

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

JADYN NEWMAN, individually, and on behalf
of classes of similarly situated individuals,

Plaintiffs,

v.

AUDIENCEVIEW TICKETING
CORPORATION AND
UNIVERSITYTICKETS.COM, INC.,

Defendants.

Case No 1:23-cv-03764-VEC

RICHARD Z. TOLEDO, individually, and on
behalf of classes of similarly situated
individuals,

Plaintiffs,

v.

AUDIENCEVIEW TICKETING
CORPORATION AND
UNIVERSITYTICKETS.COM, INC.,

Defendants.

Case No 1:23-cv-03764-VEC

CONSOLIDATED WITH 1:23-CV-03764-
VEC

**PLAINTIFFS' UNOPPOSED MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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Plaintiffs Jady Newman and Richard Z. Toledo (“Plaintiffs”) submit this Unopposed Memorandum in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.¹

INTRODUCTION

This class action arises out of Audienceview Ticketing Corporation’s (“AudienceView”) and UniversityTickets.Com, Inc.’s (“UniversityTickets”) (AudienceView and UniversityTickets, collectively “Defendants”) alleged failure to safeguard the payment card information (“PCI”) that it collected and maintained from Plaintiffs and the Class of approximately 13,045 individuals. Defendants deny all liability and wrongdoing.

On August 23, 2024, Plaintiffs filed a motion seeking court approval of a prior version of the settlement agreement. (ECF Dkt. 61). This Court issued an order denying such motion without prejudice and identifying discrepancies and issues which it instructed the parties to address in their subsequent submission. The parties have closely reviewed this Court’s guidance and submit that their revised motion is fair, adequate, and reasonable.

In exchange for a narrowly tailored release, limited to claims that were based upon the specific facts alleged in this case, Defendants have agreed to establish a Settlement Fund in the sum of \$435,000 to compensate valid claims submitted by Class Members, any court-approved attorneys’ fees, costs and expenses, and court-approved Service Awards to the Plaintiffs. Settlement Agreement, (“SA”).² Plaintiffs strongly believe the settlement is favorable to the Settlement Class. See Declaration of Kiley L. Grombacher (“Grombacher Decl.” or “Decl.”), ¶ 11.

¹ Counsel for Defendants have been apprised of the content of this Motion and have stated that the Motion is unopposed.

² The Settlement Agreement (“SA”) in its entirety is attached as **Exhibit A** to the Declaration of Kiley L. Grombacher (“Grombacher Decl.”) filed herewith. Capitalized terms shall have the same meaning as assigned to them in the Settlement Agreement.

Pursuant to Rule 23(e), Plaintiffs move the Court for an order certifying the class for settlement purposes, preliminarily approving the settlement agreement, and approving the content and manner of the proposed notice. Plaintiffs respectfully request that the Court preliminarily approve the Parties' Settlement Agreement.

I. CASE SUMMARY

A. The Data Incident

Defendants AudienceView Ticketing Corporation and UniversityTickets.com, Inc. operate an online ticketing platform providing services across the United States. In the ordinary course of doing business, Defendants collect certain PCI from customers such as: name, address, payment card information, billing and shipping addresses, transaction histories and email address. Grombacher Decl., ¶ 13.

Between February 14, 2023 and February 21, 2023, malicious actors infiltrated AudienceView's digital infrastructure. The malware bypassed existing security measures and involved potential access to PCI from AudienceView's servers. As a result, Defendants notified approximately 13,045 current and past users of the AudienceView platform that their PCI was potentially impacted by the Data Incident. *Id.*, ¶ 15. These individuals represent the total scope of individuals whose PCI was potentially impacted by the Data Incident based on Defendants' investigation into same. *See* First Amended Complaint, ¶ 3, n.1.

B. Plaintiff's Complaint

On May 4, 2023, Plaintiff Newman filed their complaint in this matter, and on June 30, 2023, Plaintiff Toledo filed his complaint, with parallel allegations. Following the consolidation of these two actions against Defendants, Plaintiffs filed a consolidated class action complaint on August 10, 2023, amending on October 16, 2023. Plaintiffs allege claims of negligence, unjust enrichment, breach of express contract, breach of implied contract, invasion of privacy, and deceptive business

practices.

Plaintiffs seek an award of actual, nominal, consequential and punitive damages as well as attorneys' fees and costs, and any such further relief as may be deemed just and proper. Further, by their complaint, Plaintiffs seek equitable relief enjoining Defendants from engaging in the wrongful conduct complained of and compelling Defendants to utilize appropriate methods and policies with respect to consumer data collection, storage, and safety. *Id.*, ¶ 18. Defendants filed a motion to dismiss the amended complaint on November 17, 2023, which was rendered moot upon the court staying the case on February 14, 2024, to enable the parties to pursue mediation. *Id.*, ¶ 19.

C. The Parties' Settlement Negotiations and Mediation Efforts

Following the filing of the motion to dismiss, the Parties, by and through their respective counsel, began discussing the possibility of early resolution. Grombacher Decl., ¶ 22. The Parties agreed that exploration of whether early resolution could be achieved was warranted. Over the next few months, the Parties engaged in extensive arm's-length settlement negotiations. *Id.*, at ¶ 23. Negotiations included a significant exchange of information, allowing both Parties to evaluate the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses. *Ibid.*

On May 28, 2024, the parties engaged in a full-day mediation session with the Honorable Morton Denlow, a well-respected industry leader in this field. The parties reached a settlement in principle at the mediation, and over the next few weeks, the Parties diligently negotiated, drafted, and finalized the settlement agreement, notice forms, and came to an agreement on a claims process and administrator. *Id.*, ¶ 24.

On August 23, 2024, Plaintiffs filed a motion seeking approval of the parties' class action settlement. Thereafter, on August 30, 2024, this Court issued an Order denying the Motion without prejudice identifying certain issues with the proposed settlement and seeking clarification. (Dkt 66.) Following this Court's order (Dkt 66) and in accordance with the guidance provided therein, the

Revised Settlement Agreement (“SA”) was finalized by the Parties on September 20, 2024 and is attached in full as **Exhibit A** to the Declaration of Kiley L. Grombacher, filed herewith. It is the opinion of Plaintiffs and proposed settlement class counsel, based on their experience and investigation, that the Settlement Agreement presents a favorable result for the Class. *Id.*, ¶ 11.

II. SUMMARY OF SETTLEMENT

A. Settlement Benefits

Under the proposed Settlement, Class Members shall have an opportunity to submit a claim for reimbursement of out-of-pocket losses and attested time, or an alternative cash payment of \$75. Furthermore, under the Settlement Agreement, Defendants have implemented certain cybersecurity enhancements. The Settlement provides for relief for a Class defined as: “persons who are identified on the Settlement Class List, including all individuals residing in the United States who were sent notification by Defendants that their Payment Card Information was potentially compromised in the Data Incident.” SA ¶ 39.

The Class is estimated to include approximately 13,045 individuals. The Settlement Class specifically excludes: “(1) the judges presiding over this Action, and members of their direct families; (2) Defendants, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or its parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.” *Id.*

1. Monetary Relief

Under the terms of the Settlement Agreement, Defendants will pay \$435,000 into a Settlement Fund, which will be used to make payments to Class Members and to pay the costs of Notice, Settlement Administration, attorneys’ fees and expenses, and Service Awards to Plaintiffs. SA., ¶¶ 47, 51.

Settlement Class Members can submit a claim for Out-of-Pocket Losses, which provides for up to \$5,000.00 per person reimbursement of documented out-of-pocket losses, demonstrably incurred, more likely than not, as a result of the Data Incident, including, but not limited to: “(i) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, or other possible misuse of class member’s Payment Card Information; and/or (ii) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges.” *Id.*, ¶ 53.

Additionally, Class Members can submit a claim for compensation for up to four (4) hours of lost time spent addressing issues related to the Data Incident, calculated at the rate of \$25.00 per each full hour of time spent. SA, ¶ 55. To make a claim for Attested Time the Class Member must include an attestation that the time claimed was actually spent as a result of the Data Incident. *Id.*

Alternatively, Class Members can elect to receive an alternative cash payment in the amount of \$75 subject to pro rata increase or decrease based upon the claims rate. *Id.*, ¶ 58.

Given the nature of information potentially impacted in the Incident, which included PCI and not other personal identifiable information such as Social Security numbers or driver’s license numbers, the parties agreed that there was no need to offer credit monitoring as part of the settlement terms, as discussed in further detail below.

2. Data Security Measures

In addition to the monetary relief provided, Defendants have represented that they have either undertaken or will undertake certain reasonable steps to further secure their systems and environments. SA, ¶ 70. Defendants have agreed to provide further information to Class Counsel regarding the facts and circumstances of the Data Incident, Defendants’ responses thereto, and the changes and improvements that have been made or will be made to protect Settlement Class Members’ information from further unlawful intrusions. *Id.* Such changes and improvements that

have been made or will be made include but are not limited to: removal of malicious JavaScript code from affected databases, implementation of trigger to identify reinsertion of malicious scripts into databases, disabling of SQL SA accounts, enabling blocking of SQL injection attempts at Cloudflare WAF, implementing firewall blocking rules for identified IOCs, engaging a third-party forensics firm to assist in the internal investigation, implementing DefenderATP EDR solution, archiving impacted infrastructures associated with the product, and deploying dark web monitoring. *Id.*

3. Releases

The releases are tailored to the claims that have been pleaded or could have been pleaded in this case. SA, ¶¶ 88-90. Class Members who do not exclude themselves from the Settlement Agreement will release all claims, whether known or unknown, against Released Persons, based on, relating to, concerning or arising out of the alleged Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. *Id.*, ¶ 31.

B. THE NOTICE AND CLAIM PROCESS

1. Notice

The Parties agreed to use Eisner Advisory Group, LLC (“Settlement Administrator”) as the Settlement Administrator. Grombacher Decl., ¶ 35. The cost of notice and all other costs of Settlement Administration will be paid by the Settlement Fund. *Id.*, ¶ 36. The Administrator has agreed that the cost of administration will not exceed \$60,000. Declaration of Ryan Aldridge (“Aldridge Decl.”), at ¶ 14. The notice plan provides for individual notice to Class Members via email and U.S. mail, to the postal address that Defendants have on record for each Class Member. *Id.*, ¶¶ 6-13.

The Settlement Administrator will establish a settlement website and will maintain and update the website during the claim period, with the Long Notice, and Claim Form, the Preliminary Approval Order, Settlement Agreement, and other relevant case documents. Aldridge Decl., ¶ 11. Class

Members will be able to submit Claim Forms through the website. *Id.* The Settlement Administrator will also make a toll-free help line during the claims period to provide Class Members with additional information about the Settlement and will establish a P.O. Box to which Class Members may submit a request for exclusion from the SA by mail. *Id.*, ¶¶ 12-13.

2. Claims

The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object. Grombacher Decl., ¶ 44. Class Members will have no less than sixty (60) days after the Notice Deadline to complete and submit their Claim Form to the Settlement Administrator, either by mail or online. *Id.*, at ¶ 46; SA, ¶ 7. The Claim Form is written in plain language to facilitate Class Members' ease in completing it. Grombacher Decl., ¶ 47. The Settlement Administrator will be responsible for reviewing the Claim Forms and determining if they are complete and valid. *Id.*, ¶ 48; SA, Ex. 3. Should a claim be incomplete or lacking sufficient documentation, the Settlement Administrator may reach out to the claimant for supplementation. Grombacher Decl., ¶ 48.

3. Requests For Exclusion And Objections

Settlement Class Members will have sixty (60) days following the Notice Deadline to object to or to submit a request for exclusion from the Settlement. SA, ¶ 7. Similar to the timing of the claims process, the timing with regard to objections and requests for exclusion is structured to give Class Members sufficient time to access and review the Settlement documents— including Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, which will be filed thirty (30) days prior to the deadline for Class Members to object or exclude themselves from the Settlement. *Id.*, ¶¶ 91, 93.

To be excluded from the Settlement, Class Members must make their request in writing, and must clearly manifest their intent to be excluded from the class. SA ¶ 34. Any Member of the Class who elects to be excluded shall not (i) be bound by any order or the Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement. *Id.*, ¶ 4.2.

Any Settlement Class Member who wishes to object shall file notice of his/her intention to do so with the Settlement Administrator. SA, ¶ 76. The objection to the Settlement Agreement must include: (i) the objector's full name and address; (ii) the case name and docket number; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., a copy of the objector's settlement notice, a copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or their counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing them in connection with the objection. Grombacher Decl. ¶53.

C. FEES, COSTS, AND SERVICE AWARDS

The Settlement Agreement calls for a reasonable service award to each of the two named Plaintiffs in the amount of \$3,500, totaling \$7,000. SA ¶ 91. The Service Award is meant to compensate Plaintiffs for their efforts on behalf of the Class, including maintaining contact with counsel, assisting in the investigation of the case, reviewing the Complaint, remaining available for consultation during the settlement negotiations, reviewing the Settlement Agreement, and answering counsel's questions. Grombacher Decl., ¶ 54.

After agreeing to the terms of the settlement, counsel for Plaintiffs negotiated with Defendants regarding their attorneys' fees and costs. Any costs and fees awarded are to be paid out of the \$435,000 Settlement Fund as outlined in the Settlement Agreement. *Id.*, ¶ 56. Class Counsel will submit a separate motion seeking attorneys' fees, costs, expenses, and Plaintiffs' Service Award before filing the Motion for Final Approval, and before Class Members' deadline to exclude themselves from, or object to, the Settlement Agreement. *Id.*, at ¶ 57.

III. LEGAL STANDARD

Federal courts strongly encourage settlements, particularly in class actions and other complex matters where inherent costs, delays, and risks of continued litigation might otherwise outweigh any potential benefit the individual plaintiff(s)—or the class—could hope to obtain. See *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y. Sept. 24, 2009) (“There is a strong judicial policy in favor of settlement, particularly in the class action context. The compromise of complex litigation is encouraged by the courts and favored by public policy.”). “Class action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. There is a strong public interest in quieting any litigation; this is ‘particularly true in class actions.’” *In re Luxottica Group S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006).

Plaintiffs bring this motion pursuant to Federal Rule of Civil Procedure 23(e), under which a class action may not be settled without approval of the Court. Under the current iteration of Rule 23(e), in weighing a grant of preliminary approval district courts must determine whether “giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” The Settlement Agreement here warrants preliminary approval so that persons in the Class can be notified of the Settlement and provided an opportunity to participate and receive relief, or to voice exclusion

or objection.

IV. ARGUMENT

A. The Settlement Class Should be Preliminarily Certified

Plaintiffs here seek to certify, for settlement purposes, a class defined as: “all natural persons residing in the United States who were sent a Notice Letter notifying them that their Private Information may have been compromised in the Data Incident.” SA ¶ 39. The Class is estimated to include approximately 13,045 individuals. *Id.*, Ex. 4. These individuals represent the total scope of individuals whose PCI was potentially impacted by the Data Incident based on Defendants’ investigation into same. *See* First Amended Complaint, ¶ 3, n.1. Rule 23(a) sets out four specific prerequisites to class certification: (1) the class must be so numerous that joinder is impracticable; (2) there must be questions of law and fact common to the class; (3) the claims or defenses of the class representatives must be typical of those of the class; and (4) the representative parties must fairly and adequately protect the interests of the class. Further, under Rule 23(b)(3), the Court must find that common questions of law or fact predominate over questions affecting only individual members, and that a class action is superior to other available methods for adjudication of the controversy.

In determining whether to preliminarily approve a class action settlement, courts must first determine that the settlement class, as defined by the parties, is certifiable under the standards of Rule 23(a) and (b). “Before certification is proper for any purpose—settlement, litigation, or otherwise—a court must ensure that the requirements of Rule 23(a) and (b) have been met.” *Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006) (concluding in part that “the District Court conducted a Rule 23(a) and (b) analysis that was properly independent of their Rule 23(e) fairness review”).

Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court’s evaluation is somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In some

ways, the court’s review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id.* Other certification issues, however, such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions” require heightened scrutiny in the settlement-only class context “for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.* In this Circuit, courts have found that “[i]n deciding certification, courts must take a liberal rather than restrictive approach in determining whether the [P]laintiff[s] satisf[y] these requirements and may exercise broad discretion in weighing the propriety of a putative class.” *Cohen*, 262 F.R.D. at 158, (internal quotations omitted); *see also Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997) (“Rule 23 is given a liberal rather than restrictive construction, and courts are to adopt a standard of flexibility” in deciding whether to grant certification.). Because the Class meets all requirements for certification under Rule 23, this Court should grant Plaintiffs’ request.

B. The Proposed Class is Sufficiently Numerous

Numerosity requires “the class [be] so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). While there is no numerical requirement for satisfying the numerosity requirement, forty class members generally satisfies the numerosity requirement. *Alcantara v. CNA Mgmt., Inc.*, 264 F.R.D. 61, 64 (S.D.N.Y. 2009); *see also Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir.1995). Here, the Parties have identified approximately 13,045 individuals who are a part of the Class. Grombacher Decl., ¶ 15. The large number of persons in the Class clearly renders joinder impracticable. As such, the numerosity requirement is easily satisfied.

C. Questions of Law and Fact are Common to the Class

Commonality requires Plaintiffs to demonstrate “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The threshold for meeting this prong is not high—commonality does

not require that every question be common to every member of the class, but rather that the questions linking class members are substantially related to the resolution of the litigation and capable of generating common answers even where the individuals are not identically situated. *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 175 (S.D.N.Y. 2014) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Plaintiffs may meet the commonality requirement where the individual circumstances of class members differ, but “their injuries derive from a unitary course of conduct by a single system.” *Marisol A.*, 126 F.3d at 377 (*per curiam*). “Even a single common legal or factual question will suffice.” *Jackson v. Bloomberg, L.P.*, 298 F.R.D. 152, 162 (S.D.N.Y. Mar. 19, 2014) (quoting *Freeland v. AT & T Corp.*, 238 F.R.D. 130, 140 (S.D.N.Y. Aug. 17, 2006)). Here, the commonality requirement is met because Plaintiffs can demonstrate that numerous common issues exist. For example, whether Defendants failed to adequately safeguard the records of their customers who entrusted it with their information is a question common across the entire class. Defendants’ security safeguards were common across the Class, and those applied to the data of one Class Member did not differ from those applied to another.

Other specific common issues include (but are not limited to): (a) Whether Defendants failed to implement reasonable security procedures and practices; and (b) Whether Defendants’ conduct rose to the level of negligence. These common questions, and others alleged by Plaintiffs in their Complaint, are central to the causes of action brought here, will generate common answers, and can be addressed on a class-wide basis. Thus, Plaintiffs have met the commonality requirement of Rule 23.

D. Plaintiffs’ Claims and Defenses are Typical of the Class

Typicality Rule 23(a)(3) is satisfied where “each class member’s claim arises from the same course of events and each class member makes similar legal arguments[.]” *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009) (internal quotation omitted). The crux of

the typicality requirement is to ensure that “maintenance of a class action is economical and [that] the named [P]laintiff[s]’ claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected[.]” *Marisol A.*, 126 F.3d at 376.

Here, Plaintiffs’ and Class Members’ claims stem from the same event—the Data Incident—and Defendants’ cybersecurity protocols to protect Plaintiffs’ and Class Members’ data. Thus, Plaintiffs’ claims are typical of the Class Members’ claims and the typicality requirement is satisfied.

E. Plaintiffs Will Provide Fair and Adequate Representation of the Class

As representatives, Plaintiffs must be able to provide fair and adequate representation for the class. To satisfy the adequacy of representation requirement, Plaintiffs must establish that: (1) there is no conflict of interest between the class representatives and other members of the class; and (2) the Plaintiffs’ counsel is qualified, experienced, and generally able to conduct the litigation. *Bolanos v. Norwegian Cruise Lines Ltd.*, 212 F.R.D. 144, 156 (S.D.N.Y. 2022) (*quoting Marisol A.*, 126 F.3d at 378); *see also Amchem*, 521 U.S. at 624.

Here, Plaintiffs’ interests are aligned with those of the Class in that they seek relief for injuries arising out of the same Data Incident. Plaintiffs’ and Class Members’ data was allegedly compromised in the same manner. Under the terms of the Settlement Agreement, Plaintiffs and Class Members will all be eligible for monetary relief from the \$435,000 Gross Settlement Amount of payments to be made by Defendants. Moreover, their data remaining with Defendants will be safeguarded in the future by the security protections they have or will put into place.

Further, counsel for Plaintiffs have decades of combined experience as class action litigators and are well suited to advocate on behalf of the class. See Grombacher Decl., ¶¶ 3-12. Moreover, they have put their collective experience to use in negotiating an early-stage settlement that guarantees immediate relief to class members. Thus, the requirements of Rule 23(a) are satisfied.

F. Because Common Issues Predominate Over Individualized Ones, Class Treatment is Superior

To show that common issues predominate, Plaintiffs must demonstrate that common questions of law or fact relating to the class predominate over any individualized issues. *Bolanos*, 212 F.R.D. at 157. This requirement “tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. The predominance requirement is met when the Defendants’ wrongful acts involve common practices, or when the Defendants have a common defense. *Fox v. Cheminova*, 213 F.R.D. 113, 130 (E.D.N.Y. Feb. 28, 2003) (citing *In re Agent Orange*” *Prod. Liab. Litig.*, 818 F.2d 145, 166-167 (2d Cir. 1987)). Commonality is regularly met in cases where the focus is on the conduct of Defendants rather than that of individual plaintiffs, making it particularly susceptible to common, generalized proof. *Cohen.*, 262 F.R.D. at 159.

In this case, the key predominating questions are whether Defendants had a duty to exercise reasonable care in safeguarding, securing, and protecting the personal information of Plaintiffs and the Class, and whether Defendants breached that duty. The common questions that arise from Defendants’ conduct predominate over any individualized issues. Other courts have recognized that the types of common issues arising from data breaches predominate over any individualized issues. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312–315 (N.D. Cal. 2018) (finding predominance was satisfied because “Plaintiffs’ case for liability depend[ed], first and foremost, on whether [the Defendants] used reasonable data security to protect Plaintiffs’ personal information,” such that “the claims rise or fall on whether [the Defendants] properly secured the stolen personal information,” and that these issues predominated over potential individual issues); *see also Hapka v. CareCentrix, Inc.*, Case No. 2:16-cv-02372, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case, stating “[t]he many common questions of fact and law that arise from the E-mail Security Incident and [Defendants’] alleged conduct predominate over any individualized issues”); *In re The Home Depot, Inc., Customer Data Sec.*

Breach Litig., Case No. 1:14-md-02583-TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members’ personal and financial information, whether it had a legal duty to do so, and whether it failed to timely notify class members of the data breach); *In re Heartland Payment Sys. Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1049, 1059 (S.D. Tex 2012) (finding predominance satisfied in data breach case despite variations in state laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class).

Because the class is being certified for settlement, there are no issues with manageability. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present ...management problems[.]”). The resolution of 14,000 claims in one action is superior to individual lawsuits. Class certification—and class resolution—furthers judicial efficiency and conservation of resources by avoiding individually litigating thousands of individual data breach cases arising out of the same Data Incident.

The common questions of fact and law arising from Defendants’ s conduct predominate over any individualized issues, a class action is the superior vehicle to resolve these issues, and the requirements of Rule 23(b)(3) are met. Accordingly, the classes should be certified for settlement.

G. The Terms of the Settlement are Fair, Reasonable, and Adequate

After determining that certification of the Settlement Class is appropriate, the court must determine whether the Settlement Agreement itself is worthy of preliminary approval and of providing notice. Under the current iteration of the Rule, notice is only justified where the parties can show that the court will “likely” be able to approve the proposed settlement. Fed. R. Civ. P. 23(e)(1)(i). Thus, consideration on preliminary approval requires an initial assessment of the factors to be considered on final approval: “(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the

class is adequate . . . ; and (D) the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(A)-(D). In determining whether the relief is adequate, Courts consider: “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 35 (E.D.N.Y. 2019); Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv).

Before the 2018 revisions to Rule 23(e), the Second Circuit had developed their own list of factors for consideration, finding preliminary approval of a proposed class action settlement is warranted where it is the result of “serious, informed, non-collusive (“arm’s length”) negotiations, where there are no grounds to doubt their fairness and no other obvious deficiencies. . . and where the settlement appears to fall within the range of possible approval.” *See Cohen*, 262 F.R.D. at 157; *In re Nasdaq Market Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ; *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 354 (E.D.N.Y. 2006); *see also* Manual for Complex Litigation, § 30.41 (3d ed. 1995). In making this determination, Second Circuit Courts considered nine *Grinnell* factors: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class through the trial; (7) the ability of the Defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 88 (S.D.N.Y. 2009) (*citing City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) (abrogated on other grounds)).

In reviewing the Settlement for substantive fairness, reasonableness, and adequacy, Plaintiffs

will examine the Settlement for satisfaction of both the Rule 23 factors, as well as the *Grinnell* factors historically considered by Second Circuit Courts in order to demonstrate that the Settlement falls well within the “range of possible approval,” is “likely” to be granted final approval and warrants preliminary approval so that notice can issue to the class.

1. The Settlement Warrants Preliminary Approval Under Rule 23(e).

a. Plaintiffs and Proposed Class Counsel have adequately represented the Class

Under Rule 23(e)(2)(A), the first factor to be considered is whether the class representatives and Class Counsel have adequately represented the class, including the nature and amount of discovery undertaken in the litigation. *See* Fed. R. Civ. P. 23(e)(2)(A), 2018 Advisory Committee Notes. Here, Plaintiffs have maintained contact with counsel, assisted in the investigation of the case, reviewed the Complaint, remained available for consultation throughout settlement negotiations, reviewed the Settlement Agreement, and answered counsel’s many questions. Grombacher Decl., ¶ 49. Plaintiffs do not have any conflicts with the proposed class and have adequately represented Settlement Class Members in the litigation.

Proposed Class Counsel has also adequately represented the class. As discussed *supra* at Section V.E, Co-Lead Counsel has extensive experience in class action litigation generally, and data breach cases in particular. *See* Grombacher Decl., ¶ 3-12. In negotiating the Settlement, Co-Lead Counsel was thus well-positioned and able to benefit from years of experience and familiarity with the factual and legal bases for this case. Although formal discovery had not been completed, such discovery is not required for a settlement to be adequate. *D’Amato v. Deutsche Bank*, 236 F.3d 78, 87 (2d Cir. 2007) (finding “although no formal discovery had taken place, the parties had engaged in an extensive exchange of documents and other information”); *Willix v. Healthfirst, Inc.*, No. 07–cv–1143, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 18, 2011). (“The pertinent question is whether counsel had an adequate appreciation of the merits of the case before negotiating” (internal

quotations omitted)). “In fact, informal discovery designed to develop a settlement’s factual predicate is encouraged because it expedites the negotiation process and limits costs which could potentially reduce the value of the settlement.” *Castagna*, 2011 WL 2208614, at *6 (citing *Jones v. Amalgamated Warbasse Houses, Inc.*, 97 F.R.D. 355, 360 (S.D.N.Y. 1982)) (“In view of the way this speeds the negotiation process, informal ‘discovery’ is to be encouraged”).

Here, proposed Class Counsel carried out a thorough investigation of the claims, and settlement negotiations included a significant exchange of information, allowing both Parties to evaluate the strengths and weaknesses of Plaintiffs’ claims and Defendants’ defenses. Grombacher Decl., ¶ 19. Accordingly, Plaintiffs and Class Counsel here have adequately represented the Class and this factor weighs in favor of preliminary approval.

b. The Settlement was negotiated at arms’-length and is absent of any collusion.

Rule 23(e)(2)(B) requires procedural fairness, as evidenced by the fact that “the proposal was negotiated at arm’s-length.” If a class settlement is reached through arm’s-length negotiations between experienced, capable counsel knowledgeable in complex class litigation, “the Settlement will enjoy a presumption of fairness.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 693 (S.D.N.Y. 2019).

Here, both Parties were represented by experienced counsel, and the settlement was only reached after months of arm’s length negotiations. Grombacher Decl., ¶ 23. The Court need look no further than the fact that the parties were unable to reach a mutually agreeable figure for the attorneys’ fees to understand that the negotiations were both contentious and at arms’ length. Thus, there is no evidence of collusion. Accordingly, this factor weighs in favor of preliminary approval.

c. The relief provided for the class is more than adequate.

Fed. R. Civ. P. 23(e)(2)(c) requires examination of the relief provided by the Settlement. The

instant Settlement negotiated by Class Counsel on behalf of the class provides for significant relief. Valued at up to a total of \$435,000, the Settlement provides for up to \$5,000.00 per Class Member in monetary relief, including reimbursement of out-of-pocket costs and compensation for lost time, or an alternative cash payment, attorneys' fees and costs to the extent approved by the Court, and administration costs, up to the agreed \$435,000 cap. Additionally, Defendants have undertaken specific data security enhancements ensuring Plaintiffs' and Class Members' data is better protected in the future.

The Settlement terms are consistent with, and in fact better than, agreements in other similar data breach cases, in the Southern District of New York and across the country. *See, e.g., Baksh et al. v. IvyRehab Network, Inc.*, No. 7:20-CV-01845 (S.D.N.Y.) (providing up to \$75 per class member out of pocket expenses incurred related to the data breach and \$20 reimbursement for lost time, with payments capped at \$75,000 in aggregate; credit monitoring for claimants; and equitable relief in the form of data security enhancements); *Rutledge et al v. Saint Francis Healthcare System*, No. 1:20-cv-00013-SPC (E.D. Mo.) (data breach settlement providing up to \$280 in value to Class Members in the form of: reimbursement up to \$180 of out of pocket expenses and time spent dealing with the data breach; credit monitoring services valued at \$100; and data security enhancements).

As the relief provided is well within the range of possible approval when considered in light of the Rule 23(e)(2)(c)(i)-(iv) factors, preliminary approval should be granted.

i. The costs, risks, and delay of trial and appeal are great.

The relief provided for by the Settlement Agreement is significant, especially in light of the costs, risks, and delay of further litigation. The Settlement Agreement guarantees Class Members the opportunity to make a claim for up to \$5,000.00 each. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain. While Plaintiffs strongly believe in the merits of the case, Plaintiffs also understand that Defendants will assert a

number of potentially case-dispositive defenses. Proceeding with litigation would open up Plaintiffs to the risk inherent in trying to achieve and maintain class certification and prove liability—both factors considered under the test for final approval established by *Grinnell*.

Moreover, due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. See *Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that has been denied in other data breach cases. See, e.g., *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). Additionally, in this case, Defendants represented that they would seek to change the venue for this litigation from the United States to Canada, given that the company was headquartered there.

Plaintiffs dispute the defenses it anticipates Defendants will likely assert, but it is obvious that success at trial is far from certain. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

ii. **The proposed method of distributing relief, including the method of processing class-member claims, is objective, efficient, and fair.**

As described in Section III.B, *supra*, the Settlement Administrator will assess claims and distribute relief. SA ¶ 54. Class Members will have sixty (60) days after the Notice Deadline to complete and submit a claim form. Grombacher Decl., ¶ 46. The Settlement Administrator will be responsible for evaluating the claims and the evidence submitted, requesting additional documentation and/or information where the claim form is insufficient, and awarding funds. *Id.* at ¶ 48. The Settlement Administrator has estimated that a total of \$60,000 in fees and costs will be incurred to implement the proposed notice plan and administer the settlement, including \$6,000 in postage costs.

Aldridge Decl., ¶ 14. Plaintiffs believe this amount is reasonable given the size of the Class and the relief made available to the Class through the Settlement Agreement. Thus, the procedure provided for by the Settlement Agreement is objective, efficient, and fair.

iii. The attorneys' fees, costs and service awards that Plaintiffs will request this Court approve are reasonable.

By separate motion, Plaintiffs will seek Court approval of attorneys' fees and costs in the maximum amount of thirty percent (30%) of the Settlement Fund, or One Hundred Thirty Thousand Five Hundred Dollars and Zero Cents (\$130,500.00), and a service award for each Plaintiff in the amount of Three Thousand Five Hundred Dollars and Zero Cents (\$3,500.00). SA ¶¶ 91, 93. These requests are well within the range of those regularly accepted by Second Circuit courts. *See Strougo ex rel. BrazilianEquity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (finding 33% in attorneys' fees alone to be reasonable) (collecting cases); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-83 (S.D.N.Y. 2013) (granting an award of \$5,000 to \$7,500 to Plaintiffs); *In re Polaroid ERISA Litig.*, 2007 WL 2116398, at *3 (S.D.N.Y. July 19, 2007) (granting award of \$10,000 to named plaintiffs). While Plaintiffs will fully brief their request by separate motion prior to Class Members' deadline to object to or exclude themselves from the Settlement, the attorneys' fees, costs, and service awards sought clearly fall within the range of possible approval.

iv. No additional agreements related to the settlement exists.

No additional agreements require identification or examination under Rule 23(e)(3).

d. *The Settlement Treats Class Members Equitably to Each Other.*

Under the terms of the Settlement, the Class Members will be treated equitably to each other. Every Settlement Class Member can submit a claim for up to \$5,000.00 in monetary compensation. SA ¶ 53. All payments will be made on a pro-rata basis if the claims exceed available funds. Accordingly, and because the Settlement Agreement meets all of the required criteria under Rule 23 (e), preliminary approval should be granted.

2. Consideration of the *Grinnell* Factors Favors Preliminary Approval.

Prior to the revisions to Rule 23, the Second Circuit relied on the nine factors set forth in *City of Detroit v. Grinnell Corp.* to guide their assessment of whether a class action settlement should be approved. *See* 495 F.2d 448, 463 (2d Cir. 1974) (abrogated on other grounds). While preliminary approval requires only an initial evaluation and Rule 23 has been since amended, the factors remain instructive and have been used by Second Circuit courts in evaluating settlements even after 2018. *See Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP*, 333 F.R.D. 314, 320 (S.D.N.Y. 2019) (considering both the Rule 23 and *Grinnell* factors on motion for preliminary approval).

First, the complexity, expense, and likely duration of the litigation support preliminary approval. As discussed *supra*, at Section V(G)(1)(c)(i), continued litigation will be complex, long, and expensive. Plaintiffs would likely need to prevail on a motion to dismiss and/or summary judgment and both gain and maintain class certification through trial. Additionally, the amount of data expert analysis and testimony needed to bring this case to trial would increase costs significantly, as well as add to the length of time needed to resolve the matter. Thus, this factor weighs in favor of approval.

Second, the reaction of class members is not yet apparent. While Plaintiffs have reviewed and approved the Settlement Agreement, other Class Members have not yet had the same opportunity. As such, this factor is appropriately examined after Notice has issued to the Class and Class Members have had the opportunity to make a claim, exclude themselves, or object to the Settlement.

Third, the stage of the proceedings and the amount of discovery completed supports settlement approval. While the case is early in litigation, the Parties' exchanged information sufficient to allow both Parties to assess the claims and defenses at issue. Early settlement where the Parties are adequately informed, is to be commended. *Castagna*, 2011 WL 2208614, at *6 (commending negotiating early settlement and avoiding hundreds of hours of legal fees); *In re Interpublic Sec.*

Litig., No. 02 Civ. 6527, 2004 WL 2397190, *12 (S.D.N.Y. Oct. 26, 2004) (early settlements should be encouraged when warranted). As discussed above at Section V(B), the Parties had more than enough information to evaluate the claims and defenses at issue. As such, this factor favors approval.

Fourth, Fifth, and Sixth, the risks of establishing liability, damages, and maintaining a class through trial weigh in favor of Settlement Approval. Although Plaintiffs firmly believe in the merits of the case, litigating in such an evolving area of law involves significant risk. “Litigation inherently involves risks.” *In re Painewebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997). “If settlement has any purpose at all, it is to avoid a trial on the merits because of the uncertainty of the outcome.” *Id.* (quoting *In re Ira Haupt & Co.*, 304 F. Supp. 917, 934 (S.D.N.Y. 1969)); see also *Velez v. Majik Cleaning Serv., Inc.*, No. 03 Civ. 8698, 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007) (noting “there are always risks in proceeding to trial and these risks are compounded by virtue of the nature of class action litigation”) (citing *Frank v. Eastman Kodak Co.*, 228 F.R.D. at 185 (W.D.N.Y. 2005)). While Plaintiffs remain confident in the strength of their claims, additional litigation leaves open the risk that Plaintiffs will be unable to establish liability, prove causation and damages, and gain and maintain certification through trial. Thus, these factors weigh in favor of Settlement approval.

Seventh, the ability of Defendants to withstand a greater judgment is not at issue here. Even if Defendants could withstand a greater judgment, their ability to do so, “standing alone, does not suggest that the settlement is unfair.” *Eastman Kodak Co.*, 228 F.R.D. at 186 (quoting *In re Austrian*, 80 F. Supp. 2d at 178 n.9). Thus, this factor is neutral.

Eighth and Ninth, the Settlement provides substantial relief to the Settlement Class, especially in light of all the risks of litigation. The Settlement provides Class Members an opportunity to receive up to \$5,000 per person in monetary relief, subject to a \$435,000 overall cap on payments to be made by Defendants, along with the benefit of data security measures implemented by

Defendants. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain.

The Settlement here is similar to the settlement agreement approved by the court in *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation*, 851 F. Supp. 2d 1040, 1047 (S.D. Tex. 2012) (“*In re Heartland*”). There, as here, hackers breached the defendant’s computer systems and obtained customers’ confidential payment card information. The *In re Heartland* Settlement, like the Settlement Agreement here, established a fund from which class members would receive reimbursement for their out-of-pocket losses and time spent related to the breach. The *In re Heartland* Settlement specifically defined “losses” to exclude credit monitoring or insurance costs incurred by class members. 851 F. Supp. 2d at 1049. Upon approving the settlement, the Court observed that, where the compromised data is confined to payment card information, the facts do not necessarily “present any need for [credit] monitoring.” *Id.* at 1079 n. 35; *see also, In re Hudson’s Bay Co. Data Sec. Incident Consumer Litig.*, No. 18-CV-8472 (PKC), 2022 WL 2063864, at *1, *9 (S.D.N.Y. June 8, 2022) (approving the settlement providing payment for out-of-pocket losses and time expended - but not for credit monitoring - where the breach involved customers’ payment card information). Simply, given the nature of the information at issue in this breach, which included payment card information, particularly the fact that neither social security numbers nor driver’s licenses were comprised, there is not an exigent need for credit monitoring.

Again, while Plaintiffs strongly believes in the merits of this case, Plaintiffs also understand that Defendants will assert a number of potentially case-dispositive defenses. Proceeding with litigation would open Plaintiffs up to the risks inherent in trying to achieve and maintain class certification and prove liability and damages. Through the Settlement, the Class Members gain significant benefits without facing further risk of receiving no relief at all.

The *Grinnell* factors favor approving the Settlement—and certainly at least support

preliminary approval. As such, the Court should grant Plaintiffs' motion and allow notice to issue.

H. The Proposed Claims Administrator Will Provide Adequate Notice

Rule 23(e)(1) requires the Court to “direct reasonable notice to all class members who would be bound by” a proposed Settlement. For classes like this one, certified under Rule 23(b)(3), parties must provide “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2)(B) permits notice to be sent by “U.S. Mail, electronic mail, or other appropriate means.” The Notice Plan negotiated here is the best practicable. The Notice plan calls for Notice to issue via email or U.S. mail to the addresses Defendants have in their possession. Grombacher Decl., ¶ 42; Aldridge Decl., ¶¶ 8, 9, and 10.

“The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 113–14 (2d Cir. 2005). There are no rigid rules for determining whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice merely must “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Id.* at 114. Second Circuit Courts have explained that a Rule 23 notice will satisfy due process where it describes the terms of the settlement generally and informs the class about the allocation of attorneys' fees, and provides specific information regarding the date, time, and place of the final approval hearing. *Charron v. Pinnacle Group N.Y. LLC*, 874 F. Supp. 2d 179, 191 (S.D.N.Y. 2012) (internal citations omitted). The notice must also “contain information that a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class and be bound by the final judgment.” *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1105 (5th Cir. 1977); *Achtman v. Kirby, McInerney & Squire, LLP*,

464 F.3d 328, 338 (2d Cir. 2006). The substance of the Notice here is designed to be clear and concise and inform Class Members of the general terms of the Settlement, the allocation of attorneys' fees, and provide specific information regarding the date, time, and place of the final approval hearing. See SA, Exs. A-C. The designated Settlement Administrator possesses extensive experience in the design and implementation of notice procedures and class settlement programs. Aldridge Decl., ¶¶ 2-3.

As such, the proposed Notice Plan should be approved.

V. CONCLUSION

Plaintiffs have negotiated a fair, adequate, and reasonable settlement that guarantees Class Members significant relief. The Settlement Agreement is well within the range of reasonable results, and an initial assessment of both Rule 23 and the *Grinnell* factors demonstrates that final approval is likely, and Notice should be issued to the class. For these and the above reasons, Plaintiffs respectfully request this Court certify the class for settlement purposes and grant their Motion for Preliminary Approval of Class Action Settlement.

Date: September 20, 2024

Respectfully submitted,

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Attorneys for Plaintiff and the Putative Class

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
SOUTHERN DIVISION**

<p>JADYN NEWMAN, individually, and on behalf of classes of similarly situated individuals,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>AUDIENCEVIEW TICKETING CORPORATION AND UNIVERSITYTICKETS.COM, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No 1:23-cv-03764-VEC</p>
<p>RICHARD Z. TOLEDO, individually, and on behalf of classes of similarly situated individuals,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>AUDIENCEVIEW TICKETING CORPORATION AND UNIVERSITYTICKETS.COM, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No 1:23-cv-03764-VEC</p> <p>CONSOLIDATED WITH 1:23 -CV-3764</p>

DECLARATION OF KILEY L. GROMBACHER IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Kiley L. Grombacher being competent to testify, make the following declaration:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify.
2. I am currently a partner of the law firm Bradley Grombacher, LLP. I am admitted to

practice before this Court *Pro Hac Vice*. I am counsel at Bradley Grombacher for the proposed Settlement Class. I submit this declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"). Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so. A true and correct copy of the Revised Settlement Agreement ("Settlement Agreement") is attached hereto as **Exhibit A**. Included with the Agreement are true and correct copies of following sub-exhibits:

Sub-Exhibit 1: Short Form Notice

Sub-Exhibit 2: Long Form Notice

Sub-Exhibit 3: Claim Form

Sub-Exhibit 4: [Proposed] Preliminary Approval Order

Sub-Exhibit 5: [Proposed] Final Approval Order and Judgment

Counsel Qualifications

3. Bradley/Grombacher LLP is a national law firm. Bradley/Grombacher, LLP, has extensive experience litigating wage and hour class and representative actions as well as complex consumer class actions, including data breach matters. Details on the work, experience and accomplishments of the firm can be found at www.bradleygrombacher.com.

4. I have been a member of the State Bar of California since 2006. My involvement in various forms of class action litigation spans more than a decade during which time I have litigated hundreds of class actions.

5. I began my legal career at Arias, Ozzello & Gignac where I specialized in and gained extensive experience litigating consumer cases. Thereafter, I joined Marlin & Saltzman in 2010, where I focused my practice almost exclusively on class, collective and enforcement actions including the reported case, *Faulkinbury v. Boyd & Associates*, which clarified the holding in a seminal case, *Brinker Restaurant Corp. v. Superior Court*, to establish that legality of certain company policies could be determined on a class-wide basis even if the application of the policies varies by individual.

6. I have argued cases before trial courts and courts of appeal. My writings on legal topics

pertaining to class and representative actions have appeared in professional publications and I have been called upon to speak at conferences and seminars for professional organizations. I have also been honored as a Rising Star and/or Super Lawyer in the area of class actions by Los Angeles Magazine for multiple years including the current year.

7. My partner, Mr. Bradley, has practiced since 1994. He has been responsible for all facets of class action and other complex litigation, from pre-filing investigation through trial and appeal. Since approximately May 2000, he has spent the majority of his time representing workers in wage and hour matters. Mr. Bradley's writings on legal topics pertaining to litigating wage and hour class and representative actions have appeared in professional publications and he has also been called upon to speak at conferences and seminars for professional organizations, including a recent presentation titled "Planning for and Executing Trial in Class and Collective Wage & Hour Cases." Mr. Bradley has been honored as a Super Lawyer in the area of class actions by Los Angeles Magazine for multiple years including 2021. He is a member of a number of professional organizations including the Consumer Attorneys of Los Angeles, the Consumer Attorneys of California, the California Employment Lawyers Association, and the American Association of Justice.

8. Myself and Mr. Bradley, at our present firm or at our prior firms, have litigated numerous class actions to favorable settlements including:

- a. *Gutierrez v. State Farm Mutual*, Los Angeles Superior Court (BC236552). Class action seeking overtime compensation for approximately 2,600 insurance claims adjusters employed by State Farm. The class was certified and summary adjudication was granted as to liability in favor of the class. The case settled for \$135 million just prior to trial, with final approval granted with no objections filed.
- b. *Bednar v. Allstate Insurance Company*, Los Angeles Superior Court (BC240813). Class action seeking overtime compensation for approximately 1,200 insurance claims adjusters employed by Allstate. The class was certified and summary adjudication was

granted as to liability in favor of the class. The case settled for \$120 million just prior to trial, with final approval granted with no objections filed.

- c. *Roberts v. Coast National Insurance*, Orange County Superior Court (01CC08478). Class action seeking overtime compensation for insurance claims adjusters employed by Coast National Insurance. Certification granted, and then the matter was tried before a binding arbitrator. The case settled during the arbitration for in excess of \$18 million.
- d. *CNA Class Action Litigation*, Los Angeles Superior Court Class (JCCP 4230). Class action seeking overtime compensation for insurance claims adjusters employed by Defendant. Case settled for \$33 million, with final approval granted with no objections filed.
- e. *Dotson v. Royal SunAlliance*, Orange County Superior Court (02CC01787). Class action seeking overtime compensation for insurance claims adjusters employed by Royal SunAlliance. Case settled for \$12.3 million, with final approval granted with no objections filed.
- f. *Parris v. Lowe's Home Improvement*, Los Angeles County Superior Court (BC260702). Class action seeking payment of "off-the-clock" hours worked by all hourly employees of Lowe's Home Improvement stores in the State of California. The class was certified by the Court of Appeal and remanded to the trial court for further proceedings. Shortly thereafter, a \$29.5 million settlement was reached and approved without objection.
- g. *Pardo v. Toyota Motor Sales, et al.* Los Angeles County Superior Court (BC372781). Class action misclassification of workers with claims for overtime and missed meal and rest breaks. The case settled for \$7.75 million and was approved with no objections.
- h. *Smith/Ballard v. Wal-Mart Stores, Inc.* United States District Court for the Northern District of California (Case No. 4:06-cv-05411-SBA). Wage and hour class action seeking unpaid vacation and personal time, unpaid wages, and related penalties on behalf of over 245,000 employees. The action was certified and settled for \$86 million while Defendant's appeal of the certification was pending in the Ninth Circuit Court of Appeals.

- i. *Hoyng v. AON*, Los Angeles County Superior Court (BC377184). Wage and hour class action seeking overtime and related compensation on behalf of Relationship and Account Specialists. The case settled for \$10.5 million which was approved with no objections filed.
- j. *In RE Bank of America Wage and Hour Employment Practices Litigation*, MDL 2138, United States District Court for the District of Kansas. California state and FLSA wage and hour litigation for various violations including unpaid overtime and “off-the-clock” work. Settled for \$73 million.
- k. *Lemus v. H & R Block Litigation*, United States District Court for the Northern District of California (Case No. 3:09-cv-03179-SI) Class certified, and settlement reached prior to trial. Total settlement of \$35 million.
- l. *Harris v. Vector Marketing Corporation*, United States District Court for the Northern District of California (Case No. 3:08-cv-05198-EMC). Class action case on behalf of approximately 70,000 employees misclassified as “trainees.”
- m. *Bickley v. Schneider National Trucking*, United States District Court for the Northern District of California (Case No. 4:08-cv-05806-JSW). Wage and hour class action on behalf of approximately 6,000 truck drivers. Settled for \$29.5million.
- n. *Roberts v. TJX*, United States District Court for the Northern District of California (Case No. 13-CV-04731-MEJ). Wage and hour violations on behalf of approximately 82,000 employees. Settled for \$8.5 million.
- o. *Oprychal v. New Your Life Insurance*, United States District Court for the Central District of California (Case No. 2:07-cv-00518-VBF). Class action for the failure to pay commissions pursuant to a compensation plan. Settled for \$10 million.
- p. *Neuvenheim v. Gamestop Corp.*, United States District Court for the Central District of California (Case No. 2:09-cv-06799-ODW). Class action on behalf of nonexempt employees for wage and hour violations.
- q. *Hightower v. JP Morgan Chase*, United States District Court for the Central District of California (Case No. 2:11-cv-01802-PSG). Class action on behalf of nonexempt

employees for wage and hour violations. Settled for \$12 million.

r. *Stern v. AT&T Mobility Corporation f/k/a Cingular Wireless Corporation*, United States District Court Central District of California (Case No. 2:05-CV-08842-CAS). Settlement with total value of the available settlement benefits that could have been claimed equaling \$38,280,748.

s. *Lozano v. AT&T Wireless Services, Inc.*, United States District Court Central District of California (Case No 2:02-CV-00090-CAS). Settlement with total value of the available settlement benefits that could have been claimed equaling \$42,700,800.

9. Bradley Grombacher attorneys also participating in other data breach and privacy litigation, which includes: *Newman v. AudienceView Ticketing Corp. et al.*, Case No. 1:23-cv-03764 (S.D. N.Y. 2023); *In Re: Blackhawk Network Data Breach Litigation*, Case No. 3:22-cv-07084 (N.D. Cal. 2022); and *In Re: Independent Living Systems Data Breach Litigation*, Case No. 1:23-cv-21060 (S.D. Fla. 2023).

10. My years of experience representing individuals in complex class actions— including data breach actions—contributed to an awareness of Plaintiff’s settlement leverage, as well as the needs of Plaintiff and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

11. In the sections that follow, I will detail the hard-fought negotiations that resulted in the Agreement now before the Court for preliminary approval. As described below, the Settlement provides significant relief to Members of the Settlement Classes, and I strongly believe that it is favorable for the Settlement Class. It is, in the opinion of the undersigned, fair, reasonable, adequate, and in the best interests of the Settlement Class Members and is worthy of preliminary approval.

12. My co-counsel Brian Murray of Glancy Prongay & Murray LLP is also well qualified to represent this class. Glancy Prongay & Murray LLP is a national class action law firm based in Los

Angeles, California with offices in Berkeley and New York. The firm's current resume is attached hereto as **Exhibit B**.

Initial Investigation and Communications

13. Defendants AudienceView Ticketing Corporation and UniversityTickets.com Inc. operate an online ticketing platform providing services across the United States. In the ordinary course of doing business, Defendants collect certain Personally Identifiable Information (PII) from customers such as: name, address, payment card information, billing and shipping addresses, transaction histories and email address.

14. Between February 14, 2023 and February 21, 2023, malicious actors infiltrated AudienceView's digital infrastructure.

15. The malware bypassed existing security measures and involved potential access to PII from AudienceView's servers. As a result, Defendants notified approximately 13,045 current and past users of the AudienceView platform that their PII was potentially impacted by the Data Incident.

16. These individuals represent the total scope of individuals whose PCI was potentially impacted by the Data Incident based on Defendants' investigation into same.

Procedural Posture

17. On May 4, 2023, after receiving notices that their data had been affected, Plaintiff Newman filed their complaint in this matter, and on June 30, 2023, Plaintiff Toledo filed his complaint, with parallel allegations. Following the consolidation of these two actions against Defendants, Plaintiffs filed a consolidated class action complaint on August 10, 2023, amending on October 16, 2023. Plaintiffs alleged claims of negligence, unjust enrichment, breach of express contract, breach of implied contract, invasion of privacy, and deceptive business practices.

18. Plaintiffs seek an award of actual, nominal, consequential and punitive damages as well as attorneys' fees and costs, and any such further relief as may be deemed just and proper. Further, by

their complaint, Plaintiffs seek equitable relief enjoining Defendants from engaging in the wrongful conduct complained of and compelling Defendants to utilize appropriate methods and policies with respect to consumer data collection, storage, and safety.

19. Defendants filed a motion to dismiss the amended complaint on November 17, 2023, which was rendered moot upon the court staying the case on February 14, 2024, to enable the parties to pursue mediation.

20. On August 23, 2024, Plaintiffs filed a motion seeking court approval of a prior version of the settlement agreement. (ECF Dkt. 61).

21. This Court issued an order denying such motion without prejudice and identifying discrepancies and issues which it instructed the parties to address in their subsequent submission. The parties have closely reviewed this Court's guidance and submit that their revised motion is fair, adequate, and reasonable.

Settlement Negotiations And Mediation Efforts

22. Following the filing of the motion to dismiss, the Parties, by and through their respective counsel, began discussing the possibility of early resolution.

23. The Parties agreed that exploration of whether early resolution could be achieved was warranted. Over the next few months, the Parties engaged in extensive arm's length settlement negotiations. *Id.*, ¶ 26. Negotiations included a significant exchange of information, allowing both Parties to evaluate the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses. *Id.*, ¶ 27.

24. On May 28, 2024, the parties engaged in a full-day mediation session with the Honorable Morton Denlow, a well-respected industry leader in this field. The parties reached a settlement in principle at the mediation, and over the next few weeks, the Parties diligently negotiated, drafted, and finalized the settlement agreement, notice forms, and came to an agreement on a claims process and administrator.

25. The original Settlement Agreement was finalized by the Parties on August 23, 2024, and submitted to the Court August 23, 2024 for approval.

26. On August 30, 2024, this Court issued an Order denying the Motion for Preliminary Approval without prejudice identifying certain issues with the proposed settlement and seeking clarification. (Dkt 66.)

27. The parties carefully reviewed such order and engaged in further negotiations and revisions of the Settlement agreement. The product of which, the Revised Settlement Agreement, is an Exhibit hereto.

Settlement Benefits

28. The Class is estimated to include approximately 13,045 individuals.

29. The Settlement Class specifically excludes: “(1) the judges presiding over this Action, and members of their direct families; (2) Defendants, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or its parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.”

30. Under the proposed Settlement, Class Members shall have an opportunity to submit a claim for reimbursement of out-of-pocket losses and attested time, or an alternative cash payment of \$75. Furthermore, under the Settlement Agreement, Defendants have implemented certain cybersecurity enhancements. The Settlement provides for relief for a Class defined as: “persons who are identified on the Settlement Class List, including all individuals residing in the United States who were sent notification by Defendants that their Payment Card Information was potentially compromised in the Data Incident.” SA ¶ 39.

31. Furthermore, under the Settlement Agreement, Defendants have implemented certain cybersecurity enhancements.

Monetary Relief

32. Under the terms of the Settlement Agreement, Defendants will pay \$435,000 into a Settlement Fund, which will be used to make payments to Class Members and to pay the costs of Notice, Settlement Administration, attorneys' fees and expenses, and Service Awards to Plaintiffs. SA., ¶¶47, 5

33. Settlement Class Members can submit a claim for Out-of-Pocket Losses, which provides for up to \$5,000.00 per person reimbursement of documented out-of-pocket losses, demonstrably incurred, more likely than not, as a result of the Data Incident, including, but not limited to: "(i) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, or other possible misuse of class member's Payment Card Information; and/or (ii) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges." *Id.*, ¶ 53.

34. Additionally, Class Members can submit a claim for compensation for up to four (4) hours of lost time spent addressing issues related to the Data Incident, calculated at the rate of \$25.00 per each full hour of time spent. SA, ¶55. To make a claim for Attested Time the Class Member must include an attestation that the time claimed was actually spent as a result of the Data Incident. *Id.*

35. Alternatively, Class Members can elect to receive an alternative cash payment in the amount of \$75 subject to pro rata increase or decrease based upon the claims rate. *Id.*, ¶ 58.

Data Security Measures

36. In addition to the monetary relief provided, Defendants have represented that they have either undertaken or will undertake certain reasonable steps to further secure their systems and environments.

37. Defendants have agreed to provide further information to Class Counsel regarding the facts and circumstances of the Data Incident, Defendants' responses thereto, and the changes and improvements that have been made or will be made to protect Settlement Class Members' information

from further unlawful intrusions. *Id.* Such changes and improvements that have been made or will be made include but are not limited to: removal of malicious JavaScript code from affected databases, implementation of trigger to identify reinsertion of malicious scripts into databases, disabling of SQL SA accounts, enabling blocking of SQL injection attempts at Cloudflare WAF, implementing firewall blocking rules for identified IOCs, engaging a third-party forensics firm to assist in the internal investigation, implementing DefenderATP EDR solution, archiving impacted infrastructures associated with the product, and deploying dark web monitoring. *Id.*

Release

38. The release is tailored to the claims that have been pleaded or could have been pleaded in this case.

39. Class Members who do not exclude themselves from the Settlement Agreement will release all claims, whether known or unknown, against Released Persons, based on, relating to, concerning or arising out of the alleged Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation.

Notice

40. The Parties agreed to use Eisner Advisory Group, LLC (“Settlement Administrator”) as the Settlement Administrator.

41. The cost of notice and all other costs of Settlement Administration will be paid by the Settlement Fund. *Id.*, ¶ 36. The Administrator has agreed that the cost of administration will not exceed \$60,000. Declaration of Ryan Aldridge (“Aldridge Decl.”), at ¶ 14.

42. The notice plan provides for individual notice to Class Members via email and U.S. mail, to the postal address that Defendants have on record for each Class Member. *Id.*, ¶ 37.

43. The Settlement Administrator will establish a settlement website and will maintain and update the website during the claim period, with the Long Notice, and Claim Form, the Preliminary

Approval Order, Settlement Agreement, and other relevant case documents.

44. Class Members will be able to submit Claim Forms through the website. *Id.* The Settlement Administrator will also make a toll-free help line during the claims period to provide Class Members with additional information about the Settlement and will establish a P.O. Box to which Class Members can submit claims.

Claims Process

45. The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object.

46. Class Members will have no less than sixty (60) days after the Short Notice is issued to complete and submit their Claim Form to the Settlement Administrator, either by mail or online.

47. The Claim Form is written in plain language to facilitate Class Members' ease in completing it.

48. The Settlement Administrator will be responsible for reviewing the Claim Forms and determine if they are complete and valid. Should a claim be incomplete or lacking sufficient documentation, the Settlement Administrator may reach out the claimant for supplementation.

Requests for Exclusion and Objections

49. Settlement Class Members will have sixty (60) days following the Notice Commencement Date to object to or to submit a request for exclusion from the Settlement.

50. Similar to the timing of the claims process, the timing with regard to objections and requests for exclusion is structured to give Class Members sufficient time to access and review the Settlement documents— including Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, which will be filed fourteen (14) days prior to the deadline for Class Members to object or exclude themselves from the Settlement.

51. To be excluded from the Settlement, Class Members must make their request in writing, and must clearly manifest their intent to be excluded from the class. Any Member of the Class who elects to be excluded shall not (i) be bound by any order or the Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

52. Any Settlement Class Member who wishes to object shall file notice of his/her intention to do so with the Court and concurrently mail notice to Class Counsel, counsel for Defendants, and the Claims Administrator.

53. The objection to the Settlement Agreement must include: (i) the objector's full name and address; (ii) the case name and docket number; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or their counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or their in connection with the objection.

Fees, Costs, and Service Awards

54. The Settlement Agreement calls for a reasonable service award to Plaintiffs in the amount of \$3,500 each, totally \$7,000. The Service Award is meant to compensate Plaintiffs for their efforts on behalf of the Class, including maintaining contact with counsel, assisting in the investigation of the case, reviewing the Complaint, remaining available for consultation during the settlement negotiations, reviewing the Settlement Agreement, and answering counsel's questions.

55. After agreeing to the terms of the settlement, counsel for Plaintiffs negotiated with Defendants regarding their attorneys' fees.

56. By separate motion, Plaintiffs will seek Court approval of attorneys' fees and costs in the maximum amount of thirty percent (30%) of the Settlement Fund, or One Hundred Thirty Thousand Five Hundred Dollars and Zero Cents (\$130,500.00). See *Reynolds v. Marymount Manhattan Coll.*, No. 1:22-CV-06846-LGS, 2023 U.S. Dist. LEXIS 191993, at *3 (S.D.N.Y. Oct. 23, 2023) (holding that “[e]mpirical evidence indicates that the median percentage of the settlement amount awarded as attorneys' fees in” matters similar to data breach cases is 29%).

57. Class Counsel will submit a separate motion seeking attorneys' fees, costs, expenses, and Plaintiff's Service Award before filing the Motion for Final Approval, and before Class Members' deadline to exclude themselves from, or object to, the Settlement Agreement. Agreement.

58. In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Westlake Village, California on this 20th day of September 2024.

By /s/ Kiley L. Grombacher
Kiley L. Grombacher
Attorneys for Plaintiff and the Putative Class

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between JADYN NEWMAN and RICHARD Z. TOLEDO, individually and on behalf of Participating Settlement Class Members (as defined in Paragraph 29) (together “Plaintiffs”), and AUDIENCEVIEW TICKETING CORPORATION (“AudienceView”) and UNIVERSITYTICKETS.COM, INC. (“UniversityTickets”) (AudienceView and UniversityTickets, collectively “Defendants”) (Plaintiffs and Defendants, collectively the “Parties”), in the action *Newman et al. v. AudienceView Ticketing Corporation et al.*, Case No. 1:23-cv-03764-VEC, pending in the U.S. District Court for the Southern District of New York (the “Action”).

RECITALS

WHEREAS, Plaintiffs have filed a Complaint(s) against Defendants in the United States District Court for the Southern District of New York relating to a data security incident affecting AudienceView which occurred in or around February 2023, which Complaint(s) have been consolidated and are presently pending in the Action;

WHEREAS, Defendants deny the allegations and all liability with respect to any and all facts and claims alleged in the Action, that the class representatives and the class(es) which they purport to represent have suffered any damage(s), and/or that the Action satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23; and

WHEREAS, following extensive arm’s length settlement negotiations and a mediation session, the Parties reached an agreement of the essential terms of settlement.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a full, complete, and final settlement and resolution of the Action, subject to Court approval, on the following terms and conditions:

I. DEFINITIONS

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

1. “Action” means the class action lawsuit captioned *Newman et al. v. AudienceView Ticketing Corporation et al.*, Case No. 1:23-cv-03764-VEC, pending in the U.S. District Court for the Southern District of New York before the Honorable Valerie E. Caproni.

2. “Alternative Cash Payment” means a cash payment of Seventy-Five Dollars and Zero Cents (\$75.00), which a Class Member may claim in lieu of any other benefits under this Settlement Agreement, as set forth in Paragraph 58.

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

4. “Attested Time” means time spent remediating issues related to the Data Incident.
5. “AudienceView” means Defendant AudienceView Ticketing Corporation.
6. “Claim Form” or “Claim” means the form(s) Settlement Class Members must submit to be eligible for reimbursement of Out-of-Pocket Losses and/or Attested Time, or to claim an Alternative Cash Payment under the terms of the Settlement, which is attached hereto as Exhibit 3.
7. “Claims Deadline” means the last day to submit a timely Claim Form(s), which will occur sixty (60) days after the Notice Deadline.
8. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive settlement benefits, which will end sixty (60) days after the Notice Deadline.
9. “Class Counsel” means Kiley Grombacher of Bradley Grombacher LLP and Brian Murray of Glancy Prongay & Murray LLP.
10. “Class Representatives” means Jadyn Newman and Richard Z. Toledo.
11. “Court” means the United States District Court for the Southern District of New York.
12. “Data Incident” means the data security incident affecting AudienceView which occurred in or around February 2023.
13. “Defendants” means, collectively AudienceView and UniversityTickets.
14. “Defendants’ Counsel” means Brian E. Middlebrook and John T. Mills of Gordon Rees Scully Mansukhani, LLP.
15. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Judgment or one (1) business day following entry of an order granting final approval of the settlement if no parties have standing to appeal; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to attorneys’ fees and reimbursement of expenses, the date of completion, in a manner that finally affirms and leaves in place the Judgment without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Judgment.

16. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.

17. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, and otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Agreement, substantially in the form annexed hereto as Exhibit 5.

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

19. “Litigation Costs and Expenses” means costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Action.

20. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses, (iii) Service Awards Payments approved by the Court, and (iv) Fee Award and Costs approved by the Court.

21. “Non-Profit Residual Recipient” means Electronic Privacy Information Center, subject to approval by the Court.

22. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members, substantially in the form attached hereto as Exhibit 1 (“Short Form Notice”) and Exhibit 2 (“Long Form Notice”).

23. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, performing National Change of Address search(es) and/or skip tracing, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

24. “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members, and will occur thirty (30) days after entry of the Preliminary Approval Order.

25. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement, which will be sixty (60) days after the Notice Deadline.

26. “Opt-Out Deadline” is the last day on which a Settlement Class member may file a request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Deadline.

27. “Out-of-Pocket Losses” means documented out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Data Incident, and that have not already been reimbursed by a third party, as set forth in Paragraph 53.

28. “Payment Card Information” means the name, billing address, e-mail address, and credit or debit card number in combination with the security code, access code, password, or PIN for the credit card or debit card number for the Participating Settlement Class Members which was potentially impacted in the Data Incident. The term “Payment Card Information” is not intended here, nor should it be viewed as, having any bearing on the meaning of this term or similar term in any statute or other source of law beyond this Agreement, or how the Parties may use the term in other circumstances.

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

30. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment. Such order will include the forms and procedure for providing notice to the Settlement Class, including notice of the procedure for Settlement Class Members to object to or opt-out of the Settlement, and set a date for the Final Approval Hearing, substantially in the form annexed hereto as Exhibit 4.

31. “Released Claims” means any and all claims, liabilities, rights, demands, suits, actions, causes of action, obligations, damages, penalties, costs, attorneys’ fees, losses, and remedies of every kind or description—whether known or unknown (including Unknown Claims), existing or potential, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that the Releasing Parties had or have that have been or could have been asserted in the Action or that otherwise relate to or arise from the Data Incident, the operative facts alleged in the Action, including the complaint and any amendment thereto, the alleged access, disclosure and/or acquisition of Settlement Class Members’ Payment Card Information in the Data Incident, Defendants’ provision of notice to Settlement Class Members following the Data Incident, Defendants’ information security policies and practices, or Defendants’ maintenance or storage of Payment Card Information, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law.

32. “Released Parties” means Defendants and each and every of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees, and assigns of any of the foregoing, as well as clients of Defendants and each and every of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any

and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees, and assigns of any of the foregoing. Each of the Released Parties may be referred to individually as a “Released Party.”

33. “Releasing Parties” means the Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns.

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

35. “Residual Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Approved Claim(s) for Out-of-Pocket Losses; (iv) Approved Claim(s) for Attested Time; (v) Approved Claim(s) for Alternative Cash Payment(s); (vi) Service Awards Payments approved by the Court; and (vii) Fee Award and Costs approved by the Court.

36. “Service Award Payment” means compensation awarded by the Court and paid to the Class Representatives in recognition of each of their roles in this litigation.

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

38. “Settlement Administrator” means Eisner Advisory Group, LLC, subject to Court approval.

39. “Settlement Class” means the persons who are identified on the Settlement Class List, including all individuals residing in the United States who were sent notification by Defendants that their Payment Card Information was potentially compromised in the Data Incident. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

40. “Settlement Class List” means the list generated by Defendants containing the full names and current or last known addresses for Settlement Class Members, which Defendants shall provide to the Settlement Administrator within ten (10) days of the Preliminary Approval Order.

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

42. “Settlement Fund” means the sum of Four Hundred Thirty-Five Thousand Dollars and Zero Cents (\$435,000.00) to be paid by or on behalf of Defendants as specified in Paragraph 47, including any interest accrued thereon after payment. This payment is the limit and extent of the monetary obligations of Defendants, their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees, and assigns of any of the foregoing, with respect to this Agreement and the settlement of this matter.

43. “Settlement Payment” or “Settlement Check” means the payment to be made via mailed check or electronic payment to a Participating Settlement Class Member pursuant to Paragraph 60.

44. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs’ motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs’ motion for an award of attorneys’ fees, costs and expenses, and/or service awards, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

45. “Taxes and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendants with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

46. “UniversityTickets” means Defendant UniversityTickets.com, Inc.

II. SETTLEMENT FUND

47. **Establishment of Settlement Fund.** Within ten (10) days of the Preliminary Approval Order, Defendants shall deposit or cause to be deposited the total sum of Four Hundred Thirty-Five Thousand Dollars and Zero Cents (\$435,000.00) into an interest-bearing account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator and Defendants.

48. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Defendants in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph 86.

49. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

50. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraph 86.

51. **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Approved Claim(s) for Out-of-Pocket Losses; (iv) Approved Claim(s) for Attested Time; (v) Approved Claim(s) for Alternative Cash Payment(s); (vi) Service Awards Payments approved by the Court; and (vii) Fee Award and Costs approved by the Court. Following payment of all of the above expenses, any amount remaining in the Residual Settlement Fund shall be distributed *pro rata* to Participating Settlement Class Members in accordance with Paragraph 68 and shall thereafter be paid to the Non-Profit Residual Recipient in accordance with Paragraph 69. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

52. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties, their counsel, and their insurers and reinsurers for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Participating Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

III. REIMBURSEMENT FOR OUT-OF-POCKET LOSSES AND ATTESTED TIME

53. **Reimbursement for Out-of-Pocket Losses.** All Settlement Class Members may submit a claim for up to Five Thousand Dollars and Zero Cents (\$5,000.00) for reimbursement of Out-of-Pocket Losses. “Out-of-Pocket Losses” are unreimbursed costs or expenditures incurred by a Settlement Class Member that are fairly traceable to the Data Incident including, without limitation, the following: (i) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, or other possible misuse of class member’s Payment Card Information; and/or (ii) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Settlement Class Members who elect to submit a claim for Reimbursement of Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member’s name and current address; (2) documentation supporting their claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) whether the Settlement Class Member has been reimbursed for the loss by another source. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not “self-prepared” by the Settlement Class Member 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 to or support other submitted documentation. Settlement Class Members shall not be reimbursed for Out-of-Pocket Losses if they have already been reimbursed for the same Out-of-Pocket Losses by another source. A claim for reimbursement for Out-of-Pocket Losses may be combined with a claim for Attested Time but in no circumstance will a Settlement Class Member be eligible to receive more than the Five Thousand Dollars and Zero Cents (\$5,000.00) cap.

54. **Assessing Claims for Out-of-Pocket Losses.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Losses reflects valid Out-of-Pocket Losses actually incurred that are fairly traceable to the Data Incident, but may consult with Class Counsel and Defendants’ Counsel in making individual determinations. In assessing what qualifies as “fairly traceable,” the Parties agree to instruct the Settlement Administrator to consider (i) whether the timing of the loss occurred on or after February 14, 2023; and/or (ii) whether the Payment Card Information used to commit identity theft or fraud consisted of the same type of Payment Card Information that was potentially impacted as a result of the Data Incident. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

55. **Reimbursement for Attested Time.** All Settlement Class Members may submit a claim for reimbursement of Attested Time up to four (4) hours at Twenty-Five Dollars and Zero Cents (\$25.00) per hour, but only if at least one (1) full hour was spent. Settlement Class Members can receive reimbursement of Attested Time with a brief description of the actions taken in response to the Data Incident and the time associated with each action. Claims for Attested Time are capped at One Hundred Dollars and Zero Cents (\$100.00) per individual. A claim for Attested Time may be combined with a claim for reimbursement for Out-of-Pocket Losses but in no

circumstance will a Settlement Class Member be eligible to receive more than the Five Thousand Dollars and Zero Cents (\$5,000.00) individual cap.

56. **Assessing Claims for Attested Time.** The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met in order to award payments of Attested Time, but may consult with Class Counsel and Defendants' Counsel in making individual determinations. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

57. **Disputes.** To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses or Attested Time is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel and Defendants' Counsel in making such determinations.

IV. ALTERNATIVE CASH PAYMENT

58. **Alternative Cash Payment.** In lieu of the benefits made available to Settlement Class Members under Section III, Paragraphs 53-57 above, all Settlement Class Members may submit a claim for an Alternative Cash Payment of Seventy-Five Dollars and Zero Cents (\$75.00).

59. **Assessing Claims for Alternative Cash Payments.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. A Settlement Class Member shall not be required to submit any documentation or additional information in support of their claim for an Alternative Cash Payment. However, the Claim Form must clearly indicate that the Settlement Class Member is electing to claim the Alternative Cash Payment in lieu of any other benefits made available under this Settlement Agreement and, specifically, Section III, Paragraphs 53-57 above. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity. In the event of any ambiguities in the Claim Form, the Settlement Administrator must contact the Settlement Class Member prior to making a determination as to its validity and, specifically, to determine whether the Settlement Class Member wishes to file a claim for an Alternative Cash Payment, or any other benefits made available under this Settlement Agreement.

V. PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS

60. **Payment Timing.** Payments for Approved Claims shall be issued in the form of an electronic payment or check mailed as soon as practicable after the allocation and distribution of

funds are determined by the Settlement Administrator following the Effective Date. The Settlement Administrator shall utilize electronic payment methods wherever possible.

61. **Timing.** To the extent payments are made by check, settlement checks shall bear in the legend that they expire if not negotiated within sixty (60) days of their date of issue.

62. **Returned Checks.** For any electronic payment or settlement check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the electronic payment or check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement electronic payment(s) or settlement check(s) issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

63. **Uncashed Checks.** To the extent that an electronic payment or settlement check is not cashed, accepted, and/or negotiated within sixty (60) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Participating Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued electronic payment or check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Participating Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing an electronic payment or check or mailing the Participating Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued electronic payment or check. Any reissued electronic payment(s) or settlement check(s) issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

64. **Deceased Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the electronic payment(s) or settlement check(s) to the Participating Settlement Class Member's estate upon receiving proof the Participating Settlement Class Member is deceased and after consultation with Class Counsel and Defendants' Counsel.

VI. CLAIMS; DISTRIBUTION OF SETTLEMENT FUNDS; RESIDUAL SETTLEMENT FUND

65. **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline.

66. **Order of Distribution of Funds.** The Settlement Administrator shall use the funds available in the Net Settlement Fund to make payments for Approved Claims for Out-of-Pocket Losses, followed by Approved Claims for Attested Time, followed by Approved Claims for Alternative Cash Payments.

67. **Pro-Rata Contingencies.**

a. In the event that the funds remaining in the Net Settlement Fund after payments for Approved Claims for Out-of-Pocket Losses are not sufficient to make payment for Approved Claims for Attested Time, then the value of the payments for all Approved Claims for Attested Time shall be reduced on a pro rata basis, such that the aggregate value of all payments for Approved Claims for Out-of-Pocket Losses and Approved Claims for Attested Time does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed for Approved Claims for Alternative Cash Payments.

b. In the event that the funds remaining in the Net Settlement Fund after payments for Approved Claims for Out-of-Pocket Losses and Approved Claims for Attested Time are not sufficient to make payment for Approved Claims for Alternative Cash Payments, then the value of the payments for Approved Claims for Alternative Cash Payments shall be reduced on a pro rata basis, such that the aggregate value of all payments for Approved Claims for Out-of-Pocket Losses, Approved Claims for Attested Time, and Approved Claims for Alternative Cash Payments does not exceed the Net Settlement Fund. In no event shall the Settlement Fund be increased for any reason.

c. All pro rata determinations required by this Paragraph shall be performed by the Settlement Administrator upon notice to Class Counsel and Defendants' Counsel.

68. **Residual Distributions.** In the event that there are funds in the Residual Settlement Fund, and the remaining amount is not *de minimis* (as determined by Class Counsel and Defendants' Counsel based on calculations provided by the Settlement Administrator), then each Settlement Class Member who is entitled to receive payment for an Approved Claim for Attested Time and Approved Claim for Alternative Cash Payment shall receive funds increased on a *pro rata* basis (in other words, the same additional amount is added to each Settlement Class Member's payment as set forth herein) so that the Net Settlement Fund is depleted. In the event that residual distributions are made pursuant to this Paragraph, under no circumstances shall a Settlement Class Member receive more than three (3) times the value of his, her, or its Approved Claim for Attested Time or Approved Claim for Alternative Cash Payment. All *pro rata* determinations required by this Paragraph shall be performed by the Settlement Administrator upon notice to Class Counsel and Defendants' Counsel.

69. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to Defendants after the Effective Date. To the extent any monies remain in the Residual Settlement Fund more than 150 days after the distribution of settlement payments to the Participating Settlement Class Members, or 30 days after all reissued Settlement Checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, any remaining monies shall be distributed as required by state law or to the Non-Profit Residual Recipient.

VII. CONFIRMATORY DISCOVERY

70. **Confirmatory Discovery.** Within thirty (30) days of the Preliminary Approval Order, Defendants will provide reasonable access to confidential confirmatory discovery and/or a confidential declaration to Class Counsel which will include documents regarding the facts and circumstances of the Data Incident, Defendants' response thereto, and the changes and improvements that have been made or will be made to protect Settlement Class members' information from further unlawful intrusions. Such changes and improvements that have been made or will be made include but are not limited to: removal of malicious JavaScript code from affected databases, implementation of trigger to identify reinsertion of malicious scripts into databases, disabling of SQL SA accounts, enabling blocking of SQL injection attempts at Cloudflare WAF, implementing firewall blocking rules for identified IOCs, engaging a third-party forensics firm to assist in the internal investigation, implementing DefenderATP EDR solution, archiving impacted infrastructures associated with the product, and deploying dark web monitoring. The information provided pursuant to this Paragraph 70 shall identify the approximate annual cost of those security-related measures, which shall be paid by Defendants separate and apart from the Settlement Fund.

71. **Confidentiality.** The information provided by Defendants pursuant to this Section VII shall be treated as confidential and cannot be used for any purpose other than enforcement of this Settlement Agreement.

72. **No Other Rights or Remedies.** Nothing about this Section VII shall create any rights to any present or future contractual or equitable remedy requiring Defendants to make or maintain any particular security processes or procedures in the future.

VIII. SETTLEMENT CLASS NOTICE

73. **Timing of Notice.** Within ten (10) days after the date of the Preliminary Approval Order, Defendants shall provide the Settlement Class List to the Settlement Administrator. Within thirty (30) days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice to the members of the Settlement Class. The Settlement Administrator shall make the Long Form Notice and Claim Form available to Settlement Class Members on the Settlement Website.

74. **Form of Notice.** Notice shall be disseminated via U.S. mail and electronic mail to Settlement Class Members.

IX. OPT-OUTS AND OBJECTIONS

75. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. Any Settlement Class Member who elects to be excluded shall not (i) be bound by any order or the Judgment; (ii) be entitled to relief under the Settlement; (iii) gain any rights by virtue of the Settlement; or (iv) be entitled to object to any aspect of the Settlement. The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal

signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

76. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement by submitting written objections to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member’s attorney. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

77. Within seven (7) days after the deadline for opt-out as set forth in this Paragraph and as approved by the Court, the Settlement Administrator shall furnish to counsel for the Parties a complete list of all timely and valid requests for exclusion. In the event that within seven (7) days after receipt of the list from the Settlement Administrator, there have been more than seventy-five (75) Opt-Outs (exclusions), Defendants may, by notifying Class Counsel in writing, void this Agreement. If Defendants void the Agreement pursuant to this Paragraph, Defendants shall be obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs, and expenses of Class Counsel and service awards.

X. DUTIES OF THE SETTLEMENT ADMINISTRATOR

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

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Performing National Change of Address searches and/or skip tracing on the Settlement Class List;

- d. Providing Notice to Settlement Class Members via U.S. mail and electronic mail;
- e. Establishing and maintaining the Settlement Website;
- f. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- g. Responding to any mailed or emailed Settlement Class Member inquiries within one (1) business day;
- h. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- i. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Defendants' Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel;
- j. After the Effective Date, processing and transmitting settlement payments to Settlement Class Members;
- k. Providing weekly or other periodic reports to Class Counsel and Defendants' Counsel that include information regarding the number of settlement electronic payments and/or checks mailed and delivered, electronic payments and/or settlement checks cashed, undeliverable information, and any other requested information relating to settlement payments. The Settlement Administrator shall also, as requested by Class Counsel or Defendants' Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- l. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and
- m. Performing any function related to settlement administration as provided for in this Agreement or at the agreed-upon instruction of Class Counsel or Defendants' Counsel, including, but not limited to, verifying that settlement payments have been distributed.

79. **Limitation of Liability.** The Parties, Class Counsel, Defendants' Counsel, and Defendants' insurers and reinsurers, shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees

or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

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

XI. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

81. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Defendants reserve the right to contest class certification for all other purposes. The Parties further stipulate to designate the Class Representatives as the representatives for the Settlement Class.

82. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of this Settlement with the Court. Class Counsel shall provide Defendants' counsel with a draft of the motion for preliminary approval within a reasonable time frame prior to filing same to ensure that there are no requested revisions from Defendants.

83. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline; and at least 90 days after Class Counsel notifies the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. In connection with the motion for preliminary approval, counsel for the parties shall request that the Court set a date for the Final Approval Hearing that is no earlier than 120 days after entry of the Preliminary Approval Order. Class Counsel shall provide Defendants' counsel with a draft of the motion for final approval within a reasonable time frame prior to filing same to ensure that there are no requested revisions from Defendants.

84. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any

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

XII. MODIFICATION AND TERMINATION

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

86. **Termination.** Class Counsel (on behalf of the Settlement Class Members) and Defendant shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice"): (1) within seven (7) days of either of the following: (a) the Court's refusal to grant preliminary approval of the Settlement in any material respect; or (b) Defendants' receipt of the opt-out list from the Settlement Administrator that includes more than seventy-five (75) Opt-Outs which right may be exercised solely by Defendants as set forth above in Paragraph 75; or (2) within fourteen (14) days of either of the following: (a) the Court's refusal to enter the Judgment in any material respect, or (b) the date upon which the Judgment is modified or reversed in any material respect by any appellate or other court.

87. **Effect of Termination.** In the event of a termination as provided in Paragraph 86, this Agreement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

XIII. RELEASES

88. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Parties from any and all Released Claims.

89. **Unknown Claims.** The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Action and that Plaintiffs, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if

known by him, her, or it, might affect his, her, or its agreement to release the Released Parties or the Released Claims or might affect his, her, or its decision to agree, object, or not to object to the Settlement. Upon the Effective Date, Plaintiffs, the Settlement Class, and any Releasing Party shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

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

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

90. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

XIV. SERVICE AWARD PAYMENT

91. **Service Award Payment.** At least thirty (30) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion seeking a service award payment not to exceed Three Thousand Five Hundred Dollars and Zero Cents (\$3,500.00) for each of the Class Representatives, for a total of Seven Thousand Dollars and Zero Cents (\$7,000.00), in recognition of their contributions to this Action, subject to Court approval. The Settlement Administrator shall make the Service Award Payment to the Class Representative from the Settlement Fund. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

92. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or

reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

XV. ATTORNEYS' FEES, COSTS, EXPENSES

93. **Attorneys' Fees and Costs and Expenses.** At least thirty (30) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion for an award of attorneys' fees and litigation costs and expenses not to exceed thirty percent (30%) of the Settlement Fund, or One Hundred Thirty Thousand Five Hundred Dollars and Zero Cents (\$130,500.00) to be paid from the Settlement Fund, and subject to Court approval. Fee Award and Costs shall be paid by the Settlement Administrator from the Settlement Fund, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

94. **Allocation.** To the extent applicable, and unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiffs' counsel and any other attorneys for Plaintiffs. Defendants and their insurers and reinsurers shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

95. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees and costs and expenses in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the attorneys' fees and costs shall constitute grounds for termination of this Agreement.

XVI. NO ADMISSION OF LIABILITY

96. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

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

XVII. MISCELLANEOUS

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

99. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications, and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

100. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to “days” in this agreement shall refer to calendar days unless otherwise specified.

101. **Singular and Plurals.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

102. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

103. **Construction.** For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

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

105. **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 consulted in good faith.

106. **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.

107. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the State of New York, without regard to the principles thereof regarding choice of law.

108. **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 signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically, by facsimile, or through e-mail of an Adobe PDF shall be deemed an original.

109. **Notices.** All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Kiley L. Grombacher
BRADLEY GROMBACHER LLP
31365 Oak Crest Drive, Suite 24
Westlake Village, California 91361
kgrombacher@bradleygrombacher.com

Brian P. Murray
GLANCY PRONGAY & MURRAY LLP
230 Park Avenue, Suite 358
New York, New York 10169
bmurray@glancylaw.com

All notices to Defendants provided for herein, shall be sent by overnight mail and email to:

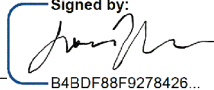
Brian E. Middlebrook
John T. Mills
GORDON REES SCULLY MANSUKHANI, LLP
One Battery Park Plaza
New York, New York 10004
bmiddlebrook@grsm.com
jtmills@grsm.com

The notice recipients and addresses designated above may be changed by written notice.

110. **Authority.** 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.

SIGNATURES

JADYN NEWMAN

Signed by:
By:  _____
B4BDF88F9278426...


Date: 9/20/2024

RICHARD Z. TOLEDO

By: _____

Date: _____

BRADLEY GROMBACHER LLP
Counsel for Plaintiffs and the Class

By:  _____
Kiley Grombacher

Date: 9/20/2024

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Westlake Village, California 91361
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GLANCY PRONGAY & MURRAY LLP
230 Park Avenue, Suite 358
New York, New York 10169
bmurray@glancylaw.com

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Brian E. Middlebrook
John T. Mills
GORDON REES SCULLY MANSUKHANI, LLP
One Battery Park Plaza
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jtmills@grsm.com

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SIGNATURES

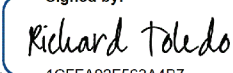
JADYN NEWMAN

By: _____

Date: _____

RICHARD Z. TOLEDO

Signed by:

By:  _____
1CFFA92F563A4B7...

Date: 9/20/2024

BRADLEY GROMBACHER LLP
Counsel for Plaintiffs and the Class

By: _____
Kiley Grombacher

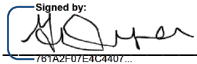
Date: _____

GLANCY PRONGAY & MURRAY LLP
Counsel for Plaintiffs and the Class

By: Brian Murray
Brian Murray

Date: September 20, 2024

AUDIENCEVIEW TICKETING CORPORATION

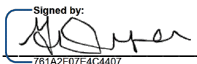
By: 
Signed by: 761A2F07E4C4A07...

Date: September 20, 2024 | 9:48 AM PDT

Name: Gord Dyer

Title: cfo

UNIVERSITYTICKETS.COM, INC.

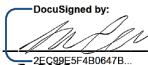
By: 
Signed by: 761A2F07E4C4A07...

Date: September 20, 2024 | 9:48 AM PDT

Name: Gord Dyer

Title: cfo

GORDON REES SCULLY MANSUKHANI, LLP
Counsel for Defendants (as to form only)

By: 
DocuSigned by: 2F098E5F4B0647B...
John Mills

Date: September 20, 2024 | 8:00 AM PDT

EXHIBIT 1

**IF YOU WERE NOTIFIED BY AUDIENCEVIEW TICKETING CORPORATION
REGARDING THE FEBRUARY 2023 DATA INCIDENT, YOU MAY BE ELIGIBLE
FOR PAYMENT FROM A CLASS ACTION SETTLEMENT.**

Si desea recibir esta notificación en español, llámenos o visite nuestra página web.

A settlement has been reached in a class action lawsuit against AudienceView Ticketing Corporation and UniversityTickets.com, Inc. (“Defendants”) relating to a cyberattack against AudienceView Ticketing Corporation’s computer systems that occurred in or around February 2023 (the “Data Incident”). The systems possibly affected by the Data Incident contained payment card information of certain individuals. The Plaintiffs claim that Defendants were responsible for the Data Incident. Defendants deny all of the claims.

WHO IS INCLUDED? Defendants’ records show you received a notification from Defendants regarding the Data Incident, and, therefore, you are included in this Settlement as a “Settlement Class Member” unless you opt out of the Settlement.

SETTLEMENT BENEFITS. The Settlement provides payments to people who submit valid claims for out-of-pocket expenses (up to \$5,000) and lost time (up to 4 hours at \$25/hour). The Settlement also provides an option for Settlement Class Members to submit a claim for an alternative cash payment estimated to be \$75. Defendants also represent that they have adopted and implemented additional security measures following the Data Incident to further strengthen the security of their systems. **The only way to receive a benefit is to file a claim. To get a Claim Form, visit the website or call [PHONE NUMBER]. The claim deadline is [60 days from Notice Date].**

OPT OUT. If you do not want to be legally bound by the Settlement, you must exclude yourself. A more detailed notice is available to explain how to exclude yourself. You must mail your exclusion request, postmarked no later than **[60 days from Notice Deadline]**, to the Settlement Administrator. You cannot exclude yourself by phone or email. If you exclude yourself from the Settlement, you will receive no benefits under the Settlement and will not be legally bound by the Court’s judgments related to the Settlement Class and Defendants in this class action.

OBJECT. If you stay in the Settlement, you may object to it by **[60 days from Notice Deadline]**, if you do not agree with any part of it. A more detailed notice is available to explain how to object. You must mail your written objection to the Settlement Administrator, postmarked no later than **[60 days from Notice Deadline]**. You can object only if you stay in the Settlement Class.

OTHER OPTIONS. If you do nothing, you will remain in the Settlement Class, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue Defendant for the claims resolved by this Settlement.

FOR MORE INFORMATION. Please visit the website or call **[phone number]** for a copy of the more detailed notice. On **Month Day, 2024**, the Court will hold a Final Approval Hearing to determine whether to approve the Settlement, Class Counsel’s request for attorneys’ fees up to \$130,500 and for service awards of up to \$3,500 for each of the Class Representatives for a total of \$7,000. The Motion for attorneys’ fees and expenses and service awards will be posted on the website after it is filed. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. This is only a summary. For more information, call or visit the website below.

[insert website]

[insert phone number]

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Newman et al. v. AudienceView Ticketing Corporation et al., Case No. 1:23-cv-03764-VEC

If AudienceView Ticketing Corporation notified you of a Data Incident in or around February 2023, you may be eligible for a payment from a class action settlement.

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

Si necesita ayuda en español, comuníquese con el administrador al [settlement admin phone #].

- You may be eligible to receive a payment from a proposed Four Hundred Thirty-Five Thousand Dollars and Zero Cents (\$435,000.00) non-reversionary class action settlement (the “Settlement Fund”).
- A Settlement has been reached in a class action lawsuit against AudienceView Ticketing Corporation and UniversityTickets.com, Inc. (“Defendants”) concerning a data security incident that occurred in or around February 2023 (the “Data Incident”).
- The lawsuit is called *Newman et al. v. AudienceView Ticketing Corporation et al.*, Case No. 1:23-cv-03764-VEC (the “Action”). The lawsuit alleges that the Data Incident potentially exposed certain payment card information of Plaintiffs and the members of the putative class.
- The Settlement Class includes all individuals who were sent notification by Defendants that their personal information was or may have been compromised in the Data Incident.
- Eligible claimants under the Settlement Agreement will be eligible to receive:
 - Reimbursement for the actual amount of unreimbursed out-of-pocket expenses up to \$5,000, with supporting documentation of the monetary losses;
 - Compensation of up to \$100 (4 hours at \$25 per hour) for time spent dealing with fraud, identity theft, or other alleged misuse of your personal information that is fairly traceable to the Data Incident; or

An Alternative Cash Payment of \$75.

- Your legal rights are affected regardless of whether you act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

**SUBMIT A CLAIM
FORM**

This is the only way you may receive benefits from this Settlement. The deadline to submit a Claim Form is [60 days from Notice Deadline].

EXCLUDE YOURSELF FROM THE SETTLEMENT	You will receive no payment, but you will retain any rights you currently have with respect to Defendant and the issues in this case. The deadline to exclude yourself from the Settlement is [60 days from Notice Deadline] .
OBJECT TO THE SETTLEMENT	Write to the Settlement Administrator explaining why you do not agree with the Settlement. The deadline to object is [60 days from Notice Deadline] .
ATTEND THE FINAL APPROVAL HEARING	You or your attorney may attend and speak about your objection at the Final Approval Hearing. The Final Approval Hearing will be held on [_____] , 2024.
DO NOTHING	You will not get any benefits from the Settlement and you will give up certain legal rights. You will remain in the Settlement Class and be subject to the Release.

- These rights and options, and the deadlines to exercise them, are explained in this Notice. For complete details, please see the Settlement Agreement, whose terms control, available at **[insert website]**.
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

BASIC INFORMATION

1. What is this Notice and why should I read it?

The Court authorized this Notice to inform you about a proposed Settlement with Defendants. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The case is called *Newman et al. v. AudienceView Ticketing Corporation et al.*, Case No. 1:23-cv-03764-VEC.

2. What is a class action lawsuit?

A class action is a lawsuit in which one or more plaintiffs—in this case, Plaintiffs and Class Representatives Jadyne Newman and Richard Z. Toledo—sues on behalf of a group of people who have similar claims. Together, this group is called a “Class” and consists of “Class Members.” In a class action, the court resolves the issues for all class members, except those who exclude themselves from the class.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

Plaintiff claims that Defendants failed to implement and maintain reasonable security measures to adequately protect the payment card information in their possession and to prevent the Data Incident from occurring.

Defendants deny that they are liable for the claims made in the lawsuit and deny any allegations of wrongdoing. More information about the complaint in the lawsuit can be found on the Settlement Website at [\[insert website name\]](#).

4. Why is there a Settlement?

The Court has not decided whether the Plaintiffs or Defendants should win this case. Instead, both sides agreed to this Settlement. That way, they can avoid the uncertainty, risks, and expense of ongoing litigation, and Settlement Class Members will be eligible to get compensation now rather than years later—if ever. The Class Representatives and attorneys for the Settlement Class Members, called Class Counsel, agree the Settlement is in the best interests of the Settlement Class Members. The Settlement is not an admission of wrongdoing by the Defendants.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

You are part of the Settlement as a Settlement Class Member if you received a notification letter from AudienceView Ticketing Corporation stating that your payment card information was or may have been compromised in the Data Incident.

Settlement Class Members will have been mailed notice of their eligibility. If you are still not sure whether you are included, you can contact the Settlement Administrator by calling [\[insert settlement admin phone #\]](#), by emailing [\[insert settlement admin email\]](#), or by visiting the website [\[insert settlement admin website\]](#).

This Settlement Class does not include (1) the judges presiding over this Action and members of their direct families; (2) Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Under the proposed Settlement, Defendants will pay (or cause to be paid) \$435,000 into a Settlement Fund. The Settlement Fund, plus interest accrued thereon, will pay notice and administration costs, Court-approved attorneys' fees and costs, Court-approved service awards for class representatives, and certain Settlement Fund taxes and tax expenses (the "Net Settlement Fund"). The Net Settlement Fund will be used to provide eligible Settlement Class Members with payments and benefits described below.¹

Reimbursement for Lost Time and Ordinary Out-of-Pocket Losses: If you spent time responding to the Data Incident, you may be eligible to receive compensation for Lost Time. If you incurred financial losses that are fairly traceable to the Data Incident, you may be eligible to receive reimbursement for ordinary out-of-pocket losses.

A. Attested Time: A claim for reimbursement may also include a claim for up to 4 hours of time spent in response to the Data Incident. Lost Time will be compensated at \$25.00/hour and requires a brief description of the action taken in response to the Data Incident and the time associated with those actions.

B. Out-of-Pocket Losses: A claim for reimbursement may include, but is not limited to the following provided the expenses were incurred primarily as a result of the Data Incident: (i) unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud or other possible misuse of class member's personal information; and/or (ii) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Claims for ordinary out-of-pocket expenses or losses are subject to a \$5,000.00 cap, which is aggregated with a claim for attested time.

Alternative Cash Payment: In lieu of filing a claim for reimbursement of out-of-pocket losses, or attested time, all Settlement Class Members may file a claim for an alternative cash payment estimated at \$75.00. By filing a claim for an alternative cash payment, Settlement Class Members are giving up their right to file a claim for any other benefits made available under this settlement.

Confirmatory Discovery: Defendants have also agreed to provide documents and information to Class Counsel showing that they have taken data security measures to remedy the issues that led to the Data Security Incident and have implemented other business practices to help ensure information security.

¹ If the benefits claimed by all Settlement Class Members meets or exceeds the amount of the Net Settlement Fund, then the payments and/or benefits for your Claim may be reduced *pro rata* by the Settlement Administrator so that the aggregate cost of all payments and benefits does not exceed the amount of the Net Settlement Fund.

For complete details, please see the Settlement Agreement, whose terms control, available at [\[insert settlement admin website\]](#).

HOW TO GET BENEFITS

7. How do I make a Claim?

To qualify for a Settlement benefit, you must complete and submit a Claim Form.

Settlement Class Members who want to submit a Claim must fill out and submit a Claim Form online at [\[insert settlement admin website\]](#) or by mail to the Settlement Administrator. Claim Forms are available through the Settlement website at [\[insert settlement admin website\]](#) or by calling [\[insert settlement admin phone\]](#).

All Claim Forms must be submitted no later than [\[60 days after notice deadline\]](#).

8. When will I get my payment?

The hearing to consider the fairness of the Settlement is scheduled for [\[\]](#), 2024. If the Court approves the Settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will be sent payment after all appeals and other reviews, if any, are completed. Please be patient.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

Yes, the Court has appointed Kiley Grombacher of Bradley Gromacher LLP and Brian Murray of Glancy Prongay & Murray LLP as “Class Counsel” to represent you and all class members. You will not be charged for these lawyers. You can ask your own lawyer to appear in Court for you at your own expense if you want someone other than Class Counsel to represent you.

10. How will the lawyers be paid?

To date, Class Counsel has not received any payment for their services in conducting this litigation on behalf of the Class and have not been paid for their out-of-pocket expenses. Class Counsel will ask the Court for an award of attorneys’ fees not to exceed \$130,500.00 which were incurred in connection with the Action. Such sums as may be approved by the Court will be paid from the Settlement Fund.

Class Counsel will also request a service award of \$3,500.00 per Plaintiff, for a total of \$7,000.00, to be paid from the Settlement Fund.

The Court will determine the proper amount of any attorneys’ fees, costs, and expenses to award Class Counsel and the proper amount of any service awards to Plaintiffs.

Class Counsel will file their request for attorneys' fees, costs, and expenses and service awards for Plaintiffs with the Court, which will also be posted on the Settlement Website, at [\[insert settlement admin website\]](#).

YOUR RIGHTS AND OPTIONS

11. What claims do I give up by participating in this Settlement?

If you do not exclude yourself from the Settlement, you will not be able to sue Defendants about the Data Incident, and you will be bound by all decisions made by the Court in this case, the Settlement, and its included Release. This is true regardless of whether you submit a Claim Form. However, you may exclude yourself from the Settlement (*see* Question 14). If you exclude yourself from the Settlement, you will not be bound by any of the Released Claims, which are described in the Settlement Agreement at [\[insert settlement admin website\]](#).

12. What happens if I do nothing at all?

If you do nothing, you will receive no benefits under the Settlement. You will be in the Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments of the Court, the Settlement, and its included Release. You will be deemed to have participated in the Settlement and will be subject to the provisions of Section 11 above. Unless you exclude yourself, you won't be able to file a lawsuit or be part of any other lawsuit against Defendants for the claims or legal issues released in this Settlement.

13. What happens if I ask to be excluded?

If you exclude yourself from the Settlement, you will receive no benefits under the Settlement. However, you will not be in the Settlement Class and will not be legally bound by the Court's judgments related to the Settlement Class and Defendants in this class action.

14. How do I ask to be excluded?

You can ask to be excluded from the Settlement. To do so, you must send a written notification to the Settlement Administrator stating that you want to be excluded from the Settlement in *Newman et al. v. AudienceView Ticketing Corporation et al.*, Case No. 1:23-cv-03764-VEC. Your written notification must include: (1) the name of the proceeding; (2) your full name and current address; (3) your signature; and (4) the words "Request for Exclusion" or a comparable statement that you do not wish to participate in the Settlement at the top of the communication. You must mail your exclusion request, postmarked no later than [\[60 days after Notice Deadline\]](#), to the following address:

[\[settlement admin address\]](#)

You cannot exclude yourself by phone or email. Any individual who wants to be excluded from the Settlement must submit his or her own exclusion request. No group opt-outs shall be permitted.

15. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims or legal issues released in this Settlement, even if you do nothing.

16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for any benefits.

17. How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you do not agree with any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must mail a written objection to the Settlement Administrator stating that you object to the Settlement in *Newman et al. v. AudienceView Ticketing Corporation et al.*, Case No. 1:23-cv-03764-VEC.

The objection must be in writing and be personally signed by you. The objection must include: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

You must mail your objection to the Settlement Administrator at **[insert address]**, postmarked no later than **[60 days after the notice deadline]**.

18. What's the difference between objecting and excluding myself from the Settlement?

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

THE COURT'S FINAL APPROVAL HEARING

19. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court will hold the Final Approval Hearing on **[Insert Hearing Date]** at the Courthouse located at **[Insert Address or Videoconference Information]**. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees, costs, and expenses and the service awards to Plaintiffs.

The location, date and time of the Final Approval Hearing are subject to change by Court order. Any changes will be posted at the Settlement Website, **[insert website]**, or through the Court's publicly available docket. You should check the Settlement Website to confirm the date and time have not been changed.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. If your written objection was filed or mailed on time and meets the other criteria described in the Settlement, the Court will consider it. However, you may appear on your behalf or pay a lawyer to attend on your behalf to assert your objection if you would like.

21. May I speak at the hearing?

Yes. If you do not exclude yourself from the Settlement Class, you (or your attorney) may appear and speak at the Final Approval Hearing concerning any part of the proposed Settlement.

GETTING MORE INFORMATION

22. Where can I get additional information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at **[website]** or by writing to AudienceView Ticketing Data Incident Settlement Administrator, **[address for settlement admin]**.

23. How do I get more information?

[insert website, phone number, and email for settlement admin]

PLEASE DO NOT CALL THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR THE DEFENDANTS WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

EXHIBIT 3

CLAIM FORM

USE THIS FORM TO MAKE A CLAIM FOR LOST TIME PAYMENTS AND OUT-OF-POCKET EXPENSES PAYMENTS OR ALTERNATIVE CASH PAYMENT

For more information, call 1-888-888-8888 or visit the website www.xxxx.com

The DEADLINE to submit this Claim Form online (or mail it postmarked) is

[XXXX XX, 202X]

This claim form should be filled out online or submitted by mail if you received a notification from AudienceView Ticketing Corporation that your payment card information was or may have been compromised in the data security incident in or about February 2023 (the “Data Incident”), and you had out-of-pocket losses or lost time spent dealing with the Data Incident, or you wish to claim an alternative cash payment in lieu of any other benefits that may be available under the settlement. You may get a check or electronic payment if you fill out this claim form, if the settlement is approved, and if you are found to be eligible for a payment. The Settlement establishes a \$435,000 fund to compensate Settlement Class Members for their lost time and out-of-pocket losses as well as for the costs of notice and administration, certain taxes, service award payments, and attorney fee awards and costs as awarded by the Court.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website, [\[website name\]](#), or call [\[insert settlement admin phone number\]](#) for more information.

If you wish to submit a claim for a settlement payment, you need to provide the information requested below. Please print clearly in blue or black ink. The **DEADLINE** to submit this claim form online (or have it postmarked for mailing) is **[insert date 60 days from Notice Deadline]**.

Si necesita ayuda en español, comuníquese con el administrador al [\[insert settlement admin phone number\]](#).

1. CLASS MEMBER INFORMATION (ALL INFORMATION IS REQUIRED):

Name: _____

Address: _____

Telephone: _____ Email: _____

2. PAYMENT ELIGIBILITY INFORMATION.

Please review the notice and Section III through V of the Settlement Agreement (available at [\[website name\]](#)) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed. Please provide as much information as you can to help us figure out if you are entitled to a settlement payment.

PLEASE PROVIDE THE INFORMATION LISTED BELOW:

Check the box for each category of benefits you would like to claim. Categories include out-of-pocket losses that you had to pay as a result of the Data Incident, time you had to spend dealing with the effects of the Data Incident, and up to one year of credit monitoring and identity protection services. Alternatively, you may claim an alternative cash payment in lieu of any other benefits that may be available under this settlement.

Please be sure to fill in the total amount you are claiming for each category and to attach documentation of the charges as described in bold type (if you are asked to provide account statements as part of proof required for any part of your claim, you may mark out any unrelated transactions if you wish).

a. Out-of-Pocket Losses Resulting from the Data Incident:

_____ I incurred unreimbursed charges as a result of the Data Incident.

Examples - unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, or other possible misuse of your information; and/or other miscellaneous expenses incurred such as notary, fax, postage, copying, mileage and long-distance telephone charges that were incurred on or after February 14, 2023 through **[60 days after notice deadline]**

Total amount for this category \$ _____

If you are seeking reimbursement for fees, expenses, or charges, please attach a copy of a statement from the company that charged you, or a receipt for the amount you incurred.

If you are seeking reimbursement, please attach a copy of a receipt or other proof of purchase. (Note: By claiming reimbursement in this category, you certify that you incurred this cost primarily because of the Data Incident and not for any other purpose).

Supporting documentation must be provided. You may mark out any transactions that are not relevant to your claim before sending in the documentation.

b. Between one and four hours of documented time spent dealing with the Data Incident:

_____ I certify that I spent time dealing with the effects of the Data Incident.

Examples – You spent valuable time calling customer service lines, writing letters or emails, or on the Internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed.

I certify that I spent the following amount of time in response to the Data incident:

_____ hour(s) _____ minute(s)

Please describe the time spent dealing with the effects of the Data Incident:

c. In lieu of any other benefits above, claim an alternative cash payment of \$75.00:

_____ I would like to claim an alternative cash payment.

The Settlement provides for an alternative cash payment to any class member who timely claims it. This is in lieu of any other benefits which may be available under the settlement outlined above.

*****If you file a claim for an alternative cash payment you cannot file a claim for any other benefits under (a) through (b) above.**

_____ **Check here if you would like to receive payment for your approved claim, if any, via electronic means.**

3. SIGN AND DATE YOUR CLAIM FORM.

I declare under penalty of perjury under the laws of the United States and the laws of my State of residence that the information supplied in this claim form by the undersigned is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

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

_____/_____/_____
Signature Print Name Date

4. MAIL YOUR CLAIM FORM, OR SUBMIT YOUR CLAIM FORM ONLINE.

This claim form must be:

Postmarked by **[60 days after notice deadline]** and mailed to: **[insert address for settlement administrator]**; OR

Emailed by midnight on **[60 days after notice deadline]** to **[insert email for settlement administrator]**; OR

Submitted through the Settlement Website by midnight on **[60 days after notice deadline]** at: **[settlement administration website]**.

EXHIBIT 4

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

<p>JADYN NEWMAN, individually and on behalf of classes of similarly situated individuals,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>AUDIENCEVIEW TICKETING CORPORATION and UNIVERSITYTICKETS.COM, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: 1:23-cv-03764-VEC</p> <p>[PROPOSED] PRELIMINARY APPROVAL ORDER</p>
<p>RICHARD Z. TOLEDO, individually and on behalf of classes of similarly situated individuals,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>AUDIENCEVIEW TICKETING CORPORATION and UNIVERSITYTICKETS.COM, INC.,</p> <p style="text-align: center;">Defendants.</p>	

WHEREAS, a consolidated class action is pending in this Court entitled *Newman et al. v. AudienceView Ticketing Corporation et al.*, Case No. 1:23-cv-03764-VEC (the “Action”);

WHEREAS, Plaintiffs JADYN NEWMAN and RICHARD Z. TOLEDO, individually and on behalf of all others similarly situated (collectively “Plaintiffs”) and Defendants AUDIENCEVIEW TICKETING CORPORATION and UNIVERSITYTICKETS.COM, INC. (“Defendants”) have entered into a Settlement Agreement (the “Settlement Agreement”) that

settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendants in the above-captioned action (the “Action”) on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, Plaintiffs have made an application for an order, pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiffs as Class Representatives, appointing Class Counsel as counsel for the Settlement Class, appointing Eisner Advisory Group, LLC as Settlement Administrator, and allowing notice to Settlement Class Members as more fully described herein;

WHEREAS, the Court has read and considered: (a) Plaintiffs’ motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith; and (b) the Settlement Agreement and exhibits attached thereto; and

WHEREAS, unless otherwise defined herein, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes Only**. For settlement purposes only and pursuant to Fed. R. Civ. P. 23(b)(3) and (e), the Court certifies, solely for purposes of effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:

All persons who were sent notification by AudienceView Ticketing Corporation that their payment card information was or may have been compromised in the Data Incident.

The Settlement Class includes approximately 13,045 people. The Settlement Class specifically excludes: (1) the judges presiding over this Action, and members of their direct families; (2) Defendants, their subsidiaries, parent companies, successors, predecessors, and any

entity in which Defendants or their parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

2. **Class Findings**: The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Class Representatives have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

3. **Class Representatives and Settlement Class Counsel**: JADYN NEWMAN and RICHARD Z. TOLEDO are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class and that they will be adequate Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel: Kiley Grombacher of Bradley Grombacher LLP and Brian Murray of Glancy Prongay & Murray LLP.

4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below. Pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, the Parties have shown that the Court will likely be able to approve the proposal under Rule 23(e)(2), which requires the Court to consider the following factors in determining whether a proposed settlement is fair, reasonable, and adequate:

- (a) have the class representatives and class counsel adequately represented the class;
- (b) was the proposal negotiated at arm's length;
- (c) is the relief provided for the class adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (d) does the proposal treat class members equitably relative to each other.

For the purposes of preliminary approval, the Court finds: (a) Plaintiffs and Plaintiffs' Counsel have adequately represented the Settlement Class; (b) the Settlement is the result of arm's length negotiations conducted under the auspices of Hon. Morton Denlow (Ret.); (c) the relief provided is adequate when considering (i) the substantial costs, risks, and delay of continued litigation, (ii) the proposed method for processing Settlement Class Members' claims and distributing relief to eligible claimants is standard in data breach class action settlements and has been found to be effective in these types of settlements, and (iii) the conditions under which the

Parties may terminate the Settlement is standard and has no negative impact on the fairness of the Settlement; and (d) the Settlement treats Settlement Class Members equitably relative to one another.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held at [REDACTED] : [REDACTED].m. on [REDACTED], 2024, in the United States District Court for the Southern District of New York, at the Courthouse located at [REDACTED], [REDACTED], [REDACTED], [REDACTED] [by [REDACTED] videoconference] for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate to the Settlement Class; (b) to determine whether a proposed Judgment substantially in the form annexed to the Settlement Agreement as Exhibit 5 should be entered dismissing the Action with prejudice against Defendant; (c) to determine whether the motion of Settlement Class Counsel for a Fee Award and Costs should be approved; (d) to determine whether the motion of the Class Representatives for Service Award Payment(s) should be approved; and (e) to consider any other matters that may be properly brought before the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to the Settlement Class Members as set forth in Paragraph 7 of this Order.

6. The Court may adjourn the Final Approval Hearing without further notice to the Settlement Class Members, and may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class Members.

7. **Retention of Claims Administrator and Manner of Giving Notice.** Class Counsel is hereby authorized to retain Eisner Advisory Group, LLC (the “Settlement Administrator”) to supervise and administer the notice procedure in connection with the proposed

Settlement as well as the processing of Claims as set out more fully below. Notice of the Settlement and the Final Approval Hearing shall be given as follows:

(a) Within ten (10) days of this Order, Defendant shall provide the Class Member Information List to the Settlement Administrator;

(b) As soon as practicable following entry of this Order, the Settlement Administrator shall establish the Settlement Website and Settlement Toll-Free Number as set forth in the Settlement Agreement;

(c) Within thirty (30) days of this Order, the Settlement Administrator shall disseminate the Short Form Notice via U.S. mail to all Settlement Class Members. At that time, the Settlement Administrator shall make the Long Form Notice and Claim Form available to Settlement Class Members on the Settlement Website.

8. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Summary Notice, the long form Notice, and Claim Form attached to the Settlement Agreement as Exhibits 1, 2 and 3, and as modified by the Parties and filed with the Court on _____, 2024 (ECF No. _____), and (b) finds that the Notice provided to Settlement Class Members as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for Fee Award and Costs, of Class Representatives' request(s) for Service Award Payment(s), of their right to object to the Settlement, Class Counsel's request for Fee Award and Costs, and/or Class Representatives' request(s) for Service Award Payment(s), of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii)

constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before it is distributed.

9. **Participation in the Settlement.** Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form, and must do so within sixty (60) days after the Notice is issued to the Settlement Class Members. If a Final Approval Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Approval Order and Judgment.

10. **Claims Process and Distribution and Allocation Plan.** Class Representatives and Defendants have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the claims process described in the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

11. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice,

postmarked no later than **60 Days after the Notice Deadline** (the “Opt-Out Deadline”). The written notification must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication.

Any Settlement Class Member who does not timely and validly exclude himself or herself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Approval Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Approval Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

12. **Objections and Appearances**. No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is mailed to the Settlement Administrator, post marked no later than **60 days after the notice deadline** as specified in the Notice and Paragraph 76 of the Settlement Agreement. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 76 of the Settlement Agreement, which is as follows: (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the

objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

13. Any Settlement Class Member who fails to comply with the provisions in Paragraph 12 may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if a Final Approval Order and Judgment is entered. If a Final Approval Order and Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this Action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the motion for Service Award Payment(s), or the motion for Fee Award and Costs.

14. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no

further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

15. **Use of Order.** This Order shall be of no force or effect if a Final Approval Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representative or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

16. **Stay of Proceedings and Temporary Injunction.** Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Released Entities.

17. **Settlement Administration Fees and Expenses.** All reasonable costs incurred with notifying Settlement Class Members of the Settlement and administering the Settlement shall be paid as set forth in the Settlement Agreement. However, the costs of notice and administration shall not exceed [REDACTED] without further Order of the Court.

18. **Settlement Fund.** The contents of the Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the

Court, until such time as funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

19. **Taxes.** The Settlement Administrator is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

20. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

21. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

Notice Deadline: 30 Days after Preliminary Approval Order

Motions for Service Award Payment(s) and Attorneys' Fee Award and Costs: 30 days after Notice Deadline

Opt-Out Deadline: 60 Days after Notice Date

Objection Deadline: 60 Days after Notice Date

Claims Deadline: 60 Days after Notice is sent to the Settlement Class

Final Approval Hearing: at least 110 Days after Preliminary Approval

IT IS SO ORDERED this _____ day of _____, 202_____.

Valerie E. Caproni
United States District Judge

EXHIBIT 5

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

<p>JADYN NEWMAN, individually and on behalf of classes of similarly situated individuals,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>AUDIENCEVIEW TICKETING CORPORATION and UNIVERSITYTICKETS.COM, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: 1:23-cv-03764-VEC</p> <p>[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT</p>
<p>RICHARD Z. TOLEDO, individually and on behalf of classes of similarly situated individuals,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>AUDIENCEVIEW TICKETING CORPORATION and UNIVERSITYTICKETS.COM, INC.,</p> <p style="text-align: center;">Defendants.</p>	

WHEREAS, a consolidated class action is pending in this Court entitled *Newman et al. v. AudienceView Ticketing Corporation et al.*, Case No. 1:23-cv-03764-VEC (the “Action”);

WHEREAS, Plaintiffs JADYN NEWMAN and RICHARD Z. TOLEDO, individually and on behalf of all others similarly situated (collectively “Plaintiffs”) and Defendants AUDIENCEVIEW TICKETING CORPORATION and UNIVERSITYTICKETS.COM, INC. (“Defendants”) have entered into a Settlement Agreement (the “Settlement Agreement”) that

settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendants in the above-captioned action (the “Action”) on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated [REDACTED], 2024 (“Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) appointed Plaintiffs as Class Representatives; (d) appointed Class Counsel as counsel for the Settlement Class; (e) appointed Eisner Advisory Group, LLC as Settlement Administrator; (f) ordered that notice of the proposed settlement be provided to potential Settlement Class Members; (g) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (h) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, [XX] Class Members submitted objections;

WHEREAS, [XX] Class Members submitted Requests for Exclusion;

WHEREAS, the Court conducted a hearing on [INSERT FINAL APPROVAL HEARING DATE] (the “Final Approval Hearing”) to consider, among other things, (a) the Objection(s) to the Settlement; (b) whether the terms and conditions of the Settlement were fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; (c) whether Class Counsel’s motion for Fee Award and Costs should be granted; (d) whether Class Representatives’ motion for Service Award Payment(s) should be granted; and (e) whether a judgment should be entered dismissing the Action with prejudice as against Defendants; and

WHEREFORE, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings had herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction**: This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents**: This Judgment incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on [REDACTED], 2024; and (b) the Notice documents filed with the Court on [REDACTED], 2024.

3. **Class Certification for Settlement Purposes**: The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the Settlement Class consisting of all individuals who were sent notification by AudienceView Ticketing Corporation that their payment card information was or may have been compromised in the Data Incident. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

4. **Adequacy of Representation**: Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiffs and Class Representatives for the Settlement Class and appointing Class Counsel to serve as counsel for the Settlement Class. Plaintiffs and Class Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

5. **Notice**: The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action, (ii) the effect of the proposed Settlement (including the releases to be provided thereunder), (iii) Class Counsel's motion for a Fee Award and Costs, (iv) Class Representatives' motion for a Service Award Payment(s), (v) their right to object to any aspect of the Settlement, Class Counsel's motion for a Fee Award and Costs, and/or Class Representatives' motion for a Service Award Payment(s), (vi) their right to exclude themselves from the Settlement Class, and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Objection**: [TO BE DETERMINED]

7. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects (including, without limitation: the amount of the Settlement Fund; the Releases provided for in the Settlement Agreement; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

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

9. **Binding Effect:** The terms of the Settlement Agreement and this Judgment shall be forever binding on Defendants, Plaintiffs, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submitted a Claim Form or seeks or obtains a distribution of benefits from the Net Settlement Fund), as well as their respective successors and assigns.

10. **Releases:** The releases set forth in the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that, upon the Effective Date, and in consideration of the Settlement benefits described in the Settlement Agreement, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendants and each of the Released Parties from any and all Released Claims.

11. Notwithstanding Paragraph 10 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

12. **Rule 11 Findings:** The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense and settlement of the Action.

13. **No Admissions:** This Judgment and Order, and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by the Defendant of any liability, claim or wrongdoing in this Action or in any other proceeding.

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) Class Counsel's motion for a Fee Award and Costs; (d) Class Representatives' motion for a Service Award Payment(s); and (e) the Settlement Class Members for all matters relating to the Action.

15. A separate order shall be entered regarding Class Counsel's motion for a Fee Award and Costs and Class Representatives' motion for a Service Award Payment(s). Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

16. **Modification of the Agreement of Settlement:** Without further approval from the Court, Plaintiffs and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the

Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

17. **Termination of Settlement:** If the Settlement is terminated as provided in the Settlement Agreement or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Settlement Agreement, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members and Defendants, and the Parties shall revert to their respective positions in the Action as of [REDACTED], 2024, as provided in the Settlement Agreement.

18. **Entry of Judgment:** There is no just reason for delay of entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final Judgment in the Action.

IT IS SO ORDERED this [REDACTED] day of [REDACTED], 2024.

Valerie E. Caproni
United States District Judge