures will be explained in the Long Form Notice, as well as how Settlement Class Members  
19 may exercise their right to object to the proposed Settlement and/or Application for Attorneys' Fees,  
20 Costs, and Services Awards at the Final Approval Hearing. *Id.* ¶¶ 101, 104-105.

21 **E. Claim Submission Process** - To receive Settlement Class Member Benefits, Settlement  
22 Class Members must accurately and timely submit a Claim by the Claim Form Deadline. *Id.* § IX. A  
23 copy of the proposed Claim Form is attached to the Agreement as Exhibit 5. Claim Forms may be  
24 submitted online through the Settlement Website or through U.S. Mail sent to the Settlement  
25 Administrator at the address designated on the Claim Form. *Id.* ¶ 111. The Settlement Administrator  
26 will review all Claim Forms to determine their validity, eligibility, and the type and amount of the  
27 Cash Payment to which the Settlement Class Member may be entitled. *Id.* ¶ 112. The Claims process  
28 includes procedures for the Settlement Administrator to identify and reject duplicate Claims; to take

1 any reasonable steps to prevent fraud and abuse; to send a Notice of Deficiency to a Settlement Class  
2 Member whose Claim Form was rejected for containing incomplete or inaccurate information, and/or  
3 omitting required information in the Claim Form, allowing for the submission of information to  
4 validate the Claim; and to reduce or reject a Claim. *Id.* ¶¶ 113-116. The Settlement Administrator will  
5 provide Settlement Class Members who submitted Valid Claims with their Settlement Class Member  
6 Benefits no later than 75 days after the Effective Date. *Id.* ¶ 120. Cash Payments will be made  
7 electronically or by paper check, and an email will be sent to Settlement Class Members electing  
8 Financial Account Monitoring with activation instructions. *Id.* ¶¶ 121-122. Greater detail on the  
9 Claims process is in Section IX of the Agreement.

10 **F. Disposition of Residual Funds** - The Settlement is designed to exhaust the Settlement  
11 Fund. However, in the event there are funds remaining in the Settlement Fund, including from  
12 uncashed checks, within 45 days following the 180-day check negotiation period, the Parties will ask  
13 the Court to approve the distribution of all remaining funds to an appropriate *cy pres* recipient. *Id.* ¶  
14 128.

15 **G. Settlement Administrator** - The proposed Settlement Administrator, Epiq, is a well-  
16 respected and reputable third-party administrator that has significant experience with data breach  
17 settlements. *Id.* ¶ 74; *see also generally* Declaration of Cameron R. Azari (“Admin. Decl.”). The  
18 Settlement Administrator shall effectuate the Notice Program, handle the Claims process, administer  
19 the Settlement Fund, and distribute the Settlement Class Member Benefits to Settlement Class  
20 Members. Agreement § VII.

21 The Settlement Administrator’s duties include, *inter alia*: (i) initiating and completing the  
22 Court-approved Notice Program; (ii) establishing and maintaining the Settlement Fund Escrow  
23 Account; (iii) establishing and maintaining a post office box to receive opt-out requests, objections,  
24 and Claim Forms; (iv) establishing and maintaining the Settlement Website; (v) establishing and  
25 maintaining an automated toll-free telephone line for Settlement Class members to call; (vi)  
26 responding to any mailed Settlement Class member inquiries; (vii) processing all opt-out requests  
27 from the Settlement Class; (viii) providing weekly reports to Class Counsel and Defendant’s Counsel  
28 that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency

1 sent, opt-out requests and objections received that week, the total number of opt-out requests and  
2 objections received to date, and other pertinent information; (ix) in advance of the Final Approval  
3 Hearing, preparing a declaration confirming the Notice Program was completed in accordance with  
4 the terms of the Agreement and the Preliminary Approval Order, describing how the Notice Program  
5 was completed, indicating the number of Claim Forms received and the amount of Valid Claims,  
6 providing the names of each Settlement Class member who timely and properly requested to opt-out  
7 from the Settlement Class, indicating the number of objections received, and other information as  
8 may be necessary to allow the Parties to seek and obtain Final Approval; (x) distributing, out of the  
9 Settlement Fund, Cash Payments electronically or by paper check and sending out Financial Account  
10 Monitoring activation emails; (xi) paying Court-approved attorneys' fees, costs, and Service Awards  
11 out of the Settlement Fund; (xii) paying Settlement Administration Costs, including any required  
12 taxes, out of the Settlement Fund following approval by Class Counsel; and (xiii) any other Settlement  
13 Administration function at the instruction of Class Counsel and Defendant including, but not limited  
14 to, verifying the Settlement Fund has been properly administered and the Cash Payments have been  
15 properly distributed. *Id.* ¶ 97. The Parties shall jointly oversee the Settlement Administrator. *Id.* ¶ 95.

16 **H. Opt-Out and Objection Procedures** - Consistent with the Settlement's opt-out  
17 procedures, the Long Form Notice details that Settlement Class members who do not wish to  
18 participate in the Settlement may opt-out up to 30 days prior to the original Final Approval Hearing  
19 date. *Id.* ¶ 61. During the Opt-Out Period, they may mail an opt-out request to the Settlement  
20 Administrator including the Settlement Class member's name, address, telephone number, and email  
21 address (if any), and a statement requesting to be excluded from the Settlement Class. *Id.* ¶ 104. Any  
22 Settlement Class member who does not timely opt-out shall be bound by the Agreement's terms even  
23 if that Settlement Class Member does not submit a Claim Form. *Id.*

24 The Agreement and Long Form Notice also specify how Settlement Class Members may  
25 object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards. *Id.* ¶  
26 105. Objections must be mailed to the Settlement Administrator. *Id.* For an objection to be considered  
27 by the Court, it must be submitted no later than the last day of the Objection Period, as specified in  
28 the Notice (30 days before the original Final Approval Hearing date). *Id.* If submitted by mail, an

1 objection shall be deemed to have been submitted when posted if received with a postmark date  
2 indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the  
3 instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to  
4 have been submitted on the shipping date reflected on the shipping label. *Id.* It must set forth: (a) the  
5 objector's full name, mailing address, telephone number, and email address (if any); (b) all grounds  
6 for the objection, accompanied by any legal support for the objection known to the objector or  
7 objector's counsel; (c) the number of times the objector has objected to a class action settlement  
8 within the five years preceding the date that the objector files the objection, the caption of each case  
9 in which the objector has made such objection, and a copy of any orders related to or ruling upon the  
10 objector's prior objections that were issued by the trial and appellate courts in each listed case; (d) the  
11 identity of all counsel who represent the objector, including any former or current counsel who may  
12 be entitled to compensation for any reason related to the objection to the Settlement and/or  
13 Application for Attorneys' Fees, Costs, and Service Awards; (e) the number of times in which the  
14 objector's counsel and/or counsel's law firm have objected to a class action settlement within the five  
15 years preceding the date of the filed objection, the caption of each case in which counsel or the firm  
16 has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's  
17 law firm's prior objections that were issued by the trial and appellate courts in each listed case in  
18 which the objector's counsel and/or counsel's law firm have objected to a class action settlement  
19 within the preceding five years; (f) the identity of all counsel (if any) representing the objector who  
20 will appear at the Final Approval Hearing; (g) a list of all persons who will be called to testify at the  
21 Final Approval Hearing in support of the objection (if any); (h) a statement confirming whether the  
22 objector intends to personally appear and/or testify at the Final Approval Hearing; and (i) the  
23 objector's signature (an attorney's signature is not sufficient). Class Counsel and/or Defendant's  
24 Counsel may conduct limited discovery on any objector or objector's counsel. *Id.*

25 **I. Release of Claims** - Plaintiffs and Settlement Class Members who do not timely and  
26 validly opt-out of the Settlement Class will be bound by the Settlement terms, including the Releases  
27 discharging the Released Claims against the Released Parties. *Id.* § XIII. The Released Claims are  
28 narrowly tailored to only claims arising out of or relating to the Data Incidents. *See* Joint Declaration.

1           **J. Service Awards** - The amount of any Service Awards for the Class Representatives  
2 shall be determined by the Court and payable from the Settlement Fund. Agreement ¶ 125. Class  
3 Counsel will apply to the Court for a Service Award in the amount of \$10,000.00 each for those  
4 Plaintiffs that were deposed in the 2019 Action and \$3,500.00 each for all other Plaintiffs. *Id.* The  
5 Settlement is not contingent on approval of the requests for Service Awards, and if the Court grants  
6 amounts other than what was requested, the remaining provisions of the Agreement shall remain in  
7 force. *Id.* ¶ 127. The Notice will advise the Settlement Class of the amounts of the Service Awards  
8 that will be sought. *Id.*, Ex. 1-4. Because Plaintiffs will separately apply for the Service Award at the  
9 time of seeking Final Approval of the proposed class action Settlement, the Court does not reach a  
10 determination as to the fairness of the proposed Service Awards.

11           **K. Attorneys' Fees and Costs** - The amount of any attorneys' fees and costs shall be  
12 determined by the Court and payable from the Settlement Fund. Agreement ¶ 126. Class Counsel will  
13 apply to the Court for an award of attorneys' fees of up to 30% of the Settlement Fund, plus  
14 reimbursement of costs. *Id.* The attorneys' fees and costs will be formally sought in the Application  
15 for Attorneys' Fees, Costs, and Service Awards filed as part of the Motion for Final Approval. The  
16 Settlement is not contingent on approval of the requests for attorneys' fees and costs, and if the Court  
17 grants amounts other than what was requested, the remaining provisions of the Agreement shall  
18 remain in force. *Id.* ¶ 127. The Notice will advise the Settlement Class of the amount of attorneys'  
19 fees that Class Counsel intends to seek. *Id.*, Ex. 1-4. Because Plaintiffs will separately apply for the  
20 attorneys' fees at the time of seeking Final Approval of the proposed class action Settlement, the  
21 Court does not reach a determination as to the fairness of the proposed attorneys' fees.

#### 22 **IV. LEGAL STANDARD**

23           A class action may not be settled without the approval of the court. Fed. R. Civ. Proc. 23(e).  
24 The decision to approve or reject a proposed settlement "is committed to the sound discretion of the  
25 trial judge[.]" *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The Supreme Court  
26 has recognized the benefits of a proposed settlement of a class action can be realized only through the  
27 certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

28           The Ninth Circuit has declared that a strong judicial policy favors settlement of class actions.

1 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). However, a class action may  
2 not be settled without court approval. Fed. R. Civ. P. 23(e). When the parties to a putative class action  
3 reach a settlement agreement prior to class certification, “courts must peruse the proposed  
4 compromise to ratify both the propriety of the certification and the fairness of the settlement.” *Staton*  
5 *v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). At the preliminary stage, the court must first assess  
6 whether a class exists. *Id.* (citing *Amchem*, 521 U.S. 591 at 620). Second, the court must determine  
7 whether the proposed settlement “is fundamentally fair, adequate, and reasonable.” *Hanlon*, 150 F.3d  
8 at 1026. If the court preliminarily certifies the class and finds the proposed settlement fair to its  
9 members, the court schedules a fairness hearing where it will make a final determination as to the  
10 fairness of the class settlement. Third, the court must “direct notice in a reasonable manner to all class  
11 members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).

## 12 **V. DISCUSSION**

13 The Motion for Preliminary Approval contends the Court should find the Settlement is within  
14 the range of reasonableness necessary to grant Preliminary Approval under Fed. R. Civ. P. 23(e) and  
15 enter an order: (i) granting Preliminary Approval of the Settlement; (ii) provisionally certifying the  
16 Settlement Class for settlement purposes; (iii) appointing the Plaintiffs as Class Representatives; (iv)  
17 appointing John Yanchunis, Doug McNamara, E. Michelle Drake, David Berger, J. Gerard Stranch  
18 IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow as Class Counsel for the Settlement  
19 Class; (v) approving the form of the Notices and the Notice Program; (vi) approving the Claim Form  
20 and the Claim process; (vii) appointing Epiq Class Action & Claims Solutions, Inc. as the Settlement  
21 Administrator; (viii) establishing procedures and deadlines for members of the Settlement Class to  
22 opt-out of or object to the Settlement; and (ix) scheduling a Final Approval Hearing at which time the  
23 Court will consider whether to grant Final Approval of the Settlement and the Application for  
24 Attorneys’ Fees, Costs and Service Awards. Accordingly, the Court grants class certification for the  
25 purposes of settlement and approves the proposed Settlement on a preliminary basis as fair,  
26 reasonable, and adequate.

### 27 **A. Provisional Class Certification.**

28 Plaintiffs must satisfy all Fed. R. Civ. P. 23(a) requirements (numerosity, commonality,

1 typicality, and adequacy), and one of the requirements of Fed. R. Civ. P. 23(b). Plaintiffs seek  
2 certification under Rule 23(b)(3), requiring common questions of law or fact to predominate over any  
3 individual issues and class treatment to be the superior method for efficiently handling the case. Fed.  
4 R. Civ. P. 23(b)(3). The Court finds that the Settlement Class meets these class certification  
5 requirements.

6       **1. Ascertainability** - Ascertainability is an implied prerequisite of Rule 23. Before a  
7 district court can consider whether a potential class satisfies Rule 23(a), it must find the proposed  
8 class is “precise, objective, and presently ascertainable.” *Andersen v. Briad Restaurant Group LLC*,  
9 No. 2:14-cv-00786-GMN-BNW, 2020 WL 633599, at \*1 (D. Nev. Jan. 13, 2020). Class certification  
10 and ascertainability typically involve one inquiry because, without an adequate definition for a  
11 proposed class, a district court cannot ascertain who belongs in the class. For purposes of class  
12 certification, a proposed class is ascertainable if it is adequately defined such that its membership is  
13 capable of determination. Ascertainability may be satisfied if it is “administratively feasible” for the  
14 court to determine whether a particular individual is a member, though this is not a prerequisite to  
15 certification. *Briseno v. ConAgra Foods, Inc.*, 944 F.3d 1121 (9th Cir. 2017). Here, the Settlement  
16 Class is adequately defined and clearly ascertainable because the Settlement Class definition contains  
17 sufficient objective criteria to allow an individual to determine whether he or she is a member of the  
18 Settlement Class—i.e., whether they were sent notice that their Private Information may have been  
19 accessed during the Data Incidents. Agreement ¶ 76.

20       **2. Rule 23(a)** - Under Rule 23(a), the Court must determine whether: (1) the class is so  
21 numerous that joinder of all members is impracticable; (2) there are questions of law or fact common  
22 to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses  
23 of the class; and (4) the representative parties will fairly and adequately protect the interests of the  
24 class. Each requirement is satisfied here.

25       **Numerosity** - Rule 23(a)(1) requires that a class include so many members that joinder of all  
26 would be impracticable. “Impracticability does not mean ‘impossibility,’ but only the difficulty or  
27 inconvenience of joining all members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329  
28 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). Generally, numerosity is satisfied when the class

1 exceeds 40 members. *Andersen v. Briad Restaurant Group, LLC*, 333 F.R.D. 194, 202 (D. Nev. 2019).  
2 Here, there are millions of Settlement Class members. Therefore, the Court can safely conclude the  
3 Settlement Class is sufficiently numerous such that the joinder of each member would be  
4 impracticable.

5 **Commonality** - Rule 23(a)(2) requires a showing that there are questions of law or fact  
6 common to the class. This requirement is satisfied where the plaintiffs assert claims that “depend  
7 upon a common contention” that is “of such a nature that it is capable of class-wide resolution—  
8 which means that determination of its truth or falsity will resolve an issue that is central to the validity  
9 of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).  
10 Commonality is a permissive requirement, and “not all questions of fact and law need be common to  
11 satisfy the rule.” *Hanlon*, 150 F.3d at 1019. The “existence of shared legal issues with divergent  
12 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal  
13 remedies within the class.” *Id.* at 1019–20. A single common question will do. *Andersen*, 333 F.R.D.  
14 at 203.

15 Courts in this Circuit have previously addressed this requirement in the context of data breach  
16 class actions and found it satisfied. *See, e.g., In re PostMeds, Inc. Data Breach Litig.*, No. 23-cv-  
17 05710-HSG, 2024 WL 4894293, at \*2 (N.D. Cal. Nov. 26, 2024) (commonality satisfied because  
18 claims turn on whether defendant had legal duty to use reasonable security measures to protect class  
19 members’ personal information, whether that duty was breached, and whether defendant’s data  
20 security was adequate to protect personal information). Here, as in other data breach cases, the claims  
21 turn on whether Defendant’s security environment was adequate to protect the Settlement Class’  
22 Private Information. That inquiry can be fairly resolved because it revolves around evidence that does  
23 not vary between members, at least for purposes of the Settlement, for all Settlement Class members  
24 at once. Indeed, the Data Incidents impacted each Settlement Class member’s Private Information.

25 The Court is therefore satisfied that, if Plaintiffs were to continue to pursue the Actions, the  
26 answers to these questions would result in classwide resolution of the claims asserted. Therefore, the  
27 Court finds Plaintiffs have satisfied the commonality requirement.

28 **Typicality** - The commonality and typicality analyses often overlap—both focus on whether

1 a sufficient nexus exists between the legal claims of the named class representatives and those of  
2 individual class members to warrant class certification. *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG  
3 (RAOx), 2022 WL 2155117, at \*3 (C.D. Cal. Feb. 22, 2022) (citing *Gen. Tel. Co. Sw. v. Falcon*, 457  
4 U.S. 147, 157 n.13 (1982)). “The test of typicality ‘is whether other members have the same or similar  
5 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether  
6 other class members have been injured by the same course of conduct.’” *Ellis v. Costco Wholesale*  
7 *Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (citation omitted). *See also Andersen*, 333 F.R.D. at 203  
8 (same). “Typicality refers to the nature of the claim or defense of the class representative, and not to  
9 the specific facts from which it arose or the relief sought.” *Id.* “Under the ‘permissive standards’ of  
10 Rule 23(a)(3), ‘representative claims are ‘typical’ if they are reasonably co-extensive with those of  
11 absent class members; they need not be substantially identical.’” *Hanlon*, 150 F.3d at 1020.

12 The Court is satisfied that typicality is met because Plaintiffs’ interests are aligned with the  
13 Settlement Class in that they all received a notice letter informing them their Private Information may  
14 have been compromised as a result of the Data Incidents and were therefore impacted by the same  
15 purportedly inadequate data security that allegedly harmed the rest of the Settlement Class. Their  
16 claims are based on the same legal theories and underlying event.

17 ***Adequacy of Representation*** – “‘To satisfy constitutional due process concerns, absent class  
18 members must be afforded adequate representation before entry of a judgment which binds them.’”  
19 *Andersen*, 333 F.R.D. at 204 (citation omitted). Fed. R. Civ. P. 23(a)(4) requires the representative  
20 parties “fairly and adequately protect the interests of the class.” This determination turns on two  
21 questions: “(1) [d]o the representative plaintiffs and their counsel have any conflicts of interest with  
22 other class members, and (2) will the representative plaintiffs and their counsel prosecute the action  
23 vigorously on behalf of the class?” *Staton*, 327 F.3d 938, 957 (9th Cir. 2003); *Andersen*, 333 F.R.D.  
24 at 204. Both components are met.

25 In the instant case, the Court is satisfied at this stage that Plaintiffs will adequately represent  
26 the Settlement Class. Like all Settlement Class members, Plaintiffs have claims against Defendant  
27 arising from the Data Incidents that allegedly impacted their Private Information. Plaintiffs were  
28 similarly injured by Defendant’s allegedly wrongful acts. Proof of Plaintiffs’ claims would

1 necessarily involve adjudicating the same issues of law and fact as the claims of the Settlement Class  
2 as a whole. Thus, Plaintiffs and the Settlement Class they seek to represent have the same interests in  
3 recovering damages. Further, Plaintiffs have also diligently and adequately prosecuted the Actions  
4 through Class Counsel by, among other things, reviewing filings, promptly providing documents and  
5 information to Class counsel, the 2019 Plaintiffs responding to written discovery requests and being  
6 deposed, acting in the best interest of the Settlement Class, and accepting the classwide Settlement.  
7 *See* Joint Declaration. Plaintiffs’ willingness to serve as Class Representatives demonstrates their  
8 serious commitment to bringing about the best results possible for the Settlement Class.

9       The Court further finds that Class Counsel have significant experience in data breach class  
10 action lawsuits and have adequately demonstrated their vigorous advocacy on behalf of the Settlement  
11 Class’ interests in the Actions. *See* Joint Declaration., Ex. 1-9. In retaining these firms, Plaintiffs  
12 employed counsel who are “qualified, experienced and able to conduct the proposed litigation.”  
13 *Hester v. Vision Airlines, Inc.*, No. 2:09-cv-00117, 2009 WL 4893185, at \*5 (D. Nev. Dec. 16, 2009)  
14 (internal quotation omitted). Class Counsel have litigated the Actions, including, inter alia, evaluating  
15 the claims, preparing comprehensive pleadings, pursuing formal and informal discovery, consulting  
16 with data security experts, responding to motions to dismiss and preparing and responding to other  
17 motions, complying with Court orders and requirements, and participating in a mediation that  
18 ultimately resulted in this Settlement. Accordingly, Plaintiffs and Class Counsel will adequately  
19 protect the Settlement Class. *See* Joint Declaration.

20       **3. Rule 23(b)(3)** - Rule 23(b)(3) requires the court to find “questions of law or fact  
21 common to class members predominate over questions affecting only individual members, and that a  
22 class action is superior to other available methods for fairly and efficiently adjudicating the  
23 controversy.” Fed. R. Civ. P. 23(b)(3). When assessing predominance and superiority, the court may  
24 consider the class will be certified for settlement purposes only, and that a showing of manageability  
25 at trial is not required. *See Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only  
26 class certification, a district court need not inquire whether the case, if tried, would present intractable  
27 management problems, . . . for the proposal is that there be no trial.”).

1           **Predominance** – The predominance inquiry looks at “the legal or factual questions that  
2 qualify each class member’s case as a genuine controversy, questions that preexist any settlement.”  
3 *Amchem*, 521 U.S. at 623. If common questions “present a significant aspect of the case and they can  
4 be resolved for all members of the class in a single adjudication,” then “there is clear justification for  
5 handling the dispute on a representative rather than on an individual basis,” and the predominance  
6 test is satisfied. *Hanlon*, 150 F.3d at 1022 (citing *Amchem*, 521 U.S. at 622). There is no definitive  
7 test, however, in general, predominance is met when there exists generalized evidence which proves  
8 or disproves an [issue or] element on a simultaneous, classwide basis, since such proof obviates the  
9 need to examine each class members’ individual position. The main concern is “the balance between  
10 individual and common issues.” *In re Wells Fargo Home Mortg.*, 571 F.3d 953, 959 (9th Cir. 2009).

11           Here, all Settlement Class members had their Private Information compromised in the Data  
12 Incidents and the security practices at issue did not vary from person to person. Thus, because these  
13 common questions represent a significant aspect of the case and they can be resolved for all members  
14 of the class in a single adjudication, there is a clear justification for handling the dispute on a  
15 representative rather than on an individual basis. *Id.* Predominance is satisfied.

16           **Superiority** – “[T]he purpose of the superiority requirement is to assure that the class action  
17 is the most efficient and effective means of resolving the controversy.” *Wolin v. Jaguar Land Rover*  
18 *N. Am. LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). Rule 23(b)(3)’s non-exclusive factors are: “(A) the  
19 interest of members of the class in individually controlling the prosecution or defense of separate  
20 actions; (B) the extent and nature of any litigation concerning the controversy already commenced by  
21 or against members of the class; (C) the desirability or undesirability of concentrating the litigation  
22 of the claims in the particular forum; and (D) the difficulties likely to be encountered in the  
23 management of a class action.” All of these factors are present here. Adjudicating individual actions  
24 would be impractical. The amount in dispute for each Settlement Class member is too small, the  
25 technical issues too complex, and the expert testimony and document review too costly. *See Joint*  
26 *Declaration*. Further, individual claim prosecution would be prohibitively expensive, needlessly delay  
27 resolution, and may lead to inconsistent rulings. *Id.* Accordingly, a class action is the superior method  
28 of adjudicating this case. *Id.*

1 Accordingly, because the Settlement Class satisfies the requirements of Rule 23(a) and 23(b),  
2 the Court hereby provisionally certifies the Settlement Class for settlement purposes.

3 **B. Preliminarily Approval of the Settlement.**

4 After determining settlement class certification is likely, the Court must determine whether  
5 the Settlement is worthy of preliminary approval and providing notice to the Settlement Class. The  
6 decision to approve or reject a proposed settlement “is committed to the sound discretion of the trial  
7 judge[.]” *Hanlon*, 150 F.3d at 1026. This discretion is to be exercised “in light of the strong judicial  
8 policy that favors settlements, particularly where complex class action litigation is concerned,” which  
9 minimizes substantial litigation expenses for both sides and conserves judicial resources. *See Linney*  
10 *v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (quotations omitted).<sup>3</sup>

11 Courts have long recognized that “settlement class actions present unique due process  
12 concerns for absent class members.” *Hanlon*, 150 F.3d at 1026. One inherent risk is that class counsel  
13 may collude with the defendants, “tacitly reducing the overall settlement in return for a higher  
14 attorney’s fee.” *Knisley v. Network Assocs., Inc.*, 312 F.3d 1123, 1125 (9th Cir. 2002); *see Evans v.*  
15 *Jeff D.*, 475 U.S. 717, 733 (1986).

16 The question at the preliminary approval stage is whether the Court is likely to find the  
17 Settlement is fair, adequate, and reasonable under Fed. R. Civ. P. 23(e)(2) and considering the Ninth  
18 Circuit traditional “*Churchill*” factors.<sup>4</sup>

19 The Rule 23(e)(2) factors are:

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21 <sup>3</sup> Courts must give “proper deference to the private consensual decision of the parties,” since “the  
22 court’s intrusion upon what is otherwise a private consensual agreement negotiated between the  
23 parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the  
24 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,  
25 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon*,  
26 150 F.3d at 1027. Thus, in considering a potential settlement, the Court need not reach any ultimate  
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage  
28 in a trial on the merits. *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir.  
1982), *cert. denied sub nom. Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983).

<sup>4</sup> Rule 23(e)(2) was amended in 2018 to include explicit class settlement approval factors. However,  
consistent with the Advisory Committee note to that rule amendment, courts in this Circuit have made  
clear the amendment does not entirely displace the traditional Ninth Circuit factors, which overlap  
with the express Rule 23(e)(2) factors. *See, e.g., McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 609  
n.4 (9th Cir. 2024) (citing Fed. R. Civ. P. 23 Advisory Committee’s note to the 2018 amendment).  
Thus, the Court addresses them all.

- 1 (A) the class representatives and class counsel have adequately represented the class;  
2 (B) the proposal was negotiated at arms' length;  
3 (C) the relief provided for the class is adequate, taking into account:  
4 (i) the costs, risks, and delay of trial and appeal;  
5 (ii) the effectiveness of any proposed method of distributing relief to the class,  
6 including the method of processing class-member claims;  
7 (iii) the terms of any proposed award of attorney's fees, including timing of  
8 payment; and  
9 (iv) any agreement required to be identified under Rule 23(e)(3); and  
10 (D) the proposal treats class members equitably relative to each other.

11 The *Churchill* factors are: "(1) the strength of the plaintiff's case; (2) the risk, expense,  
12 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status  
13 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage  
14 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental  
15 participant; and (8) the reaction of the class members of the proposed settlement." *In re Bluetooth*  
16 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill., L.L.C. v. Gen.*  
17 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

18 Where, as here, "a settlement agreement is negotiated prior to formal class certification,  
19 consideration of these eight *Churchill* factors alone is not enough." *Id.* Prior to formal class  
20 certification, there is an even greater potential for a breach of fiduciary duty owed the class during  
21 settlement. Accordingly, "such agreements must withstand an even higher level of scrutiny for  
22 evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before  
23 securing the court's approval as fair." *Id.* (citing *Hanlon*, 150 F.3d at 1026); accord *In re Gen. Motors*  
24 *Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 805 (3d Cir. 1995) (cautioning that  
25 courts must be "even more scrupulous than usual in approving settlements where no class has yet  
26 been formally certified"); *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust Co. of Chicago*, 834 F.2d  
27 677, 681 (7th Cir. 1987) ("[W]hen class certification is deferred, a more careful scrutiny of the  
28 fairness of the settlement is required."); *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982)  
(noting that reviewing courts must employ "even more than the usual care"); see also *Manual for*  
*Complex Litig.* § 21.612 (4th ed. 2004). Therefore, before approving a precertification settlement, the  
Court must not only show that it "has explored [the Rule 23(e)(2) and *Churchill*] factors  
comprehensively, but also that the settlement is not the product of collusion among the negotiating  
parties." *In re Bluetooth*, 654 F.3d at 947. Because collusion is unlikely to be evident from the face

1 of the settlement itself, “courts must be particularly vigilant not only for explicit collusion, but also  
2 for more subtle signs that class counsel have allowed pursuit of their own self-interests and that of  
3 certain class members to infect the negotiations.” *Id.*

4 Because collusion is unlikely to be evident from the face of the settlement itself, “courts must  
5 be particularly vigilant not only for explicit collusion, but also for more subtle signs that  
6 class counsel have allowed pursuit of their own self-interests and that of certain class members to  
7 infect the negotiations.” *Id.* A few such signs include: (1) “when counsel receive a  
8 disproportionate distribution of the settlement”; (2) “when the parties negotiate a ‘clear sailing’  
9 arrangement providing for the payment of attorneys’ fees separate and apart from class funds”; and  
10 (3) “when the parties arrange for fees not awarded to revert to defendants rather than be added to the  
11 class fund.” *Id.*

12 For the following reasons, the Settlement is granted Preliminary Approval, applying the Rule  
13 23(e)(2) and *Churchill* factors.<sup>5</sup> The Court is likely to find the Settlement is fair, reasonable, and  
14 adequate at the final approval stage.

15 **1. Adequacy of Representation (Rule 23(e)(2)(A) and *Churchill* Factor 5)** – Both Class  
16 Counsel and the Class Representative have adequately represented the Settlement Class. Class  
17 Counsel have adequately represented the Settlement Class by fully investigating and litigating the  
18 facts and legal claims. Their substantial efforts are exhibited by the formal and informal discovery  
19 regarding the 2019 Data Incident, and, while settlement of the 2023 Data Incident claims is coming  
20 at an earlier stage, Class Counsel’s efforts to use informal discovery to learn what occurred to cause  
21 the 2023 Data Incident and the Private Information impacted, before attending a full-day mediation  
22 session with an experienced mediator, which allowed for arm’s length and good faith negotiations,  
23 without collusion. *See* Joint Declaration. Class Counsel used their experience in complex class action  
24 litigation, including similar data breach actions, and devoted substantial time and resources to  
25 vigorous litigation. *Id.*

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26  
27 <sup>5</sup> The seventh factor is inapplicable, and the eighth factor is in applicable at this time and is best  
28 considered after Notice of the Settlement is sent to see if there is any opposition to the Settlement.  
The Court will consider the final *Churchill* factor at the final approval stage.

1 The Class Representatives also have demonstrated their adequacy by (i) having a genuine  
2 personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii) producing  
3 information and documents to Class Counsel to permit investigation and development of the  
4 complaints; (iv) being available as needed, including to respond to discovery and in the case of the  
5 2019 Plaintiffs sitting for deposition; (v) monitoring the Actions; and (vi) reviewing the Settlement  
6 terms. *See* Joint Declaration. Plaintiffs’ respective interests are coextensive and do not conflict with  
7 the interests of the Settlement Class. *Id.* Plaintiffs have the same interest in the Settlement relief, and  
8 the absent Settlement Class members have no diverging interests. *Id.* Therefore, the Court finds Rule  
9 23(e)(2)(A) and *Churchill* factor 5 weigh in favor of approval.

10 **2. The Settlement Was Negotiated at Arm’s Length (Rule 23(e)(2)(B) and *Churchill***  
11 **Factor 6)** – This Circuit puts “a good deal of stock in the product of arms-length, negotiated  
12 resolution.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (citing *Hanlon*, 150  
13 F.3d at 1027; *Officers for Justice*, 688 F.2d at 625). Critically, there is “[a]n initial presumption of  
14 fairness is usually involved if the settlement is recommended by class counsel after arm’s-length  
15 bargaining.” *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at \*6  
16 (N.D. Cal. Apr. 1, 2011), supplemented, No. C-06-05778 JCS, 2011 WL 1838562 (N.D. Cal. May  
17 13, 2011).

18 The Settlement is the result of good faith, informed, and arm’s-length negotiations between  
19 experienced attorneys familiar with class action litigation and with the legal and factual issues at  
20 stake. *See* Joint Declaration. Class Counsel recommend approval of the Settlement after they  
21 thoroughly investigated and analyzed Plaintiffs’ claims; fully briefed the motion to dismiss the 2019  
22 Data Incident claims, which the court denied in part and granted in part; engaged in formal and  
23 informal discovery for the 2019 Data Incident and informal discovery for the 2023 Data Incident; and  
24 consulted with data security experts, enabling them to gain an understanding of the evidence related  
25 to central questions in the Actions and preparing them for well-informed settlement negotiations. *Id.*  
26 The Settlement was reached with the assistance of a well-respected and experienced mediator. *Id.* For  
27 these reasons and those discussed related to attorneys’ fees below, there was no fraud or collusion in  
28

1 arriving at the Settlement.<sup>6</sup> Therefore, the Court finds Rule 23(e)(2)(B) and Churchill factor 6 weigh  
2 in favor of approval.

3 **3. The Adequacy of the Settlement Relief (Rule 23(e)(2)(C) and Churchill Factors 1-**  
4 **4)** – Although Plaintiffs believe the claims asserted in the Actions are strong and meritorious and the  
5 Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses  
6 significant risks that make any recovery for the Settlement Class uncertain. In assessing the degree of  
7 risk of continued litigation, “the court evaluates the time and cost required.” *Adoma v. Univ. of*  
8 *Phoenix, Inc.*, 913 F.Supp.2d 964, 976 (E.D. Cal. 2012). “[U]nless the settlement is clearly  
9 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with  
10 uncertain results.” *Id.* (quoting *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D.  
11 523, 526 (C.D. Cal. 2004)). “The parties . . . save themselves the time, expense, and inevitable risk  
12 of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the  
13 saving of cost and elimination of risk, the parties each give up something that they might have won  
14 had they proceeded with litigation.” *Officers for Justice*, 688 F.2d at 624 (quoting *United States v.*  
15 *Armour & Co.*, 402 U.S. 673, 681–82 (1971)).

16 Data breach class actions are risky. *See, e.g., In re Mednax Serv., Customer Data Sec. Breach*  
17 *Litig.*, No. 21-MD-02994-RAR, 2024 WL 1554329, at \*7 (S.D. Fla. Apr. 10, 2024); *In re Equifax*  
18 *Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021) (“Settlements also save  
19 the bench and bar time, money, and headaches”); *FultonGreen v. Accolade, Inc.*, No. 18-274, 2019  
20 WL 4677954, at \*8 (E.D. Pa. Sept. 24, 2019) (noting that data breach class actions are “a risky field  
21 of litigation because [they] are uncertain and class certification is rare”). *See also, e.g., In re*  
22 *Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-mn-02972-JFA, 2024 WL 2155221 (D.S.C.  
23 May 14, 2024) (denying class certification in a data breach case). The Settlement’s fairness is  
24 underscored by consideration of the obstacles the Settlement Class would face in ultimately  
25

26 <sup>6</sup> None of the so-called “*Bluetooth*” factors are of concern. *See In re Bluetooth*, 654 F.3d at 947. First,  
27 Class Counsel will not receive a disproportionate distribution from the Settlement Fund. Second, there  
28 is no clear-sailing arrangement regarding the attorneys’ fees Class Counsel will seek. Agreement ¶  
127. Third, there is no provision that unawarded attorneys’ fees would revert to Defendant.

1 succeeding on the merits, as well as the expense and likely duration of the litigation.

2 Despite the risks involved with further litigation, the Settlement provides outstanding benefits,  
3 including Cash Payments and Financial Account Monitoring for all Settlement Class Members. Also,  
4 the Claim Form submission process and distribution of Settlement Class Member Benefits is fair,  
5 convenient, and effective. Settlement Class Members will promptly receive Cash Payments by  
6 electronic means or paper check issued by the Settlement Administrator and Financial Account  
7 Monitoring, if elected. The Settlement Administrator is highly qualified to manage the entire process.  
8 *See* Joint Declaration. Thus, through the Settlement, Plaintiffs and Settlement Class Members gain  
9 significant benefits without having to face further risk of not receiving any relief at all. *Andersen*,  
10 2022 WL 181262 at \*7.

11 Furthermore, the attorneys' fees do not impact the other terms of the Settlement, as Class  
12 Counsel and Defendant negotiated and reached agreement regarding attorneys' fees and costs only  
13 after reaching agreement on all other material Settlement terms. *See* Joint Declaration. The  
14 Settlement, including disbursement of the Settlement Class Member Benefits, is also not contingent  
15 on approval of the attorneys' fee or costs award to Class Counsel or the Service Awards. Agreement  
16 ¶ 127. As the Application for Attorneys' Fees, Costs, and Service Awards will detail, the 30% of the  
17 common Settlement Fund that will be sought is within the typical range of acceptable attorneys' fees  
18 in the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002); *Smith v.*  
19 *One Nevada Credit Union*, No. 2:16-cv-02156, 2018 WL 4407251, at \*8 (D. Nev. Sept. 16, 2018).  
20 Finally, the Parties' agreements are all in the Agreement. *See* Joint Declaration.

21 Therefore, the Court finds Rule 23(e)(2)(C) and *Churchill* factors 1-4 weigh in favor of  
22 approval.

23 **4. The Equitable Treatment of Settlement Class Members (Rule 23(e)(2)(D))** – All  
24 Settlement Class Members are given an equal opportunity to claim Settlement Class Member  
25 Benefits. Specifically, each has the option to be reimbursed for documented losses up to \$15,000.00,  
26 may elect to receive a flat cash payment based upon their respective Settlement Class tier, and all may  
27 select Financial Account Monitoring. The tiering of additional flat cash payments reasonably assigns  
28 higher value to the more valuable categories of Private Information exfiltrated in the Data Incidents.

1 All Settlement Class Member Cash Payments may be subject to a *pro rata* increase or decrease,  
2 depending on the number of Valid Claims and the value of all Cash Payments claimed. Thus, the  
3 Settlement Class Member Benefits distribution method will be equitable and effective. Therefore, the  
4 Court finds Rule 23(e)(2)(D) weighs in favor of approval.

5 Accordingly, the Court is likely to find the Settlement is fair, reasonable, and adequately  
6 protects the interests of the Settlement Class members.

7 **C. The Court Appoints the Proposed Class Representatives, Class Counsel, and**  
8 **Settlement Administrator.**

9 Plaintiffs have been integral to Class Counsel throughout litigation and settlement. *See* Joint  
10 Declaration. The 2019 Plaintiffs were very involved in this litigation. *Id.* They assisted with the  
11 preparation of the 2019 Complaint, provided necessary factual information and helped respond to  
12 written discovery requests, had their depositions taken, communicated with Class Counsel when  
13 needed, and reviewed settlement documents. *Id.* The 2023 Plaintiffs assisted with the preparation of  
14 the 2023 Complaint, provided necessary factual information, communicated with Class Counsel when  
15 needed, and reviewed settlement documents. *Id.* Moreover, Plaintiffs are committed to continuing to  
16 assist Class Counsel through Final Approval. *Id.* Because Plaintiffs are adequate, the Court appoints  
17 them as Class Representatives.

18 For the same reasons discussed above for adequacy of representation, and when appointing  
19 them on an interim basis in the Actions, the Court designates John Yanchunis, Doug McNamara, E.  
20 Michelle Drake, David Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger,  
21 and Jeff Ostrow as Class Counsel. Fed. R. Civ. P. 23(g)(1)(A)'s four factors for appointing class  
22 counsel for a certified class are (1) "the work counsel has done in identifying or investigating potential  
23 claims in the action;" (2) "counsel's experience in handling class actions, other complex litigation,  
24 and the types of claims asserted in the action;" (3) "counsel's knowledge of the applicable law;" and  
25 (4) "the resources that counsel will commit to representing the class." The Court may also "consider  
26 any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the  
27 class[.]" Fed. R. Civ. P. 23(g)(1)(B). Here, Plaintiffs and the Settlement Class are represented by  
28 qualified and competent Class Counsel who are leaders in the class action field with extensive

1 experience prosecuting and resolving complex class actions. *See* Joint Declaration, Ex. 1-9. Before  
2 commencing litigation, they investigated the potential claims against Defendant, interviewed  
3 potential plaintiffs, and gathered information regarding the Data Incident. *Id.* Class Counsel has  
4 devoted substantial time and resources to the Actions and will continue to do so. *Id.*

5 Finally, subject to Court approval, the Parties have agreed Epiq should be the Settlement  
6 Administrator. Epiq has a long history of successful class action administrations. *See generally*  
7 *Admin. Decl.* The Court approves Epiq as the Settlement Administrator.

8 **D. The Proposed Notice Program and Claim Process Are Reasonable.**

9 Under Fed. R. Civ. P. 23(e)(1), the Court should “direct notice in a reasonable manner to all  
10 class members who would be bound” by the proposed settlement. Notice of a proposed settlement  
11 must be the “best notice practicable.” Fed. R. Civ. P. 23(c)(2)(B). “[B]est notice practicable” means  
12 “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle*  
13 *& Jacquelin*, 417 U.S. 156, 173 (1974); *see also Andersen*, 2022 WL 181262 at \*6 (notice satisfactory  
14 if it describes the settlement terms in sufficient detail to alert those with adverse viewpoints to  
15 investigate and to come forward to be heard). The best notice practicable is that which “is reasonably  
16 calculated, under all of the circumstances, to apprise interested parties of the pendency of the action  
17 and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr.*  
18 *Co.*, 339 U.S. 306, 314 (1950). Moreover, Fed. R. Civ. P. 23(h)(1) requires that “[n]otice of the motion  
19 [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class  
20 members in a reasonable manner.”

21 The Notice Program satisfies the foregoing criteria. The Parties negotiated the form of the  
22 Notices with the Settlement Administrator’s input and assistance. The Notice will be directly  
23 disseminated to all persons who fall within the Settlement Class definition and whose names, email  
24 addresses, and postal addresses can be identified with reasonable effort from Defendant’s records,  
25 and through databases tracking nationwide addresses and address changes, as well as through  
26 publication on digital media. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th  
27 Cir. 2015) (notice provided by mail and email was sufficient). In addition, Epiq will administer the  
28 Settlement Website containing relevant information about the Settlement and maintain the toll-free

1 telephone line that Settlement Class members can call. Further, the Notices include, among other  
2 information: a description of the material terms of the Settlement; how to submit a Claim Form; the  
3 Claim Form Deadline; the last day of the Opt-Out Period for Settlement Class members to opt-out of  
4 the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to  
5 the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards; the Final Approval  
6 Hearing date; and the Settlement Website address at which Settlement Class members may access  
7 this Agreement and other related documents and information. Agreement § VIII. The Long Form  
8 Notice and Settlement Website will also detail the opt-out and objection procedures approved by the  
9 Court. Finally, the Notice Program satisfies the requirements of Rule 23(h)(1), as the Notices will  
10 notify the Settlement Class that Class Counsel may apply to the Court for an award of attorneys' fees  
11 of up to 30% of the Settlement Fund, plus reimbursement of costs, and for Service Awards for the  
12 Class Representatives. *Id.*

13 Thus, the Court approves the Notice Program, including the form and content of the Notices.  
14 Agreement, Exs. 1-4. The Court also approves the opt-out and objection procedures set forth in the  
15 Agreement and summarized in this Order.

16 The Court also approves the Claim Form and Claim process. The Claim Form is easy to  
17 understand and may be submitted online through the Settlement Website or through U.S. Mail sent  
18 to the Settlement Administrator. *Id.* ¶ 111. As noted above, the Settlement Administrator will review  
19 all Claim Forms to determine their validity, eligibility, and the type and amount of the Cash Payment  
20 to which the Settlement Class Member may be entitled, and the Claim review process is robust. *Id.*  
21 ¶¶ 112-116.

22 The Court directs the Settlement Administrator to disseminate the Notices and Claim Form as  
23 approved herein. Class Counsel and Defendant's Counsel are hereby authorized to use all reasonable  
24 procedures in connection with approval and administration of the Settlement that are not materially  
25 inconsistent with this order or the Settlement, including making, without the Court's further approval,  
26 minor form or content changes to the Notices and Claim Form they jointly agree are reasonable or  
27 necessary.  
28

1 **VI. CONCLUSION**

2 **IT IS HEREBY ORDERED** that the Motion for Preliminary Approval (ECF No. \_\_) is  
3 **GRANTED** as follows:

- 4 1. The Settlement Class is granted provisional class certification.
- 5 2. Plaintiff’s Counsel, John Yanchunis, Doug McNamara, E. Michelle Drake, David  
6 Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow are  
7 appointed as Class Counsel.
- 8 3. Plaintiffs are appointed as Class Representatives.
- 9 4. Epiq Class Action & Claims Solutions, Inc. is appointed as Settlement Administrator.
- 10 5. The proposed Settlement agreement is preliminarily approved as fair, reasonable, and  
11 adequate.
- 12 6. If the Settlement is terminated, not approved, canceled, fails to become effective for any  
13 reason, or the Effective Date does not occur, this Preliminary Approval Order shall become null and  
14 void and shall be without prejudice to the rights of Plaintiffs, the Settlement Class members, and  
15 Defendant, all of whom shall be restored to their respective positions in the Actions as provided in  
16 the Agreement.
- 17 7. All pretrial proceedings in the Actions are stayed and suspended until further order of  
18 this Court, except such actions as may be necessary to implement the Settlement and this Preliminary  
19 Approval Order.
- 20 8. Upon the entry of this Preliminary Approval Order, with the exception of Class  
21 Counsel’s, Defendant’s Counsel’s, Defendant’s, and the Class Representatives’ implementation of  
22 the Settlement and the approval process in the Actions, all members of the Settlement Class shall be  
23 provisionally enjoined and barred from asserting any claims or continuing any litigation against  
24 Defendant and the Released Parties arising out of, relating to, or in connection with the Released  
25 Claims prior to the Court’s decision as to whether to grant Final Approval of the Settlement.
- 26 9. For the benefit of the Settlement Class and to protect this Court’s jurisdiction, this Court  
27 retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in  
28 accordance with the Settlement preliminarily approved herein and the related orders of this Court.

1 10. The Final Approval Hearing will be conducted for the following purposes: (a) to  
 2 determine whether the proposed Settlement, on the terms and conditions provided for in the  
 3 Settlement, is fair, reasonable, and adequate, and should be approved by the Court; (b) to determine  
 4 whether an order of Final Judgment should be entered dismissing the Actions on the merits and with  
 5 prejudice; (c) to determine whether the proposed plan of allocation and distribution of the Settlement  
 6 Fund is fair and reasonable and should be approved; (d) to determine whether any requested award  
 7 of attorneys’ fees and costs to Class Counsel and Service Awards to the Class Representatives should  
 8 be approved; and (e) to consider any other matters that may properly be brought before the Court in  
 9 connection with the Settlement. The Court may elect to hold the Final Approval Hearing virtually by  
 10 Zoom or some other application, and if it does, the instructions on how to attend shall be posted by  
 11 the Settlement Administrator on the Settlement Website.

12 11. Consistent with the Agreement, the following scheduled is imposed leading up to the  
 13 Final Approval Hearing that shall take place on \_\_\_\_\_, 2025, at \_\_\_ a.m./p.m. in Courtroom  
 14 \_\_\_, located at Lloyd D. George Federal Courthouse, 333 Las Vegas Boulevard South, Las Vegas,  
 15 Nevada 89101, before District Court Judge Gloria M. Navarro:

16 Deadline to commence Notice Program	Within 30 days of the Preliminary Approval Order
17 Deadline to complete Notice Program	45 days before the original Final Approval Hearing date
18 Deadline for filing Motion for Final Approval, including Class Counsel’s Application for Attorneys’ Fees, Costs, and Service Awards	45 days before the original Final Approval Hearing date
19 Opt-Out Period Ends	30 days before the original Final Approval Hearing date
20 Objection Period Ends	30 days before the original Final Approval Hearing date
21 Claim Form Deadline	15 days before the original Final Approval Hearing date
22 Final Approval Hearing	_____, 2025 at __:___ a.m./p.m.

23 **DATED** this \_\_ day of \_\_\_\_\_, 2025.

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 \_\_\_\_\_  
 Gloria M. Navarro, District Judge  
 UNITED STATES DISTRICT COURT

**EXHIBIT 7**  
**(FINAL APPROVAL ORDER)**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION  
  
This Document Relates To: All actions.

Case No.: 2:20-cv-00376-GMN

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.  
  
Plaintiffs,  
  
v.  
  
MGM RESORTS INTERNATIONAL  
  
Defendant.

Master File No. 2:23-cv-01480-GMN  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR  
ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS AND FINAL JUDGMENT**

On January \_\_, 2025, after extensive arms-length negotiations, and private mediation conducted before Bruce Friedman, Esq., with JAMS in Las Vegas, Plaintiffs and Defendant entered into the Settlement Agreement, which is subject to review under Fed. R. Civ. P. 23, for monetary damages as set forth in the Agreement.

On January \_\_, 2025, the Plaintiffs filed the Agreement with the Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law. (ECF No. \_\_.)

On January \_\_, 2025, upon consideration of the Agreement, Motion for Preliminary Approval, and the record, the Court entered the Preliminary Approval Order. (ECF No. \_\_.) Pursuant to the Preliminary Approval Order, the Court, among other things, (i) provisionally certified the Settlement Class for settlement purposes; (ii) appointed the Plaintiffs as Class Representatives; (iii) appointed John Yanchunis, Doug McNamara, E. Michelle Drake, David Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow as Class Counsel for the Settlement Class;

1 (iv) approved the form of the Notices and the Notice Program; (v) approved the Claim Form and the  
2 Claim process; (vi) appointed Epiq Class Action & Claims Solutions, Inc. as the Settlement  
3 Administrator; (vii) established procedures and deadlines for members of the Settlement Class to opt-  
4 out of or object to the Settlement; and (viii) scheduled the Final Approval Hearing at which time the  
5 Court would consider whether to grant Final Approval of the Settlement and the Application for  
6 Attorneys' Fees, Costs and Service Awards. *Id.*

7 On \_\_\_\_\_, 2025, Plaintiffs filed the Motion for Final Approval of Class Action  
8 Settlement and Application for Attorneys' Fees, Costs, and Service Awards. ECF No. \_\_. Pursuant  
9 to the Motion for Final Approval, the Parties request Final Approval of the proposed class action  
10 Settlement, and awards of attorneys' fees and costs to Class Counsel and Service Awards to the Class  
11 Representatives. *Id.*

12 On \_\_\_\_\_, 2025, a Final Approval Hearing was held on the Motion for Final Approval  
13 and Application for Attorneys' Fees, Costs, and Service Awards. Class Counsel appeared for the  
14 Plaintiffs and Settlement Class, and Defendant's Counsel appeared for Defendant.

15 Having received and considered the Settlement, the supporting papers filed by the Parties, and  
16 the evidence and argument received by the Court before entering the Preliminary Approval Order and  
17 at the Final Approval Hearing, the Court grants Final Approval of the Settlement and the Application  
18 for Attorneys' Fees, Costs, and Service Awards, enters this order, and **IT IS HEREBY ORDERED:**

19 1. **INCORPORATION OF DEFINED TERMS:** This order incorporates the definitions  
20 of all capitalized terms defined in Section II of the Settlement Agreement, and all capitalized terms  
21 used in this order have the same meanings as set forth in that Agreement.

22 2. **JURISDICTION:** The Court has subject matter jurisdiction over the Action and  
23 personal jurisdiction over the Parties and Settlement Class Members.

24 3. **NOTICE PROGRAM AND CLAIMS PROCESS:** Pursuant to the Court's  
25 Preliminary Approval Order, the Settlement Administrator has complied with the approved Notice  
26 Program as confirmed in its declaration filed with the Court. The form and method for notifying the  
27 Settlement Class of the Settlement and its terms and conditions was in conformity with this Court's  
28 Preliminary Approval Order and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due

1 process, and constituted the best notice practicable under the circumstances. The Court finds that the  
2 Notice Program was clearly designed to advise the Settlement Class members of their rights. Further,  
3 the Court finds that the Claim Process set forth in the Agreement was followed and that the process  
4 was the best practicable procedure under the circumstances.

5 4. **FINAL CLASS CERTIFICATION**: The Court again finds the Actions satisfy the  
6 applicable prerequisites for class action treatment under Fed. R. Civ. P. 23, namely:

- 7 a. The Settlement Class members are so numerous that joinder of all of them in the  
8 Lawsuit would be impracticable;
- 9 b. There are questions of law and fact common to the Settlement Class members, which  
10 predominate over any individual questions;
- 11 c. The claims of Plaintiffs are typical of the claims of the Settlement Class members;
- 12 d. Plaintiffs and Class Counsel have fairly and adequately represented and protected the  
13 interests of all the Settlement Class members; and
- 14 e. Class treatment of these claims will be efficient and manageable, thereby achieving an  
15 appreciable measure of judicial economy, and a class action is superior to other  
16 available methods for a fair and efficient adjudication.

17 5. **CERTIFICATION OF SETTLEMENT CLASS**: The Court finally certifies the  
18 following Settlement Class:

19 All persons in the United States whose Private Information was accessed during the  
20 Data Incidents.

21 Excluded from the Settlement Class are the judges presiding over the Actions and members of their  
22 direct families.

23 6. **APPOINTMENTS**: Consistent with the Preliminary Approval Order, the Court hereby  
24 appoints the following as Class Representatives, Class Counsel, and Settlement Administrator:

- 25 a. Plaintiffs are appointed as Class Representatives.
- 26 b. Plaintiffs' counsel, John Yanchunis, Doug McNamara, E. Michelle Drake, David  
27 Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff  
28 Ostrow, are appointed as Class Counsel;

1 c. Epiq Class Action & Claims Solutions, Inc. is appointed as Settlement Administrator.

2 7. **SETTLEMENT TERMS REASONABLE**: The Court finds that the Settlement of the  
3 Actions, on the terms and conditions set forth in the Agreement, is in all respects fundamentally fair,  
4 reasonable, adequate, and in the best interests of the Settlement Class, applying the Fed. R. Civ. P.  
5 23(e)(2) factors and Ninth Circuit’s traditional *Churchill* factors.

6 8. **FINAL APPROVAL**: The Agreement, which has been filed with the Court and shall  
7 be deemed incorporated herein, and the proposed Settlement is finally approved and shall be  
8 consummated in accordance with the terms and provisions thereof, except as amended by any order  
9 issued by this Court.

10 9. **OPT-OUTS**: A list of the individuals who have opted-out of the Settlement is attached  
11 as *Exhibit A*. Those individuals will not be bound by the Agreement or the Releases contained therein.

12 10. **OBJECTIONS**: The Settlement Class Members were given an opportunity to object to  
13 the Settlement. No Settlement Class Members filed objections.

14 11. **SETTLEMENT BINDING**: This Order is binding on all Settlement Class Members,  
15 except those individuals who validly and timely opted-out from the Settlement Class.

16 12. **SERVICE AWARDS; ATTORNEYS’ FEES AND COSTS**:

17 a. The Class Representatives are awarded reasonable Service Awards, applying the  
18 factors in *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015).  
19 Plaintiffs Ryan Bohlim, Duke Hwynn, Larry Lawter, Kerri Shapiro, Gennady Simkin,  
20 Robert Taylor, and Victor Wukovits in the 2019 Action shall receive \$\_\_\_\_\_ each.  
21 Plaintiffs Tonya Owens, Emily Kirwan, David Zussman, David Lackey, Michael  
22 Pircio, David Terezo, Ronald G. Rundell, Laura Willis Abrigo, Anita Johnson, Paul  
23 Zaro, Michael Manson, Kyle Sloan, Michelle Righetti, Edgar Mejia, and DuJun  
24 Johnson in the 2023 Action shall receive \$\_\_\_\_\_ each. The Service Awards shall  
25 be paid out of the Settlement Fund in accordance with the Agreement.

26 b. Class Counsel are awarded \$\_\_\_\_\_ for attorneys’ fees and \$\_\_\_\_\_ for costs.  
27 These payments shall be made out of the Settlement Fund in accordance with the  
28 Agreement. The Court evaluated settlement Class Counsel’s request using a common

1 fund analysis, applying the factors set forth in *Vizcaino v. Microsoft Corp.*, 290 F.3d  
2 1043, 1048 (9th Cir. 2002), and concludes that amount is fair and within the range of  
3 reason.

4 13. **VALID CLAIMS**: Based on the information presented to the Court, the Claim process  
5 has proceeded as ordered and consistent with the Agreement and Preliminary Approval Order. The  
6 distribution plan for Settlement Class Member Benefits proposed by the Parties in the Agreement is  
7 fair, reasonable, and adequate. All Settlement Class Members who submitted Valid Claims shall  
8 receive their Settlement Class Member Benefits pursuant to the Settlement’s terms. All Settlement  
9 Class Members who did not submit a Claim, or for whom the Claim is determined to be invalid, shall  
10 still be bound by the terms of the Settlement and Releases therein.

11 14. **PAYMENT OF SETTLEMENT ADMINISTRATION COSTS**: The Parties are  
12 authorized to approve the payment of the Settlement Administration Costs to the Settlement  
13 Administrator from the Settlement Fund.

14 15. **RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT**: As of the Effective  
15 Date, Plaintiffs and all Settlement Class Members and Releasing Parties, and persons purporting to  
16 act on their behalf, are permanently barred and enjoined from commencing or prosecuting, either  
17 individually or as a class, or in any other capacity, any of the Released Claims against any of the  
18 Released Parties, as set forth in the Agreement, against any of the Released Parties in any action or  
19 proceeding in any court, arbitration forum, or tribunal. The Released Claims are compromised,  
20 discharged, and dismissed with prejudice by virtue of these proceedings and this order.

21 16. **RESIDUAL FUNDS**: In the event there are funds remaining in the Settlement Fund,  
22 including from uncashed checks, within 45 days following the 180-day check negotiation period, the  
23 Court approves the distribution of all remaining funds to \_\_\_\_\_.

24 17. **JURISDICTION RETAINED**: The Court hereby retains and reserves jurisdiction  
25 over: (1) implementation of this Settlement and any distributions of Settlement Class Member  
26 Benefits to the Settlement Class Members; (2) the Action, until the Effective Date, and until each and  
27 every act agreed to be performed by the Parties shall have been performed pursuant to the terms of  
28 the Agreement, including the exhibits appended thereto; and (3) all Parties, for the purpose of

1 enforcing and administering the Settlement.

2 18. In the event the Effective Date of the Settlement does not occur, the Settlement shall be  
3 rendered null and void to the extent provided by and in accordance with the Agreement, and this order  
4 and any other order entered by this Court in accordance with the terms of the Agreement shall be  
5 vacated, *nunc pro tunc*. In such event, all orders entered and releases delivered in connection with the  
6 Settlement shall be null and void and have no further force and effect, shall not be used or referred to  
7 for any purpose whatsoever, and shall not be admissible or discoverable in any proceeding. The  
8 Action shall return to its status immediately prior to execution of the Agreement.

9 19. **ENTRY OF JUDGMENT**: There being no just reason for delay, the Clerk of Court is  
10 hereby directed to enter final judgment forthwith pursuant to Fed. R. Civ. P. 58.

11 **DATED** this \_\_ day of \_\_\_\_\_, 2025.

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14 Gloria M. Navarro, District Judge  
15 UNITED STATES DISTRICT COURT  
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**EXHIBIT A**

**OPT-OUT LIST**

(To Be Completed Before Final Approval Hearing)

# EXHIBIT A-1

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION

Case No.: 2:20-cv-00376-GMN

This Document Relates To: All actions.

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.

Plaintiffs,

v.

MGM RESORTS INTERNATIONAL, et al.

Defendants.

Master File No. 2:23-cv-01480-RFB  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**AMENDMENT TO SETTLEMENT AGREEMENT**

This Amendment to Settlement Agreement<sup>1</sup> is entered into between Plaintiffs, on behalf of themselves and the provisionally certified Settlement Class, on the one hand, and Defendant, on the other hand, and shall be effective as of March 28, 2025.

**WHEREAS**, the Parties entered into the Agreement on January 17, 2025;

**WHEREAS**, the Parties now desire to amend the Agreement to modify the Notice Program to remove the requirement to send Postcard Notices to those Settlement Class members whose email addresses are unknown, or to those whose email bounces back or are otherwise

---

<sup>1</sup> This Amendment to Settlement Agreement shall be referred to herein as “Amendment” and all other capitalized terms herein shall have the same meanings as those defined in Section II of the Settlement Agreement.

undeliverable;

**WHEREAS**, pursuant to paragraph 157 of the Agreement, subject to Court approval, Class Counsel and Defendant’s Counsel have the authority to enter into this Amendment to modify the Agreement.

**NOW THEREFORE**, in consideration for the Parties’ promises and commitments in the Settlement Agreement, the Parties hereby modify the Agreement as follows:

64. This paragraph shall be deleted in its entirety and replaced with the following: “Postcard Notice” means the postcard notice of the Settlement, substantially in the form attached hereto as *Exhibit 2*, that the Settlement Administrator shall disseminate to Tier 1, Tier 2, and Tier 3 Settlement Class members for whom physical addresses are available.

107. The first sentence of this paragraph shall be deleted in its entirety. The second sentence shall be deleted in its entirety and replaced with the following: Those Settlement Class members in Tiers 1, 2, and 3 whose physical addresses were identified will be sent a Postcard Notice no later than 60 days before the original date of the Final Approval Hearing.

III. D. Settlement Class Notice – The third sentence of the second paragraph of this section shall be deleted in its entirety.

No other provisions of the Agreement are affected by this Amendment. The Parties agree to file a motion with the Court seeking approval of this Amendment and, upon approval by the Court, to update the Notice Program to include only sending Postcard Notices to Tier 1, Tier 2, and Tier 3 Settlement Class members whose physical addresses are available, and to remove the requirement to send Postcard Notices to those Settlement Class members whose emails bounce back or are otherwise undeliverable.

**CLASS COUNSEL**

  
Douglas McNamara (Apr 1, 2025 15:11 EDT)

---

**DOUGLAS MCNAMARA**  
COHEN MILSTEIN  
LLPSELLERS & TOLL PLLC

J. Gerard Stranch, IV  
J. Gerard Stranch, IV (Apr 1, 2025 15:08 CDT)

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**J. GERARD STRANCH, IV**  
STRANCH, JENNINGS  
& GARVEY, PLLC

**MGM'S COUNSEL**

Neil Gilman  
Neil Gilman (Apr 1, 2025 17:01 EDT)

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**NEIL GILMAN**  
HUNTON ANDREWS KURTH

Eric Roberts  
Eric Roberts (Apr 1, 2025 16:06 CDT)

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**ERIC ROBERTS**  
DLA PIPER LLP (US)

# EXHIBIT B

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION  
  
This Document Relates To: All actions.

Case No.: 2:20-cv-00376-GMN

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.  
  
Plaintiffs,  
  
v.  
  
MGM RESORTS INTERNATIONAL  
  
Defendant.

Master File No. 2:23-cv-01480-GMN  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**JOINT DECLARATION OF CLASS COUNSEL IN SUPPORT OF PLAINTIFFS’  
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT  
AND APPLICATION FOR ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS**

We, John Yanchunis, Doug McNamara, E. Michelle Drake, David Berger, J. Gerard Stranch  
IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow, declare as follows:

1. We are Class Counsel<sup>1</sup> in the above-captioned Actions. We submit this declaration in  
support of Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and  
Application for Attorneys’ Fees, Costs, and Service Awards. Unless otherwise noted, we have  
personal knowledge of the facts set forth in this declaration and could and would testify competently  
to them if called upon to do so.

**PROCEDURAL HISTORY**

2. The procedural history of the important events and work leading up to the proposed  
Settlement is detailed in the Motion for Final Approval with citation to the relevant docket entries

<sup>1</sup> All capitalized terms used herein shall have the same meanings as those defined in Section II of the  
Settlement Agreement, attached to the Motion for Final Approval as Exhibit A.

1 from the 2019 Action and 2023 Action. The facts that follow supplement the record in the Actions  
2 with factual information relevant to the Motion for Final Approval.

3 **The 2019 Action**

4 3. In or about July 2019, unauthorized individuals accessed Defendant’s network and  
5 downloaded certain customer data for approximately 37 million MGM guests. Defendant discovered  
6 the 2019 Data Incident on or about July 10, 2019. According to Defendant, the unauthorized  
7 individuals acquired personally identifiable information including customers’ names, postal  
8 addresses, telephone numbers, email addresses, dates of birth, and passport numbers. However, for  
9 the vast majority of the victims, the exposure was limited to their name, postal address, email address,  
10 telephone number, and/or their date of birth.

11 4. Defendant began notifying the impacted individuals that their Private Information may  
12 have been impacted in the 2019 Data Incident.

13 5. As a result, commencing on February 21, 2019, Defendant was named in the first of  
14 eight class action lawsuits that were consolidated and for which interim class counsel was appointed.

15 6. After the Court’s ruling on Defendant’s motion to dismiss, the Parties in the 2019  
16 Action engaged in substantial fact discovery, including written discovery, document production,  
17 depositions, and discovery motion practice.

18 7. The 2019 Plaintiffs’ counsel took six depositions (five MGM employees and one of a  
19 third-party) and defended seven named-Plaintiff depositions. Following Plaintiffs’ counsel’s review  
20 and coding of over 170,000 of the 2019 Plaintiffs’ documents, they produced thousands of responsive  
21 documents to the Defendant, while also reviewing and coding over 180,000 documents produced by  
22 the Defendant.

23 **The 2023 Action**

24 8. Beginning on September 7, 2023, in a separate cybersecurity incident, unauthorized  
25 individuals accessed Defendant’s network by impersonating an information technology administrator  
26 and gaining access to employees’ network access credentials. Once inside the network, the  
27 unauthorized individuals locked down Defendant’s network and further gained access to  
28 approximately 37 million customers’ personally identifiable information, including, but not limited

1 to MGM’s customers and guests’ names, addresses, telephone numbers, email addresses, dates of  
2 birth, driver’s license numbers, passport numbers, military identification numbers, and in some cases,  
3 Social Security numbers.

4 9. Similar to the 2019 Data Incident, the Defendant sent notice to the impacted  
5 individuals advising that their Private Information may have been involved in the 2023 Data Incident.

6 **The 2019 Plaintiffs and 2023 Plaintiffs Agreement to Work Cooperatively for Mediation**

7 10. In July 2024, the 2019 Plaintiffs and the 2023 Plaintiffs agreed to participate in a joint  
8 mediation with Defendant before an experienced data breach mediator, Bruce Friedman, Esq., with  
9 JAMS in Las Vegas on August 5, 2024.

10 11. Before mediation, the 2019 Plaintiffs and the 2023 Plaintiffs propounded informal  
11 discovery requests to learn as much as possible about the 2019 Data Incident and the 2023 Data  
12 Incident. Through the provision of informal discovery, Plaintiffs in both cases were able to evaluate  
13 the merits of Defendant’s position. The Parties also exchanged detailed mediation briefs outlining  
14 their positions with respect to liability, damages, and settlement-related issues. The mediation was  
15 canceled for various reasons. Thereafter, the 2019 Plaintiffs and the 2023 Plaintiffs decided to work  
16 together and collectively pursue a global settlement of the Actions.

17 12. The Parties rescheduled and participated in mediation for October 10, 2024, with Mr.  
18 Friedman, in Las Vegas. In advance of the mediation, Plaintiffs propounded additional informal  
19 discovery requests regarding the size and scope of the Data Incidents, including, but not limited to,  
20 the number of persons potentially impacted, the data elements impacted, and the geographical makeup  
21 of the putative classes. After a full day of negotiations, the Parties were unable to reach a settlement.  
22 Over the next several weeks, however, the Parties continued to negotiate the contours of a potential  
23 global resolution.

24 13. The Parties negotiated the terms of the Settlement Agreement over the next couple of  
25 months ultimately signing it on January 17, 2025.

26 **SETTLEMENT**

27 14. The Settlement provides for a non-reversionary \$45,000,000 all cash Settlement Fund.  
28 The Defendant fully funded the Escrow Account after Preliminary Approval.

1 15. The Settlement is the result of good faith, informed, and arm's-length negotiations  
2 between experienced class action attorneys familiar with the legal and factual issues at stake. Class  
3 Counsel endorse the Settlement as fair, reasonable, and adequate after they thoroughly investigated  
4 and analyzed Plaintiffs' claims; fully briefed the motion to dismiss the 2019 Data Incident claims,  
5 which the court denied in part and granted in part; engaged in substantial formal and informal  
6 discovery for the 2019 Data Incident and informal discovery for the 2023 Data Incident; and consulted  
7 with data security experts, enabling them to gain an understanding of the evidence related to central  
8 questions in the Actions and preparing them for well-informed settlement negotiations. The  
9 Settlement was reached with the assistance of a well-respected and experienced mediator.

10 16. Class Counsel has fully evaluated the strengths, weaknesses, and equities of the Parties'  
11 respective positions and believe the proposed Settlement fairly resolves their respective differences.  
12 The Settlement structure is fair and the allocation and distribution plan is reasonable.

13 17. The amount of the Settlement is well within the range of reasonableness for data  
14 breaches of this size and for the type of information at issue. If approved, the Settlement will provide  
15 certain, substantial, and immediate relief to the Settlement Class.

16 18. The Claim Process was structured to ensure that all Settlement Class members had  
17 adequate time to review the Settlement terms, compile documents supporting their Claim, and decide  
18 whether to submit a Claim and to opt-out of or object to the Settlement. Settlement Class Members  
19 may continue to submit Claim Forms online or by mail prior to the June 3, 2025 Claim Form Deadline.  
20 Settlement Class Members have the option of requesting an electronic payment or a traditional paper  
21 check on the Claim Form. They will also receive Financial Account Monitoring, if elected.

22 19. All Settlement Class Members are given an equal opportunity to claim Settlement Class  
23 Member Benefits. Specifically, each has the option to be reimbursed for documented losses up to  
24 \$15,000.00, may elect to receive an additional Cash Payment based upon their respective Settlement  
25 Class tier, and all may select Financial Account Monitoring. The tiering of additional flat Cash  
26 Payments reasonably assigns higher value to the more valuable categories of Private Information  
27 exfiltrated in the Data Incidents. All Settlement Class Member Cash Payments may be subject to a  
28 *pro rata* increase or decrease, depending on the number of Valid Claims. Thus, the Settlement Class

1 Member Benefits distribution method will be equitable and effective.

2 20. Any funds remaining in the Settlement Fund, including from uncashed checks,  
3 following the 180-day check negotiation period shall be distributed to a mutually agreeable *cy pres*  
4 recipient to be approved by the Court. The Parties propose the UNLV Cyber Clinic  
5 (<https://freecyberclinic.org/about>) as the recipient. That non-profit organization’s mission matches  
6 the Action’s goals to redress and protect consumer privacy rights by “striving to protect and educate  
7 small businesses while building the foundation for tomorrow’s cybersecurity professionals”  
8 (<https://freecyberclinic.org/team>).

9 21. The Court-approved Notice Program carried out by the Settlement Administrator  
10 conforms with the procedural and substantive requirements of due process and Rule 23.

11 22. Both Class Counsel and the Class Representatives have adequately represented the  
12 Settlement Class. Class Counsel fully investigated and litigated the facts and legal claims before  
13 settling the Action. Their substantial efforts are exhibited by the motion practice and extensive  
14 discovery that took place in the 2019 Action, and the Parties participated in the exchange of necessary  
15 informal discovery related to the 2023 Action.

16 23. Their understanding of the Data Incidents, the Defendant’s liability, and the scope of  
17 damages at issue, before attending a full-day mediation session with an experienced mediator,  
18 allowed for arm’s length and good faith negotiations, without collusion.

19 24. The Class Representatives also have demonstrated their adequacy by (i) having a  
20 genuine personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii)  
21 producing information and documents to Class Counsel to permit investigation and development of  
22 the complaints; (iv) being available as needed, including to respond to discovery and in the case of  
23 the 2019 Plaintiffs sitting for deposition; (v) monitoring the Actions; and (vi) reviewing the  
24 Settlement terms.

25 25. Plaintiffs’ respective interests are coextensive and do not conflict with the interests of  
26 the Settlement Class. Plaintiffs have the same interest in the Settlement relief, and the absent  
27 Settlement Class members have no diverging interests.

28 26. Although Plaintiffs believe their claims are strong and meritorious and the Settlement

1 Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks  
2 that make any recovery for the Settlement Class uncertain.

3 27. Further, the attorneys' fees do not impact the other Settlement terms, as Class Counsel  
4 and Defendant negotiated and reached agreement regarding attorneys' fees and costs only after  
5 reaching agreement on all other material Settlement terms.

6 28. Finally, there are no separate agreements to disclose under Rule 23(e)(3)—all of the  
7 Parties' agreements are in the Agreement, as amended.

8 **CLASS COUNSEL EXPERIENCE AND EXPERTISE**

9 29. Class Counsel and the others appointed to the 2023 Action's Plaintiffs' Steering  
10 Committee are some of the most experienced data breach lawyers in the country. This formidable  
11 team of attorneys used their years of experience of handling privacy class actions in federal and state  
12 courts throughout the country to litigate the Actions here efficiently and to achieve a favorable  
13 resolution in the face of serious risks.

14 30. Class Counsel are responsible for shaping much of the data breach jurisprudence that  
15 courts rely on today. Their experience in developing the legal framework in this sector was invaluable  
16 in navigating through the complicated issues presented in these Actions. They have led some of the  
17 most intricate multidistrict litigation privacy cases, and in so doing have worked with nearly every  
18 privacy expert, briefed and argued nearly every type of dispositive motion, argued for and obtained  
19 class certification, and settled some of the largest breaches in history. Their history of negotiating  
20 hundreds of settlements was critical here.

21 31. Combining overlapping classes from two separate breaches into a single settlement that  
22 fairly and equitably distributes funds based upon sensitivity of impacted data elements required  
23 experience and skills that was honed over years.

24 **THE ATTORNEYS' FEES AND LITIGATION COSTS ARE REASONABLE**

25 32. A settlement was only possible once the 2019 Plaintiffs and the 2023 Plaintiffs agreed  
26 to work cooperatively for the best interest of those impacted in the Data Incidents. As this Court is  
27 well aware, the 2019 Action was actively litigated for over five years and the 2023 Action is now  
28 entering year three. The 2019 Plaintiffs had to survive a motion to dismiss and engage in considerable

1 discovery, including the production and review of thousands of pages of documents and the taking  
2 and defending of many depositions. It was not until the filing of the 2023 Action, and the threat of  
3 litigating the 2023 Action by new counsel at the same time as the 2019 Action, that the Defendant  
4 agreed to explore settlement. At that point, Class Counsel for the 2019 Action had already spent  
5 thousands of hours of time working on the 2019 Action and incurred hundreds of thousands of dollars  
6 in costs with experts preparing for class certification and eventually trial to achieve this Settlement  
7 which includes substantial benefits for tens of millions of people.

8 33. Through their efforts, Class Counsel was able to obtain a meaningful cash recovery  
9 available for the entire Settlement Class—an all-cash fund of \$45,000,000 for Settlement Class  
10 members to apply for out-of-pocket documented losses up to \$15,000 each plus a separate Tiered  
11 Cash Payment, the amount of which is based upon the type of data they had impacted in the Data  
12 Incidents. Additionally, Settlement Class members may elect to receive one year of Financial Account  
13 Monitoring consisting of identity theft protection (with \$1,000,000 in insurance) and credit  
14 monitoring.

15 34. The Settlement, which provides for substantial tangible benefits now (as opposed to  
16 years in the future, if at all) would not have happened without the Class Counsel’s efforts and is a  
17 significant result. Defendant continues to maintain that Settlement Class members data was not  
18 exposed in any harmful way, and that for the overwhelming majority of the Settlement Class Members  
19 their most sensitive Private Information was not impacted, making the recovery of \$45,000,000.00  
20 outstanding. The Settlement is favorable when compared to other data breach settlements involving  
21 similar types of data and considering the entirety of the Data Incidents.

22 35. Class Counsel, the 2023 Action’s Plaintiffs’ Steering Committee, and additional  
23 Plaintiffs’ counsel agreed to represent the Plaintiffs and the Settlement Class on a fully contingent  
24 basis, knowing they would have to advance time and out-of-pocket costs with no guarantee of  
25 recovery. In doing so, they forwent representing other clients in other cases so they could dedicate  
26 their resources to the Actions. The organization of counsel ensured that the work was coordinated to  
27 maximize efficiency and minimize duplication of effort.

28 36. Class Counsel have not been compensated for their time, nor have they been reimbursed

1 for the significant costs they have incurred. Due to the uncertainty of the data breach landscape and  
2 the mix of decisions in this Circuit and across the country, there was significant risk of nonpayment.

3 37. Before commencing litigation, Class Counsel devoted substantial time to investigating  
4 the potential legal claims against Defendant, interviewed potential plaintiffs, and gathered  
5 information regarding the Data Incident.

6 38. Substantial time and resources were also dedicated to working with experts, engaging  
7 in motion practice and in discovery, including the taking and defending of many depositions and the  
8 production and review of thousands of pages of documents, and preparing for and attending a  
9 successful mediation. Significant time was then devoted to negotiating and drafting that Agreement,  
10 the Preliminary Approval process, and to all actions required thereafter pursuant to the Preliminary  
11 Approval Order.

12 39. Class Counsel has spent substantial time leading up to the filing of this Motion for Final  
13 Approval, addressing the Notice Program, Claims process, and preparing this Motion. Time will also  
14 be spent preparing for and attending the Final Approval Hearing. Finally, Class Counsel will devote  
15 substantial time to Settlement administration should Final Approval be granted to ensure Valid  
16 Claims are paid and the Settlement is fully implemented.

17 40. As compensation for the skill, commitment, and time they dedicated to litigating these  
18 challenging Actions, consistent with the Agreement, the Notices, and recognized class action practice  
19 and procedure, Class Counsel now respectfully request an award of attorneys' fees of \$13,500,000,  
20 which is equal to 30% of the \$45,000,000.00 Settlement Fund they obtained for the Settlement Class.  
21 The requested attorneys' fee award is within the range of reason under the factors considered in the  
22 Ninth Circuit.

23 41. Additionally, Class Counsel request \$801,631.96 as reimbursement for their litigation  
24 costs reasonably and necessarily incurred in representing the Plaintiffs and the Settlement Class in  
25 the Actions. As detailed below, the costs are reasonable, customary, and reimbursable.

26 42. The Parties negotiated and reached agreement regarding attorneys' fees and costs only  
27 after reaching agreement on all other material Settlement terms.

28 43. Plaintiffs and the Settlement Class faced serious litigation risks and could have ended

1 up with nothing if they did not settle at this stage. Maintaining class certification through trial is  
 2 another overarching risk. But for this Settlement, in addition to certifying and maintaining a class,  
 3 Plaintiffs would have had time to overcome summary judgment, succeed at trial, and win on appeal  
 4 to recover. To date, no data breach class action has been tried and so the outcome is even more  
 5 uncertain.

6 44. Considering Defendant has compelling defenses, continuing to pursue the Actions  
 7 posed a significant risk for Plaintiffs and the Settlement Class. Given the risk Class Counsel took in  
 8 prosecuting the Actions over several years on a fully contingent basis, and the excellent result  
 9 achieved, Class Counsel’s attorneys’ fees request of 30% of the Settlement Fund is reasonable.

10 45. The Notices advised the Settlement Class what amount Class Counsel would be seeking  
 11 for attorneys’ fees and that they would also seek cost reimbursement, and not a single member of the  
 12 Settlement Class is objecting. Settlement Class member, Jeffrey L. Beckerleg, submitted an objection  
 13 to the Settlement Administrator, but after consultation with Class Counsel about the Settlement on  
 14 April 25, 2025, he confirmed the withdrawal of his objection.

15 46. As further detailed herein, Class Counsel has a total lodestar in this case of  
 16 \$6,534,208.11, broken down by firm as follows:

Firm	Lodestar Amount
Berger Montague PC	\$1,678,250.00
Cohen & Malad, LLP	\$287,625.00
Cohen Milstein Sellers & Toll PLLC	\$918,253.00
Gibbs Law Group LLP	\$1,406,360.50
Hausfeld LLP	\$141,700.50
Kopelowitz Ostrow P.A.	\$333,213.50
Milberg Coleman Bryson Phillips Grossman PLLC	\$180,331.40
Morgan & Morgan	\$1,204,899.90
Stranch, Jennings & Garvey, PLLC	\$383,574.31

23 47. Additionally, the 2023 Action’s Plaintiffs’ Steering Committee Members and additional  
 24 Plaintiffs’ firms have also collectively incurred \$968,815.10 for attorneys’ fees.

25 48. Thus, the total lodestar incurred to date, plus an estimate of 40 hours that will be spent  
 26 to work to complete the Final Approval process and then spend post-Final Approval to distribute the  
 27 Settlement benefits, is \$7,503,023.21 and the lodestar multiplier is 1.80, which is within the range  
 28 approved in the Ninth Circuit. Detailed time records from each firm will be submitted for *in camera*

1 inspection should the Court so require.

2 49. The total costs incurred by Class Counsel are \$790,269.55, broken down by firm as  
 3 follows:

<b>Firm</b>	<b>Costs</b>
Berger Montague PC	\$68,332.72
Cohen & Malad, LLP	\$3,329.42
Cohen Milstein Sellers & Toll PLLC	\$133,561.80
Gibbs Law Group LLP	\$40,073.51
Hausfeld LLP	\$4,042.05
Kopelowitz Ostrow P.A.	\$58,194.35
Milberg Coleman Bryson Phillips Grossman PLLC	\$1,010.59
Morgan & Morgan	\$455,080.36
Stranch, Jennings & Garvey, PLLC	\$26,644.75

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 10 50. The 2023 Action’s Plaintiffs’ Steering Committee Members and additional Plaintiffs’  
 11 firms also collectively incurred \$11,362.41 in costs.

12 51. Class Counsel, the 2023 Action’s Plaintiffs’ Steering Committee Members, and the  
 13 additional Plaintiffs’ firms routinely survey hourly rates charged by lawyers around the country in  
 14 published surveys and review continuously, as part of our continuing education, opinions rendered  
 15 by courts on attorneys’ fee requests. Based upon our research, our rates are within the range of lawyers  
 16 with our level of experience practicing in this area of law.

17 52. Below is a recitation of each Class Counsel, 2023 Action Plaintiffs’ Steering Committee  
 18 firms’, and the additional Plaintiffs’ firms’ lodestar and reimbursable costs information.

19 **Berger Montague PC’s Lodestar and Costs**

20 53. Berger Montague PC has devoted the time and resources of its attorneys and staff to  
 21 ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this  
 22 litigation.

23 54. The current hourly rates for the attorneys and support staff at the firm who worked on  
 24 this case are as follows:

<b>Biller</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Drake, Michelle E.	Executive Shareholder	24	140.80	\$1,180.00	\$166,144.00
Savett, Sherrie	Executive Shareholder	52	1.00	\$1,525.00	\$1,525.00
Davis, Joshua	Shareholder	28	2.30	\$1,360.00	\$3,128.00

1	Dell'Angelo, Michael	Executive Shareholder	27	15.10	\$1,325.00	\$20,007.50
2	Lambiras, Jon	Of Counsel	22	702.10	\$875.00	\$614,337.50
3	Hashmall, Joseph	Senior Counsel	16	4.60	\$795.00	\$3,657.00
4	Aviles, Natisha	Counsel	15	232.30	\$710.00	\$164,933.00
5	Albanese, John	Shareholder	13	1.20	\$895.00	\$1,074.00
6	Vaughan, Zachary	Senior Counsel	13	0.40	\$765.00	\$306.00
7	DeSanto, Mark	Senior Counsel	12	708.70	\$760.00	\$538,612.00
8	Gibboney, Kyla	Associate	11	0.50	\$750.00	\$375.00
9	Rios, Sophia	Shareholder	10	35.90	\$820.00	\$29,438.00
10	Streater, Reginald	Associate	6	64.30	\$545.00	\$35,043.50
11	Kiener, Ariana	Associate	4	29.40	\$640.00	\$18,816.00
12	Brinn, Hope	Associate	4	0.20	\$640.00	\$128.00
13	Raths, Katherine	Associate	3	7.90	\$625.00	\$4,937.50
14	Summers, Matthew	Associate	2	0.80	\$660.00	\$528.00
15	Hibray, Jean	Paralegal	N/A	45.80	\$500.00	\$22,900.00
16	Filbert, David	Paralegal	N/A	0.20	\$470.00	\$94.00
17	Gebo, Rachel	Legal Project Team Manager	N/A	5.30	\$460.00	\$2,438.00
18	Brandy, Max	Paralegal	N/A	64.50	\$450.00	\$29,025.00
19	Amland, Megan	Legal Project Analyst	N/A	34.50	\$340.00	\$11,730.00
20	Dang, Michelle	Legal Project Analyst	N/A	3.90	\$340.00	\$1,326.00
21	Simon, Connie	Legal Assistant	N/A	0.50	\$305.00	\$152.50
22	Magnus, Eleanor	Legal Assistant	N/A	0.10	\$305.00	\$30.50
23	Gionnette, Julie	Legal Assistant	N/A	24.80	\$305.00	\$7,564.00
24	<b>Total</b>			<b>2,127.10</b>		<b>\$1,678,250.00</b>

25. Indeed, Berger Montague PC's hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

26. The total hours billed by the attorneys and support staff at Berger Montague PC for this case are 2,127.10 hours. Applying the above hourly rates, the total lodestar is \$1,678,250.00.

27. Additionally, Berger Montague PC's costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

Cost Category	Amount
Filing Fees	\$294.91
Travel and Accommodations	\$984.42

Research	\$4,700.33
DocuSign	\$114.08
Litigation Support	\$37,098.86
Postage/Overnight Courier	\$87.24
Photocopies	\$10.25
Telephone	\$42.63
Deposition Costs	\$5,714.95
Experts	\$3,533.79
Document Management	\$12,348.36
Mediation	\$3,402.91
<b>Total</b>	<b>\$68,332.72</b>

**Cohen & Malad, LLP's Lodestar and Costs**

58. Cohen & Malad, LLP has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

59. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Toops, Lynn	Equity Partner	19	157.70	\$1,250	\$197,125.00
Thomas, Amina	Partner	9	44.90	\$700	\$31,430.00
Herrin, Emily	Associate	5	23.40	\$550	\$12,870.00
Pitchford, Jack	Paralegal	N/A	38.10	\$300	\$11,430.00
Miller, Vess	Partner	19	36.60	\$950	\$34,770.00
<b>Total</b>			<b>300.70</b>		<b>\$287,625.00</b>

60. Indeed, Cohen & Malad, LLP's hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

61. The total hours billed by the attorneys and support staff at Cohen & Malad, LLP for this case are 300.70 hours. Applying the above hourly rates, the total lodestar is \$287,625.00.

62. Additionally, Cohen & Malad, LLP's costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$30.10
Travel and Accommodations	\$3,299.32
<b>Total</b>	<b>\$3,329.42</b>

**Cohen Milstein Sellers & Toll PLLC's Lodestar and Costs**

63. Cohen Milstein Sellers & Toll PLLC has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

64. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
McNamara, Douglas, J.	Partner	30	379.10	\$1,190	\$451,129.00
Johnson, Brian	Associate	13	17.80	\$650	\$11,570.00
Puttieva, Karina	Associate	8	340.20	\$675	\$229,635.00
Stephan, Paul	Associate	7	10.20	\$525	\$5,355.00
Torchiana, Claire	Associate	6	222.50	\$680	\$151,300.00
Andreopoulos, Spero	Contract Attorney		27.00	\$265	\$7,155.00
DeVeaux, Paul	Contract Attorney		32.00	\$300	\$9,600.00
Horowitz, Jennifer E.	Paralegal	N/A	2.60	\$350	\$910.00
Lam, Kaitlyn	Paralegal	N/A	2.00	\$395	\$790.00
McCubbin, Erin	Paralegal	N/A	55.40	\$395	\$21,883.00
Rienhardt, Segundo	Paralegal	N/A	1.00	\$380	\$380.00
Shea, Caitlin	Paralegal	N/A	73.80	\$350	\$25,830.00
Valdez, Max	Paralegal	N/A	1.50	\$395	\$592.50
Miller, Blake	Staff Atty	16	3.10	\$685	\$2,123.50
<b>Total</b>			<b>1,168.20</b>		<b>\$918,253.00</b>

65. Indeed, Cohen Milstein Sellers & Toll PLLC's hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

66. The total hours billed by the attorneys and support staff at Cohen Milstein Sellers & Toll PLLC for this case are 1,168.20 hours. Applying the above hourly rates, the total lodestar is \$918,253.00.

67. Additionally, Cohen Milstein Sellers & Toll PLLC's costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Travel and Accommodations	\$1,937.61
Filing Fees	\$1,093.14
Deposition Costs	\$23,628.40

Mediation	\$3,097.09
Research	\$550.33
Postage/Overnight Courier	\$109.06
Expert Costs	\$68,803.54
Document Management	\$34,342.64
<b>Total</b>	<b>\$133,561.80</b>

**Gibbs Law Group LLP's Lodestar and Costs**

68. Gibbs Law Group LLP has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

69. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

Billor	Position	Years of Experience	Time Spent	Hourly Rate	Total
David Berger	Partner	17	375.90	\$925	\$347,707.50
Eric Gibbs	Partner	30	4.10	\$1,150	\$4,715.00
Amanda Karl	Partner	11	2.80	\$800	\$2,240.00
Linda Lam	Partner	11	168.80	\$800	\$135,040.00
Dave Stein	Partner	17	0.70	\$925	\$647.50
Aaron Blumenthal	Counsel	9	6.40	\$700	\$4,480.00
Parker Hutchinson	Counsel	15	33.90	\$765	\$25,933.50
Shawn Judge	Counsel	27	60.60	\$1,000	\$60,600.00
Emily Beale	Associate	5	0.40	\$530	\$212.00
Sofi Cullen	Associate	2	72.70	\$405	\$29,443.50
Jane Farrell	Associate	4	5.30	\$530	\$2,809.00
Julia Gonzalez	Associate	4	211.80	\$490	\$103,782.00
Sadie Hillier	Associate	4	22.50	\$530	\$11,925.00
Andrew Homan	Contract Attorney	11	64.50	\$300	\$19,350
Jeff Kosbie	Associate	10	603.30	\$690	\$416,277.00
Megan Richard	Contract Attorney	7	100.20	\$260	\$26,052
Nikul Shah	Associate	7	2.10	\$415	\$871.50
Jennifer Sun	Associate	1	313.10	\$470	\$147,157.00
Zeke Wald	Associate	4	31.30	\$530	\$16,589.00
Tayler Walters	Associate	4	66.30	\$530	\$35,139.00
Sunayana Rane	Law Clerk	N/A	0.40	\$290	\$116.00
Catherine Conroy	Legal Apprentice	N/A	0.70	\$290	\$203.00
Emma Atuire	Summer Associate	N/A	29.50	\$250	\$7,375.00

1	Dina Girmay	Summer Associate	N/A	1.50	\$275	\$412.50
2	Josephina Nimarko	Summer Associate	N/A	2.80	\$275	\$770.00
3	Edwin Rhodes	Legal Technology Manager	N/A	0.20	\$340	\$68.00
4	Adam Aronovsky	Litigation Assistant	N/A	5.40	\$250	\$1,350.00
5	Honeyleen Bohol	Litigation Assistant	N/A	1.50	\$250	\$375.00
6	Jason Gibbs	Litigation Assistant	N/A	3.70	\$315	\$1,165.50
7	Lindsey Kincaid	Litigation Assistant	N/A	0.30	\$250	\$75.00
8	Walter Murcia	Litigation Assistant	N/A	3.50	\$280	\$980.00
9	Dana Nguyen	Litigation Assistant	N/A	6.80	\$250	\$1,700.00
10	Nerine Ortiz Pon	Litigation Assistant	N/A	1.70	\$250	\$425.00
11	Alex Veith	Litigation Assistant	N/A	1.50	\$250	\$375.00
12	<b>Total</b>			<b>2,206.20</b>		<b>\$1,406,360.50</b>

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70. Indeed, Gibbs Law Group LLP's hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

71. Class Counsel will submit detailed time records for each attorney should the Court so require.

72. The total hours billed by the attorneys and support staff at Gibbs Law Group LLP for this case are 2,206.20 hours. Applying the above hourly rates, the total lodestar is \$1,406,360.50.

73. Additionally, Gibbs Law Group LLP's costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Photocopies	\$275.00
Filing Fees	\$1,026.95
Litigation Support	\$22,686.48
Document Management	\$5,776.00
Non-Travel Meals	\$108.05
Postage/Overnight Courier	\$77.45
Research	\$5,472.43
Travel and Accommodations	\$4,651.15
<b>Total</b>	<b>\$40,073.51</b>

**Hausfeld LLP's Lodestar and Costs**

74. Hausfeld LLP has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

75. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Pizzirusso, Jamie J.	Partner	24	106.90	\$1,025	\$109,572.50
Boltax, Mandy	Associate	3	6.90	\$520	\$3,588.00
Crooks, Ashley	Counsel	10	2.50	\$750	\$1,875.00
Mitchell, James	Paralegal	N/A	1.50	\$370	\$555.00
Nathan, Steven	Of Counsel	38	21.20	\$900	\$19,080.00
Rodriguez, Ramon	Paralegal	N/A	19.00	\$370	\$7,030.00
<b>Total</b>			<b>158.00</b>		<b>\$141,700.50</b>

76. Indeed, Hausfeld LLP's hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

77. The total hours billed by the attorneys and support staff at Hausfeld LLP for this case are 158.00 hours. Applying the above hourly rates, the total lodestar is \$141,700.50.

78. Additionally, Hausfeld LLP's costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees, Court Fees	\$422.50
Research	\$52.50
Travel and Accommodations	\$3,567.05
<b>Total</b>	<b>\$4,042.05</b>

**Kopelowitz Ostrow P.A.'s Lodestar and Costs**

79. Kopelowitz Ostrow P.A. has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

80. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Jeff Ostrow	Partner	28	215.40	\$1,100	\$236,940.00
Jonathan M. Streisfeld	Partner	28	50.00	\$1,100	\$55,000.00
Kenneth J. Grunfeld	Partner	26	2.40	\$1,025	\$2,460.00
Kristen L. Cardoso	Partner	18	14.60	\$950	\$13,870.00
Steven P. Sukert	Partner	5	19.90	\$815	\$16,218.50
Daniel E. Tropin	Partner	13	4.50	\$550	\$2,475.00
Todd M. Becker	Paralegal	N/A	25.00	\$250	\$6,250.00
<b>Total</b>			<b>331.80</b>		<b>\$333,213.50</b>

81. Indeed, Kopelowitz Ostrow P.A.'s hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

82. The total hours billed by the attorneys and support staff at Kopelowitz Ostrow P.A. for this case are 331.80 hours. Applying the above hourly rates, the total lodestar is \$333,213.50.

83. Additionally, Kopelowitz Ostrow P.A.'s costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Mediation	\$6,694.35
Experts	\$50,000.00
Travel and Accommodations	\$1,500.00
<b>Total</b>	<b>\$58,194.35</b>

#### **Milberg Coleman Bryson Phillips Grossman PLLC's Lodestar and Costs**

84. Milberg Coleman Bryson Phillips Grossman PLLC has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

85. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Gary Klinger	Partner	15	101.00	\$948	\$95,748.00
David Lietz	Partner	34	25.50	\$1,141	\$29,095.50
John Nelson	Partner	15	63.80	\$839	\$53,528.20
Glen Abramson	Partner	29	.70	\$1,141	\$798.70
Sandra Passanisi	Paralegal	N/A	1.80	\$258	\$464.40
Heather Sheflin	Paralegal	N/A	2.70	\$258	\$696.60
<b>Total</b>			<b>195.50</b>		<b>\$180,331.40</b>

1 86. Indeed, Milberg Coleman Bryson Phillips Grossman PLLC's hourly rates have been  
2 recently approved by federal courts around the country, including in data breach settlements similar  
3 to this one.

4 87. The total hours billed by the attorneys and support staff at Milberg Coleman Bryson  
5 Phillips Grossman PLLC for this case are 195.50 hours. Applying the above hourly rates, the total  
6 lodestar is \$180,331.40.

7 88. Additionally, Milberg Coleman Bryson Phillips Grossman PLLC's costs in prosecuting  
8 this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

Cost Category	Amount
Filing Fees	\$250.00
Travel and Accommodations	\$760.59
<b>Total</b>	<b>\$1,010.59</b>

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12 **Morgan & Morgan's Lodestar and Costs**

13 89. Morgan & Morgan has devoted the time and resources of its attorneys and staff to ensure  
14 the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

15 90. The current hourly rates for the attorneys and support staff at the firm who worked on  
16 this case are as follows:

Biller	Position	Year of Admission	Time Spent	Hourly Rate	Total
John Yanchunis	Partner	45	161.40	\$1,600	\$258,240.00
Jean Martin	Partner	27	77.60	\$1,150	\$89,240.00
Arnold Ashley	Associate	31	342.40	\$676	\$231,462.40
Scott Davis	Associate	9	304.80	\$468	\$142,646.40
John Baroni	Senior Counsel	27	243.80	\$1,057	\$257,696.60
Justin Galvez	Associate	10	189.80	\$450	\$85,410.00
Patrick Barthle	Associate	13	47.00	\$800	\$37,600.00
Marcio Valladares	Senior Counsel	32	45.20	\$1,000	\$45,200.00
Jeff Prendki	Associate	21	39.50	\$919	\$36,300.50
Ross Berlin	Associate	6	18.00	\$538	\$9,684.00
Ryan McGee	Senior Counsel	16	6.10	\$1,000	\$6,100.00
Francesca Kester	Associate	8	3.50	\$650	\$2,275.00
Riya Sharma	Associate	2	0.50	\$437	\$218.50
Ron Podolny	Senior Counsel	15	0.50	\$878	\$439.00
David Reign	Investigator	N/A	0.50	\$500	\$250.00
Jennifer Cabezas	Paralegal	N/A	9.50	\$225	\$2,137.50

<b>Total</b>			<b>1,490.10</b>		<b>\$1,204,899.90</b>
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91. Indeed, Morgan & Morgan’s hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

92. The total hours billed by the attorneys and support staff at Morgan & Morgan for this case are 1,490.10 hours. Applying the above hourly rates, the total lodestar is \$1,204,899.90.

93. Additionally, Morgan & Morgan’s costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$400.00
In-House Printing	\$271.40
Research	\$133.00
Postage/Shipping	\$214.75
Service of Process	\$1,240.00
Travel and Accommodations	\$25,881.34
Experts	\$426,939.87
<b>Total</b>	<b>\$455,080.36</b>

**Stranch, Jennings & Garvey, PLLC’s Lodestar and Costs**

94. Stranch, Jennings & Garvey, PLLC has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

95. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Biller</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Stranch, J. Gerard	Partner	22	184.10	\$1,450.00	\$266,945.00
Iadevaia, Michael	Associate	6	6.50	\$819.00	\$5,323.50
Levenson, Suzanne	Paralegal	NA	2.80	\$375.00	\$1,050.00
Mize, Andrew	Associate	13	12.90	\$787.50	\$10,158.75
Ring, Nate	Partner	15	49.30	\$850.20	\$41,914.86
Smith, Jack	Associate	7	6.70	\$600.00	\$4,020.00
Steele, Jennifer	Paralegal	N/A	46.90	\$375.00	\$17,587.50
Wade, Michelle	Paralegal	N/A	1.50	\$375.00	\$562.50
Wells, Grayson	Associate	5	43.80	\$819.00	\$35,872.20
Yusuf, Naqvi	Law Clerk	N/A	0.40	\$350.00	\$140.00
<b>Total</b>			<b>354.90</b>		<b>\$383,574.31</b>

1 96. Indeed, Stranch, Jennings & Garvey, PLLC’s hourly rates have been recently approved  
 2 by federal courts around the country, including in data breach settlements similar to this one.

3 97. The total hours billed by the attorneys and support staff at Stranch, Jennings & Garvey,  
 4 PLLC for this case are 354.90 hours. Applying the above hourly rates, the total lodestar is  
 5 \$383,574.31.

6 98. Additionally, Stranch, Jennings & Garvey, PLLC’s costs in prosecuting this case are set  
 7 forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$1,633.60
Travel and Accommodations	\$2,147.15
Expert Fees	\$22,864.00
<b>Total</b>	<b>\$26,644.75</b>

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 12 **DannLaw’s Lodestar and Costs**

13 99. DannLaw has devoted the time and resources of its attorneys and staff to ensure the  
 14 vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

15 100. The current hourly rates for the attorneys and support staff at the firm who worked on  
 16 this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Marc Dann	Partner	38	12.10	\$795	\$9,619.50
Andrew Engel	Sr. Counsel	35	3.30	\$795	\$2,623.50
Brian Flick	Partner	18	11.30	\$625	\$7,062.50
George Haines	Partner	25	2.50	\$525	\$1,487.50
Javier Merino	Partner	11	.50	\$525	\$287.50
Kimberly White	Paralegal	N/A	11.70	\$250	\$2,925.00
Marita Ramirez	Associate	3	2.30	\$350	\$805.00
<b>Total</b>			<b>43.7</b>		<b>\$24,810.50</b>

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 23 101. Indeed, DannLaw’s hourly rates have been recently approved by federal courts around  
 24 the country, including in data breach settlements similar to this one.

25 102. The total hours billed by the attorneys and support staff at DannLaw for this case are  
 26 43.7 hours. Applying the above hourly rates, the total lodestar is \$24,810.50.

27 103. Additionally, DannLaw’s costs in prosecuting this case are set forth below. Cost receipts  
 28 will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$447.63
Postage/Shipping	\$22.80
<b>Total</b>	<b>\$470.43</b>

**Wolf Haldenstein Adler Freeman & Herz LLP's Lodestar and Costs**

104. Wolf Haldenstein Adler Freeman & Herz LLP has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

105. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Rachele R. Byrd	Partner	23	17.20	\$925	\$15,910.00
Ferdeza Zekiri	Associate	4	.20	\$385	\$77.00
Jasmin Rangel	Paralegal	9	1.00	\$230	\$230
<b>Total</b>			<b>18.4</b>		<b>\$16,217.00</b>

106. Indeed, Wolf Haldenstein Adler Freeman & Herz LLP's hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

107. The total hours billed by the attorneys and support staff at Wolf Haldenstein Adler Freeman & Herz LLP for this case are 18.4 hours. Applying the above hourly rates, the total lodestar is \$16,217.00.

108. Additionally, Wolf Haldenstein Adler Freeman & Herz LLP's costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$306.75
<b>Total</b>	<b>\$306.75</b>

**Cotchett, Pitre & McCarthy's Lodestar and Costs**

109. Cotchett, Pitre & McCarthy has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

110. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Thomas E. Loeser	Partner	26	16.20	\$1,100	\$17,820.00
Niall McCarthy	Partner	33	28.80	\$1,250	\$36,000.00
Sarvenaz Fahimi	Partner	22	21.10	\$1,100	\$23,210.00
Kevin Boutin	Sr. Associate	4	30.30	\$900	\$27,270.00
Jeanette Sanchez	Sr. Paralegal	N/A	31.50	\$400	\$12,600.00
James P. Lamerdin	Paralegal	N/A	4.30	\$350	\$1,505.00
Maureen St. John	Paralegal	N/A	43.00	\$350	\$15,050.00
<b>Total</b>			<b>175.20</b>		<b>\$133,455.00</b>

111. Indeed, Cotchett, Pitre & McCarthy's hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

112. The total hours billed by the attorneys and support staff at Cotchett, Pitre & McCarthy for this case are 175.29 hours. Applying the above hourly rates, the total lodestar is \$133,455.00.

113. Additionally, Cotchett, Pitre & McCarthy's costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$612.63
In-House Printing	\$57.60
Research	\$654.82
Postage/Shipping	\$105.27
<b>Total</b>	<b>\$1,430.32</b>

#### **McShane & Brady, LLC's Lodestar and Costs**

114. McShane & Brady, LLC has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

115. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Maureen Brady	Partner	20	23.90	\$950	\$22,705.00
Cassandra Ponce	Paralegal	N/A	3.70	\$250	\$925.00

1	Tony Love	Partner	32	4.60	\$650	\$2,990.00
2	Sharon Zinns	Partner	20	10.20	\$1,150	\$11,730.00
	<b>Total</b>			<b>42.40</b>		<b>\$38,350.00</b>

3 116. Indeed, McShane & Brady, LLC's hourly rates have been recently approved by federal  
4 courts around the country, including in data breach settlements similar to this one.

5 117. The total hours billed by the attorneys and support staff at McShane & Brady, LLC for  
6 this case are 42.40 hours. Applying the above hourly rates, the total lodestar is \$38,350.00.

7 118. Additionally, McShane & Brady, LLC's costs in prosecuting this case are set forth  
8 below. Cost receipts will be submitted to the Court should it likewise so require.

9	Cost Category	Amount
10	Filing Fees	\$626.30
11	Maintenance/Technology Fee	\$349.08
	<b>Total</b>	<b>\$975.38</b>

#### 12 Levin Sedran & Berman, LLP's Lodestar and Costs

13 119. Levin Sedran & Berman, LLP has devoted the time and resources of its attorneys and  
14 staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this  
15 litigation.

16 120. The current hourly rates for the attorneys and support staff at the firm who worked on  
17 this case are as follows:

18	Billor	Position	Years of Experience	Time Spent	Hourly Rate	Total
19	Charles E. Schaffer	Partner	36	19.3	\$1,025	\$19,782.50
20	David Magagna	Associate	9	.3	\$550	\$165.00
21	Nicholas Elia	Associate	7	4.5	\$650	\$2,925.00
22	Danielle Guardiani	Paralegal	N/A	14.40	\$450	\$6,480.00
	<b>Total</b>			<b>38.50</b>		<b>\$29,352.50</b>

23 121. Indeed, Levin Sedran & Berman, LLP's hourly rates have been recently approved by  
24 federal courts around the country, including in data breach settlements similar to this one.

25 122. The total hours billed by the attorneys and support staff at Levin Sedran & Berman, LLP  
26 for this case are 38.50 hours. Applying the above hourly rates, the total lodestar is \$29,352.50.

27 123. Additionally, Levin Sedran & Berman, LLP's costs in prosecuting this case are set forth  
28 below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$795.00
Research	\$77.00
Postage/Shipping	\$1.14
<b>Total</b>	<b>\$873.14</b>

**Carella Byrne Cecchi Brody Agnello, P.C.'s Lodestar and Costs**

124. Carella Byrne Cecchi Brody Agnello, P.C. has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

125. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
James Cecchi	Partner	24	6.30	\$1300	\$8,190.00
Caroline Fabend Bartlett	Partner	21	4.50	\$975	\$4,387.50
Kevin Cooper	Partner	11	44.20	\$725	\$32,045.00
Jordan Steele	Associate	5	25.50	\$600	\$15,300.00
Brian O'Toole	Associate	2	20.00	\$600	\$12,000.00
Lindsey H. Taylor	Partner	25	18.20	\$975	\$17,745.00
Nancy Houser	Paralegal	N/A	2.00	\$125	\$250.00
Mary Ellen Rago	Paralegal	N/A	.40	\$225	\$90.00
Jeffrey Falduto	Paralegal	N/A	.50	\$225	\$112.50
<b>Total</b>			<b>121.60</b>		<b>\$90,120.00</b>

126. Indeed, Carella Byrne Cecchi Brody Agnello, P.C.'s hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

127. The total hours billed by the attorneys and support staff at Carella Byrne Cecchi Brody Agnello, P.C. for this case are 121.60 hours. Applying the above hourly rates, the total lodestar is \$90,120.00.

128. Additionally, Carella Byrne Cecchi Brody Agnello, P.C.'s costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$402.00
Research	\$47.70

<b>Total</b>	<b>\$449.70</b>
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**Lockridge Grindal Nauen PLLP's Lodestar and Costs**

129. Lockridge Grindal Nauen PLLP has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

130. The current hourly rates for the attorneys and support staff at the firm who worked on this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Karen H. Riebel	Partner	34	186.50	\$1,275	\$237,787.50
Kate M. Baxter-Kauf	Partner	14	1.50	\$1,025	\$1,537.50
Maureen Kane Berg	Senior Counsel	23	32.70	\$975	\$31,882.50
Eura Chang	Associate	3	183.50	\$750	\$137,625.00
Emma Ritter Gordon	Associate	3	3.90	\$750	\$2,925.00
Carey R. Johnson	Paralegal	19	72.00	\$475	\$34,200.00
Amber M. Raak	Paralegal	12	2.30	\$430	\$989.00
<b>Total</b>			<b>482.40</b>		<b>\$446,946.50</b>

131. Indeed, Lockridge Grindal Nauen PLLP's hourly rates have been recently approved by federal courts around the country, including in data breach settlements similar to this one.

132. The total hours billed by the attorneys and support staff at Lockridge Grindal Nauen PLLP for this case are 482.40 hours. Applying the above hourly rates, the total lodestar is \$446,946.50.

133. Additionally, Lockridge Grindal Nauen PLLP's costs in prosecuting this case are set forth below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Postage/Overnight Courier	\$147.25
Photocopies	\$33.45
Research	\$2,883.87
Filing Fees	\$500.00
<b>Total</b>	<b>\$3,564.57</b>

**McCulley McCluer PLLC's Lodestar and Costs**

134. McCulley McCluer PLLC has devoted the time and resources of its attorneys and staff

1 to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this  
2 litigation.

3 135. The current hourly rates for the attorneys and support staff at the firm who worked on  
4 this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
R. Bryant McCulley	Partner	22	3.70	\$870	\$3,219.00
Frank Ulmer	Of Counsel	22	60.90	\$625	\$38,062.50
Brooks Maund	Paralegal	N/A	1.00	\$150	\$150.00
<b>Total</b>			<b>65.60</b>		<b>\$41,431.50</b>

9 136. Indeed, McCulley McCluer PLLC's hourly rates have been recently approved by federal  
10 courts around the country, including in data breach settlements similar to this one.

11 137. The total hours billed by the attorneys and support staff at McCulley McCluer PLLC  
12 for this case are 65.60 hours. Applying the above hourly rates, the total lodestar is \$41,431.50.

13 138. Additionally, McCulley McCluer PLLC's costs in prosecuting this case are set forth  
14 below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$80.00
Postage/Overnight Courier	\$4.80
<b>Total</b>	<b>\$84.80</b>

#### **Goldenberg Schneider, LPA's Lodestar and Costs**

19 139. Goldenberg Schneider, LPA has devoted the time and resources of its attorneys and staff  
20 to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this  
21 litigation.

22 140. The current hourly rates for the attorneys and support staff at the firm who worked on  
23 this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Jeffrey Goldenberg	Partner	30	2.10	\$925	\$1,942.50
Todd Naylor	Partner	27	.80	\$875	\$700.00
Stephanie Vaaler	Paralegal	N/A	3.00	\$250	\$750.00
<b>Total</b>			<b>5.90</b>		<b>\$3,392.50</b>

28 141. Indeed, Goldenberg Schneider, LPA's hourly rates have been recently approved by

1 federal courts around the country, including in data breach settlements similar to this one.

2 142. The total hours billed by the attorneys and support staff at Goldenberg Schneider, LPA  
 3 for this case are 5.90 hours. Applying the above hourly rates, the total lodestar is \$3,392.50.

4 143. Additionally, Goldenberg Schneider, LPA’s costs in prosecuting this case are set forth  
 5 below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$655.00
Postage/Overnight Courier	\$1.26
Photocopies	\$86.94
Research	\$52.60
Process Service	\$99.45
<b>Total</b>	<b>\$895.25</b>

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 11 **Bursor & Fisher, P.A.’s Lodestar and Costs**

12 144. Bursor & Fisher, P.A. has devoted the time and resources of its attorneys and staff to  
 13 ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this  
 14 litigation.

15 145. The current hourly rates for the attorneys and support staff at the firm who worked on  
 16 this case are as follows:

<b>Biller</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
L. Timothy Fisher	Partner	28	6.40	\$1,250	\$8,000.00
Brittany S. Scott	Associate	6	.30	\$700	\$210.00
Julian C. Diamond	Associate	5	11.60	\$650	\$7,540.00
Matthew A. Girardi	Associate	5	3.00	\$650	\$1,950.00
Caroline C. Donovan	Associate	2	9.70	\$500	\$4,850.00
Molly C. Sasseen	Senior Litigation Support Specialist	N/A	3.20	\$400	\$1,280.00
Judy Fontanilla	Senior Litigation Support Specialist	N/A	1.30	\$400	\$520.00
Jessica A. Kelley	Litigation Support Specialist	N/A	5.80	\$350	\$2,030.00
<b>Total</b>			<b>41.30</b>		<b>\$26,829.60</b>

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 28 146. Indeed, Bursor & Fisher, P.A.’s hourly rates have been recently approved by federal

1 courts around the country, including in data breach settlements similar to this one.

2 147. The total hours billed by the attorneys and support staff at Bursor & Fisher, P.A. for this  
 3 case are 41.30 hours. Applying the above hourly rates, the total lodestar is \$26,829.60.

4 148. Additionally, Bursor & Fisher, P.A.’s costs in prosecuting this case are set forth below.  
 5 Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$402.00
Research	\$47.60
<b>Total</b>	<b>\$449.60</b>

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 9 **Tostrud Law Group, P.C.’s Lodestar and Costs**

10 149. Tostrud Law Group, P.C. has devoted the time and resources of its attorneys and staff  
 11 to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this  
 12 litigation.

13 150. The current hourly rates for the attorneys and support staff at the firm who worked on  
 14 this case are as follows:

<b>Billor</b>	<b>Position</b>	<b>Years of Experience</b>	<b>Time Spent</b>	<b>Hourly Rate</b>	<b>Total</b>
Jon Tostrud	Partner		63.90	\$950	\$60,705.00
<b>Total</b>			<b>63.90</b>		<b>\$60,705.00</b>

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 18 151. Indeed, Tostrud Law Group, P.C.’s hourly rates have been recently approved by federal  
 19 courts around the country, including in data breach settlements similar to this one.

20 152. The total hours billed by the attorneys and support staff at Tostrud Law Group, P.C. for  
 21 this case are 63.90 hours. Applying the above hourly rates, the total lodestar is \$60,705.00.

22 153. Additionally, Tostrud Law Group, P.C.’s costs in prosecuting this case are set forth  
 23 below. Cost receipts will be submitted to the Court should it likewise so require.

<b>Cost Category</b>	<b>Amount</b>
Filing Fees	\$500.00
Travel and Accomodations	\$976.00
<b>Total</b>	<b>\$1,476.00</b>

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 27 **Langeland Law’s Lodestar and Costs**

28 154. Langeland Law has devoted the time and resources of its attorneys and staff to ensure

1 the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation.

2 155. The current hourly rates for the attorneys and support staff at the firm who worked on  
 3 this case are as follows:

Billor	Position	Years of Experience	Time Spent	Hourly Rate	Total
Erik Langeland	Partner	30	67.30	\$850	\$57,205.00
<b>Total</b>			<b>67.30</b>		<b>\$57,205.00</b>

7 156. Indeed, Langeland Law’s hourly rates have been recently approved by federal courts  
 8 around the country, including in data breach settlements similar to this one.

9 157. The total hours billed by the attorneys and support staff at Langeland Law for this case  
 10 are 67.30 hours. Applying the above hourly rates, the total lodestar is \$57,205.00.

11 158. Additionally, Langeland Law’s costs in prosecuting this case are set forth below. Cost  
 12 receipts will be submitted to the Court should it likewise so require.

Cost Category	Amount
Filing Fees	\$273.42
Travel and Accomodations	\$113.05
<b>Total</b>	<b>\$386.47</b>

16 **THE SERVICE AWARDS ARE REASONABLE**

17 159. Class Counsel request Service Awards for the Class Representatives in recognition of  
 18 their initiating the Actions and serving as Class Representatives on behalf of the Settlement Class.  
 19 Specifically, Class Counsel request \$10,000.00 for those Class Representatives that were deposed by  
 20 the Defendant (Ryan Bohlim, Duke Hwynn, Larry Lawter, Kerry Shapiro, Gennady Simkin, Robert  
 21 Taylor, and Victor Wukovits) and \$3,500.00 for those who were not (Tonya Owens, Emily Kirwan,  
 22 David Zussman, David Lackey, Michael Pircio, David Terezo, Ronald G. Rundell, Laura Willis  
 23 Abrigo, Anita Johnson, Paul Zari, Michael Manson, Kyle Sloan, Michelle Righetti, Edgar Mejia, and  
 24 DuJun Johnson). The Service Award amounts were negotiated by the Parties after all material terms  
 25 of the Settlement, and not a single Settlement Class Member has objected.

26 160. The Class Representatives were essential in securing relief for the Settlement Class.  
 27 They undertook personal risk to do so and worked closely with Class Counsel throughout the Action.  
 28 The Plaintiffs in the 2019 Action were subject to aggressive discovery by the Defendant. They

1 assisted with responding to written discovery, produced personal information, and sat for deposition.  
2 The Plaintiffs in the 2023 Action were not deposed, but they were prepared to do whatever was  
3 reasonably necessary for the benefit of the Settlement Class. All Class Representatives were  
4 instrumental in Class Counsel’s investigation of the Data Incidents, stayed in communication with  
5 Class Counsel, and remained involved in the entire process. They each reviewed the Settlement  
6 Agreement and agreed to the terms of the Settlement. The Class Representatives commitment to the  
7 Settlement Class’ interests and desire to hold the Defendant accountable was essential to the  
8 successful prosecution of this class action and warrants the reasonable Service Awards requested  
9 here.

10  
11 I declare under penalty of perjury that the foregoing is true and correct as to the conduct of  
12 the litigation, and as to fees and expenses incurred by my firm, Morgan & Morgan. Executed on this  
13 2<sup>nd</sup> day of May, 2025, at St. Petersburg, Florida.

14 /s/ John Yanchunis  
15 John Yanchunis

16 I declare under penalty of perjury that the foregoing is true and correct as to the conduct of  
17 the litigation, and as to fees and expenses incurred by my firm, Cohen Milstein Sellers & Toll, PLLC.  
18 Executed on this 2<sup>nd</sup> day of May, 2025, at Washington, D.C.

19 /s/ Doug McNamara  
20 Doug McNamara

21 I declare under penalty of perjury that the foregoing is true and correct as to the conduct of  
22 the litigation, and as to fees and expenses incurred by my firm, Berger Montague PC. Executed on  
23 this 2<sup>nd</sup> day of May, 2025, at Minneapolis, Minnesota.

24 /s/ E. Michelle Drake  
25 E. Michelle Drake

26 I declare under penalty of perjury that the foregoing is true and correct as to the conduct of  
27 the litigation, and as to fees and expenses incurred by my firm, Gibbs Law Group LLP. Executed on  
28 this 2<sup>nd</sup> day of May, 2025, at Oakland, California.

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/s/ David M. Berger  
David M. Berger

I declare under penalty of perjury that the foregoing is true and correct as to the conduct of the litigation, and as to fees and expenses incurred by my firm, Stranch, Jennings & Garvey, PLLC. Executed on this 2<sup>nd</sup> day of May, 2025, at Nashville, Tennessee.

/s/ J. Gerard Stranch IV  
J. Gerard Stranch IV

I declare under penalty of perjury that the foregoing is true and correct as to the conduct of the litigation, and as to fees and expenses incurred by my firm, Cohen & Malad, LLP. Executed on this 2<sup>nd</sup> day of May, 2025, at Indianapolis, Indiana.

/s/ Lynn Toops  
Lynn Toops

I declare under penalty of perjury that the foregoing is true and correct as to the conduct of the litigation, and as to fees and expenses incurred by my firm, Hausfeld LLP. Executed on this 2<sup>nd</sup> day of May, 2025, at Washington, D.C.

/s/ James Pizzirusso  
James Pizzirusso

I declare under penalty of perjury that the foregoing is true and correct as to the conduct of the litigation, and as to fees and expenses incurred by my firm, Milberg Coleman Bryson Phillips Grossman, PLLC. Executed on this 2<sup>nd</sup> day of May, 2025, at Chicago, Illinois.

/s/ Gary Klinger  
Gary Klinger

I declare under penalty of perjury that the foregoing is true and correct as to the conduct of the litigation, and as to fees and expenses incurred by my firm, Kopelowitz Ostrow, P.A. Executed on this 2<sup>nd</sup> day of May, 2025, at Fort Lauderdale, Florida.

/s/ Jeff Ostrow  
Jeff Ostrow

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION

Case No.: 2:20-cv-00376-GMN

This Document Relates To: All actions.

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.

Plaintiffs,

v.

MGM RESORTS INTERNATIONAL

Defendant.

Master File No. 2:23-cv-01480-GMN  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**DECLARATION OF CAMERON R. AZARI, ESQ. REGARDING  
IMPLEMENTATION AND ADEQUACY OF NOTICE PROGRAM**

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice and have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am a Senior Vice President of Epiq Class Action & Claims Solutions, Inc. (“Epiq”) and the Managing Director of Epiq Legal Noticing (aka Hilsoft Notifications), a business unit of Epiq that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans.

4. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq and

1 Epiq Legal Noticing (hereinafter “Epiq”).

2 **OVERVIEW**

3 5. This declaration describes the successful implementation of the Updated Settlement  
4 Notice Program (“Notice Program”) for the Settlement of *In re MGM International Resorts Data*  
5 *Breach Litigation*, Case No.: 2:20-cv-00376-GMN, and *Tanya Owens, et al. vs. MGM Resorts*  
6 *International, et al.*, Case No. 2:23-cv-01480-GMN, both pending in the United States District  
7 Court for the District of Nevada. This declaration details the notice activities undertaken to date  
8 and explains how and why the Notice Program is comprehensive and well-suited to reach the  
9 Settlement Class members. This declaration also discusses the administration activity to date.

10 6. I previously executed my *Declaration of Cameron R. Azari, Esq. Regarding Notice*  
11 *Program* (“Notice Declaration”) on January 13, 2025, (Dkt. 62), which described the Notice  
12 Program, detailed Epiq’s class action notice experience, and attached Epiq’s *curriculum vitae*. I  
13 also provided my educational and professional experience relating to class actions and my ability  
14 to render opinions on overall adequacy of notice programs.

15 7. Subsequently, I executed my *Declaration of Cameron R. Azari, Esq. RE: Updated*  
16 *Notice Program* (“Updated Notice Declaration”) on March 18, 2025, (Dkt. 72), which described  
17 the updated Settlement Notice Program based on the Settlement Class member data received from  
18 MGM. A significant number of Settlement Class member records did not include an associated  
19 email address, and many associated physical addresses were incomplete, duplicative, and  
20 unreliable, requiring Epiq to modify the initial proposed Notice Program.

21 **NOTICE PROGRAM METHODOLOGY**

22 8. Federal Rule of Civil Procedure 23(c)(2)(B) directs that notice must be “the best  
23 notice that is practicable under the circumstances, including individual notice to all members who  
24 can be identified through reasonable effort” and that “the notice may be by one or more of the  
25 following: United States mail, electronic means, or other appropriate means.” The Notice Program  
26 as implemented satisfies these requirements.

27 9. The Notice Program is designed to reach the greatest practicable number of  
28 Settlement Class members. The Notice Program’s individual notice efforts via email and/or mail

1 to identified Settlement Class members, combined with the Publication Notice (digital notice and  
2 social media plan), will reach approximately 90% of the Settlement Class. This reach is further  
3 enhanced by internet sponsored search listings, an informational release, and a Settlement Website.  
4 In my experience, the reach of the Notice Program is consistent with other court-approved notice  
5 programs, is the best notice practicable under the circumstances of this case, and satisfies the  
6 requirements of due process, including its “desire to actually inform” requirement.<sup>1</sup>

7 **NOTICE PROGRAM DETAIL**

8 10. On January 21, 2025, the Court approved the Notice Program and appointed Epiq  
9 as the Settlement Administrator in the *Order Granting Plaintiffs’ Unopposed Motion for*  
10 *Preliminary Approval of Class Action Settlement* (“Preliminary Approval Order”). In the  
11 Preliminary Approval Order, the Court approved and certified, for settlement purposes, following  
12 “Settlement Class”:

13 [A]ll persons in the United States whose Private Information was accessed during  
14 the Data Incidents.<sup>2</sup>

15 Excluded from the Settlement Class are the judges presiding over the Actions and  
16 members of their direct families.

17 11. I further understand that all Settlement Class Members are eligible for a  
18 Documented Loss Cash Payment and Financial Account Monitoring. Certain Settlement Class  
19 members may elect a Tiered Cash Payment, which is a flat cash payment amount (subject to a pro  
20 rata increase or decrease), which is based upon whether they are a Tier 1 Settlement Class Member,  
21 Tier 2 Settlement Class Member, or Tier 3 Settlement Class Member. The tiers are determined by  
22 the type of data a Settlement Class member had exposed in a Data Incident. Tier 1, 2, and 3  
23 Settlement Class Members were identifiable in the data.

24 12. After the Court’s Preliminary Approval Order was entered, Epiq began

25 <sup>1</sup> *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a  
26 person’s due, process which is a mere gesture is not due process. The means employed must be such  
27 as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The  
28 reasonableness and hence the constitutional validity of any chosen method may be defended on the  
ground that it is in itself reasonably certain to inform those affected . . .”).

<sup>2</sup> The 2019 Data Incident and the 2023 Data Incident, collectively.

1 implementing the Notice Program. Subsequently, on April 1, 2025, the Court approved the  
2 Updated Notice Program in the *Order Granting Joint Motion to Approve Amendment to Settlement*  
3 *Agreement and to Modify Notice Program*.

4 **NOTICE PROGRAM**

5 ***Individual Notice***

6 13. It is my understanding that MGM provided all reasonably available data for  
7 identified Settlement Class members (“Class List”). On January 22, 2025, Epiq received four data  
8 files containing 160,488,318 records for identified Settlement Class members, containing names,  
9 email addresses, and postal addresses. Subsequently, on February 19, 2025, Epiq received one  
10 supplemental data file containing 17,263,776 records for identified Settlement Class members,  
11 which included phone numbers, Social Security numbers, and dates of birth for those records, if  
12 available. Epiq deduplicated and rolled-up the records and loaded the unique, identified Settlement  
13 Class member records into its database for the case. These efforts resulted in 76,793,483 unique,  
14 identified Settlement Class member records.

15 14. For records that had no associated email address, Epiq performed “reverse look-  
16 ups” to identify any additional, available associated email address. An Email Notice was sent to  
17 all identified Settlement Class members for whom a valid email address was available, and a  
18 Postcard Notice was sent via United States Postal Service (“USPS”) first class mail to Tier 1, 2,  
19 and 3 Settlement Class members without an available email address and for whom a physical  
20 address was available. The Email Notice and Postcard Notice clearly described the Settlement and  
21 the legal rights of the Settlement Class members. In addition, the Email Notice and Postcard  
22 Notice directed the recipients to a Settlement Website where they could access additional  
23 information, including the Long Form Notice.

24 ***Individual Notice – Email***

25 15. On February 20, 2025, Epiq commenced sending 48,057,202 Email Notices to  
26 identified Settlement Class members for whom a valid email address was available or was  
27 determined through the reverse look-up process. Some valid email addresses are associated with  
28 multiple Settlement Class members, and some Settlement Class members have multiple email

1 addresses associated with their name, and an Email Notice was sent to each valid email address.  
2 The Email Notice to Tier 1, 2 and 3 identified Settlement Class members is included as  
3 **Attachment 1**. The Email Notice sent to non-Tiered identified Settlement Class members is  
4 included as **Attachment 2**.

5 16. The following industry standard best practices were followed. The Email Notice is  
6 drafted in such a way that the subject line, the sender, and the body of the message overcame  
7 SPAM filters and ensured readership to the fullest extent reasonably practicable. For instance, the  
8 Email Notices used an embedded html text format. This format provided easy-to-read text without  
9 graphics, tables, images, and other elements that in our experience would have increased the  
10 likelihood that the message would have been blocked by Internet Service Providers (ISPs) or  
11 SPAM filters for this type of communication. The Email Notices were sent from an IP address  
12 known to major email providers as one not used to send bulk “SPAM” or “junk” email blasts.  
13 Each Email Notice was transmitted with a digital signature to the header and content of the Email  
14 Notice, which allowed ISPs to programmatically authenticate that the Email Notices were from  
15 our authorized mail servers. Each Email Notice was also transmitted with a unique message identifier.  
16 The Email Notices included an embedded link to the Settlement Website. By clicking the link,  
17 recipients are able to access the Long Form Notice and additional information about the Settlement.

18 17. If the receiving email server cannot not deliver the message, a “bounce code” is  
19 returned along with the unique message identifier. For Email Notices for which a bounce code is  
20 received indicating that the message is undeliverable for reasons such as an inactive or disabled  
21 account, the recipient’s mailbox was full, technical autoreplies, etc., at least two additional  
22 attempts are made to deliver the Email Notice.

### 23 *Individual Notice – Direct Mail*

24 18. On April 16, 2025, Epiq commenced sending 4,978,730 Postcard Notices via USPS  
25 first class mail to identified Tier 1, 2, and 3 Settlement Class members with an available mailing  
26 address for whom no valid email address is available. The Postcard Notice directs the recipients  
27 to the Settlement Website where they can file a Claim and access the Long Form Notice and  
28 additional information about the Settlement. The Postcard Notice is included as **Attachment 3**.

1 19. Prior to sending the Postcard Notices, all mailing addresses were checked against  
2 the National Change of Address (“NCOA”) database maintained by the USPS to ensure Settlement  
3 Class member address information was up-to-date and accurately formatted for mailing.<sup>3</sup> In  
4 addition, the addresses were certified via the Coding Accuracy Support System (“CASS”) to ensure  
5 the quality of the zip code, and was verified through Delivery Point Validation (“DPV”) to verify  
6 the accuracy of the addresses. This address updating process is standard for the industry and for  
7 the majority of promotional mailings that occur today.

8 20. The return address on the Postcard Notices is a post office box that Epiq maintains  
9 for this Settlement. The USPS automatically forwards Postcard Notices with an available  
10 forwarding address order that has not expired. Postcard Notices returned as undeliverable are re-  
11 mailed to any new address available through USPS information (for example, to the address  
12 provided by the USPS on returned mail pieces for which the automatic forwarding order has  
13 expired, but is still within the time period in which the USPS returns the piece with the address  
14 indicated), and to better addresses that are found using a third-party lookup service. Upon  
15 successfully locating better addresses, Postcard Notices are promptly remailed.

16 21. Additionally, a Long Form Notice and Claim Form (“Notice Package”) are mailed  
17 to all persons who requested one via the toll-free telephone number or other means. As of April  
18 28, 2025, Epiq has mailed 1,347 Notice Packages as a result of such requests. The Long Form  
19 Notice is included as **Attachment 4**. The Claim Form is included as **Attachment 5**.

#### 20 *Internet Digital Notice Campaign*

21 22. Even with the extensive individual notice effort to Settlement Class members, there were  
22 some records in the Class List for whom individual notice could not be delivered. These Settlement  
23 Class members were provided Publication Notice via a comprehensive online media plan. The media  
24 plan consists of two phases. The first phase ran from February 20, 2025, through March 19, 2025,

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25 <sup>3</sup> The NCOA database is maintained by the USPS and consists of approximately 160 million  
26 permanent change-of-address records consisting of names and addresses of individuals, families,  
27 and businesses who have filed a change-of-address with the Postal Service™. The address  
28 information is maintained on the database for 48 months and reduces undeliverable mail by  
providing the most current address information, including standardized and delivery point coded  
addresses, for matches made to the NCOA file for individual, family, and business moves.

1 delivering approximately 194.1 million targeted impressions, and the second phase is currently running  
2 and will deliver approximately 132 million targeted impressions by May 8, 2025. Combined, the two  
3 phases will generate approximately 326.1 million targeted impressions nationwide. Sponsored search  
4 began with the start of phase one on February 20, 2025, and will complete on June 3, 2025. As of April  
5 28, 2025, more than 82,000 sponsored search ad impressions have been displayed.

6 23. Internet advertising has become a standard component in legal notice programs.  
7 The internet has proven to be an efficient and cost-effective method to target class members as part  
8 of providing notice of a settlement for a class action case. According to MRI-Simmons<sup>4</sup> data, 97%  
9 of all adults are online and 84% of all adults use social media.

10 24. The Notice Program includes targeted digital advertising (“Digital Notices”) on the  
11 selected advertising network *Google Display Network*, which represents thousands of digital properties  
12 across all major content categories. Digital Notices are targeted to selected target audiences and are  
13 designed to encourage participation by Settlement Class members—by linking directly to the  
14 Settlement Website, allowing visitors easy access to relevant information and documents.

15 25. The Digital Notices are also placed on the leading social media platforms in the  
16 United States, including *Facebook*, *Instagram*, *Reddit*, and *X (Twitter)*. The social media campaign  
17 uses an interest-based approach which focuses on the interests that users exhibit while on the social  
18 media platforms, capitalizing on the target audience’s propensity to engage in social media.

19 26. *Facebook* is the leading social networking site in the United States with 193 million users.<sup>5</sup>  
20

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21 <sup>4</sup> MRI-Simmons is a leading source of publication readership and product usage data for the  
22 communications industry. MRI-Simmons is a joint venture of GfK Mediamark Research &  
23 Intelligence, LLC (“MRI”) and Simmons Market Research. MRI-Simmons offers comprehensive  
24 demographic, lifestyle, product usage and exposure to all forms of advertising media collected from  
25 a single sample. As the leading U.S. supplier of multimedia audience research, the company  
26 provides information to magazines, televisions, radio, internet, and other media, leading national  
27 advertisers, and over 450 advertising agencies—including 90 of the top 100 in the United  
28 States. MRI-Simmons’s national syndicated data is widely used by companies as the basis for the  
majority of the media and marketing plans that are written for advertised brands in the United States.

<sup>5</sup> Statista Digital 2025: Global Overview Report. Statista, founded in 2007, is a leading provider  
of worldwide market and consumer data and is trusted by thousands of companies around the  
world for data. Statista.com consolidates statistical data on over 80,000 topics from more than  
22,500 sources and makes it available in German, English, French and Spanish.

27. *Instagram* has 171 million active users in the United States<sup>6</sup> and nearly three-fourths of its users in the United States are 44 years of age or younger.

28. *Reddit* is a widely used social forum website that contains more than one million communities known as subreddits. These communities cover specific topics making this an ideal platform to reach individuals with focused interests. *Reddit* reaches 288 million users in the United States.<sup>7</sup>

29. *X (Twitter)* is a popular microblogging social media website that allows posts/tweets containing images or videos. Users can like, comment, and share/retweet posts. *X* has more than 103 million users in the United States.<sup>8</sup>

30. All Digital Notices appear on desktop, mobile, and tablet devices. Digital Notices on *Google Display Network, Facebook, Instagram, Reddit, and X (Twitter)* are displayed nationwide. Digital Notices are also targeted (remarketed) to people who click on a Digital Notice.

31. More details regarding the target audiences, specific ad sizes of the Digital Notices, and the number of impressions delivered for the first phase of the media campaign are included in the following table:

<i>Digital Plan</i>	<i>Target</i>	<i>Ad Sizes</i>	<i>Delivered Impressions</i>
<i>Google Display Network</i>	Adults 18+	728x90, 300x250, 300x600 & 970x250	20,460,921
<i>Google Display Network</i>	Adults 18+ and Affinity targeting for Gambling, MGM Casino, Slot Machines, Blackjack, Roulette, Poker, Craps, Baccarat, Video Poker, Pai Gow Poker, Keno and/or Sic Bo	728x90, 300x250, 300x600 & 970x250	26,298,600
<i>Google Display Network</i>	Adults 18+ and Intent targeting for Gambling and/or MGM Casino	728x90, 300x250, 300x600 & 970x250	25,848,431
<i>Geofence Display Targeting</i> <sup>9</sup>	Adults 18+ who have been to an MGM Casino	728x90, 300x250, 300x600 & 970x250	15,743,161

<sup>6</sup> Statista Digital 2025: Global Overview Report.

<sup>7</sup> Statista Digital 2025: Global Overview Report.

<sup>8</sup> Statista Digital 2025: Global Overview Report.

<sup>9</sup> Geofence Targeting targets adults who have been to an MGM location. Adults who have location services turned on within their smartphones and enter a U.S. MGM Casino are identified and Digital Notices served to them. This can occur after they have been in the casino and does not

<i>Digital Plan</i>	<i>Target</i>	<i>Ad Sizes</i>	<i>Delivered Impressions</i>
<i>Facebook</i>	Adults 18+	Newsfeed & Right Hand Column	15,197,823
<i>Facebook</i>	Adults 18+ and Interests in Gambling, MGM Casinos, Slot Machines, Blackjack, Roulette, Poker, Craps, Baccarat, Video Poker, Pai Gow Poker, Keno, Sic Bo and/or Las Vegas	Newsfeed & Right Hand Column	41,027,939
<i>Instagram</i>	Adults 18+	Newsfeed	10,225,025
<i>Instagram</i>	Adults 18+ and Interests in Gambling, MGM Casinos, Slot Machines, Blackjack, Roulette, Poker, Craps, Baccarat, Video Poker, Pai Gow Poker, Keno, Sic Bo and/or Las Vegas	Newsfeed	30,955,101
<i>Reddit</i>	Adults 18+ and Subreddits r/Gambling, r/Poker and/or r/Vegas	Reddit Feed Ads	3,142,850
<i>X (Twitter)</i>	Adults 18+ and Post Engagement Targeting for Gambling and/or MGM Resorts	Newsfeed	5,226,474
<b>TOTAL</b>			<b>194,126,325</b>

32. For the first phase, combined, approximately 194.1 million targeted impressions were generated by the Digital Notices, which were displayed nationwide.<sup>10</sup> Clicking on the Digital Notices linked the reader to the Settlement Website, where they could easily obtain detailed information about the Settlement. The first phase of the Internet Digital Notice Campaign ran from February 20, 2025, through March 19, 2025. Examples of the Digital Notices are included as **Attachment 6**.

have to be while they are there. Locations included are Bellagio, ARIA, Vdara at ARIA, The Cosmopolitan of Las Vegas, MGM Grand, The Signature at MGM Grand, Mandalay Bay, Delano Las Vegas, Four Seasons Las Vegas, Park MGM, NoMad Las Vegas, New York-New York, Luxor, Excalibur, MGM Springfield, MGM National Harbor, MGM Grand Detroit, Beau Rivage, Borgata, MGM Northfield Park and Empire City Casino.

<sup>10</sup> The third-party ad management platform, ClickCease is used to audit the Digital Notice ad placements. This type of platform tracks all Digital Notice ad clicks to provide real-time ad monitoring, fraud traffic analysis, blocks clicks from fraudulent sources, and quarantines dangerous IP addresses. This helps reduce wasted, fraudulent, or otherwise invalid traffic (e.g., ads being seen by 'bots' or non-humans, ads not being viewable, etc.).

33. The second phase of the Media Campaign includes a “List Activation” strategy. This is accomplished by matching the available data of known Settlement Class members with current consumer profiles. This strategy ensures that specific individuals receiving direct notice are also provided reminder messaging online via Digital Notices. The “List Activation” strategy is used on the *Google Display Network*, *Facebook*, *Instagram*, and *X (Twitter)*.

34. More details regarding the target audiences, specific ad sizes of the Digital Notices, and the number of impressions being delivered for the second phase of the media campaign are included in the following table, showing approximately 132 million additional targeted impressions will be generated nationwide by the Digital Notices for the second phase:

<i>Digital Plan</i>	<i>Target</i>	<i>Ad Sizes</i>	<i>Impressions Being Delivered</i>
<i>Google Display Network</i>	Adults 18+ and Affinity targeting for Gambling, MGM Casino, Slot Machines, Blackjack, Roulette, Poker, Craps, Baccarat, Video Poker, Pai Gow Poker, Keno and/or Sic Bo	728x90, 300x250, 300x600 & 970x250	15,000,000
<i>Google Display Network</i>	Adults 18+ and Intent targeting for Gambling and/or MGM Casino	728x90, 300x250, 300x600 & 970x250	15,000,000
<i>Google Display Network</i>	List Activation against Phone Numbers & Emails	728x90, 300x250, 300x600 & 970x250	35,000,000
<i>Geofence Display Targeting</i>	Adults 18+ who have been to an MGM Casino	728x90, 300x250, 300x600 & 970x250	10,000,000
<i>Facebook</i>	Adults 18+ and Interests in Gambling, MGM Casinos, Slot Machines, Blackjack, Roulette, Poker, Craps, Baccarat, Video Poker, Pai Gow Poker, Keno, Sic Bo and/or Las Vegas	Newsfeed & Right Hand Column	5,000,000
<i>Facebook</i>	List Activation against Phone Numbers & Emails	Newsfeed & Right Hand Column	20,000,000
<i>Instagram</i>	List Activation against Phone Numbers & Emails	Newsfeed	15,000,000
<i>Reddit</i>	Adults 18+ and Subreddits r/Gambling, r/Poker and/or r/Vegas	Reddit Feed Ads	7,000,000
<i>X (Twitter)</i>	Adults 18+ and Post Engagement Targeting for Gambling and/or MGM Resorts	Newsfeed	5,000,000
<i>X (Twitter)</i>	List Activation against Phone Numbers & Emails	Feed Ads	5,000,000
<b>TOTAL</b>			<b>132,000,000</b>

### *Sponsored Search Listings*

1  
2 35. To facilitate locating the Settlement Website, sponsored search listings began  
3 running on February 20, 2025, on the three most highly-visited internet search engines: *Google*,  
4 *Yahoo!*, and *Bing*. The sponsored search listings will run through June 3, 2025, the Claim Form  
5 Deadline. As of April 28, 2025, the sponsored listings have been displayed 82,575 times, which  
6 resulted in 11,805 clicks that displayed the Settlement Website. A complete list of the sponsored  
7 search keyword combinations is included as **Attachment 7**. Examples of the sponsored search  
8 listing as displayed on each search engine are included as **Attachment 8**.

### *Informational Release*

9  
10 36. To build additional reach and extend exposures, on February 20, 2025, a party-  
11 neutral Informational Release (in both English and Spanish) was issued nationwide over PR  
12 Newswire to approximately 13,000 general media (print and broadcast) outlets, including local and  
13 national newspapers, magazines, national wire services, television and radio broadcast media  
14 across the United States as well as over 4,000 websites, online databases, internet networks, and  
15 social networking media. The Hispanic newswire reaches over 1,900 Hispanic US general media  
16 contacts as well as up to 4,840 additional industry-specific Hispanic media contacts. The Hispanic  
17 release also included a guaranteed placement on 40+ Hispanic websites and/or news portals.

18 37. The Informational Release included the address of the Settlement Website and the  
19 toll-free telephone number. The Informational Release served a valuable role by providing  
20 additional notice exposures beyond that which was provided by the paid media. The Informational  
21 Release in both English and Spanish is included as **Attachment 9**.

### *Settlement Website*

22  
23 38. Epiq created a dedicated website for the Settlement ([www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com))  
24 that went live on February 19, 2025. Relevant documents are posted on the Settlement Website,  
25 including the Settlement Agreement, Preliminary Approval Order, Long Form Notice (in English  
26 and Spanish), Claim Form (in English and Spanish), and other case-related documents. In  
27 addition, the Settlement Website includes relevant dates, answers to frequently asked questions  
28 (“FAQs”), instructions for how Settlement Class members may opt-out (request exclusion) from

1 or object to the Settlement, contact information for the Settlement Administrator, and how to  
2 obtain other case-related information, including a Long Form Notice and Claim Form. Settlement  
3 Class Members can also file a Claim Form on the Settlement Website. The Settlement Website  
4 address is prominently displayed in all notice documents. As of April 28, 2025, there have been  
5 793,819 unique visitor sessions to the Settlement Website, and 3,297,945 web pages have been  
6 presented. The Long Form Notice in Spanish is included as **Attachment 10**. The Claim Form in  
7 Spanish is included as **Attachment 11**.

### 8 *Toll-Free Telephone Number and Postal Address*

9 39. A toll-free telephone number (1-888-899-8358) was established for the Settlement  
10 that went live on February 19, 2025. Callers can hear an introductory message and have the option  
11 to learn more about the Settlement in the form of recorded answers to FAQs, and to request that a  
12 Notice Package be mailed to them. This automated telephone system is available 24 hours per  
13 day, 7 days per week. The toll-free telephone number is prominently displayed in all notice  
14 documents. As of April 28, 2025, there have been 10,571 calls to the toll-free telephone number  
15 representing 21,193 minutes of use.

16 40. A postal mailing address was also established and continues to be available for  
17 Settlement Class members to request additional information or ask questions.

### 18 *Opt-Out Requests and Objections*

19 41. The deadline to opt-out from the Settlement or to object to the Settlement is May  
20 19, 2025. As of May 2, 2025, Epiq has received 92 opt-out requests, which are being reviewed.  
21 The list of opt-outs is included as **Attachment 12**. As of May 2, 2025, Epiq is aware of no  
22 objections to the Settlement regarding notice or settlement administration.

### 23 *Claim Submission & Distribution Options*

24 42. The Notices provide a detailed summary of relevant information about the  
25 Settlement, including the Settlement Website address and how Settlement Class Members can  
26 submit a Claim Form online or by mail. With any method of filing a Claim Form, Settlement Class  
27 Members are given the option of receiving an electronic payment or a traditional paper check.

28 43. The deadline for Settlement Class Members to file a Claim Form is June 3, 2025.

1 As of April 28, 2025, Epiq has received 414,515 Claim Forms (413,575 online and 940 paper).  
2 Since the Claim Form filing deadline has not yet passed, these numbers are preliminary. The  
3 number of Claim Forms submitted to date suggests the Claims process is proceeding as expected  
4 and the rate of response is typical for a class action of this type. As standard practice, Epiq is in  
5 the process of conducting a complete quality control review of Claim Forms received. There is a  
6 likelihood that after detailed review, the total number of Claim Forms received will change due to  
7 duplicate and denied Claim Forms.

#### 8 ***Settlement Administration Costs***

9 44. Epiq estimates Settlement Administration Costs, inclusive of the costs for the  
10 Notice Program and implementing the Settlement terms following Final Approval of the  
11 Settlement will be \$6,997,408.00.

#### 12 **CONCLUSION**

13 45. In class action notice planning, execution, and analysis, we are guided by due  
14 process considerations under the United States Constitution, by federal and local rules and statutes,  
15 and further by case law pertaining to notice. This framework directs that the notice program be  
16 designed to reach the greatest practicable number of potential class members and, that the notice  
17 or notice program provide class members with easy access to the details of how the class action  
18 may impact their rights. All of these requirements were met in this case.

19 46. The Notice Program individual notice effort includes email and/or mail to identified  
20 Settlement Class members, combined with the Publication Notice (Digital Notice and social media  
21 effort). With the address updating protocols that were used, the Notice Program individual notice  
22 efforts will reach approximately 90% of the Settlement Class. The reach was further enhanced by  
23 internet sponsored search listings, an informational release, and a Settlement Website. The FJC's  
24 *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, which is relied  
25 upon for federal cases, and is illustrative for state courts, states that, "the lynchpin in an objective  
26 determination of the adequacy of a proposed notice effort is whether all the notice efforts together will

1 reach a high percentage of the class. It is reasonable to reach between 70–95%.”<sup>11</sup> Here, we have  
2 developed and implemented a Notice Program that readily achieved a reach within that standard.

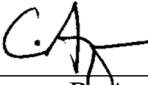
3 47. The Notice Program follows the guidance for satisfying due process obligations  
4 that a notice expert gleans from the United States Supreme Court’s seminal decisions, which  
5 emphasize the need: (a) to endeavor to actually inform the Settlement Class, and (b) to ensure that  
6 notice is reasonably calculated to do so.

7 a) “[W]hen notice is a person’s due, process which is a mere gesture is not due  
8 process. The means employed must be such as one desirous of actually informing  
9 the absentee might reasonably adopt to accomplish it,” *Mullane v. Central Hanover*  
10 *Trust*, 339 U.S. 306, 315 (1950); and

11 b) “[N]otice must be reasonably calculated, under all the circumstances, to  
12 apprise interested parties of the pendency of the action and afford them an  
13 opportunity to present their objections,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156  
14 (1974) (citing *Mullane*, 339 U.S. at 314).

15 48. The Notice Program provides the best notice practicable under the circumstances;  
16 conformed to all aspects of Federal Rule of Civil Procedure 23 regarding notice, comports with  
17 the guidance for effective notice articulated in the Manual for Complex Litigation, Fourth and  
18 applicable FJC materials; and satisfies the requirements of due process, including its “desire to  
19 actually inform” requirement.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed on May  
21 2, 2025.

22   
23 \_\_\_\_\_  
24 Cameron R. Azari, Esq.

25  
26  
27 <sup>11</sup> FED. JUDICIAL CTR, JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND  
28 PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

# Attachment 1

**From:** MGM Data Incident Litigation Settlement Administrator  
<mgmdatasettlement@e.epiqnotice.com>  
**To:** [REDACTED]  
**Subject:** MGM RESORTS INTERNATIONAL COURT ORDERED NOTICE OF CLASS ACTION SETTLEMENT

**Unique ID:** [REDACTED]  
**PIN:** [REDACTED]

Dear [REDACTED]

**If your Private Information was compromised as a result of one of two Data Incidents involving MGM Resorts International in or around July 2019, and/or in or around September 2023, you may be entitled to benefits from a Settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

You can learn more at: [www.MGMDataSettlement.com](http://www.MGMDataSettlement.com)

A \$45 million Settlement has been reached in two class action lawsuits against MGM Resorts International (“MGM” or “Defendant”) arising out of two Data Incidents, one that occurred in or around July 2019, and a second separate Data Incident that occurred in or around September 2023 (together, the “Data Incidents”). Varying amounts of Private Information of customers and guests of MGM were accessed in the Data Incidents. The Private Information included names, addresses, telephone numbers, email addresses, dates of birth, and, for a smaller number of individuals, drivers’ license numbers, passport numbers, and Social Security numbers. Only certain people had their Social Security numbers, passport numbers, and/or drivers’ license numbers exposed.

The purpose of this Notice is to provide information about this Settlement and explain your rights and options.

**Who is Included?** You are receiving this Email Notice because data provided by MGM indicates your information was included in one of the Data Incidents and you are a Settlement Class Member. The Settlement Class includes all persons in the United States whose Private Information was compromised as a result of the Data Incidents and who were sent notice by the Defendant of the Data Incidents.

**What does the Settlement Provide?**

**Documented Loss Cash Payment.**

You may submit a timely and valid Claim Form and provide supporting documentation that you spent money or incurred losses related to the Data Incident for up to \$15,000.00. Please visit the [website](#) for information and examples on how to file for a Documented Loss Cash Payment.

**Tiered Cash Payments.**

Certain Settlement Class Members are also eligible to receive a flat cash payment, without providing documentation, depending on what personal information may have been exposed in the Data Incidents. The three tiers of Cash Payments are listed below.

**Tier 1 Cash Payment** – If your Social Security number or military identification number was exposed, you may be eligible to receive an estimated \$75 flat cash payment.

**Tier 2 Cash Payment** – If your passport number or driver's license number was exposed, you may be eligible to receive an estimated \$50 flat cash payment.

**Tier 3 Cash Payment** – If your name, address, and/or date of birth was exposed, you may be eligible to receive an estimated \$20 flat cash payment.

**According to data provided by MGM, you are eligible for a Tier 1 Cash Payment.**

Use this unique ID number [REDACTED] and PIN [REDACTED] to file your Claim online.

Your Cash Payment amount may be subject to a *pro rata* (a legal term meaning equal share) increase if the amount of Valid Claims received is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement, the amount of Cash Payments may be reduced *pro rata* accordingly.

**Financial Account Monitoring.**

In addition to the Cash Payments, you can file a Claim for one year of three-bureau identity theft protection, Financial Account Monitoring, and at least \$1,000,000 of fraud/identity theft insurance.

**All Settlement Class Members are eligible to file a Claim for Financial Account Monitoring and a Documented Loss Cash Payment, but not every Settlement Class Member is eligible to file a Claim for a Tiered Cash Payment.**

You must submit a timely and valid Claim Form online [here](#) or by mail postmarked by **June 3, 2025**.

**Other Options.** If you do not want to be legally bound by the Settlement, you must opt out of the Settlement no later than **May 19, 2025**. If you do not opt out, you will give up the right to sue and will release the Defendant and Released Parties about the legal claims in the lawsuits. If you do not opt out, you may object to the Settlement by **May 19, 2025**. The [Long-Form Notice](#) on the Settlement Website has instructions on how to opt out or object. If you do nothing, you will get no Settlement Class Member Benefits, and you will be bound by the Settlement and any judgments and orders. The Court will hold a Final Approval Hearing on **June 18, 2025**, to consider whether to approve the Settlement and Class Counsel's request for attorneys' fees of up to 30% of the \$45 million Settlement Fund, and reimbursement of their litigation costs. Class Counsel will also seek Service Awards for the Class Representatives. You or your lawyer may attend and ask to appear at the hearing, but you are not required to do so. The hearing may be held remotely, and if so, instructions will be at [www.MGMDataSettlement.com](http://www.MGMDataSettlement.com).

**This notice is a summary. Learn more about the Settlement [here](#) or call toll free 1-888-899-8358.**

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If [REDACTED] should not be subscribed or if you need to change your subscription information for MGM - Data Incident, [please use this preferences page](#).

# Attachment 2

**From:** MGM Data Incident Litigation Settlement Administrator  
<mgmdatasettlement@e.epiqnotice.com>  
**To:** [REDACTED]  
**Subject:** MGM RESORTS INTERNATIONAL COURT ORDERED NOTICE OF CLASS ACTION SETTLEMENT

**Unique ID:** [REDACTED]  
**PIN:** [REDACTED]

Dear [REDACTED]

**If your Private Information was compromised as a result of one of two Data Incidents involving MGM Resorts International in or around July 2019, and/or in or around September 2023, you may be entitled to benefits from a Settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

You can learn more at: [www.MGMDataSettlement.com](http://www.MGMDataSettlement.com)

A \$45 million Settlement has been reached in two class action lawsuits against MGM Resorts International (“MGM” or “Defendant”) arising out of two Data Incidents, one that occurred in or around July 2019, and a second separate Data Incident that occurred in or around September 2023 (together, the “Data Incidents”). Varying amounts of Private Information of customers and guests of MGM were accessed in the Data Incidents. The Private Information included names, addresses, telephone numbers, email addresses, dates of birth, and, for a smaller number of individuals, drivers’ license numbers, passport numbers, and Social Security numbers. Only certain people had their Social Security numbers, passport numbers, and/or drivers’ license numbers exposed.

The purpose of this Notice is to provide information about this Settlement and explain your rights and options.

**Who is Included?** You are receiving this Email Notice because data provided by MGM indicates your information was included in one of the Data Incidents and you are a Settlement Class Member. The Settlement Class includes all persons in the United States whose Private Information was compromised as a result of the Data Incidents and who were sent notice by the Defendant of the Data Incidents.

**What does the Settlement Provide?**

**Documented Loss Cash Payment.**

You may submit a timely and valid Claim Form and provide supporting documentation that you spent money or incurred losses related to the Data Incident for up to \$15,000.00. Please visit the [website](#) for information and examples on how to file for a Documented Loss Cash Payment.

Use this unique ID number [REDACTED] and PIN [REDACTED] to file your Claim online.

Your Cash Payment amount may be subject to a *pro rata* (a legal term meaning equal share) increase if the amount of Valid Claims received is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement, the amount of Cash Payments may be reduced *pro rata* accordingly.

**Financial Account Monitoring.**

In addition to the Cash Payments, you can file a Claim for one year of three-bureau identity theft protection, Financial Account Monitoring, and at least \$1,000,000 of fraud/identity theft insurance.

**All Settlement Class Members are eligible to file a Claim for Financial Account Monitoring and a Documented Loss Cash Payment, but not every Settlement Class Member is eligible to file a Claim for a Tiered Cash Payment.**

You must submit a timely and valid Claim Form online [here](#) or by mail postmarked by **June 3, 2025**.

**Other Options.** If you do not want to be legally bound by the Settlement, you must opt out of the Settlement no later than **May 19, 2025**. If you do not opt out, you will give up the right to sue and will release the Defendant and Released Parties about the legal claims in the lawsuits. If you do not opt out, you may object to the Settlement by **May 19, 2025**. The [Long-Form Notice](#) on the Settlement Website has instructions on how to opt out or object. If you do nothing, you will get no Settlement Class Member Benefits, and you will be bound by the Settlement and any judgments and orders. The Court will hold a Final Approval Hearing on **June 18, 2025**, to consider whether to approve the Settlement and Class Counsel's request for attorneys' fees of up to 30% of the \$45 million Settlement Fund, and reimbursement of their litigation costs. Class Counsel will also seek Service Awards for the Class Representatives. You or your lawyer may attend and ask to appear at the hearing, but you are not required to do so. The hearing may be held remotely, and if so, instructions will be at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com).

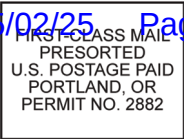
**This notice is a summary. Learn more about the Settlement [here](#) or call toll free 1-888-899-8358.**

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If [REDACTED] should not be subscribed or if you need to change your subscription information for MGM - Data Incident, [please use this preferences page](#).

# Attachment 3

MGM Data Incident Litigation  
Settlement Administrator  
PO Box 3020  
Portland, OR 97208-3020



Court-Approved Legal Notice

*In re MGM International Resorts Data Breach Litigation*, 2:20-cv-00376-GMN-NJK and *Tonya Owens et. al v. MGM Resorts International et al.*, 2:23-cv-01480-FRB  
United States District Court  
for the District of Nevada

**If your Private Information was compromised as a result of one of two Data Incidents involving MGM Resorts International in or around July 2019, and/ or in or around September 2023, you may be entitled to benefits from a Settlement.**

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

[www.MGMDataSettlement.com](http://www.MGMDataSettlement.com)  
1-888-899-8358



A \$45 million Settlement has been reached in two class action lawsuits against MGM Resorts International (“Defendant”) arising out of two Data Incidents, one that occurred in or around July 2019, and a second one that occurred in or around September 2023 (together, the “Data Incidents”). Varying amounts of Private Information of customers and guests of Defendant were accessed in the Data Incidents. The Private Information included, names, addresses, telephone numbers, email addresses, dates of birth, drivers’ license numbers, passport numbers, Social Security numbers, and military identification numbers.

**Who is Included?** The Settlement Class includes all persons in the United States whose Private Information was compromised as a result of the Data Incidents and who were sent notice by the Defendant of the Data Incidents.

**What does the Settlement Provide?**

**Documented Loss Cash Payment:** You can file a Claim Form with supporting documentation that you spent money or incurred losses related to the Data Incident for up to \$15,000.

**Tiered Cash Payment:** Certain Settlement Class Members are also eligible to receive a flat cash payment, without providing supporting documentation, depending on what personal information may have been exposed in the Data Incidents. There are three Tiers: (1) Tier 1 payments are estimated to be \$75; (2) Tier 2 payments are estimated to be \$50; and (3) Tier 3 payments are estimated to be \$20. All payments may be adjusted upward or downward depending on the amount of Valid Claims filed. Please visit the website for information on the 3 different Tiered Cash Payments.

**According to data provided by MGM, you are eligible for a Tier 3 Cash Payment**

Use this unique ID number [REDACTED] and PIN [REDACTED] to file your Claim online

**Financial Account Monitoring:** In addition to Cash Payments, you can elect one year of Financial Account Monitoring.

**All Settlement Class Members are eligible to file a Claim for Financial Account Monitoring and a Documented Loss Cash Payment, but not every Settlement Class Member is eligible to file a Claim for a Tiered Cash Payment.**

You must submit your Claim Form online or by mail postmarked by **June 3, 2025**.

**Other Options.** If you do not want to be bound by the Settlement, you must opt-out by **May 19, 2025**. If you do not opt-out, you will give up the right to sue and will release the Defendant and Released Parties of legal claims in the lawsuits. If you do not-opt out, you may object to the Settlement by **May 19, 2025**. The Long Form Notice on the Settlement Website has instructions on how to opt-out or object. If you do nothing, you will get no Settlement Class Member Benefits, and you will be bound by the Settlement, any judgments, and orders. The Court will hold a Final Approval Hearing on **June 18, 2025**, to consider whether to approve the Settlement, the requested Service Awards, attorneys’ fees of up to 30% of the \$45 million Settlement Fund, costs, and any objections. You or your own attorney may attend and ask to appear at the hearing, but are not required to do so.

**This notice is a summary. Learn more about the Settlement at [www.MGMDataSettlement.com](http://www.MGMDataSettlement.com), or by calling toll free 1-888-899-8358.**

# Attachment 4

**If your Private Information was compromised as a result of one of two Data Incidents involving MGM Resorts International in or around July 2019, and/or in or around September 2023, you may be entitled to benefits from a Settlement.**

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

- A \$45 million Settlement has been reached against MGM Resorts International (“MGM” or “Defendant”) arising out of two Data Incidents, one that occurred in or around July 2019, and a second separate Data Incident that occurred in or around September 2023 (together, the “Data Incidents”). Varying amounts of Private Information of customers and guests of MGM were accessed in the Data Incidents. The Private Information may have included, names, addresses, telephone numbers, email addresses, dates of birth, drivers’ license numbers, military identification numbers, passport numbers, and Social Security numbers. Only certain people had their Social Security numbers, passport numbers and/or drivers’ license numbers exposed.
- If you are a Settlement Class Member, you may be able to receive the following Settlement Class Member Benefits:

**Documented Loss Cash Payment:** You may submit a timely and valid Claim Form and provide supporting documentation that you spent money or incurred losses related to the Data Incident for up to \$15,000.00.

**Tiered Cash Payments:** Certain Settlement Class Members are also eligible to receive a flat cash payment, without providing documentation, depending on what personal information may have been exposed in the Data Incidents. A timely and Valid Claim required for Tiered Cash Payments also.

**Tier 1 Cash Payment** - If your Social Security number or military identification number was exposed, you may be eligible to receive an estimated \$75.00 flat cash payment.

**Tier 2 Cash Payment** – If your passport number or driver’s license number was exposed, you may be eligible to receive an estimated \$50.00 flat cash payment.

**Tier 3 Cash Payment** – If your name, address, and/or date of birth was exposed, you may be eligible to receive an estimated \$20.00 flat cash payment.

**Financial Account Monitoring:** In addition to the Cash Payments, all Settlement Class members are eligible for one year of Financial Account Monitoring, upon submission of a timely and Valid Claim.

Your Cash Payment may be subject to a *pro rata* (a legal term meaning equal share) increase or decrease. More information about this adjustment is found below.

**This Notice may affect your rights. Please read it carefully.**

<b>Your Legal Rights and Options</b>		<b>Deadline</b>
<b>SUBMIT A CLAIM FORM</b>	The only way to get Settlement Class Member Benefits is to submit a timely and valid Claim Form.	Submitted or Postmarked by: <b>June 3, 2025</b>
<b>OPT-OUT OF THE SETTLEMENT</b>	Get no Settlement Class Member Benefits. Keep your right to file your own lawsuit against the Released Parties about the legal claims in these lawsuits that are released by the Settlement.	<b>Postmarked by: May 19, 2025</b>

**Questions? Go to [www.MGMDataSettlement.com](http://www.MGMDataSettlement.com) or call 1-888-899-8358**

<b>OBJECT TO THE SETTLEMENT</b>	Stay in the Settlement, but tell the Court why you do not agree with the Settlement. You will still be bound by the Settlement if the Court approves it.	<b>Postmarked by: May 19, 2025</b>
<b>Do NOTHING</b>	Get no Settlement Class Member Benefits. Give up your legal rights.	

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. The Court must decide whether to approve the Settlement and the requested Service Awards and attorneys’ fees and Costs. Settlement Class Member Benefits will not be provided unless the Court approves the Settlement.

## BASIC INFORMATION

### 1. Why is this Notice being provided?

A court authorized this Notice because you have the right to know about the Settlement and about all of your rights and options before the Court decides whether to grant Final Approval of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

The Honorable Gloria M. Navarro of the United States District Court for the District of Nevada is overseeing the combined Settlement of two class action lawsuits. The lawsuits are known as *In re MGM International Resorts Data Breach Litigation*, Case No.: 2:20-cv-00376-GMN-NJK and *Tanya Owens, et al. v. MGM Resorts International, et al.*, Case No. 2:23-cv-01480-FRB (“lawsuits”). The individuals who filed these lawsuits are called the “Plaintiffs” and/or “Class Representatives” and the company sued, MGM Resorts International, is called the “Defendant.”

### 2. What are the lawsuits about?

Plaintiffs filed these lawsuits against Defendant, individually, and on behalf of customers and guests of Defendant whose Private Information, including but not limited to, names, addresses, telephone numbers, email addresses, dates of birth, drivers’ license numbers, passport numbers, and Social Security numbers was compromised as a result of two separate Data Incidents.

Plaintiffs allege that on or around July 2019, and again on or around September 2023, as a result of the Data Incidents, unauthorized individuals accessed Defendant’s network and their Private Information. Different Plaintiffs brought two separate lawsuits against Defendant arising out of each of the Data Incidents.

Defendant denies the legal claims in each lawsuit and denies any wrongdoing or liability. No court or other judicial entity has made any judgment or other determination of any wrongdoing by Defendant, or that any law has been violated. Instead, Plaintiffs and Defendant have agreed to a Settlement to avoid the risk, cost, and time of continuing the lawsuit.

### 3. Why is the lawsuit a class action?

In a class action, one or more people (called class representatives) sue on behalf of all people who have similar legal claims. Together, all these people are called a class or class members. One court resolves the issues for all Settlement Class members, except for those Settlement Class members who timely exclude themselves (opt-out) from the Settlement Class.

The Class Representatives in the lawsuits are the Plaintiffs who sued the Settlement Agreement.

**Questions? Go to [www.MGMDataSettlement.com](http://www.MGMDataSettlement.com) or call 1-888-899-8358**

#### 4. Why is there a Settlement?

Sometime after each lawsuit was filed, the Plaintiffs in the lawsuit in the 2019 Data Incident and the Plaintiffs in the lawsuit in the 2023 Data Incident decided to work together and collectively pursue a global settlement of both lawsuits with the Defendant. Plaintiffs and Defendant do not agree about the legal claims made in the lawsuits. Neither lawsuit has not gone to trial, and the Court has not decided in favor of Plaintiffs or Defendant in either one. Instead, Plaintiffs and Defendant have agreed to settle the lawsuits together. The Class Representatives, Defendant, and their lawyers believe the Settlement is best for all Settlement Class members because of the benefits to the Settlement Class members and the risks and uncertainty associated with continuing either of the lawsuits.

### WHO IS INCLUDED IN THE SETTLEMENT?

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

The Settlement Class includes all persons in the United States whose Private Information was compromised as a result of the Data Incidents and who were sent notice by the Defendant of the Data Incidents.

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

Yes. Excluded from the Settlement Class are the judges presiding over the lawsuits and members of their direct families.

#### 7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class member, you may go to the Settlement Website at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) or call the Settlement Administrator's toll-free number at 1-888-899-8358.

### THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

#### 8. What does the Settlement provide?

If you are a Settlement Class member and you submit a timely and valid Claim Form, you may be eligible for the following Settlement Class Member Benefits:

##### **Documented Loss Cash Payment.**

You may submit a Claim Form with supporting documentation that you spent money or incurred losses related to the Data Incidents for up to \$15,000.00.

Examples of losses include, but are not limited to:

- Unreimbursed losses relating to fraud or identity theft;
- Professional fees including attorneys' fees, accountants' fees, and fees for credit repair services;
- Costs associated with freezing or unfreezing credit with any credit reporting agency;
- Credit monitoring costs that were incurred on or after the Data Incidents through the Claims Deadline; and
- Miscellaneous expenses such as notary, facsimile, postage, copying, mileage, and long-distance telephone charges.

**Questions? Go to [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) or call 1-888-899-8358**

Examples of supporting documentation include, but are not limited to:

- credit card statements;
- bank statements;
- invoices;
- telephone records; and
- receipts

“Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. You will not be reimbursed for expenses if you have been reimbursed for the same expenses by another source.

### **Tiered Cash Payments.**

In addition to the Documented Loss Cash Payment, you may be eligible to receive a flat cash payment if you had certain information exposed in either of the 2019 or 2023 Data Incidents. If you were sent Notice of the Settlement by email or mail, your Notice informed you if you were likely eligible for a Tier 1, Tier 2 or Tier 3 Cash Payment.

**Tier 1 Cash Payment** - If your Social Security number or military identification number was exposed, you may be eligible to receive an estimated \$75.00 flat cash payment.

**Tier 2 Cash Payment** – If your passport number or driver’s license number was exposed, you may be eligible to receive an estimated \$50.00 flat cash payment.

**Tier 3 Cash Payment** – If your name, address, and/or date of birth was exposed, you may be eligible to receive an estimated \$20.00 flat cash payment.

Your Cash Payment may be subject to a *pro rata* (a legal term meaning equal share) increase from the Settlement Fund if the amount of Valid Claims is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of Cash Payments may be reduced *pro rata* accordingly.

### **Financial Account Monitoring.**

In addition to the Cash Payments, you may be eligible for one year of three-bureau identity theft protection, credit monitoring, and at least \$1,000,000 of fraud/identity theft insurance.

## **9. What am I giving up to receive Settlement benefits or stay in the Settlement Class?**

Unless you opt-out of the Settlement, you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes final, all Court orders and any judgments will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against the Released Parties about the legal issues in the lawsuits that are released by this Settlement. The specific rights you are giving up are called “Released Claims.”

## **10. What are the Released Claims?**

Section XIII of the Settlement Agreement describes the Released Claims and the Release, in necessary legal terminology, so please read these sections carefully. The complete Settlement Agreement is available at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com). For questions regarding the Release or Released Claims and what the language in the Settlement Agreement means, you can also contact Class Counsel listed in Question 14 for free, or you can talk to your own lawyer at your own expense.

**Questions? Go to [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) or call 1-888-899-8358**

## HOW TO GET BENEFITS FROM THE SETTLEMENT

### 11. How do I make a Claim for Settlement Class Member Benefits?

You must submit a timely and valid Claim Form for the Settlement Benefits described in Question 8. Your Claim Form must be submitted online at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) by **June 3, 2025**, or mailed to the Settlement Administrator at the address on the Claim Form, **postmarked by June 3, 2025**. Claim Forms are also available on the Settlement Website at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) or by calling 1-888-899-8358 or by writing to:

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box 3020  
Portland, OR 97208-3020

### 12. How do I know if I qualify for a Tier 1, Tier 2, or Tier 3 Cash Payment?

If you were sent Notice of the Settlement via email or mail, your Notice indicated whether you were eligible for a Tier 1, Tier 2, or Tier 3 Cash Payment. You were also provided with a unique ID number to help you easily file your Claim online at the Settlement Website. If you still have questions about your eligibility, visit [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) or call 1-888-899-8358.

### 13. What happens if my contact information changes after I submit a Claim Form?

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by writing to:

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box 3020  
Portland, OR 97208-3020

### 14. When will I receive my Settlement Class Member Benefits?

If you file a timely and valid Claim Form, the Settlement Class Member Benefits will be provided by the Settlement Administrator after the Settlement is approved by the Court and becomes final.

It may take time for the Settlement to be approved and become final. Please be patient and check [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) for updates.

## THE LAWYERS REPRESENTING YOU

### 15. Do I have a lawyer in this lawsuit?

Yes, the Court has appointed John Yanchunis of Morgan & Morgan Complex Litigation Group, E. Michelle Drake of Berger Montague PC, Doug McNamara of Cohen Milstein Sellers & Toll, PLLC, David Berger of Gibbs Law Group LLP, J. Gerard Stranch IV of Stranch, Jennings & Garvey, PLLC, Lynn Toops of Cohen & Malad LLP, James Pizzirusso of Hausfeld LLP, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and Jeff Ostrow of Kopelowitz Ostrow P.A. as Class Counsel to represent you and the Settlement Class for the purposes of this Settlement. You may hire

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your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this lawsuit.

## 16. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award attorneys' fees and costs payable out of the \$45,000,000 Settlement Fund. They will seek 30% of the Settlement Fund in attorneys' fees and reimbursement of their litigation costs. Class Counsel will also ask the Court to approve Service Awards in the amount of \$10,000.00 each for those Class Representatives who had their depositions taken and \$3,500.00 each for all other Class Representatives. The Service Awards are for the Class Representatives' efforts in participating in the Actions and for achieving the Settlement. If awarded by the Court, the Attorneys' Fees, Costs, and the Service Awards will be paid from the Settlement Fund. The Court may award less than these amounts.

Class Counsel's Application for attorneys' fees, Costs, and Service Awards will be made available on the Settlement Website at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com).

## OPTING-OUT FROM THE SETTLEMENT

If you are a Settlement Class member and want to keep any right you may have to individually sue or continue to sue the Released Parties on your own based about the legal claims in the lawsuits or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting-out” of—the Settlement.

## 17. How do I opt-out of the Settlement?

To opt-out of the Settlement, you must mail a written request for exclusion, which includes the following:

- 1) Your name, address, telephone number, and email address (if any);
- 2) Your personal physical signature; and
- 3) A statement that you want to be excluded from the Settlement Class, such as “I hereby request to be excluded from the Settlement Class in *In re MGM International Resorts Data Breach Litigation*, Case No.: 2:20-cv-00376-GMN-NJK and *Tanya Owens, et al. v. MGM Resorts International, et al.*, Case No. 2:23-cv-01480-FRB.”

The opt-out request must be **mailed** to the Settlement Administrator at the following address, and be **postmarked by May 19, 2025**:

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box 3020  
Portland, OR 97208-3020

**You cannot opt-out (exclude yourself) by telephone or by email.**

“Mass” or “class” requests for exclusion filed by third parties on behalf of a “mass” or “class” of Settlement Class members or multiple Settlement Class members where the opt-out has not been signed by each and every individual Settlement Class member will not be allowed.

**Questions? Go to [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) or call 1-888-899-8358**

### 18. If I opt-out can I still get anything from the Settlement?

No. If you timely opt-out, you will not be entitled to receive Settlement Class Member Benefits, but you will not be bound by the Settlement or any judgment in the lawsuits. You can only get Settlement Class Member Benefits if you stay in the Settlement and submit a timely and valid Claim Form.

### 19. If I do not opt-out, can I sue Defendant for the same thing later?

No. Unless you timely opt-out, you give up any right to individually sue any of the Released Parties for the legal claims this Settlement resolves and Releases relating to the Data Incidents. You must opt-out of the lawsuits to start or continue with your own lawsuit or be part of any other lawsuit against the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## OBJECTING TO THE SETTLEMENT

### 20. How do I tell the Court that I object to the Settlement?

If you are a Settlement Class Member, you can tell the Court you object to all or any part of the Settlement.

To object, you must send your written objection by U.S. mail to the Clerk of Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator postmarked by or shipped by private courier (such as Federal Express) by **May 19, 2025**, stating you object to the Settlement in *In re MGM International Resorts Data Breach Litigation*, Case No.: 2:20-cv-00376-GMN-NJK and *Tanya Owens, et al. v. MGM Resorts International, et al.*, Case No. 2:23-cv-01480-FRB.

To file an objection, you cannot opt-out of the Settlement Class. Your objection must include all of the following information:

- 1) Your full name, address, telephone number, and email address (if any);
- 2) All grounds for the objection, accompanied by any legal support for the objection known to you as the objector or your own lawyer;
- 3) The number of times you have objected to a class action settlement within the 5 years preceding the date that you file the objection, the caption of each case in which you have made an objection, and a copy of any orders related to or ruling upon your prior objections that were issued by the trial and appellate courts in each listed case;
- 4) The identity of all lawyers representing you, including any former or current lawyers who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
- 5) The number of times in which your lawyer or your lawyer's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which your lawyer or the firm has made the objection and a copy of any orders related to or ruling upon your lawyer's or the lawyer's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which your lawyer's and/or lawyer's law firm have objected to a class action settlement within the preceding 5 years;
- 6) The identity of all lawyers (if any) representing you who will appear at the Final Approval Hearing;
- 7) A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- 8) A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and

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9) Your signature as the objector (a lawyer's signature is not sufficient).

To be timely, written notice of an objection including all of the information above must be mailed to the Clerk of Court, Class Counsel, Defendant's Counsel and the Settlement Administrator by **May 19, 2025**, at the following addresses:

<b>COURT</b>	<b>CLASS COUNSEL</b>
<p>Clerk U.S. District Court Lloyd D. George Federal Courthouse 333 Las Vegas Blvd South Las Vegas, NV 89101</p>	<p>John A. Yanchunis Morgan &amp; Morgan 201 North Franklin Street, 7<sup>th</sup> Floor Tampa, FL 33602</p> <p>J. Gerard Stranch IV Stranch, Jennings, Garvey, PLLC 223 Rosa L. Parks Ave, Suite 200 Nashville, TN 32703</p>
<b>DEFENDANT'S COUNSEL</b>	<b>SETTLEMENT ADMINISTRATOR</b>
<p>Neil Gilman Hunton Andrews Kurth LLP 2200 Pennsylvania Avenue, NW Washington, DC 20037 ngilman@huntonak.com</p> <p>Eric M. Roberts DLA Piper LLP (US) 444 West Lake Street, Suite 900 Chicago, IL 60606 eric.roberts@us.dlapiper.com</p>	<p>MGM Data Incident Litigation Settlement Administrator PO Box 3020 Portland, OR 97208-3020</p>

If you fail to comply with the requirements for objecting as detailed above, you waive and forfeit any and all rights you may have to appear separately and/or to object to the Settlement and you will be bound by all the terms of the Settlement and by all proceedings, orders, and judgments in the lawsuits.

### **21. What is the difference between objecting and asking to opt-out?**

Objecting is simply telling the Court you do not like something about the Settlement or the requested Attorneys' Fees, Costs, or Service Awards. You can object only if you stay in the Settlement Class (meaning you do not opt-out of the Settlement). Opting-out of the Settlement is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you opt-out, you cannot object to the Settlement.

## **THE FINAL APPROVAL HEARING**

The Court will hold a "Final Approval Hearing" to decide whether to approve the Settlement. You may attend and you may ask to speak if you file an objection by the deadline, but you do not have to.

### **22. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing on **June 18, 2025, at 9:00 a.m.** before the Honorable Gloria M. Navarro, II, in Courtroom 7D at the Lloyd D. George Federal Courthouse, 333 Las Vegas Blvd. South, Las Vegas, Nevada 89101. At this hearing, the Court will consider whether the

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Settlement is fair, reasonable, and adequate and decide whether to approve the Settlement, Class Counsel's Application for the Attorneys' Fees, Costs, and Service Awards.

If there are objections that were filed by the deadline, the Court will consider them. If you file a timely objection, and you would like to speak at the hearing, the Court will also listen to you or your lawyer speak at the hearing, if you so request.

**Note:** The date and time of the Final Approval Hearing are subject to change without further notice to the Settlement Class. The Court may also decide to hold the hearing via video conference or by telephone. You should check the Settlement Website [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) to confirm the date and time of the Final Approval Hearing has not changed.

### **23. Do I have to attend the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to attend the Final Approval Hearing to speak about it. As long as you file a written objection by the deadline, the Court will consider it.

### **24. May I speak at the Final Approval Hearing?**

Yes, as long as you do not opt-out and you file a timely written objection requesting to speak at the hearing, you can (but do not have to) participate and speak for yourself at the Final Approval Hearing. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

If you want to appear, or if you want your own lawyer instead of Class Counsel to speak for you at the hearing, you must follow all of the procedures for objecting to the Settlement listed in Question 20 above—and specifically include a statement whether you and your lawyer will appear at the Final Approval Hearing.

## **IF YOU DO NOTHING**

### **25. What happens if I do nothing at all?**

If you are a Settlement Class Member and you do nothing, you will not receive any of the Settlement Class Member Benefits, and you will give up rights explained in the "Opting-Out from the Settlement" section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against any of the Released Parties about the legal issues in this lawsuit that are released by the Settlement relating to the Data Incidents.

## **GETTING MORE INFORMATION**

### **26. How do I get more information?**

This Notice summarizes the Settlement. Complete details about the Settlement are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com). You may get additional information at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com), by calling toll-free 1-888-899-8358, or by writing to:

**Questions? Go to [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) or call 1-888-899-8358**

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box 3020  
Portland, OR 97208-3020

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT'S  
CLERK OFFICE REGARDING THIS NOTICE.**

**Questions? Go to [www.MGMDataSettlement.com](http://www.MGMDataSettlement.com) or call 1-888-899-8358**

# Attachment 5

**Must be postmarked  
or submitted online  
NO LATER THAN  
June 3, 2025**

**MGM Data Incident Litigation  
Settlement Administrator  
P.O. BOX 3020  
Portland, OR 97208-3020  
MGMDDataSettlement.com**

**MGM Data Incident Litigation Claim Form**

**SETTLEMENT BENEFITS – WHAT YOU MAY GET**

If you are a person in the United States whose Private Information was compromised in either of the MGM Data Incidents that occurred on July 10, 2019, and/or September 7, 2023, you may submit a Claim.

**The easiest way to submit a Claim is online at MGMDDataSettlement.com**, or you can complete and mail this Claim Form to the mailing address above.

**You may submit a Claim for one or more of these Settlement Class Member Benefits:**

- 1. Financial Account Monitoring:** Use the Claim Form to request free Financial Account Monitoring.
- 2. Documented Loss Cash Payment:** If you incurred financial losses from fraud or identity theft that you believe is fairly traceable to the Data Incidents, you can be reimbursed up to \$15,000.00. You must submit documents supporting your Claim.
- 3. Tiered Cash Payment.** If you have been identified as a Tier 1, Tier 2, or Tier 3 Settlement Class member, you are also eligible to receive a flat cash payment. The three Tiers of Cash Payments are listed below.
  - **Tier 1 Cash Payment** - If your Social Security number or military identification number was exposed, you may be eligible to receive an estimated \$75.00 flat cash payment.
  - **Tier 2 Cash Payment** – If your passport number or driver’s license number was exposed, you may be eligible to receive an estimated \$50.00 flat cash payment.
  - **Tier 3 Cash Payment** – If your name, address, and date of birth was exposed, you may be eligible to receive an estimated \$20.00 flat cash payment.

**Monetary compensation from this Settlement is available under Option 2, Documented Loss Cash Payment, and Option 3, Tiered Cash Payment.**

**All Settlement Class members are eligible to file a Claim for Financial Account Monitoring and a Documented Loss Cash Payment, but not every Settlement Class member is eligible to file a Claim for a Tiered Cash Payment.**

**Claims must be submitted online or postmarked by June 3, 2025. Use the website address below for online Claims or the physical address above for mailed claims.**

*Please note: The Settlement Administrator may contact you to request additional documentation to process your Claim. Your Cash Payment amounts may increase or decrease depending on the number and amount of Valid Claims submitted.*

For more information and complete instructions visit **www.MGMDDataSettlement.com**.

**Please note that Settlement Class Member Benefits will be distributed only after the Settlement is approved by the Court and becomes final.**

If the Settlement is approved and your Claim for a Cash Payment is accepted, you will receive an email at the email address you provide below prompting you to select how you would like to be paid. You can receive your Cash Payment via a variety of digital options such as digital debit card or PayPal, or you can elect to receive a paper check.

If the Settlement is approved and you file a Valid Claim for Financial Account Monitoring, you will receive an email with a code and activation instructions at the email address you provide below.



### Financial Account Monitoring

*You may be eligible to receive free financial account monitoring services.*

You can elect to submit a Claim for Financial Account Monitoring including identity theft protection and credit monitoring. This benefit includes one year of Cyex Identity Defense Total with three-bureau monitoring and at least \$1,000,000.00 of fraud/identity theft insurance. The one-year period will commence when you use your code to activate the Financial Account Monitoring.

*Please select Option 1 if you want the Financial Account Monitoring for which you are eligible.*

**Option 1, Financial Account Monitoring:** I want to receive free Financial Account Monitoring.

*If you select this option, you will be sent instructions and an activation code after the Settlement is final to your email address or home address. You won't be "upsold" any services by enrolling or otherwise asked to submit any payment for these services now or in the future.*

### Documented Loss Cash Payment: Money You Lost or Spent

If you incurred financial losses from fraud or identity theft that you believe is fairly traceable to either of the Data Incidents and have not been reimbursed for that money, you can receive reimbursement for up to \$15,000.00.

It is important for you to send documents that show what happened and how much you lost or spent, so that you can be reimbursed.

*Please select Option 2 if you want to claim for Reimbursement of Out-of-Pocket Losses or Expenses.*

**Option 2, Documented Loss Cash Payment:** I have experienced a documented out-of-pocket loss related to the MGM Data Incidents. I am providing the necessary information and documentation.

To look up more details about how Cash Payments work, visit **MGMDataSettlement.com** or call toll-free 1-888-899-8358. You will find more information about the types of losses that can be paid back to you, what documents you need to attach, and how the Settlement Administrator decides whether to approve your payment. *By filling out the boxes on the next page of this form, you are certifying that the money you spent doesn't relate to other data breaches.*

**You may make as many copies of the Claim Form pages as necessary to list all of your expenses. If you need more space to list your losses, please submit additional pages of this Claim Form to provide that information.**

Loss Type	Approximate Date Loss	Amount of Loss
Costs for freezing or unfreezing your credit report on or after 7/10/2019	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="margin-left: 10px;">MM</div> <div style="margin-left: 10px;">DD</div> <div style="margin-left: 10px;">YYYY</div> </div>	\$ <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">•</span> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Description of Loss or Money Spent and Supporting Documents</b>                      (Identify what you are attaching, and why it's related to the Data Incidents)  <i>Examples: Receipts, notices, or account statements reflecting payment for a credit freeze.</i></p> <hr/> <hr/> <hr/> <hr/>		
Credit monitoring and identity theft protection purchased between 7/10/2019 and the date of your claim submission	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="margin-left: 10px;">MM</div> <div style="margin-left: 10px;">DD</div> <div style="margin-left: 10px;">YYYY</div> </div>	\$ <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">•</span> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Description of Loss or Money Spent and Supporting Documents</b>                      (Identify what you are attaching, and why it's related to the Data Incidents)  <i>Examples: Receipts or statements for credit monitoring services.</i></p> <hr/> <hr/> <hr/> <hr/>		
Costs, expenses, and losses due to identity theft, fraud, or misuse of your personal information on or after 7/10/2019 and that you believe are fairly traceable to the Data Incidents	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="margin-left: 10px;">MM</div> <div style="margin-left: 10px;">DD</div> <div style="margin-left: 10px;">YYYY</div> </div>	\$ <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">•</span> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Description of Loss or Money Spent and Supporting Documents</b>                      (Identify what you are attaching, and why it's related to the Data Incidents)  <i>Examples: Account statement with unauthorized charges highlighted, police reports, IRS documents, FTC Identity Theft Reports, letters refusing to refund fraudulent charges, credit monitoring services you purchased</i></p> <hr/> <hr/> <hr/> <hr/>		

Loss Type	Approximate Date Loss	Amount of Loss
Professional fees paid to address identity theft on or after 7/10/2019 and that you believe are fairly traceable to the Data Incidents	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> </div> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span>MM</span> <span>DD</span> <span>YYYY</span> </div>	\$ <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <span style="margin: 0 5px;">•</span> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Description of Loss or Money Spent and Supporting Documents</b>                      (Identify what you are attaching, and why it's related to the Data Incidents)  <i>Examples: Receipts, bills, and invoices from accountants, lawyers, or others.</i></p> <hr/> <hr/> <hr/> <hr/>		
Other expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges related to the Data Incidents	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; display: inline-block;"></div> </div> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span>MM</span> <span>DD</span> <span>YYYY</span> </div>	\$ <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <span style="margin: 0 5px;">•</span> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Description of Loss or Money Spent and Supporting Documents</b>                      (Identify what you are attaching, and why it's related to the Data Incidents)  <i>Examples: Phone bills, receipts, detailed list of places you traveled (i.e. police station, IRS office), reason why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled</i></p> <hr/> <hr/> <hr/> <hr/>		

### Tiered Cash Payment

If you have been identified as a Tier 1, Tier 2, or Tier 3 Settlement Class member, you are eligible to receive a flat cash payment. The three Tiers of Cash Payments are listed below.

**Tier 1 Cash Payment** - If your Social Security number was exposed, you may be eligible to receive an estimated \$75.00 flat cash payment.

**Tier 2 Cash Payment** - If your passport number or driver's license number was exposed, you may be eligible to receive an estimated \$50.00 flat cash payment.

**Tier 3 Cash Payment** - If your name, address, and date of birth was exposed, you may be eligible to receive an estimated \$20.00 flat cash payment.

*Please select Option 3 if you want the Tiered Cash Payment for which you are eligible.*

**Option 3: Tiered Cash Payment: I am eligible to receive one of the Tiered Cash Payments based on the Notice I received, and I wish to claim the Tiered Cash Payment I am eligible for.**

*If you select this option, we will confirm your eligibility against MGM's records. If you are not a Tier 1, Tier 2 or Tier 3 Settlement Class member, you will not receive a Tiered Cash Payment. Only individuals whose Notice identified them as eligible will be able to claim this option.*

### Signature

I affirm under the laws of the United States that the information I have supplied in this form and any copies of documents that I am sending to support my claim are true and correct to the best of my knowledge.

I understand that I may be asked to provide more information by the Settlement Administrator before my claim is complete.

Print Name

Signature

Date:   -   -      
MM DD YYYY

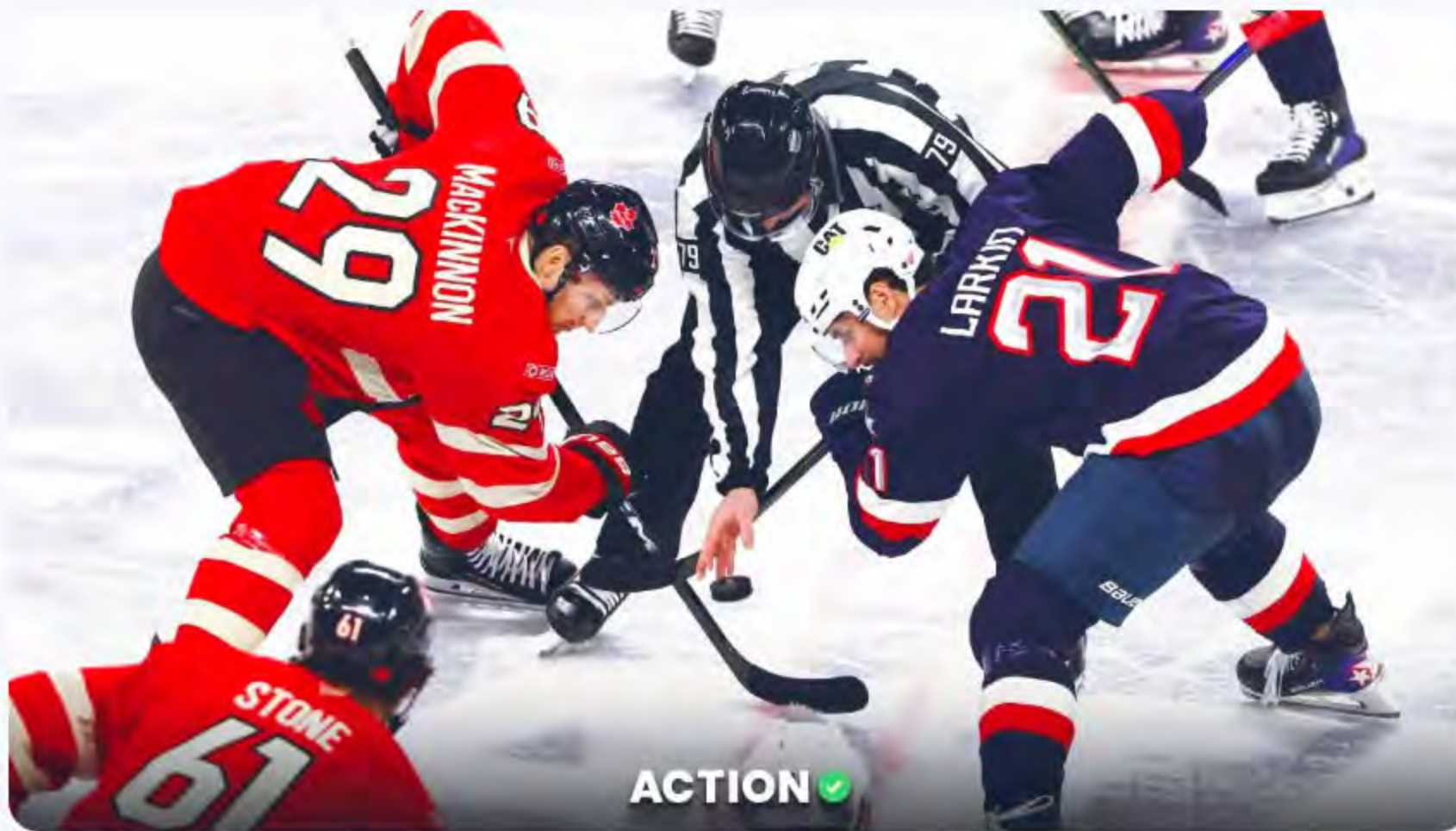
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### Canada vs. USA: How to Bet This 4 Nations Face-Off Championship Match

NHL Greg Liodice

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- Fanatics Sportsbook
- Kalshi (Exchange)
- Caesars Sportsbook
- DraftKings
- ESPN BET
- Sleeper (DFS)
- Underdog (DFS)
- PrizePicks (DFS)
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- Dabble (DFS)
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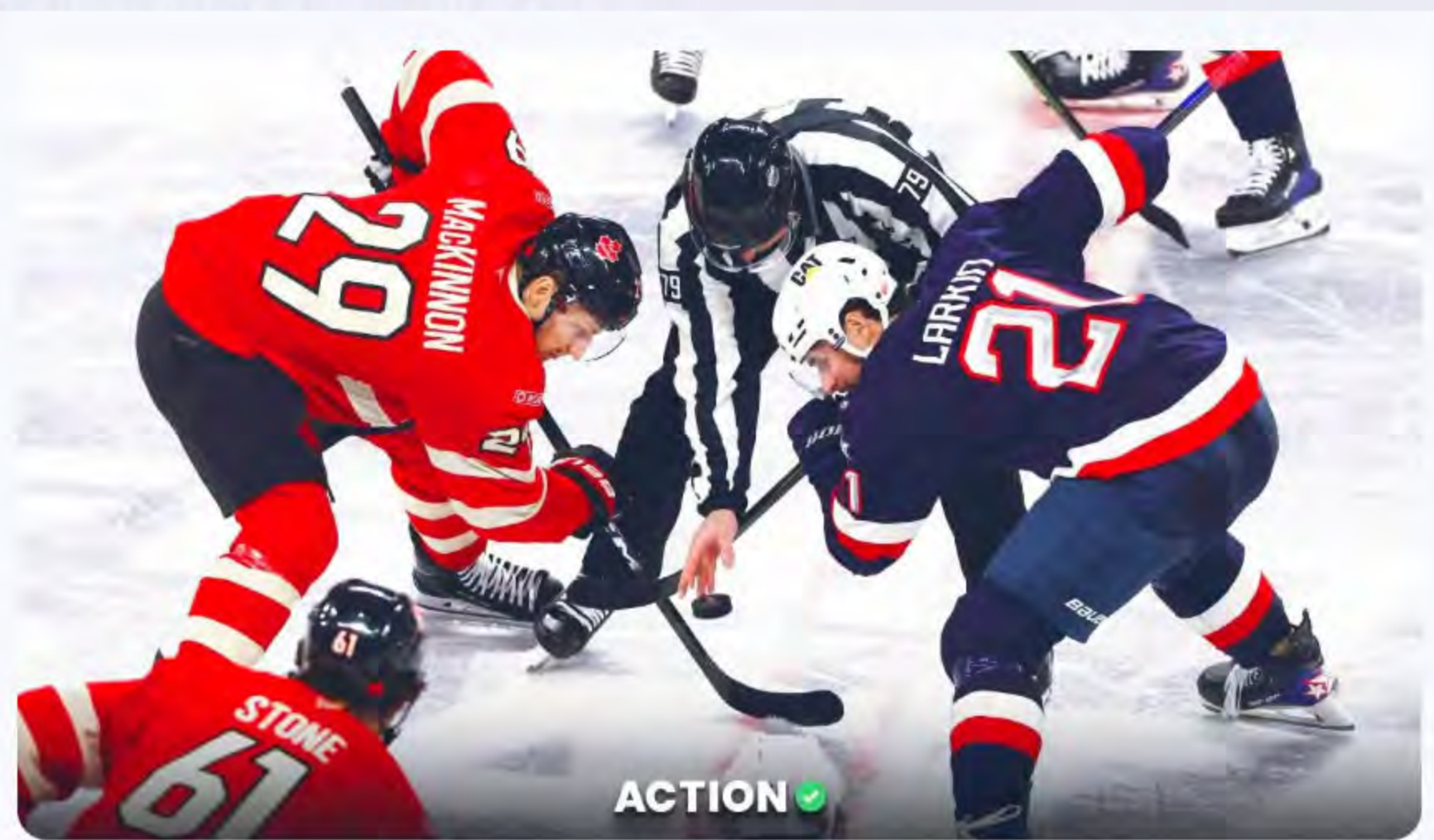
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- PrizePicks (DFS)
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# Bracketology: Big Ten rise in NCAA men's tournament projection

MEN'S COLLEGE BASKETBALL Feb. 18, 2025



**SEC, Kansas top winners, losers from NCAA men's tournament seed release**

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**Bubble watch: Analyzing the teams fighting to make the men's tournament**

MEN'S COLLEGE BASKETBALL 8:14 a.m. ET Feb. 19



**Teams rising and falling in the projected NCAA men's tournament bracket**

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**Auburn takes back No. 1 spot in the men's basketball poll**

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**Auburn, Alabama lead NCAA men's tournament top 16 seeds release**

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**When does March Madness start? NCAA bracket dates, what to know**

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### March Madness odds: Best bets to win 2025 NCAA

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# 'A rock for a lot of people': Las Vegas bartender mourned, found shot inside vehicle



Atomic Liquors bartender Hope Ritter was found dead early Saturday morning in downtown Las Vegas. (Las Vegas Review-Journal)



By **Bryan Horwath**  
 Las Vegas Review-Journal  
 February 19, 2025 - 8:56 pm

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Updated February 19, 2025 - 11:13 pm

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As she sat at the Atomic Liquors outdoor patio Wednesday evening, Maria Ledezma

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# Bets pour in on 4 Nations Cup final between US and Canada



1 of 4 | Canada's Brandon Hagel (38) and United States' Noah Hanifin (15) battle in front of goaltender Connor Hellebuyck (37) during third period of 4 Nations Face-Off hockey game in Montreal on Saturday, Feb. 15, 2025. (Christinne Muschi/The Canadian Press via AP)

BY MARK ANDERSON

Updated 5:57 PM EST, February 19, 2025

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LAS VEGAS (AP) — The players have been emotionally invested in the [4 Nations Face-Off](#), and sports bettors have noticed and followed suit.

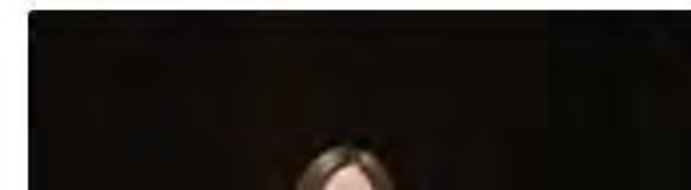
Money has been pouring in on the tournament, and the championship on Thursday night in Boston — a rematch between the United States and Canada — is drawing large betting handles.

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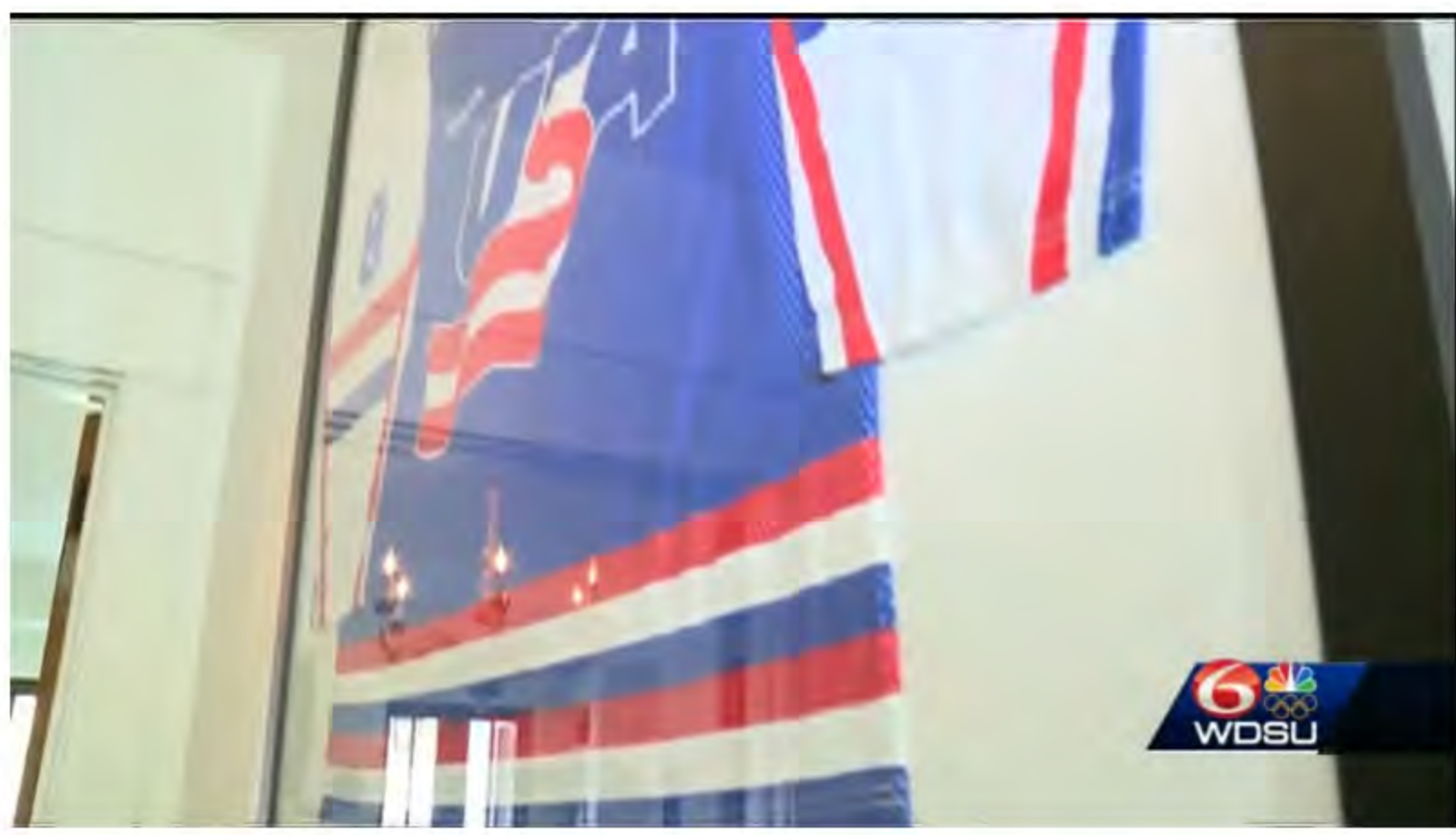
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# Louisiana governor supports idea of bringing NHL team to New Orleans

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'He's just the guy that helps you win': How Jaccob Slavin has been the quiet hero of Team USA

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## How Jaccob Slavin has been the quiet hero of Team USA



Ryan S. Clark

Feb 20, 2025, 07:00 AM ET

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BOSTON -- What makes Team USA a *team* -- and not just a collection of All-Stars -- is having [Jaccob Slavin](#) on the roster.

That's not conjecture. That's what Team USA coach Mike Sullivan said when asked what the [Carolina Hurricanes](#) defenseman means to the men's national team at the [4 Nations Face-Off](#).

Practically everything about Team USA is a spectacle. The way they win is a spectacle. Their personalities are spectacles upon spectacles. Even hearing the song "Free Bird" after each goal is a spectacle; the reaction it draws from Team USA's fans comes with the expectation that a bald eagle is going to soar throughout the arena to the backdrop of fireworks.

And while Slavin is the antithesis of that spectacle, what he does for the team is one of the main reasons the spectacle exists in

### EDITOR'S PICKS



The stars and surprises (good and bad) from the 4 Nations Face-Off:

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Milwaukee's Bobby Portis suspended 25 games for violating NBA's drug policy

NBA 12:08 p.m. ET Feb. 20



Tigers give Maeda the ball in spring opener: 'He came here to prove something'

TIGERS 6:06 p.m. ET Feb. 19



Lions' Jameson Williams won't face further discipline from NFL over gun-related incident

LIONS 3:53 p.m. ET Feb. 19

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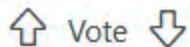
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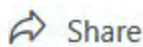


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# Attachment 7

## ***MGM Data Breach***


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## MGM Data Incident - Class Action Settlement

Benefits available to those compromised in the July 2019 and/or Sept 2023 Data Incidents. To find out more information and to see if you are included, visit the Settlement website.



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## Cyber Attack & Breach on the MGM Resort Explained

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## MGM agrees to pay \$45 million to victims of 2019 data ...

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Is the MGM data breach legitimate? 

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## MGM Resorts Data Breach Class Action Lawsuit

The **breach** involves up to 200 million guests worldwide who stayed at an MGM property through approximately December 31, 2017. Information stolen in the breach ...



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## Press Release Details

Oct 5, 2023 — MGM Resorts determined that an **unauthorized third party** obtained personal information of some of its customers on September 11, 2023.

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**MGM Data Settlement - Class Action Lawsuit - See if you are included**

Impacted by the 7/2019 and/or 9/2023 Data Incidents? Settlement benefits may be available. To find out more information and to see if you are included, visit the Settlement website.

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**\$45 Million MGM Settlement Resolves Data Breach ...**

Jan 30, 2025 — **MGM has agreed to pay a \$45 million settlement** to resolve class action lawsuits over separate data breaches that occurred in July 2019 and ...

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**Settlement in MGM Data Breach Preliminarily Approved**

Jan 24, 2025 — A federal court granted preliminary approval of a \$45 million global **settlement** in a data breach class action against MGM Resorts International.

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The breach involves up to 200 million guests worldwide who stayed at an MGM property through approximately December 31, 2017. Information stolen in the breach ...

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**\$45M MGM settlement resolves data breach class actions**

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### MGM Data Incident - Class Action Settlement >

Benefits available to those compromised in the July 2019 and/or Sept 2023 Data Incidents. To find out more information and to see if you are included, visit the Settlement website.

Hotel and casino giant MGM Resorts has agreed to pay **\$45 million** to settle more than a dozen class action lawsuits after hackers stole personal data on millions of customers in two separate cyberattacks.

Reference:

### MGM Resorts settles lawsuits after millions of customer ...

www.cnn.com · 2023/10/05 · business

### Casino giant MGM expects \$100 million hit from hack that led ... >

Oct 6, 2023 · The private **data** of customers who used MGM services before March 2019, including contact information, gender, date of birth and driver's license numbers, was breached...

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### MGM RESORTS UPDATE ON RECENT CYBERSECURITY ISSUE >

Oct 5, 2023 · Promptly after learning of this issue, MGM Resorts took steps to protect its systems and **data**, including shutting down certain systems. The Company also quickly launche...

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### MGM Resorts \$45 Million Data Breach Settlement >

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### MGM Data Breach Lawsuits | ClassAction.org >

< What Does The Lawsuit Say exactly? How A Lawsuit Could Help MGM >

As a result of MGM Resorts' actions – or lack thereof – guests are now at a "heightened and imminent risk of fraud and identity theft," the lawsuit says. Further, the suit says, guests would not have paid as much as they did for their hotel stays – or would not have stayed at all – had they known MGM Resorts failed to implement proper data security...

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### Settlement in MGM Data Breach Preliminarily Approved >

Jan 24, 2025 · A federal court granted preliminary approval of a \$45 million global settlement in a data breach class action against MGM Resorts International for failing to implement reasonable...

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MGM Data Incident - Class Action Settlement

Sponsored Benefits available to those compromised in the July 2019 and/or Sept 2023 Data Incidents. To find out more information and to see if you are included, visit the Settlement website.

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CNN
https://www.cnn.com/business

Casino giant MGM expects \$100 million hit from hack that led to ...

Oct 6, 2023 - MGM Resorts International said on Thursday a cyberattack last month that disrupted its operations would cause a \$100 million hit to its third-quarter results, as it works to ...

Cyber Security Hub
https://www.cshub.com/attacks/news

A full timeline of the MGM Resorts cyber attack

Sep 15, 2023 - Hospitality and entertainment company, MGM Resorts, recently suffered a cyber attack that severely impacted its business operations. The ...

Author: Olivia Powell



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# \$45 million

According to 4 sources

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[MGM Resorts settles lawsui...](#)  
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A Nevada federal judge preliminarily approved a **\$45 million** MGM Resorts International settlement resolving claims it failed to protect the customer information during data breaches in 2019 and 2023. The MGM settlement would end dozens...

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## MGM Data Settlement - Class Action Lawsuit

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## MGM Resorts \$45 Million Data Breach Settlement - claimdepot.com

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## \$45 Million MGM Settlement Resolves Data Breach ...

Jan 30, 2025 · MGM has agreed to pay a \$45 million settlement to resolve class action lawsuits over separate data breaches that occurred in July 2019 and September 2023.



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YouTube › CBS News



**MGM** Agrees to Pay Las Vegas Shooting Victims Up to \$800 Million

Mar 22, 2018  
NY Times › Richard A. Oppel Jr.



**MGM** Resorts Reaches **Settlement** in 2017 Las Vegas Mass Shooting

Oct 3, 2019  
WSJ › Katherine Sayre, Zusha Elinson



**MGM** to pay \$800 million **settlement** to victims of Las Vegas massacre

# Attachment 9

# If your Private Information was compromised as a result of one of two Data Incidents involving MGM Resorts International in or around July 2019, and/or in or around September 2023, you may be entitled to benefits from a Settlement

USA - English ▾

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NEWS PROVIDED BY

**United States District Court for the District of Nevada →**

Feb 20, 2025, 09:00 ET

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LAS VEGAS, Feb. 20, 2025 /PRNewswire/ -- A \$45 million Settlement has been reached in two class action lawsuits against MGM Resorts International ("Defendant") arising out of two Data Incidents, one that occurred in or around July 2019, and a second one that occurred in or around September 2023 (together, the "Data Incidents"). Varying amounts of Private Information of customers and guests of Defendant were accessed in the Data Incidents. The Private Information included, names, addresses, telephone numbers, email addresses, dates of birth, and, for a smaller number of individuals, drivers' license numbers, passport numbers, Social Security numbers, and military identification numbers.

**Who is Included?** The Settlement Class includes all persons in the United States whose Private Information was compromised as a result of the Data Incidents and who were sent notice by the Defendant of the Data Incidents.



## What does the Settlement Provide?

**Documented Loss Cash Payment:** You can file a Claim Form with supporting documentation that you spent money or incurred losses related to the Data Incident for up to \$15,000.

**Tiered Cash Payment:** Certain Settlement Class Members are also eligible to receive a flat cash payment, without providing supporting documentation, depending on what personal information may have been exposed in the Data Incidents. There are three Tiers: (1) Tier 1 payments are estimated to be \$75; (2) Tier 2 payments are estimated to be \$50; and (3) Tier 3 payments are estimated to be \$20. All payments may be adjusted upward or downward depending on the amount of Valid Claims filed. Please visit the website for information on the 3 different Tiered Cash Payments.

**Financial Account Monitoring:** In addition to Cash Payments, you can elect one year of Financial Account Monitoring.

**All Settlement Class Members are eligible to file a Claim for Financial Account Monitoring and a Documented Loss Cash Payment, but not every Settlement Class Member is eligible to file a Claim for a Tiered Cash Payment.**

You must submit your Claim Form online or by mail postmarked by **June 3, 2025**.

**Other Options.** If you do not want to be bound by the Settlement, you must opt-out by **May 19, 2025**. If you do not opt-out, you will give up the right to sue and will release the Defendant and Released Parties of legal claims in the lawsuits. If you do not opt out, you may object to the Settlement by **May 19, 2025**. The Long Form Notice on the Settlement Website has instructions on how to opt-out or object. If you do nothing, you will get no Settlement Class Member Benefits, and you will be bound by the Settlement, any judgments, and orders. The Court will hold a Final Approval Hearing on **June 18, 2025**, to consider whether to approve the Settlement, the requested Service Awards, attorneys' fees of up to 30% of the \$45 million Settlement Fund, costs, and any objections. You or your own attorney may attend and ask to appear at the hearing, but are not required to do so.

**This notice is a summary. Learn more about the Settlement at [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com), or by calling toll free 1-888-899-8358.**



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Si su Información Privada se vio comprometida como resultado de uno de los dos Incidentes de Datos que involucraron a MGM Resorts International en julio de 2019 y/o en septiembre de 2023, o aproximadamente en esas fechas, usted puede tener derecho a los beneficios de un Acuerdo de Conciliación

USA - español ▼

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NEWS PROVIDED BY

**United States District Court for the District of Nevada →**

Feb 20, 2025, 09:00 ET

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LAS VEGAS, 20 de febrero de 2025 /PRNewswire-HISPANIC PR WIRE/ -- Se ha llegado a un Acuerdo de Conciliación por \$45 millones en dos demandas colectivas contra MGM Resorts International ("Demandado") derivadas de dos Incidentes de Datos, uno que ocurrió en julio de 2019, y un segundo que ocurrió en septiembre de 2023 o alrededor de esas fechas (en conjunto, los "Incidentes de Datos"). En los Incidentes de Datos, se accedió a cantidades variables de Información Privada de clientes y huéspedes del Demandado. La Información Privada incluía nombres, direcciones, números de teléfono, direcciones de correo electrónico, fechas de nacimiento y, para un número menor de personas, números de licencia de conducir, números de pasaporte, números de la Seguridad Social y números de identificación militar.



**¿Quiénes están incluidos?** El Grupo de Demandantes incluye a todas las personas en los Estados Unidos cuya Información Privada se vio comprometida como resultado de los Incidentes de Datos y a quienes el Demandado envió una notificación de los Incidentes de Datos.

### **¿Qué establece el Acuerdo de Conciliación?**

**Pago en efectivo por pérdidas documentadas:** Puede presentar un Formulario de Reclamación con documentación de apoyo de que gastó dinero o incurrió en pérdidas relacionadas con el Incidente de Datos por hasta \$15,000.

**Pago en efectivo por niveles:** Ciertos Miembros del Grupo de Demandantes también son elegibles para recibir un pago fijo en efectivo, sin proporcionar documentación de apoyo, dependiendo de la información personal que pueda haber sido expuesta en los Incidentes de Datos. Se establecieron tres niveles: (1) Los pagos del Nivel 1 se estiman en \$75; (2) los pagos del Nivel 2 se estiman en \$50; y (3) los pagos del Nivel 3 se estiman en \$20. Todos los pagos pueden ajustarse al alza o a la baja en función de la cantidad de Reclamaciones Válidas presentadas. Visite el sitio web para obtener información sobre los 3 diferentes Pagos en efectivo por niveles.

**Monitoreo de cuentas financieras:** Además de los Pagos en efectivo, puede elegir un año de Monitoreo de cuentas financieras.

**Todos los Miembros del Grupo de Demandantes son elegibles para presentar una Reclamación de Monitoreo de cuentas financieras y un Pago en efectivo por pérdidas documentadas, pero no todos los Miembros del Grupo de Demandantes son elegibles para presentar una Reclamación de Pago en efectivo por niveles.**

Debe enviar su Formulario de Reclamación en línea o por correo postal con matasellos de antes del **3 de junio de 2025**.

**Otras opciones.** Si no desea estar sujeto al Acuerdo de Conciliación, debe excluirse antes del **19 de mayo de 2025**. Si no se excluye, renunciará al derecho a demandar y eximirá al Demandado y a las Partes Eximidas de las reclamaciones legales planteadas en las demandas. Si no se excluye, puede objetar el Acuerdo de Conciliación antes del **19 de mayo de 2025**. El Aviso Detallado en el Sitio Web del Acuerdo de

Conciliación contiene instrucciones sobre cómo excluirse u objetar. Si no hace nada, no obtendrá Beneficios para los Miembros del Grupo de Demandantes y estará sujeto al Acuerdo de Conciliación, a cualquier sentencia y a cualquier orden. El Tribunal celebrará una Audiencia de Aprobación Definitiva el **18 de junio de 2025** para considerar si aprueba el Acuerdo de Conciliación, las Indemnizaciones por Servicios solicitadas, los honorarios de los abogados de hasta el 30 % del Fondo del Acuerdo de Conciliación de \$45 millones, los costos y cualquier objeción. Usted o su propio abogado pueden asistir y solicitar comparecer en la audiencia, pero no están obligados a hacerlo.

**Este aviso es un resumen. Obtenga más información sobre el Acuerdo de Conciliación en [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com), o llamando al número gratuito 1-888-899-8358.**

FUENTE United States District Court for the District of Nevada

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# Attachment 10

**Si su Información Privada se vio comprometida como resultado de uno de los dos Incidentes de Datos que involucraron a MGM Resorts International en julio de 2019 y/o en septiembre de 2023, o aproximadamente en esas fechas, usted puede tener derecho a los beneficios de una Conciliación.**

*Este aviso fue autorizado por un tribunal. No es a solicitud de un abogado.*

- Se ha llegado a una Conciliación por \$45 millones contra MGM Resorts International (“MGM” o el “Demandado”) derivadas de dos Incidentes de Datos, uno que ocurrió en julio de 2019, y un segundo que ocurrió en septiembre de 2023 o alrededor de esas fechas (en conjunto, los “Incidentes de Datos”). En los Incidentes de Datos, se accedió a cantidades variables de Información Privada de clientes y huéspedes de MGM. La Información Privada incluía nombres, direcciones, números de teléfono, direcciones de correo electrónico, fechas de nacimiento y números de licencia de conducir, números de pasaporte, números de la Seguridad Social y números de identificación militar. Solo los números de Seguro Social, números de pasaporte y/o números de licencia de conducir de ciertas personas quedaron expuestos.
- Si usted es un Miembro del Grupo de Demandantes de la Conciliación, es posible que como tal pueda recibir los siguientes Beneficios:

**Pago en efectivo por pérdidas documentadas:** Puede presentar un Formulario de Reclamación válido y en forma oportuna y documentación de apoyo de que gastó dinero o incurrió en pérdidas relacionadas con el Incidente de Datos por hasta \$15,000.

**Pago en efectivo por niveles:** Ciertos Miembros del Grupo de Demandantes de la Conciliación también son elegibles para recibir un pago fijo en efectivo, sin tener que proporcionar documentación de apoyo, dependiendo de la información personal que pueda haber sido expuesta en los Incidentes de Datos. También se requiere la presentación de una Reclamación válida y oportuna para poder recibir los Pagos en efectivo por niveles.

**Pago en efectivo de nivel 1:** si su número de Seguro Social o número de identificación militar quedó expuesto, puede ser elegible para recibir un pago en efectivo fijo estimado de \$75.00.

**Pago en efectivo de nivel 2:** si su número de pasaporte o número de licencia de conducir quedó expuesto, puede ser elegible para recibir un pago en efectivo fijo estimado de \$50.00.

**Pago en efectivo de nivel 3:** si su nombre, dirección y/o fecha de nacimiento quedaron expuestos, es posible que sea elegible para recibir un pago en efectivo fijo estimado de \$20.00.

**Monitoreo de cuentas financieras:** Además de los Pagos en efectivo, todos los Miembros del Grupo de Demandantes de la Conciliación son elegibles para recibir un año de Monitoreo de cuentas financieras, tras la presentación de una Reclamación válida y oportuna.

Su Pago en efectivo puede estar sujeto a un aumento o disminución *prorratedo* (un término legal que significa participación equitativa). A continuación, encontrará más información sobre este ajuste.

**Este Aviso puede afectar sus derechos. Léalo con atención.**

Sus opciones y derechos legales		Fecha límite
<b>PRESENTAR UN FORMULARIO DE RECLAMACIÓN</b>	La única manera de obtener Beneficios para los Miembros del Grupo de Demandantes de la Conciliación es presentando un Formulario de Reclamación válido y oportuno.	Enviado o con fecha de franqueo postal a más tardar del: <b>3 de junio de 2025</b>
<b>EXCLUIRSE DE LA CONCILIACIÓN</b>	No obtiene Beneficios para Miembros del Grupo de Demandantes. Conserva cualquier derecho de presentar su propia demanda contra las Partes exoneradas en relación con las reclamaciones legales que se plantean en estas demandas que sean resueltas por la Conciliación.	<b>Contener fecha de franqueo postal a más tardar del: 19 de mayo de 2025</b>
<b>OBJETAR LA CONCILIACIÓN</b>	Permanece en la Conciliación, pero le informa al Tribunal por qué no está de acuerdo con la Conciliación. Seguirá estando obligado por la Conciliación si el Tribunal la aprueba.	<b>Contener fecha de franqueo postal a más tardar del: 19 de mayo de 2025</b>
<b>NO HACER NADA</b>	No obtiene Beneficios para Miembros del Grupo de Demandantes. Renuncia a sus derechos legales.	

- Estos derechos y estas opciones, **y las fechas límite para ejercerlos**, se explican en este Aviso. El Tribunal debe decidir si aprueba la Conciliación, así como las adjudicaciones por servicio, los honorarios y costos solicitados de los abogados. No se proporcionará ningún Beneficio para los Miembros del Grupo de Demandantes de la Conciliación hasta que el Tribunal apruebe dicha Conciliación.

## INFORMACIÓN BÁSICA

### 1. ¿Por qué se proporciona este Aviso?

Un tribunal autorizó este Aviso porque usted tiene el derecho de saber acerca de la Conciliación y de todos sus derechos y opciones antes de que el Tribunal decida si dará la Aprobación Definitiva de la Conciliación. En este Aviso se explican la demanda, el Acuerdo de conciliación, sus derechos legales, los beneficios disponibles, quiénes son elegibles para recibir los beneficios y cómo obtenerlos.

La Honorable Gloria M. Navarro del Tribunal de Distrito de los Estados Unidos para el Distrito de Nevada está supervisando la Conciliación combinada de dos demandas colectivas. Las demandas se conocen como *In re MGM International Resorts Data Breach Litigation*, Caso N.º: 2:20-cv-00376-GMN-NJK y *Tanya Owens, et al. v. MGM Resorts International, et al.*, Caso N.º 2:23-cv-01480-FRB (las “demandas”). Las personas que presentaron estas demandas se denominan los “Demandantes” y/o los “Representantes del Grupo de Demandantes” y la compañía demandada, MGM Resorts International, se denomina el “Demandado”.

### 2. ¿De qué tratan las demandas?

Los Demandantes presentaron estas demandas contra el Demandado individualmente y en nombre de los clientes y huéspedes del Demandado cuya Información Privada, incluidos, entre otros datos, nombres, direcciones, números de teléfono, direcciones de correo electrónico, fechas de nacimiento, números de licencia de conducir, números de pasaporte y números de Seguro Social se vio comprometida como resultado de dos Incidentes de Datos separados.

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Los Demandantes alegan que, en julio de 2019, o alrededor de esa fecha, y nuevamente en septiembre de 2023, o alrededor de esa fecha, como resultado de los Incidentes de Datos, personas no autorizadas accedieron a la red del Demandado y a su Información Privada. Diferentes Demandantes interpusieron dos demandas separadas contra el Demandado que surgieron de cada uno de los Incidentes de Datos.

El Demandado niega las reclamaciones legales en cada demanda y niega haber cometido un acto ilícito o tener responsabilidad. Ningún tribunal ni ninguna otra entidad judicial ha emitido una sentencia ni otra determinación de una infracción por parte del Demandado o de que se haya violado la ley. En cambio, los Demandantes y el Demandado han llegado a una Conciliación para evitar el riesgo, el costo y el tiempo de continuar con la demanda.

### **3. ¿Por qué esta se considera una demanda colectiva?**

En una demanda colectiva, una o más personas (llamadas representantes del grupo) demandan en nombre de todas las personas que tienen reclamaciones similares. En conjunto, todas estas personas se denominan Grupo de Demandantes o Miembros del Grupo de Demandantes. Un tribunal resuelve las cuestiones para todos los Miembros del Grupo de Demandantes de la Conciliación, excepto aquellos que se excluyan (se retiren) del Grupo de Demandantes de la Conciliación dentro del plazo establecido.

Los Representantes del Grupo de Demandantes en las demandas son los Demandantes que demandaron el Acuerdo de Conciliación.

### **4. ¿Por qué existe una Conciliación?**

En algún momento después de que se interpusiera cada demanda, los Demandantes de la demanda por el Incidente de Datos de 2019 y los Demandantes de la demanda por el Incidente de Datos de 2023 decidieron trabajar juntos y en conjunto llegar a una conciliación global de ambas demandas con el Demandado. Los Demandantes y el Demandado no están de acuerdo con respecto a las reclamaciones legales planteadas en las demandas. Ninguna demanda fue elevada a juicio, y el Tribunal no ha tomado ninguna decisión a favor de los Demandantes ni del Demandado. En su lugar, los Demandantes y el Demandado acordaron resolver ambas demandas mediante una conciliación. Los Representantes del Grupo de Demandantes, el Demandado y sus abogados creen que la Conciliación es lo mejor para todos los Miembros del Grupo de Demandantes de la Conciliación debido a los beneficios disponibles para estos y los riesgos e incertidumbre de continuar las demandas.

## **¿QUIÉNES ESTÁN INCLUIDOS EN LA CONCILIACIÓN?**

### **5. ¿Cómo sé si formo parte de la Conciliación?**

El Grupo de Demandantes incluye a todas las personas en los Estados Unidos cuya Información Privada se vio comprometida como resultado de los Incidentes de Datos y a quienes el Demandado envió una notificación de los Incidentes de Datos.

### **6. ¿Existen excepciones para ser incluido en la Conciliación?**

Sí. Quedan excluidos del Grupo de Demandantes de la Conciliación los jueces que presiden las demandas y sus familiares directos.

## 7. ¿Qué hago si todavía no estoy seguro si formo parte del Acuerdo de Conciliación?

Si no está seguro de si es Miembro del Grupo de Demandantes de la Conciliación, puede visitar el Sitio web de la Conciliación en [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) o llamar al número gratuito del Administrador de la Conciliación al 1-888-899-8358.

## LOS BENEFICIOS DE LA CONCILIACIÓN: QUÉ OBTENDRÁ SI REÚNE LOS REQUISITOS

## 8. ¿Qué establece el Acuerdo de Conciliación?

Si usted es Miembro del Grupo de Demandantes de la Conciliación y presenta un Formulario de Reclamación válido y oportuno, es posible que sea elegible para recibir los siguientes Beneficios para Miembros del Grupo de Demandantes de la Conciliación:

### **Pago en efectivo por pérdidas documentadas.**

Puede presentar un Formulario de Reclamación con documentación de apoyo de que gastó dinero o incurrió en pérdidas relacionadas con los Incidentes de Datos por hasta \$15,000.

Algunos ejemplos de pérdidas incluyen, entre otros, los siguientes:

- Pérdidas no reembolsadas relacionadas con fraude o robo de identidad;
- Honorarios profesionales, incluidos honorarios de abogados, honorarios de contadores y honorarios por servicios de reparación de crédito;
- Costos asociados con el congelamiento o descongelamiento de crédito con cualquier agencia de informes de crédito;
- Costos de monitoreo de crédito en los que se incurrió durante o después de los Incidentes de Datos hasta la Fecha límite de las reclamaciones; y
- Gastos varios como de notario, fax, franqueo, fotocopias, millaje y cargos telefónicos por llamadas de larga distancia.

Algunos ejemplos de documentación de apoyo incluyen, entre otros, los siguientes:

- estados de cuenta de tarjeta de crédito;
- estados de cuenta bancarios;
- facturas;
- registros telefónicos; y
- recibos.

La documentación “de preparación propia”, como recibos escritos a mano, son, por sí mismos, insuficientes para recibir el reembolso, pero se pueden considerar para agregar claridad o respaldar otra documentación presentada. No se le reembolsarán los gastos si otra fuente le ha reembolsado los mismos gastos.

### **Pagos en efectivo por niveles.**

Además del Pago en Efectivo por Pérdida Documentada, usted puede ser elegible para recibir un pago en efectivo fijo si determinada información suya quedó expuesta en cualquiera de los Incidentes de Datos de 2019 o 2023. Si se le envió un Aviso de la Conciliación por correo electrónico o correo postal, en tal Aviso se le informaba si era probablemente elegible para recibir un Pago en Efectivo de Nivel 1, Nivel 2 o Nivel 3.

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**Pago en efectivo de nivel 1:** si su número de Seguro Social o número de identificación militar quedó expuesto, puede ser elegible para recibir un pago en efectivo fijo estimado de \$75.00.

**Pago en efectivo de nivel 2:** si su número de pasaporte o número de licencia de conducir quedó expuesto, puede ser elegible para recibir un pago en efectivo fijo estimado de \$50.00.

**Pago en efectivo de nivel 3:** si su nombre, dirección y/o fecha de nacimiento quedaron expuestos, es posible que sea elegible para recibir un pago en efectivo fijo estimado de \$20.00.

Los Pagos en Efectivo pueden estar sujetos a un aumento prorrateado (un término legal que significa participación equitativa) del Fondo de la Conciliación en caso de que el monto de las Reclamaciones Válidas sea insuficiente para agotar todo el Fondo de la Conciliación. De manera similar, en caso de que el monto de las Reclamaciones Válidas agote el monto del Fondo de la Conciliación, el monto de los Pagos en Efectivo podrá reducirse de manera prorrateada según corresponda.

### **Monitoreo de cuentas financieras.**

Además de los Pagos en Efectivo, usted puede ser elegible para obtener un año de protección contra robo de identidad de tres agencias, monitoreo de crédito y al menos \$1,000,000 de seguro contra fraude/robo de identidad.

## **9. ¿A qué renuncio para recibir los beneficios de la Conciliación o permanecer en el Grupo de Demandantes?**

A menos que se excluya de la Conciliación, usted elige permanecer en el Grupo de Demandantes de la Conciliación. Si la Conciliación se aprueba y se torna definitiva, todas las órdenes y sentencias del Tribunal lo afectarán y serán legalmente vinculantes para usted. Usted no podrá iniciar o continuar una demanda, ni ser parte de ninguna otra demanda contra las Partes Exoneradas, por los asuntos legales de estas demandas que sean exonerados mediante la presente Conciliación. Los derechos específicos a los que usted renuncia se denominan “Reclamaciones Exoneradas”.

## **10. ¿Cuáles son las Reclamaciones Exoneradas?**

En la Sección XIII del Acuerdo de Conciliación se describen las Reclamaciones Exoneradas y la Exoneración de Responsabilidad, utilizando la terminología legal necesaria, por lo tanto, lea esas secciones detenidamente. El Acuerdo de Conciliación completo está disponible en [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com). Puede hablar sin costo alguno con los Abogados del Grupo de Demandantes que aparecen en la pregunta 14, o puede, por su cuenta y gasto, hablar con su propio abogado si tiene preguntas acerca de la Exoneración de Responsabilidad o las Reclamaciones Exoneradas y el significado del vocabulario del Acuerdo de Conciliación.

## **CÓMO OBTENER LOS BENEFICIOS DE LA CONCILIACIÓN**

## **11. ¿Cómo realizo una Reclamación de los Beneficios para Miembros del Grupo de Demandantes de la Conciliación?**

Debe presentar un Formulario de Reclamación válido y oportuno para recibir los Beneficios de la Conciliación descritos en la Pregunta 8. Su Formulario de Reclamación debe enviarse en línea en [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) a más tardar el **3 de junio de 2025**, o por correo al Administrador de la Conciliación a la dirección que figura en el Formulario de Reclamación, **con fecha de franqueo postal** a más tardar del **3 de junio de 2025**. Los Formularios de Reclamación también están disponibles en el

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Sitio web de la Conciliación en [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) o llamando al 1-888-899-8358 o escribiendo a esta dirección:

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## **12. ¿Cómo sé si reúno los requisitos para recibir un Pago en Efectivo de Nivel 1, Nivel 2 o Nivel 3?**

Si se le envió un Aviso de la Conciliación por correo electrónico o correo postal, en su Aviso se le indicaba si usted era elegible para recibir un Pago en Efectivo de Nivel 1, Nivel 2 o Nivel 3. También se le proporcionó un número de identificación único para ayudarle a presentar fácilmente su Reclamación en línea en el Sitio web de la Conciliación. Si aún tiene preguntas sobre su elegibilidad, visite [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) o llame al 1-888-899-8358.

## **13. ¿Qué sucede si mi información de contacto cambia después de que envió un Formulario de Reclamación?**

Si usted cambia su dirección postal o dirección de correo electrónico después de presentar un formulario de reclamación, es su responsabilidad comunicarle al administrador del acuerdo de conciliación su información actualizada. Deberá notificar al administrador del acuerdo de conciliación cualquier cambio por escrito a la siguiente dirección:

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## **14. ¿Cuándo recibiré mis Beneficios para Miembros del Grupo de Demandantes de la Conciliación?**

Si usted presenta un Formulario de Reclamación válido, los Beneficios para Miembros del Grupo de Demandantes de la Conciliación serán proporcionados por el Administrador de la Conciliación después de que la Conciliación sea aprobada por el Tribunal y se torne definitiva.

Puede tomar tiempo para que la Conciliación se apruebe y sea definitiva. Tenga paciencia y consulte la página [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) para obtener actualizaciones.

## **LOS ABOGADOS QUE LO REPRESENTAN**

### **15. ¿Tengo un abogado en esta demanda?**

Sí, el Tribunal ha designado a John Yanchunis de Morgan & Morgan Complex Litigation Group, E. Michelle Drake de Berger Montague PC, Doug McNamara de Cohen Milstein Sellers & Toll, PLLC, David Berger de Gibbs Law Group LLP, J. Gerard Stranch IV de Stranch, Jennings y Garvey, PLLC, Lynn Toops de Cohen & Malad LLP, James Pizzirusso de Hausfeld LLP, Gary M. Klinger de Milberg Coleman Bryson Phillips Grossman PLLC, y Jeff Ostrow de Kopelowitz Ostrow P.A. como Abogados del Grupo de Demandantes para representarlo a usted y al Grupo de Demandantes de la Conciliación a

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los fines de esta Conciliación. Usted puede contratar a su propio abogado por su cuenta y cargo si desea que otra persona que no sean los Abogados del Grupo de Demandantes lo represente en esta demanda.

## 16. ¿Cómo se les pagará a los Abogados del Grupo de Demandantes?

Los Abogados del Grupo de Demandantes presentarán una moción para solicitar al Tribunal que adjudique los honorarios de abogados y costos por un valor de \$45,000,000 del Fondo de la Conciliación. Buscarán solicitar el 30 % del Fondo de la Conciliación en concepto de honorarios de abogados y el reembolso de sus costos de litigio. Los Abogados del Grupo de Demandantes también solicitarán al Tribunal que apruebe Adjudicaciones por Servicio por un monto de \$10,000.00 cada una para aquellos Representantes del Grupo de Demandantes a quienes les hayan tomado declaración y \$3,500.00 cada uno para todos los demás Representantes del Grupo de Demandantes. Las Adjudicaciones por Servicio compensan los esfuerzos de los Representantes del Grupo de Demandantes destinados a las Demandas y a lograr la Conciliación. Si el Tribunal los concede, estos Honorarios de Abogados, Costos y Adjudicaciones por Servicio se pagarán del Fondo de la Conciliación. El Tribunal puede adjudicar montos menores que estos.

La Solicitud de los Abogados del Grupo de Demandantes para cubrir los honorarios de los abogados, los Costos y las Adjudicaciones por servicio estará disponible en el Sitio web de la Conciliación en [www.MGMDataSettlement.com](http://www.MGMDataSettlement.com).

## CÓMO OPTAR POR EXCLUIRSE DE LA CONCILIACIÓN

Si usted es Miembro del Grupo de Demandantes de la Conciliación y desea conservar cualquier derecho que pueda tener de iniciar o continuar una demanda contra las Partes Exoneradas por su cuenta y cargo, por las reclamaciones legales planteadas en estas demandas o exoneradas por las Reclamaciones Exoneradas, usted debe seguir los pasos para salir de la Conciliación. Esto se conoce cómo excluirse u “optar por no formar parte” de la Conciliación.

## 17. ¿Cómo excluirse de la Conciliación?

Para excluirse de la Conciliación, debe enviar una solicitud de exclusión por escrito que incluya lo siguiente:

- 1) Su nombre, dirección, número de teléfono y dirección de correo electrónico (según corresponda);
- 2) Su firma física personal; y
- 3) Una declaración en la que indique que desea ser excluido del Grupo de Demandantes de la Conciliación, como por ejemplo: “Por el presente solicito ser excluido del Grupo de Demandantes de la Conciliación en *In re MGM International Resorts Data Breach Litigation*, Caso N.º: 2:20-cv-00376-GMN-NJK y *Tanya Owens, et al. v. MGM Resorts International, et al.*, Caso N.º 2:23-cv-01480-FRB”.

La solicitud de exclusión debe **enviarse por correo** al Administrador de la Conciliación a la siguiente dirección, con **fecha de franqueo postal** a más tardar del **19 de mayo de 2025**:

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Portland, OR 97208-3020

**No puede optar por excluirse (salirse) por teléfono ni por correo electrónico.**

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No se permitirán las solicitudes de exclusión “masivas” o “en grupo” presentadas por terceros en nombre de “un conjunto masivo” o “un grupo” de Miembros del Grupo de Demandantes de la Conciliación o múltiples Miembros del Grupo de Demandantes cuando la exclusión no haya sido firmada por cada Miembro del Grupo de Demandantes de la Conciliación.

### **18. Si me excluyo, ¿puedo igualmente obtener algo de la Conciliación?**

No. Si se excluye en forma oportuna, no tendrá derecho a recibir ningún Beneficio para Miembros del Grupo de Demandantes de la Conciliación, pero no quedará vinculado ni por la Conciliación ni por ninguna sentencia que se dicte en estas demandas. Solamente puede obtener los Beneficios para Miembros del Grupo de Demandantes de la Conciliación si permanece en la Conciliación y presenta un Formulario de Reclamación válido y oportuno.

### **19. Si no me excluyo, ¿puedo iniciar acciones legales contra el Demandado por el mismo asunto en el futuro?**

No. A menos que se excluya en forma oportuna, usted renuncia al derecho de demandar individualmente a las Partes Exoneradas por las reclamaciones legales que la presente Conciliación resuelva y exonere en relación con los Incidentes de Datos. Usted debe excluirse de estas demandas para poder iniciar o continuar su propia demanda o ser parte de cualquier otra demanda contra el Demandado u otras Partes Exoneradas. Si usted tiene una demanda en trámite, hable de inmediato con el abogado que lo representa en ese caso.

## **OBJETAR LA CONCILIACIÓN**

### **20. ¿Cómo le comunico al Tribunal que objeto la Conciliación?**

Si usted es Miembro del Grupo de Demandantes de la Conciliación, puede informar al Tribunal que objeta la totalidad o alguna parte de la Conciliación.

Para objetar, debe enviar su objeción por escrito por correo postal de los EE. UU. al Secretario del Tribunal, los Abogados del Grupo de Demandantes, los Abogados del Demandado y el Administrador de la Conciliación con fecha de franqueo postal o enviado por servicio de mensajería privado (como Federal Express) a más tardar el **19 de mayo de 2025**, indicando que objeta la Conciliación en *In re MGM International Resorts Data Breach Litigation*, Caso n.º: 2:20-cv-00376-GMN-NJK y *Tanya Owens, et al. v. MGM Resorts International, et al.*, Caso n.º 2:23-cv-01480-FRB.

Para presentar una objeción, no puede excluirse del Grupo de Demandantes de la Conciliación. Su objeción debe incluir la siguiente información:

- 1) Su nombre completo, dirección, número de teléfono y dirección de correo electrónico (según corresponda);
- 2) Todos los motivos de la objeción, acompañados por cualquier fundamento jurídico que respalde tal objeción conocido por usted o sus abogados;
- 3) La cantidad de veces en que ha objetado una conciliación en una demanda colectiva en los cinco años anteriores a la fecha en que presenta la objeción, el título de cada caso en el que haya hecho tal objeción y una copia de las sentencias relacionadas o que se pronuncien sobre tales objeciones previas, emitidas por los tribunales de primera instancia y de apelación en cada uno de los casos mencionados;
- 4) La identidad de todos los abogados (si los hubiera) que lo representan, incluido cualquier abogado

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anterior o actual que pueda tener derecho a una compensación por cualquier motivo relacionado con la objeción a la Conciliación o a la solicitud de honorarios de abogados, costos y adjudicaciones por servicio;

- 5) La cantidad de veces en las que su abogado o estudio de abogados objetó una conciliación en una demanda colectiva dentro de los cinco años anteriores a la fecha de la objeción presentada, el título de cada caso en el que el abogado o el estudio de abogados haya hecho tal objeción y una copia de las sentencias relacionadas o que se pronuncien respecto de tales objeciones previas del abogado o del estudio de abogados que hubiesen sido emitidas por los tribunales de primera instancia y de apelación en cada uno de los casos mencionados en los que su abogado o estudio de abogados haya objetado una conciliación en una demanda colectiva dentro de los cinco años anteriores;
- 6) la identidad de todos los abogados (si los hubiera) que lo representan y que vayan a comparecer en la Audiencia de Aprobación Definitiva;
- 7) una lista de todas las personas que vayan a ser convocadas para testificar en la Audiencia de Aprobación Definitiva para respaldar la objeción (si las hubiera);
- 8) una declaración que confirme si usted tiene la intención de comparecer y/o testificar en la Audiencia de aprobación definitiva; y
- 9) Su firma como la persona que objeta (la firma del abogado no es suficiente).

Para ser oportuna, el aviso por escrito de una objeción, incluida toda la información anterior, debe enviarse por correo al Secretario del Tribunal, los Abogados del Grupo de Demandantes, los Abogados del Demandado y el Administrador de la Conciliación antes **del 19 de mayo de 2025**, a las siguientes direcciones:

TRIBUNAL	ABOGADOS DEL GRUPO DE DEMANDANTES
Clerk U.S. District Court Lloyd D. George Federal Courthouse 333 Las Vegas Blvd South Las Vegas, NV 89101	John A. Yanchunis Morgan & Morgan 201 North Franklin Street, 7th Floor <i>Tampa, FL 33602</i>  J. Gerard Stranch IV Stranch, Jennings, Garvey, PLLC 223 Rosa L. Parks Ave, Suite 200 Nashville, TN 32703
ABOGADOS DEL DEMANDADO	ADMINISTRADOR DE LA CONCILIACIÓN
Neil Gilman Hunton Andrews Kurth LLP 2200 Pennsylvania Avenue, NW Washington, DC 20037 ngilman@huntonak.com  Eric M. Roberts DLA Piper LLP (US) 444 West Lake Street, Suite 900 Chicago, IL 60606 eric.roberts@us.dlapiper.com	MGM Data Incident Litigation Settlement Administrator PO Box 3020 Portland, OR 97208-3020

Si no cumple con los requisitos para objetar establecidos más arriba, renunciará y perderá todos y cada uno de los derechos que pueda tener a comparecer por separado o a objetar la Conciliación, y estará obligado por todos los términos de la Conciliación y por todos los procedimientos, órdenes y sentencias de las demandas.

## 21. ¿Cuál es la diferencia entre presentar una objeción y pedir la exclusión?

Objetar es simplemente decirle al Tribunal que no le agrada algo sobre la Conciliación o sobre los honorarios de los abogados, costos o adjudicaciones solicitados. Usted solo puede objetar si permanece en el Grupo de Demandantes de la Conciliación (es decir, si usted no se excluye de la Conciliación). Excluirse de la Conciliación es decirle al Tribunal que usted no desea ser parte del Grupo de Demandantes ni de la Conciliación. Si se excluye, no puede objetar la Conciliación.

## LA AUDIENCIA DE APROBACIÓN DEFINITIVA

El Tribunal llevará a cabo una “Audiencia de Aprobación Definitiva” para decidir si aprobará la Conciliación. Puede asistir y pedir la palabra si usted presenta una objeción antes de la fecha límite, pero no es obligatorio que lo haga.

## 22. ¿Cuándo y dónde decidirá el Tribunal si aprueba la Conciliación?

El Tribunal llevará a cabo una Audiencia de Aprobación Definitiva el **18 de junio de 2025, a las 9:00 a.m.** ante la Honorable Gloria M. Navarro, II, en la Sala 7D del Tribunal Federal Lloyd D. George, 333 Las Vegas Blvd. South, Las Vegas, Nevada 89101. En esta audiencia, el Tribunal evaluará si la Conciliación es justa, razonable y adecuada, y decidirá si aprueba la Conciliación y la solicitud de honorarios de abogados, costos y adjudicaciones por servicio efectuada por los Abogados del Grupo de Demandantes de la Conciliación.

Si hay objeciones que se presentaron antes de la fecha límite, el Tribunal las considerará. Si presenta una objeción oportuna, y desea declarar en la audiencia, el Tribunal también lo escuchará a usted o a su abogado declarar en la audiencia, si así lo solicita.

**Nota:** La fecha y la hora de la Audiencia de Aprobación Definitiva están sujetas a cambios sin previo aviso al grupo demandante del Acuerdo. El Tribunal también puede decidir celebrar la audiencia a través de Zoom o por teléfono. Debe consultar el Sitio web de la Conciliación [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) para confirmar que la fecha de la Audiencia de Aprobación Definitiva no haya cambiado.

## 23. ¿Tengo que asistir a la Audiencia de Aprobación Definitiva?

No. Los Abogados del Grupo de Demandantes responderán todas las preguntas que el Tribunal pueda tener. Sin embargo, puede asistir por su cuenta si lo desea. Si presenta una objeción, no necesitará asistir a la Audiencia de Aprobación Definitiva para hablar sobre ello. Siempre que presente su objeción por escrito antes del plazo límite, el Tribunal la considerará.

## 24. ¿Puedo declarar en la Audiencia de Aprobación Definitiva?

Sí, siempre y cuando no se excluya y presente una objeción por escrito en forma oportuna en la cual solicite hablar en la audiencia, podrá participar y hablar en su nombre en la Audiencia de Aprobación Definitiva (pero no está obligado a hacerlo). Esto se conoce como comparecencia. Asimismo, usted puede hacer que su abogado haga uso de la palabra en su nombre, pero usted deberá pagar el abogado a su costa.

Si usted desea comparecer, o si desea que su propio abogado en lugar de los Abogados del Grupo de Demandantes hable en su nombre en la Audiencia, debe seguir todos los procedimientos para objetar la

Conciliación que se indican en la Pregunta 20 anterior (e incluir específicamente una declaración para indicar si usted y su abogado comparecerán en la Audiencia de Aprobación Definitiva).

## **SI DECIDE NO HACER NADA**

### **25. ¿Qué sucede si no actúo?**

Si usted es un Miembro del Grupo de Demandantes y no hace nada, no recibirá ningún Beneficio para Miembros del Grupo de Demandantes de la Conciliación y renunciará a los derechos explicados en la sección “Exclusión de la Conciliación” de este Aviso, incluido su derecho a iniciar o continuar una demanda, o ser parte de cualquier otra demanda contra cualquiera de las Partes Exoneradas, respecto de los asuntos legales de esta demanda que son exonerados por la Conciliación en relación con los Incidentes de Datos.

## **CÓMO OBTENER MÁS INFORMACIÓN**

### **26. ¿Cómo puedo obtener más información?**

Este Aviso resume la Conciliación. El Acuerdo de Conciliación proporciona detalles completos sobre la Conciliación. El Acuerdo de Conciliación y otros documentos relacionados están disponibles en [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com). Puede obtener información adicional en [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com), llamando al número gratuito 1-888-899-8358 o escribiendo a esta dirección:

*MGM Data Incident Litigation*  
Settlement Administrator  
PO Box 3020  
Portland, OR 97208-3020

**NO LLAME POR TELÉFONO AL TRIBUNAL O  
AL SECRETARIO DEL TRIBUNAL EN RELACIÓN CON ESTE AVISO.**

¿Tiene alguna pregunta? Visite [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com) o llame al 1-888-899-8358

# Attachment 11

Debe tener fecha de franqueo postal o se debe enviar en línea con fecha A MÁS TARDAR del 3 de junio de 2025

Demanda por Incidentes de Datos de MGM  
Administrador de la Conciliación  
P.O. Box 3020  
Portland, OR 97208-3020  
MGMDDataSettlement.com

## Formulario de Reclamación relativo a la demanda por Incidentes de Datos de MGM

### BENEFICIOS DE LA CONCILIACIÓN: ¿QUÉ OBTENDRÁ?

Si usted es una persona en los Estados Unidos cuya Información Privada se vio comprometida en alguno de los Incidentes de Datos de MGM que ocurrieron el 10 de julio de 2019 y/o el 7 de septiembre de 2023, puede presentar una Reclamación.

La forma más fácil de presentar una Reclamación es en línea en [MGMDDataSettlement.com](http://MGMDDataSettlement.com), o puede completar y enviar por correo este Formulario de Reclamación a la dirección postal que se indica arriba.

#### Puede presentar una Reclamación para recibir uno o varios de estos Beneficios para Miembros del Grupo de Demandantes de la Conciliación:

- 1. Monitoreo de cuentas financieras:** Utilice el Formulario de Reclamación para solicitar el Monitoreo de cuentas financieras gratuito.
- 2. Pago en efectivo por pérdidas documentadas:** Si incurrió en pérdidas financieras por fraude o robo de identidad que cree que son bastante atribuibles a los Incidentes de Datos, se le pueden reembolsar hasta \$15,000.00. Debe presentar documentos que respalden su Reclamación.
- 3. Pago en efectivo por niveles.** Si usted ha sido identificado como Miembro del Grupo de Demandantes de la Conciliación de Nivel 1, Nivel 2 o Nivel 3, también es elegible para recibir un pago fijo en efectivo. Los tres Niveles de pagos en efectivo se enumeran a continuación.
  - **Pago en efectivo de nivel 1:** si su número de Seguro Social o número de identificación militar quedó expuesto, puede ser elegible para recibir un pago en efectivo fijo estimado de \$75.00.
  - **Pago en efectivo de nivel 2:** si su número de pasaporte o número de licencia de conducir quedó expuesto, puede ser elegible para recibir un pago en efectivo fijo estimado de \$50.00.
  - **Pago en efectivo de nivel 3:** si su nombre, dirección y/o fecha de nacimiento quedaron expuestos, puede ser elegible para recibir un pago en efectivo fijo estimado de \$20.00.

La compensación monetaria de esta Conciliación está disponible en virtud de la Opción 2, Pago en efectivo por pérdida documentada, y la Opción 3, Pago en efectivo por niveles.

Todos los Miembros del Grupo de Demandantes de la Conciliación son elegibles para presentar una Reclamación de Monitoreo de cuentas financieras y un Pago en efectivo por pérdidas documentadas, pero no todos los Miembros del Grupo de Demandantes de la Conciliación son elegibles para presentar una Reclamación de Pago en efectivo por niveles.

Las Reclamaciones deben presentarse en línea o enviarse con sello postal fechado a más tardar el 3 de junio de 2025. Utilice la dirección del sitio web a continuación para enviar Reclamaciones en línea o la dirección física anterior para enviar Reclamaciones por correo.

*Tenga en cuenta lo siguiente: El Administrador de la Conciliación puede comunicarse con usted para solicitar documentos adicionales para procesar su Reclamación. Sus montos de Pago en efectivo pueden aumentar o disminuir según la cantidad y el monto de Reclamaciones Válidas presentadas.*

Para obtener más información e instrucciones completas, visite [www.MGMDDataSettlement.com](http://www.MGMDDataSettlement.com).

**Los Beneficios para Miembros del Grupo de Demandantes de la Conciliación se distribuirán solo después de que el Tribunal apruebe la Conciliación y esta se torne definitiva.**

Si se aprueba la Conciliación y su Reclamación de Pago en efectivo es aceptada, recibirá un correo electrónico a la dirección de correo electrónico que indique más adelante cuando se le pide que seleccione cómo le gustaría que se le pagara. Puede recibir su Pago en efectivo a través de una variedad de opciones digitales, como tarjeta de débito digital o PayPal, o puede elegir recibir un cheque.

Si se aprueba el Acuerdo y usted presenta una Reclamación válida para el Monitoreo de cuentas financieras, recibirá un correo electrónico con un código e instrucciones de activación en la dirección de correo electrónico que proporcione a continuación.

### Su información

*Utilizaremos esta información para comunicarnos con usted y procesar su Reclamación. No se utilizará para ningún otro fin. Si cambia alguno de los siguientes datos, deberá notificar lo antes posible al Administrador de la Conciliación.*

Nombre:	Inicial del segundo nombre:	Apellido:
<input type="text"/>	<input type="text"/>	<input type="text"/>
Nombre(s) alternativo(s) (si corresponde):		
<input type="text"/>		
Identificación única (como aparece en el aviso que recibió):		
<input type="text"/>		
Dirección (obligatorio):		
<input type="text"/>		
Ciudad:	Estado:	Código postal:
<input type="text"/>	<input type="text"/>	<input type="text"/>
Número telefónico:		
<input type="text"/> - <input type="text"/> - <input type="text"/>		
Dirección de correo electrónico:		
<input type="text"/>		
Año de nacimiento:		
<input type="text"/>		

### Monitoreo de cuentas financieras

*Puede ser elegible para recibir servicios gratuitos de monitoreo de cuentas financieras.*

Puede optar por presentar una Reclamación para el Monitoreo de cuentas financieras, que incluye la protección contra robo de identidad y el monitoreo de crédito. Este beneficio incluye un año de Cyex Identity Defense Total con monitoreo de tres agencias y al menos \$1,000,000.00 de seguro contra fraude/robo de identidad. El período de un año comenzará cuando utilice su código para activar el Monitoreo de cuentas financieras.

*Seleccione la Opción 1 si desea recibir el Monitoreo de cuentas financieras para el cual es elegible.*

**Opción 1, Monitoreo de cuentas financieras:** Quiero recibir el Monitoreo de cuentas financieras gratuito.

*Si selecciona esta opción, se le enviarán instrucciones y un código de activación a su dirección de correo electrónico o domicilio después de que la Conciliación sea definitiva. No se le venderá ningún servicio extra al inscribirse ni se le pedirá que envíe ningún pago por estos servicios ahora ni en el futuro.*

### Pago en efectivo por pérdidas documentadas: Dinero que perdió o gastó

Si incurrió en pérdidas financieras por fraude o robo de identidad que cree que son bastante atribuibles a alguno de los Incidentes de Datos y no se le ha reembolsado ese dinero, puede recibir un reembolso de hasta \$15,000.00.

Es importante que envíe documentos que muestren lo que sucedió y cuánto perdió o gastó para que se le pueda reembolsar el dinero.

*Seleccione la Opción 2 si desea reclamar el reembolso de Gastos o pérdidas de bolsillo.*

**Opción 2, Pago en efectivo por pérdidas documentadas:** He experimentado una pérdida de gastos de bolsillo documentada relacionada con los Incidentes de Datos de MGM. Proporciono la información y documentación necesarias.

Para obtener más detalles sobre cómo funcionan los Pagos en efectivo, visite **MGMDDataSettlement.com** o llame al número gratuito 1-888-899-8358. Encontrará más información sobre los tipos de pérdidas que se le pueden devolver, qué documentos necesita adjuntar y cómo el Administrador de la Conciliación decide si aprueba su pago. *Al rellenar las casillas en la página siguiente de este formulario, certifica que el dinero que gastó no está relacionado con otras violaciones de seguridad de los datos.*

**Puede hacer tantas copias de las páginas del Formulario de Reclamación como sea necesario para enumerar todos sus gastos. Si necesita más espacio para enumerar sus pérdidas, envíe páginas adicionales de este Formulario de Reclamación para proporcionar esa información.**

Tipo de pérdida	Fecha aproximada de la pérdida	Monto de la pérdida
Costos por bloqueo o desbloqueo de su informe de crédito a partir del 7/10/2019	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="margin: 0 5px;">MM</div> <div style="margin: 0 5px;">DD</div> <div style="margin: 0 5px;">AAAA</div> </div>	\$ <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">•</span> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Descripción de la pérdida o el dinero gastado y documentos de respaldo</b>                      (Identifique lo que está adjuntando y por qué está relacionado con los Incidentes de Datos)  <i>Ejemplos: Recibos, avisos o estados de cuenta que reflejen el pago de un bloqueo de crédito.</i></p> <hr/> <hr/> <hr/> <hr/>		
Monitoreo de crédito o protección contra el robo de identidad comprados entre el 7/10/2019 y la fecha de presentación de su reclamación	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="margin: 0 5px;">MM</div> <div style="margin: 0 5px;">DD</div> <div style="margin: 0 5px;">AAAA</div> </div>	\$ <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">•</span> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Descripción de la pérdida o el dinero gastado y documentos de respaldo</b>                      (Identifique lo que está adjuntando y por qué está relacionado con los Incidentes de Datos)  <i>Ejemplos: Recibos o estados de cuenta de servicios de monitoreo de crédito.</i></p> <hr/> <hr/> <hr/> <hr/>		
Costos, gastos y pérdidas debido a robo de identidad, fraude o uso indebido de su información personal a partir del 7/10/2019, que usted crea que son razonablemente atribuibles al Incidente de Datos.	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="margin: 0 5px;">MM</div> <div style="margin: 0 5px;">DD</div> <div style="margin: 0 5px;">AAAA</div> </div>	\$ <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">•</span> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Descripción de la pérdida o el dinero gastado y documentos de respaldo</b>                      (Identifique lo que está adjuntando y por qué está relacionado con los Incidentes de Datos)  <i>Ejemplos: estado de cuenta con cargos no autorizados resaltados, informes policiales, documentos del IRS, informes de robo de identidad de la Comisión Federal de Comercio (Federal Trade Commission, FTC), cartas que se niegan a reembolsar cargos fraudulentos, servicios de monitoreo de crédito que usted compró</i></p> <hr/> <hr/> <hr/> <hr/>		

Tipo de pérdida	Fecha aproximada de la pérdida	Monto de la pérdida
Honorarios profesionales pagados para resolver el robo de identidad a partir del 7/10/2019 y que usted crea que son razonablemente atribuibles a los Incidentes de Datos.	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="margin-left: 10px;">MM      DD      AAAA</div> </div>	\$ <div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="margin: 0 5px;">•</div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Descripción de la pérdida o el dinero gastado y documentos de respaldo</b>                      (Identifique lo que está adjuntando y por qué está relacionado con los Incidentes de Datos)  <i>Ejemplos: Recibos, cuentas y facturas de contadores, abogados u otros.</i></p> <hr/> <hr/> <hr/> <hr/>		
Otros gastos como gastos de notario, fax, franqueo, fotocopias, millaje y cargos telefónicos de larga distancia relacionados con los Incidentes de Datos.	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <span style="margin: 0 5px;">-</span> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="margin-left: 10px;">MM      DD      AAAA</div> </div>	\$ <div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px; margin-right: 5px;"></div> <div style="margin: 0 5px;">•</div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>
<p><b>Descripción de la pérdida o el dinero gastado y documentos de respaldo</b>                      (Identifique lo que está adjuntando y por qué está relacionado con los Incidentes de Datos)  <i>Ejemplos: Facturas telefónicas, recibos, lista detallada de lugares a los que viajó (es decir, estación de policía, oficina del Servicio de Impuestos Internos [Internal Revenue Service, IRS]), razón por la que viajó allí (es decir, informe policial o carta del IRS con respecto a la declaración de impuestos falsificada) y número de millas que viajó</i></p> <hr/> <hr/> <hr/> <hr/>		

### Pago en efectivo por niveles

Si ha sido identificado como Miembro del Grupo de Demandantes de la Conciliación de Nivel 1, Nivel 2 o Nivel 3, es elegible para recibir un pago fijo en efectivo. Los tres Niveles de pagos en efectivo se enumeran a continuación

**Pago en efectivo de nivel 1:** si su número de Seguro Social quedó expuesto, puede ser elegible para recibir un pago en efectivo fijo estimado de \$75.00.

**Pago en efectivo de nivel 2:** si su número de pasaporte o número de licencia de conducir quedó expuesto, puede ser elegible para recibir un pago en efectivo fijo estimado de \$50.00.

**Pago en efectivo de nivel 3:** si su nombre, dirección y/o fecha de nacimiento quedaron expuestos, puede ser elegible para recibir un pago en efectivo fijo estimado de \$20.00.

Seleccione la Opción 3 si desea recibir el Pago en efectivo por niveles para el cual es elegible.

**Opción 3: Pago en efectivo por niveles: Soy elegible para recibir uno de los Pagos en efectivo por niveles según el Aviso que recibí, y deseo reclamar el Pago en efectivo por niveles para el que soy elegible.**

*Si selecciona esta opción, revisaremos los registros de MGM para confirmar su elegibilidad. Si usted no es un Miembro del Grupo de Demandantes de la Conciliación de Nivel 1, Nivel 2 o Nivel 3, no recibirá un Pago en efectivo por niveles. Solo las personas cuyo Aviso las haya identificado como elegibles podrán reclamar esta opción.*

### Firma

Declaro en virtud de las leyes de los Estados Unidos que la información que he suministrado en este Formulario y cualquier copia de los documentos que estoy enviando para respaldar mi reclamación son verdaderas y correctas a mi leal saber y entender.

Comprendo que es posible que el Administrador de la Conciliación me pida que proporcione más información antes de que se complete mi reclamación.

Nombre, en letra de imprenta

Firma

Fecha:   -   -

MM                  DD                  AAAA

# Attachment 12



## List of Opt-Outs

***MGM International Resorts Data Breach Litigation***

Number	First Name	Middle Name	Last Name
1	Arnold		Abraham
2	Lydia	Barroso	Anderson
3	Patricia	A	Anglin
4	Zachary	L	Barbour
5	David		Barnes
6	Max	Jacob	Blumen
7	Michael		Boyd
8	Joshua		Burns
9	Christina		Camerlingo
10	Kevin		Clines
11	Archie	W	Colburn
12	Jessica	Taleen	Coleman
13	Alfredia		Conner
14	Michael	Terrance	Conway
15	Barbara		Dement
16	Kevin		Dierker
17	Kimberly		Erickson
18	Julio		Ferrer
19	Robert	K	Flowers
20	Trent		Folse
21	Lawrence	W	Freiman
22	Anne	Marie	Gault
23	Ricardo		Gonzalez
24	Richard		Hartley
25	Mary		Hartley
26	Marilyn		Hawranik
27	Taylor		Hill
28	Michael		Holtgrewe
29	Kyle	T	Hunter
30	Katherine		Johns
31	Darryl		Johns
32	Jennifer	M	Johnson
33	Kevin		Jones
34	David		Kamsler
35	Jason	David	Knight
36	Vasily		Korovkin
37	Tawn		Kreider
38	Steven		Kulakowski
39	Robert	G	Lilburne



## List of Opt-Outs

***MGM International Resorts Data Breach Litigation***

Number	First Name	Middle Name	Last Name
40	Michael		Lin
41	Chris		Linder
42	Kenneth		Ludwig
43	Peter		Lum
44	Yovinka	Fatima	Mallo
45	Roland		Manalo
46	Louis	wiffe	Marshall
47	Ashley		Maylevi
48	John	Andrew	McClary II
49	Patsy	J	Melatti
50	Anwar	E	Monroy
51	Kimberly		Moon
52	Kerushen		Morgan
53	Sharon		Moser
54	Tony		Moser
55	Karen	S	Nelson
56	Matthew	C	North
57	Moon Ho		Park
58	Steven	R	Penn
59	Eddie	Jack	Pool
60	Kathleen	Ann	Powell
61	Warren	W	Prince
62	Jayna		Querin
63	Travis		Radtke
64	Shoaib		Razzaq
65	Jason	E	Rist
66	David		Rosenstiel
67	Al		Russ
68	Patrick		Russo
69	Irvin		Salgado
70	Heath		Schweitzer
71	Robert	F	Severino
72	Rose		Severino
73	Grace	D	Solomon
74	Chad		Sthele
75	Nathan		Stoll
76	Erick		Suarez
77	Annette		Szawan
78	Richard		Szucs

**List of Opt-Outs*****MGM International Resorts Data Breach Litigation***

<b>Number</b>	<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>
79	Andrew		Tedesco
80	Alan		Thierfeldt
81	Matthew		Tollefsrud
82	Pat		Tran
83	Ellen	S	Wakefield
84	Shawn	N	Warnecke
85	Neil	D	Weiser
86	Shane		Whitley
87	Dara		Wilson
88	Jacqueline		Wilson
89	Tyler		Winkelmann
90	Teeresa		Wood
91	Kristopher		Young
92	Aleksei		Zubkov

# EXHIBIT D

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION  
  
This Document Relates To: All actions.

Case No.: 2:20-cv-00376-GMN

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.  
  
Plaintiffs,  
  
v.  
  
MGM RESORTS INTERNATIONAL  
  
Defendant.

Master File No. 2:23-cv-01480-GMN  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**DECLARATION OF BRIAN T. FITZPATRICK**

I, Brian T. Fitzpatrick, declare as follows:

1. I submit this declaration in support of Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys’ Fees, Costs, and Service Awards. Unless otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

**BACKGROUND AND QUALIFICATIONS**

2. I am the Milton R. Underwood Chair in Free Enterprise and Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O’Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1. I speak only for myself and not for Vanderbilt.

1           3.       My teaching and research at Vanderbilt have focused on class action litigation. I  
2 teach the Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have  
3 published a number of articles on class action litigation in such journals as the University of  
4 Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the  
5 Fordham Law Review, the NYU Journal of Law & Business, and the University of Arizona Law  
6 Review. My work has been cited by numerous courts, scholars, and media outlets such as the New  
7 York Times, USA Today, and Wall Street Journal. I have also been invited to speak at symposia  
8 and other events about class action litigation, such as the ABA National Institutes on Class Actions  
9 in 2011, 2015, 2016, 2017, 2019, 2023, and 2024; and the ABA Annual Meeting in 2012. Since  
10 2010, I have also served on the Executive Committee of the Litigation Practice Group of the  
11 Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of  
12 the American Law Institute. In 2021, I became the co-editor of THE CAMBRIDGE HANDBOOK OF  
13 CLASS ACTIONS: AN INTERNATIONAL SURVEY (with Randall Thomas).

14           4.       In December 2010, I published an article in the Journal of Empirical Legal Studies  
15 entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L.  
16 Stud. 811 (2010) (hereinafter “Empirical Study”). This article is still what I believe to be the most  
17 comprehensive examination of federal class action settlements and attorneys’ fees that has ever been  
18 published. Unlike other studies of class actions, which have been confined to one subject matter or  
19 have been based on samples of cases that were not intended to be representative of the whole (such  
20 as settlements approved in published opinions), my study attempted to examine *every* class action  
21 settlement approved by a federal court over a two-year period (2006-2007). *See id.* at 812-13. As  
22 such, not only is my study an unbiased sample of settlements, but the number of settlements included  
23 in my study is also several times the number of settlements per year that has been identified in any  
24 other empirical study of class action settlements: over this two-year period, I found 688 settlements,  
25 including 169 from the Ninth Circuit alone. *See id.* at 817. I presented the findings of my study at  
26 the Conference on Empirical Legal Studies at the University of Southern California School of Law  
27 in 2009, at the Meeting of the Midwestern Law and Economics Association at the University of  
28 Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. Since then,

1 this study has been relied upon regularly by a number of courts, scholars, and testifying experts.<sup>1</sup> I

2

3 <sup>1</sup> See, e.g., *In re Stericycle Sec. Litig.*, 35 F.4th 555, 561 (7th Cir. 2022) (relying on article  
 4 to assess fees); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (same); *In*  
 5 *re Ranbaxy Generic Drug Application Antitrust Litig.*, 2022 WL 4329646, at \*5 (D. Mass., Sep. 19,  
 6 2022) (same); *de la Cruz v. Manhattan Parking Group*, 2022 WL 3155399, at \*4 (S.D.N.Y., Aug.  
 7 8, 2022) (same); *Kukorinis v. Walmart*, 2021 WL 8892812, at \*4 (S.D. Fla., Sep. 21, 2021) (same);  
 8 *Kuhn v. Mayo Clinic Jacksonville*, No. 3:19-cv-453-MMH-MCR, 2021 WL 1207878, at \*12-13  
 9 (M.D. Fla. Mar. 30, 2021) (same); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD  
 10 2262 (NRB), 2020 WL 6891417, at \*3 (S.D.N.Y. Nov. 24, 2020) (same); *Shah v. Zimmer Biomet*  
 11 *Holdings, Inc.*, No. 3:16-cv-815-PPS-MGG, 2020 WL 5627171, at \*10 (N.D. Ind. Sept. 18, 2020)  
 12 (same); *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at \*5 (S.D.N.Y.  
 13 June 16, 2020) (same); *In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 16-cv-05541-JST,  
 14 2020 WL 1786159, at \*11 (N.D. Cal. Apr. 7, 2020) (same); *Arkansas Teacher Ret. Sys. v. State St.*  
 15 *Bank & Trust Co.*, No. CV 11-10230-MLW, 2020 WL 949885, 2020 WL 949885, at \*52 (D. Mass.  
 16 Feb. 27, 2020), *appeal dismissed sub nom. Arkansas Tchr. Ret. Sys. v. State St. Corp.*, No. 20-1365,  
 17 2020 WL 5793216 (1st Cir. Sept. 3, 2020) (same); *In re Equifax Inc. Customer Data Sec. Breach*  
 18 *Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at \*34 (N.D. Ga. Jan. 13, 2020) (same); *In re*  
 19 *Transpacific Passenger Air Transp. Antitrust Litig.*, No. 3:07-cv-05634-CRB, 2019 WL 6327363,  
 20 at \*4-5 (N.D. Cal. Nov. 26, 2019) (same); *Espinal v. Victor's Cafe 52nd St., Inc.*, No. 16-CV-8057  
 21 (VEC), 2019 WL 5425475, at \*2 (S.D.N.Y. Oct. 23, 2019) (same); *James v. China Grill Mgmt.,*  
 22 *Inc.*, No. 18 Civ. 455 (LGS), 2019 WL 1915298, at \*2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v.*  
 23 *Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund*  
 24 *v. Bank of Am. Corp.*, No. 14-CV-7126 (JMF), 2018 WL 6250657, at \*2 (S.D.N.Y. Nov. 29, 2018)  
 25 (same); *Rodman v. Safeway Inc.*, No. 11-cv-03003-JST, 2018 WL 4030558, at \*5 (N.D. Cal. Aug.  
 26 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C.  
 27 2018) (same); *Hillson v. Kelly Servs. Inc.*, No. 2:15-cv-10803, 2017 WL 3446596, at \*4 (E.D. Mich.  
 28 Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, No. 14-1374, 2017 WL 2884535, at  
 \*23, \*27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258  
 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, No.  
 15-3509, 2017 WL 1021025, at \*9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps*  
*Antitrust Litig.*, No. 13MD2476 (DLC), 2016 WL 2731524, at \*17 (S.D.N.Y. Apr. 26, 2016) (same);  
*Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v.*  
*Jewell*, 167 F. Supp 3d 1217, 1246 (D.N.M. 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*,  
 No. 3:07-cv-5944 JST, 2016 WL 721680, at \*42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool*  
*Products Distribution Mkt. Antitrust Litig.*, No. MDL 2328, 2015 WL 4528880, at \*19-20 (E.D. La.  
 July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, 2015 WL  
 2147679, at \*2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*,  
 No. 11-cv-4462, 2015 WL 1399367, at \*3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One*  
*Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 797 (N.D. Ill. 2015) (same); *In re Neurontin*  
*Marketing and Sales Practices Litig.*, 58 F.Supp.3d 167, 172 (D. Mass. 2014) (same); *Tennille v.*  
*W. Union Co.*, No. 09-cv-00938-JLK-KMT, 2014 WL 5394624, at \*4 (D. Colo. Oct. 15, 2014)  
 (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014)  
 (same); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 991 F. Supp.  
 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Fed. Nat'l Mortg. Association Sec., Derivative,*  
*and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Prod. Liab. Litig.*,  
 No. 11-1546, 2013 WL 5295707, at \*3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers*  
*Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Se. Milk Antitrust*  
*Litig.*, No. 2:07-CV 208, 2013 WL 2155387, at \*2 (E.D. Tenn., May 17, 2013) (same); *In re*  
*Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D.  
 Tex. 2012) (same); *Pavlik v. FDIC*, No. 10 C 816, 2011 WL 5184445, at \*4 (N.D. Ill. Nov. 1, 2011)  
 (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In*  
*re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill.



1 allege violations of various state laws. The first lawsuit was filed in 2020 for the 2019 data breach,  
2 and the defendant's motion to dismiss was denied in part, following which the parties engaged in  
3 extensive discovery. A series of related cases were filed and consolidated in 2023 following the  
4 2023 data incident. With litigation involving both data incidents pending, counsel representing the  
5 plaintiffs and putative classes for both data incidents agreed to mediate with defendant. In addition  
6 to formal discovery for the 2019 data incident, detailed informal discovery ensued to allow the  
7 parties to prepare for mediation. The mediation was cancelled, but the plaintiffs in both cases then  
8 decided to work together and collectively pursue a global settlement. The parties mediated but did  
9 not reach agreement that day. They continued negotiating over the next few weeks and reached  
10 agreement to terms for a class-wide settlement covering both data incidents. A settlement class was  
11 certified and the settlement preliminarily approved on January 22, 2025. The parties are now  
12 seeking final approval and class counsel are seeking a reasonable attorneys' fee award.

13 8. The class includes, with minor exceptions, "all persons in the United States whose  
14 Private Information was accessed during the Data Incidents." Settlement Agreement ¶ 76. If  
15 granted final approval, the settlement will require the defendant to pay the class \$45 million in cash.  
16 *See id.* at ¶ 88. After deducting attorneys' fees and litigation costs, settlement administration costs,  
17 and service awards to the representative plaintiffs, these monies will be distributed to class members  
18 in the follow manner: class members who submit claims for documented losses may recover up to  
19 \$15,000.00. *See id.* at ¶ 92. Eligible class member may also claim tiered cash payment based on  
20 which tier of sensitivity their data falls into. *Id.* Finally, all class member may claim identity theft  
21 protection and credit monitoring. *Id.* The cash payments are subject to *pro rata* increase or decrease  
22 depending on the amount of valid claims. *Id.* The entire settlement fund will be exhausted, and none  
23 of this money can revert back to the defendant; if any monies remain from uncashed checks, it will  
24 be distributed *cy pres* to a charity that works toward protecting electronic data privacy. *See id.* at ¶  
25 128. In exchange, the class will release the defendant from claims that "result from, arise out of,  
26 are based upon, or relate to (a) the Data Incidents; (b) the Actions; (c) the information at issue in the  
27 Data Incidents or the alleged value thereof; or (d) any of the alleged violations of laws or regulations  
28 cited in the Complaints". *Id.* at ¶ 129.

1           9.       Class counsel are now seeking a fee of 30% of the \$45 million cash settlement fund.  
2 For the reasons I state below, it is my opinion that this request is reasonable in light of the empirical  
3 and economic research on class actions.

4                                   **ASSESSMENT OF THE REQUEST FOR ATTORNEYS' FEES**

5           10.       This settlement is a so-called “common fund” settlement where attorneys for the  
6 plaintiffs have created a settlement fund for the benefit of class members. When fee-shifting is  
7 inapplicable in such cases (as it is here), courts award fees from class members’ proceeds pursuant  
8 to the common law of unjust enrichment. This is sometimes called the “common fund” or “common  
9 benefit” doctrine.

10                                   **Percentage versus Lodestar Method**

11           11.       At one time, courts that awarded fees in such cases did so using the familiar lodestar  
12 approach. *See* Fitzpatrick, *Class Action Lawyers, supra*, at 2051. Under this approach, courts  
13 awarded counsel a fee equal to the number of hours they worked on the case (to the extent the hours  
14 were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that  
15 courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the  
16 lodestar approach fell out of favor, largely for two reasons. First, courts came to dislike the lodestar  
17 method because it was difficult to calculate; courts had to review and analyze voluminous time  
18 records and related materials. Second—and more importantly—courts came to dislike the lodestar  
19 method because it did not align the interests of counsel with the interests of their clients—to wit,  
20 counsel’s recovery did not depend on how much was recovered, but rather on how many hours were  
21 spent on the case. *See id.* at 2051-52. According to my empirical study, the lodestar method is now  
22 used to award fees in only a small percentage of class actions, usually those where fees are paid  
23 pursuant to a fee-shifting statute or those where the relief is injunctive in nature and the value of the  
24 injunction cannot be reliably calculated. *See* Fitzpatrick, *Empirical Study, supra*, at 832 (finding  
25 the lodestar method used in only 12% of settlements). The other large-scale academic studies of  
26 fees agree. *See, e.g.,* Theodore Eisenberg et al., *Attorneys’ Fees in Class Actions: 2009-2013*, 92  
27 N.Y.U. Law Review 937, 945 (2017) (hereinafter “Eisenberg-Miller 2017”) (finding the lodestar  
28 method used only 6.29% of the time from 2009-2013, down from 13.6% from 1993-2002 and 9.6%

1 from 2003-2008).

2 12. The more widely utilized method of calculating attorneys' fees today is known as the  
3 "percentage" method. Under this approach, courts select a percentage that they believe is fair to  
4 counsel, multiply the settlement amount by that percentage, and then award counsel the resulting  
5 amount. The percentage approach became popular precisely because it corrected the deficiencies  
6 of the lodestar method: it is less cumbersome to calculate, and, more importantly, it aligns the  
7 interests of counsel with the interests of their clients because the greater the recovery, the more  
8 counsel receives. *See* Fitzpatrick, *Class Action Lawyers*, *supra*, at 2052.

9 13. In the Ninth Circuit, district courts have the discretion to use either the lodestar  
10 method or the percentage method. *See, e.g., In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d  
11 539, 570 (9th Cir. 2019) (en banc) ("No presumption in favor of either the percentage or the lodestar  
12 method encumbers the district court's discretion to choose one or the other."). In light of the well-  
13 recognized disadvantages of the lodestar method and the well-recognized advantages of the  
14 percentage method, it is my opinion that courts should generally use the percentage method when  
15 enough of the value of the settlement can be reliably calculated. It is my opinion that courts should  
16 use the lodestar method only where the value of the settlement cannot be reliably calculated (and  
17 the percentage method is therefore not feasible) or a fee-shifting statute requiring the lodestar  
18 method is applicable. This is not just my opinion. It is the consensus opinion of class action  
19 scholars. *See* American Law Institute, *Principles of the Law of Aggregate Litigation* § 3.13(b)  
20 (2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund  
21 cases."). In this case, the settlement consists entirely of cash which can obviously be easily valued.  
22 Thus, in my opinion, the Court should use the percentage method, and I will proceed under that  
23 method here.

#### 24 **Percentage Method**

25 14. When selecting the percentage, the Ninth Circuit instructs courts to begin with a  
26 "benchmark" percentage of 25%, *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.  
27 1998), and then to adjust the percentage higher or lower based on at least eight different factors:

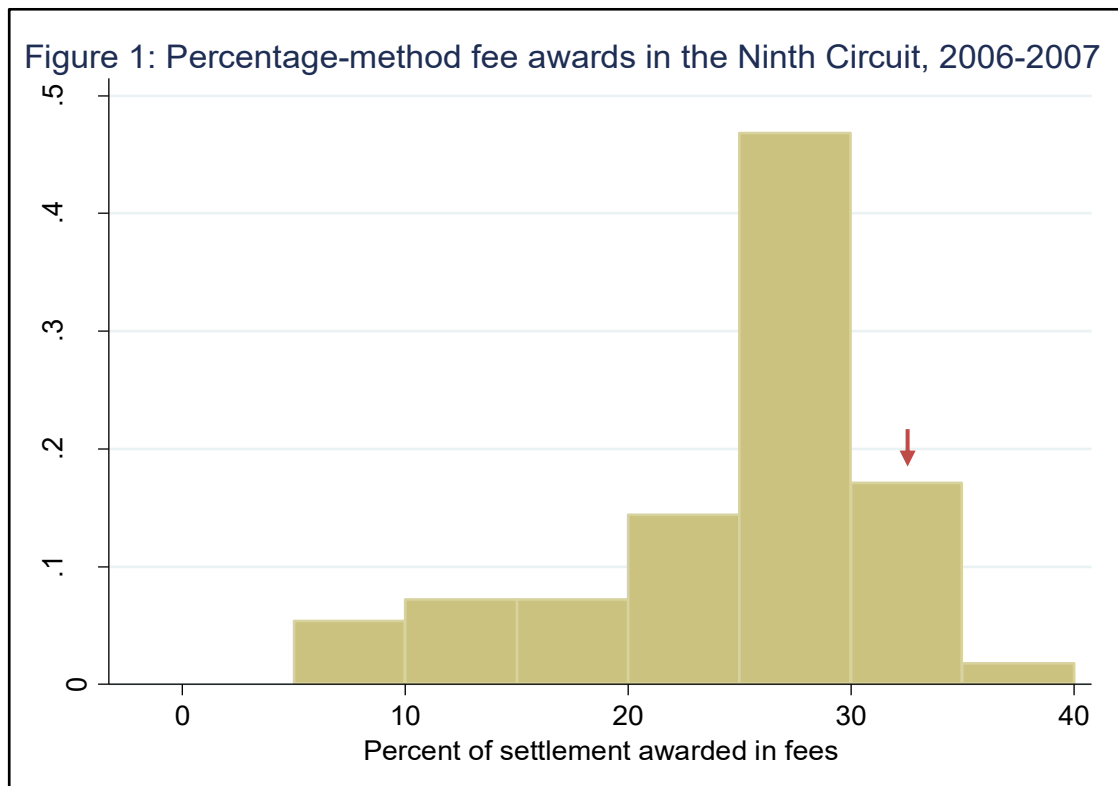
28 1) the percentages awarded in other cases, *see Vizcaino v. Microsoft Corp.*, 290 F.3d

- 1 1043, 1050 (9th Cir. 2002);
- 2 2) the results achieved by counsel, *see Six Mexican Workers v. Arizona Citrus Growers*,
- 3 904 F.2d 1301, 1311 (9th Cir. 1990); *Vizcaino*, 290 F.3d at 1048;
- 4 3) the complexity of the case, *see Six Mexican Workers*, 904 F.2d at 1311; *In re Pacific*
- 5 *Enters. Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995);
- 6 4) the risks the case involved, *see In re Pacific Enters. Securities Litig.*, 47 F.3d at 379;
- 7 *Vizcaino*, 290 F.3d at 1048-49;
- 8 5) the length the case has transpired, *see Six Mexican Workers*, 904 F.2d at 1311;
- 9 *Vizcaino*, 290 F.3d at 1050;
- 10 6) any non-monetary benefits obtained by counsel, *see In re Pacific Enters. Securities*
- 11 *Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1049; *Staton*, 327 F.3d at 946; and
- 12 7) the percentages in standard contingency-fee agreements in similar individual cases,
- 13 *see Vizcaino*, 290 F.3d at 1049.

14 15. The fee request here is 30%, which is above the benchmark percentage. But, as I  
15 explain now, it is my opinion that an above-benchmark percentage is reasonable here because it is  
16 supported by the Ninth Circuit’s factors.

17 16. Consider first the Ninth Circuit’s factor (1): the awards in other cases. According to  
18 my empirical study, the most common percentages awarded by all federal courts using the  
19 percentage method were 25%, 30%, and 33%, with nearly two-thirds of awards between 25% and  
20 35%, and with a mean award of 25.4% and a median award of 25%. *See Fitzpatrick, Empirical*  
21 *Study, supra*, at 833-34, 838. The numbers for the 111 settlements in the Ninth Circuit in my study  
22 where the percentage method was used were quite similar: the mean was 23.9% and the median  
23 25%. My numbers agree with the other large-scale academic studies of class action fee awards. *See*  
24 *Theodore Eisenberg & Geoffrey P. Miller, Attorneys’ Fees and Expenses in Class Action*  
25 *Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 260 (2010) (hereinafter “Eisenberg-Miller  
26 2010”) (finding mean and median of 24% and 25% nationwide, and 25% in Ninth Circuit);  
27 *Eisenberg-Miller 2017, supra*, at 951 (finding mean and median of 27% and 29% nationwide, and  
28 26% and 25% in the Ninth Circuit). In light of the benchmark, it is not surprising that the fee request

1 is above average; that is not fatal: as I explain below, the other Ninth Circuit factors support an  
 2 above-average fee percentage. But it is important to note that, even if above average, the fee  
 3 requested here is still one of the most popular percentages awarded in the Ninth Circuit. In order to  
 4 visualize this, I graphed the distribution of the Ninth Circuit's percentage awards from my study in  
 5 Figure 1, below. The figure shows what fraction of settlements (y-axis) had fee awards within each  
 6 five-point range of fee percentages (x-axis). I have marked which column class counsel's  
 7 percentage would fall with a red arrow. As the arrow shows, the fee request falls into the second  
 8 most common fee range in the Circuit.



22 17. Consider next factors (2), (3), and (4): the results achieved by counsel compared to  
 23 the risks and complexities counsel faced. These factors reward or punish class counsel based on  
 24 what they accomplished for the class: did they over or underperform with the hand they were dealt?  
 25 To a large extent, the percentage method is supposed to address this by automatically rewarding  
 26 class counsel if they recover more for the class, but the percentage method does not perfectly  
 27 incentivize class counsel, *see Fitzpatrick, Fiduciary Judge, supra*, at 1154-55; FITZPATRICK, THE  
 28 CONSERVATIVE CASE FOR CLASS ACTIONS 93-95, so it is good to double check class counsel's

1 performance with these factors. In my opinion, these factors strongly support the fee request. Data  
2 breach cases are very difficult to litigate because it is often not clear that many class members have  
3 sustained actual injuries. Not only can this destroy standing, but it obviously complicates what a  
4 jury might award in damages. Moreover, there were open questions about whether the defendant  
5 was even liable for doing something wrong here; sometimes bad things happen despite out best  
6 efforts. Despite these challenges, the recovery here compares very well per class member to other  
7 data breach settlements based on both the document loss and tiered cash payments that a class  
8 member may elect. Class members may also elect valuable identity theft protection and credit  
9 monitoring. Indeed, it would not surprise me at all if the recovery even outstrips the class's actual  
10 injuries, and even does so by a wide margin. You cannot say that about many class action  
11 settlements. In other words, this is an above-benchmark recovery. As such, in my opinion, these  
12 factors strongly support an above-benchmark fee request.

13 18. Consider next factor (5): the length the litigation has transpired. This factor is  
14 important because the longer class counsel must wait to get paid for their work, the lower their  
15 "effective" fee becomes. This is the "time value of money": a dollar today is worth more than a  
16 dollar several years from now. The 2023 data breach litigation is now entering year three and the  
17 2019 data breach litigation has been ongoing for over five years. The latter is already almost *twice*  
18 *as long* as the typical class action takes to reach final approval of a settlement. *See Fitzpatrick,*  
19 *Empirical Study, supra*, at 820 (finding mean and median times to final approval of around three  
20 years). Thus, this factor, too, supports an above-benchmark fee request.

21 19. Consider next factor (6): the non-monetary benefits conferred by the litigation.  
22 Courts use this factor to reward class counsel for injunctive relief they secure for the class when the  
23 value of such relief will not be known and class counsel cannot thereby be paid a percentage of that  
24 value. For example, if a settlement has both cash and injunctive components and the injunctive  
25 components cannot be valued, courts use this factor to increase the percentage they would otherwise  
26 award class counsel from the cash components. Courts do this because it is important to find some  
27 way to compensate class counsel for securing injunctive relief; otherwise class counsel would be  
28 disincentivized to go after it, even when it would be of greater benefit to the class than cash. Here,

1 however, the settlement consists entirely of cash and this factor is therefore inapplicable.

2       20. Consider next factor (7): the percentages in standard contingency-fee agreements in  
3 similar individual cases. It is well known that standard contingency-fee percentages in individual  
4 litigation are one-third or greater. *See, e.g., Fitzpatrick, Fiduciary Judge, supra*, at 1159-63  
5 (canvassing the empirical studies). This is true even among sophisticated clients. *See, e.g.,*  
6 *Schwartz, supra*, at 360 (finding that corporations in patent cases either agree to flat rates of, on  
7 average, 38.6% or graduated rates that start, on average, at 28% and accelerate, on average, to  
8 40.2%); *Fitzpatrick, Fiduciary Judge, supra*, at 1159-63. The fee request here is below such  
9 numbers. Thus, this factor, too, supports the fee request.

10       21. Finally, I should note that some courts also consider counsel's lodestar and  
11 "crosscheck" it against the percentage. This crosscheck is not required in the Ninth Circuit. *See,*  
12 *e.g., Farrell v. Bank of Am. Corp., N.A.*, 827 F. App'x 628, 630 (9th Cir. 2020) ("This Court has  
13 consistently refused to adopt a crosscheck requirement, and we do so once more."). Moreover, only  
14 a minority of courts nationwide perform the crosscheck with the percentage method. *See*  
15 *Fitzpatrick, supra*, at 833 (finding that only 49% of courts consider lodestar when awarding fees  
16 with the percentage method); *Eisenberg-Miller 2017, supra*, at 945 (finding percentage method with  
17 lodestar crosscheck used 38% of the time versus 54% for percentage method without lodestar  
18 crosscheck). In my opinion, the majority approach is the better one: courts that entertain the lodestar  
19 crosscheck ultimately hurt class members by creating bad incentives for their lawyers. *See, e.g.,*  
20 *Fitzpatrick, Fiduciary Judge, supra*, at 1167. In particular, it brings through the backdoor all of the  
21 bad things the lodestar method used to bring through the front door: not only does the court have to  
22 concern itself again with class counsel's timesheets, but, more importantly, it reintroduces the very  
23 same misaligned incentives that the percentage method was designed to correct in the first place.  
24 *See, e.g., Fitzpatrick, Fiduciary Judge, supra*, at 1157-58.

25       22. Consider the following examples. Suppose a class action lawyer had incurred a  
26 lodestar of \$1 million in a class action case. If that counsel believed that a court would not award  
27 him a 25% fee if it exceeded three times his lodestar, then he would be *rationaly indifferent* between  
28 settling the case for \$12 million and \$12 billion. Either way he will get the same \$5 million fee.

1 Needless to say, the incentive to be indifferent as to the size of the settlement is not good for class  
2 members. Or suppose counsel believed that the most he could wring from the defendant in this  
3 example was \$60 million. In order to reap the maximum 25% fee with the lodestar crosscheck, he  
4 would have to generate an additional \$4 million in lodestar before agreeing to the settlement; this  
5 would give him incentive to *drag the case out* before sealing the deal. Again, dragging cases along  
6 for nothing is not good for class members.

7 23. This is why the lodestar crosscheck is all but unheard of when real clients hire  
8 lawyers on contingency in real marketplaces. Professor Schwartz, *supra*, did not report any  
9 crosscheck agreements in his study of patent litigation. Professor Herbert Kritzer, perhaps the most  
10 famous scholar of contingency fees, has never reported any in his studies. *See, e.g.*, Fitzpatrick,  
11 *Fiduciary Judge, supra*, at 1159-60, 1167. The Seventh Circuit thinks it is so irrational it has all but  
12 banned the practice for the same reason it banned the bigger-begets-smaller practice I discussed  
13 above. *See Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (holding  
14 that “a lodestar check is not . . . required methodology” because “[t]he . . . argument . . . that any  
15 percentage fee award exceeding a certain lodestar multiplier is excessive . . . echoes the ‘megafund’  
16 cap we rejected in *Synthroid*”). Indeed, it is hard to see how the lodestar crosscheck does not conflict  
17 with the Ninth Circuit’s factor (7): the percentages in standard contingency-fee agreements in  
18 similar individual cases; as I said, standard contingency-fee agreements do not include crosschecks.  
19 For all these reasons, it is my opinion that courts should not do it.

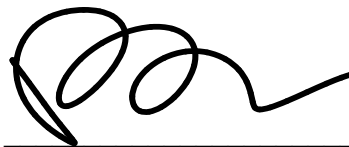
20 24. But class counsel have nonetheless asked me to address their lodestar to the extent  
21 the Court may consider it, and I will do so now. The lodestar multiplier that would result here if the  
22 court granted the fee request would be 1.71. There is nothing out of the ordinary about such a  
23 multiplier. *See, e.g., Vizcaino*, 290 F.3d at 1051 n.6 (noting multipliers of up to 19.6); *Steiner v.*  
24 *American Broadcasting Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming fee award where  
25 the lodestar multiplier was 6.85); *Lloyd v. Navy Fed. Credit Union*, 2019 WL 2269958, at \*13 (S.D.  
26 Cal. May 28, 2019) (approving fee award even though “[t]he Court is aware that a lodestar cross-  
27 check would likely result in a multiplier of around 10.96”). Indeed, it is downright typical: in my  
28 empirical study, the average multiplier was 1.65 and the median was 1.34, but multipliers ranged all

1 the way from 0.07 to 10.3. *See Fitzpatrick, Empirical Study, supra*, at 834. The other large-scale  
2 studies are consistent. *See Eisenberg-Miller 2010, supra*, at 274 (finding mean and median of 1.98  
3 and 1.75, respectively, in settlements between \$38.3 million and \$69.6 million, but with a standard  
4 deviation of 1.0); *Eisenberg-Miller 2017, supra*, at 967 (finding mean and median of 1.65 and 1.5,  
5 respectively, in settlements between \$23.4 million and \$67.5 million, but with a standard deviation  
6 of 1.27). Thus, in my opinion, even if this factor is examined, it supports the fee request.

7 25. For all these reasons, I believe the fee request here is within the range of reasonable  
8 awards in light of the empirical and research on economic incentives in class action litigation.

9 26. My compensation in this matter was a flat fee in no way dependent on the outcome  
10 of class counsel's fee petition.

11 I declare under penalty of perjury that the foregoing is true and correct. Executed on this  
12 2nd day of May, 2025, at Nashville, Tennessee.

13 

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15 Brian T. Fitzpatrick  
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# EXHIBIT 1

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**ACADEMIC APPOINTMENTS**

**VANDERBILT UNIVERSITY LAW SCHOOL**, *Milton R. Underwood Chair in Free Enterprise*, 2020 to present

- *FedEx Research Professor*, 2014-2015
- *Professor of Law*, 2012 to present
- *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts, Textualism & Originalism
- Hall-Hartman Outstanding Professor Award, 2008-2009 & 2023-2024
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

**HARVARD LAW SCHOOL**, *Visiting Professor*, Fall 2018

- Classes: Civil Procedure, Litigation Finance

**FORDHAM LAW SCHOOL**, *Visiting Professor*, Fall 2010

- Classes: Civil Procedure

**EDUCATION**

**HARVARD LAW SCHOOL**, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

**UNIVERSITY OF NOTRE DAME**, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

**CLERKSHIPS**

**HON. ANTONIN SCALIA**, Supreme Court of the United States, 2001-2002

**HON. DIARMUID O'SCANNLAIN**, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

**EXPERIENCE**

**NEW YORK UNIVERSITY SCHOOL OF LAW**, Feb. 2006 to June 2007  
*John M. Olin Fellow*

**HON. JOHN CORNYN**, United States Senate, July 2005 to Jan. 2006  
*Special Counsel for Supreme Court Nominations*

**SIDLEY AUSTIN LLP**, Washington, DC, 2002 to 2005  
*Litigation Associate*

## BOOKS

THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (Cambridge University Press 2021) (ed., with Randall Thomas)

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press 2019) (winner of the Pound Institute's 2022 Civil Justice Scholarship Award)

## BOOK CHAPTERS

*Climate Change and Class Actions* in CLIMATE LIBERALISM: PERSPECTIVES ON LIBERTY, PROPERTY, AND POLLUTION (Jonathan Adler, ed., Palgrave Macmillan 2023)

*How Many Class Actions are Meritless?*, in THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (ed., with Randall Thomas, Cambridge University Press 2021)

*The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?*, in THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (ed., with Randall Thomas, Cambridge University Press 2021) (with Randall Thomas)

*Do Class Actions Deter Wrongdoing?* in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

*Judicial Selection in Illinois* in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

*Civil Procedure in the Roberts Court* in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

*Is the Future of Affirmative Action Race Neutral?* in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

## ACADEMIC ARTICLES

*Agency Costs in Third Party Litigation Finance Reconsidered*, THEORETICAL INQUIRIES IN LAW (forthcoming 2025) (with Will Marra)

*Distributing Attorney Fees in Multidistrict Litigation*, 13 J. LEG. ANAL. 558 (2021) (with Ed Cheng & Paul Edelman)

*A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 FORD. L. REV. 1151 (2021)

- Many Minds, Many MDL Judges*, 84 L. & CONTEMP. PROBLEMS 107 (2021)
- Objector Blackmail Update: What Have the 2018 Amendments Done?*, 89 FORD. L. REV. 437 (2020)
- Why Class Actions are Something both Liberals and Conservatives Can Love*, 73 VAND. L. REV. 1147 (2020)
- Deregulation and Private Enforcement*, 24 LEWIS & CLARK L. REV. 685 (2020)
- The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?*, 40 NW. J. INT'L L. & BUS. 203 (2020) (with Randall Thomas)
- Can the Class Action be Made Business Friendly?*, 24 N.Z. BUS. L. & Q. 169 (2018)
- Can and Should the New Third-Party Litigation Financing Come to Class Actions?*, 19 THEORETICAL INQUIRIES IN LAW 109 (2018)
- Scalia in the Casebooks*, 84 U. CHI. L. REV. 2231 (2017)
- The Ideological Consequences of Judicial Selection*, 70 VAND. L. REV. 1729 (2017)
- Judicial Selection and Ideology*, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017) (reprinted in THE ROMANIAN JUDGES' FORUM REVIEW, no. 2 (2023))
- Justice Scalia and Class Actions: A Loving Critique*, 92 NOTRE DAME L. REV. 1977 (2017)
- A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology*, 69 VAND. L. REV. 991 (2016)
- The Hidden Question in Fisher*, 10 NYU J. L. & LIBERTY 168 (2016)
- An Empirical Look at Compensation in Consumer Class Actions*, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)
- The End of Class Actions?*, 57 ARIZ. L. REV. 161 (2015)
- The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, 98 VA. L. REV. 839 (2012)
- Twombly and Iqbal Reconsidered*, 87 NOTRE DAME L. REV. 1621 (2012)
- Originalism and Natural Law*, 79 FORD. L. REV. 1541 (2011)
- An Empirical Study of Class Action Settlements and their Fee Awards*, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)
- Do Class Action Lawyers Make Too Little?*, 158 U. PA. L. REV. 2043 (2010)
- Originalism and Summary Judgment*, 71 OHIO ST. L.J. 919 (2010)

*The End of Objector Blackmail?*, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

*The Politics of Merit Selection*, 74 MISSOURI L. REV. 675 (2009)

*Errors, Omissions, and the Tennessee Plan*, 39 U. MEMPHIS L. REV. 85 (2008)

*Election by Appointment: The Tennessee Plan Reconsidered*, 75 TENN. L. REV. 473 (2008)

*Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?*, 13 MICH. J. RACE & LAW 277 (2007)

*Strict Scrutiny of Facially Race-Neutral State Action and the Texas Ten Percent Plan*, 53 Baylor L. Rev. 289 (2001)

## ACADEMIC PRESENTATIONS

*The Conservative Case for Private Antitrust Enforcement*, American Antitrust Institute Annual Private Enforcement Conference, National Press Club, Washington, DC (October 30, 2024) (panelist)

*Hot Topics in Class Action Settlement Approval*, National Institute on Class Actions, American Bar Association, Nashville, TN (October 24, 2024) (panelist)

*Non-Securities Class Action Settlements Since CAFA*, University of Missouri Law School (September 20, 2024)

*Do Representative Payments Matter? An Empirical Study*, University of Missouri Law School (September 20, 2024)

*Non-Securities Class Action Settlements Since CAFA*, University of California at Berkeley Law School (September 18, 2024)

*Do Representative Payments Matter? An Empirical Study*, University of California at Berkeley Law School (September 18, 2024)

*Non-Securities Class Action Settlements in CAFA's First Eleven Years*, Conference of the European Society for Empirical Legal Studies, Universidad Miguel Hernandez, Elche, Spain (June 21, 2024)

*Litigation Financing*, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Mar. 7, 2024) (panelist)

*Non-Securities Class Action Settlements in CAFA's First Eleven Years*, George Mason Law School, Arlington, VA (Feb. 6, 2024)

*Agency Costs in Third Party Litigation Finance Reconsidered*, Third Party Litigation Funding: The Past, The Present, and The Future Conference, Tel Aviv University Buchmann Faculty of Law, Tel Aviv, Israel (June 14, 2023)

*Non-Securities Class Action Settlements in CAFA's First Eleven Years*, University of Florida Law School, Gainesville, FL (Feb. 6, 2023)

*Entrapment of the Little Guy: Resisting the Erosion of Investor, Employee and Consumer Protections*, Institute for Law and Economic Policy, San Diego, CA (Jan. 27, 2023) (panelist)

*A New Source of Data for Non-Securities Class Actions*, William & Mary Law School, Williamsburg, VA (Nov. 10, 2022)

*Can Courts Avoid Politicization in a Polarized America?*, American Bar Association Annual Meeting, Chicago, IL (Aug. 5, 2022) (panelist)

*A New Source of Data for Non-Securities Class Actions*, Seventh Annual Civil Procedure Workshop, Cardozo Law School, New York, NY (May 20, 2022)

*Resolution Issues in Class Actions and Mass Torts*, Miami Law Class Action & Complex Litigation Forum, University of Miami School of Law, Miami, FL (Mar. 11, 2022) (panelist)

*Developments in Discovery Reform*, George Mason Law & Economics Center Fifteenth Annual Judicial Symposium on Civil Justice Issues, Charleston, SC (Nov. 16, 2021) (panelist)

*Locality Litigation and Public Entity Incentives to File Lawsuits: Public Interest, Politics, Public Finance or Financial Gain?*, George Mason Law & Economics Center Symposium on Novel Liability Theories and the Incentives Driving Them, Nashville, TN (Oct. 25, 2021) (panelist)

*A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, University of California Hastings College of the Law, San Francisco, CA (Nov. 3, 2020)

*A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, The Judicial Role in Professional Regulation, Stein Colloquium, Fordham Law School, New York, NY (Oct. 9, 2020)

*Objector Blackmail Update: What Have the 2018 Amendments Done?*, Institute for Law and Economic Policy, Fordham Law School, New York, NY (Feb. 28, 2020)

*Keynote Debate: The Conservative Case for Class Actions*, Miami Law Class Action & Complex Litigation Forum, University of Miami School of Law, Miami, FL (Jan. 24, 2020)

*The Future of Class Actions*, National Consumer Law Center Class Action Symposium, Boston, MA (Nov. 16, 2019) (panelist)

*The Conservative Case for Class Actions*, Center for Civil Justice, NYU Law School, New York, NY (Nov. 11, 2019)

*Deregulation and Private Enforcement*, Class Actions, Mass Torts, and MDLs: The Next 50 Years, Pound Institute Academic Symposium, Lewis & Clark Law School, Portland, OR (Nov. 2, 2019)

*Class Actions and Accountability in Finance*, Investors and the Rule of Law Conference, Institute for Investor Protection, Loyola University Chicago Law School, Chicago, IL (Oct. 25, 2019) (panelist)

*Incentivizing Lawyers as Teams*, University of Texas at Austin Law School, Austin, TX (Oct. 22, 2019)

*“Dueling Pianos”: A Debate on the Continuing Need for Class Actions*, National Institute on Class Actions, American Bar Association, Nashville, TN (Oct. 18, 2019) (panelist)

*A Debate on the Utility of Class Actions*, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Oct. 16, 2019) (panelist)

*Litigation Funding*, Forty Seventh Annual Meeting, Intellectual Property Owners Association, Washington, DC (Sep. 26, 2019) (panelist)

*The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?*, International Class Actions Conference, Vanderbilt Law School, Nashville, TN (Aug. 24, 2019)

*A New Source of Class Action Data*, Corporate Accountability Conference, Institute for Law and Economic Policy, San Juan, Puerto Rico (April 12, 2019)

*The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?*, Ninth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 14, 2018)

*MDL: Uniform Rules v. Best Practices*, Miami Law Class Action & Complex Litigation Forum, University of Miami Law School, Miami, FL (Dec. 7, 2018) (panelist)

*Third Party Finance of Attorneys in Traditional and Complex Litigation*, George Washington Law School, Washington, D.C. (Nov. 2, 2018) (panelist)

*MDL at 50 - The 50th Anniversary of Multidistrict Litigation*, New York University Law School, New York, New York (Oct. 10, 2018) (panelist)

*The Discovery Tax*, Law & Economics Seminar, Harvard Law School, Cambridge, Massachusetts (Sep. 11, 2018)

*Empirical Research on Class Actions*, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

*A Political Future for Class Actions in the United States?*, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

*The Indian Class Actions: How Effective Will They Be?*, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

*Hot Topics in Class Action and MDL Litigation*, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

*Critical Issues in Complex Litigation*, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

*The Conservative Case for Class Actions*, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

*The Conservative Case for Class Actions—A Monumental Debate*, National Institute on Class Actions, American Bar Association, Washington, DC (Oct. 26, 2017) (panelist)

*One-Way Fee Shifting after Summary Judgment*, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

*The Conservative Case for Class Actions*, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

*One-Way Fee Shifting after Summary Judgment*, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

*The Constitution Revision Commission and Florida's Judiciary*, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

*Class Actions After Spokeo v. Robins: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners*, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

*The Ironic History of Rule 23*, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

*Justice Scalia and Class Actions: A Loving Critique*, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

*Should Third-Party Litigation Financing Be Permitted in Class Actions?*, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

*Hot Topics in Class Action and MDL Litigation*, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

*The Ideological Consequences of Judicial Selection*, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

*After Fifty Years, What's Class Action's Future*, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

*Where Will Justice Scalia Rank Among the Most Influential Justices*, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

*The Ironic History of Rule 23*, University of Washington Law School, Seattle, WA (July 14, 2016)

*A Respected Judiciary—Balancing Independence and Accountability*, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

*What Will and Should Happen to Affirmative Action After Fisher v. Texas*, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

*Litigation Funding: The Basics and Beyond*, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

*Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?*, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

*Arbitration and the End of Class Actions?*, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

*The Next Steps for Discovery Reform: Requester Pays*, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

*Private Attorney General: Good or Bad?*, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

*Liberty, Judicial Independence, and Judicial Power*, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

*The Economics of Objecting for All the Right Reasons*, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

*Compensation in Consumer Class Actions: Data and Reform*, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

*The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?*, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

*The End of Class Actions?*, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, George Mason Law School, Arlington, VA (Mar. 6, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

*Is the Future of Affirmative Action Race Neutral?*, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

*The Mass Tort Bankruptcy: A Pre-History*, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

*Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions*, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

*The End of Class Actions?*, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

*Toward a More Lawyer-Centric Class Action?*, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

*The Problem: AT & T as It Is Unfolding*, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

*Standing under the Statements and Accounts Clause*, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

*The End of Class Actions?*, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

*Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change*, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

*Is Summary Judgment Unconstitutional? Some Thoughts About Originalism*, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

*The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote*, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

*Twombly and Iqbal Reconsidered*, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

*Do Class Action Lawyers Make Too Little?*, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

*Originalism and Summary Judgment*, Georgetown Law School, Washington, DC (Apr. 5, 2010)

*Theorizing Fee Awards in Class Action Litigation*, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

*Originalism and Summary Judgment*, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

*The End of Objector Blackmail?*, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

*The Politics of Merit Selection*, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

*The End of Objector Blackmail?*, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

*Alternatives To Affirmative Action After The Michigan Civil Rights Initiative*, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

## OTHER PUBLICATIONS

*Trump is Right About One Thing: Nationwide Injunctions Need Fixing*, THE BERKSHIRE EAGLE (Apr. 9, 2025)

*We Don't Need the Consumer Financial Protection Bureau—We Have Courts*, THE HILL (Mar. 15, 2025)

*Is the Fifth Circuit Really Too Conservative for the Supreme Court?* THE NATIONAL LAW JOURNAL (Aug. 15, 2024)

*Judicial Profile: Hon. Charles Breyer*, THE FEDERAL LAWYER (Summer 2024)

*Racial Preferences Won't Go Easily*, WALL ST. J. (June 1, 2023)

*Memo to Mitch: Repeal the Republican Tax Increase*, THE HILL (July 17, 2020)

*The Right Way to End Qualified Immunity*, THE HILL (June 25, 2020)

*I Still Remember*, 133 HARV. L. REV. 2458 (2020)

*Proposed Reforms to Texas Judicial Selection*, 24 TEX. R. L. & POL. 307 (2020)

*The Conservative Case for Class Actions?*, NATIONAL REVIEW (Nov. 13, 2019)

*9th Circuit Split: What's the math say?*, DAILY JOURNAL (Mar. 21, 2017)

*Former clerk on Justice Antonin Scalia and his impact on the Supreme Court*, THE CONVERSATION (Feb. 24, 2016)

*Lessons from Tennessee Supreme Court Retention Election*, THE TENNESSEAN (Aug. 20, 2014)

*Public Needs Voice in Judicial Process*, THE TENNESSEAN (June 28, 2013)

*Did the Supreme Court Just Kill the Class Action?*, THE QUARTERLY JOURNAL (April 2012)

*Let General Assembly Confirm Judicial Selections*, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

*“Tennessee Plan” Needs Revisions*, THE TENNESSEAN (Feb. 3, 2012)

*How Does Your State Select Its Judges?*, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

*On the Merits of Merit Selection*, THE ADVOCATE 67 (Winter 2010)

*Supreme Court Case Could End Class Action Suits*, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

*Kagan is an Intellect Capable of Serving Court*, THE TENNESSEAN (Jun. 13, 2010)

*Confirmation “Kabuki” Does No Justice*, POLITICO (July 20, 2009)

*Selection by Governor may be Best Judicial Option*, THE TENNESSEAN (Apr. 27, 2009)

*Verdict on Tennessee Plan May Require a Jury*, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

*Tennessee’s Plan to Appoint Judges Takes Power Away from the Public*, THE TENNESSEAN (Mar. 14, 2008)

*Process of Picking Judges Broken*, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

*Disorder in the Court*, LOS ANGELES TIMES (Jul. 11, 2007)

*Scalia’s Mistake*, NATIONAL LAW JOURNAL (Apr. 24, 2006)

*GM Backs Its Bottom Line*, DETROIT FREE PRESS (Mar. 19, 2003)

*Good for GM, Bad for Racial Fairness*, LOS ANGELES TIMES (Mar. 18, 2003)

*10 Percent Fraud*, WASHINGTON TIMES (Nov. 15, 2002)

## **OTHER PRESENTATIONS**

*Ethics & Professionalism*, Class Action & Pharmaceutical and Medical Device Sections, American Association for Justice Annual Convention, Nashville, TN (July 21, 2024) (panelist)

*Abstention*, Tennessee Attorney General's Office Continuing Legal Education, Nashville, TN (Apr. 13, 2022)

*The Need for New Lower Court Judgeships, 30 Years in the Making*, Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Feb. 24, 2021)

*Does the Way We Choose our Judges Affect Case Outcomes?*, American Legislative Exchange Council 2018 Annual Meeting, New Orleans, LA (August 10, 2018) (panelist)

*Oversight of the Structure of the Federal Courts*, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, United States Senate, Washington, D.C. (July 31, 2018)

*Where Will Justice Scalia Rank Among the Most Influential Justices*, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

*Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit*, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

*Supreme Court Review 2016: Current Issues and Cases Update*, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

*A Respected Judiciary—Balancing Independence and Accountability*, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

*Future Amendments in the Pipeline: Rule 23*, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

*The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding*, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

*Hedge Funds + Lawsuits = A Good Idea?*, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

*Judicial Selection in Historical and National Perspective*, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

*The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions*, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

*Life as a Supreme Court Law Clerk and Views on the Health Care Debate*, Exchange Club, Nashville, TN (Apr. 3, 2012)

*The Tennessee Judicial Selection Process—Shaping Our Future*, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

*Reexamining the Class Action Practice*, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

*Judicial Selection in Kansas*, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

*Judicial Selection and the Tennessee Constitution*, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

*What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?*, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

*Judicial Selection in Tennessee*, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

*Ethical Implications of Tennessee's Judicial Selection Process*, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

## **PROFESSIONAL ASSOCIATIONS**

Referee, Israel Science Foundation  
Referee, Journal of Legal Studies  
Referee, Journal of Law, Economics and Organization  
Referee, Journal of Empirical Legal Studies  
Referee, Supreme Court Economic Review  
Reviewer, Aspen Publishing  
Reviewer, Cambridge University Press  
Reviewer, University Press of Kansas  
Reviewer, Palgrave Macmillan  
Reviewer, Oxford University Press  
Reviewer, Routledge  
Member, American Law Institute  
Member, American Bar Association  
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights, 2009-2015  
Board of Directors, Tennessee Stonewall Bar Association, 2012-2022  
American Swiss Foundation Young Leaders' Conference, 2012  
Bar Admission, District of Columbia & California (inactive)

## **COMMUNITY ACTIVITIES**

Board of Directors, Beacon Center of Tennessee, 2018-present; Board of Directors, Nashville Ballet, 2011-2017 & 2019-2022; Nashville Talking Library for the Blind, 2008-2009

# EXHIBIT 2



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# An Empirical Study of Class Action Settlements and Their Fee Awards

*Brian T. Fitzpatrick\**

This article is a comprehensive empirical study of class action settlements in federal court. Although there have been prior empirical studies of federal class action settlements, these studies have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). By contrast, in this article, I attempt to study every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first attempt to collect a complete set of federal class action settlements for any given year. I find that district court judges approved 688 class action settlements over this two-year period, involving nearly \$33 billion. Of this \$33 billion, roughly \$5 billion was awarded to class action lawyers, or about 15 percent of the total. Most judges chose to award fees by using the highly discretionary percentage-of-the-settlement method, and the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Fee percentages were strongly and inversely associated with the size of the settlement. The age of the case at settlement was positively associated with fee percentages. There was some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located, with lower percentages in securities cases and in settlements from the Second and Ninth Circuits. There was no evidence that fee percentages were associated with whether the class action was certified as a settlement class or with the political affiliation of the judge who made the award.

## I. INTRODUCTION

Class actions have been the source of great controversy in the United States. Corporations fear them.<sup>1</sup> Policymakers have tried to corral them.<sup>2</sup> Commentators and scholars have

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Research for this article was supported by Vanderbilt's Cecil D. Branstetter Litigation & Dispute Resolution Program and Law & Business Program. I am grateful for comments I received from Dale Collins, Robin Effron, Ted Eisenberg, Deborah Hensler, Richard Nagareda, Randall Thomas, an anonymous referee for this journal, and participants at workshops at Vanderbilt Law School, the University of Minnesota Law School, the 2009 Meeting of the Midwestern Law and Economics Association, and the 2009 Conference on Empirical Legal Studies. I am also grateful for the research assistance of Drew Dörner, David Dunn, James Gottry, Chris Lantz, Gary Peebles, Keith Randall, Andrew Yi, and, especially, Jessica Pan.

<sup>1</sup>See, e.g., Robert W. Wood, *Defining Employees and Independent Contractors*, *Bus. L. Today* 45, 48 (May–June 2008).

<sup>2</sup>See Private Securities Litigation Reform Act (PSLRA) of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.); Class Action Fairness Act of 2005, 28 U.S.C. §§ 1453, 1711–1715 (2006).

suggested countless ways to reform them.<sup>3</sup> Despite all the attention showered on class actions, and despite the excellent empirical work on class actions to date, the data that currently exist on how the class action system operates in the United States are limited. We do not know, for example, how much money changes hands in class action litigation every year. We do not know how much of this money goes to class action lawyers rather than class members. Indeed, we do not even know how many class action cases are resolved on an annual basis. To intelligently assess our class action system as well as whether and how it should be reformed, answers to all these questions are important. Answers to these questions are equally important to policymakers in other countries who are currently thinking about adopting U.S.-style class action devices.<sup>4</sup>

This article tries to answer these and other questions by reporting the results of an empirical study that attempted to gather all class action settlements approved by federal judges over a recent two-year period, 2006 and 2007. I use class action settlements as the basis of the study because, even more so than individual litigation, virtually all cases certified as class actions and not dismissed before trial end in settlement.<sup>5</sup> I use federal settlements as the basis of the study for practical reasons: it was easier to identify and collect settlements approved by federal judges than those approved by state judges. Systematic study of class action settlements in state courts must await further study;<sup>6</sup> these future studies are important because there may be more class action settlements in state courts than there are in federal court.<sup>7</sup>

This article attempts to make three contributions to the existing empirical literature on class action settlements. First, virtually all the prior empirical studies of federal class action settlements have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). In this article, by contrast, I attempt to collect every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first to attempt to collect a complete set of federal class action settlements for

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<sup>3</sup>See, e.g., Robert G. Bone, *Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness*, 83 B.U.L. Rev. 485, 490–94 (2003); Allan Erbsen, *From “Predominance” to “Resolvability”: A New Approach to Regulating Class Actions*, 58 Vand. L. Rev. 995, 1080–81 (2005).

<sup>4</sup>See, e.g., Samuel Issacharoff & Geoffrey Miller, *Will Aggregate Litigation Come to Europe?*, 62 Vand. L. Rev. 179 (2009).

<sup>5</sup>See, e.g., Emery Lee & Thomas E. Willing, *Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two’s Pre-CAFA Sample of Diversity Class Actions 11* (Federal Judicial Center 2008); Tom Baker & Sean J. Griffith, *How the Merits Matter: D&O Insurance and Securities Settlements*, 157 U. Pa. L. Rev. 755 (2009).

<sup>6</sup>Empirical scholars have begun to study state court class actions in certain subject areas and in certain states. See, e.g., Robert B. Thompson & Randall S. Thomas, *The Public and Private Faces of Derivative Suits*, 57 Vand. L. Rev. 1747 (2004); Robert B. Thompson & Randall S. Thomas, *The New Look of Shareholder Litigation: Acquisition-Oriented Class Actions*, 57 Vand. L. Rev. 133 (2004); *Findings of the Study of California Class Action Litigation* (Administrative Office of the Courts) (First Interim Report, 2009).

<sup>7</sup>See Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 56 (2000).

any given year.<sup>8</sup> As such, this article allows us to see for the first time a complete picture of the cases that are settled in federal court. This includes aggregate annual statistics, such as how many class actions are settled every year, how much money is approved every year in these settlements, and how much of that money class action lawyers reap every year. It also includes how these settlements are distributed geographically as well as by litigation area, what sort of relief was provided in the settlements, how long the class actions took to reach settlement, and an analysis of what factors were associated with the fees awarded to class counsel by district court judges.

Second, because this article analyzes settlements that were approved in both published and unpublished opinions, it allows us to assess how well the few prior studies that looked beyond securities cases but relied only on published opinions capture the complete picture of class action settlements. To the extent these prior studies adequately capture the complete picture, it may be less imperative for courts, policymakers, and empirical scholars to spend the considerable resources needed to collect unpublished opinions in order to make sound decisions about how to design our class action system.

Third, this article studies factors that may influence district court judges when they award fees to class counsel that have not been studied before. For example, in light of the discretion district court judges have been delegated over fees under Rule 23, as well as the salience the issue of class action litigation has assumed in national politics, realist theories of judicial behavior would predict that Republican judges would award smaller fee percentages than Democratic judges. I study whether the political beliefs of district court judges are associated with the fees they award and, in doing so, contribute to the literature that attempts to assess the extent to which these beliefs influence the decisions of not just appellate judges, but trial judges as well. Moreover, the article contributes to the small but growing literature examining whether the ideological influences found in published judicial decisions persist when unpublished decisions are examined as well.

In Section II of this article, I briefly survey the existing empirical studies of class action settlements. In Section III, I describe the methodology I used to collect the 2006–2007 federal class action settlements and I report my findings regarding these settlements. District court judges approved 688 class action settlements over this two-year period, involving over \$33 billion. I report a number of descriptive statistics for these settlements, including the number of plaintiff versus defendant classes, the distribution of settlements by subject matter, the age of the case at settlement, the geographic distribution of settlements, the number of settlement classes, the distribution of relief across settlements, and various statistics on the amount of money involved in the settlements. It should be noted that despite the fact that the few prior studies that looked beyond securities settlements appeared to oversample larger settlements, much of the analysis set forth in this article is consistent with these prior studies. This suggests that scholars may not need to sample unpublished as well as published opinions in order to paint an adequate picture of class action settlements.

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<sup>8</sup>Of course, I cannot be certain that I found every one of the class actions that settled in federal court over this period. Nonetheless, I am confident that if I did not find some, the number I did not find is small and would not contribute meaningfully to the data reported in this article.

In Section IV, I perform an analysis of the fees judges awarded to class action lawyers in the 2006–2007 settlements. All told, judges awarded nearly \$5 billion over this two-year period in fees and expenses to class action lawyers, or about 15 percent of the total amount of the settlements. Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method and, unsurprisingly, the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Using regression analysis, I confirm prior studies and find that fee percentages are strongly and inversely associated with the size of the settlement. Further, I find that the age of the case is positively associated with fee percentages but that the percentages were not associated with whether the class action was certified as a settlement class. There also appeared to be some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all other areas, and district courts in some circuits—the Ninth and the Second (in securities cases)—awarded lower fee percentages than courts in many other circuits. Finally, the regression analysis did not confirm the realist hypothesis: there was no association between fee percentage and the political beliefs of the judge in any regression.

## II. PRIOR EMPIRICAL STUDIES OF CLASS ACTION SETTLEMENTS

There are many existing empirical studies of federal securities class action settlements.<sup>9</sup> Studies of securities settlements have been plentiful because for-profit organizations maintain lists of all federal securities class action settlements for the benefit of institutional investors that are entitled to file claims in these settlements.<sup>10</sup> Using these data, studies have shown that since 2005, for example, there have been roughly 100 securities class action settlements in federal court each year, and these settlements have involved between \$7 billion and \$17 billion per year.<sup>11</sup> Scholars have used these data to analyze many different aspects of these settlements, including the factors that are associated with the percentage of

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<sup>9</sup>See, e.g., James D. Cox & Randall S. Thomas, Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions, 106 Colum. L. Rev. 1587 (2006); James D. Cox, Randall S. Thomas & Lynn Bai, There are Plaintiffs and . . . there are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements, 61 Vand. L. Rev. 355 (2008); Theodore Eisenberg, Geoffrey Miller & Michael A. Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U.J.L. & Pol'y 5 (2009); Michael A. Perino, Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Actions (St. John's Legal Studies, Research Paper No. 06-0034, 2006), available at <<http://ssrn.com/abstract=870577>> [hereinafter Perino, Markets and Monitors]; Michael A. Perino, The Milberg Weiss Prosecution: No Harm, No Foul? (St. John's Legal Studies, Research Paper No. 08-0135, 2008), available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1133995](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133995)> [hereinafter Perino, Milberg Weiss].

<sup>10</sup>See, e.g., RiskMetrics Group, available at <<http://www.riskmetrics.com/scas>>.

<sup>11</sup>See Cornerstone Research, Securities Class Action Settlements: 2007 Review and Analysis 1 (2008), available at <[http://securities.stanford.edu/Settlements/REVIEW\\_1995-2007/Settlements\\_Through\\_12\\_2007.pdf](http://securities.stanford.edu/Settlements/REVIEW_1995-2007/Settlements_Through_12_2007.pdf)>.

the settlements that courts have awarded to class action lawyers.<sup>12</sup> These studies have found that the mean and median fees awarded by district court judges are between 20 percent and 30 percent of the settlement amount.<sup>13</sup> These studies have also found that a number of factors are associated with the percentage of the settlement awarded as fees, including (inversely) the size of the settlement, the age of the case, whether a public pension fund was the lead plaintiff, and whether certain law firms were class counsel.<sup>14</sup> None of these studies has examined whether the political affiliation of the federal district court judge awarding the fees was associated with the size of awards.

There are no comparable organizations that maintain lists of nonsecurities class action settlements. As such, studies of class action settlements beyond the securities area are much rarer and, when they have been done, rely on samples of settlements that were not intended to be representative of the whole. The two largest studies of class action settlements not limited to securities class actions are a 2004 study by Ted Eisenberg and Geoff Miller,<sup>15</sup> which was recently updated to include data through 2008,<sup>16</sup> and a 2003 study by Class Action Reports.<sup>17</sup> The Eisenberg-Miller studies collected data from class action settlements in both state and federal courts found from court opinions published in the Westlaw and Lexis databases and checked against lists maintained by the CCH Federal Securities and Trade Regulation Reporters. Through 2008, their studies have now identified 689 settlements over a 16-year period, or less than 45 settlements per year.<sup>18</sup> Over this 16-year period, their studies found that the mean and median settlement amounts were, respectively, \$116 million and \$12.5 million (in 2008 dollars), and that the mean and median fees awarded by district courts were 23 percent and 24 percent of the settlement, respectively.<sup>19</sup> Their studies also performed an analysis of fee percentages and fee awards. For the data through 2002, they found that the percentage of the settlement awarded as fees was associated with the size of the settlement (inversely), the age of the case, and whether the

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<sup>12</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 17–24, 28–36; Perino, *Markets and Monitors*, *supra* note 9, at 12–28, 39–44; Perino, *Milberg Weiss*, *supra* note 9, at 32–33, 39–60.

<sup>13</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 17–18, 22, 28, 33; Perino, *Markets and Monitors*, *supra* note 9, at 20–21, 40; Perino, *Milberg Weiss*, *supra* note 9, at 32–33, 51–53.

<sup>14</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 14–24, 29–30, 33–34; Perino, *Markets and Monitors*, *supra* note 9, at 20–28, 41; Perino, *Milberg Weiss*, *supra* note 9, at 39–58.

<sup>15</sup>See Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 *J. Empirical Legal Stud.* 27 (2004).

<sup>16</sup>See Theodore Eisenberg & Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008*, 7 *J. Empirical Legal Stud.* 248 (2010) [hereinafter Eisenberg & Miller II].

<sup>17</sup>See Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., *Attorney Fee Awards in Common Fund Class Actions*, 24 *Class Action Rep.* 169 (Mar.–Apr. 2003).

<sup>18</sup>See Eisenberg & Miller II, *supra* note 16, at 251.

<sup>19</sup>*Id.* at 258–59.

district court went out of its way to comment on the level of risk that class counsel had assumed in pursuing the case.<sup>20</sup> For the data through 2008, they regressed only fee awards and found that the awards were inversely associated with the size of the settlement, that state courts gave lower awards than federal courts, and that the level of risk was still associated with larger awards.<sup>21</sup> Their studies have not examined whether the political affiliations of the federal district court judges awarding fees were associated with the size of the awards.

The Class Action Reports study collected data on 1,120 state and federal settlements over a 30-year period, or less than 40 settlements per year.<sup>22</sup> Over the same 10-year period analyzed by the Eisenberg-Miller study, the Class Action Reports data found mean and median settlements of \$35.4 and \$7.6 million (in 2002 dollars), as well as mean and median fee percentages between 25 percent and 30 percent.<sup>23</sup> Professors Eisenberg and Miller performed an analysis of the fee awards in the Class Action Reports study and found the percentage of the settlement awarded as fees was likewise associated with the size of the settlement (inversely) and the age of the case.<sup>24</sup>

### III. FEDERAL CLASS ACTION SETTLEMENTS, 2006 AND 2007

As far as I am aware, there has never been an empirical study of all federal class action settlements in a particular year. In this article, I attempt to make such a study for two recent years: 2006 and 2007. To compile a list of all federal class settlements in 2006 and 2007, I started with one of the aforementioned lists of securities settlements, the one maintained by RiskMetrics, and I supplemented this list with settlements that could be found through three other sources: (1) broad searches of district court opinions in the Westlaw and Lexis databases,<sup>25</sup> (2) four reporters of class action settlements—*BNA Class Action Litigation Report*, *Mealey's Jury Verdicts and Settlements*, *Mealey's Litigation Report*, and the *Class Action World* website<sup>26</sup>—and (3) a list from the Administrative Office of Courts of all district court cases

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<sup>20</sup>See Eisenberg & Miller, *supra* note 15, at 61–62.

<sup>21</sup>See Eisenberg & Miller II, *supra* note 16, at 278.

<sup>22</sup>See Eisenberg & Miller, *supra* note 15, at 34.

<sup>23</sup>*Id.* at 47, 51.

<sup>24</sup>*Id.* at 61–62.

<sup>25</sup>The searches consisted of the following terms: (“class action” & (settle! /s approv! /s (2006 2007))); (((counsel attorney) /s fee /s award!) & (settle! /s (2006 2007)) & “class action”); (“class action” /s settle! & da(aft 12/31/2005 & bef 1/1/2008)); (“class action” /s (fair reasonable adequate) & da(aft 12/31/2005 & bef 1/1/2008)).

<sup>26</sup>See <<http://classactionworld.com/>>.

coded as class actions that terminated by settlement between 2005 and 2008.<sup>27</sup> I then removed any duplicate cases and examined the docket sheets and court orders of each of the remaining cases to determine whether the cases were in fact certified as class actions under either Rule 23, Rule 23.1, or Rule 23.2.<sup>28</sup> For each of the cases verified as such, I gathered the district court's order approving the settlement, the district court's order awarding attorney fees, and, in many cases, the settlement agreements and class counsel's motions for fees, from electronic databases (such as Westlaw or PACER) and, when necessary, from the clerk's offices of the various federal district courts. In this section, I report the characteristics of the settlements themselves; in the next section, I report the characteristics of the attorney fees awarded to class counsel by the district courts that approved the settlements.

#### A. Number of Settlements

I found 688 settlements approved by federal district courts during 2006 and 2007 using the methodology described above. This is almost the exact same number the Eisenberg-Miller study found over a 16-year period in both federal *and* state court. Indeed, the number of annual settlements identified in this study is *several times* the number of annual settlements that have been identified in any prior empirical study of class action settlements. Of the 688 settlements I found, 304 were approved in 2006 and 384 were approved in 2007.<sup>29</sup>

#### B. Defendant Versus Plaintiff Classes

Although Rule 23 permits federal judges to certify either a class of plaintiffs or a class of defendants, it is widely assumed that it is extremely rare for courts to certify defendant classes.<sup>30</sup> My findings confirm this widely held assumption. Of the 688 class action settlements approved in 2006 and 2007, 685 involved plaintiff classes and only three involved

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<sup>27</sup>I examined the AO lists in the year before and after the two-year period under investigation because the termination date recorded by the AO was not necessarily the same date the district court approved the settlement.

<sup>28</sup>See Fed. R. Civ. P. 23, 23.1, 23.2. I excluded from this analysis opt-in collective actions, such as those brought pursuant to the provisions of the Fair Labor Standards Act (see 29 U.S.C. § 216(b)), if such actions did not also include claims certified under the opt-out mechanism in Rule 23.

<sup>29</sup>A settlement was assigned to a particular year if the district court judge's order approving the settlement was dated between January 1 and December 31 of that year. Cases involving multiple defendants sometimes settled over time because defendants would settle separately with the plaintiff class. All such partial settlements approved by the district court on the same date were treated as one settlement. Partial settlements approved by the district court on different dates were treated as different settlements.

<sup>30</sup>See, e.g., Robert H. Klonoff, Edward K.M. Bilich & Suzette M. Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* 1061 (2d ed. 2006).

defendant classes. All three of the defendant-class settlements were in employment benefits cases, where companies sued classes of current or former employees.<sup>31</sup>

### C. Settlement Subject Areas

Although courts are free to certify Rule 23 classes in almost any subject area, it is widely assumed that securities settlements dominate the federal class action docket.<sup>32</sup> At least in terms of the number of settlements, my findings reject this conventional wisdom. As Table 1 shows, although securities settlements comprised a large percentage of the 2006 and 2007 settlements, they did not comprise a majority of those settlements. As one would have

Table 1: The Number of Class Action Settlements Approved by Federal Judges in 2006 and 2007 in Each Subject Area

<i>Subject Matter</i>	<i>Number of Settlements</i>	
	<i>2006</i>	<i>2007</i>
Securities	122 (40%)	135 (35%)
Labor and employment	41 (14%)	53 (14%)
Consumer	40 (13%)	47 (12%)
Employee benefits	23 (8%)	38 (10%)
Civil rights	24 (8%)	37 (10%)
Debt collection	19 (6%)	23 (6%)
Antitrust	13 (4%)	17 (4%)
Commercial	4 (1%)	9 (2%)
Other	18 (6%)	25 (6%)
Total	304	384

NOTE: Securities: cases brought under federal and state securities laws. Labor and employment: workplace claims brought under either federal or state law, with the exception of ERISA cases. Consumer: cases brought under the Fair Credit Reporting Act as well as cases for consumer fraud and the like. Employee benefits: ERISA cases. Civil rights: cases brought under 42 U.S.C. § 1983 or cases brought under the Americans with Disabilities Act seeking nonworkplace accommodations. Debt collection: cases brought under the Fair Debt Collection Practices Act. Antitrust: cases brought under federal or state antitrust laws. Commercial: cases between businesses, excluding antitrust cases. Other: includes, among other things, derivative actions against corporate managers and directors, environmental suits, insurance suits, Medicare and Medicaid suits, product liability suits, and mass tort suits.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>31</sup>See *Halliburton Co. v. Graves*, No. 04-00280 (S.D. Tex., Sept. 28, 2007); *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-2998 (D. Minn. Aug. 29, 2007); *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-2998 (D. Minn. Sept. 17, 2007).

<sup>32</sup>See, e.g., John C. Coffee, Jr., *Reforming the Security Class Action: An Essay on Deterrence and its Implementation*, 106 *Colum. L. Rev.* 1534, 1539–40 (2006) (describing securities class actions as “the 800-pound gorilla that dominates and overshadows other forms of class actions”).

expected in light of Supreme Court precedent over the last two decades,<sup>33</sup> there were almost no mass tort class actions (included in the “Other” category) settled over the two-year period.

Although the Eisenberg-Miller study through 2008 is not directly comparable on the distribution of settlements across litigation subject areas—because its state and federal court data cannot be separated (more than 10 percent of the settlements were from state court<sup>34</sup>) and because it excludes settlements in fee-shifting cases—their study through 2008 is the best existing point of comparison. Interestingly, despite the fact that state courts were included in their data, their study through 2008 found about the same percentage of securities cases (39 percent) as my 2006–2007 data set shows.<sup>35</sup> However, their study found many more consumer (18 percent) and antitrust (10 percent) cases, while finding many fewer labor and employment (8 percent), employee benefits (6 percent), and civil rights (3 percent) cases.<sup>36</sup> This is not unexpected given their reliance on published opinions and their exclusion of fee-shifting cases.

#### D. Settlement Classes

The Federal Rules of Civil Procedure permit parties to seek certification of a suit as a class action for settlement purposes only.<sup>37</sup> When the district court certifies a class in such circumstances, the court need not consider whether it would be manageable to try the litigation as a class.<sup>38</sup> So-called settlement classes have always been more controversial than classes certified for litigation because they raise the prospect that, at least where there are competing class actions filed against the same defendant, the defendant could play class counsel off one another to find the one willing to settle the case for the least amount of money.<sup>39</sup> Prior to the Supreme Court’s 1997 opinion in *Amchem Products, Inc. v. Windsor*,<sup>40</sup> it was uncertain whether the Federal Rules even permitted settlement classes. It may therefore be a bit surprising to learn that 68 percent of the federal settlements in 2006 and 2007 were settlement classes. This percentage is higher than the percentage found in the Eisenberg-Miller studies, which found that only 57 percent of class action settlements in

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<sup>33</sup>See, e.g., Samuel Issacharoff, *Private Claims, Aggregate Rights*, 2008 Sup. Ct. Rev. 183, 208.

<sup>34</sup>See Eisenberg & Miller II, *supra* note 16, at 257.

<sup>35</sup>*Id.* at 262.

<sup>36</sup>*Id.*

<sup>37</sup>See Martin H. Redish, *Settlement Class Actions, The Case-or-Controversy Requirement, and the Nature of the Adjudicatory Process*, 73 U. Chi. L. Rev. 545, 553 (2006).

<sup>38</sup>See *Amchem Prods., Inc v Windsor*, 521 U.S. 591, 620 (1997).

<sup>39</sup>See Redish, *supra* note 368, at 557–59.

<sup>40</sup>521 U.S. 591 (1997).

state and federal court between 2003 and 2008 were settlement classes.<sup>41</sup> It should be noted that the distribution of litigation subject areas among the settlement classes in my 2006–2007 federal data set did not differ much from the distribution among nonsettlement classes, with two exceptions. One exception was consumer cases, which were nearly three times as prevalent among settlement classes (15.9 percent) as among nonsettlement classes (5.9 percent); the other was civil rights cases, which were four times as prevalent among nonsettlement classes (18.0 percent) as among settlements classes (4.5 percent). In light of the skepticism with which the courts had long treated settlement classes, one might have suspected that courts would award lower fee percentages in such settlements. Nonetheless, as I report in Section III, whether a case was certified as a settlement class was not associated with the fee percentages awarded by federal district court judges.

### *E. The Age at Settlement*

One interesting question is how long class actions were litigated before they reached settlement. Unsurprisingly, cases reached settlement over a wide range of ages.<sup>42</sup> As shown in Table 2, the average time to settlement was a bit more than three years (1,196 days) and the median time was a bit under three years (1,068 days). The average and median ages here are similar to those found in the Eisenberg-Miller study through 2002, which found averages of 3.35 years in fee-shifting cases and 2.86 years in non-fee-shifting cases, and

Table 2: The Number of Days, 2006–2007, Federal Class Action Cases Took to Reach Settlement in Each Subject Area

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>	<i>Minimum</i>	<i>Maximum</i>
Securities	1,438	1,327	392	3,802
Labor and employment	928	786	105	2,497
Consumer	963	720	127	4,961
Employee benefits	1,162	1,161	164	3,157
Civil rights	1,373	1,360	181	3,354
Debt collection	738	673	223	1,973
Antitrust	1,140	1,167	237	2,480
Commercial	1,267	760	163	5,443
Other	1,065	962	185	3,620
All	1,196	1,068	105	5,443

SOURCE: PACER.

<sup>41</sup>See Eisenberg & Miller II, *supra* note 16, at 266.

<sup>42</sup>The age of the case was calculated by subtracting the date the relevant complaint was filed from the date the settlement was approved by the district court judge. The dates were taken from PACER. For consolidated cases, I used the date of the earliest complaint. If the case had been transferred, consolidated, or removed, the date the complaint was filed was not always available from PACER. In such cases, I used the date the case was transferred, consolidated, or removed as the start date.

medians of 4.01 years in fee-shifting cases and 3.0 years in non-fee-shifting cases.<sup>43</sup> Their study through 2008 did not report case ages.

The shortest time to settlement was 105 days in a labor and employment case.<sup>44</sup> The longest time to settlement was nearly 15 years (5,443 days) in a commercial case.<sup>45</sup> The average and median time to settlement varied significantly by litigation subject matter, with securities cases generally taking the longest time and debt collection cases taking the shortest time. Labor and employment cases and consumer cases also settled relatively early.

#### *F. The Location of Settlements*

The 2006–2007 federal class action settlements were not distributed across the country in the same way federal civil litigation is in general. As Figure 1 shows, some of the geographic circuits attracted much more class action attention than we would expect based on their docket size, and others attracted much less. In particular, district courts in the First, Second, Seventh, and Ninth Circuits approved a much larger share of class action settlements than the share of all civil litigation they resolved, with the First, Second, and Seventh Circuits approving nearly double the share and the Ninth Circuit approving one-and-one-half times the share. By contrast, the shares of class action settlements approved by district courts in the Fifth and Eighth Circuits were less than one-half of their share of all civil litigation, with the Third, Fourth, and Eleventh Circuits also exhibiting significant underrepresentation.

With respect to a comparison with the Eisenberg-Miller studies, their federal court data through 2008 can be separated from their state court data on the question of the geographic distribution of settlements, and there are some significant differences between their federal data and the numbers reflected in Figure 1. Their study reported considerably higher proportions of settlements than I found from the Second (23.8 percent), Third (19.7 percent), Eighth (4.8 percent), and D.C. (3.3 percent) Circuits, and considerably lower proportions from the Fourth (1.3 percent), Seventh (6.8 percent), and Ninth (16.6 percent) Circuits.<sup>46</sup>

Figure 2 separates the class action settlement data in Figure 1 into securities and nonsecurities cases. Figure 2 suggests that the overrepresentation of settlements in the First and Second Circuits is largely attributable to securities cases, whereas the overrepresentation in the Seventh Circuit is attributable to nonsecurities cases, and the overrepresentation in the Ninth is attributable to both securities and nonsecurities cases.

It is interesting to ask why some circuits received more class action attention than others. One hypothesis is that class actions are filed in circuits where class action lawyers

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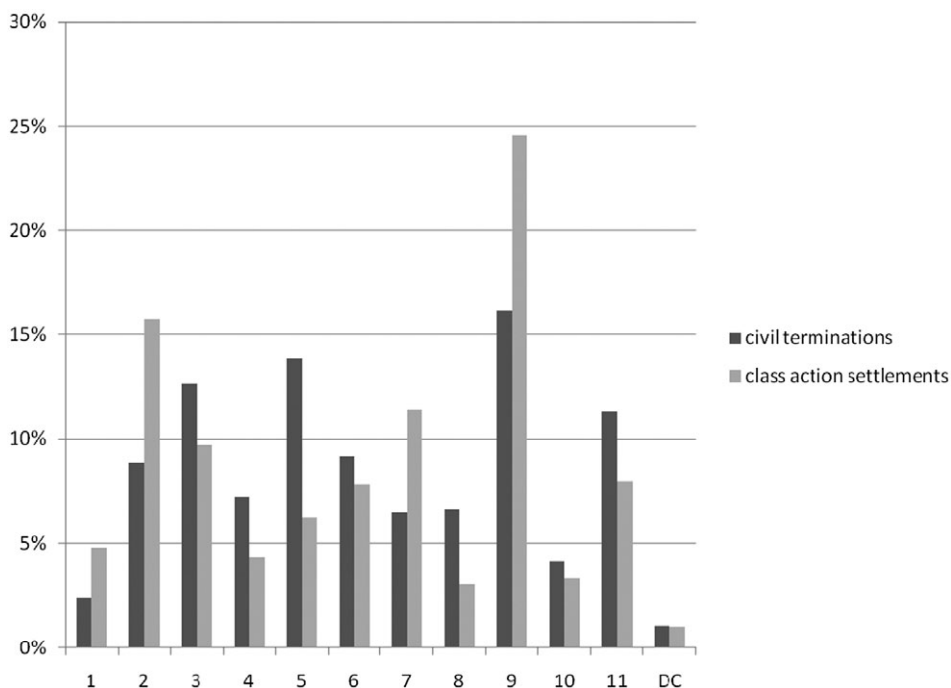
<sup>43</sup>See Eisenberg & Miller, *supra* note 15, at 59–60.

<sup>44</sup>See *Clemmons v. Rent-a-Center W., Inc.*, No. 05-6307 (D. Or. Jan. 20, 2006).

<sup>45</sup>See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006).

<sup>46</sup>See Eisenberg & Miller II, *supra* note 16, at 260.

Figure 1: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



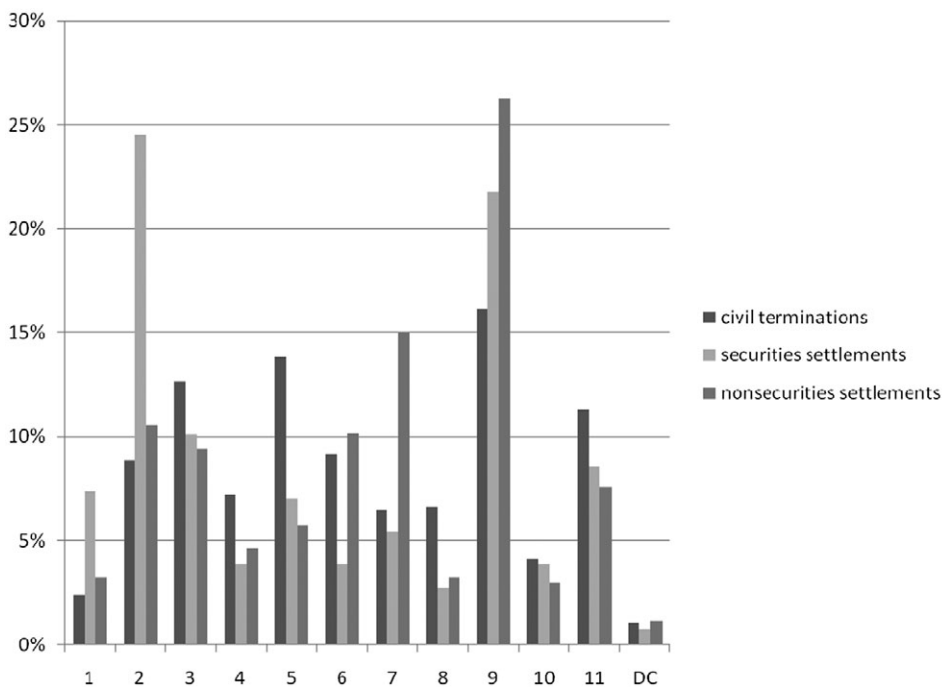
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

believe they can find favorable law or favorable judges. Federal class actions often involve class members spread across multiple states and, as such, class action lawyers may have a great deal of discretion over the district in which file suit.<sup>47</sup> One way law or judges may be favorable to class action attorneys is with regard to attorney fees. In Section III, I attempt to test whether district court judges in the circuits with the most over- and undersubscribed class action dockets award attorney fees that would attract or discourage filings there; I find no evidence that they do.

Another hypothesis is that class action suits are settled in jurisdictions where defendants are located. This might be the case because although class action lawyers may have discretion over where to file, venue restrictions might ultimately restrict cases to jurisdic-

<sup>47</sup>See Samuel Issacharoff & Richard Nagareda, *Class Settlements Under Attack*, 156 U. Pa. L. Rev. 1649, 1662 (2008).

Figure 2: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

tions in which defendants have their corporate headquarters or other operations.<sup>48</sup> This might explain why the Second Circuit, with the financial industry in New York, sees so many securities suits, and why other circuits with cities with a large corporate presence, such as the First (Boston), Seventh (Chicago), and Ninth (Los Angeles and San Francisco), see more settlements than one would expect based on the size of their civil dockets.

Another hypothesis might be that class action lawyers file cases wherever it is most convenient for them to litigate the cases—that is, in the cities in which their offices are located. This, too, might explain the Second Circuit’s overrepresentation in securities settlements, with prominent securities firms located in New York, as well as the

<sup>48</sup>See 28 U.S.C. §§ 1391, 1404, 1406, 1407. See also *Foster v. Nationwide Mut. Ins. Co.*, No. 07-04928, 2007 U.S. Dist. LEXIS 95240 at \*2–17 (N.D. Cal. Dec. 14, 2007) (transferring venue to jurisdiction where defendant’s corporate headquarters were located). One prior empirical study of securities class action settlements found that 85 percent of such cases are filed in the home circuit of the defendant corporation. See James D. Cox, Randall S. Thomas & Lynn Bai, Do Differences in Pleading Standards Cause Forum Shopping in Securities Class Actions?: Doctrinal and Empirical Analyses, 2009 Wis. L. Rev. 421, 429, 440, 450–51 (2009).

overrepresentation of other settlements in some of the circuits in which major metropolitan areas with prominent plaintiffs' firms are found.

### G. *Type of Relief*

Under Rule 23, district court judges can certify class actions for injunctive or declaratory relief, for money damages, or for a combination of the two.<sup>49</sup> In addition, settlements can provide money damages both in the form of cash as well as in the form of in-kind relief, such as coupons to purchase the defendant's products.<sup>50</sup>

As shown in Table 3, the vast majority of class actions settled in 2006 and 2007 provided cash relief to the class (89 percent), but a substantial number also provided in-kind relief (6 percent) or injunctive or declaratory relief (23 percent). As would be

Table 3: The Percentage of 2006 and 2007 Class Action Settlements Providing Each Type of Relief in Each Subject Area

<i>Subject Matter</i>	<i>Cash</i>	<i>In-Kind Relief</i>	<i>Injunctive or Declaratory Relief</i>
Securities ( <i>n</i> = 257)	100%	0%	2%
Labor and employment ( <i>n</i> = 94)	95%	6%	29%
Consumer ( <i>n</i> = 87)	74%	30%	37%
Employee benefits ( <i>n</i> = 61)	90%	0%	34%
Civil rights ( <i>n</i> = 61)	49%	2%	75%
Debt collection ( <i>n</i> = 42)	98%	0%	12%
Antitrust ( <i>n</i> = 30)	97%	13%	7%
Commercial ( <i>n</i> = 13)	92%	0%	62%
Other ( <i>n</i> = 43)	77%	7%	33%
All ( <i>n</i> = 688)	89%	6%	23%

NOTE: Cash: cash, securities, refunds, charitable contributions, contributions to employee benefit plans, forgiven debt, relinquishment of liens or claims, and liquidated repairs to property. In-kind relief: vouchers, coupons, gift cards, warranty extensions, merchandise, services, and extended insurance policies. Injunctive or declaratory relief: modification of terms of employee benefit plans, modification of compensation practices, changes in business practices, capital improvements, research, and unliquidated repairs to property.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>49</sup>See Fed. R. Civ. P. 23(b).

<sup>50</sup>These coupon settlements have become very controversial in recent years, and Congress discouraged them in the Class Action Fairness Act of 2005 by tying attorney fees to the value of coupons that were ultimately redeemed by class members as opposed to the value of coupons offered class members. See 28 U.S.C. § 1712.

expected in light of the focus on consumer cases in the debate over the anti-coupon provision in the Class Action Fairness Act of 2005,<sup>51</sup> consumer cases had the greatest percentage of settlements providing for in-kind relief (30 percent). Civil rights cases had the greatest percentage of settlements providing for injunctive or declaratory relief (75 percent), though almost half the civil rights cases also provided some cash relief (49 percent). The securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class and almost none provided in-kind, injunctive, or declaratory relief. This is but one example of how the focus on securities settlements in the prior empirical scholarship can lead to a distorted picture of class action litigation.

#### H. Settlement Money

Although securities settlements did not comprise the majority of federal class action settlements in 2006 and 2007, they did comprise the majority of the money—indeed, the *vast majority* of the money—involved in class action settlements. In Table 4, I report the total amount of ascertainable value involved in the 2006 and 2007 settlements. This amount

Table 4: The Total Amount of Money Involved in Federal Class Action Settlements in 2006 and 2007

Subject Matter	Total Ascertainable Monetary Value in Settlements (and Percentage of Overall Annual Total)			
	2006 (n = 304)		2007 (n = 384)	
Securities	\$16,728	76%	\$8,038	73%
Labor and employment	\$266.5	1%	\$547.7	5%
Consumer	\$517.3	2%	\$732.8	7%
Employee benefits	\$443.8	2%	\$280.8	3%
Civil rights	\$265.4	1%	\$81.7	1%
Debt collection	\$8.9	<1%	\$5.7	<1%
Antitrust	\$1,079	5%	\$660.5	6%
Commercial	\$1,217	6%	\$124.0	1%
Other	\$1,568	7%	\$592.5	5%
Total	\$22,093	100%	\$11,063	100%

NOTE: Dollar amounts are in millions. Includes all determinate payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>51</sup>See, e.g., 151 Cong. Rec. H723 (2005) (statement of Rep. Sensenbrenner) (arguing that consumers are “seeing all of their gains go to attorneys and them just getting coupon settlements from the people who have allegedly done them wrong”).

includes all determinate<sup>52</sup> payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.<sup>53</sup> I did not attempt to assign a value to any relief that was not valued by the district court (even if it may have been valued by class counsel). It should be noted that district courts did not often value in-kind or injunctive relief—they did so only 18 percent of the time—and very little of Table 4—only \$1.3 billion, or 4 percent—is based on these valuations. It should also be noted that the amounts in Table 4 reflect only what defendants *agreed to pay*; they do not reflect the amounts that defendants *actually paid* after the claims administration process concluded. Prior empirical research has found that, depending on how settlements are structured (e.g., whether they awarded a fixed amount of money to each class member who eventually files a valid claim or a pro rata amount of a fixed settlement to each class member), defendants can end up paying much less than they agreed.<sup>54</sup>

Table 4 shows that in both years, around three-quarters of all the money involved in federal class action settlements came from securities cases. Thus, in this sense, the conventional wisdom about the dominance of securities cases in class action litigation is correct. Figure 3 is a graphical representation of the contribution each litigation area made to the total number and total amount of money involved in the 2006–2007 settlements.

Table 4 also shows that, in total, over \$33 billion was approved in the 2006–2007 settlements. Over \$22 billion was approved in 2006 and over \$11 billion in 2007. It should be emphasized again that the totals in Table 4 understate the amount of money defendants agreed to pay in class action settlements in 2006 and 2007 because they exclude the unascertainable value of those settlements. This understatement disproportionately affects litigation areas, such as civil rights, where much of the relief is injunctive because, as I noted, very little of such relief was valued by district courts. Nonetheless, these numbers are, as far as I am aware, the first attempt to calculate how much money is involved in federal class action settlements in a given year.

The significant discrepancy between the two years is largely attributable to the 2006 securities settlement related to the collapse of Enron, which totaled \$6.6 billion, as well as to the fact that seven of the eight 2006–2007 settlements for more than \$1 billion were approved in 2006.<sup>55</sup> Indeed, it is worth noting that the eight settlements for more than \$1

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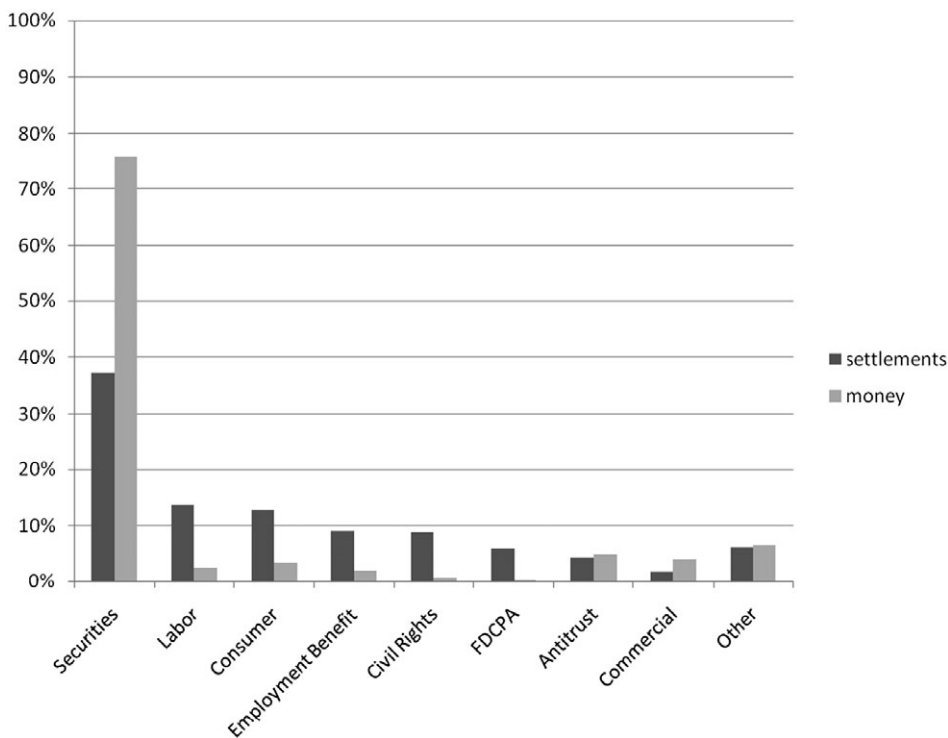
<sup>52</sup>For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement documents.

<sup>53</sup>In some cases, the district court valued the relief in the settlement over a range. In these cases, I used the middle point in the range.

<sup>54</sup>See Hensler et al., *supra* note 7, at 427–30.

<sup>55</sup>See *In re Enron Corp. Secs. Litig.*, MDL 1446 (S.D. Tex. May 24, 2006) (\$6,600,000,000); *In re Tyco Int'l Ltd. Multidistrict Litig.*, MDL 02-1335 (D.N.H. Dec. 19, 2007) (\$3,200,000,000); *In re AOL Time Warner, Inc. Secs. & "ERISA" Litig.*, MDL 1500 (S.D.N.Y. Apr. 6, 2006) (\$2,500,000,000); *In re Diet Drugs Prods. Liab. Litig.*, MDL 1203 (E.D. Pa. May 24, 2006) (\$1,275,000,000); *In re Nortel Networks Corp. Secs. Litig. (Nortel I)*, No. 01-1855 (S.D.N.Y. Dec. 26, 2006) (\$1,142,780,000); *In re Royal Ahold N.V. Secs. & ERISA Litig.*, 03-1539 (D. Md. Jun. 16, 2006)

Figure 3: The percentage of 2006–2007 federal class action settlements and settlement money from each subject area.



SOURCES: Westlaw, PACER, district court clerks' offices.

billion accounted for almost \$18 billion of the \$33 billion that changed hands over the two-year period. That is, a mere 1 percent of the settlements comprised over 50 percent of the value involved in federal class action settlements in 2006 and 2007. To give some sense of the distribution of settlement size in the 2006–2007 data set, Table 5 sets forth the number of settlements with an ascertainable value beyond fee, expense, and class-representative incentive awards (605 out of the 688 settlements). Nearly two-thirds of all settlements fell below \$10 million.

Given the disproportionate influence exerted by securities settlements on the total amount of money involved in class actions, it is unsurprising that the average securities settlement involved more money than the average settlement in most of the other subject areas. These numbers are provided in Table 6, which includes, again, only the settlements

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(\$1,100,000,000); *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006) (\$1,075,000,000); *In re Nortel Networks Corp. Secs. Litig. (Nortel II)*, No. 05-1659 (S.D.N.Y. Dec. 26, 2006) (\$1,074,270,000).

Table 5: The Distribution by Size of 2006–2007 Federal Class Action Settlements with Ascertainable Value

<i>Settlement Size (in Millions)</i>	<i>Number of Settlements</i>
[\$0 to \$1]	131 (21.7%)
(\$1 to \$10]	261 (43.1%)
(\$10 to \$50]	139 (23.0%)
(\$50 to \$100]	33 (5.45%)
(\$100 to \$500]	31 (5.12%)
(\$500 to \$6,600]	10 (1.65%)
Total	605

NOTE: Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 6: The Average and Median Settlement Amounts in the 2006–2007 Federal Class Action Settlements with Ascertainable Value to the Class

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>
Securities ( <i>n</i> = 257)	\$96.4	\$8.0
Labor and employment ( <i>n</i> = 88)	\$9.2	\$1.8
Consumer ( <i>n</i> = 65)	\$18.8	\$2.9
Employee benefits ( <i>n</i> = 52)	\$13.9	\$5.3
Civil rights ( <i>n</i> = 34)	\$9.7	\$2.5
Debt collection ( <i>n</i> = 40)	\$0.37	\$0.088
Antitrust ( <i>n</i> = 29)	\$60.0	\$22.0
Commercial ( <i>n</i> = 12)	\$111.7	\$7.1
Other ( <i>n</i> = 28)	\$76.6	\$6.2
All ( <i>N</i> = 605)	\$54.7	\$5.1

NOTE: Dollar amounts are in millions. Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.

SOURCES: Westlaw, PACER, district court clerks' offices.

with an ascertainable value beyond fee, expense, and class-representative incentive awards. The average settlement over the entire two-year period for all types of cases was almost \$55 million, but the median was only \$5.1 million. (With the \$6.6 billion Enron settlement excluded, the average settlement for all ascertainable cases dropped to \$43.8 million and, for securities cases, dropped to \$71.0 million.) The average settlements varied widely by litigation area, with securities and commercial settlements at the high end of around \$100

million, but the median settlements for nearly every area were bunched around a few million dollars. It should be noted that the high average for commercial cases is largely due to one settlement above \$1 billion;<sup>56</sup> when that settlement is removed, the average for commercial cases was only \$24.2 million.

Table 6 permits comparison with the two prior empirical studies of class action settlements that sought to include nonsecurities as well as securities cases in their purview. The Eisenberg-Miller study through 2002, which included both common-fund and fee-shifting cases, found that the mean class action settlement was \$112 million and the median was \$12.9 million, both in 2006 dollars,<sup>57</sup> more than double the average and median I found for all settlements in 2006 and 2007. The Eisenberg-Miller update through 2008 included only common-fund cases and found mean and median settlements in federal court of \$115 million and \$11.7 million (both again in 2006 dollars),<sup>58</sup> respectively; this is still more than double the average and median I found. This suggests that the methodology used by the Eisenberg-Miller studies—looking at district court opinions that were published in Westlaw or Lexis—oversampled larger class actions (because opinions approving larger class actions are, presumably, more likely to be published than opinions approving smaller ones). It is also possible that the exclusion of fee-shifting cases from their data through 2008 contributed to this skew, although, given that their data through 2002 included fee-shifting cases and found an almost identical mean and median as their data through 2008, the primary explanation for the much larger mean and median in their study through 2008 is probably their reliance on published opinions. Over the same years examined by Professors Eisenberg and Miller, the Class Action Reports study found a smaller average settlement than I did (\$39.5 million in 2006 dollars), but a larger median (\$8.48 million in 2006 dollars). It is possible that the Class Action Reports methodology also oversampled larger class actions, explaining its larger median, but that there are more “mega” class actions today than there were before 2003, explaining its smaller mean.<sup>59</sup>

It is interesting to ask how significant the \$16 billion that was involved annually in these 350 or so federal class action settlements is in the grand scheme of U.S. litigation. Unfortunately, we do not know how much money is transferred every year in U.S. litigation. The only studies of which I am aware that attempt even a partial answer to this question are the estimates of how much money is transferred in the U.S. “tort” system every year by a financial services consulting firm, Tillinghast-Towers Perrin.<sup>60</sup> These studies are not directly

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<sup>56</sup>See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006) (approving \$1,075,000,000 settlement).

<sup>57</sup>See Eisenberg & Miller, *supra* note 15, at 47.

<sup>58</sup>See Eisenberg & Miller II, *supra* note 16, at 262.

<sup>59</sup>There were eight class action settlements during 2006 and 2007 of more than \$1 billion. See note 55 *supra*.

<sup>60</sup>Some commentators have been critical of Tillinghast’s reports, typically on the ground that the reports overestimate the cost of the tort system. See M. Martin Boyer, *Three Insights from the Canadian D&O Insurance Market: Inertia, Information and Insiders*, 14 *Conn. Ins. L.J.* 75, 84 (2007); John Fabian Witt, *Form and Substance in the Law of*

comparable to the class action settlement numbers because, again, the number of tort class action settlements in 2006 and 2007 was very small. Nonetheless, as the tort system no doubt constitutes a large percentage of the money transferred in all litigation, these studies provide something of a point of reference to assess the significance of class action settlements. In 2006 and 2007, Tillinghast-Towers Perrin estimated that the U.S. tort system transferred \$160 billion and \$164 billion, respectively, to claimants and their lawyers.<sup>61</sup> The total amount of money involved in the 2006 and 2007 federal class action settlements reported in Table 4 was, therefore, roughly 10 percent of the Tillinghast-Towers Perrin estimate. This suggests that in merely 350 cases every year, federal class action settlements involve the same amount of wealth as 10 percent of the entire U.S. tort system. It would seem that this is a significant amount of money for so few cases.

#### IV. ATTORNEY FEES IN FEDERAL CLASS ACTION SETTLEMENTS, 2006 AND 2007

##### A. Total Amount of Fees and Expenses

As I demonstrated in Section III, federal class action settlements involved a great deal of money in 2006 and 2007, some \$16 billion a year. A perennial concern with class action litigation is whether class action lawyers are reaping an outsized portion of this money.<sup>62</sup> The 2006–2007 federal class action data suggest that these concerns may be exaggerated. Although class counsel were awarded some \$5 billion in fees and expenses over this period, as shown in Table 7, only 13 percent of the settlement amount in 2006 and 20 percent of the amount in 2007 went to fee and expense awards.<sup>63</sup> The 2006 percentage is lower than the 2007 percentage in large part because the class action lawyers in the Enron securities settlement received less than 10 percent of the \$6.6 billion corpus. In any event, the percentages in both 2006 and 2007 are far lower than the portions of settlements that contingency-fee lawyers receive in individual litigation, which are usually at least 33 percent.<sup>64</sup> Lawyers received less than 33 percent of settlements in fees and expenses in virtually every subject area in both years.

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Counterinsurgency Damages, 41 *Loy. L.A.L. Rev.* 1455, 1475 n.135 (2008). If these criticisms are valid, then class action settlements would appear even more significant as compared to the tort system.

<sup>61</sup>See Tillinghast-Towers Perrin, *U.S. Tort Costs: 2008 Update 5* (2008). The report calculates \$252 billion in total tort “costs” in 2007 and \$246.9 billion in 2006, *id.*, but only 65 percent of those costs represent payments made to claimants and their lawyers (the remainder represents insurance administration costs and legal costs to defendants). See Tillinghast-Towers Perrin, *U.S. Tort Costs: 2003 Update 17* (2003).

<sup>62</sup>See, e.g., Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?* 158 *U. Pa. L. Rev.* 2043, 2043–44 (2010).

<sup>63</sup>In some of the partial settlements, see note 29 *supra*, the district court awarded expenses for all the settlements at once and it was unclear what portion of the expenses was attributable to which settlement. In these instances, I assigned each settlement a pro rata portion of expenses. To the extent possible, all the fee and expense numbers in this article exclude any interest known to be awarded by the courts.

<sup>64</sup>See, e.g., Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 *DePaul L. Rev.* 267, 284–86 (1998) (reporting results of a survey of Wisconsin lawyers).

Table 7: The Total Amount of Fees and Expenses Awarded to Class Action Lawyers in Federal Class Action Settlements in 2006 and 2007

<i>Subject Matter</i>	<i>Total Fees and Expenses Awarded in Settlements (and as Percentage of Total Settlement Amounts) in Each Subject Area</i>	
	<i>2006</i> (n = 292)	<i>2007</i> (n = 363)
Securities	\$1,899 (11%)	\$1,467 (20%)
Labor and employment	\$75.1 (28%)	\$144.5 (26%)
Consumer	\$126.4 (24%)	\$65.3 (9%)
Employee benefits	\$57.1 (13%)	\$71.9 (26%)
Civil rights	\$31.0 (12%)	\$32.2 (39%)
Debt collection	\$2.5 (28%)	\$1.1 (19%)
Antitrust	\$274.6 (26%)	\$157.3 (24%)
Commercial	\$347.3 (29%)	\$18.2 (15%)
Other	\$119.3 (8%)	\$103.3 (17%)
Total	\$2,932 (13%)	\$2,063 (20%)

NOTE: Dollar amounts are in millions. Excludes settlements in which fees were not (or at least not yet) sought (22 settlements), settlements in which fees have not yet been awarded (two settlements), and settlements in which fees could not be ascertained due to indefinite award amounts, missing documents, or nonpublic side agreements (nine settlements).

SOURCES: Westlaw, PACER, district court clerks' offices.

It should be noted that, in some respects, the percentages in Table 7 overstate the portion of settlements that were awarded to class action attorneys because, again, many of these settlements involved indefinite cash relief or noncash relief that could not be valued.<sup>65</sup> If the value of all this relief could have been included, then the percentages in Table 7 would have been even lower. On the other hand, as noted above, not all the money defendants agree to pay in class action settlements is ultimately collected by the class.<sup>66</sup> To the extent leftover money is returned to the defendant, the percentages in Table 7 understate the portion class action lawyers received relative to their clients.

### *B. Method of Awarding Fees*

District court judges have a great deal of discretion in how they set fee awards in class action cases. Under Rule 23, federal judges are told only that the fees they award to class counsel

<sup>65</sup>Indeed, the large year-to-year variation in the percentages in labor, consumer, and employee benefits cases arose because district courts made particularly large valuations of the equitable relief in a few settlements and used the lodestar method to calculate the fees in these settlements (and thereby did not consider their large valuations in calculating the fees).

<sup>66</sup>See Hensler et al., *supra* note 7, at 427–30.

must be “reasonable.”<sup>67</sup> Courts often exercise this discretion by choosing between two approaches: the lodestar approach or the percentage-of-the-settlement approach.<sup>68</sup> The lodestar approach works much the way it does in individual litigation: the court calculates the fee based on the number of hours class counsel actually worked on the case multiplied by a reasonable hourly rate and a discretionary multiplier.<sup>69</sup> The percentage-of-the-settlement approach bases the fee on the size of the settlement rather than on the hours class counsel actually worked: the district court picks a percentage of the settlement it thinks is reasonable based on a number of factors, one of which is often the fee lodestar (sometimes referred to as a “lodestar cross-check”).<sup>70</sup> My 2006–2007 data set shows that the percentage-of-the-settlement approach has become much more common than the lodestar approach. In 69 percent of the settlements reported in Table 7, district court judges employed the percentage-of-the-settlement method with or without the lodestar cross-check. They employed the lodestar method in only 12 percent of settlements. In the other 20 percent of settlements, the court did not state the method it used or it used another method altogether.<sup>71</sup> The pure lodestar method was used most often in consumer (29 percent) and debt collection (45 percent) cases. These numbers are fairly consistent with the Eisenberg-Miller data from 2003 to 2008. They found that the lodestar method was used in only 9.6 percent of settlements.<sup>72</sup> Their number is no doubt lower than the 12 percent number found in my 2006–2007 data set because they excluded fee-shifting cases from their study.

### C. *Variation in Fees Awarded*

Not only do district courts often have discretion to choose between the lodestar method and the percentage-of-the-settlement method, but each of these methods leaves district courts with a great deal of discretion in how the method is ultimately applied. The courts

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<sup>67</sup>Fed. R. Civ. P. 23(h).

<sup>68</sup>The discretion to pick between these methods is most pronounced in settlements where the underlying claim was not found in a statute that would shift attorney fees to the defendant. See, e.g., *In re Thirteen Appeals Arising out of San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (permitting either percentage or lodestar method in common-fund cases); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (same); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (same). By contrast, courts typically used the lodestar approach in settlements arising from fee-shifting cases.

<sup>69</sup>See Eisenberg & Miller, *supra* note 15, at 31.

<sup>70</sup>*Id.* at 31–32.

<sup>71</sup>These numbers are based on the fee method described in the district court’s order awarding fees, unless the order was silent, in which case the method, if any, described in class counsel’s motion for fees (if it could be obtained) was used. If the court explicitly justified the fee award by reference to its percentage of the settlement, I counted it as the percentage method. If the court explicitly justified the award by reference to a lodestar calculation, I counted it as the lodestar method. If the court explicitly justified the award by reference to both, I counted it as the percentage method with a lodestar cross-check. If the court calculated neither a percentage nor the fee lodestar in its order, then I counted it as an “other” method.

<sup>72</sup>See Eisenberg & Miller II, *supra* note 16, at 267.

that use the percentage-of-the-settlement method usually rely on a multifactor test<sup>73</sup> and, like most multifactor tests, it can plausibly yield many results. It is true that in many of these cases, judges examine the fee percentages that other courts have awarded to guide their discretion.<sup>74</sup> In addition, the Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.<sup>75</sup> Moreover, in securities cases, some courts presume that the proper fee award percentage is the one class counsel agreed to when it was hired by the large shareholder that is now usually selected as the lead plaintiff in such cases.<sup>76</sup> Nonetheless, presumptions, of course, can be overcome and, as one court has put it, “[t]here is no hard and fast rule mandating a certain percentage . . . which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case.”<sup>77</sup> The court added: “[i]ndividualization in the exercise of a discretionary power [for fee awards] will alone retain equity as a living system and save it from sterility.”<sup>78</sup> It is therefore not surprising that district courts awarded fees over a broad range when they used the percentage-of-the-settlement method. Figure 4 is a graph of the distribution of fee awards as a percentage of the settlement in the 444 cases where district courts used the percentage method with or without a lodestar cross-check and the fee percentages were ascertainable. These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court’s order or counsel’s motion for fees and expenses (which was 96 percent of the time). The awards ranged from 3 percent of the settlement to 47 percent of the settlement. The average award was 25.4 percent and the median was 25 percent. Most fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent. The Eisenberg-Miller study through 2008 found a slightly lower mean (24 percent) but the same median (25 percent) among its federal court settlements.<sup>79</sup>

It should be noted that in 218 of these 444 settlements (49 percent), district courts said they considered the lodestar calculation as a factor in assessing the reasonableness of the fee percentages awarded. In 204 of these settlements, the lodestar multiplier resulting

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<sup>73</sup>The Eleventh Circuit, for example, has identified a nonexclusive list of 15 factors that district courts might consider. See *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 772 n.3, 775 (11th Cir. 1991). See also *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007) (five factors); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (six factors); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (seven factors); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006) (13 factors); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (12 factors); *In re Baan Co. Sec. Litig.*, 288 F. Supp. 2d 14, 17 (D.D.C. 2003) (seven factors).

<sup>74</sup>See Eisenberg & Miller, *supra* note 15, at 32.

<sup>75</sup>See *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003).

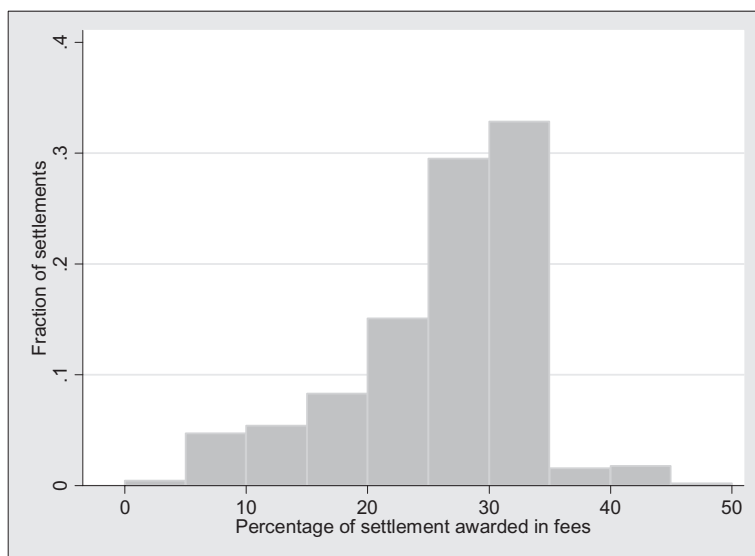
<sup>76</sup>See, e.g., *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

<sup>77</sup>*Camden I Condo. Ass’n*, 946 F.2d at 774.

<sup>78</sup>*Camden I Condo. Ass’n*, 946 F.2d at 774 (alterations in original and internal quotation marks omitted).

<sup>79</sup>See Eisenberg & Miller II, *supra* note 16, at 259.

Figure 4: The distribution of 2006–2007 federal class action fee awards using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

from the fee award could be ascertained. The lodestar multiplier in these cases ranged from 0.07 to 10.3, with a mean of 1.65 and a median of 1.34. Although there is always the possibility that class counsel are optimistic with their timesheets when they submit them for lodestar consideration, these lodestar numbers—only one multiplier above 6.0, with the bulk of the range not much above 1.0—strike me as fairly parsimonious for the risk that goes into any piece of litigation and cast doubt on the notion that the percentage-of-the-settlement method results in windfalls to class counsel.<sup>80</sup>

Table 8 shows the mean and median fee percentages awarded in each litigation subject area. The fee percentages did not appear to vary greatly across litigation subject areas, with most mean and median awards between 25 percent and 30 percent. As I report later in this section, however, after controlling for other variables, there were statistically significant differences in the fee percentages awarded in some subject areas compared to others. The mean and median percentages for securities cases were 24.7 percent and 25.0 percent, respectively; for all nonsecurities cases, the mean and median were 26.1 percent and 26.0 percent, respectively. The Eisenberg-Miller study through 2008 found mean awards ranging from 21–27 percent and medians from 19–25 percent,<sup>81</sup> a bit lower than the ranges in my

<sup>80</sup>It should be emphasized, of course, that these 204 settlements may not be representative of the settlements where the percentage-of-the-settlement method was used without the lodestar cross-check.

<sup>81</sup>See Eisenberg & Miller II, *supra* note 16, at 262.

Table 8: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Subject Matter</i>	<i>Percentage of Settlement Awarded as Fees</i>	
	<i>Mean</i>	<i>Median</i>
Securities ( <i>n</i> = 233)	24.7	25.0
Labor and employment ( <i>n</i> = 61)	28.0	29.0
Consumer ( <i>n</i> = 39)	23.5	24.6
Employee benefits ( <i>n</i> = 37)	26.0	28.0
Civil rights ( <i>n</i> = 20)	29.0	30.3
Debt collection ( <i>n</i> = 5)	24.2	25.0
Antitrust ( <i>n</i> = 23)	25.4	25.0
Commercial ( <i>n</i> = 7)	23.3	25.0
Other ( <i>n</i> = 19)	24.9	26.0
All ( <i>N</i> = 444)	25.7	25.0

SOURCES: Westlaw, PACER, district court clerks' offices.

2006–2007 data set, which again, may be because they oversampled larger settlements (as I show below, district courts awarded smaller fee percentages in larger cases).

In light of the fact that, as I noted above, the distribution of class action settlements among the geographic circuits does not track their civil litigation dockets generally, it is interesting to ask whether one reason for the pattern in class action cases is that circuits oversubscribed with class actions award higher fee percentages. Although this question will be taken up with more sophistication in the regression analysis below, it is worth describing here the mean and median fee percentages in each of the circuits. Those data are presented in Table 9. Contrary to the hypothesis set forth in Section III, two of the circuits most oversubscribed with class actions, the Second and the Ninth, were the only circuits in which the mean fee awards were *under* 25 percent. As I explain below, these differences are statistically significant and remain so after controlling for other variables.

The lodestar method likewise permits district courts to exercise a great deal of leeway through the application of the discretionary multiplier. Figure 5 shows the distribution of lodestar multipliers in the 71 settlements in which district courts used the lodestar method and the multiplier could be ascertained. The average multiplier was 0.98 and the median was 0.92, which suggest that courts were not terribly prone to exercise their discretion to deviate from the amount of money encompassed in the lodestar calculation. These 71

Table 9: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Circuit</i>	<i>Percentage of Settlement Awarded as Fees</i>	
	<i>Mean</i>	<i>Median</i>
First ( <i>n</i> = 27)	27.0	25.0
Second ( <i>n</i> = 72)	23.8	24.5
Third ( <i>n</i> = 50)	25.4	29.3
Fourth ( <i>n</i> = 19)	25.2	28.0
Fifth ( <i>n</i> = 27)	26.4	29.0
Sixth ( <i>n</i> = 25)	26.1	28.0
Seventh ( <i>n</i> = 39)	27.4	29.0
Eighth ( <i>n</i> = 15)	26.1	30.0
Ninth ( <i>n</i> = 111)	23.9	25.0
Tenth ( <i>n</i> = 18)	25.3	25.5
Eleventh ( <i>n</i> = 35)	28.1	30.0
DC ( <i>n</i> = 6)	26.9	26.0

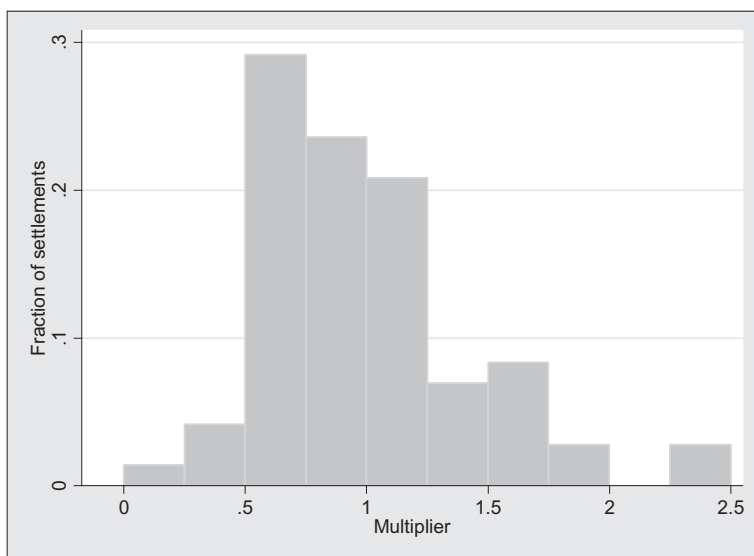
SOURCES: Westlaw, PACER, district court clerks' offices.

settlements were heavily concentrated within the consumer (median multiplier 1.13) and debt collection (0.66) subject areas. If cases in which district courts used the percentage-of-the-settlement method with a lodestar cross-check are combined with the lodestar cases, the average and median multipliers (in the 263 cases where the multipliers were ascertainable) were 1.45 and 1.19, respectively. Again—putting to one side the possibility that class counsel are optimistic with their timesheets—these multipliers appear fairly modest in light of the risk involved in any piece of litigation.

#### *D. Factors Influencing Percentage Awards*

Whether district courts are exercising their discretion over fee awards wisely is an important public policy question given the amount of money at stake in class action settlements. As shown above, district court judges awarded class action lawyers nearly \$5 billion in fees and expenses in 2006–2007. Based on the comparison to the tort system set forth in Section III, it is not difficult to surmise that in the 350 or so settlements every year, district court judges

Figure 5: The distribution of lodestar multipliers in 2006–2007 federal class action fee awards using the lodestar method.



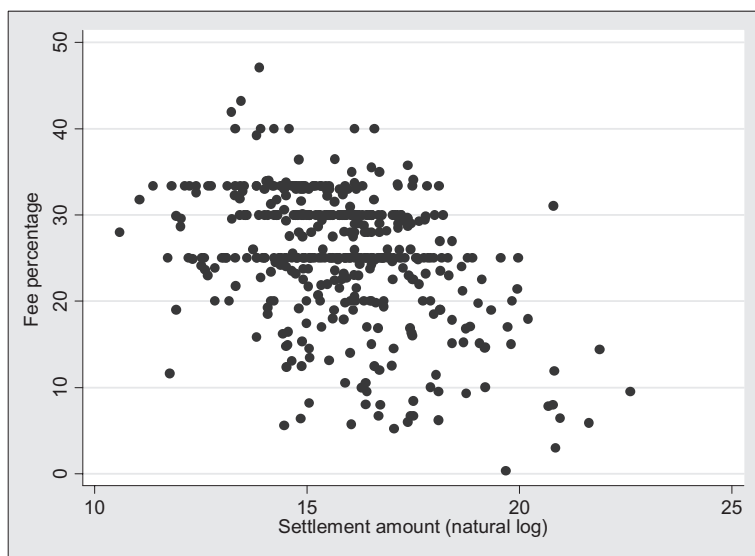
SOURCES: Westlaw, PACER, district court clerks' offices.

are awarding a significant portion of all the annual compensation received by contingency-fee lawyers in the United States. Moreover, contingency fees are arguably the engine that drives much of the noncriminal regulation in the United States; unlike many other nations, we regulate largely through the ex post, decentralized device of litigation.<sup>82</sup> To the extent district courts could have exercised their discretion to award billions more or billions less to class action lawyers, district courts have been delegated a great deal of leeway over a big chunk of our regulatory horsepower. It is therefore worth examining how district courts exercise their discretion over fees. This examination is particularly important in cases where district courts use the percentage-of-the-settlement method to award fees: not only do such cases comprise the vast majority of settlements, but they comprise the vast majority of the money awarded as fees. As such, the analysis that follows will be confined to the 444 settlements where the district courts used the percentage-of-the-settlement method.

As I noted, prior empirical studies have shown that fee percentages are strongly and inversely related to the size of the settlement both in securities fraud and other cases. As shown in Figure 6, the 2006–2007 data are consistent with prior studies. Regression analysis, set forth in more detail below, confirms that after controlling for other variables, fee percentage is strongly and inversely associated with settlement size among all cases, among securities cases, and among all nonsecurities cases.

<sup>82</sup>See, e.g., Samuel Issacharoff, *Regulating after the Fact*, 56 DePaul L. Rev. 375, 377 (2007).

*Figure 6:* Fee awards as a function of settlement size in 2006–2007 class action cases using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

As noted above, courts often look to fee percentages in other cases as one factor they consider in deciding what percentage to award in a settlement at hand. In light of this practice, and in light of the fact that the size of the settlement has such a strong relationship to fee percentages, scholars have tried to help guide the practice by reporting the distribution of fee percentages across different settlement sizes.<sup>83</sup> In Table 10, I follow the Eisenberg-Miller studies and attempt to contribute to this guidance by setting forth the mean and median fee percentages, as well as the standard deviation, for each decile of the 2006–2007 settlements in which courts used the percentage-of-the-settlement method to award fees. The mean percentages ranged from over 28 percent in the first decile to less than 19 percent in the last decile.

It should be noted that the last decile in Table 10 covers an especially wide range of settlements, those from \$72.5 million to the Enron settlement of \$6.6 billion. To give more meaningful data to courts that must award fees in the largest settlements, Table 11 shows the last decile broken into additional cut points. When both Tables 10 and 11 are examined together, it appears that fee percentages tended to drift lower at a fairly slow pace until a settlement size of \$100 million was reached, at which point the fee percentages plunged well below 20 percent, and by the time \$500 million was reached, they plunged well below 15 percent, with most awards at that level under even 10 percent.

<sup>83</sup>See Eisenberg & Miller II, *supra* note 16, at 265.

Table 10: Mean, Median, and Standard Deviation of Fee Awards by Settlement Size in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
[\$0 to \$0.75] ( <i>n</i> = 45)	28.8%	29.6%	6.1%
(\$0.75 to \$1.75] ( <i>n</i> = 44)	28.7%	30.0%	6.2%
(\$1.75 to \$2.85] ( <i>n</i> = 45)	26.5%	29.3%	7.9%
(\$2.85 to \$4.45] ( <i>n</i> = 45)	26.0%	27.5%	6.3%
(\$4.45 to \$7.0] ( <i>n</i> = 44)	27.4%	29.7%	5.1%
(\$7.0 to \$10.0] ( <i>n</i> = 43)	26.4%	28.0%	6.6%
(\$10.0 to \$15.2] ( <i>n</i> = 45)	24.8%	25.0%	6.4%
(\$15.2 to \$30.0] ( <i>n</i> = 46)	24.4%	25.0%	7.5%
(\$30.0 to \$72.5] ( <i>n</i> = 42)	22.3%	24.9%	8.4%
(\$72.5 to \$6,600] ( <i>n</i> = 45)	18.4%	19.0%	7.9%

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 11: Mean, Median, and Standard Deviation of Fee Awards of the Largest 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
(\$72.5 to \$100] ( <i>n</i> = 12)	23.7%	24.3%	5.3%
(\$100 to \$250] ( <i>n</i> = 14)	17.9%	16.9%	5.2%
(\$250 to \$500] ( <i>n</i> = 8)	17.8%	19.5%	7.9%
(\$500 to \$1,000] ( <i>n</i> = 2)	12.9%	12.9%	7.2%
(\$1,000 to \$6,600] ( <i>n</i> = 9)	13.7%	9.5%	11%

SOURCES: Westlaw, PACER, district court clerks' offices.

Prior empirical studies have not examined whether fee awards are associated with the political affiliation of the district court judges making the awards. This is surprising because realist theories of judicial behavior would predict that political affiliation would influence fee decisions.<sup>84</sup> It is true that as a general matter, political affiliation may influence district court judges to a lesser degree than it does appellate judges (who have been the focus of most of the prior empirical studies of realist theories): district court judges decide more routine cases and are subject to greater oversight on appeal than appellate judges. On the other hand, class action settlements are a bit different in these regards than many other decisions made by district court judges. To begin with, class action settlements are almost never appealed, and when they are, the appeals are usually settled before the appellate court hears the case.<sup>85</sup> Thus, district courts have much less reason to worry about the constraint of appellate review in fashioning fee awards. Moreover, one would think the potential for political affiliation to influence judicial decision making is greatest when legal sources lead to indeterminate outcomes and when judicial decisions touch on matters that are salient in national politics. (The more salient a matter is, the more likely presidents will select judges with views on the matter and the more likely those views will diverge between Republicans and Democrats.) Fee award decisions would seem to satisfy both these criteria. The law of fee awards, as explained above, is highly discretionary, and fee award decisions are wrapped up in highly salient political issues such as tort reform and the relative power of plaintiffs' lawyers and corporations. I would expect to find that judges appointed by Democratic presidents awarded higher fees in the 2006–2007 settlements than did judges appointed by Republican presidents.

The data, however, do not appear to bear this out. Of the 444 fee awards using the percentage-of-the-settlement approach, 52 percent were approved by Republican appointees, 45 percent were approved by Democratic appointees, and 4 percent were approved by non-Article III judges (usually magistrate judges). The mean fee percentage approved by Republican appointees (25.6 percent) was slightly *greater* than the mean approved by Democratic appointees (24.9 percent). The medians (25 percent) were the same.

To examine whether the realist hypothesis fared better after controlling for other variables, I performed regression analysis of the fee percentage data for the 427 settlements approved by Article III judges. I used ordinary least squares regression with the dependent variable the percentage of the settlement that was awarded in fees.<sup>86</sup> The independent

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<sup>84</sup>See generally C.K. Rowland & Robert A. Carp, *Politics and Judgment in Federal District Courts* (1996). See also Max M. Schanzenbach & Emerson H. Tiller, *Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform*, 75 U. Chi. L. Rev. 715, 724–25 (2008).

<sup>85</sup>See Brian T. Fitzpatrick, *The End of Objector Blackmail?* 62 Vand. L. Rev. 1623, 1640, 1634–38 (2009) (finding that less than 10 percent of class action settlements approved by federal courts in 2006 were appealed by class members).

<sup>86</sup>Professors Eisenberg and Miller used a square root transformation of the fee percentages in some of their regressions. I ran all the regressions using this transformation as well and it did not appreciably change the results. I also ran the regressions using a natural log transformation of fee percentage and with the dependent variable natural log of the fee amount (as opposed to the fee percentage). None of these models changed the results

variables were the natural log of the amount of the settlement, the natural log of the age of the case (in days), indicator variables for whether the class was certified as a settlement class, for litigation subject areas, and for circuits, as well as indicator variables for whether the judge was appointed by a Republican or Democratic president and for the judge's race and gender.<sup>87</sup>

The results for five regressions are in Table 12. In the first regression (Column 1), only the settlement amount, case age, and judge's political affiliation, gender, and race were included as independent variables. In the second regression (Column 2), all the independent variables were included. In the third regression (Column 3), only securities cases were analyzed, and in the fourth regression (Column 4), only nonsecurities cases were analyzed.

In none of these regressions was the political affiliation of the district court judge associated with fee percentage in a statistically significant manner.<sup>88</sup> One possible explanation for the lack of evidence for the realist hypothesis is that district court judges elevate other preferences above their political and ideological ones. For example, district courts of both political stripes may succumb to docket-clearing pressures and largely rubber stamp whatever fee is requested by class counsel; after all, these requests are rarely challenged by defendants. Moreover, if judges award class counsel whatever they request, class counsel will not appeal and, given that, as noted above, class members rarely appeal settlements (and when they do, often settle them before the appeal is heard),<sup>89</sup> judges can thereby virtually guarantee there will be no appellate review of their settlement decisions. Indeed, scholars have found that in the vast majority of cases, the fees ultimately awarded by federal judges are little different than those sought by class counsel.<sup>90</sup>

Another explanation for the lack of evidence for the realist hypothesis is that my data set includes both unpublished as well as published decisions. It is thought that realist theories of judicial behavior lose force in unpublished judicial decisions. This is the case because the kinds of questions for which realist theories would predict that judges have the most room to let their ideologies run are questions for which the law is ambiguous; it is

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appreciably. The regressions were also run with and without the 2006 Enron settlement because it was such an outlier (\$6.6 billion); the case did not change the regression results appreciably. For every regression, the data and residuals were inspected to confirm the standard assumptions of linearity, homoscedasticity, and the normal distribution of errors.

<sup>87</sup>Prior studies of judicial behavior have found that the race and sex of the judge can be associated with his or her decisions. See, e.g., Adam B. Cox & Thomas J. Miles, *Judging the Voting Rights Act*, 108 *Colum. L. Rev.* 1 (2008); Donald R. Songer et al., *A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals*, 56 *J. Pol.* 425 (1994).

<sup>88</sup>Although these coefficients are not reported in Table 8, the gender of the district court judge was never statistically significant. The race of the judge was only occasionally significant.

<sup>89</sup>See Fitzpatrick, *supra* note 85, at 1640.

<sup>90</sup>See Eisenberg & Miller II, *supra* note 16, at 270 (finding that state and federal judges awarded the fees requested by class counsel in 72.5 percent of settlements); Eisenberg, Miller & Perino, *supra* note 9, at 22 ("judges take a light touch when it comes to reviewing fee requests").

Table 12: Regression of Fee Percentages in 2006–2007 Settlements Using Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Independent Variable</i>	<i>Regression Coefficients (and Robust t Statistics)</i>				
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
Settlement amount (natural log)	-1.77 (-5.43)**	-1.76 (-8.52)**	-1.76 (-7.16)**	-1.41 (-4.00)**	-1.78 (-8.67)**
Age of case (natural log days)	1.66 (2.31)**	1.99 (2.71)**	1.13 (1.21)	1.72 (1.47)	2.00 (2.69)**
Judge's political affiliation (1 = Democrat)	-0.630 (-0.83)	-0.345 (-0.49)	0.657 (0.76)	-1.43 (-1.20)	-0.232 (-0.34)
Settlement class		0.150 (0.19)	0.873 (0.84)	-1.62 (-1.00)	0.124 (0.15)
1st Circuit		3.30 (2.74)**	4.41 (3.32)**	0.031 (0.01)	0.579 (0.51)
2d Circuit		0.513 (0.44)	-0.813 (-0.61)	2.93 (1.14)	-2.23 (-1.98)**
3d Circuit		2.25 (1.99)**	4.00 (3.85)**	-1.11 (-0.50)	—
4th Circuit		2.34 (1.22)	0.544 (0.19)	3.81 (1.35)	—
5th Circuit		2.98 (1.90)*	1.09 (0.65)	6.11 (1.97)**	0.230 (0.15)
6th Circuit		2.91 (2.28)**	0.838 (0.57)	4.41 (2.15)**	—
7th Circuit		2.55 (2.23)**	3.22 (2.36)**	2.90 (1.46)	-0.227 (-0.20)
8th Circuit		2.12 (0.97)	-0.759 (-0.24)	3.73 (1.19)	-0.586 (-0.28)
9th Circuit		—	—	—	-2.73 (-3.44)**
10th Circuit		1.45 (0.94)	-0.254 (-0.13)	3.16 (1.29)	—
11th Circuit		4.05 (3.44)**	3.85 (3.07)**	4.14 (1.88)*	—
DC Circuit		2.76 (1.10)	2.60 (0.80)	2.41 (0.64)	—
Securities case		—	—	—	—
Labor and employment case		2.93 (3.00)**	—	—	2.85 (2.94)**
Consumer case		-1.65 (-0.88)	—	-4.39 (-2.20)**	-1.62 (-0.88)
Employee benefits case		-0.306 (-0.23)	—	-4.23 (-2.55)**	-0.325 (-0.26)
Civil rights case		1.85 (0.99)	—	-2.05 (-0.97)	1.76 (0.95)
Debt collection case		-4.93 (-1.71)*	—	-7.93 (-2.49)**	-5.04 (-1.75)*
Antitrust case		3.06 (2.11)**	—	0.937 (0.47)	2.78 (1.98)**

Table 12 *Continued*

Independent Variable	Regression Coefficients (and Robust t Statistics)				
	1	2	3	4	5
Commercial case		-0.028 (-0.01)		-2.65 (-0.73)	0.178 (0.05)
Other case		-0.340 (-0.17)		-3.73 (-1.65)	-0.221 (-0.11)
Constant	42.1 (7.29)**	37.2 (6.08)**	43.0 (6.72)**	38.2 (4.14)**	40.1 (7.62)**
N	427	427	232	195	427
R <sup>2</sup>	.20	.26	.37	.26	.26
Root MSE	6.59	6.50	5.63	7.24	6.48

NOTE: \*\*significant at the 5 percent level; \*significant at the 10 percent level. Standard errors in Column 1 were clustered by circuit. Indicator variables for race and gender were included in each regression but not reported.

SOURCES: Westlaw, PACER, district court clerks' offices, Federal Judicial Center.

thought that these kinds of questions are more often answered in published opinions.<sup>91</sup> Indeed, most of the studies finding an association between ideological beliefs and case outcomes were based on data sets that included only published opinions.<sup>92</sup> On the other hand, there is a small but growing number of studies that examine unpublished opinions as well, and some of these studies have shown that ideological effects persisted.<sup>93</sup> Nonetheless, in light of the discretion that judges exercise with respect to fee award decisions, it hard to characterize *any* decision in this area as “unambiguous.” Thus, even when unpublished, I would have expected the fee award decisions to exhibit an association with ideological beliefs. Thus, I am more persuaded by the explanation suggesting that judges are more concerned with clearing their dockets or insulating their decisions from appeal in these cases than with furthering their ideological beliefs.

In all the regressions, the size of the settlement was strongly and inversely associated with fee percentages. Whether the case was certified as a settlement class was not associated

<sup>91</sup>See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

<sup>92</sup>Id. at 178–79.

<sup>93</sup>See, e.g., David S. Law, Strategic Judicial Lawmaking: Ideology, Publication, and Asylum Law in the Ninth Circuit, 73 U. Cin. L. Rev. 817, 843 (2005); Deborah Jones Merritt & James J. Brudney, Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals, 54 Vand. L. Rev. 71, 109 (2001); Donald R. Songer, Criteria for Publication of Opinions in the U.S. Courts of Appeals: Formal Rules Versus Empirical Reality, 73 *Judicature* 307, 312 (1990). At the trial court level, however, the studies of civil cases have found no ideological effects. See Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States, 7 *J. Empirical Legal Stud.* 175, 192–93 (2010); Denise M. Keele et al., An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions, 6 *J. Empirical Legal Stud.* 213, 230 (2009); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 *J. Legal Stud.* 257, 276–77 (1995). With respect to criminal cases, there is at least one study at the trial court level that has found ideological effects. See Schanzenbach & Tiller, *supra* note 81, at 734.

with fee percentages in any of the regressions. The age of the case at settlement was associated with fee percentages in the first two regressions, and when the settlement class variable was removed in regressions 3 and 4, the age variable became positively associated with fee percentages in nonsecurities cases but remained insignificant in securities cases. Professors Eisenberg and Miller likewise found that the age of the case at settlement was positively associated with fee percentages in their 1993–2002 data set,<sup>94</sup> and that settlement classes were not associated with fee percentages in their 2003–2008 data set.<sup>95</sup>

Although the structure of these regressions did not permit extensive comparisons of fee awards across different litigation subject areas, fee percentages appeared to vary somewhat depending on the type of case that settled. Securities cases were used as the baseline litigation subject area in the second and fifth regressions, permitting a comparison of fee awards in each nonsecurities area with the awards in securities cases. These regressions show that awards in a few areas, including labor/employment and antitrust, were more lucrative than those in securities cases. In the fourth regression, which included only nonsecurities cases, labor and employment cases were used as the baseline litigation subject area, permitting comparison between fee percentages in that area and the other nonsecurities areas. This regression shows that fee percentages in several areas, including consumer and employee benefits cases, were lower than the percentages in labor and employment cases.

In the fifth regression (Column 5 of Table 12), I attempted to discern whether the circuits identified in Section III as those with the most overrepresented (the First, Second, Seventh, and Ninth) and underrepresented (the Fifth and Eighth) class action dockets awarded attorney fees differently than the other circuits. That is, perhaps district court judges in the First, Second, Seventh, and Ninth Circuits award greater percentages of class action settlements as fees than do the other circuits, whereas district court judges in the Fifth and Eighth Circuits award smaller percentages. To test this hypothesis, in the fifth regression, I included indicator variables only for the six circuits with unusual dockets to measure their fee awards against the other six circuits combined. The regression showed statistically significant association with fee percentages for only two of the six unusual circuits: the Second and Ninth Circuits. In both cases, however, the direction of the association (i.e., the Second and Ninth Circuits awarded *smaller* fees than the baseline circuits) was opposite the hypothesized direction.<sup>96</sup>

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<sup>94</sup>See Eisenberg & Miller, *supra* note 15, at 61.

<sup>95</sup>See Eisenberg & Miller II, *supra* note 16, at 266.

<sup>96</sup>This relationship persisted when the regressions were rerun among the securities and nonsecurities cases separately. I do not report these results, but, even though the First, Second, and Ninth Circuits were oversubscribed with securities class action settlements and the Fifth, Sixth, and Eighth were undersubscribed, there was no association between fee percentages and any of these unusual circuits except, again, the inverse association with the Second and Ninth Circuits. In nonsecurities cases, even though the Seventh and Ninth Circuits were oversubscribed and the Fifth and the Eighth undersubscribed, there was no association between fee percentages and any of these unusual circuits except again for the inverse association with the Ninth Circuit.

The lack of the expected association with the unusual circuits might be explained by the fact that class action lawyers forum shop along dimensions other than their potential fee awards; they might, for example, put more emphasis on favorable class-certification law because there can be no fee award if the class is not certified. As noted above, it might also be the case that class action lawyers are unable to engage in forum shopping at all because defendants are able to transfer venue to the district in which they are headquartered or another district with a significant connection to the litigation.

It is unclear why the Second and Ninth Circuits were associated with lower fee awards despite their heavy class action dockets. Indeed, it should be noted that the Ninth Circuit was the baseline circuit in the second, third, and fourth regressions and, in all these regressions, district courts in the Ninth Circuit awarded smaller fees than courts in many of the other circuits. The lower fees in the Ninth Circuit may be attributable to the fact that it has adopted a presumption that the proper fee to be awarded in a class action settlement is 25 percent of the settlement.<sup>97</sup> This presumption may make it more difficult for district court judges to award larger fee percentages. The lower awards in the Second Circuit are more difficult to explain, but it should be noted that the difference between the Second Circuit and the baseline circuits went away when the fifth regression was rerun with only nonsecurities cases.<sup>98</sup> This suggests that the awards in the Second Circuit may be lower *only* in securities cases. In any event, it should be noted that the lower fee awards from the Second and Ninth Circuits contrast with the findings in the Eisenberg-Miller studies, which found no intercircuit differences in fee awards in common-fund cases in their data through 2008.<sup>99</sup>

## V. CONCLUSION

This article has attempted to fill some of the gaps in our knowledge about class action litigation by reporting the results of an empirical study that attempted to collect all class action settlements approved by federal judges in 2006 and 2007. District court judges approved 688 class action settlements over this two-year period, involving more than \$33 billion. Of this \$33 billion, nearly \$5 billion was awarded to class action lawyers, or about 15 percent of the total. District courts typically awarded fees using the highly discretionary percentage-of-the-settlement method, and fee awards varied over a wide range under this method, with a mean and median around 25 percent. Fee awards using this method were strongly and inversely associated with the size of the settlement. Fee percentages were positively associated with the age of the case at settlement. Fee percentages were not associated with whether the class action was certified as a settlement class or with the

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<sup>97</sup>See note 75 *supra*. It should be noted that none of the results from the previous regressions were affected when the Ninth Circuit settlements were excluded from the data.

<sup>98</sup>The Ninth Circuit's differences persisted.

<sup>99</sup>See Eisenberg & Miller II, *supra* note 16, at 260.

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political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.

## **EXHIBIT 3**

## **DOCUMENTS REVIEWED**

1. Settlement Agreement
2. Amendment to Settlement Agreement
3. Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law (including Exhibits A-D)
4. Order Granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement
5. Plaintiffs' Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs, and Service Awards and Memorandum of Law
6. Joint Declaration of Class Counsel in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs, and Service Awards and Memorandum of Law
7. CyEx, LLC Financial Shield Total Product Description

# **EXHIBIT E**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION  
  
This Document Relates To: All actions.

Case No.: 2:20-cv-00376-GMN

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.  
  
Plaintiffs,  
  
v.  
  
MGM RESORTS INTERNATIONAL  
  
Defendant.

Master File No. 2:23-cv-01480-GMN  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR  
ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS AND FINAL JUDGMENT**

On January 17, 2025, after extensive arms-length negotiations, and private mediation conducted before Bruce Friedman, Esq., with JAMS in Las Vegas, Plaintiffs and Defendant entered into the Settlement Agreement, which is subject to review under Fed. R. Civ. P. 23, for monetary damages as set forth in the Agreement.

On January 17, 2025, the Plaintiffs filed the Agreement with the Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law. (Case No. 2:20-cv-00376-GMN, ECF No. 243; Case No. 2:23-cv-01480-GMN, ECF No. 62.)

On January 22, 2025, upon consideration of the Agreement, Motion for Preliminary Approval, and the record, the Court entered the Preliminary Approval Order. (Case No. 2:20-cv-00376-GMN, ECF No. 244; Case No. 2:23-cv-01480-GMN, ECF No. 63.) Pursuant to the Preliminary Approval Order, the Court, among other things, (i) provisionally certified the Settlement Class for settlement purposes; (ii) appointed the Plaintiffs as Class Representatives; (iii) appointed John Yanchunis, Doug

1 McNamara, E. Michelle Drake, David Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso,  
2 Gary Klinger, and Jeff Ostrow as Class Counsel for the Settlement Class; (iv) approved the form of  
3 the Notices and the Notice Program; (v) approved the Claim Form and the Claim process; (vi)  
4 appointed Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator; (vii)  
5 established procedures and deadlines for members of the Settlement Class to opt-out of or object to  
6 the Settlement; and (viii) scheduled the Final Approval Hearing at which time the Court would  
7 consider whether to grant Final Approval of the Settlement and the Application for Attorneys' Fees,  
8 Costs and Service Awards. *Id.*

9 On April 1, 2025, the Parties filed their Joint Motion to Approve Amendment to Settlement  
10 Agreement and Modify Notice Program (Case No. 2:20-cv-00376-GMN, ECF No. 250; Case No.  
11 2:23-cv-01480-GMN, ECF No. 72), which the Court granted (Case No. 2:20-cv-00376-GMN, ECF  
12 No. 251; Case No. 2:23-cv-01480-GMN, ECF No. 73).

13 On May 2, 2025, Plaintiffs filed the Motion for Final Approval of Class Action Settlement  
14 and Application for Attorneys' Fees, Costs, and Service Awards. (Case No. 2:20-cv-00376-GMN,  
15 ECF No. 257; Case No. 2:23-cv-01480-GMN, ECF No. 77.) Pursuant to the Motion for Final  
16 Approval, the Parties request Final Approval of the proposed class action Settlement, and awards of  
17 attorneys' fees and costs to Class Counsel and Service Awards to the Class Representatives. *Id.*

18 On June 18, 2025, a Final Approval Hearing was held on the Motion for Final Approval and  
19 Application for Attorneys' Fees, Costs, and Service Awards. Class Counsel appeared for the Plaintiffs  
20 and Settlement Class, and Defendant's Counsel appeared for Defendant.

21 Having received and considered the Settlement, the supporting papers filed by the Parties, and  
22 the evidence and argument received by the Court before entering the Preliminary Approval Order and  
23 at the Final Approval Hearing, the Court grants Final Approval of the Settlement and the Application  
24 for Attorneys' Fees, Costs, and Service Awards, enters this order, and **IT IS HEREBY ORDERED:**

25 1. **INCORPORATION OF DEFINED TERMS:** This order incorporates the definitions  
26 of all capitalized terms defined in Section II of the Settlement Agreement, and all capitalized terms  
27 used in this order have the same meanings as set forth in that Agreement.

28 2. **JURISDICTION:** The Court has subject matter jurisdiction over the Action and

1 personal jurisdiction over the Parties and Settlement Class Members.

2 3. **NOTICE PROGRAM AND CLAIMS PROCESS**: Pursuant to the Court’s  
3 Preliminary Approval Order, the Settlement Administrator has complied with the approved Notice  
4 Program as confirmed in its declaration filed with the Court. The form and method for notifying the  
5 Settlement Class of the Settlement and its terms and conditions was in conformity with this Court’s  
6 Preliminary Approval Order and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due  
7 process, and constituted the best notice practicable under the circumstances. The Court finds that the  
8 Notice Program was clearly designed to advise the Settlement Class members of their rights. Further,  
9 the Court finds that the Claim Process set forth in the Agreement was followed and that the process  
10 was the best practicable procedure under the circumstances.

11 4. **FINAL CLASS CERTIFICATION**: The Court again finds the Actions satisfy the  
12 applicable prerequisites for class action treatment under Fed. R. Civ. P. 23, namely:

- 13 a. The Settlement Class members are so numerous that joinder of all of them in the  
14 Lawsuit would be impracticable;
- 15 b. There are questions of law and fact common to the Settlement Class members, which  
16 predominate over any individual questions;
- 17 c. The claims of Plaintiffs are typical of the claims of the Settlement Class members;
- 18 d. Plaintiffs and Class Counsel have fairly and adequately represented and protected the  
19 interests of all the Settlement Class members; and
- 20 e. Class treatment of these claims will be efficient and manageable, thereby achieving an  
21 appreciable measure of judicial economy, and a class action is superior to other  
22 available methods for a fair and efficient adjudication.

23 5. **CERTIFICATION OF SETTLEMENT CLASS**: The Court finally certifies the  
24 following Settlement Class:

25 All persons in the United States whose Private Information was accessed during the  
26 Data Incidents.

27 Excluded from the Settlement Class are the judges presiding over the Actions and members of their  
28 direct families.

1           6.    **APPOINTMENTS**: Consistent with the Preliminary Approval Order, the Court hereby  
2 appoints the following as Class Representatives, Class Counsel, and Settlement Administrator:

3           a.    Plaintiffs are appointed as Class Representatives.

4           b.    Plaintiffs' counsel, John Yanchunis, Doug McNamara, E. Michelle Drake, David  
5 Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff  
6 Ostrow, are appointed as Class Counsel;

7           c.    Epiq Class Action & Claims Solutions, Inc. is appointed as Settlement Administrator.

8           7.    **SETTLEMENT TERMS REASONABLE**: The Court finds that the Settlement of the  
9 Actions, on the terms and conditions set forth in the Agreement, is in all respects fundamentally fair,  
10 reasonable, adequate, and in the best interests of the Settlement Class, applying the Fed. R. Civ. P.  
11 23(e)(2) factors and Ninth Circuit's traditional *Churchill* factors.

12           8.    **FINAL APPROVAL**: The Agreement, which has been filed with the Court and shall  
13 be deemed incorporated herein, and the proposed Settlement is finally approved and shall be  
14 consummated in accordance with the terms and provisions thereof, except as amended by any order  
15 issued by this Court.

16           9.    **OPT-OUTS**: A list of the individuals who have opted-out of the Settlement is attached  
17 as *Exhibit A*. Those individuals will not be bound by the Agreement or the Releases contained therein.

18           10. **OBJECTIONS**: The Settlement Class Members were given an opportunity to object to  
19 the Settlement. No Settlement Class Members filed objections.

20           11. **SETTLEMENT BINDING**: This Order is binding on all Settlement Class Members,  
21 except those individuals who validly and timely opted-out from the Settlement Class.

22           12. **SERVICE AWARDS; ATTORNEYS' FEES AND COSTS**:

23           a.    The Class Representatives are awarded reasonable Service Awards, applying the  
24 factors in *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015).  
25 Plaintiffs Ryan Bohlim, Duke Hwynn, Larry Lawter, Kerri Shapiro, Gennady Simkin,  
26 Robert Taylor, and Victor Wukovits in the 2019 Action shall receive \$\_\_\_\_\_ each.  
27 Plaintiffs Tonya Owens, Emily Kirwan, David Zussman, David Lackey, Michael  
28 Pircio, David Terezo, Ronald G. Rundell, Laura Willis Abrigo, Anita Johnson, Paul

1 Zaro, Michael Manson, Kyle Sloan, Michelle Righetti, Edgar Mejia, and DuJun  
2 Johnson in the 2023 Action shall receive \$\_\_\_\_\_ each. The Service Awards shall  
3 be paid out of the Settlement Fund in accordance with the Agreement.

4 b. Class Counsel are awarded \$\_\_\_\_\_ for attorneys' fees and \$\_\_\_\_\_ for costs.  
5 These payments shall be made out of the Settlement Fund in accordance with the  
6 Agreement. The Court evaluated settlement Class Counsel's request using a common  
7 fund analysis, applying the factors set forth in *Vizcaino v. Microsoft Corp.*, 290 F.3d  
8 1043, 1048 (9th Cir. 2002), and concludes that amount is fair and within the range of  
9 reason.

10 13. **VALID CLAIMS**: Based on the information presented to the Court, the Claim process  
11 has proceeded as ordered and consistent with the Agreement and Preliminary Approval Order. The  
12 distribution plan for Settlement Class Member Benefits proposed by the Parties in the Agreement is  
13 fair, reasonable, and adequate. All Settlement Class Members who submitted Valid Claims shall  
14 receive their Settlement Class Member Benefits pursuant to the Settlement's terms. All Settlement  
15 Class Members who did not submit a Claim, or for whom the Claim is determined to be invalid, shall  
16 still be bound by the terms of the Settlement and Releases therein.

17 14. **PAYMENT OF SETTLEMENT ADMINISTRATION COSTS**: The Parties are  
18 authorized to approve the payment of the Settlement Administration Costs to the Settlement  
19 Administrator from the Settlement Fund.

20 15. **RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT**: As of the Effective  
21 Date, Plaintiffs and all Settlement Class Members and Releasing Parties, and persons purporting to  
22 act on their behalf, are permanently barred and enjoined from commencing or prosecuting, either  
23 individually or as a class, or in any other capacity, any of the Released Claims against any of the  
24 Released Parties, as set forth in the Agreement, against any of the Released Parties in any action or  
25 proceeding in any court, arbitration forum, or tribunal. The Released Claims are compromised,  
26 discharged, and dismissed with prejudice by virtue of these proceedings and this order.

27 16. **RESIDUAL FUNDS**: In the event there are funds remaining in the Settlement Fund,  
28 including from uncashed checks, within 45 days following the 180-day check negotiation period, the

1 Court approves the distribution of all remaining funds to UNLV Cyber Clinic  
2 (<https://freecyberclinic.org/about>).

3 17. **JURISDICTION RETAINED**: The Court hereby retains and reserves jurisdiction  
4 over: (1) implementation of this Settlement and any distributions of Settlement Class Member  
5 Benefits to the Settlement Class Members; (2) the Action, until the Effective Date, and until each and  
6 every act agreed to be performed by the Parties shall have been performed pursuant to the terms of  
7 the Agreement, including the exhibits appended thereto; and (3) all Parties, for the purpose of  
8 enforcing and administering the Settlement.

9 18. In the event the Effective Date of the Settlement does not occur, the Settlement shall be  
10 rendered null and void to the extent provided by and in accordance with the Agreement, and this order  
11 and any other order entered by this Court in accordance with the terms of the Agreement shall be  
12 vacated, *nunc pro tunc*. In such event, all orders entered and releases delivered in connection with the  
13 Settlement shall be null and void and have no further force and effect, shall not be used or referred to  
14 for any purpose whatsoever, and shall not be admissible or discoverable in any proceeding. The  
15 Action shall return to its status immediately prior to execution of the Agreement.

16 19. **ENTRY OF JUDGMENT**: There being no just reason for delay, the Clerk of Court is  
17 hereby directed to enter final judgment forthwith pursuant to Fed. R. Civ. P. 58.

18 **DATED** this \_\_ day of \_\_\_\_\_, 2025.

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21 Gloria M. Navarro, District Judge  
22 UNITED STATES DISTRICT COURT  
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**EXHIBIT A**

**Opt-Out List**

1. Arnold Abraham
2. Lydia Barroso Anderson
3. Patricia A Anglin
4. Zachary L Barbour
5. David Barnes
6. Max Jacob Blumen
7. Michael Boyd
8. Joshua Burns
9. Christina Camerlingo
10. Kevin Clines
11. Archie W Colburn
12. Jessica Taleen Coleman
13. Alfredia Conner
14. Michael Terrance Conway
15. Barbara Dement
16. Kevin Dierker
17. Kimberly Erickson
18. Julio Ferrer
19. Robert K Flowers
20. Trent Folse
21. Lawrence W Freiman
22. Anne Marie Gault
23. Ricardo Gonzalez
24. Richard Hartley
25. Mary Hartley
26. Marilyn Hawranik
27. Taylor Hill
28. Michael Holtgrewe
29. Kyle T Hunter
30. Katherine Johns
31. Darryl Johns
32. Jennifer M Johnson
33. Kevin Jones
34. David Kamsler
35. Jason David Knight
36. Vasily Korovkin
37. Tawn Kreider
38. Steven Kulakowski
39. Robert G Lilburne
40. Michael Lin
41. Chris Linder
42. Kenneth Ludwig
43. Peter Lum
44. Yovinka Fatima Mallo
45. Roland Manalo
46. Louis Wiffe Marshall
47. Ashley Maylevi
48. John Andrew McClary II
49. Patsy J Melatti
50. Anwar E Monroy

- 1 51. Kimberly Moon
- 2 52. Kerushen Morgan
- 3 53. Sharon Moser
- 4 54. Tony Moser
- 5 55. Karen S Nelson
- 6 56. Matthew C North
- 7 57. Moon Ho Park
- 8 58. Steven R Penn
- 9 59. Eddie Jack Pool
- 10 60. Kathleen Ann Powell
- 11 61. Warren W Prince
- 12 62. Jayna Querin
- 13 63. Travis Radtke
- 14 64. Shoaib Razzaq
- 15 65. Jason E Rist
- 16 66. David Rosenstiel
- 17 67. Al Russ
- 18 68. Patrick Russo
- 19 69. Irvin Salgado
- 20 70. Heath Schweitzer
- 21 71. Robert F Severino
- 22 72. Rose Severino
- 23 73. Grace D Solomon
- 24 74. Chad Sthele
- 25 75. Nathan Stoll
- 26 76. Erick Suarez
- 27 77. Annette Szawan
- 28 78. Richard Szucs
79. Andrew Tedesco
80. Alan Thierfeldt
81. Matthew Tollefsrud
82. Pat Tran
83. Ellen S Wakefield
84. Shawn N Warnecke
85. Neil D Weiser
86. Shane Whitley
87. Dara Wilson
88. Jacqueline Wilson
89. Tyler Winkelmann
90. Teeresa Wood
91. Kristopher Young
92. Aleksei Zubkov