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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 *IN RE: ETHOS TECHNOLOGIES INC. DATA*  
19 *BREACH LITIGATION*

20 This Document Relates To: All Actions

Case No. 3:22-cv-09203-SK

21 **PLAINTIFFS' NOTICE OF MOTION,**  
22 **UNOPPOSED MOTION FOR**  
23 **PRELIMINARY APPROVAL OF CLASS**  
24 **ACTION SETTLEMENT AND**  
25 **MEMORANDUM IN SUPPORT**

26 Date: August 7, 2023  
27 Time: 9:30 a.m.  
28 Courtroom: C, 15th Floor  
Judge: Hon. Sallie Kim

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**TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** on August 7, 2023, at 9:30 AM, or as soon thereafter as counsel may be heard, before the Honorable Sallie Kim, at San Francisco Courthouse, Courtroom C, 15th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs will and hereby do move this Court, pursuant to Federal Rule of Civil Procedure 23, for an order granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

Plaintiffs seek provisional certification of the Settlement Class and California Subclass, appointment of undersigned counsel as Settlement Class Counsel, appointment of the named Plaintiffs in the consolidated actions as Class Representatives, and preliminary approval of the proposed Class Action Settlement.

Plaintiffs base their Motion for Preliminary Approval of Class Action Settlement on this Notice; the Memorandum of Points and Authorities filed in support thereof; the Settlement Agreement and Release ("Settlement Agreement"); the Declaration of M. Anderson Berry in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Berry Decl."); the Declaration of Scott M. Fenwick of Kroll Settlement Administration LLC in Connection with Preliminary Approval ("Fenwick Decl."), all other records and papers on file in this action; any oral argument on the Motion; and all other matters properly before the Court.

Plaintiffs seek an order pursuant to Federal Rule of Civil Procedure 23(b)(3) certifying the Settlement Class more fully described in the Settlement Agreement, attached hereto as **Exhibit 1**; preliminarily approving the Settlement as fair, reasonable, and adequate; directing notice to be disseminated to the Settlement Class in the form and manner proposed by the parties as set forth in the Settlement Agreement and attached to the Settlement Agreement as Exhibits B and C thereto; appointing Kroll Settlement Administration LLC to serve as the Settlement Administrator; appointing Plaintiffs as Class Representatives and the undersigned attorneys as Class Counsel; and setting a hearing date and schedule for final approval of the Settlement and consideration of Class Counsel's forthcoming motion for an award of fees, costs, expenses, and service awards.

## I. PRELIMINARY STATEMENT

Plaintiffs Christopher Stein, Josephine Dibisceglia, John Blumenstock, Thomas Rossello, Jeffry Branch, Derrick Carter, Trevor Pearch, James Schneider, and Tameka Young, individually, (collectively “Plaintiffs”) and on behalf of all others similarly situated (“Class Members”) have reached an agreement with Defendant Ethos Technologies Inc. (“Ethos”) to settle claims on behalf of Plaintiffs and Class Members stemming from a Data Incident<sup>1</sup> that Ethos experienced in late 2022. The settlement is the product of hard bargaining, including a full day of unsuccessful mediation resulting in a subsequent mediator’s proposal that was accepted by both parties. Moreover, mediation was only entered into after Ethos shared critical informal discovery that included a detailed technical narrative of the Data Incident and information about the class size and California Subclass size. Plaintiffs now ask that the Court preliminarily approve the Settlement Agreement as fair and reasonable so that notice under FRCP 23(e)(2) may be provided to the Class Members. A proposed order has been submitted herewith.

## II. ISSUES TO BE DECIDED

1. Whether the Settlement Class and California Subclass should be provisionally certified;
2. Whether the proposed Class Action Settlement should be preliminarily approved;
3. Whether notice should issue to the Settlement Class and California Subclass;
4. Whether the named Plaintiffs in the consolidated actions should be named as Class Representatives, and
5. Whether the undersigned Plaintiffs’ Counsel should be appointed as Settlement Class Counsel.

## III. STATEMENT OF FACTS

Ethos is a provider of insurance, specializing in life insurance. Ethos provides an online life insurance application tool on its public facing website, [www.ethoslife.com](http://www.ethoslife.com), which enables any web user to attempt to apply for life insurance for free (the “Application Flow”). As part of the Application

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<sup>1</sup> Capitalized terms have the same meaning as the Settlement Agreement unless otherwise noted.



1 Flow, Ethos uses an integration from a third-party service provider to prefill certain information in the  
2 user's application that is ultimately submitted to a carrier for underwriting purposes, including Social  
3 Security numbers ("SSN"). Although the third-party application programming interface ("API")  
4 returns SSNs to Ethos, the SSNs are supposed to be encrypted the SSNs before they reach the page  
5 source code of the web application layer. The third-party integration is used as part of Ethos's identity  
6 validation and underwriting process, as it allows Ethos to confirm the identities of insurance applicants  
7 for compliance and fraud detection purposes. The integration is also intended to increase accuracy and  
8 reduce user error. Until August 2022, all SSNs returned to the page source code through this  
9 integration were encrypted, as intended.

10 In August 2022, Ethos made changes to the back-end code of the life insurance application  
11 page of its website. This code change—which went into production on August 4, 2022—resulted in  
12 both encrypted and unencrypted SSNs being sent to the page source code of the Application Flow via  
13 the third-party integration. Ethos did not learn of the code error until December 6, 2022, after  
14 discovering an abnormal pattern of insurance applications that had been abandoned at the stage where  
15 applicants are asked to validate the last four digits of their SSNs. Ethos's investigation revealed  
16 that, due to the above-described code change, at this stage in the Application Flow, unknown actors  
17 were able to access Plaintiffs' and Class Members' unencrypted SSNs. Thereafter, Ethos sent  
18 notification letters to Plaintiffs and approximately 34,000 other individuals whose SSNs are believed  
19 to have been exposed in the Data Breach. This includes approximately 1,302 residents of California.

#### 21 **IV. PROCEDURAL HISTORY**

22 On December 30, 2022, Plaintiff Stein, individually and on behalf of all others similarly  
23 situated, filed a class action complaint in the Northern District of California (Case No. 3:22-cv-  
24 09203). On January 6, 2023, Plaintiffs John Blumenstock, Thomas Rossello, and Jeffrey Branch also  
25 filed a class action complaint against Ethos, also in the Northern District of California (Case No. 3:23-  
26 cv-00073) on behalf of themselves and those similarly situated. On January 31, 2023, the Court  
27 consolidated these actions under the lead case, No. 3:22-cv-09203. *See* Doc. 19. On March 2, 2023,  
28

1 Plaintiffs filed a Consolidated Class Action Complaint (“CCAC”). In addition to Plaintiffs Stein,  
 2 Blumenstock, Rossello, and Branch, the CCAC added Plaintiffs Dibisceglia, Carter, Pearch,  
 3 Schneider, and Young to this action. The Consolidated Complaint alleges six claims: (1) negligence,  
 4 (2) invasion of privacy, (3) unjust enrichment, (4) violations of the California Unfair Competition  
 5 Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, (5) declaratory judgment, and (6) violations  
 6 of the California Consumer Privacy Act (“CCPA”), Cal. Civ. Code §§ 1798.100, *et seq.* Doc. 25, ¶¶  
 7 226-97.

8 On March 24, 2023, the Court stayed the case pending mediation. Doc. 27. Thereafter, the  
 9 Parties exchanged Rule 408 discovery, and in April, the Parties engaged in a full day mediation session  
 10 with Hon. Wayne R. Anderson (Ret.) of JAMS. Due to hard bargaining on both sides, the Parties were  
 11 unable to reach a resolution during the all-day mediation session. Given the impasse, Judge Anderson  
 12 (Ret.) submitted a mediator’s proposal that was ultimately accepted by both Parties. The terms of the  
 13 mediator’s proposal (and additional reasonable terms agreed to by the Parties) are memorialized in  
 14 this Settlement Agreement, which was negotiated at arm’s-length, in good faith and without collusion,  
 15 by capable and experienced counsel, with full knowledge of the facts, the law, and the risks inherent  
 16 in litigating this action, and with the active involvement of the Parties.

## 18 **V. THE SETTLEMENT TERMS**

### 19 **A. Proposed Settlement Class Definition**

20 The proposed nationwide class definition for settlement purposes is defined as “all persons  
 21 identified by Defendant (or its agents or affiliates) as being among those individuals impacted by the  
 22 Data Incident, including all who were sent a notice of the Data Incident.” S.A. ¶ 1.30. Plaintiffs also  
 23 seek to certify for settlement purposes a California Subclass defined as “all persons identified by  
 24 Defendant (or its agents or affiliates) as being among those individuals residing in California impacted  
 25 by the Data Incident, including all who were sent a notice of the Data Incident.” S.A. ¶ 1.33. These  
 26 are the same definitions used in the Consolidated Class Action Complaint, but for changing the term  
 27  
 28

1 “Breach” in the Complaint to “Incident” in the Settlement Agreement to describe the precise same  
2 occurrence. Doc. 25, ¶ 213.

3 The Settlement Class and Subclass exclude “(i) Defendant and its respective officers and  
4 directors; (ii) the Judge(s) to whom the action is assigned and any member of those Judges’ staffs or  
5 immediate family members; and (iii) any other Person found by a court of competent jurisdiction to  
6 be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence  
7 of the Data Incident or who pleads nolo contendere to any such charge.” S.A. ¶¶ 1.30; 1.33.<sup>2</sup>

### 8 **B. Settlement Benefits – Monetary Relief**

9 Defendant has agreed to establish a one million dollar (\$1,000,000) non-reversionary cash  
10 settlement fund (the “Settlement Fund”), which will be used first to pay the approved costs of  
11 settlement administration and notice, the approved attorneys’ fees and expenses, and any approved  
12 service awards. The remaining funds will then be applied until exhausted in the following order: (1)  
13 to claims for out-of-pocket loss reimbursement up to \$5,000 per valid claim, (2) cash payments to  
14 California Subclass members up to \$100 per valid claim, and (3) *pro rata* cash payments of \$100 made  
15 from any money remaining in the Settlement Fund to all individuals submitted a Valid Claim. S.A. ¶¶  
16 1.32, 2.3.<sup>3</sup>

#### 17 **1. Out of Pocket Loss Reimbursement Claims**

18 Every Settlement Class Member may submit a claim for up to \$5,000 each for out-of-pocket  
19 expenses and losses, which are unreimbursed costs, expenditures, or losses incurred by a Settlement  
20 Class member that are fairly traceable to the Data Incident (“Out-of-Pocket Losses”). S.A. ¶ 2.3.1.  
21 Settlement Class Members who elect to submit a claim for reimbursement of Out-of- Pocket Losses  
22

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23 <sup>2</sup> The exclusions in the Settlement Agreement are largely similar to the exclusions in the Consolidated  
24 Complaint. *Compare* S.A. ¶¶ 1.30, 1.33, *with* Doc. 25, ¶ 215. However, the Settlement Agreement does  
25 not include mere employees among those excluded from claiming benefits because if a mere  
26 employee’s data was compromised in the Data Breach, he or she should be permitted to claim benefits.

27 <sup>3</sup> The Settlement Fund will not be used to pay for the Credit Monitoring and Identity-Protection  
28 Services Benefits or Business Practice Commitments, explained in ¶¶ 2.4 and 2.5 of the Settlement  
Agreement, respectively. Nor shall it be used to pay for the required CAFA Notice. S.A. ¶ 1.3.

1 must provide to the Claims Administrator information required to evaluate the claim, including: (1)  
 2 the Settlement Class Member's name and current address; (2) documentation reasonably supporting  
 3 their claim; and (3) a brief description of the nature of the loss, if the nature of the loss is not apparent  
 4 from the documentation alone. *Id.* Documentation supporting Out-of-Pocket Losses can include  
 5 receipts or other documentation not "self-prepared" by the Settlement Class Member concerning the  
 6 costs incurred.<sup>4</sup> *Id.*

## 7 **2. California Cash Payment Claims**

8 California Subclass Members may submit a claim for a \$100 cash payment as a result of the  
 9 statutory CCPA claim available to them as California residents. S.A. ¶ 2.3.2. The CCPA Payment for  
 10 California residents is in addition to any other Settlement benefits available. *Id.* The CCPA payment  
 11 may be *pro rata* decreased if insufficient funds remain in the Settlement Fund following the payment  
 12 of Attorneys' Fees and Expenses Award, any Service Award, the Costs of Claims Administration, and  
 13 claims for Out-of-Pocket Losses. *Id.*

## 14 **3. Pro Rata Cash Payments**

15 All Settlement Class Member may file a claim for \$100.00. S.A. ¶ 2.3.3. The amount of this  
 16 benefit shall be *pro rata* increased or decreased based on the funds remaining in the Settlement Fund  
 17 following the payment of Attorneys' Fees and Expenses Award, any Service Award, the Costs of  
 18 Claims Administration, claims for Out-of-Pocket Losses, and the CCPA Payments. *Id.*

## 19 **C. Non-Monetary Settlement Benefits**

### 20 **1. Credit Monitoring**

21 All members of the Settlement Class will be provided access to credit monitoring and identity-  
 22 protection services through Experian ("Experian Monitoring Services") for a period of 12 months from  
 23 the date a member of the Settlement Class claims an offer for Experian Monitoring Services as  
 24 provided on the Short Notice (defined below). S.A. ¶ 2.4. Such services shall be added consecutively  
 25

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26  
 27 <sup>4</sup> "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive  
 28 reimbursement, but can be considered to clarify or support other submitted documentation. S.A. ¶ 2.3.1.

1 to any credit monitoring services that a class member has already received from Ethos as a result of  
2 the Data Incident. Experian Monitoring Services will include a minimum of the following features:  
3 (1) identity theft insurance (with a \$1,000,000 policy limit); (2) real-time credit monitoring services;  
4 and (3) access to fraud resolution agents. The activation codes for Experian Monitoring Services will  
5 be provided to every Settlement Class member on their Short Notice. *Id.* Ethos will pay for the costs  
6 for such services separately and apart from the Settlement Fund, with the cost to be separately  
7 negotiated by Ethos with Experian on a per-redeemed code basis. *Id.* Credit Monitoring Services can  
8 be obtained by all Settlement Class members without the need to file a claim with the Claims  
9 Administrator and regardless of whether they submit a claim for a monetary payment under the  
10 settlement. *Id.*

## 11 **2. Security Enhancements**

12 Ethos shall take reasonable steps to secure personal information within its platform, including  
13 its online insurance application process (“Online Application Flow”). S.A. ¶ 2.5. As part of those  
14 efforts, Ethos agrees that it has taken or will take the following measures (or measures that are better  
15 protective of consumer data security): (1) embed security engineers into product engineering teams to  
16 review code changes that may impact personally identifiable information and assess potential security  
17 implications of the code development process before code is launched; (2) use mechanisms to block  
18 suspicious website traffic, including by configuring Ethos’s firewalls to block traffic from IP addresses  
19 exhibiting suspicious traffic patterns (e.g., abnormally repetitive quote requests from the same IP  
20 address); (3) use reCAPTCHA logging or similar technologies to block automated use of the Online  
21 Quote Flow; (4) use a third-party security auditor/penetration tester as well as internal security  
22 personnel to conduct penetration tests and audits on Ethos’s systems on a periodic basis, and address  
23 any problems or issues detected thereby on a risk-prioritized basis; (5) periodically audit, test, and  
24 train Ethos’s security personnel regarding new or modified procedures corresponding with their job  
25 responsibilities; (6) conduct periodic computer system scanning and security checks; (7) conduct  
26 periodic internal training and education to inform Ethos employees about the company’s security  
27  
28

1 practices. *Id.*

2 Ethos is responsible for all costs associated with implementing and maintaining these Business  
3 Practice Commitments, which costs are separate and apart from the Settlement Fund. *Id.* These  
4 requirements shall remain in place for at least three (3) years following the date the Court approves  
5 the settlement. *Id.* Ethos has represented that it expects to expend approximately \$470,000 per year,  
6 i.e., \$1,410,000 on these Business Practice Commitments through the end of this three-year period.  
7 Berry Decl. ¶ 22.

8 **D. Class Notice and Settlement Administration**

9 The cost of class notice and settlement administration will be paid from the Settlement Fund  
10 (subject to Court approval). S.A. ¶ 3.3. As described in the Settlement Agreement, the notice program  
11 shall include a Short Notice (Exhibit C), Long Notice (Exhibit B), Claim Form (Exhibit A), and the  
12 establishment of a Settlement Website. S.A. ¶¶ 3.2-3.3. The Claims Administrator has estimated that  
13 notice and administration costs will total approximately \$97,987. Fenwick Decl. ¶ 15.

14 In an attempt to obtain a higher claims rate, the Parties have negotiated a robust notice program.  
15 No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide  
16 the Claims Administrator with the names, and any last known physical address of each member of the  
17 Settlement Class (collectively, “Class Member Information”) that Defendant possesses as well as any  
18 email address Defendant possesses. S.A. ¶ 3.3. The Class Member Information and its contents shall  
19 be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to  
20 this Agreement and shall not be used for any other purpose at any time. *Id.* Except to administer the  
21 settlement as provided in this Settlement Agreement or provide all data and information in its  
22 possession to the Parties upon request, the Claims Administrator shall not reproduce, copy, store, or  
23 distribute in any form, electronic or otherwise, the Class Member Information. *Id.* The Claims  
24 Administrator shall delete all information associated with this Litigation when it no longer has a legal  
25 requirement to retain such data. *Id.* Moreover, the Settlement Administrator shall at all times comply  
26 with the Northern District of California Settlement Administration Data Protection Checklist. S.A. ¶  
27  
28

1 8.4.

2 By the Notice Commencement Date, the Settlement Administrator shall begin circulating the  
3 Short Notice via United States Postal Service to the approximately 34,000 Class Members for whom  
4 Ethos has mailing addresses as well as via email for all Class Members for whom Ethos has email  
5 addresses, which process will be completed by the Notice Completion Date. *See id.* ¶ 3.3(d). In the  
6 event that a Short Notice is returned to the Claims Administrator by the USPS because the address of  
7 the recipient is no longer valid, and the envelope contains a forwarding address, the Claims  
8 Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of  
9 receiving the returned Short Notice. *Id.* In the event a notice is “returned to sender” without a  
10 forwarding address, the Settlement Administrator will perform a skip trace on the Class Member and  
11 attempt to locate a valid address so that the notice can be resent. *Id.*

12 Before the dissemination of the Short Notice, the Claims Administrator shall establish a  
13 settlement website that will inform members of the Settlement Class of the terms of the Settlement  
14 Agreement, their rights, dates and deadlines and related information. The Settlement Website shall  
15 include, in .pdf format and available for download, relevant case filings. *Id.* ¶ 3.3(c). The Settlement  
16 Website shall also include a copy of the Claim Form and Long Notice. *Id.* ¶ 3.3(e). Separately, the  
17 Short Notice shall be published in a general publication that reaches the entire United States. *Id.* ¶  
18 3.3(f). Additionally, the Claims Administrator will provide the Settlement Class a Reminder Notice  
19 via email and U.S. mail, for those Settlement Class members it has such information for, at least  
20 fourteen (14) days before the Claims Deadline. *Id.* ¶¶ 1.28, 3.3(g).

21 Class Counsel, based on their experience with data breach cases and in consultation with the  
22 Settlement Administrator about the claims process in this case, anticipate that there will be a claims  
23 rate in this case of between 1-10 percent of the Class (in other words, roughly 360 to 3,600 claims).  
24 *Lutz v. Electromed, Inc.*, No. 21-CV-02198 (D. Minn.) (Doc. 67 at 9) (roughly 4 percent claims rate,  
25 1,854 out of 46,405, in non-reversionary common fund settlement including *pro rata* cash payments).  
26 This comports with previous statements by this District. *See, In re Facebook Biometric Info. Priv.*  
27  
28



*Litig.*, No. 15-cv-03747-JD, 2021 WL 757025, at \*2 (N.D. Cal. Feb. 26, 2021) (noting that consumer class actions typically have a claims rate between 4% and 9%).

**E. Attorneys' Fees and Representative Plaintiffs' Service Awards**

Class Counsel has agreed not to request more than one-third (1/3) of the Settlement Fund as reimbursement for attorneys' fees, nor more than \$20,000 for reimbursement of Class Counsel's costs and expenses. The Ninth Circuit has found attorneys' fees awards of 1/3 of the fund to be reasonable. *See, In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming award of one-third of total recovery). Such fees are even more reasonable here given that Defendant is paying for 12 months of additional credit monitoring services per Class Member, along with business security enhancements, separate from the Settlement Fund, which adds \$1,410,000 in value to the Settlement, making Class Counsel's fee request represent only 13.83% percent of the fund, excluding the value of additional credit monitoring services. *See Berry Decl.* ¶ 22.

To date, Class Counsel have, thus far, accrued a lodestar of roughly \$281,536.40, which includes the time spent investigating the Data Incident pre-suit, drafting the various pleadings in this matter, post-suit informal discovery and investigation, extensive settlement negotiations, communicating with Plaintiffs, finalizing the terms of the Settlement Agreement, and drafting and filing preliminary approval filings. *Berry Decl.*, ¶ 39. Class Counsel anticipates accruing additional lodestar totals to get this case through confirmatory discovery, settlement administration, final approval, appeal and any other hearings the Court may request. *Id.* ¶ 38.

Plaintiffs also intend to request service awards of \$2,000 each, for a total of \$18,000. S.A. ¶ 7.3. This too is presumptively reasonable. *See, In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at \*5 (N.D. Cal. July 22, 2020) ("Half of the Settlement Class Representatives seek \$5,000 or less, which is considered 'presumptively reasonable' in this district.") (citation omitted).

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1           **F. Comparison of Settlement Benefits Against Full Recovery**

2           The benefits made available under this Settlement give Plaintiffs and Class Members cash,  
3 credit and identity theft protection, and cybersecurity enhancements, which is beyond what Class  
4 Members would be seeking on their best day in Court.

5           If Plaintiffs had prevailed at trial, they would have sought recovery for their out-of-pocket  
6 losses and the cost of obtaining credit monitoring. Plaintiffs believe that the \$5,000 cap for out-of-  
7 pocket expenses will likely make each class member whole. According to the Federal Trade  
8 Commission's Identity Theft Survey Report, 85 percent of identity theft victims report the misuse of  
9 existing accounts and 17 percent of victims report new accounts being opened in their name. Berry  
10 Decl., ¶ 51. For those identity theft victims who had misuse of existing accounts, the average out-of-  
11 pocket loss was \$500, while the average loss for improperly opened accounts was \$1,200. *Id.*  
12 Moreover, only a maximum of 6 percent of those who had improper use of existing accounts had out-  
13 of-pocket losses of \$1,000 or above, and 16 percent of those that had accounts opened in their name  
14 had losses of \$1,000 or above. *Id.* This recovery for out-of-pocket losses is then combined with the  
15 *pro rata* cash payment to make Class Members whole. Thus, while Plaintiffs acknowledge that there  
16 could be individuals who would be able to achieve greater recovery if this matter went to trial, the  
17 overwhelming number of eligible Class Members will have the opportunity to be made whole by this  
18 Settlement.  
19

20           With respect to statutory damages under the CCPA, if successful at trial, the approximately  
21 1,302 California Subclass Members would each be entitled to between \$100 and \$750 per individual.  
22 Cal. Civ. Code Ann. § 1798.150(a)(1)(A)). This is between approximately \$130,200 and \$976,500  
23 total. Ordinarily under the CCPA, however, a plaintiff is entitled to the greater of actual or statutory  
24 damages, but not both. *See id.* Here, California Subclass Members are eligible to receive \$100, plus  
25 credit monitoring and identity theft protection, the reimbursement of actual losses, and a *pro rata* share  
26 of any remaining funds.  
27  
28

1           **G. Release**

2           The Settlement Agreement states that “[u]pon the Effective Date, each Settlement Class  
3 Member and Plaintiff, shall be deemed to have, and by operation of the Final Approval Order shall  
4 have, fully, finally, and forever released, relinquished, and discharged all Released Claims, including  
5 Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each  
6 Settlement Class Member and Plaintiff, shall, either directly, indirectly, representatively, as a member  
7 of or on behalf of the general public or in any capacity, be permanently barred from commencing,  
8 prosecuting, or participating in any recovery in any action in this or any other forum (other than  
9 participation in the settlement as provided herein) in which any of the Released Claims is asserted.”  
10 S.A. ¶ 6.1.

11           “Released Claims” are defined as “any and all past, present, and future claims, causes of action,  
12 demands, damages, debts, liabilities, remedies, proceedings, actions, suits, allegations, assertions of  
13 wrongdoing, and any demand for injunctive relief or any other type of equitable or legal relief  
14 including, but not limited to, any causes of action arising under or premised upon any statute,  
15 constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county,  
16 city, or municipality, whether known or unknown, suspected or unsuspected, asserted or unasserted,  
17 discovered or undiscovered, liquidated or unliquidated, accrued or unaccrued, fixed or contingent,  
18 direct or derivative, and any other form of legal or equitable relief that either has been asserted, was  
19 asserted, or could have been asserted by any Settlement Class Member against any of the Released  
20 Persons with respect to the Data Incident. Released Claims shall not include the right of any Settlement  
21 Class Member or any of the Released Persons to enforce the terms of the settlement contained in this  
22 Settlement Agreement and shall not include the claims of individuals in the Settlement Class who have  
23 timely excluded themselves from the Settlement.” S.A. ¶ 1.26. Moreover, “Unknown Claims” are  
24 defined as “any of the Released Claims that any Settlement Class Member, including Plaintiff, does  
25 not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if  
26 known by him or her, might have affected his or her settlement with, and release of, the Released  
27  
28

Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement.” S.A. ¶ 1.38.

## **VI. ARGUMENT**

Courts within the Ninth Circuit strongly favor class action settlements where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”).

The Manual for Complex Litigation (Fourth) advises that in cases presented for both preliminary approval and class certification, the “judge should make a preliminary determination that the proposed class satisfies the criteria.” § 21.632. 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). Plaintiffs seek certification of a Settlement Class consisting of approximately 34,000 individuals and the California Subclass consisting of approximately 1,302 of the Class Members. For the reasons set forth below, the Court should certify the Settlement Class and California Subclass for settlement purposes and preliminarily approve the Settlement.

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

Before assessing the Parties’ settlement, the Court should first confirm the underlying settlement class meets the requirements of Rule 23(a). *See Amchem*, 521 U.S. at 620; Manual for Complex Litigation (Fourth), § 21.632. The requirements are well known: numerosity, commonality, typicality, and adequacy—each of which is met here. FRCP 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011).

#### **1. The Proposed Class is Sufficiently Numerous**

Generally, courts will find numerosity is satisfied where a class includes at least 40 members. *See, e.g., Celano v. Marriott Int’l Inc.*, 242 F.R.D. 544, 548-49 (N.D. Cal. 2007) (numerosity is generally

1 satisfied when a class has at least 40 members). Numbering approximately 34,000 individuals, the  
2 proposed Settlement Class easily satisfies Rule 23's numerosity requirement. Furthermore, the  
3 California Subclass, consisting of approximately 1,302 individuals, also satisfies the numerosity  
4 requirement.

5 **2. The Settlement Class and California Subclass Satisfy the Commonality**  
6 **Requirement**

7 The Settlement Class and California Subclass satisfy the commonality requirement, which  
8 requires that class members' claims "depend upon a common contention," of such a nature that  
9 "determination of its truth or falsity will resolve an issue that is central to the validity of each [claim]  
10 in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, as in most data breach  
11 cases, "[t]hese common issues all center on [Defendant's] conduct, satisfying the commonality  
12 requirement." *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-md-02583-  
13 TWT, 2016 WL 6902351, at \*2 (N.D. Ga. Aug. 23, 2016). Thus, common questions include, *inter*  
14 *alia*, whether Ethos engaged in the wrongful conduct alleged; whether Class Members' PII was  
15 compromised in the Data Incident; whether Ethos owed a duty to Plaintiffs and Class Members;  
16 whether Ethos breached its duties. Accordingly, Plaintiffs have met the commonality requirement of  
17 Rule 23(a).  
18

19 **3. Plaintiffs' Claims and Defenses are Typical to Those of the Class**

20 Plaintiffs satisfy the typicality requirement of Rule 23 because Plaintiffs' claims, which are  
21 based on Defendant's alleged failure to protect Plaintiffs' and Class Members' PII, are "reasonably  
22 coextensive with those of the absent class members." *See* FRCP 23(a)(3); *Meyer v Portfolio Recovery*  
23 *Assocs.*, 707 F.3d 943, 1041-42 (9th Cir. 2012) (upholding typicality finding). Plaintiffs allege their  
24 PII was compromised, and that they were therefore impacted by the same allegedly inadequate data  
25 security that they allege harmed the rest of the Settlement Class.

26 ///

27 ///

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

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

Here, Plaintiffs have no conflicts of interest with other class members, are subject to no unique defenses, and they and their counsel have and continue to vigorously prosecute this case on behalf of the class. Plaintiffs are members of the Class who received data breach notifications from Ethos and experienced the same injuries and seek, like other Class Members, compensation for Ethos's alleged data security shortcomings. As such, their interests and the interests of their counsel are consistent with those of other Class Members. Further, proposed Class Counsel have decades of combined experience handling complex class action cases including over 100 data breach class actions in state and federal courts around the United States. Berry Decl., ¶ 45. Thus, Plaintiffs satisfy the requirement of adequacy.

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

"In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under FRCP 23(b)(1), (2) or (3)." *Hanlon*, 150 F.3d at 1022. Here, Plaintiffs allege that the Settlement Class is maintainable for purposes of settlement under Rule 23(b)(3), as common questions predominate over any questions affecting only individual members and class resolution is superior to other available methods for a fair and efficient resolution of the controversy. *Id.*

##### **1. Common Questions Predominate**

The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623 (citation omitted). "If common questions 'present a significant aspect of the case and they can be resolved for all members of the class

1 in a single adjudication,’ then ‘there is clear justification for handling the dispute on a representative  
 2 rather than on an individual basis,’ and the predominance test is satisfied.” *See, Keegan v. Am. Honda*  
 3 *Motor Co.*, 284 F.R.D. 504, 526 (C.D. Cal. 2012), quoting *Hanlon*, 150 F.3d at 1022.

4 Consistent with the position on commonality, Plaintiffs allege that predominance is readily  
 5 met here “where the class is a ‘cohesive group of individuals [who] suffered the same harm in the  
 6 same way because of the [defendant's] conduct.’” *In re Google LLC St. View Elec. Commc’ns Litig.*,  
 7 No. 10-MD-02184-CRB, 2020 WL 1288377, at \*5 (N.D. Cal. Mar. 18, 2020) (alterations in original),  
 8 quoting *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 559 (9th Cir. 2019). Plaintiffs’ claims  
 9 depend on whether Ethos used reasonable data security measures to protect consumers’ PII. That  
 10 question can be resolved using the same evidence for all Class Members, and thus is precisely the type  
 11 of predominant question that makes a class-wide settlement worthwhile. *See, e.g., Tyson Foods, Inc.*  
 12 *v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (“When ‘one or more of the central issues in the action  
 13 are common to the class and can be said to predominate, the action may be considered proper under  
 14 Rule 23(b)(3) ....’”) (citation omitted).

## 15 **2. Class Action is Superior to Other Methods of Adjudication**

16 Rule 23(b)(3) also requires that a district court determine that “a class action is superior to  
 17 other available methods for the fair and efficient adjudication of the controversy.” In determining  
 18 whether the “superiority” requirement is satisfied, a court may consider: (1) the interest of members  
 19 of the class in individually controlling the prosecution or defense of separate actions; (2) the extent  
 20 and nature of any litigation concerning the controversy already commenced by or against members of  
 21 the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the  
 22 particular forum; and (4) the difficulties likely to be encountered in the management of a class action.  
 23 FRCP 23(b)(3).  
 24

25 First, adjudicating individual actions here is impracticable: the amount in dispute for individual  
 26 class members is too small, the technical issues involved are too complex, and the required expert  
 27 testimony and document review too costly. *See, Just Film, Inc. v. Buono*, 847 F.3d 1108, 1123 (9<sup>th</sup>  
 28

1 Cir. 2017). There are thousands of class members with modest individual claims, most of whom likely  
 2 lack the resources necessary to seek individual legal redress. *See, Local Joint Exec. Bd. of Culinary/  
 3 Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases involving  
 4 “multiple claims for relatively small individual sums” are particularly well suited to class treatment);  
 5 *see also, Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“Where  
 6 recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this  
 7 factor weighs in favor of class certification.”). *See* FRCP 23(b)(3); Second, there are no other  
 8 individual actions currently pending arising from this Data Incident. *See, Malta v. Fed. Home Loan*  
 9 *Mortg. Corp.*, No. 10-CV-1290 BEN NLS, 2013 WL 444619, at \*3 (S.D. Cal. Feb. 5, 2013)  
 10 (superiority met where “considerations of judicial economy favor litigating a predominant common  
 11 issue once in a class action instead of many times in separate lawsuits” and the “small individual  
 12 claims of class members” made it “unlikely that individual actions will be filed”). Third, this forum is  
 13 home to the Defendant, and the majority of the class members.

14  
 15 Finally, because the claims are being certified for purposes of settlement, there are no issues  
 16 with manageability. Resolution of thousands of claims in one action is far superior to individual  
 17 lawsuits and promotes consistency and efficiency of adjudication. For these reasons, certification of  
 18 the Settlement Class for purposes of settlement is appropriate.

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

20 “[U]nder Rule 23(e)(1), the issue at preliminary approval turns on whether the Court ‘will  
 21 likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes  
 22 of judgment on the proposal.’” *Reyes v. Experian Info. Sols., Inc.*, No. SACV1600563AGAFMX, 2020  
 23 WL 466638, at \*1 (C.D. Cal. Jan. 27, 2020). Rule 23(e) provides that a proposed class action may be  
 24 “settled, voluntarily dismissed, or compromised only with the court’s approval.” Moreover, “[t]he  
 25 parties must provide the court with information sufficient to enable it to determine whether to give  
 26 notice of the proposal to the class.” If the parties make a sufficient showing that the Court will likely  
 27 be able to “approve the proposal” and “certify the class for purposes of judgment on the proposal,”  
 28



1 “[t]he court must direct notice in a reasonable manner to all class members who would be bound by  
 2 the proposal.” FRCP 23(e). Thus, notice should be given to the class, and hence preliminary approval  
 3 should be granted, where the Court “will likely be able to” finally approve the settlement under Rule  
 4 23(e)(2) and certify the class for settlement purposes. *Id.* “In evaluating a proposed settlement at the  
 5 preliminary approval stage, some district courts . . . have stated that the relevant inquiry is whether the  
 6 settlement ‘falls within the range of possible approval’ or ‘within the range of reasonableness.’” *Bykov*  
 7 *v. DC Trans. Servs., Inc.*, No. 2:18-cv-1692 DB, 2019 WL 1430984, at \*2 (E.D. Cal. Mar. 29, 2019).  
 8 That is, “preliminary approval of a settlement has both a procedural and a substantive component.” *In*  
 9 *re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1080 (N.D. Cal. 2007). As to the procedural  
 10 component, “a presumption of fairness applies when settlements are negotiated at arm’s length,  
 11 because of the decreased chance of collusion between the negotiating parties.” *Gribble v. Cool*  
 12 *Transps. Inc.*, No. CV 06-4863 GAF (SHx), 2008 WL 5281665, at \*9 (C.D. Cal. Dec. 15, 2008). With  
 13 respect to the substantive component, “[a]t this preliminary approval stage, the court need only  
 14 ‘determine whether the proposed settlement is within the range of possible approval.’” *Murillo v. Pac.*  
 15 *Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010), quoting *Gautreaux v. Pierce*, 690 F.2d 616,  
 16 621 n.3 (7th Cir. 1982).

17  
 18 The Ninth Circuit has identified nine factors to consider in analyzing the fairness,  
 19 reasonableness, and adequacy of a class settlement: (1) the strength of the plaintiff’s case; (2) the risk,  
 20 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action  
 21 status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed  
 22 and the stage of the proceedings; (6) the views of counsel; (7) the presence of a governmental  
 23 participant; (8) the reaction of the class members to the proposed settlement and; (9) whether the  
 24 settlement is a product of collusion among the parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654  
 25 F.3d 935, 946 (9th Cir. 2011); *see also Hanlon*, 150 F.3d at 1026. Rule 23(e) requires a court to  
 26 consider several additional factors, including whether the class representative and class counsel have  
 27  
 28



adequately represented the class, and whether the settlement treats class members equitably relative to one another. FRCP 23(e).

In applying these factors, this Court should be guided foremost by the general principle that settlements of class actions are favored by federal courts. *See, Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“It hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits”). Here, the relevant factors support the conclusion that the negotiated settlement is fundamentally fair, reasonable, and adequate, and should be preliminarily approved.

### **1. The Strength of Plaintiffs’ Case**

This case involves a proposed class of approximately 34,000 individuals (each of whom, Ethos has argued, would need to establish cognizable harm and causation); a complicated and technical factual background; and a motivated Defendant that already has provided some relief to Class Members through two years of complimentary credit monitoring. Notwithstanding, Plaintiffs believe they have and would continue to build a strong case for liability if this matter were to continue.

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

While Plaintiffs believe they have strong claims, their success is not guaranteed. It is “plainly reasonable for the parties at this stage to agree that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication.” *Dennis v. Kellogg Co.*, No. 09-cv-1786-L (WMc), 2013 WL 6055326, at \*3 (S.D. Cal. Nov. 14, 2013). “Here, as with most class actions, there was risk to both sides in continuing towards trial. The settlement avoids uncertainty for all parties involved.” *Chester v. TJX Cos., Inc.*, No. 5:15-cv-01437-ODW (DTB), 2017 WL 6205788, at \*6 (C.D. Cal. Dec. 5, 2017). Given the inherent risks Plaintiffs face with respect to the novel claims in data breach class actions, including class certification, summary judgment, and trial, the substantial benefits the Settlement provides favors preliminary approval of the Settlement. Furthermore, Ethos fully opposes Plaintiffs’ claims. Thus, this factor favors approval.

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

While Plaintiffs' case is still in the pleadings stage, the Parties have not briefed, and the Court has not yet certified, any class treatment of this case. If they were to proceed to litigate their claims through trial, Plaintiffs would encounter risks in obtaining and maintaining certification of the class. The class has not yet been certified, and Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiffs "necessarily risk losing class action status." *Grimm v. Am. Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK (MANx), 2014 WL 1274376, at \*10 (C.D. Cal. Sept. 24, 2014). Class certification in contested consumer data breach cases is not common—first occurring in *Smith v. Triad of Ala., LLC*, No. 1:14-CV-324-WKW, 2017 U.S. Dist. LEXIS 38574, at \*45-46 (M.D. Ala. Mar. 17, 2017), and more recently in *In re Brinker Data Incident Litig.*, No. 3:18-cv-686-TJC-MCR, 2021 WL 1405508, at \*1 (M.D. Fla. Apr. 14, 2021), where a class was certified over objection to plaintiffs' damage calculation. Most recently, class certification was granted in part and denied in part in *In Re Marriott Int. Inc. Customer Data Security Breach Litig.*, No. 19-md-2879, 2022 WL 1396522 (D. Md. May 3, 2022) (certifying several classes in a data breach class action). While certification of additional consumer data breach classes may well follow, it still remains a substantial risk for Plaintiffs in this case.

### 4. The Amount Offered in Settlement

As noted above, each Class Member is eligible to make a claim for monetary benefits out of the \$1 million non-reversionary common fund. Moreover, all Settlement Class Members automatically receive access to credit monitoring services for an additional 12 months without the need to submit a claim (a value of approximately \$299.88 per claimant). Berry Decl., ¶ 20. Finally, Plaintiffs have negotiated certain cybersecurity enhancements that Ethos has implemented as a result of this lawsuit and will maintain that are estimated to value approximately \$1,410,000 through the end of the three-year period beginning on the Effective Date. Berry Decl., ¶ 22. This settlement is a strong result for the Class, and as discussed below is in line with other settlements in cases involving data breaches of similar scope. Because the settlement amount here is similar to or exceeds other settlements reached

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

Here, the settlement has an approximate value of \$27.78 per class member, not including the value of credit monitoring and security enhancements.<sup>5</sup> In comparison, this District recently granted final approval of a \$5 million settlement reached at the pleading stage of a data breach action involving approximately 3.82 million class members. *See, Cochran v. Kroger Co.*, No. 5:21-CV-01887-EJD, 2022 WL 2126696, at \*2 (N.D. Cal. Mar. 24, 2022). This was an average value per class member of \$1.31. *Id.*, Doc. 31 at 33. An objection argued that the value of this settlement was too low, Doc. 107, but this District overruled the objection, finding it lacked merit. *See id.*, 2022 WL 2126696, at \*2.

The settlement reached in this case also compares favorably to past settlements in which Class Counsel here have participated and which have been approved by courts in this and other districts. For example, in *In Re: Hanna Andersson and Salesforce.com Data Breach Litigation*, Master File No. 3:20-cv-00812-EMC (N.D. Cal.), in a data breach impacting approximately 200,000 settlement class members a common settlement fund of \$400,000 was created, providing for a recovery of \$2.00 per class member. *Pygin v. Bombas, LLC, et al.*, Case No. 20-cv-04412-JSW (N.D. Cal.) provides another favorable comparison where there was a settlement fund of \$225,000.00 for a class of approximately 83,000 persons, providing for a recovery of approximately \$2.71 per class member. Finally, in *Gaston v. FabFitFun, Inc.*, 2:20-cv-09534-RGK-E (C.D. Cal.) a fund of \$625,000 was created for a class of approximately 441,160, providing for a recovery of \$1.42 per class member. The instant settlement, providing for a fund worth approximately \$29.41 per class member compares very favorably with these past data breach settlements.

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

Before entering into settlement discussions on behalf of class members, counsel should have “sufficient information to make an informed decision.” *Linney v. Cellular Alaska Partnership*, 151

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<sup>5</sup> \$1,000,000 / 36,000 = 27.777.

1 F.3d 1234, 1239 (9th Cir. 1998). Here, the Parties engaged in a slew of informal discovery. Plaintiffs’  
 2 counsel has gathered sufficient and reliable information that was available regarding Ethos and the  
 3 Data Incident. Berry Decl., ¶ 50. The Parties also informally exchanged non-public information  
 4 concerning the Security Incident and the size of the Class in preparation for a successful mediation.  
 5 *Id.*

6 Class Counsel’s collective experience in similar types of privacy and data protection practices  
 7 provided substantive knowledge on the subject to enable Class Counsel to evaluate the risks and value  
 8 of the litigation and adequately represent Plaintiffs’ and Class Members’ interests without expending  
 9 hundreds of hours and substantial financial resources to come up to speed on the subject area. *Id.*, ¶  
 10 46. “[T]he efficiency with which the Parties were able to reach an agreement need not prevent this  
 11 Court from granting . . . approval.” *Hillman v. Lexicon Consulting, Inc.*, No. EDCV 16-01186-  
 12 VAP(SP<sub>x</sub>), 2017 WL 10433869, at \*8 (C.D. Cal. April 27, 2017). Accordingly, Plaintiffs are well  
 13 informed about the strengths and weaknesses of this case.  
 14

#### 15 **6. Class Counsel’s Experience and Views**

16 Class Counsel assisted Plaintiffs in initiating this lawsuit when Ethos announced the Data  
 17 Incident, which, based upon publicly available information, impacted approximately 34,000  
 18 individuals. Class Counsel have substantial experience litigating complex class cases of various types,  
 19 including data breach cases such as this one. Berry Decl., ¶ 45. Having worked on behalf of the putative  
 20 class since the Data Incident was first announced, evaluated the legal and factual disputes, and  
 21 dedicated significant time and monetary resources to this litigation, proposed Class Counsel fully  
 22 support the Settlement. Berry Decl., ¶ 53. A great deal of weight is accorded to the recommendation  
 23 of counsel, who are most closely acquainted with the facts of the underlying litigation. *See, e.g.*,  
 24 *Norton v. Maximus, Inc.*, No. 1:14-cv-0030 WBS, 2017 WL 1424636, at \*6 (D. Idaho Apr. 17, 2017);  
 25 *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this factor  
 26 supports approval.  
 27  
 28

1                   **7. Governmental Participants**

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

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

4           Because notice has not yet been given, this factor is not yet implicated; however,  
5   Representative Plaintiffs support the Settlement. Berry Decl., ¶ 43.

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

7           The parties' arms'-length negotiations resulted in a settlement that provides broad and  
8   substantial value to the Class with monetary compensation, future identify theft protection, and  
9   injunctive relief (*i.e.*, enhanced security). Furthermore, Class Counsel and Ethos's counsel are well-  
10   versed in handling data breach class actions such as this one and fully understand the values recovered  
11   in similar cases. Therefore, the Court can be assured that the negotiations were not collusive.

12                   **D. The Court Should Approve the Proposed Notice Program**

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

19           Such notice must be the "best notice practicable," *see* FRCP 23(c)(2)(B), which means  
20   "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle*  
21   *& Jacquelin*, 417 U.S. 156, 173 (1974). To satisfy due process, notice to class members must again  
22   be the best practicable, and reasonably calculated under all the circumstances to apprise interested  
23   parties of the pendency of the action and afford them an opportunity to present their objections. FRCP  
24   23(c)(2); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

25           Here, and after a competitive bid process, the parties have agreed to a robust notice program  
26   to be administered by a well-respected third-party class administrator—Kroll Settlement  
27   28

Administration, LLC—which will use all reasonable efforts to provide direct and individual notice to each potential Settlement Class Member via email or mail. Fenwick Decl., ¶¶ 7-10. The costs of administering the Settlement will be paid from the Settlement Fund. S.A. ¶ 3.3. The Notice and Claim Forms negotiated by the Parties are clear and concise and inform Settlement Class Members of their rights and options under the Settlement, including detailed instructions on how to make a claim, object to the Settlement, or opt-out of the Settlement. Berry Decl., ¶ 31.

In addition to the direct notice, the Administrator will also establish a dedicated Settlement Website and will maintain and update the website throughout the Claims Period, with the forms of Short Notice, Postcard, Long Notice, and Claim Form approved by the Court, as well as the Settlement Agreement. S.A. ¶¶ 3.2-3.3. The Claims Administrator will also make a toll-free help line staffed with a reasonable number of live operators available to provide Settlement Class Members with additional information about the settlement. *Id.* ¶ 3.3(h). Finally, the Claims Administrator will send an additional reminder notice to those Settlement Class Members who have not submitted claims by fourteen (14) days prior to the expiration of the claims period. *Id.* ¶ 3.3(g). Because the notice plan ensures that Settlement Class Members’ due process rights are amply protected, this Court should approve it. *See, Hartranft v. TVI, Inc.*, No. 15-01081-CJC-DFM, 2019 WL 1746137, at \*3 (C.D. Cal. Apr. 18, 2019).

**E. Appointment of the Settlement Administrator**

In connection with implementation of the Notice Program and administration of the settlement benefits, the Parties request the Court appoint Kroll Settlement Administration, LLC (“Kroll”) to serve as the Claims Administrator. Kroll has a trusted and proven track record of supporting thousands of class action administrations. Fenwick Decl., ¶ 2. Notice and administration is expected to cost approximately \$97,987 and will be paid from the Settlement Fund. *Id.*, ¶ 15.

**F. Appointment of Settlement Class Counsel**

Under Rule 23, “a court that certifies a class must appoint class counsel [who must] fairly and adequately represent the interests of the class.” FRCP 23(g)(1)(B). In making this determination, courts generally consider the following attributes: the proposed class counsel’s (1) work in identifying

or investigating potential claims, (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case, (3) knowledge of the applicable law, and (4) resources committed to representing the class. FRCP 23(g)(1)(A)(i-iv). Here, proposed Class Counsel have extensive experience prosecuting class actions and other complex cases, and specifically data breach cases. *See* Berry Decl., ¶ 45; Exh. A-E.

Plaintiffs respectfully request that the Court appoint M. Anderson Berry and Gregory Haroutunian of Clayeo C. Arnold, APC; Dylan J. Gould and Jonathan T. Deters of Markovits, Stock & DeMarco, LLC; Samuel J. Strauss, Raina Borrelli, and Brittany Resch of Turke & Strauss LLP; Jean S. Martin of Morgan & Morgan Complex Litigation Group; and John J. Nelson of Milberg Coleman Bryson Phillips Grossman LLC as Class Counsel.

## **VII. CONCLUSION**

For all the above reasons, Plaintiffs respectfully request this Court grant Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

Dated: June 23, 2023

Respectfully submitted,

/s/ M. Anderson Berry

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: ETHOS TECHNOLOGIES INC.  
DATA BREACH LITIGATION

This Document Relates To: All Actions

Case No. 3:22-cv-09203-SK

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of June 23, 2023, is made and entered into by and among the following Parties (as defined below): Christopher Stein, Josephine Dibisceglia, John Blumenstock, Thomas Rossello, Jeffrey Branch, Derrick Carter, Trevor Pearch, James Schneider and Tameka Young (collectively, “**Plaintiffs**”), individually and on behalf of the Settlement Class and Subclass (as defined below), and Ethos Technologies Inc. (“**Defendant**” or “**Ethos**” and, together with Plaintiffs, the “**Parties**,” singular, “**Party**”), by and through their respective counsel of record. The Settlement Agreement is subject to Court approval and is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

**I. THE LITIGATION**

Plaintiffs allege that between August 4, 2022 and December 9, 2022, criminal actors accessed information using Defendant’s website, including the Social Security numbers (“SSN”) of approximately 36,000 consumers (referred to as the “Data Incident”). After the Data Incident, Defendant sent notification letters to approximately 33,985 individuals, including 1,302 California residents. Defendant offered these individuals two years of free credit monitoring and identity theft protection services. Plaintiffs and members of the Settlement Class (defined below) received notices of the Data Incident in or around December 2022 and in or around June 2023.

On September 30, 2022, Plaintiff Stein, individually and on behalf of all others similarly situated, filed a class action complaint in the Northern District of California (Case No. 3:22-cv-09203), through attorneys M. Anderson Berry and Gregory Haroutunian of Clayco C. Arnold, A

Professional Law Corporation, and Dylan J. Gould of Markovits, Stock & DeMarco, LLC. On January 6, 2023, Plaintiffs John Blumenstock, Thomas Rossello, and Jeffrey Branch, individually and on behalf of all others similarly situated, filed a class action complaint in the Northern District of California (Case No. 3:23-cv-00073), through attorneys Adam J. Schwartz and Samuel J. Strauss of Turke & Strauss LLP. On January 31, 2023, the Court consolidated these actions under the lead case, No. 3:22-cv-09203 (together with the consolidated actions, the “**Litigation**”). *See* Doc. 19. On March 2, 2023, Plaintiffs, on behalf of the Settlement Class, filed a Consolidated Class Action Complaint (“**CCAC**”). In addition to Plaintiffs Stein, Blumenstock, Rosello, and Branch, the CCAC added Plaintiffs Dibisceglia, Carter, Pearch, Schneider, and Young to this action, as well as their counsel, Jean S. Martin of Morgan & Morgan Complex Litigation Group and John J. Nelson of Milberg Coleman Bryson Phillips Grossman PLLC. Jonathan T. Deters of Markovits, Stock & DeMarco, LLC and Raina Borrelli and Brittany Resch of Turke & Strauss LLP also appeared as Plaintiffs’ counsel on the CCAC.

In the CCAC, Plaintiffs asserted claims for: (i) negligence; (ii) invasion of privacy; (iii) unjust enrichment, (iv) violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (v) declaratory relief relating to the Data Incident; and (vi) violations of California’s Consumer Privacy Act, Cal. Civ. Code. § 1798.100, *et seq.* Thereafter, the Parties exchanged Rule 408 discovery, and in April, the Parties engaged in a full day mediation session with Hon. Wayne R. Andersen (Ret.) of JAMS. Due to hard bargaining on both sides, the Parties could not reach a resolution during the all-day mediation session. Given the impasse, Judge Andersen (Ret.) submitted a mediator’s proposal that all Parties ultimately accepted. The terms of the mediator’s proposal (and additional reasonable terms agreed to by the Parties) are memorialized in this Settlement Agreement, which was negotiated at arm’s-length, in good faith and without collusion, by capable and experienced counsel, with full knowledge of the facts, the law, and the inherent risks in the Litigation, and with the active involvement of the Parties.

## **II. CLAIMS AND BENEFITS OF SETTLING**

Plaintiffs believe the claims asserted in this action have merit. Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary

to prosecute this action against Defendant through motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Class Counsel, in consultation with Plaintiffs, have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

### **III. DENIAL OF WRONGDOING AND LIABILITY**

Defendant has denied and continues to deny: (a) each and every allegation and all charges of wrongdoing or liability of any kind whatsoever asserted or which could have been asserted in this Litigation, (b) that the Plaintiffs and the class they seek to represent have suffered any damage, and (c) that the Litigation satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23. Nonetheless, Defendant has considered the uncertainty and risks inherent in any litigation and concluded that contesting this action further could be protracted and expensive, so it is desirable and beneficial that the action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. This Settlement Agreement is for settlement purposes only, and nothing in this agreement shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs in this action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or admission by any of the Parties of the validity or lack thereof of any claim, allegation, or defense asserted in this action or in any other action.

### **IV. TERMS OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class, Class Counsel, and Defendant that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Parties and the Settlement Class Members (not including those members of the Settlement Class who timely and validly opt-out of the Settlement Agreement), upon and subject to the terms and

conditions of this Settlement Agreement, as follows:

**1. Definitions**

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this agreement.

1.2 “Attorneys’ Fees and Expenses Award” means the amount awarded by the Court to be paid to Class Counsel from the Settlement Fund, such amount to be in full and complete satisfaction of Class Counsel’s claim or request for payment of attorneys’ fees, costs, disbursements, and compensation in the Litigation.

1.3 “CAFA Notice” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. §1711, *et seq.* (“CAFA”), to be served upon the appropriate state official in each state where a Settlement Class Member resides and the appropriate federal official. Costs for preparation and issuance of the CAFA Notice will be paid by Ethos separate from the Settlement Fund.

1.4 “CCPA Payment” means the cash payment made to Settlement Subclass Members in the amount of \$100—made in recognition of the claim under the California Consumer Privacy Action (“CCPA”) that the Settlement Subclass has brought—to the extent the Settlement Subclass Member submits a Valid Claim for the CCPA Payment.

1.5 “Claim Form” means the form that will be used by Settlement Class Members to submit a Settlement Claim to the Claims Administrator and that is substantially in the form as shown in **Exhibit A** to this Settlement Agreement.

1.6 “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Claims Administrator.

1.7 “Claims Administrator” means Kroll Settlement Administration, LLC (“Kroll”), a company experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation.

1.8 “Claims Deadline” means the deadline by which Settlement Class Members must submit any valid Settlement Claims pursuant to ¶ 2.3. The Claims Deadline shall be set by the

Court in the Preliminary Approval Order. The Parties propose a Claims Deadline that is 105 days after the Notice Commencement Date.

1.9 “Class Counsel” means M. Anderson Berry and Gregory Haroutunian of Clayco C. Arnold, APC; Dylan J. Gould and Jonathan T. Deters of Markovits, Stock & DeMarco, LLC; Samuel J. Strauss, Raina Borrelli, and Brittany Resch of Turke & Strauss LLP; Jean S. Martin of Morgan & Morgan Complex Litigation Group; and John J. Nelson of Milberg Coleman Bryson Phillips Grossman LLC.

1.10 “Class Representatives” or “Plaintiffs” means Plaintiffs Christopher Stein, Josephine Dibisceglia, John Blumenstock, Thomas Rossello, Jeffrey Branch, Derrick Carter, Trevor Pearch, James Schneider, and Tameka Young.

1.11 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration, the Notice Program, the administration of opt-outs, the administration of objections. All Costs of Claims Administration shall be paid from the Settlement Fund.

1.12 “Court” means the United States District Court for the Northern District of California.

1.13 “Credit Monitoring and Identity-Protection Services” and “Experian Monitoring Services” means the credit monitoring and identity-protection services through Experian pursuant to ¶ 2.4.

1.14 “Data Incident” means the security incident perpetrated on Defendant between approximately August 2022 and December 2022, wherein criminal actors accessed information via Defendant’s website including the Social Security numbers of approximately 36,000 consumers.

1.15 “Effective Date” shall have the meaning specified in Section 9.1.

1.16 “Final Approval Order” means the order of the Court that approves this Settlement Agreement, provides for the release of the Released Claims, and makes such other final rulings as are contemplated by this Settlement Agreement, which may or may not include approving payment of any Service Awards and Class Counsel’s Attorneys’ Fees and Expenses Award. The Parties’ proposed form of Final Approval Order is attached to this Settlement Agreement as **Exhibit E**.

1.17 “Judgment” means the judgment to be entered by the Court. The Judgment must be substantially similar to the form of **Exhibit F**.

1.18 “Litigation” means the litigation first filed in the Federal District Court for the Northern District of California, *Christopher Stein, et al. v. Ethos Technologies Inc.*, Case No. 3:22-cv- 09203-SK, including all actions consolidated into or with that action.

1.19 “Long Notice” means the long form notice of settlement to be posted on the Settlement Website (as defined below), substantially in the form of **Exhibit B** to this Settlement Agreement.

1.20 “Notice Program” means the plan described in Section 3 for disseminating notice to members of the Settlement Class of the terms of this Settlement Agreement and the Final Approval Order.

1.21 The “Notice Commencement Date” means thirty (30) days after the entry of the Preliminary Approval Order.

1.22 “Objection Date” means the date by which Settlement Class Members’ objections to the Settlement must be postmarked by mailing them to the Court for that objection to be timely. The objector or his or her counsel may also file, no later than the Objection Date, the written objection with the Court through the Court’s ECF system. The Objection Date shall be set by the Court in the Preliminary Approval Order. The Parties propose an Objection Date that is 75 days after the Notice Commencement Date.

1.23 “Opt-Out Date” means the date by which members of the Settlement Class requests for exclusion from the Settlement Class must be postmarked by mailing them to the Claims Administrator for that request to be effective. The Opt-Out Date shall be set by the Court in the Preliminary Approval Order. The Parties propose an Opt-Out Date that is 75 days after the Notice Commencement Date.

1.24 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors,

representatives, or assignees.

1.25 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Parties’ proposed form of Preliminary Approval Order is attached to this Settlement Agreement as **Exhibit D**.

1.26 “Released Claims” shall collectively mean any and all past, present, and future claims, causes of action, demands, damages, debts, liabilities, remedies, proceedings, actions, suits, allegations, assertions of wrongdoing, and any demand for injunctive relief or any other type of equitable or legal relief including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, whether known or unknown, suspected or unsuspected, asserted or unasserted, discovered or undiscovered, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted by any Settlement Class Member against any of the Released Persons with respect to the Data Incident on a similar factual predicate. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of individuals in the Settlement Class who have timely excluded themselves from the Settlement.

1.27 “Released Persons” means Defendant and its past or present parents, subsidiaries, divisions, and related or affiliated entities, of any nature whatsoever, whether direct or indirect, as well as each of Defendant’s and these entities’ respective predecessors, successors, directors, officers, principals, agents, attorneys, shareholders, employees, servants, representatives, advisors, consultants, vendors, partners, contractors, subrogees, insurers, and reinsurers.

1.28 “Reminder Notice” means a reminder notice, based off of the Short Notice, sent via email to members of the Settlement Class for whom Defendant possesses email addresses, and via single postcard to members of the Settlement Class for whom Defendant possesses physical addresses. This Reminder Notice will be provided to the Settlement Class at least fourteen (14)

days before the Claims Deadline.

1.29 “Settlement Claim(s)” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.30 “Settlement Class” means all persons identified by Defendant (or its agents or affiliates) as being among those individuals impacted by the Data Incident, including all who were sent a notice of the Data Incident. The Settlement Class specifically excludes: (i) Defendant and its respective officers and directors; (ii) the Judge(s) to whom the action is assigned and any member of those Judges’ staffs or immediate family members; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.31 “Settlement Class Member(s)” means a Person(s) who falls within the definition of the Settlement Class who does not timely and validly request exclusion from the Settlement Class.

1.32 “Settlement Fund” means an amount equal to One Million Dollars (\$1,000,000), which shall be used to pay for: (1) Valid Claims; (2) Costs of Claims Administration; (3) any Service Awards approved by the Court; and (4) any Attorneys’ Fees and Expenses Award payment approved by the Court. The Settlement Fund will not be used to pay for the Credit Monitoring and Identity-Protection Services Benefits or Business Practice Commitments, explained below in ¶¶ 2.4 and 2.5, respectively. Nor shall it be used to pay for the required CAFA Notice.

1.33 “Settlement Subclass” or “California Subclass” means all persons identified by Defendant (or its agents or affiliates) as being individuals residing in California impacted by the Data Incident, including all who were sent a notice of the Data Incident. The Settlement Subclass specifically excludes: (i) Defendant and its respective officers and directors; (ii) the Judge(s) to whom the action is assigned and any member of those Judges’ staffs or immediate family members; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.34 “Settlement Subclass Member” or “California Subclass Member” means a



Person(s) who falls within the definition of the Settlement Subclass who does not timely and validly request exclusion from the Settlement Class.

1.35 “Short Notice” means the short notice of the proposed class action settlement, substantially in the form of **Exhibit C** to this Settlement Agreement, sent via email to members of the Settlement Class for whom Defendant possesses email addresses, and via single postcard to members of the Settlement Class for whom Defendant possesses physical addresses. The Short Notice will direct recipients to the Settlement Website where recipients may view the Long Notice and make a claim for monetary relief. The emailed version of the Short Notice will include a link to download the Claim Form. The Short Notice will also provide the Settlement Class with instructions on how to enroll in the Credit Monitoring and Identity-Protection Services Benefits explained below in ¶ 2.4. The Short Notice will also inform the Settlement Class, *inter alia*, of the Claims Deadline, and the Opt-Out Date and Objection Date.

1.36 “Short Notice Completion Date” means forty-five (45) days after the entry of the Preliminary Approval Order.

1.37 “United States” as used in this Settlement Agreement includes the District of Columbia and all United States and territories.

1.38 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Final Approval Order shall have, released any and all Released Claims, including Unknown Claims, and waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80, *et seq.*, Montana Code Ann. § 28-1-1602; North

Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

Settlement Class Members, including Plaintiffs, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Final Approval Order shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims, including Unknown Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.39 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator.

1.40 All time periods herein stated in terms of “days” shall be in calendar days unless otherwise expressly stated.

## **2. Settlement Benefits**

2.1 In consideration for the release contained in this Settlement Agreement, and as a direct result of the Litigation, and without admitting liability for any of the alleged acts or omissions alleged in the Litigation, and in the interests of minimizing the costs inherent in any litigation, Ethos will perform all the following.

2.2 Ethos will establish the Settlement Fund with the Claims Administrator as follows:  
(a) within thirty (30) days following entry of the Preliminary Approval Order, Ethos will advance the amounts necessary to pay for the Notice Program and Claims Administration, which amount shall be determined and requested by the Claims Administrator, and which advances will be

credited against the Settlement Fund; and (b) Ethos will advance the balance of the Settlement Fund by no later than fifteen (15) days after the order granting Final Approval. Additionally, within one hundred twenty (120) days after the Effective Date, Ethos will implement the Business Practice Commitments as described in ¶ 2.5.

2.3 All Class Members shall have the opportunity to submit a Claim Form for certain claimed benefits. The claimed benefits, as described below, shall include: (a) Out-of-Pocket Losses; (b) CCPA Payment; and (c) *Pro Rata* Cash Payment. Any Valid Claim may be combined with any other Valid Claim. The priority for payment of claimed benefits will be as follows: (1) Out-of-Pocket Losses; (2) CCPA Payment; and (3) *Pro Rata* Cash Payment. If the Settlement Fund is insufficient to cover all Out-of-Pocket Losses, such claims shall be reduced *pro rata* to account for the amount of remaining funds, and no money shall be paid to any claimants for CCPA Payments or *Pro Rata* Cash Payments. If there are sufficient funds to pay for all claimed Out-of-Pocket Losses, but insufficient funds to pay for all claimed CCPA payments, then claimants shall receive full value for their Out-of-Pocket Losses, but CCPA payments shall be reduced *pro rata* to account for the amount of remaining funds. Any remaining money in the Settlement Fund (to the extent any exists) after the payment of Out-of-Pocket Losses and CCPA Payments shall be disbursed in a *pro rata* amount to all valid claimants.

2.3.1 Out-of-Pocket Losses: Every Settlement Class Member may submit a claim for up to \$5,000 each for out-of-pocket expenses and losses, which are unreimbursed costs, expenditures, or losses incurred by a Settlement Class member that are fairly traceable to the Data Incident (“Out-of-Pocket Losses”). Out-of-Pocket Losses may include, without limitation, the following:

- 1) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of a Settlement Class Member’s Social Security number;
- 2) unreimbursed costs incurred on or after August 4, 2022, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency;
- 3) other unreimbursed miscellaneous expenses incurred related to any

Out-of-Pocket Expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges;

- 4) other mitigative costs that were incurred on or after August 4, 2022, through the date of the Settlement Class Member's claim submission; and
- 5) unpaid time off work to address issues fairly traceable to the Data Incident at the actual hourly rate of that Settlement Class Member.

Settlement Class Members who elect to submit a claim for reimbursement of Out-of-Pocket Losses must provide to the Claims Administrator information required to evaluate the claim, including: (1) the Settlement Class Member's name and current address; (2) documentation reasonably supporting their claim; and (3) a brief description of the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Settlement Class Member concerning the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to clarify or support other submitted documentation. Out-of-Pocket Losses will be deemed "fairly traceable" if: (1) the timing of the loss occurred on or after August 4, 2022, and (2) in the Claims Administrator's sole determination, the Out-of-Pocket Losses could reasonably be caused by the Data Incident. Claims for Out-of-Pocket Losses may be reduced *pro rata* if insufficient funds remain in the Settlement Fund after the payment of Attorneys' Fees and Expenses Award, any Service Awards, and the Costs of Claims Administration.

2.3.2 CCPA Payment: California Subclass Members may submit a claim for a \$100 cash payment as a result of the CCPA claim they have brought against Defendant as California residents. The CCPA Payment, for California residents, is in addition to any other Settlement benefits available. The CCPA payment may be *pro rata* decreased if insufficient funds remain in the Settlement Fund following the payment of Attorneys' Fees and Expenses Award, any Service Awards, the Costs of Claims Administration, and claims for Out-of-Pocket Losses.

2.3.3 Pro Rata Cash Payment: All Settlement Class Members may file a claim

for \$100.00. The amount of this benefit shall be increased or decreased based on the funds remaining in the Settlement Fund following the payment of Attorneys' Fees and Expenses Award, any Service Awards, the Costs of Claims Administration, claims for Out-of-Pocket Losses, and the CCPA Payments. Any increase will be done *pro rata* based on the amount of the claims. Any decrease will be done pursuant to Paragraph 2.3 above.

2.3.4 Claim Form Submission: Settlement Class Members submitting a claim for Out-of-Pocket Losses, CCPA Payments, and/or a *Pro Rata* Cash Payment must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the Claims Deadline. A Claim Form being filed for an Out-of-Pocket Expense and Loss reimbursement must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Notarization is not required. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 2.6.

2.4 Credit Monitoring and Identity-Protection Services Benefit: All members of the Settlement Class will be provided access to credit monitoring and identity-protection services through Experian ("Experian Monitoring Services") for a period of 12 months from the date a member of the Settlement Class claims an offer for Experian Monitoring Services as provided on the Short Notice (defined below). Such services shall be added consecutively to any credit monitoring services that a class member has already received from Ethos as a result of the Data Incident. Experian Monitoring Services will include a minimum of the following features: (1) identity theft insurance (with a \$1,000,000 policy limit); (2) real-time credit monitoring services; and (3) access to fraud resolution agents. The activation codes for Experian Monitoring Services will be provided to every Settlement Class member on their Short Notice. Ethos will pay for the costs for such services separate and apart from the Settlement Fund, with the cost to be negotiated between Ethos and Experian. Credit Monitoring Services can be obtained by all Settlement Class members without the need to file a claim with the Claims Administrator and regardless of whether they submit a claim for a monetary payment under the settlement.

2.5 Business Practice Commitments: Ethos shall take or continue the implementation

of reasonable steps to secure personal information within its platform, including its online insurance application process (“Online Application Flow”). As part of those efforts, Ethos agrees that it has taken or will take the following measures (or measures that are better protective of consumer data security). Ethos is responsible for all costs associated with implementing and/or maintaining these Business Practice Commitments, which costs are separate and apart from the Settlement Fund:

- 1) Embed security engineers into product engineering teams to review code changes that may impact personally identifiable information and assess potential security implications of the code development process before code is launched.
- 2) Use mechanisms to block suspicious website traffic, including by configuring Ethos’s firewalls to block traffic from IP addresses exhibiting suspicious traffic patterns (e.g., abnormally repetitive quote requests from the same IP address).
- 3) Use reCAPTCHA logging or similar technologies to block automated use of the Online Quote Flow.
- 4) Use a third-party security auditor/penetration tester as well as internal security personnel to conduct penetration tests and audits on Ethos’s systems on a periodic basis, and address any problems or issues detected thereby on a risk-prioritized basis.
- 5) Periodically audit, test, and train Ethos’s security personnel regarding new or modified procedures corresponding with their job responsibilities.
- 6) Conduct periodic computer system scanning and security checks.
- 7) Conduct periodic internal training and education to inform Ethos employees about the company’s security practices.

The requirements of this ¶ 2.5 shall remain in place for at least three (3) years following the date the court approves the settlement.

## 2.6 Validity of Claims.

2.6.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant

has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support a claim for Out-of-Pocket Losses, pursuant to ¶¶ 2.3.1 and 2.6; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses or expenses as a result of the Data Incident. Subject to ¶ 2.6, the Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the claim, e.g., documentation requested on the Claim Form, information regarding the claimed expenses, and claims previously made for identity theft and the resolution thereof.

2.6.2 Upon receipt of an incomplete or unsigned Claim Form the Claims Administrator shall request additional information and give the claimant thirty (30) days to cure the defect before rejecting the claim. If the defect is not cured to the satisfaction of the Claims Administrator, then the claim will be deemed invalid, there shall be no obligation to pay the defective claim, and the claim shall not be considered a Valid Claim.

2.6.3 For a Claim Form for an Out-of-Pocket Loss that is not accompanied by sufficient documentation to support the claimed expenses, within thirty (30) days after the Claims Deadline, the Claims Administrator shall request additional information and give the claimant thirty (30) days to cure the defect before rejecting the claim, in whole or in part. If the defect is not cured to the satisfaction of the Claims Administrator, then any claim for Out-of-Pocket Losses under section ¶ 2.3.1 will be deemed invalid to the extent the documentation does not support the claim and as a Valid Claim to the extent the documentation supports the claim. Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. To the extent the claim is deemed invalid by the Claims Administrator, there will be no obligation to pay the claim and it will not be considered a Valid Claim. Notwithstanding the foregoing, the failure to provide sufficient information to support a claim for Out-of-Pocket Losses shall have no impact on a claimant's eligibility for a *Pro Rata* Cash Payment and/or CCPA Payment.

2.7 Settlement Checks. If a Settlement Class Member opts for payment via mailed check, all settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This



check must be cashed within ninety (90) days, after which time it is void.” If a check becomes void, the Settlement Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of payment on his/her claim, the Settlement Class Member’s right to receive monetary relief shall be extinguished, and neither the Settlement Fund, Claims Administrator, Defendant nor Settlement Class Counsel shall have any obligation to make payments to the Settlement Class Member on the claim. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

2.8 Payment of Valid Claims, whether via mailed check or electronic distribution, shall be made within thirty (30) days after the Effective Date. -

2.9 Settlement Class Certification. The Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Party’s position on the issue of class certification or any other issue. The Parties’ agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

### **3. Order of Preliminary Approval and Publishing of Notice of Final Approval Hearing**

3.1. As soon as practicable after the execution of the Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court, and Class Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form substantially similar to **Exhibit D**, requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to

¶ 2.9;

- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Class Counsel as Settlement Class Counsel;
- d) appointment of Plaintiffs as Class Representatives;
- e) approval of the Short Notice to be emailed or mailed to Settlement Class Members in a form substantially similar to the one attached as **Exhibit C** to this Settlement Agreement;
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as **Exhibit B** to this Settlement Agreement, which, together with the Short Notice, shall include a fair summary of the parties' respective litigation positions, statements that the settlement and notice of settlement are legitimate and that the Settlement Class is entitled to benefits under the settlement, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, instructions for how to obtain the Credit Monitoring and Identity-Protection Services Benefit, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Approval Hearing;
- g) approval of a Claim Form to be used by Settlement Class Members to make a claim in a form substantially similar to the one attached as **Exhibit A** to this Settlement Agreement; and
- h) appointment of Kroll as the Claims Administrator.

3.2 Notice Program. The Short Notice, Long Notice, and Claim Form have been reviewed and approved by the Claims Administrator but may be revised as agreed upon by the Parties prior to submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of notice.

3.3 The Settlement Fund shall be used to pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together

with the other costs of Claims Administration. Attorneys' fees, costs, and expenses of Class Counsel, and any Service Awards to the Class Representative, as approved by the Court, shall be paid by Settlement Fund as set forth in ¶ 7 below. Notice shall be provided to the Settlement Class by the Claims Administrator as follows:

- a) *Class Member Information:* No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Claims Administrator with the names, email addresses, and any last known physical address of each member of the Settlement Class (collectively, "Class Member Information") that Defendant possesses.
- b) The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement or provide all data and information in its possession to the Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information. The Claims Administrator shall delete all information associated with this Litigation when it no longer has a legal requirement to retain such data.
- c) *Settlement Website:* Prior to the dissemination of the Short Notice, the Claims Administrator shall establish a settlement website ([www.EthosSettlement.com](http://www.EthosSettlement.com)) that will inform members of the Settlement Class of the terms of this Agreement, their rights, dates and deadlines and related information ("Settlement Website"). The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Agreement; (v) the CCAC; and (vii) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall

provide members of the Settlement Class with the ability to complete and submit the Claim Form electronically. The Settlement Website shall be activated by the Notice Commencement Date and shall remain active until one hundred and eighty (180) days after the Effective Date.

d) *Short Notice:* By the Notice Commencement Date, the Claims Administrator will begin providing the Short Notice to the Settlement Class, which provision shall be substantially completed by the Short Notice Completion Date. Subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Claims Administrator will provide the Short Notice to the Settlement Class as follows:

- i. Via email to those members of the Settlement Class for whom Defendant has email addresses;
- ii. Via mail to the postal address in Defendant's possession. Before any mailing under this paragraph occurs, the Claims Administrator shall run the postal addresses of members of the Settlement Class through the United States Postal Service ("USPS") National Change of Address database to update any change of address on file with the USPS;
- iii. In the event that a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;
- iv. In the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out Date and Objection Date, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is

no longer valid, i.e., the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular member of the Settlement Class in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- e) Publishing, on or before the Notice Commencement Date, the Claim Form, Long Notice and this Settlement Agreement on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period as provided in Section 3.3(c);
- f) Publishing, on or before the Notice Commencement Date, a notice substantially in the form of the Short Notice in a general publication that reaches the entire United States, such as PR Newswire;
- g) Providing the Settlement Class with a Reminder Notice at least fourteen (14) days before the Claims Deadline;
- h) A toll-free help line with a live operator shall be made available to provide members of the Settlement Class with additional information about the settlement. The Claims Administrator also will provide copies of the Long Notice and paper Claim Form, as well as this Settlement Agreement, upon request; and
- i) Contemporaneously with seeking Final Approval of the Settlement, Class Counsel and Defendant shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

3.4 The Short Notice, Long Notice, and other applicable communications to the

Settlement Class may be adjusted by the Claims Administrator in consultation and agreement with the Parties as may be reasonable and not inconsistent with such approval. The Notice Program shall commence by the Notice Commencement Date.

3.5 The Parties through their respective counsel shall request that the Court hold a hearing (the “Final Approval Hearing”) no less than 165 days after the Preliminary Approval Order and grant final approval of the settlement set forth herein. Class Counsel shall file a Motion for Final Approval at least thirty-five (35) days before the Final Approval Hearing (or at such other time as ordered by the Court).

#### **4. Opt-Out Procedures**

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign (with a physical signature) and timely submit a written notice to the Claims Administrator of such intent by (a) mailing it with a postmark by the Opt-Out Date to the designated Post Office box established by the Claims Administrator or (b) emailing it to the Claims Administrator using the email address provided on the Settlement Website. To be effective, the written opt-out notice must include the following: (a) the requestor’s name, address and email address; (b) the requestor’s physical signature; (c) the name and number of this Litigation (e.g., “*In Re: Ethos Technologies Inc. Data Breach Litigation*, Case No. 3:22-cv-09203 (N.D. Cal.)”); and (4) a statement that clearly manifests his or her wish to be excluded from the Settlement Class for purposes of this Settlement. To be effective, written notice must be postmarked or emailed no later than the Opt-Out Date.

4.2 All Persons who submit valid and timely notices of their intent to opt-out and not be a Settlement Class Member, as set forth in ¶ 4.1 above, referred to herein as “Opt-Out(s),” shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Final Approval Order entered thereon.

4.3 Persons submitting an Opt-Out are not entitled to any benefits of this Settlement under Section 2. Any member of the Settlement Class who submits an Opt-Out and a Claim Form shall not be entitled to receive any monetary payment and his or her claim shall not be considered

a Valid Claim.

## **5. Objection Procedures**

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name and address; (ii) the case name and number, *In Re: Ethos Technologies Inc. Data Breach Litigation*, Case No. 3:22-cv-09203 (N.D. Cal.); (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement 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 Settlement 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 her 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 her in connection with the objection. To be timely, written notice of an objection in the appropriate form must be submitted to the Court either by filing it electronically or in person at any location of the United States District Court for the Northern District of California or by mailing it to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102, with a postmark or filing date no later than the Objection Date.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement or the Final Approval Order approving this Settlement Agreement shall be pursuant to appeal under the Federal Rules of Civil Procedure and not through a collateral attack.



**6. Releases**

6.1 Upon the Effective Date, each Settlement Class Member and Plaintiff, shall be deemed to have, and by operation of the Final Approval Order shall have fully, finally, and forever released, relinquished, and discharged all Released Claims, including Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member and Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

**7. Class Counsel's Attorneys' Fees, Costs, and Expenses; Service Awards to Class Representatives**

7.1 The Parties did not discuss the amount of Attorneys' Fees and Expenses Award and/or Service Awards to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon.

7.2 Within sixty (60) days after the Notice Commencement Date, Class Counsel will move the Court for an award of their reasonable attorneys' fees incurred in the Action in an amount not to exceed one-third (1/3) of the Settlement Fund, and reimbursement of costs and expenses of an amount not to exceed \$20,000.00. The amount of the Attorneys' Fees and Expenses Award shall be determined by the Court. Class Counsel, in their sole discretion, shall allocate and distribute any amounts of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel.

7.3 Subject to Court approval, Class Counsel will move the court for service awards to the Class Representatives of up to \$2,000 each (the "Service Awards"). The amount of the Service Awards shall be determined by the Court.

7.4 It is not a condition of this Settlement Agreement that any particular amount of attorneys' fees, costs, or expenses or Service Awards be approved by the Court, or that such fees, costs, expenses, or awards be approved at all. Any order or proceeding relating to the amount of any award of attorneys' fees, costs, or expenses or Service Payments, or any appeal from any order relating thereto, or reversal or modification thereof, shall not operate to modify, terminate, or

cancel this Settlement Agreement, or affect or delay the finality of the Final Approval Order and the Judgment.

7.5 If awarded by the Court, the Claims Administrator shall pay from the Settlement Fund any Attorneys' Fees and Expenses Award and any Service Awards for the Class Representatives, as set forth in ¶¶ 7.2 and 7.3 in the amounts awarded by the Court within forty-two (42) days after the Final Approval Order if no appeals are taken and within fourteen (14) days after the Effective Date if the Final Approval Order and/or Judgment are appealed. Payment will be made to M. Anderson Berry of Clayco C. Arnold, A Professional Law Corporation, at 865 Howe Avenue Sacramento, CA 95825. Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among themselves and the Service Awards to Plaintiffs consistent with ¶¶ 7.2 and 7.3.

## **8. Administration of Claims**

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶¶ 2.3 and 2.4. Class Counsel and Defendant shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Claims Administrator's determination of whether a Settlement Claim is a Valid Claim shall be binding.

8.2 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the timeframes set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Final Approval Order.

8.3 No Person shall have any claim against the Claims Administrator, Defendant, Class Counsel, the Class Representative, and/or Defendant's counsel based on distributions of benefits to Settlement Class Members.

8.4 The Claims Administrator shall at all times comply with the Northern District of

California Settlement Administration Data Protection Checklist, which can be located at <https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>.

8.5 Within ten (10) business days following the Court's entry of the Preliminary Approval Order and pursuant thereto, the Claims Administrator on behalf of the Defendant shall cause a CAFA Notice to be served upon the appropriate State and Federal officials. All expenses incurred in connection with the preparation and service of the CAFA Notice shall be borne by Defendant and under no circumstances will be borne by Plaintiff, or Class Counsel, and will not be payable from the Settlement Fund.

8.6 The funds provided by Ethos to the Claims Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account insured by the Federal Deposit Insurance Corporation ("FDIC") at a financial institution approved by the Parties. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process.

## **9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

9.1 The Effective Date shall mean (1) business day after the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the court; and (ii) the time to appeal or seek permission to appeal from the Final Approval Order and Judgment has expired or, if appealed, any appeal has been dismissed in its entirety, or the Final Approval Order has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any Attorneys' Fees and Expense Award or Service Awards made in this case shall not affect the calculation of the Effective Date.

9.2 If the Court does not approve the Settlement Agreement or the Effective Date does not occur for any reason, the Settlement Agreement shall be canceled and terminated subject to ¶ 9.4 unless Class Counsel and Defendant's counsel mutually agree in writing to proceed with the

Settlement Agreement.

9.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.4 In the event that the Settlement Agreement or the releases set forth in ¶¶ 6.1 or 6.2 above are not approved by the Court, the Effective Date does not occur for any reason, or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, the Settlement Fund shall be used to pay any Costs of Claims Administration that have already been incurred by the Claims Administrator, and the remaining Settlement Fund shall be paid back to Defendant.

## **10. Miscellaneous Provisions**

10.1 The Parties (i) acknowledge that it is their intent to consummate this Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim or

defense. The Parties each agree that the settlement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Final Approval Order in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.5 The exhibits to this Settlement Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

10.6 This Settlement Agreement, including all exhibits hereto, contains the entire understanding between Defendant and Plaintiffs regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between Defendant and Plaintiffs in connection with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between Defendant and Plaintiff.

10.7 Class Counsel, on behalf of the Settlement Class, are expressly authorized by the

Class Representatives to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.8 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.9 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

10.10 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

10.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement. The Court 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 Claims Administrator. As part of its agreement to render services in connection with this Settlement, the Claims Administrator shall consent to the jurisdiction of the Court for this purpose.

10.12 As used herein, “he” means “he, she, they, or it;” “his” means “his, hers, theirs, or its,” and “him” means “him, her, them, or it.”

10.13 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and

governed by, the internal, substantive laws of the State of California.

10.14 All dollar amounts are in United States dollars (USD).

10.15 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement, including but not limited to those relating to all information exchanged for purposes of mediation or under the auspices of Federal Rule of Evidence 408 and California Evidence Code §1119. Defendant shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Agreement. Class Counsel agree to hold Defendant harmless from any claim regarding the division of any award of attorneys' fees and expenses to Class Counsel, and any claim that the term "Class Counsel" fails to include any counsel, Person, or firm who claims that they are entitled to a share of any attorneys' fees or expense awarded to Class Counsel in this lawsuit.

10.16 Except as required by law or any other disclosure obligations, or as provided herein, the Parties, and the Parties' counsel, shall not issue any press releases or make any postings on social media about this case or the Settlement; however, Defendant may respond to relevant posts on Defendant's Website or social media sites, and a Party or the Party's counsel may also respond to any incoming press inquiry about this case or the Settlement with a responsive statement approved in advance by the opposing Party or the opposing Party's counsel. Counsel for the Parties may identify this case, its nature, and the fact that it settled on their personal or firm resumes and on their websites.

10.17 The attached Appendix A compiles the dates and deadlines established by this Agreement. The Appendix is provided for convenience and should not be interpreted to alter the substance of this Agreement in any way.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

Class Counsel

Counsel for Ethos Technologies Inc. and  
Duly Authorized Signatory





DATED this 23rd day of June, 2023

By:  \_\_\_\_\_

M. Anderson Berry  
aberry@justice4you.com  
Gregory Haroutunian  
gharoutunian@justice4you.com  
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DATED this 23rd day of June, 2023

By: \_\_\_\_\_

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# APPENDIX A

## SETTLEMENT TIMELINE

<b><u>From Order Granting Preliminary Approval</u></b>	
Ethos provides list of Settlement Class Members to the Claims Administrator	+14 days
Ethos pays cost of Notice Program and Claims Administration	+15 days
Notice Commencement Date	+30 days
Short Notice Completion Date	+45 days
<b><u>From Notice Commencement Date</u></b>	
Class Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses	+60 days (i.e., 90 days after Order Granting Preliminary Approval)
Objection Deadline	+75 days (i.e., 105 days after Order Granting Preliminary Approval)
Exclusion Deadline	+75 days (i.e., 105 days after Order Granting Preliminary Approval)
Reminder Notice	+91 days (i.e., 121 days after Order Granting Preliminary Approval)
Claims Deadline	+105 days (i.e., 135 days after Order Granting Preliminary Approval)
Claims Administrator Provide List of Opt-Outs to the Court and Parties	+112 days (i.e., 142 days after Order Granting Preliminary Approval)
<b><u>Final Approval Hearing</u></b>	+165 days from Order Granting Preliminary Approval (at minimum)
Motion for Final Approval	At least 35 days before Final Approval Hearing
<b><u>From Order Granting Final Approval</u></b>	
Ethos to pay balance of Settlement Fund	+15 days
Effective Date	+30 days, assuming no appeals
Payment of Attorneys' Fees and Expenses and Class Representative Service Awards	+42 days
Payment of Claims to Class Members	+60 days, assuming no appeals

# **EXHIBIT A**

**CLAIM FORM**

***In Re: Ethos Technologies Inc. Data Breach Litigation, Case No. 3:22-cv-09203***  
**(United States District Court, Northern District of California)**

**SUBMIT BY \_\_\_\_\_, 2023**

**ONLINE AT WWW.ETHOSSETTLEMENT.COM**

**OR MAIL TO:**

**Ethos Claims Administrator  
Kroll Settlement Administration LLC**

**[Kroll address block]**

**GENERAL CLAIM FORM INFORMATION**

This Claim Form should be filled out online or submitted by mail if you received a notice letter of the Ethos Data Incident that occurred between approximately August 2022 and December 2022 (“Settlement Class”). Please make sure to fill out all required information, including the required Claimant Information requested on the last page of this form.

Further, there is a subclass of individuals who are residents of the State of California (“California Subclass”).

If you wish to submit a Settlement Claim by mail, please provide the information requested below. Please print clearly in blue or black ink. This Claim Form must be mailed and postmarked by **no later than DD, MM, 2023**.

**Monetary Compensation**

- 1. Cash Payment:** Would you like to submit a Settlement Claim to receive a *pro rata* payment of approximately \$100 under the Settlement? (circle one)

**Yes**

**No**

- 2. California Subclass Cash Payment:** If you lived in California at the time of the Ethos Data Incident, you are eligible for an additional \$100 payment under the Settlement. Did you live in California between August 4, 2022 and December 9, 2022? (circle one)

**Yes**

**No**

**If Yes, you must also check the box below.**

☐ I attest under penalty of perjury that, at some time between August 4, 2022 and December 9, 2022, I was a resident of the State of California.

- 3. Verified Out-Of-Pocket Expenses:** Did you incur unreimbursed out-of-pocket losses or expenses after August 4, 2022 as a result of the Data Incident? (circle one)

**Yes**

**No**

If you circled yes, please write the total amount of losses and/or expenses that you seek reimbursement for through this settlement: \$\_\_\_\_\_

Please provide copies of any receipts, bank statements, reports, or other documentation supporting your Settlement Claim. This can include receipts or other documentation not “self-prepared” by you. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. You may mark out (also known as redact) any information that is not relevant to supporting your Settlement Claim before sending in the documentation. The Claims Administrator may contact you for additional information before processing your Settlement Claim. If you do not have information supporting your Settlement Claim for ordinary or extraordinary expenses or losses, you likely will not receive compensation for this settlement benefit. Any monetary compensation you may receive under the Settlement is capped at \$5,000.

Description (including itemized amount) of the unreimbursed, out-of-pocket losses or expenses incurred, and the documents attached to support this Settlement Claim:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

**(If you seek reimbursement of expenses or losses, you must check the box below)**

☐ I attest under penalty of perjury that, to the best of my knowledge, I incurred these losses or expenses after August 4, 2022 as a result of the Data Incident. I understand that I am required to provide third-party documentation to support my Settlement Claim for out-of-pocket losses, such as providing copies of any receipts, bank statements, reports, or other documentation supporting my Settlement Claim. This can include receipts or other documentation not “self-prepared” by me.

**(Important Claimant Information Requested on Following Page)**



**Claimant Information**

---

Full Name of Settlement Class Member

---

Class Member ID

*(Can be found on the postcard or Email Notice you received informing you about this Settlement. If you need additional help locating this ID, please contact the Claims Administrator.)*

---

Street/P.O. Box

City

State

Zip Code

---

Phone Number

---

Email Address

---

Signature

# **EXHIBIT B**

## NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA  
*In Re: Ethos Technologies Inc. Data Breach Litigation*, No. 3:22-cv-09203-SK

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

**If You Were Subject to the Ethos Technologies Inc. Data Incident and  
Previously Received a Notice Letter Notifying You of the Data Incident, You  
Could be Eligible for Benefits from a Class Action Settlement**

- You may be eligible to receive a payment from a proposed \$1,000,000 class action settlement.
- The class action lawsuit concerns the Data Incident perpetrated against Defendant Ethos Technologies Inc. (“Ethos” or “Defendant”) between approximately August 2022 and December 2022 in which it was determined that an unauthorized third party gained access to certain Ethos files containing sensitive personal information of its customers, employees, and some third-party contractors. Ethos denies that it did anything wrong and disputes that it has any liability but has agreed to settle the lawsuit on a class wide basis.
- To be eligible to make a Settlement Claim, you must have received a notice letter of the Ethos Data Incident that occurred between approximately August 2022 and December 2022.
- Eligible claimants under the Settlement Agreement may receive reimbursement up to \$5,000 for out-of-pocket expenses, \$100 *pro rata* payment, and 12 months of free Experian Credit Monitoring and Identity-Protection Services. California Subclass Members may also claim an additional \$100 payment for claims arising under the California Consumer Privacy Act.
- For more information or to submit a Claim Form visit [www.EthosSettlement.com](http://www.EthosSettlement.com) or call xxx-xxx-xxxx Monday through Friday, between 8:30 a.m. and 5:00 p.m. Central Standard Time.
- **Please read this notice carefully. Your legal rights will be affected, and you have a choice to make at this time.**

	Summary of Legal Rights	Deadline(s)
<b>SUBMIT A CLAIM FORM</b>	The only way to receive payment.	Submitted or postmarked on or before <b>[Month/Date], 2023</b>
<b>EXCLUDE YOURSELF BY OPTING OUT OF THE CLASS</b>	Receive no payment. This is the only option that allows you to keep your right to bring any other lawsuit against Defendant for the same claims. For detailed information about how to exclude yourself, see Sections <b>17-19</b> below.	Submitted or postmarked on or before <b>[Month/Date], 2023</b>

**Questions! Go to [www.EthosSettlement.com](http://www.EthosSettlement.com) or call 1-800-518-4168**

<b>OBJECT TO THE SETTLEMENT AND/OR ATTEND THE HEARING</b>	<p>You can write the Court about why you agree or disagree with the Settlement. The Court cannot order a different settlement. You can also ask to speak to the Court at the Final Approval Hearing on <b>[Month/Date], 2023</b> about the fairness of the Settlement, with or without your own attorney. For detailed information about how to object to or comment on the Settlement, see Sections <b>20-21</b> below.</p>	<p>Received on or before <b>[Month/Date], 2023</b></p>
<b>DO NOTHING</b>	<p>Receive no monetary benefits, but still receive 12-months free credit monitoring. Give up rights if you are a Settlement Class Member.</p>	

- Your rights and options as a Settlement Class Member – and the deadlines to exercise your rights – are explained in this notice.
- The Court still will have to decide whether to approve the Settlement. Payments to Settlement Class members will be made if the Court approves the Settlement and after any possible appeals are resolved.

#### What This Notice Contains

<b>Class Notice Information .....</b>	<b>3</b>
<b>Who is Included in the Settlement .....</b>	<b>4</b>
<b>The Settlement Benefits.....</b>	<b>4</b>
<b>How to Get a Payment – Making a Claim.....</b>	<b>5</b>
<b>The Attorneys Representing You.....</b>	<b>6</b>
<b>Excluding Yourself from the Settlement .....</b>	<b>7</b>
<b>Objecting to or Commenting on the Settlement.....</b>	<b>8</b>
<b>The Court’s Final Approval Hearing .....</b>	<b>9</b>
<b>If I Do Nothing .....</b>	<b>10</b>

<b>Getting More Information .....</b>	<b>10</b>
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## CLASS NOTICE INFORMATION

### 1. Why did I get this notice?

If you received an email or postcard notice concerning the Settlement, Ethos’s records indicate that your information may have been part of a Data Incident perpetrated against Ethos’s systems between August 4, 2022 and December 9, 2022 that may have exposed certain personal information of yours. If you qualify, you could be eligible to receive a payment as part of the Settlement.

For more information, go to: [www.EthosSettlement.com](http://www.EthosSettlement.com)

The people who have sued Ethos Technologies Inc. are called the Plaintiffs. Ethos Technologies Inc. is the Defendant that has been sued in the lawsuit.

### 2. What is this lawsuit about?

Between approximately August 4, 2022, and December 9, 2022 Defendant Ethos Technologies experienced a Data Incident perpetrated against it by some third-party entity. This Data Incident allowed cybercriminals to gain access to certain individuals’ personal information. Upon receiving notice that their information was part of the Data Incident, Plaintiffs brought this lawsuit on behalf of themselves and other affected individuals, alleging claims of negligence to implement adequate data security safeguards, which allowed cybercriminals to access their personal information, in addition to claims for invasion of privacy, violation of the California Unfair Competition Law, Cal. Bus. & Profs. Code § 17200, *et seq.*, violation of California’s Consumer Privacy Act, Cal. Civ. Code § 1798.100 *et seq.*, and declaratory relief. Defendant denies the claims, all allegations of wrongdoing, and that it acted negligently in protecting Plaintiffs’ personal information.

### 3. What is a class action?

In a class action lawsuit, one or more people called “Class Representatives” have sued on behalf of themselves and other people who have similar claims. These people and entities together are called a “Settlement Class” or “Settlement Class Members.” The company Plaintiffs sued on behalf of themselves and all others similarly situated—Ethos Technologies Inc.—is called the

Defendant. In a class action, one court resolves the issues for all Settlement Class Members, except for those who choose to exclude themselves.

#### **4. Why is there a Settlement?**

The Court did not decide in favor of Plaintiffs or Defendant. Instead, the Parties agreed to a Settlement to resolve the claims. A class-wide settlement avoids the costs and risk of a trial, and Settlement Class members can receive the available Settlement compensation benefits. The Class Representatives and Class Counsel believe the Settlement is in the best interest of the Settlement Class.

### **WHO IS INCLUDED IN THE SETTLEMENT**

#### **5. Who is in the Settlement?**

You have been identified through Ethos's records as a Settlement Class Member, and are included in the Settlement, if you received a notice letter regarding the Data Incident from Defendant indicating that you may have been impacted by the Data Incident perpetrated against Defendant between August 2022 and December 2022. The Settlement Class is defined for Settlement purposes as:

All persons identified by Defendant (or its agents or affiliates) as being among those individuals impacted by the Data Incident, including all who were sent a notice of the Data Incident.

Excluded from the Settlement Class are Ethos's officers, directors, and employees; any entity in which Ethos has a controlling interest; and the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Ethos. Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families, and members of their staff.

#### **6. What should I do if I am not sure whether I am included?**

If you are not sure whether you are included in the Settlement Class, you can request free assistance by calling the Claims Administrator or calling xxx-xxx-xxxx for more information.

### **THE SETTLEMENT BENEFITS**

#### **7. What does the Settlement provide?**

The Defendant will pay \$1,000,000 into a Settlement Fund, which will be distributed to Settlement Class Members who submit Valid Claims, after deducting Class Counsel's Attorneys' Fees and Expenses Award, Cost of Claims Administration, and the Class Representatives' Service Awards, if such awards are approved by the Court.

The Settlement Fund will provide:

- **\$100** to each Settlement Class Member upon submission of a Valid Claim;\*\*
- **\$100** to each California Subclass Member upon submission of a Valid Claim;\*\*
  - California Subclass Members may receive the \$100 payment in addition to the \$100 payment to each Settlement Class Member.
- \*\*The cash payments may be increased or decreased *pro rata* from the remainder of the Settlement Fund after all Settlement Claims are submitted.
- **Up to \$5,000** in compensation to each Settlement Class Member who submits a Valid Claim for proven out-of-pocket losses or expenses if:
  - The loss is an actual, documented, and unreimbursed loss;
  - The loss is fairly traceable to the Ethos Data Incident;
  - The loss occurred on or after August 4, 2022;
  - The Settlement Class Member has not already received some reimbursement for the loss or expense; and
  - The Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring and identity theft insurance.
- **12-Months Experian Credit Monitoring and Identity-Protection Services** to each Settlement Class Member.

#### **8. Why does the Settlement include a separate California Subclass?**

The Settlement includes a subclass of California residents who will receive additional Settlement monetary benefits under the California Consumer Privacy Act. Settlement Class Members who submit Valid Claims will receive a different amount than the California Subclass Members.

#### **9. Who can get money from the Settlement, and how much?**

To receive money from the Settlement, you must be a Settlement Class Member – meaning that you received a notice of the Data Incident perpetrated against Ethos between August 4, 2022 and December 9, 2022. The determination of Settlement Funds available to each valid claimant is described in response to Question #7 above.

#### **10. What am I giving up if I stay in the Class?**

If you are a Settlement Class Member (*see* Question #5 above), unless you exclude yourself with an opt-out request (*see* Questions #17-19 below), you cannot sue, continue to sue, or be part of any other lawsuit against Defendant concerning the same issues as in this lawsuit. The “Release” section in the Settlement Agreement (IV, ¶ 6.1) describes the legal claims that you are giving up if you remain in the Settlement Class. The Settlement Agreement can be viewed at [www.EthosSettlement.com](http://www.EthosSettlement.com).

### **HOW TO GET A PAYMENT – MAKING A CLAIM**

**11. How can I get a payment?**

By submitting a Valid Claim on or before the Claims Deadline of [Month/Date], 2023. If you received the Data Incident notification letter from Ethos, you can make a Settlement Claim by filling out and submitting the Claim Form available at [www.EthosSettlement.com](http://www.EthosSettlement.com).

You can also contact the Claims Administrator to request a paper Claim Form by telephone (xxx-xxx-xxxx), email ([info@EthosSettlement.com](mailto:info@EthosSettlement.com)), or U.S. mail (Claims Administrator, Ethos Data Incident Settlement, PO Box xxxx, New York, NY xxxxx-xxxx).

**12. What is the deadline for submitting a Claim Form?**

To be eligible for payment from the Settlement, your Valid Claim **must be received or postmarked no later than [Month/Date], 2023.**

**13. When will I get my payment?**

The Court will hold a hearing on [Month/Date], 2023 at ##:00 a.m., to decide whether to approve the Settlement. Payments will be made after the Settlement is approved and becomes final, meaning there is no appeal from the Court's order approving the Settlement.

Updates regarding the Settlement will be posted on the Settlement Website, [www.EthosSettlement.com](http://www.EthosSettlement.com).

**THE ATTORNEYS REPRESENTING YOU****14. Do I have an attorney in the case?**

Yes. The Court appointed the following attorneys to represent you and other Settlement Class Members as "Class Counsel."

M. Anderson Berry <a href="mailto:aberry@justice4you.com">aberry@justice4you.com</a> Gregory Haroutunian <a href="mailto:gharoutunian@justice4you.com">gharoutunian@justice4you.com</a> <b>CLAYEO C. ARNOLD,</b> <b>A PROFESSIONAL</b> <b>CORPORATION</b> 865 Howe Avenue Sacramento, CA 95825 Telephone: (916) 239-4778	Dylan J. Gould <a href="mailto:dgould@msdlegal.com">dgould@msdlegal.com</a> Jonathan T. Deters <a href="mailto:jdeters@msdlegal.com">jdeters@msdlegal.com</a> <b>MARKOVITS, STOCK &amp;</b> <b>DEMARCO, LLC</b> 119 East Court Street, Suite 530 Cincinnati, OH 45202 Telephone: (513) 651-3700	Samuel J. Strauss <a href="mailto:sam@turkestrauss.com">sam@turkestrauss.com</a> Raina Borrelli <a href="mailto:raina@turkestrauss.com">raina@turkestrauss.com</a> Brittany Resch <a href="mailto:brittanyr@turkestrauss.com">brittanyr@turkestrauss.com</a> <b>TURKE &amp; STRAUSS LLP</b> 613 Williamson Street, Suite 201 Madison, Wisconsin 53703 Telephone: (608) 237-1775
Jean S. Martin <a href="mailto:jeanmartin@forthepeople.com">jeanmartin@forthepeople.com</a> <b>MORGAN &amp; MORGAN</b> <b>COMPLEX LITIGATION</b> <b>GROUP</b>	John J. Nelson <a href="mailto:jnelson@milberg.com">jnelson@milberg.com</a> <b>MILBERG COLEMAN</b> <b>BRYSON</b>	



201 N. Franklin Street, 67th Floor Tampa, FL 33602 Telephone: (813) 559-4908	<b>PHILLIPS GROSSMAN PLLC</b> 401 W Broadway, Suite 1760 San Diego, CA 92101 Telephone: (858) 209-6941	
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You will not be charged by these attorneys for their work on the case. If you want to be represented by your own attorney, you may hire one, but you will be responsible for any payment for that attorney's services.

#### **15. Should I get my own attorney?**

You do not need to hire your own attorney. If you want your own attorney, you may hire one, but you will be responsible for any payment for that attorney's services. For example, you can ask your own attorney to appear in Court for you if you want someone other than Class Counsel to speak on your behalf. You may also appear for yourself without an attorney.

#### **16. How will the attorneys be paid?**

Class Counsel have undertaken this case on a contingency-fee basis, meaning they have paid for all of their expenses in the case and have not been paid any money in relation to their work on this case. Accordingly, Class Counsel will ask the Court to award them attorneys' fees of up to 1/3 (\$333,333.33) of the Settlement Fund and reimbursement for costs and expenses not to exceed \$20,000 to be paid from the Settlement Fund. The Court will decide the amount of fees and costs and expenses to be paid. You will not have to separately pay any portion of these fees yourself. Class Counsel's request for Attorneys' Fees and Expenses Award will be filed by [Month/Date], 2023 and will be available to view on the Settlement Website at [www.EthosSettlement.com](http://www.EthosSettlement.com).

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you are a Settlement Class Member and you do not want to receive the benefits from the Settlement, and you want to keep your right, if any, to sue Defendant on your own about the legal issues at issue in this lawsuit, then you must take affirmative steps to get out of the Settlement. This is called excluding yourself from – or “Opting Out” of – the Settlement Class.

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

A Settlement Class Member may request to be excluded from the Settlement in writing by mailing or emailing a request. The request must be emailed or postmarked on or before the Opt-Out Date (85 days after Notice Date) of [Month/Date], 2023. The timely exclusion must include:

- The requestor's name, address and email address;
- The requestor's physical signature;

- The name and number of this Litigation, i.e., *In Re: Ethos Technologies Inc. Data Breach Litigation*, Case No. 3:22-cv-09203 (N.D. Cal.); and
- A statement that clearly manifests the requestor's wish to be excluded from the Settlement Class for purposes of this Settlement.

A request to be excluded that is sent to an address other than that designated as the Claims Administrator's address (Question #27 below), or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound by the terms of the Settlement.

**18. If I am a Settlement Class Member and don't opt-out, can I sue the Defendant for the same thing later?**

No. If you are a Settlement Class Member (*see* Question #5 above), unless you opt-out, you give up the right to sue Ethos for the claims resolved by the Settlement. So, if you are a Settlement Class Member and you want to try to pursue your own lawsuit, you must opt out.

**19. What happens if I opt-out?**

If you opt-out of the Settlement, you will not have any rights as a member of the Settlement Class under the Settlement terms; you will not receive any payment as part of the Settlement; you will not be bound by any further orders or judgments in this case; and you will keep the right, if any, to sue on the claims alleged in this lawsuit at your own expense.

**OBJECTING TO OR COMMENTING ON THE SETTLEMENT**

**20. How do I tell the Court if I don't agree with the Settlement terms?**

You can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject this Settlement. If the Court denies approval, no Settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object. Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must include:

- (i) the objector's full name and address;
- (ii) the case name and number (*In Re: Ethos Technologies Inc. Data Breach Litigation*, Case No. 3:22-cv-09203 (N.D. Cal.));
- (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement 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 Settlement 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 her 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 her in connection with the objection.

Objections must be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102. Objections must be filed or postmarked on or before [Month/Day], 2023.

## **21. What's the difference between objecting and opting out?**

Objecting is telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you are a Settlement Class Member and do not opt-out of the Settlement. Opting-out of the Settlement indicates to the Court that you do not want to be part of the Settlement. If you opt-out of the Settlement, you cannot object to it because it does not affect you. You cannot both opt-out of the Settlement and also object to the Settlement.

## **THE COURT'S FINAL APPROVAL HEARING**

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

The Court will hold a Final Approval Hearing at ###:## a.m. on [Month/Date], 2023, at the federal courthouse located at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and listen to any arguments presented. The Court may also decide how much Class Counsel should receive in fees and expense reimbursements. After the hearing, the Court will decide whether to approve the Settlement.

The Court may reschedule the Final Approval Hearing or change any of the deadlines described in this notice. The date of the Final Approval Hearing may change without further notice to the Settlement Class Members. Be sure to check the Settlement Website, [www.EthosSettlement.com](http://www.EthosSettlement.com), for news of any such changes.

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

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to the hearing to talk about it. As long as you mailed or filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

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

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include a statement in your written objection (discussed above at Question #20) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well.

You cannot speak at the hearing if you exclude yourself from the Settlement Class.

### **IF I DO NOTHING**

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

If you do nothing and you are a Settlement Class Member, you will get no money from this Settlement, and you will not be able to sue Ethos for the conduct alleged in this lawsuit. You will still be eligible to receive the 12 months of free Experian credit monitoring offered under the Settlement. If you do nothing and you are not a Settlement Class Member, the Settlement will not affect or release any individual claim you may have.

### **GETTING MORE INFORMATION**

#### **26. Are more details about the Settlement available?**

Yes. This notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other case documents. You can get a copy of these documents at [www.EthosSettlement.com](http://www.EthosSettlement.com), by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.dcd.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California 450 Golden Gate Avenue, 16<sup>th</sup> Floor, San Francisco, CA 94102 between 9:00 a.m. and 4:00 p.m. PST, Monday through Friday, excluding Court holidays.

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

The Settlement Website ([www.EthosSettlement.com](http://www.EthosSettlement.com)) has the Claim Form, answers to questions about the Settlement and other information, including important documents, to help you determine whether you are eligible for a payment. You can also write to or call the Claims Administrator at:

Ethos Technologies Data Incident Settlement  
c/o Kroll Settlement Administration  
P.O. Box xxx  
New York, NY xxxxx-xxxx  
xxx-xxx-xxxx

[info@EthosSettlement.com](mailto:info@EthosSettlement.com)

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE  
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

# **EXHIBIT C**

Ethos Technologies  
Data Incident Settlement  
c/o Kroll Settlement  
Administration LLC  
PO Box XXX  
City, State ZipCode

FIRST CLASS MAIL  
U.S. POSTAGE PAID  
CITY, ST  
PERMIT NO. XXXX

**NOTICE OF CLASS ACTION**  
**SETTLEMENT**

**If you received notice of a Data Incident from Ethos Technologies you are entitled to submit a claim for monetary compensation under a class action settlement.**

**[www.ethossettlement.com](http://www.ethossettlement.com)**

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

## WHO IS A CLASS MEMBER?

In the lawsuit, *Ethos Technologies Inc. v. Data Breach Analytics Inc.*, 3:22-cv-09203 (N.D. Cal.), you are a Settlement Class Member if you received a notice of the Ethos Data Incident that occurred between approximately August 2022 and December 2022 (the "Settlement Class"). If you live in California, you likely are a member of the California Subclass.

## WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

Ethos Technologies Inc. ("Ethos") has agreed to pay \$1,000,000 into a Settlement Fund which will be distributed to Settlement Class Members who submit Valid Claims, after deducting the Class Representative Service Awards, Class Counsel's Attorneys' Fees and Expenses Award, and Costs of Claims Administration, if approved by the Court. All Settlement Class Members may submit Claim Forms to receive **\$100** (subject to *pro rata* increase or reduction) plus up to **\$5,000** (subject to *pro rata* reduction) for reimbursement of out-of-pocket expenses or losses caused by the Data Incident. Settlement Class Members are also entitled to **12 months of free Credit Monitoring** and Identity-Protection Services, and California Subclass members may claim an **additional \$100 payment** (subject to *pro rata* reduction). More information about the types of Settlement Claims and required information to file them is available at [www.ethossettlement.com](http://www.ethossettlement.com) ("Settlement Website"). Ethos has also agreed to implement a series of cybersecurity enhancements.

## WHAT ARE YOUR RIGHTS AND OPTIONS?

**Submit a Claim Form.** To qualify for a cash payment you must mail a Claim Form that is attached to this notice or submit a Claim Form online at the Settlement Website. Your Claim Form must be postmarked or submitted online by [REDACTED], 2023. Kroll Settlement Administration LLC is the Claims Administrator.

**Opt Out.** You may exclude yourself from the Settlement and retain your ability to sue Ethos on your own by mailing a written request for exclusion to the Claims Administrator postmarked no later than [REDACTED], 2023. If you don't exclude yourself, you'll be bound by the Settlement and give up your right to sue regarding the settled claims.

**Object.** If you do not exclude yourself, you have the right to object to the Settlement. Written objections must be signed, postmarked no later than [REDACTED], 2023, and provide the reasons for the objection. Please visit the Settlement Website

for more requirements.

**Do Nothing.** If you do nothing, you will not receive a Settlement Payment and will lose the right to sue regarding any issues relating to this action. You will still be eligible to receive the free credit monitoring. You will be bound by the Court's decisions because this is a conditionally certified class action.

**Attend the Final Approval Hearing.** The Court will hold a **Final Approval Hearing** on [REDACTED], 2023 at [time]. All persons who timely object to the Settlement by [REDACTED], 2023 may appear at the Final Approval Hearing.

**Who are the Class Representatives?** Christopher Stein, Josephine Dibisceglia, John Blumenstock, Thomas Rossello, Jeffrey Branch, Derrick Carter, Trevor Pearch, James Schneider, and Tameka Young are the Class Representatives in this lawsuit. They will seek service awards of \$2,000.

**Who are the attorneys for the Class Representatives and the proposed Class?** Class Counsel include M. Anderson Berry of Clayco C. Arnold; Dylan Gould of Markovits, Stock & DeMarco; Raina Borrelli of Turke & Strauss; Jean Martin of Morgan & Morgan; and John Nelson of Milberg Coleman Bryson Phillips Grossman. These attorneys are well known and respected by courts and counsel throughout the United States for handling class actions, such as this one.

**Do I have any obligation to pay attorneys' fees or expenses?** No. The Attorneys' Fees and Expense Award will be paid exclusively by Ethos as awarded and approved by the Court, and will not exceed 1/3 of the Settlement Fund. The motion for Attorneys' Fees and Expense Award will be posted on the Settlement Website after it is filed with the Court.

**When is the Final Approval Hearing?** The Final Approval Hearing, where the Court will determine if the Settlement is fair, reasonable, and adequate, will be conducted on [REDACTED], 2023 at [time].

**Who is the Judge overseeing this Settlement?** Magistrate Judge Sallie Kim.

**Where may I locate a copy of the Settlement Agreement, learn more about the case, or learn more about submitting a Claim Form?** [www.ethossettlement.com](http://www.ethossettlement.com).

\*\*\* Please note that if you wish to submit a Settlement Claim for compensation for out-of-pocket expenses on the attached Claim Form, you will need to provide documentation of your out-of-pocket expenses. A longer version of the Claim Form may be accessed on the Settlement Website.

**This notice is a summary of the proposed Settlement.**



[The following pages include the tear off claim form that will be included in the mailed "Postcard" copies of the Short Form Notice. The e-mail version of the notice will include a hyperlink to the Claim Form instead]

Postage  
Required

Ethos Technologies  
Data Incident Settlement  
c/o Kroll Settlement  
Administration LLC  
PO Box XXX  
City, State Zip-Code



# **EXHIBIT D**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: ETHOS TECHNOLOGIES INC.  
DATA BREACH LITIGATION

This Document Relates To:  
All Actions

Case No. 3:22-cv-09203-SK

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Complaint Filed: December 30, 2022

This case is before the Court on Plaintiffs Christopher Stein, Josephine Dibisceglia, John Blumenstock, Thomas Rossello, Jeffrey Branch, Derrick Carter, Trevor Pearch, James Schneider and Tameka Young's (collectively, "Plaintiffs") Unopposed Motion for Preliminary Approval of the Class Action Settlement (the "Motion"). The Court, having considered the Motion, the supporting brief, the Parties' Settlement Agreement dated June 23, 2023 (the "Settlement Agreement"); the proposed Claim Form (Exhibit A), Long Notice (Exhibit B), and Short Notice (Exhibit C); the pleadings and other papers filed in this Action; and the statements of counsel and the Parties, and for good cause shown,

**HEREBY ORDERS** as follows:

Preliminary Approval of Settlement Agreement

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement Agreement.

2. This Court has jurisdiction over the Litigation, Plaintiffs, all Settlement Class Members, Defendant Ethos Technologies Inc. ("Ethos"), and any party to any agreement that is part of or related to the Settlement.

3. The Court finds that the proposed Settlement set forth in the Settlement Agreement is sufficiently fair, reasonable, and adequate such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members and that a hearing should be held as set forth below.

4. The Court preliminarily finds that this Settlement complies with the Northern District of California's *Procedural Guidance for Class Action Settlements*.

Class Certification

5. Solely for purposes of the Settlement, the Court conditionally certifies the following nationwide class ("Settlement Class") and California subclass ("California Subclass") pursuant to Fed. R. Civ. P. 23(a) and (b)(3):

**Settlement Class:** All persons identified by Defendant (or its agents or affiliates) as being among those individuals impacted by the Data Incident, including all who were sent a notice of the Data Incident.

1                   **Settlement Subclass or California Settlement Subclass:** All  
2                   persons identified by Defendant (or its agents or affiliates) as being  
3                   individuals residing in California impacted by the Data Incident,  
4                   including all who were sent a notice of the Data Incident.

5           6.       Excluded from the Settlement Class and the California Subclass are: (i) Defendant  
6           and its respective officers and directors; (ii) the Judge(s) to whom the action is assigned and any  
7           member of those Judges' staffs or immediate family members; and (iii) any other Person found by  
8           a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or  
9           abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any  
10          such charge.

11          7.       Subject to final approval of the Settlement, the Court finds and concludes for  
12          settlement purposes only that the prerequisites to a class action, set forth in Fed. R. Civ. P. 23(a)  
13          and (b), are satisfied in that:

- 14                  a.       the Settlement Class and California Subclass are so numerous that joinder of
- 15                          all members is impracticable;
- 16                  b.       there are questions of law or fact common to the Settlement Class and the
- 17                          California Subclass;
- 18                  c.       Plaintiffs and Class Counsel (as defined below) fairly and adequately
- 19                          represent the Settlement Class and the California Subclass;
- 20                  d.       the claims of Plaintiffs are typical of those of Settlement Class Members and
- 21                          California Subclass Members;
- 22                  e.       common issues predominate over any individual issues affecting the
- 23                          members of the Settlement Class and the California Subclass;
- 24                  f.       Plaintiffs fairly and adequately protect and represent the interests of all
- 25                          members of the Settlement Class and the California Subclass, and Plaintiffs'
- 26                          interests are aligned with the interests of all other members of the Settlement
- 27                          Class and the California Subclass; and
- 28

1 g. settlement of the Litigation on a class-action basis is superior to other means  
2 of resolving this matter.

3 8. The Court appoints M. Anderson Berry and Gregory Haroutunian of Clayco C.  
4 Arnold, APC; Dylan J. Gould and Jonathan T. Deters of Markovits, Stock & DeMarco, LLC;  
5 Samuel J. Strauss, Raina Borrelli, and Brittany Resch of Turke & Strauss LLP; Jean S. Martin of  
6 Morgan & Morgan Complex Litigation Group; and John J. Nelson of Milberg Coleman Bryson  
7 Phillips Grossman LLC as Class Counsel, having determined that the requirements of Rule 23(g)  
8 of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

9 9. The Court hereby appoints Plaintiffs Christopher Stein, Josephine Dibisceglia, John  
10 Blumenstock, Thomas Rossello, Jeffrey Branch, Derrick Carter, Trevor Pearch, James Schneider  
11 and Tameka Young as the Class Representatives for settlement purposes only on behalf of the  
12 Settlement Class.

13 Notice to Settlement Class Members

14 10. Pursuant to Federal Rule of Civil Procedure 23(e), the Court approves the Short  
15 Notice and Long Notice (the “Settlement Notices”), to the Settlement Agreement, and finds that  
16 the dissemination of the Settlement Notices substantially in the manner and form set forth in Section  
17 3.2 of the Settlement Agreement (“Notice Program”) complies fully with the requirements of the  
18 Federal Rule of Civil Procedure 23 and due process of law, and is the best notice practicable under  
19 the circumstances.

20 11. The Court further approves the Claim Form which will be available both on the  
21 Settlement Website and by request.

22 12. The notice procedures described in the Notice Program are hereby found to be the  
23 best means of providing notice under the circumstances and, when completed, shall constitute due  
24 and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all  
25 persons affected by the Settlement Agreement and/or entitled to participate in the Final Approval  
26 Hearing, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil  
27 Procedure and due process of law.  
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1           13.     The Court hereby orders that, within fourteen (14) days of entry of this Order, Ethos  
2 shall provide the Claims Administrator with the names, any email addresses, and any last known  
3 physical address of each member of the Settlement Class (collectively, “Class Member  
4 Information”) that Defendant possesses.

5           14.     No later than forty-five (45) days from the date of this Order preliminarily approving  
6 the Settlement, Class Counsel shall cause the Claims Administrator to send the Short Notice to each  
7 member of the Settlement Class via U.S. Mail; and, for those whom Defendant is in possession of  
8 valid email addresses, via email as well, and shall cause to be published the Long Form Notice  
9 available to the Settlement Class as stated in the proposed Notice Program. In the event that a  
10 mailed Short Notice is returned to the Claims Administrator by the USPS because the address of  
11 the recipient is no longer valid, and the envelope contains a forwarding address, the Claims  
12 Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of  
13 receiving the returned Short Notice. Contemporaneously with seeking Final Approval of the  
14 Settlement, Class Counsel and Ethos shall cause to be filed with the Court an appropriate affidavit  
15 or declaration from the Claims Administrator with respect to complying with the Notice Plan.

16           15.     All costs incurred in disseminating and otherwise in connection with the Settlement  
17 Notices shall be paid from the Settlement Fund.

18           16.     The Long Notice, Short Notice and Claim Form satisfy the requirements of due  
19 process and of Rule 23(e) of the Federal Rules of Civil Procedure and thus are approved for  
20 dissemination to the Settlement Class. The Claim Form shall be made available to the Settlement  
21 Class as set forth on the Notice Program and shall be made available to any potential Class Member  
22 that requests one.

23           Responses by Settlement Class Members and the Scheduling of a Final Approval Hearing

24           17.     Settlement Class Members may opt-out or object no later than seventy-five (75)  
25 days from the Notice Commencement Date (one hundred and five (105) days from the date this  
26 Order is entered) (the “Opt-Out Date”).

27           18.     Any member of the Settlement Class who wishes to be excluded (“opt out”) from  
28 the Settlement Class must individually sign (with a physical signature) and timely submit a written

notice to the Claims Administrator of such intent by (a) mailing it with a postmark by the Opt-Out Date to the designated Post Office box established by the Claims Administrator or (b) emailing it to the Claims Administrator using the email address provided on the Settlement Website. To be effective, the written opt-out notice must include the following: (a) the requestor's name, address and email address; (b) the requestor's physical signature; (c) the name and number of this Litigation (e.g., "*In Re: Ethos Technologies Inc. Data Breach Litigation*, Case No. 3:22-cv-09203 (N.D. Cal.)); and (4) a statement that clearly manifests his or her wish to be excluded from the Settlement Class for purposes of this Settlement. To be effective, written notice must be postmarked or emailed no later than the Opt-Out Date. All Settlement Class Members that opt-out of the Settlement will not be eligible to receive any benefits under the Settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Ethos.

19. Any member of the Settlement Class who does not properly and timely opt-out of the Settlement shall, upon entry of the Final Approval Order and Judgment, be bound by all the terms and provisions of the Settlement Agreement and Release, whether or not such Settlement Class Member objected to the Settlement and whether or not such Settlement Class Member received consideration under the Settlement Agreement.

20. The Court adopts the following schedule for the remaining events in this case:

<b><u>From Order Granting Preliminary Approval</u></b>	
Ethos provides list of Settlement Class Members to the Claims Administrator	+14 days
Ethos pays cost of Notice Program and Claims Administration	+15 days
Notice Commencement Date	+30 days
Short Notice Completion Date	+45 days
<b><u>From Notice Commencement Date</u></b>	
Class Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses	+60 days (i.e., 90 days after Order Granting Preliminary Approval)
Objection Deadline	+75 days (i.e., 105 days after Order Granting Preliminary Approval)

Exclusion Deadline	+75 days (i.e., 105 days after Order Granting Preliminary Approval)
Reminder Notice	+91 days (i.e., 121 days after Order Granting Preliminary Approval)
Claims Deadline	+105 days (i.e., 135 days after Order Granting Preliminary Approval)
Claims Administrator Provide List of Opt-Outs to the Court and Parties	+112 days (i.e., 142 days after Order Granting Preliminary Approval)
<b><u>Final Approval Hearing</u></b>	+165 days from Order Granting Preliminary Approval (at minimum)
Motion for Final Approval	At least 35 days before Final Approval Hearing
<b><u>From Order Granting Final Approval</u></b>	
Ethos to pay balance of Settlement Fund	+15 days
Effective Date	+30 days, assuming no appeals
Payment of Attorneys' Fees and Expenses and Class Representative Service Awards	+42 days
Payment of Claims to Class Members	+60 days, assuming no appeals

21. A hearing on the Settlement (the "Final Approval Hearing") shall be held before this Court on a date to be set by the Court.

22. At the Final Approval Hearing, the Court will consider (a) the fairness, reasonableness, and adequacy of the proposed class Settlement and whether the Settlement should be granted final approval by the Court; (b) dismissal with prejudice of the Litigation; (c) entry of an order including the Release; (d) entry of the Final Approval Order; and (e) entry of final judgment in this Litigation. Class Counsel's application for award of attorney's fees and expenses, and request for the Court to award a service award to the named Plaintiffs, shall also be heard at the time of the hearing.

23. The date and time of the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class, other than that which may be posted by the Court. Should the Court adjourn the date for the Final Approval Hearing, that shall not alter the deadlines for mailing and publication of notice, the Opt-Out Date, or the deadlines for submissions of settlement objections, claims, and notices of intention to appear at the Final

1 Approval Hearing unless those dates are explicitly changed by subsequent Order. The Court may  
2 also decide to hold the hearing via zoom or telephonically. Instructions on how to appear at the  
3 Final Approval Hearing will be posted on the Settlement Website, and the Parties shall endeavor to  
4 have the Claims Administrator update the Settlement Website if the Final Approval Hearing date  
5 changes.

6 24. Any person or entity who or which does not elect to be excluded from the Settlement  
7 Class may, but need not, enter an appearance through its own attorney. Settlement Class Members  
8 that do not timely object or opt out and that do not have an attorney enter an appearance on their  
9 behalf will be represented by Class Counsel.

10 25. Any person or entity who or which does not elect to be excluded from the Settlement  
11 Class may object to the proposed Settlement. Any Settlement Class Member may object to, among  
12 other things, (a) the proposed Settlement, (b) entry of Final Approval Order and the judgment  
13 approving the Settlement, (c) Class Counsel's application for attorneys' fees and expenses, or (d)  
14 the service award request, by submitting a written objection to the Court either by filing it in person  
15 at any location of the United States District Court for the Northern District of California or by  
16 mailing it to the Class Action Clerk, United States District Court for the Northern District of  
17 California, 450 Golden Gate Ave., San Francisco, CA 94102, with a filing or postmark date no later  
18 than seventy-five (75) days from the Notice Commencement Date (one hundred and five (105) days  
19 from the approval of this Order), as defined in §§ 1.22 and 5 of the Settlement Agreement  
20 ("Objection Date"). The objector or his or her counsel may also file, no later than the Objection  
21 Date, the written objection with the Court through the Court's ECF system.

22 26. Any Settlement Class Member making the objection (an "Objector") must sign the  
23 objection personally or through Objector's counsel. An objection must state: (i) the objector's full  
24 name and address; (ii) the case name and number, *In Re: Ethos Technologies Inc. Data Breach*  
25 *Litigation*, Case No. 3:22-cv-09203 (N.D. Cal.); (iii) information identifying the objector as a  
26 Settlement Class Member, including proof that the objector is a member of the Settlement Class  
27 (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a  
28 statement explaining why the objector believes he or she is a Settlement Class Member); (iv) a

1 written statement of all grounds for the objection, accompanied by any legal support for the  
2 objection the objector believes applicable; (v) the identity of any and all counsel representing the  
3 objector in connection with the objection; (vi) a statement whether the objector and/or his or her  
4 counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature  
5 of the objector's duly authorized attorney or other duly authorized representative (if any)  
6 representing him or her in connection with the objection.

7 27. Only Settlement Class Members that have filed and served valid and timely notices  
8 of objection shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class  
9 Member who does not timely file and serve an objection in writing in accordance with the procedure  
10 set forth in the Long Notice and mandated in this Order shall be deemed to have waived any  
11 objection to (a) the Settlement; (b) the Released Claims; (c) entry of Final Approval Order and  
12 Judgment; (d) Class Counsel's application for attorneys' fees, costs, and expenses; and/or (e) the  
13 service award request for the Class Representatives, whether by appeal, collateral attack, or  
14 otherwise.

15 28. Settlement Class Members need not appear at the hearing or take any other action  
16 to indicate their approval.

17 29. Upon entry of the Final Approval Order and Judgment all members of the Settlement  
18 Class that have not personally and timely requested to be excluded from the Settlement Class will  
19 be enjoined from proceeding against Ethos with respect to all of the Released Claims.

20 30. Ethos shall prepare and send, at Ethos's expense, all notices that are required by the  
21 Class Action Fairness Act of 2005 ("CAFA") as specified in 28 U.S.C. § 1715.

22 Administration of the Settlement.

23 31. The Court hereby appoints the claims administrator proposed by the parties, Kroll  
24 Settlement Administration, LLC (the "Claims Administrator"). Responsibilities of the Claims  
25 Administrator shall include: (a) establishing a post office box for purposes of communicating with  
26 Settlement Class Members; (b) disseminating notice to the Settlement Class; (c) developing a  
27 website to enable Settlement Class Members to access documents; (d) accepting and maintaining  
28 documents sent from Settlement Class Members relating to claims administration; and (e)

1 distributing settlement checks to Settlement Class Members. Pursuant to the Settlement Agreement,  
2 the Claims Administrator and costs of administration shall be paid from the Settlement Fund.

3 32. In the event the Settlement Agreement and the proposed settlement are terminated  
4 in accordance with the applicable provisions of the Settlement Agreement, the Settlement  
5 Agreement, the proposed Settlement, and all related proceedings shall, except as expressly provided  
6 to the contrary in the Settlement Agreement, become null and void, shall have no further force and  
7 effect, and Settlement Class Members shall retain all of their current rights to assert any and all  
8 claims against Ethos and any other Released Persons, and Ethos and any other Released Persons  
9 shall retain any and all of their current defenses and arguments thereto (including but not limited to  
10 arguments that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are not satisfied for purposes of  
11 continued litigation). The Litigation shall thereupon revert forthwith to its respective procedural  
12 and substantive status prior to the date of execution of the Settlement Agreement and shall proceed  
13 as if the Settlement Agreement and all other related orders and papers had not been executed.

14 33. Neither this Order nor the Settlement Agreement nor any other settlement-related  
15 document nor anything contained herein or therein or contemplated hereby or thereby nor any  
16 proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or  
17 herein or in any other settlement-related document, shall constitute, be construed as or be deemed  
18 to be evidence of or an admission or concession by Ethos as to the validity of any claim that has  
19 been or could have been asserted against it or as to any liability by it as to any matter set forth in  
20 this Order, or as to the propriety of class certification for any purposes other than for purposes of  
21 the current proposed settlement.

22  
23  
24 Dated: \_\_\_\_\_  
25 The Honorable Sallie Kim  
26 United States Magistrate Judge  
27  
28

# **EXHIBIT E**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: ETHOS TECHNOLOGIES INC. DATA  
BREACH LITIGATION

This Document Relates To:  
All Actions

Case No. 3:22-cv-09203-SK

**[PROPOSED] FINAL APPROVAL ORDER**

Complaint Filed: December 30, 2022

WHEREAS, the Court, having considered the Settlement Agreement filed June 23, 2023 (the “Settlement”) between and among Named Plaintiffs Christopher Stein, Josephine Dibisceglia, John Blumenstock, Thomas Rossello, Jeffrey Branch, Derrick Carter, Trevor Pearch, James Schneider and Tameka Young (“Plaintiffs” or “Settlement Class Representatives”), individually and on behalf of the Settlement Class, and Defendant Ethos Technologies Inc. (“Ethos” or “Defendant”) (collectively, the “Parties”), having considered the Court’s Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), having held a Final Approval Hearing on [InsertHearingDate], having considered all of the submissions and arguments with respect to the Settlement, and otherwise being fully informed, and good cause appearing therefor;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. Plaintiffs’ Motion for Final Approval of Class Action Settlement is **GRANTED**.
2. This Order incorporates herein, and makes a part hereof, the Settlement (including its exhibits) and the Preliminary Approval Order. Unless otherwise provided herein, the terms defined in the Settlement and Preliminary Approval Order shall have the same meanings for purposes of this Order.
3. The Court has personal jurisdiction over Plaintiffs, the Settlement Class Members, and Defendant for purposes of this settlement, and has subject matter jurisdiction over this matter including,



1 without limitation, jurisdiction to approve the Settlement, confirm certification of the Settlement Class  
2 for settlement purposes only, settle and release all claims released in the Settlement, and dismiss  
3 the Action with prejudice.

4 **I. CERTIFICATION OF THE SETTLEMENT CLASS**

5 4. Based on its review of the record, including the Settlement, all submissions in support of  
6 the Settlement, and all prior proceedings in the Action, the Court finally certifies the following Settlement  
7 Class and California Settlement Subclass (collectively, the “Settlement Class”) for settlement purposes  
8 only:  
9

10 All persons identified by Defendant (or its agents or affiliates) as being  
11 among those individuals impacted by the Data Incident, including all who  
12 were sent a notice of the Data Incident.

13 All persons identified by Defendant (or its agents or affiliates) as being  
14 individuals residing in California impacted by the Data Incident, including  
15 all who were sent a notice of the Data Incident.

16 5. Excluded from the Settlement Class and the California Settlement Subclass are: (i)  
17 Defendant and its respective officers and directors; (ii) the Judge(s) to whom the action is assigned and  
18 any member of those Judges’ staffs or immediate family members; and (iii) any other Person found by a  
19 court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting  
20 the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

21 6. Also excluded from the Settlement Class are those persons identified in **Exhibit #** hereto,  
22 each of whom submitted a timely and valid request for exclusion from the Settlement Class prior to the  
23 Opt-Out Deadline. Such persons shall not receive the benefits of the Settlement and shall not be bound  
24 by this Order.

25 7. For settlement purposes only, with respect to the Settlement Class and the California  
26 Subclass, the Court confirms that the prerequisites for a class action pursuant to Federal Rule of Civil  
27 Procedure 23 have been met, in that: (a) the Settlement Class and the California Subclass are so numerous  
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1 that joinder of all individual Settlement Class Members and California Subclass Members in a single  
2 proceeding is impracticable; (b) questions of law and fact common to all members of the Settlement Class  
3 and the California Subclass predominate over any potential individual questions; (c) the claims of  
4 Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs and proposed Class Counsel will  
5 fairly and adequately represent the interests of the Settlement Class; and (e) a class action is the superior  
6 method to fairly and efficiently adjudicate this controversy. Any objections to the Settlement have been  
7 considered and are hereby overruled.  
8

## 9 **II. NOTICE TO THE SETTLEMENT CLASS**

10 8. The Court finds that notice has been given to the Settlement Class in the manner  
11 directed by the Court in the Preliminary Approval Order. The Court finds that the Notice Program: (i)  
12 was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably  
13 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the  
14 Action, the terms of the Settlement including its releases, their right to exclude themselves from  
15 the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final  
16 Approval Hearing (either on their own or through counsel hired at their own expense), and the  
17 binding effect of final approval of the Settlement on all persons who do not exclude themselves  
18 from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or  
19 entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States  
20 Constitution (including the Due Process Clause), and any other applicable law.  
21

22 9. Furthermore, the Court finds that notice under the Class Action Fairness Act was  
23 effectuated within the time required by 28 U.S.C. § 1715, and that ninety (90) days has passed without  
24 comment or objection from any governmental entity.  
25

## 26 **III. FINAL APPROVAL OF THE SETTLEMENT**

27  
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1           10.     The Court finds that the Settlement resulted from arm's-length negotiations between Class  
2 Counsel and Defendant.

3           11.     The Court hereby finally approves in all respects the Settlement as fair, reasonable,  
4 and adequate, and in the best interest of the Settlement Class.

5           12.     The Court finds that Plaintiffs and Class Counsel fairly and adequately  
6 represented the interests of Settlement Class Members in connection with the Settlement.

7           13.     The Parties shall consummate the Settlement in accordance with the terms  
8 thereof. The Settlement, and each and every term and provision thereof, including its Releases, shall be  
9 deemed incorporated herein as if explicitly set forth herein and shall have the full force and effect of an  
10 order of this Court.

11  
12 **IV.    DISMISSAL OF CLAIMS AND RELEASE**

13           14.     The Action is hereby dismissed with prejudice as to all Parties including  
14 Settlement Class Members and without cost to any party, except as otherwise provided herein or in the  
15 Settlement.

16  
17           15.     Upon the Effective Date, and in consideration of the benefits set forth in the Settlement,  
18 each Settlement Class Member and Plaintiff shall be deemed to have, and by operation of this Order shall  
19 have, fully, finally, and forever released, relinquished and discharged all Released Claims, including  
20 unknown Claims.

21           16.     For purposes of this Final Approval Order, "Released Claims" shall collectively mean any  
22 and all past, present, and future claims, causes of action, demands, damages, debts, liabilities, remedies,  
23 proceedings, actions, suits, allegations, assertions of wrongdoing, and any demand for injunctive relief  
24 or any other type of equitable or legal relief including, but not limited to, any causes of action arising  
25 under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of  
26 any country, state, province, county, city, or municipality, whether known or unknown, suspected or  
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1 unsuspected, asserted or unasserted, discovered or undiscovered, liquidated or unliquidated, accrued or  
2 unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that  
3 either has been asserted, was asserted, or could have been asserted by any Settlement Class Member  
4 against any of the Released Persons with respect to the Data Incident on a similar factual predicate.  
5 Released Claims shall not include the right of any Settlement Class Member or any of the Released  
6 Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not  
7 include the claims of individuals in the Settlement Class who have timely excluded themselves from the  
8 Settlement.  
9

10 17. For the purposes of this Final Approval Order, “Released Persons” means Defendant and  
11 its past or present parents, subsidiaries, divisions, and related or affiliated entities, of any nature  
12 whatsoever, whether direct or indirect, as well as each of Defendant’s and these entities’ respective  
13 predecessors, successors, directors, officers, principals, agents, attorneys, shareholders, employees,  
14 servants, representatives, advisors, consultants, vendors, partners, contractors, subrogees, insurers, and  
15 reinsurers.  
16

17 18. For the purposes of this Final Approval Order, “Unknown Claims” means any of the  
18 Released Claims that any Settlement Class Member, including Plaintiffs, does not know or suspect to  
19 exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might  
20 have affected his or her settlement with, and release of, the Released Persons, or might have affected his  
21 or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any  
22 and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to  
23 and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed  
24 to have, and by operation of the Final Approval Order shall have, released any and all Released Claims,  
25 including Unknown Claims, and waived the provisions, rights, and benefits conferred by California Civil  
26 Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state,  
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1 province, or territory of the United States (including, without limitation, California Civil Code  
 2 §§ 1798.80, *et seq.*, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South  
 3 Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code  
 4 § 1542, which provides:

5  
 6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR  
 7 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR  
 8 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
 9 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR  
 10 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11 Settlement Class Members, including Plaintiffs, may hereafter discover facts in addition to, or  
 12 different from, those that they, and any of them, now know or believe to be true with respect to the subject  
 13 matter of the Released Claims, but Plaintiffs expressly shall have, and each other Settlement Class  
 14 Member shall be deemed to have, and by operation of the Final Approval Order shall have, upon the  
 15 Effective Date, fully, finally and forever settled and released any and all Released Claims, including  
 16 Unknown Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation  
 17 of the Final Approval Order to have acknowledged, that the foregoing waiver is a material element of the  
 18 Settlement Agreement of which this release is a part.

19 19. Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class  
 20 Member and Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of  
 21 the general public or in any capacity, be permanently barred from commencing, prosecuting, or  
 22 participating in any recovery in any action in this or any other forum (other than participation in the  
 23 settlement as provided herein) in which any of the Released Claims is asserted.

24 **V. ATTORNEYS' FEES, COSTS, AND EXPENSES AND REPRESENTATIVE**  
 25 **PLAINTIFFS' SERVICE AWARD**

26 20. The Court awards attorneys' fees of \$[TBD] and reimbursement of costs and expenses in  
 27 the amount of \$[TBD], totaling \$[TBD], and payment of a service award in the amount of \$[TBD] to  
 28

1 Plaintiffs. The Court directs the Claims Administrator to pay such amounts in accordance with the terms  
2 of the Settlement. Class Counsel, in their sole discretion to be exercised reasonably, shall allocate and  
3 distribute the attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' counsel of  
4 record in the Action.

5 **VI. OTHER PROVISIONS**

6 21. Without affecting the finality of this Final Approval Order in any way, the Court retains  
7 continuing and exclusive jurisdiction over the Parties and the Settlement Class for the purpose of  
8 consummating, implementing, administering, and enforcing all terms of the Settlement.  
9

10 22. Nothing in this Final Approval Order, the Settlement, or any documents or statements  
11 relating thereto, is or shall be deemed or construed to be an admission or evidence of any violation of any  
12 statute or law or of any liability or wrongdoing by Defendant.

13 23. In the event the Effective Date does not occur, this Final Approval Order shall be rendered  
14 null and void and shall be vacated and, in such event, as provided in the Settlement, this Order and all  
15 orders entered in connection herewith shall be vacated and null and void, the Parties shall be restored to  
16 their respective positions in the Action, all of the Parties' respective pre-Settlement claims and defenses  
17 will be preserved, and the terms and provisions of the Settlement shall have no further force and effect  
18 with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose,  
19 and any judgment or order entered by the Court in accordance with the terms of the Settlement shall be  
20 treated as vacated, *nunc pro tunc*.  
21

22 **IT IS SO ORDERED.**

23 Dated:

24 By:

25 The Honorable Sallie Kim

26 United States Magistrate Judge  
27  
28

# **EXHIBIT F**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: ETHOS TECHNOLOGIES INC. DATA  
BREACH LITIGATION

This Document Relates To:  
All Actions

Case No. 3:22-cv-09203-SK

**[PROPOSED] JUDGMENT**

Complaint Filed: December 30, 2022



1 On [date], the Court [granted] Plaintiffs' motion for final approval and [granted] Plaintiffs' motion  
2 for attorneys' fees and reimbursement of litigation expenses. ECF No. \_\_. Judgment is entered. The Clerk  
3 shall close this file.

4 **IT IS SO ORDERED.**

5 Dated:

6 \_\_\_\_\_  
The Honorable Sallie Kim  
United States Magistrate Judge  
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12 Fax: (916) 924-1829

13 *Attorneys for Plaintiffs and the Proposed Class*

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

*IN RE: ETHOS TECHNOLOGIES INC. DATA  
BREACH LITIGATION*

This Document Relates To: All Actions

Case No. 3:22-cv-09203-SK

**DECLARATION OF M. ANDERSON BERRY  
IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR  
PRELIMINARILY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: July 31, 2023

Time: 9:30a.m.

Courtroom: C – 15<sup>th</sup> Floor

Judge: Hon. Sallie Kim

1 I, M. Anderson Berry, pursuant to section 1746 of title 28 of the United States Code, declare as  
2 follows:

3 1. I am the head of the complex litigation group at Clayco C. Arnold, A Professional  
4 Corporation (the “Arnold Law Firm”), one of the firms representing Plaintiffs. I submit this declaration  
5 in support of Plaintiffs’ Motion to Preliminarily Approve Class Action Settlement. I make this  
6 declaration based on my own personal knowledge, and if called to do so, could and would testify to the  
7 matters contained herein.

8 2. The Settlement Agreement (“S.A.” or “Settlement”) executed by the Parties on June  
9 23rd, 2023, is filed concurrently herewith, as Exhibit 1 to Plaintiffs’ Motion to Preliminarily Approve  
10 Class Action Settlement (the “Motion”).

11 3. Attached to the Settlement Agreement are the following sub-exhibits, the form and  
12 substance of which have been agreed to by the Parties and are submitted with the Motion for the Court’s  
13 approval:

14 Exhibit A: Claim Form

15 Exhibit B: Long Form Notice

16 Exhibit C: Short Form Notice

17 Exhibit D: Proposed Preliminary Approval Order

18 Exhibit E: Proposed Final Approval Order

19 Exhibit F: Proposed Judgment

20  
21 **I. THE LITIGATION AND SETTLEMENT NEGOTIATIONS**

22 4. This matter concerns a putative class action arising out of a Data Incident (as defined  
23 below) suffered by Ethos Technologies, Inc. (“Ethos” or “Defendant”) in or about December 2022.  
24 Plaintiffs allege that between August 2022 and December 2022, Ethos’ website allowed unencrypted  
25 Social Security numbers (“SSNs”) to be returned to third-parties accessing its website. On or about  
26 December 6, 2022, Ethos discovered an abnormal pattern of insurance applications being abandoned at  
27 the stage where applicants were asked to validate the last four digits of their SSNs and from this  
28

discovery determined that unknown third parties had been able to reveal Plaintiffs' and Class Members' unencrypted SSNs. (the "Data Incident").

5. This impacted the approximately 34,000 individuals to whom Ethos sent notification letters, including Plaintiffs, and approximately 1,302 residents of California.

6. Individuals, including Plaintiffs, received their notices in or around December 2022. On December 30, 2022, Plaintiff Stein filed a complaint asserting claims against Ethos relating to the Data Incident. On January 6, 2023, Plaintiffs Blumenstock, Rossello, and Branch also filed a complaint asserting claims against Ethos relating to the Data Incident.

7. On January 31, 2023, the Court ordered that these matters be consolidated into one action under the lead case, No. 3:22-cv-09203. On March 2, 2023, Plaintiffs filed a Consolidated Class Action Complaint ("CCAC"). In addition to Plaintiffs Stein, Blumenstock, Rossello, and Branch, the CCAC added Plaintiffs Dibisceglia, Carter, Pearch, Schneier, and Young. The Consolidated Complaint alleges six claims: (1) negligence (2) invasion of privacy, (3) unjust enrichment, (4) violations of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, (5) declaratory judgment, and (6) violations of the California Consumer Privacy Act ("CCPA"), Cal. Civ. Code §§ 1798.100, *et seq.*

8. Plaintiffs brought this action on behalf of all persons whose PII was compromised as a result of Ethos's failure to: (i) adequately protect PII; (ii) warn of its inadequate information security practices; and (iii) effectively monitor its network for security vulnerabilities and incidents. Plaintiffs allege that Ethos' conduct amounts to negligence and violates federal and state statutes. Plaintiffs and Class Members have suffered injury as a result of Ethos' conduct. These injuries include: (i) lost or diminished value of PII; (ii) out-of-pocket expenses associated with the prevention, detection, and recovery from identity theft, tax fraud, and/or unauthorized use of their PII; (iii) lost opportunity costs associated with attempting to mitigate the actual consequences of the Data Incident, including but not limited to lost time, and (iv) the continued and certainly increased risk to their PII, which: (a) remains unencrypted and available for unauthorized third parties to access and abuse; and (b) may remain backed up in Ethos' possession and is subject to further unauthorized disclosures so long as Ethos fails to undertake appropriate and adequate measures to protect the PII.

9. Over the course of several months, the Parties engaged in informal, and always contentious, settlement negotiations. The Parties then agreed to participate in early mediation. On March 23, 2023 the Court stayed the case pending mediation. The Parties then exchanged Fed. Rule of Evidence 408 informal discovery and engaged Hon. Wayne R. Anderson (Ret.) of JAMS, a well-regarded private mediator and retired Federal judge with considerable experience mediating data breach class actions, to preside over the mediation. After spending considerable time and effort negotiating, the Parties were not able to reach a settlement. Judge Andersen later sent a mediator's proposal to the parties, which they subsequently accepted.

10. The Parties then took several weeks to finalize the full scope of the Settlement. The Parties executed the Settlement on June 23rd, 2023.

11. Though cordial and professional, the settlement negotiations were adversarial, arm's-length, and non-collusive in nature.

12. The Settlement was reached after extensive investigation, including vigorously and aggressively gathering all of the information that was available regarding Ethos and the Data Incident (including publicly-available documents concerning announcements of the Data Incident and notice of the Data Incident to its customers), and other research, and a thorough evaluation of Plaintiffs' claims in light of such information.

## **II. THE SETTLEMENT**

### ***The Settlement Class***

13. The Settlement will provide relief for the following Settlement Class: "all persons identified by Defendant (or its agents or affiliates) as being among those individuals impacted by the Data Incident, including all who were sent a notice of the Data Incident." S.A. ¶ 1.30. The following persons are excluded from the class definition: "(i) Defendant and its respective officers and directors; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge." *Id.*

14. The Settlement Class contains approximately 34,000 individuals. In addition, the Settlement creates a California Settlement Subclass, consisting of “[a]ll persons identified by Defendant (or its agents or affiliates) as being among those individuals residing in California impacted by the Data Incident, including all who were sent a notice of the Data Incident.” S.A. ¶ 1.33. The proposed Settlement Class and California Settlement Subclass definitions are the same definitions proposed in the CCAC. *See* ECF No. 25, ¶ 213.

*The Settlement Consideration*

15. Defendant has agreed to establish a one million dollar (\$1,000,000) non-reversionary cash settlement fund (the “Settlement Fund”), which will be used first to pay all approved attorneys’ fees and expenses, the approved costs of settlement administration and notice, and any approved service awards. The remaining funds will then be applied until exhausted in the following order: (1) to claims for out-of-pocket loss reimbursement up to \$5,000 per valid claim, (2) cash payments to California Subclass members up to \$100 per valid claim, and (3) *pro rata* cash payments of money remaining in the Settlement Fund to all individuals submitted a Valid Claim. S.A. ¶¶ 1.32, 2.3<sup>1</sup>

16. The first category of payments is designed to provide reimbursement for any out-of-pocket losses fairly traceable to the Data Incident and to compensate Class Members for time spent dealing with the effects of the Data Incident. Ordinary expense reimbursements can be claimed at up to \$5,000 per Class Member.

17. California Settlement Subclass Members are eligible for a separate damages award. The amount awarded to California Settlement Subclass Members who submit a Valid Claim shall be \$100. This amount may be *pro rata* decreased if insufficient funds remain in the Settlement Fund following the payment of Attorneys’ Fees and Expenses, any Service Award, the Cost of Claims Administration, and claims for Out-of-Pocket Losses. S.A. ¶ 2.3.2.

18. All Settlement Class Member may file a claim for \$100.00. S.A. ¶ 2.3.3. The amount of this benefit shall be *pro rata* increased or decreased based on the funds remaining in the Settlement

---

<sup>1</sup> The Settlement Fund will not be used to pay for the Credit Monitoring and Identity-Protection Services Benefits or Business Practice Commitments, explained in ¶¶ 2.4 and 2.5 of the Settlement Agreement, respectively. Nor shall it be used to pay for the required CAFA Notice. S.A. ¶ 1.32.

Fund following the payment of Attorneys' Fees and Expenses Award, any Service Award, the Costs of Claims Administration, claims for Out-of-Pocket Losses, and the CCPA Payments. *Id.*

19. In addition to the potential cash benefits outlined above, all Settlement Class members will be provided access to credit monitoring and identity-protection services through Experian for a period of 12 months from the date a member of the Settlement Class claims an offer for Experian Monitoring Services as provided on the Short Notice. S.A. ¶ 2.4. These services shall be added consecutively to any credit monitoring services that a class member has already received from Ethos as a result of the Data Incident. These services include: (1) identity theft insurance (with a \$1,000,000 policy limit); (2) real-time credit monitoring services; and (3) access to fraud resolution agents. *Id.* The activation codes for Experian Monitoring Services will be provided to every Settlement Class member on their Short Notice. *Id.* Ethos will pay for the costs for such services separate and apart from the Settlement Fund, with the costs to be negotiated between Ethos and Experian. *Id.* Credit Monitoring Services can be obtained by all Settlement Class members without the need to file a claim with the Claims Administrator and regardless of whether they submit a claim for a monetary payment under the settlement. *Id.*

20. Experian Monitoring Services, offered retail to consumers on Experian's website, are offered at a price of \$24.99 per month, or \$299.88 per year, per person.

21. In addition to the foregoing settlement benefits, Ethos has agreed to implement and/or maintain certain reasonable steps to adequately secure its systems and environments, including taking the steps listed in the Settlement Agreement. S.A. ¶ 2.5. These Business Practice Commitments, which costs are separate and apart from the Settlement Fund, shall remain in place for at least three (3) years following the date the Court finally approves the settlement. Based upon undersigned counsels' independent research and previous experience, these changes will benefit those members of the Settlement Class whose information remains in Ethos' possession, and also other customers who make purchases from Ethos in the future.

22. Counsel for Ethos has represented to me that Ethos expects to expend \$470,000 per year, or \$1,410,000 on these Business Practice Commitments through the end of the three-year commitment period.

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DECLARATION OF M. ANDERSON BERRY IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Case No. 3:22-cv-09203

### III. NOTICE AND CLAIMS ADMINISTRATION

23. The Parties have agreed to the appointment of Kroll Settlement Administration, LLC (“Kroll”) as the Claims Administrator and a robust notice program to be administered by Kroll. Kroll is a nationally recognized and well-respected third-party class administrator that will use all reasonable efforts to provide direct and individual notice to each potential Settlement Class Member via email or mail.

24. Kroll was selected as the lowest bidder after the Parties solicited blind, competitive bids from three experienced and reputable claims administrators. Kroll has a trusted and proven track record of supporting thousands of class action administrations, with over 50 years of legal administration experience.

25. The cost of class notice and settlement administration will be paid from the Settlement Fund (subject to Court approval).

26. Proposed Class Counsel have proposed notice forms and a notice program that comports with due process and provides the best notice practicable to Class Members.

27. The Claims Administrator has estimated that notice and administration costs will total approximately \$97,987.

28. In an attempt to obtain a higher claims rate, the Parties have negotiated a robust notice program. No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Claims Administrator with the names, and any last known physical address of each member of the Settlement Class (collectively, “Class Member Information”) that Defendant possesses. The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement or provide all data and information in its possession to the Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information. The Claims Administrator shall delete all information associated with this Litigation when it no longer has a legal requirement to retain such data.



29. Notice will be given to the Settlement Class via individual notice, which will be given primarily by mailing (via first-class U.S. Mail) the Short Form Notice (S.A., Ex. C) to the postal addresses associated with Class Members for whom Ethos has mailing addresses. In the event that a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice. In the event a notice is “returned to sender” without a forwarding address, the Settlement Administrator will perform a skip trace on the Class Member and attempt to locate a valid address so that the notice can be resent. The Settlement Administrator will also send the Short Form Notice via email to every Settlement Class Member for whom Ethos has a valid email address.

30. Before the dissemination of the Short Notice, the Claims Administrator shall establish a settlement website ([www.EthosSettlement.com](http://www.EthosSettlement.com)) that will inform members of the Settlement Class of the terms of the Settlement Agreement, their rights, dates, and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, relevant case filings. The Long Form Notice (S.A., Ex. B) will also be posted on the settlement website along with other important documents such as the Claim Form (S.A., Ex. A); the Preliminary Approval Order (S.A., Ex. D); the Settlement Agreement; the operative Amended Class Action Complaint filed in the Litigation; and any other materials agreed upon by the Parties and/or required by the Court.

31. The notice documents are clear and concise and directly apprise Class Members of all the information they need to know to make a claim or to opt-out or object to the Settlement. Fed. R. Civ. P. 23(c)(2)(B).

32. Furthermore, a toll-free number with interactive voice response, FAQs, and an option to speak to a live operator will be made available to address Class Members’ inquiries. S.A. ¶ 3.3.

33. The proposed Notices advise Settlement Class Members of the pendency of the action, including: the nature of the action and a summary of the claims; the essential terms of the Settlement; the rights of Settlement Class Members to share in the recovery or to request exclusion from the Class; the rights of Settlement Class Members to object to the Settlement and to appear before the Court at the Final Approval Hearing; and will provide the date, time, and place of the Final Approval Hearing. If the

Final Approval Hearing is continued, Proposed Class Counsel will ensure that the settlement website is updated with the new Final Approval Hearing information. The Notices also contain information regarding Plaintiffs' anticipated application for an award of attorneys' fees, reimbursement of expenses and Representative Plaintiffs' Service Awards as well as the claims process.

34. In my and my co-counsel's experience with data breach cases and in consultation with Kroll about the claims process in this case, we anticipate that there will be a claims rate in this case of between 1-10 percent of the Class.

35. The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service awards to Class Representative Plaintiffs until after the substantive terms of the Settlement had been agreed upon; other than that Defendant would pay reasonable attorneys' fees, costs, expenses, and a service awards to Plaintiffs as ordered by the Court.

36. Proposed Class Counsel have agreed not to request more than one-third of the Settlement Fund as reimbursement for attorneys' fees, nor more than \$20,000 for reimbursement of Class Counsel's costs and expenses.

37. Taken together with the value of the Business Practice Commitments, the amount of attorneys' fees that will be requested will be less than 13.83 percent of the total value of the Settlement to the Settlement Class, not even accounting for the value of the additional credit monitoring and identity-protection services being offered to the Class.

38. Class Counsel have accrued a lodestar that will fully support the requested fees, and that includes the time spent investigating the Data Incident pre-suit, pre-mediation informal discovery and investigation, extensive settlement negotiations, communicating with Plaintiffs, finalizing the terms of the Settlement Agreement, drafting and filing preliminary approval filings, and continuing to communicate with Plaintiffs. Class Counsel anticipate accruing additional lodestar totals to get this case through settlement administration, final approval, appeal and any other hearings the Court may request. Class Counsel will submit all the necessary supporting documentation for the accrued lodestar (including detailed billing records coded with the ABA task codes) in connection with the motion for attorneys' fees.

39. Class Counsel's lodestar to date is roughly 426.8 hours, which at their usual and customary billing rates equates to a total of \$281,536.40.

40. Proposed Class Counsel's fee request is well within the range of reasonableness for Settlements of this nature and size.

41. Defendant, in conjunction with Kroll, will pay the cost of serving notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, within the timelines specified by 28 U.S.C. § 1715(b).

42. Proposed Class Counsel also anticipate applying for Representative Plaintiff Service Awards in the amount of \$2,000 for each of the Representative Plaintiffs in recognition of the time and effort they expended pursuing claims that benefited the Settlement Class. *See* S.A. ¶ 7.3.

43. Representative Plaintiffs in this case have been vital in litigating this matter, including providing their personal information to Proposed Class Counsel. Furthermore, the Representative Plaintiffs have no conflicts with the Settlement Class; have participated actively in the case; and are represented by attorneys experienced in class action litigation, including data breach cases. The Representative Plaintiffs have been personally involved in the case and support the Settlement. The class representatives diligently represented the class by taking the initiative to commence this litigation, reviewing and approving the pleadings, and staying abreast of developments in the case.

44. If the Court approves the Settlement, the Parties will request that the Court enter the Final Approval Order and Judgment, releasing all claims that were or could have been asserted against Defendant in this litigation. The Proposed Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and providing for notice is attached to the Settlement Agreement as Exhibit D.

#### **IV. RECOMMENDATION OF PROPOSED CLASS COUNSEL**

45. Plaintiff's Counsel at Clayco C. Arnold, APC; Markovitz, Stock & Demarco, LLC; Milberg Coleman Bryson, Phillips, Grossman; Morgan & Morgan and Turke & Strauss LLP each have considerable experience in class action litigation, including the prosecution and resolution of consumer class actions and substantial experience with data breach litigation, including over 100 data breach class action litigations in state and federal courts across the United States. Our respective law firm resumes, as well as those of our colleagues, are attached hereto as Exhibits A, B, C, D, and E.

46. Proposed Class Counsel's collective experience in similar types of privacy and data protection practices provided substantive knowledge on the subject to enable Proposed Class Counsel to represent Plaintiffs' and Class Members' interests without expending hundreds of hours and enormous financial resources to come up to speed on the subject area.

47. Proposed Class Counsel believe Plaintiffs have a strong case for liability. With respect to Plaintiffs' negligence claim, Proposed Class Counsel believe they will ultimately be able to offer evidence that Defendant was negligent in failing to maintain reasonable and current data security programs and practices, which led directly to the loss of Plaintiffs' and the Class's PII.

48. Proposed Class Counsel believe Plaintiffs' claims are viable and that Plaintiffs have a reasonably good chance of proving that Ethos' data security was inadequate and that, if they establish that central fact, Ethos is likely to be found liable under at least some of the liability theories and statutory and common law claims Plaintiffs pled in their CCAC. While Plaintiffs believe they have strong claims and would be able to prevail, their success is not guaranteed. It is "plainly reasonable for the parties at this stage to agree that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication." *Dennis v. Kellogg Co.*, No. 09-cv-1786-L(WMc), 2013 WL 6055326, at \*3 (S.D. Cal. Nov. 14, 2013). "Here, as with most class actions, there was risk to both sides in continuing towards trial. The settlement avoids uncertainty for all parties involved." *Chester v. TJX Cos.*, No. 5:15-cv-01437-ODW(DTB), 2017 WL 6205788, at \*6 (C.D. Cal. Dec. 5, 2017). Given the heavy obstacles and inherent risks Plaintiffs face with respect to the novel claims in data breach class actions, including class certification, summary judgment, and trial, the substantial benefits the Settlement provides favors preliminary approval of the Settlement.

49. This Settlement more likely than not provides relief that will equal 100 percent of the compensable losses sustained by a Class Member who submits a valid claim. Based on Proposed Class Counsel's experience in prior similar cases, and with the claims rates in those cases, the relief obtained should be sufficient to recompense the valid individual claims filed by Class Members. Moreover, every Class Member is eligible to receive both an additional *pro rata* cash payment and the identity theft protection benefit offered by this Settlement regardless of whether they suffered any other identifiable harm fairly traceable to this Data Incident. This ensures that every Settlement Class member is receiving

1 consideration for the release he or she is giving. Therefore, given the risks and uncertainties inherent  
 2 with continued litigation, Proposed Class Counsel believes this is a strong result and provides a  
 3 substantial benefit to the Settlement Class.

4 50. Proposed Class Counsel, on behalf of Plaintiffs, vigorously and aggressively gathered all  
 5 of the information that was available regarding Ethos and the Data Incident—including publicly-  
 6 available documents concerning announcements of the Data Incident and notice of the Data Incident to  
 7 its customers. The Parties also informally exchanged non-public information concerning the Data  
 8 Incident and the size of the Class in preparation for a successful mediation.

9 51. In negotiating this Settlement, Proposed Class Counsel have considered the relative  
 10 benefits of settlement in relation to the risks of litigation. If Plaintiffs had prevailed at trial, they would  
 11 have sought recovery for their out-of-pocket losses and the cost of obtaining credit monitoring. Plaintiffs  
 12 believe that the \$5,000 cap for out-of-pocket expenses will likely make each class member whole.  
 13 According to the Federal Trade Commission's Identity Theft Survey Report, 85% of identity theft  
 14 victims report the misuse of existing accounts and 17 percent of victims report new accounts being  
 15 opened in their name. For those identity theft victims who had misuse of existing accounts, the average  
 16 out-of-pocket loss was \$500, while the average loss for improperly opened accounts was \$1,200. *Id.*  
 17 Moreover, only a maximum of 6 percent of those who had improper use of existing accounts had out-  
 18 of-pocket losses of \$1,000 or above, and 16 percent of those that had accounts opened in their name had  
 19 losses of \$1,000 or above. This recovery for out of pocket losses is then combined with the *pro rata*  
 20 cash payment to make Class Members whole. Thus, while Plaintiffs acknowledge that there could be  
 21 individuals who would be able to achieve greater recovery if this matter went to trial, the overwhelming  
 22 number of eligible Class Members will have the opportunity to be made whole by this Settlement.

23 52. With respect to statutory damages under the CCPA, if successful at trial, the  
 24 approximately 1,302 California Subclass Members would each be entitled to between \$100 and \$750  
 25 per individual. Cal. Civ. Code Ann. § 1798.150(a)(1)(A)). This is between approximately \$130,200 and  
 26 \$976,500 total. However, ordinarily under the CCPA, a plaintiff is entitled to the greater of actual or  
 27 statutory damages, but not both. *See id.* Here, California Subclass Members are eligible to receive \$100,  
 28 plus credit monitoring, the reimbursement of actual losses, and a *pro rata* share of any remaining funds.

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DECLARATION OF M. ANDERSON BERRY IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION  
 FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Case No. 3:22-cv-09203

53. Proposed Class Counsel have also negotiated this Settlement to comply in all respects with the relevant case law and the Federal Rules of Civil Procedure. Having worked on behalf of the putative class since the Data Incident was first announced, evaluated the legal and factual disputes, and dedicated significant time and monetary resources to this litigation, Proposed Class Counsel endorse the Settlement without reservation. Proposed Class Counsel believe that, considering the relative benefits of settlement at this time on the terms offered in comparison to the risk of a less favorable outcome, taking into account the considerable risk, expense and delay involved in obtaining an order certifying a consumer class action such as this one, and the prospects of prevailing on a motion to compel arbitration and dismiss, at trial and on appeal, the proposed Settlement meets the standards for preliminary approval in that the Court will likely be able to approve the Settlement as fair, reasonable adequate and certify the class for purposes of settlement. Proposed Class Counsel respectfully request that the Court grant preliminary approval so that notice can be issued to the Settlement Class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23rd day of June 2023, at Sacramento, California.



M. ANDERSON BERRY (SBN 262879)

# EXHIBIT A



## **Arnold Law Firm Biography**

### **Sacramento Office**

865 Howe Avenue  
Sacramento, CA 95825  
916-777-7777  
916.239.4778 (d)  
415.595.3302 (c)

### **Los Angeles Office**

6200 Canoga Ave, Ste 375,  
Woodland Hills, CA 91367  
Phone: 747.777.7748

**[justice4you.com](http://justice4you.com)**



Founded in 1975 by Clayeo C. Arnold, the Arnold Law Firm is a litigation-oriented practice in Sacramento, California. In keeping with its founding principles, our firm consciously works for the interests of individual people and small businesses — not for large corporations or insurance companies.

The Arnold Law Firm prosecutes class action, mass tort, *qui tam*, product defect, employment, and personal injury cases. We pride ourselves on being a practice of trial lawyers, typically trying a minimum of ten cases per year to verdict. In addition to our practice throughout the state of California in both state and federal courts, we pursue class action, *qui tam* and multi-district litigation claims on a nationwide basis.

Our team of nine attorneys collectively encompass a broad, diverse professional background, including plaintiff contingency work, public entity representation, criminal defense, and civil defense. We have current and past board members of Capital City Trial Lawyers Association, as well as members of numerous prestigious professional organizations, including the American Board of Trial Advocates, American Association for Justice, Association of Trial Lawyers of America, and Consumer Attorneys of California.

Our firm's operating structure is based on teams directed towards specific practice areas. These teams regularly and intentionally collaborate and exchange information between their practice areas to improve the quality of representation for all of our clients.





## **Arnold Law Firm Biography**

(continued)

Over four decades the Arnold Law Firm has developed a respected and extensive network of co-counsel and experienced contract counsel to rapidly expand our capabilities as necessary on an *ad hoc* basis (e.g., document review). We employ a robust staff of highly qualified, experienced assistants and paralegals to ensure that attorney time is spent in the most efficient manner possible.

The Arnold Law Firm employs technology to increase productivity, resulting in lower hourly billing, even though adverse parties eventually pay those bills. The firm increases efficiencies by using template software, client management software, and secure internet-based client management for mass tort or multi-plaintiff litigation. We also invest in appropriate billing and tracking software for contemporaneous hourly record keeping.

The Arnold Law Firm places substantial value on representing clients in a manner that is both effective and courteous. Integrity with clients, the courts, and adverse counsel are all considered to be as indispensable as successful results.

Our highly accomplished counsel has a long history of successfully handling class actions across a range of industries, including data breach cases.



## M. Anderson Berry Biography



The Arnold Law Firm has a proven track record of success and the ability to work efficiently and cooperatively with others. In addition, our firm has the availability and resources necessary to litigate complex class actions.

### M. Anderson Berry

M. Anderson Berry heads the data breach complex litigation and *qui tam* practices for the Arnold Law Firm. He brings substantial experience in complex litigation matters with a history of litigating in an efficient and practical manner, including Lead Class Counsel, Co-Lead Class Counsel, and Plaintiff's Executive Committee.

Mr. Berry has an extensive background in privacy and consumer/government fraud litigation, actively participating in a currently sealed False Claims Act case involving widespread cybersecurity fraud upon the United States, and the class action litigations filed in federal courts across the nation, set out below.

Mr. Berry was first selected as the Northern California Super Lawyers Rising Star in 2015 in the field of complex civil litigation.

Before joining the Arnold Law Firm in 2017, Mr. Berry worked as an Assistant United States Attorney for the Eastern District of California. As part of the Affirmative Civil Enforcement unit, Mr. Berry handled a wide variety of complex cases, recovering millions of dollars for the United States.

Before working for the Department of Justice, Mr. Berry practiced at one of the world's largest law firms, Jones Day, where he represented clients in international arbitration and complex commercial litigation, including defending class action allegations.



## M. Anderson Berry Biography

(continued)

Mr. Berry attended the University of California, Berkeley, where he majored in English and graduated with highest honors. Anderson was inducted into the Phi Beta Kappa Honor Society and served as President of the English Undergraduate Associate.

After working as a private investigator for both criminal and civil investigations in the San Francisco Bay Area, Anderson graduated from U.C. Berkeley School of Law, where he was a Senior Editor for both the *Berkeley Journal of Criminal Law* and *Berkeley Journal of International Law*.

He was admitted to the California Bar in 2009 and is admitted to practice in the Northern, Eastern, Southern and Central Districts of California. Mr. Berry is also admitted to practice in the Northern District of Illinois, the Eastern District of Michigan and the Southern District of Indiana.

Mr. Berry was raised in Moraga, California.

### Select Data Breach Cases

*In Re: Snap Finance Data Breach*, 2:22-cv-00761-TS-JCB  
(D.UT.) (Co-Lead Counsel)

*Holmes v. Elephant Insurance Company, et al.*, 3:22-cv-  
00487-JAG (E.D. VA.) (Co-Lead Counsel);

*In Re: Arthur J. Gallagher Data Breach Litigation*, 1:21-cv-  
-04056 (N.D.Ill.) (Co-Lead Counsel);

*In Re: CaptureRx Data Breach Litigation*, 5:21-cv-00523  
(W.D.TX.)(Co-Lead Counsel) (settled);

*Rossi v. Claire's Stores*, 1:20-cv-05090 (N.D. Ill.) (Co-Lead  
Counsel) (settled);

*Desue v. 20/20 Eye Care Network, Inc. et al.*, 0:21-cv-  
61275 (S.D. Fla.) (Executive Comm.);

*In re: Mednax Services, Inc. Customer Data Security  
Breach Litigation*, 21-MD-02994 (S.D. Fl.) (Executive  
Comm.);



**M. Anderson Berry  
Biography**

(continued)

*Hashemi et al. v. Bosley, Inc.* 2:21-cv-00946 (CD. Cal.)  
(Class Counsel) (settled);

*Heath et al. v. Insurance Technologies Corp et al.*,  
3:21-cv-01444 (N.D. Tex.) (Class Counsel) (settled);

*Gilbert v. AFTRA Retirement Fund et al*, 1:20-cv-10834-  
ALC (S.D.N.Y.) (Co-Lead Counsel);

*Carrera Aguillo et al. v. Kemper Corporation et al.*,  
1:21-cv-01883 (N.D. Ill.) (Class Counsel) (settled);

*Ahn et al. v. Herff Jones, LLC*, 1:21-cv-01381 (S.D. Ind.)  
(settled);

*Bitmouni v. Paysafe Limited*, 3:21-cv-00641-JCS  
(N.D. Cal.);

*Edke v. Belden, Inc.*, 2021CH00047 (E.D.Mo.);

*Marcaurel et al. v. USA Waste-Management Resources,  
LLC et al.*, 4:21-cv-02027 (S.D. Tex.) (settled).

*Gaston v. FabFitFun, Inc.*, 2:20-cv-09534 (C.D. Cal.)  
(Class Counsel) (settled);

*Hamid et al. v. Canon, U.S.A., Inc. et al.* 1:20-cv-06380-  
AMD-SJB (E.D.N.Y.);

*In Re: Ambry Genetics Data Breach Litigation*,  
8:20-cv-00791 (C.D. Cal.) (settled);

*In Re: Hanna Andersson and Salesforce.com Data Breach  
Litigation*, 3:20-cv-00812-EMC (N.D. Cal.) (Co-Lead  
Class Counsel) (settled);

*In Re: Morgan Stanley Data Security Litigation*,  
1:20-cv-05914 (S.D.N.Y.) (settled);

*Pfeiffer et al. v. RadNet, Inc.*, 2:20-cv-09553-RGK-SK  
(C.D. Cal.)(Class Counsel) (settled);

*Thomsen v. Morley Companies, Inc.*, 1:22-cv-10271-TLL  
(E.D. Mi.) (settled);

*In re Lakeview Loan Servicing Data Breach Litigation*,  
1:22-cv-20955-DPG (S.D. Fl.);

*Myron Schellhorn et al v. Timios, Inc.*, 2:21-cv-08661-VAP  
-JC (C.D. Ca.) (settled).

# EXHIBIT B



MARKOVITS  
STOCK  
DeMARCO

### **MARKOVITS, STOCK & DeMARCO, LLC**

Markovits, Stock & DeMarco, LLC is a boutique law firm whose attorneys have successfully represented clients in some of the largest and most complex legal matters in U.S. history. Our deep and varied experience extends from representing businesses, public pension funds, and individuals in federal and state courts across the nation, to successfully arguing appeals at the highest levels of the legal system – including prevailing before the United States Supreme Court. This broad-based litigation and trial expertise, coupled with no overstaffing and overbilling that can typify complex litigation, sets us apart as a law firm. But expertise is only part of the equation.

“Legal success comes only from recognizing a client’s goals and being able to design and effectively execute strategies that accomplish those goals. We understand that every client is different, which is why we spend so much time learning what makes them tick.”

As the business world becomes increasingly complex, you need to be able to trust your law firm to help you make the right decisions. Whether you seek counsel in resolving a current conflict, avoiding a future conflict, or navigating the sometimes choppy state and local government regulatory waters, the lawyers at Markovits, Stock & DeMarco have both the experience and track record to meet your legal needs.

### BILL MARKOVITS

Bill Markovits practices in the area of complex civil litigation, with an emphasis on securities, antitrust, RICO, and False Claims Act cases. Bill began his career as a trial lawyer at the U.S. Department of Justice Antitrust Division in Washington, D.C. He continued a focus on antitrust after moving to Cincinnati, where he became an adjunct professor of antitrust law at the University of Cincinnati Law School. Bill has been involved in the past in a number of notable cases, including: the Choice Care securities, antitrust and RICO class action in which the jury awarded over \$100 million to a class of physicians; a fraud/RICO case on behalf of The Procter & Gamble Company, which resulted in a settlement of \$165 million; an eleven year antitrust and RICO class action against Humana, including appeals that reached the United States Supreme Court, which culminated in a multi-million dollar settlement; and a national class action against Microsoft, in which he was chosen from among dozens of plaintiffs' attorneys to depose Bill Gates. More recently, Bill was: a lead counsel for plaintiffs in the Fannie Mae Securities Litigation that settled for \$153 million; a lead counsel for plaintiffs in a class action against Duke Energy that settled for \$80.75 million; and lead counsel for plaintiff in *Collins v. Eastman Kodak*, where he successfully obtained a preliminary injunction against Kodak on an antitrust tying claim. Based upon the result in *Collins*, Bill was a 2015 finalist in the American Antitrust Institute's Antitrust Enforcement Awards under the category "Outstanding Antitrust Litigation Achievement in Private Law Practice."

Bill has received a number of awards and designations, including current and past designations as a "Best Lawyer in America" in the fields of antitrust and commercial litigation.

### Education:

Harvard Law School, J.D. (1981), cum laude

Washington University, A.B. (1978), Phi Beta Kappa

### Significant and Representative Cases:

- *Collins v. Eastman Kodak*, United States District Court, Southern District of Ohio. Lead counsel representing Collins in antitrust tying claim, resulting in preliminary injunction against Kodak.
- *In Re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, United States District Court, District of Columbia. Co-lead counsel representing Ohio pension funds in securities class action that settled for \$153 million.
- *Ohio Employees Retirement System v. Federal Home Loan Mortgage, aka Freddie Mac, et al.*, United States District Court, Northern District of Ohio, Eastern Division. Special counsel representing Ohio pension fund in securities class action.
- *Williams v. Duke Energy et al.*, United States District Court, Southern District of Ohio. Representing class of energy consumers against energy provider in complex antitrust and RICO class action that settled for \$80.75 million.
- *In Re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, United States District Court, Central District of California. Former member of economic loss lead counsel committee, representing class of consumers in litigation relating to sudden acceleration.
- *In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, United States District Court, Eastern District of Louisiana. RICO workgroup coordinator in class action resulting from oil spill.
- *In Re Microsoft Corp. Litigation*, United States District Court, District of Maryland. Member of co-lead counsel firm in antitrust class action.
- *Procter & Gamble v. Amway Litigation*, United States District Court, Southern District of Texas, at

Houston; United States District Court, District of Utah, at Salt Lake City. Member of trial team representing Procter & Gamble in obtaining jury verdict against Amway distributors relating to spreading of false business rumors.

- *United States ex rel. Brooks v. Pineville Hospital*, United States District Court, Eastern District of Kentucky. One of the lead counsel in successful False Claims Act litigation.
- *Procter & Gamble v. Bankers' Trust Litigation*, United States District Court, Southern District of Ohio. Co-counsel in successful \$165 million settlement; developed the RICO case.
- *United States ex rel. Watt v. Fluor Daniel*, United States District Court, Southern District of Ohio. Co-lead counsel of successful False Claims Act case.
- *Forsyth v. Humana*, United States District Court, District of Nevada. Represented class of consumers in antitrust and RICO class action; successfully argued antitrust appeal; co-chaired successful Supreme Court appeal on RICO.
- *In Re Choice Care Litigation*, United States District Court, Southern District of Ohio, Western Division. Trial attorney on largest antitrust/RICO/securities verdict.

#### **Presentations & Publications:**

- "Implications of Sixth Circuit *Collins Inkjet Corp. v. Eastman Kodak Co. Decision*," American Bar Association panel discussion, December 10, 2015
- "Defining the Relevant Market in Antitrust Litigation," Great Lakes Antitrust Seminar, October 29, 2010
- "Beyond Compensatory Damages – Tread, RICO and The Criminal Law Implications," HarrisMartin's Toyota Recall Litigation Conference, Part II, May 12, 2010
- "The Racketeer Influenced and Corrupt Organizations Act (RICO)," HarrisMartin's Toyota Recall Litigation Conference, March 24, 2010
- "The False Claims Act: Are Healthcare Providers at Risk?," presentation to Robert Morris College Second Annual Health Services Conferences, Integrating Health Services: Building a Bridge to the 21st Century, Moon Township, PA, October 9, 1997
- "The Federal False Claims Act: Are Health Care Providers at Risk?," (Co-Speaker), Ohio Hospital Association, April, 1996
- "A Focus on Reality in Antitrust," Federal Bar News & Journal, Nov/Dec 1992
- "Using Civil Rico and Avoiding its Abuse," Ohio Trial, William H. Blessing, co-author, Summer 1992
- "Antitrust in the Health Care Field," a chapter published in Legal Aspects of Anesthesia, 2nd ed., William H. L. Dornette, J.D., M.D., editor
- *Antitrust Law Update, National Health Lawyers Health Law Update and Annual Meeting (Featured Speaker)*, San Francisco, California, 1989

#### **Affiliations:**

- American Association for Justice
- American Bar Association
- American Trial Lawyers Association
- Cincinnati Bar Association
- District of Columbia Bar Association (non-active)
- Hamilton County Trial Lawyers Association
- National Health Lawyers Association
- Ohio State Bar Association
- Ohio Trial Lawyers Association

#### **Courts Admitted:**

- District of Columbia (1981)
- State of Ohio (1983)
- United States District Court, Southern District of Ohio (1983)
- U.S. Court of Appeals, 6th Circuit (1991)
- U.S. Court of Appeals, 9th Circuit (1995)
- U.S. Supreme Court, United States of America (1998)
- United States District Court, Northern District of Ohio (2008)



### PAUL M. DEMARCO

Paul M. De Marco is a founding member of Markovits, Stock & DeMarco, LLC. He is an Appellate Law Specialist certified by the Ohio State Bar Association and has handled more than 100 appellate matters, including cases before the Supreme Court of the United States, six federal circuits, and five state supreme courts.

Paul's practice also focuses on class actions and other complex litigation. During his 25 years in Cincinnati, Paul has been actively involved in successful litigation related to the U.S. Department of Energy's Fernald nuclear weapons plant, the Lucasville (Ohio) prison riot, Lloyd's of London, defective Bjork-Shiley heart valves, Holocaust-related claims against Swiss and Austrian banks, the Bankers Trust derivative scheme, Cincinnati's Aronoff Center, the San Juan DuPont Plaza Hotel fire, the Procter & Gamble Satanism rumor, the Hamilton County (Ohio) Morgue photograph scandal, defective childhood vaccines, claims arising from tire delamination and vehicle roll-over, racial hostility claims against one of the nation's largest bottlers, fiduciary breach claims against the nation's largest pharmacy benefits manager, and claims arising from the heatstroke death of NFL lineman Korey Stringer.

### Education:

College of Wooster (B.A., 1981)

University of the Pacific, McGeorge School of Law (J.D. with distinction, 1983)

University of Cambridge (1985)

### Significant and Representative Appeals:

- *Arthur Anderson LLP v. Carlisle*, 556 U.S. 624, 129 S.Ct. 1896 (2009): In a case involving allegations of a fraudulent tax shelter and accounting and legal malpractice, the Supreme Court of the United States resolved the issue of the rights of non-parties to arbitration clauses to enforce them against parties, which had divided the circuits.
- *Williams v. Duke Energy International, Inc.*, 681 F.3d 788 (6th Cir. 2012): In a case brought as a class action by a utility's ratepayers for selective payment of illegal rebates to certain ratepayers, the United States Court of Appeals for the Sixth Circuit reversed a district court's dismissal of the excluded ratepayers' claims that the utility violated the RICO statute, the Robinson-Patman Act, and the state corrupt practices act.
- *State of Ohio ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 865 N.E.2d 1289 (2007): The Supreme Court of Ohio upheld the appellate court's issuance of the extremely rare writ of procedendo commanding the trial judge to proceed with a trial on claims he mistakenly believed the previous jury had resolved.
- *Chesher v. Neyer*, 477 F.3d 784 (6th Cir. 2007): The Sixth Circuit affirmed the district court's rejection of qualified immunity defenses raised by the Hamilton County (Ohio) coroner, his chief deputy, the coroner's administrative aide, a staff pathologist, and a pathology fellow in connection with the Hamilton County Morgue photo scandal.
- *State of Ohio ex rel. CNG Fin'l Corp. v. Nadel*, 111 Ohio St.3d 149, 855 N.E.2d 473 (2006): The Supreme Court of Ohio affirmed the appellate court's refusal to issue a writ of procedendo commanding the trial judge to halt injunctive proceedings and decide an arbitration issue.
- *Smith v. North American Stainless, L.P.*, 158 F. App'x. 699 (6th Cir. 2006): Rejecting a steel manufacturer's "up-the-ladder" immunity defense, the United States Court of Appeals for the Sixth Circuit reversed the district court's dismissal of a wrongful claim brought by the widow and estate of a steel worker killed on the job.
- *Procter & Gamble Co. v. Haugen*, 427 F.3d 727 (10th Cir. 2005): The United States Court of Appeals for the Tenth Circuit reversed the district court's dismissal of Procter & Gamble's Lanham Act claims, paving the way for a \$19.25 million jury verdict in its favor.

- *Roetenberger v. Christ Hospital*, 163 Ohio App.3d 555, 839 N.E.2d 441 (2005): In this medical malpractice action for wrongful death, the Ohio court of appeals reversed the jury verdict in the physician's favor due to improper arguments by his attorney and instructional error by the trial court.
- *City of Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 768 N.E.2d 1136 (2002): In this landmark decision on public nuisance law, the Supreme Court of Ohio held that a public nuisance action could be maintained for injuries caused by a product — in this case, guns — if the design, manufacture, marketing, or sale of the product unreasonably interferes with a right common to the general public.
- *Norgard v. Brush Wellman, Inc.*, 95 Ohio St.3d 165, 766 N.E.2d 977 (2002): In an employee's intentional tort action alleging that his employer subjected him to long-term beryllium exposure, the Supreme Court of Ohio ruled that a cause of action for an employer intentional tort accrues when the employee discovers, or by the exercise of reasonable diligence should have discovered, the workplace injury and — here's the ground-breaking part of the holding — the wrongful conduct of the employer.
- *Wallace v. Ohio Dep't of Commerce*, 96 Ohio St.3d 266, 773 N.E.2d 1018 (2002): In overturning the dismissal of a suit against the state fire marshal for negligently inspecting a fireworks store that caught fire killing nine people, the Supreme Court of Ohio held for the first time that the common-law public-duty rule cannot be applied in cases against the state in the Ohio Court of Claims.

#### Courts Admitted:

- |                                      |  |
|--------------------------------------|--|
| • Ohio                               | • U.S. Court of Appeals, 10th Circuit                  |
| • California                         | • U.S. District Court, Southern District of Ohio       |
| • Supreme Court of the United States | • U.S. District Court, Northern District of Ohio       |
| • U.S. Court of Appeals, 1st Circuit | • U.S. District Court, Eastern District of California  |
| • U.S. Court of Appeals, 4th Circuit | • U.S. District Court, Central District of California  |
| • U.S. Court of Appeals, 5th Circuit | • U.S. District Court, Southern District of California |
| • U.S. Court of Appeals, 6th Circuit | • U.S. Court of Federal Claims                         |
| • U.S. Court of Appeals, 7th Circuit |  |
| • U.S. Court of Appeals, 9th Circuit |  |

Since 1994, Paul has worked to promote professional responsibility among lawyers, serving first as a member and eventually the chair of the Cincinnati Bar Association Certified Grievance Committee, and since 2008 as a member of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

He also is a member of many legal organizations, including the Federal Bar Association, Ohio State Bar Association, Cincinnati Bar Association, American Bar Association, ABA Council of Appellate Lawyers, and the Cincinnati Bar Association's Court of Appeals Committee.

Paul was one of the founders of the Collaborative Law Center in Cincinnati, a member of Cincinnati's Citizens Police Review Panel (1999-2002), and a member of Cincinnati CAN and its Police and Community Subcommittee following the 2001 riots.

He currently serves on the boards of the Ohio Justice and Policy Center and the Mercantile Library and on the advisory committees of the Fernald Community Cohort and the Fernald Workers' Medical Monitoring Program.

**TERENCE R. COATES**

Terry Coates is Markovits, Stock & DeMarco's managing partner. His legal practice focuses on personal injury law, sports & entertainment law, business litigation and class action litigation. Mr. Coates is currently participating as a member of plaintiffs' counsel in the over 60 data breach cases pending around the country, including serving as co-lead counsel for plaintiff in *Migliaccio v. Parker Hannifin Corp.*, No. 1:22-CV-00835 (N.D. Ohio) (court-appointed co-lead counsel for preliminarily-approved \$1.75 million class action settlement); *Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.) (court-appointed co-lead counsel for preliminarily-approved class action settlement); *Abrams v. Savannah College of Art & Design*, No. 1:22-CV-04297 (N.D. Ga.) (court-appointed co-lead counsel for preliminarily-approved class action settlement); *John v. Advocate Aurora Health, Inc.*, No. 22-CV-1253-JPS (E.D. Wis.) (court-appointed interim co-lead class counsel); *In re U.S. Vision Data Breach Litigation*, No. 22-cv-06558 (D. N.J.) (same); *Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00185 (S.D. Ohio) (same); *Rodriguez v. Professional Finance Company, Inc.*, No. 1:22-cv-1679 (D. Colo.) (same); *Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495 (N.D. Ga.; court-appointed interim class counsel); *Tracy v. Elekta, Inc.*, No. 1:21-cv-02851-SDG (N.D. Ga.; court-appointed interim class counsel).

**Education:**

Thomas M. Cooley Law School, J.D. (2009)

Wittenberg University, B.A. (2005)

**Representative Cases:**

- *Bechtel v. Fitness Equipment Services, LLC*, No. 1:19-cv-726-KLL (S.D. Ohio) (\$3.65 million common fund settlement finally approved on September 20, 2022);
- *Bowling v. Pfizer, Inc.*, Case No. C-1-95-256 (S.D. Ohio) (Class Counsel for recipients of defective mechanical heart valves including continued international distribution of settlement funds to remaining class members);
- *Collins Inkjet Corp. v. Eastman Kodak Company*, Case No. 1:13-cv-0664 (S.D. Ohio) (trial counsel for Collins in an antitrust tying claim resulting in a preliminary injunction against Kodak – a decision that was affirmed by the Sixth Circuit Court of Appeals: *Collins Inkjet Corp. v. Eastman Kodak Co.*, 781 F.3d 264 (6th Cir. 2015));
- *Day v. NLO, Inc.*, Case No. C-1-90-67 (S.D. Ohio) (Class Counsel for certain former workers at the Fernald Nuclear weapons facility; the medical monitoring program continues);
- *In re Fannie Mae Securities Litigation*, Case No. 1:04-cv-1639 (D.D.C.) (represented Ohio public pension funds as Lead Plaintiffs in Section 10b securities class action litigation resulting in a \$153 million court-approved settlement);
- *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litigation*, MDL No. 2151 (C.D. Cal.) (represented plaintiffs and prepared class representatives for deposition testimony resulting in a court-approved settlement valued in excess of \$1.5 billion);
- *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, Case No. 09-1967 (N.D. Cal.) (represented NCAA, Olympic, and NBA legend, Oscar Robertson, in antitrust claims against the National Collegiate Athletic Association (NCAA), Collegiate Licensing Company (CLC), and Electronic Arts (EA) leading to a \$40 million settlement with EA and CLC and the Court issuing a permanent injunction against the NCAA for unreasonably restraining trade in violation of antitrust law);
- *Linneman v. Vita-Mix Corp.*, Case No. 14-cv-748, (S.D. Ohio) (Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement);
- *Ryder v. Wells Fargo Bank, N.A.*, No. 1:2019-cv-00638 (S.D. Ohio) (member of class counsel in a \$12 million settlement on behalf of roughly 1,830 class members);

- *Shy v. Navistar International Corp.*, No. 92-cv-0333-WHR (S.D. Ohio) (class counsel for a class action settlement valued at over \$742 million);
- *Walker v. Nautilus, Inc.*, No. 2:20-cv-3414-EAS (S.D. Ohio) (\$4.25 million common fund settlement finally approved on June 28, 2022);
- *Williams v. Duke Energy*, Case No. 1:08-cv-00046 (S.D. Ohio) (representing class of energy consumers against energy provider in complex antitrust and RICO class action resulting in the court granting final approval of an \$80.875 million settlement); and,
- *Ohio Public Employees Retirement System v. Federal Home Loan Mortgage ("Freddie Mac")*, Case No. 4:08-cv-0160 (N.D. Ohio) (Special counsel for Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation).

#### **Community Involvement:**

- Cincinnati Academy of Leadership for Lawyers (CALL), Class XXI, *Participant* (2017)
- Cincinnati Chamber of Commerce C-Change Class 9, *Participant* (2014)
- Cincinnati Chamber of Commerce, *Ambassador* (2014)
- Cincinnati Athletic Club, *President* (2015-2017)
- Cincinnati Athletic Club, *Vice President* (2014-2015)
- Cincinnati Bar Association, Board of Trustees, *Trustee* (2019-present)
- Cincinnati Bar Association, Board of Trustees, *Executive Committee* (2021-present)
- Cincinnati Bar Association, *Membership Services & Development Committee* (2014-present)
- Cincinnati Bar Association, *Run for Kids Committee* (2009-2014)
- Cincinnati Bar Association, *Social Committee* (2011-2014)
- Clermont County Humane Society, *Board Member* (2014-2017)
- Clermont County Humane Society, *Legal Adviser* (2017-present)
- Potter Stewart Inn of Court, *Executive Director* (2021-present)
- Summit Country Day High School, *Mock Trial Adviser* (2013-2016)
- St. Peter in Chains, Cathedral, Parish Council (2014-2017)

#### **Recognitions:**

- Super Lawyers, Rising Star (2014 – present)
- Best Lawyers in America, Commercial Litigation (2020-present)
- Wittenberg University Outstanding Young Alumnus Award (2014)
- Cincinnati Bar Association, Young Lawyers Section Professionalism Award (2015)
- JDRF Bourbon & Bow Tie Bash, *Young Professional (Volunteer) of the Year* for the Flying Pig Marathon (2016)
- Cincinnati Business Courier, Forty Under 40 (2019)
- Cincinnati Cystic Fibrosis Foundation, Cincinnati's Finest Honoree (2020)

#### **Courts Admitted:**

- State of Ohio (2009)
- United States District Court, Southern District of Ohio (2010)
- United States District Court, Northern District of Ohio (2010)
- United States District Court, Eastern District of Michigan (2021)
- United States District Court, District of Colorado (2022)
- United States District Court, Eastern District of Wisconsin (2022)
- United States District Court, Western District of Michigan (2023)
- United States Court of Appeals, Sixth Circuit (2018)

**JUSTIN C. WALKER**

Justin C. Walker is Of Counsel at Markovits, Stock & DeMarco. Justin's practice areas are focused on complex civil litigation and constitutional law, with an emphasis on consumer fraud and defective products. Before joining Markovits, Stock & DeMarco in April 2019, Justin practiced at the Finney Law Firm, a boutique law firm specializing in complex litigation and constitutional law. At the beginning of his legal career, Justin served as a judicial extern for Senior United States District Judge Sandra S. Beckwith before taking a full-time position as a law clerk and magistrate in the Hamilton County Ohio Court of Common Pleas for the Honorable Norbert A. Nadel. After completing his clerkship, Justin took a position as a prosecutor, serving as first chair for multiple jury trials. Justin then entered private practice, shifting his practice to focus on litigation matters.

**Education:**

University of Cincinnati, J.D. (2005)

Miami University, B.S. (2001)

**Courts Admitted:**

- State of Ohio (2005)
- U.S. Court of Appeals, 6th Circuit (2017)
- U.S. District Court, Southern District of Ohio (2008)
- U.S. Bankruptcy Court, Southern District of Ohio (2009)

**Representative Cases:**

- *Linneman v. Vita-Mix Corp.*, Case No. 15-cv-748, United States District Court, Southern District of Ohio (Co-Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement).
- *Baker v. City of Portsmouth*, Case No. 1:14-cv-512, 2015 WL 5822659 (S.D. Ohio Oct. 1, 2015) (Co-Counsel for a class of property owners, the Court ruled that City violated the Fourth Amendment when it required property owners to consent to a warrantless inspection of their property or face a criminal penalty where not valid exception to the warrant requirement exists).
- *E.F. Investments, LLC v. City of Covington, Kentucky*, Case No. 17-cv-00117-DLB-JGW, United States District Court, Eastern District of Kentucky (Lead Counsel on case brought on behalf of local property owners, contending that City's rental registration requirements violated the Fourth Amendment resulting in a settlement).
- *State of Ohio ex rel. Patricia Meade v. Village of Bratenahl*, 2018-04409, Supreme Court State of Ohio (Co-Counsel on behalf of local taxpayer contending that Defendant's violated Ohio Open Meetings Law).
- *Dawson v. Village of Winchester*, United States District Court, Southern District of Ohio (Lead Counsel represented Plaintiff claiming Federal Civil Rights violations due to unconstitutional arrest and detainment).

**Affiliations and Presentations:**

- Cincinnati Bar Association
- Clermont County Bar Association
- American Association for Justice
- "Municipal Bankruptcy: Chapter 9 – Should Cincinnati Consider Filing for Bankruptcy"
- "Ohio CLE Introduction to Bankruptcy for Lawyers CLE"

### CHRISTOPHER D. STOCK

Chris's legal practice focuses on securities class action and multi-district products liability litigation, as well as appellate advocacy. Serving as a judicial law clerk for Ohio Supreme Court Justice Terrence O'Donnell gave Chris invaluable insight into how courts synthesize and deconstruct legal arguments. Since then, Chris has briefed and argued numerous cases before the United States Court of Appeals for the Sixth Circuit, the Ohio Supreme Court, and Ohio appellate courts, including obtaining a rare summary reversal from the United States Supreme Court.

Chris also served as both Deputy First Assistant Attorney General and Deputy State Solicitor for Ohio Attorney General Jim Petro. In these positions, Chris was principal counsel to the Attorney General on a wide variety of legal and policy-oriented issues, including numerous constitutional and regulatory matters arising from state agencies, boards, and commissions. Prior to his service in state government, Chris was an attorney at a 500-lawyer nationally-recognized law firm.

He received multiple designations as an Ohio Super Lawyers "Rising Star." This distinction is awarded to less than 2.5 percent of Ohio attorneys under the age of 40.

#### Education:

The Ohio State University, Moritz College of Law, J.D. (2002)

The Ohio State University, BA (1997)

#### Significant Cases:

- *In re Fannie Mae Securities Litigation*, Case No. 1:04-cv-1639 (D.D.C.). Representing Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation.
- *Ohio Public Employees Retirement System v. Freddie Mac, et al.*, Case No. 4:08-cv-160 (N.D. Ohio). Representing Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation.
- *Williams v. Duke Energy*, Case No.: 1:08-CV-00046 (S.D. Ohio). Representing class of energy consumers against energy provider in complex antitrust and RICO class action.
- *Slaby v. Wilson*, Hamilton County Court of Common Pleas. Lead trial counsel representing two private individuals who were falsely accused by a County Commissioner of murdering their child and covering up the child's death (as well as sexual abuse of child).
- *Kelci Stringer, et al. v. National Football League, et al.*, United States District Court, Southern District of Ohio, Western Division. Represented professional football player against NFL and helmet manufacturer in wrongful death/products liability litigation related to professional football player's death.
- *Susan B. Anthony List v. Driehaus*, United States District Court, Southern District of Ohio, Western Division. Represented former Congressman in defamation action against organization who published false statements about former Congressman's voting record and alleged influence over organization's commercial activities.
- *Mitchell v. Esparza*, Case No. 02-1369 (United States Supreme Court). Obtained summary reversal of Sixth Circuit decision on Eighth Amendment capital sentencing issue.
- *Cleveland Bar Association v. CompManagement, Inc.*, Case No. 04-0817 (Ohio Supreme Court). Represented the State of Ohio as amicus in landmark workers' compensation lawsuit.

#### Presentations:

- Class Action Boot Camp: The Basics and Beyond (2012).
- Harris Martin Toyota Sudden Unintended Acceleration Litigation Conference: TREAD Act Liability and Toyota (2010).
- Harris Martin BP Oil Spill Litigation Conference: The RICO Act's Application to the BP Oil Spill (2010).

**Affiliations:**

- Ohio State Bar Association
- Cincinnati Bar Association

**Courts Admitted:**

- State of Ohio (2002)
- United States District Court, Southern District of Ohio (2003)
- Sixth Circuit Court of Appeals, Ohio (2003)
- United States District Court, Northern District of Ohio (2007)



**DYLAN J. GOULD**

Dylan is an associate attorney at Markovits, Stock & DeMarco. Dylan's practice primarily focuses on class action and complex civil litigation with an emphasis on cases involving consumer fraud and data privacy. He also has experience with matters related to sports & entertainment, personal injury, commercial law, civil conspiracy, and civil litigation under the RICO Act. At the University of Cincinnati College of Law, where he spent multiple semesters on the Dean's Honors List, Dylan was selected to the Trial Practice and Moot Court teams, participating in mock trial and appellate court competitions with law students across the country. Upon graduation, Dylan joined Markovits, Stock & DeMarco, where he quickly gained valuable experience in nearly every facet of the litigation process while skillfully guiding several cases to final judgment, including as a court appointed member of class counsel in multiple actions gaining final approval of class action settlement. In recognition of his achievements, Dylan was named an Ohio Super Lawyers Rising Star in 2021 and 2023. Aside from his litigation practice, Dylan is also a Certified Contract Advisor with the National Football League Players Association.

**Education:**

University of Cincinnati, J.D. (2018)

University of Colorado at Boulder, B.A. (2015)

**Courts Admitted:**

- State of Ohio (2018)
- United States District Court, Southern District of Ohio (2019)
- United States District Court, Northern District of Ohio (2022)
- United States District Court, Eastern District of Wisconsin (2022)
- United States Court of Appeals, Sixth Circuit (2023)

**Representative Cases:**

- *Compound Property Management LLC v. Build Realty, Inc.*, No. 1:19-CV-133, 2023 WL 2140981 (S.D. Ohio Feb. 21, 2023) (granting contested class certification of claims related to complex real estate lending scheme in civil RICO action and appointing Mr. Gould as a member of class counsel);
- *Voss v. Quicken Loans*, No. A 2002899, 2023 WL 1883124 (Feb. 8, 2023 Ohio Com.Pl.) (granting contested class certification of action under Ohio Revised Code § 5301.36 and appointing Mr. Gould as member of class counsel);
- *Lutz v. Electromed, Inc.*, No. 21-cv-2198 (D. Minn.) (court appointed member of class counsel in data breach action that recently gained preliminary approval of \$825,000 settlement);
- *Anderson v. Fortra, LLC*, No. 23-cv-533 (D. Minn.) (serving as court-appointed member of Interim Executive Committee Counsel in data breach action impacting millions of putative class members);
- *Phelps v. Toyotetsu North America*, No. 6:22-cv-00106-CHB-HAI (E.D. Ky.) (court appointed member of class counsel in data breach action that recently gained preliminary approval of \$400,000 settlement);
- *Benedetto v. The Huntington National Bank*, No. A1903532 (Hamilton County, Ohio Court of Common Pleas) (served as member of class counsel in class action related to untimely mortgage releases that received final approval of class action settlement).

**Affiliations:**

Cincinnati Bar Association

Ohio State Bar Association



**JONATHAN T. DETERS**

Jon is a Cincinnati native whose legal practice is focused on complex civil litigation, class action litigation, personal injury law, and sports & entertainment law. Jon has been a litigator since the start of his career, and his clients have included individuals, businesses, local governments, and government officials. Jon's experience serving as both plaintiff and defense counsel make him uniquely qualified and well-suited to represent individual and corporate clients in litigation. Jon has been designated as an Ohio Super Lawyers "Rising Star" from 2019-present, which is a distinction awarded to less than 2.5% of Ohio attorneys under the age of 40.

Before joining Markovits, Stock & DeMarco in January 2022, Jon practiced at Schroeder, Maundrell, Barbieri & Powers, an Ohio law firm specializing in civil litigation, personal injury, and constitutional law. While in law school, Jon served as a constable in the Hamilton County Ohio Court of Common Pleas for the Honorable Steven E. Martin and worked as law clerk at the Law Office of Steven R. Adams.

**Education:**

Salmon P. Chase School of Law at Northern Kentucky University, J.D. (2015)

Xavier University, Cincinnati, Ohio, Honors Bachelor of Arts (2012)

**Representative Cases:**

- *Baker v. Carnine*, No. 1:19-CV-60 (2022), United States District Court, Southern District of Ohio
- *Jones v. Vill. of Golf Manor*, No. 1:18-CV-403 (2020), United States District Court, Southern District of Ohio
- *Vaduva v. City of Xenia*, 780 F. App'x 331 (2019), United States Court of Appeals, Sixth Circuit
- *Gillispie v. Miami Twp.*, No. 3:13-CV-416 (2017), United States District Court, Southern District of Ohio
- *City of Mt. Healthy v. Fraternal Ord. of Police, Ohio Lab. Council, Inc.*, 101 N.E.3d 1163 (2017), Ohio First District Court of Appeals

**Community Involvement:**

- Cincinnati Bar Association, *Member*
- Ohio Bar Association, *Member*
- Boy Hope Girls Hope of Cincinnati, *Young Professionals Board Member*
- Board of Trustees of the New St. Joseph Cemetery, Cincinnati, Ohio, *Member*

**Courts Admitted:**

- State of Ohio
- United States District Court, Southern District of Ohio
- United States Court of Appeals, Sixth Circuit

# EXHIBIT C



FIRM RESUME

## WHO WE ARE

Established by members of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP, the firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

For over 50 years, Milberg and its affiliates have been protecting victims' rights and have recovered over \$50 billion for our clients. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride ourselves on providing stellar client service. We have repeatedly been recognized as leaders in the plaintiffs' bar and appointed to leadership roles in prominent mass torts and class actions.

*Milberg challenges corporate wrongdoing through class action, mass tort, consumer and shareholder rights services, both domestically and globally.*

Milberg's previous litigation efforts helped to create a new era of corporate accountability that put big companies on notice. The strategic combination of four leading plaintiffs' firms offers clients expanded capabilities, greater geographical coverage, enhanced financial breadth, and increased operational capacity. It also enables the firm to serve diverse and global clients who are seeking to enforce their rights against well-financed corporations - wherever they operate.

[www.milberg.com](http://www.milberg.com)

## PRACTICE AREAS

### ANTITRUST & COMPETITION LAW

Today, on a global scale, consolidated corporate entities exercise dominating market power, but proper enforcement of antitrust law ensures a fair, competitive marketplace. Milberg prosecutes complex antitrust class actions against large, well-funded corporate defendants in healthcare, technology, agriculture, and manufacturing. Our leading practitioners successfully represent plaintiffs affected by price-fixing, monopolization, monopoly leveraging tying arrangements, exclusive dealing, and refusals to deal. The firm continues aggressively vindicating rights of plaintiffs victimized by antitrust violations, holding companies accountable for anticompetitive behavior.

### COMPLEX LITIGATION

With 50 years of vetted success, Milberg handles complex, high-stakes cases at any stage of the litigation process. Our attorneys have experience litigating complex cases for businesses and plaintiffs outside of the class action context, including business torts, contract disputes, anti-SLAPP motions, corporations, LLCs, partnerships, real estate, and intellectual property.

### CONSUMER PRODUCTS

Milberg's consumer litigation group focuses on protecting victims of deceptive marketing and advertising of goods and services, or those who have bought defective products. Our attorneys are experienced in handling a wide array of consumer protection lawsuits, including breach of contract, failure to warn, false or deceptive advertising of goods and services, faulty, dangerous, or defective products, warranty claims and unfair trade practices cases. Milberg has achieved real-world recoveries for clients, often requiring corporations to change the way they do business. Our team of attorneys has extensive experience representing plaintiffs against well-resourced and sophisticated defendants.

### CONSUMER SERVICES

Consumers have rights, and companies providing consumer services have a legal obligation to abide by contractual agreements made with customers. Companies must also follow state and federal laws that prohibit predatory, deceptive, and unscrupulous business practices. Milberg's Consumer Services litigation group protects consumers whose rights have been violated by improperly charged fees, predatory and discriminatory lending, illegal credit reporting practices, and invasion of privacy. We also enforce consumer rights by upholding The Fair Credit Reporting Act and Telephone Consumer Protection Act.

## CLASS ACTION LAWSUITS

Milberg pioneered federal class action litigation, and is recognized as a leader in defending the rights of victims of corporate and large-scale wrongdoings. We have the manpower, resources, technology, and experience necessary to provide effective representation in nationwide class action lawsuits. Our attorneys have led class actions resulting in settlements of up to billions of dollars across a variety of practice areas, including defective consumer products, pharmaceutical drugs, insurance, securities, antitrust, environmental and toxic torts, consumer protection, and breach of contract.

## DANGEROUS DRUGS & DEVICES

For some patients, medication and medical devices improve their lives. For others, the drugs and equipment have questionable benefits at best, and serious, unintended side effects at worst. Taking on drug and device makers requires a law firm that can stand up to the world's largest, most powerful companies. Our defective drug lawyers have held leadership roles in many national drug and device litigations, recovering billions of dollars in compensation.

## DATA BREACH, CYBERSECURITY & BIOMETRIC DATA LAWSUITS

Technology changes faster than laws regulate it. Staying ahead of legal technical issues requires a law firm that can see the full picture of innovation and apply past lessons to navigate fast-moving developments, putting consumers ahead of corporate interests. Our data breach and privacy lawyers work at the cutting edge of technology and law, creating meaningful checks and balances against technology and the companies that wield it. Cybersecurity threats continue evolving and posing new consumer risks. Milberg will be there every step of the way to protect consumer privacy and hold big companies accountable.

## ENVIRONMENTAL & TOXIC TORTS LITIGATION

Litigation is key in fighting to preserve healthy ecosystems and hold environmental lawbreakers accountable. But in today's globalized world, pollutants—and polluters—are not always local. Corporations have expanded their reach and ability to cause harm. Our environmental litigation practice focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. The companies involved in harmful environmental practices are large, wealthy, and globally influential, but as an internationally recognized plaintiffs' firm, Milberg has the strength and resources to present clients seeking to enforce their environmental rights against well-financed corporations—wherever they operation.

## FINANCE & INSURANCE LITIGATION

Big banks and public insurance firms are obligated by their corporate charters to put shareholders' interests ahead of client interests. However, that doesn't mean they can deceive clients to profit at their expense. Milberg's attorneys handle hundreds of insurance-related disputes, including first party bad faith insurance cases, business interruption cases, and hurricane insurance cases. As one of the nation's stop class action law firms, we are well-positioned to pursue insurance bad faith cases on a statewide or nationwide basis.

## PUBLIC CLIENT REPRESENTATION

The ability of governments to serve and protect their residents is often threatened by the combination of lower revenues and rising costs. Budget shortfalls are increasing in part because private companies externalize costs, but while corporate profits grow, public interest pays the price. Effectuating meaningful change through litigation, Milberg partners with state and local governments to address the harms facing its residents. Internationally, Milberg's Public Client Practice has achieved success against global powerhouse corporations, including drug, tobacco, mining, and oil and gas companies.

## SECURITIES LITIGATION

Over 50 years ago, Milberg pioneered litigation claims involving investment products, securities, and the banking industry by using class action lawsuits. Our litigation set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg continues to aggressively pursue these cases on behalf of institutional and individual investors harmed by financial wrongdoing. Inventors of securities class actions, Milberg has decades of experience holding companies accountable both in the United States and globally.

## WHISTLEBLOWER & QUI TAM

Blowing the whistle on illegal or unethical conducted is a form of legally protected speech. Milberg's whistleblower attorneys have led actions that returned hundreds of millions of dollars in ill-gotten gains, resulting in significant awards of our clients. Our legacy of standing up to corporate power extends to advocating for greater transparency. In addition to representing whistleblowers, we fight back against corporate-backed laws seeking to deter them from making disclosures.

*"Scoring impressive victories against companies guilty of outrageous behavior."*

- FORBES

*"A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers."*

- NEW YORK TIMES

## LEADERSHIP ROLES

In re: Google Play Consumer Antitrust Litigation, 20-CV-05761 (N.D. Cal.)  
In re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation MDL No. 2973  
In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Products Liability Litigation  
In re: Blackbaud Data Privacy MDL No. 2972  
In re: Paragard IUD Products Liability Litigation MDL No. 2974  
In re: Seresto Flea & Tick Collar, Marketing Sales Practices & Product Liability Litigation MDL No. 3009  
In re: All-Clad Metalcrafters, LLC, Cookware Marketing and Sales Practices Litigation  
In re: Allergan Biocell Textured Breast Implant Product Liability Litigation

In re: Zicam	In re: Mirena
In re: Guidant Corp. Implantable Defibrillators	In re: Incretin
In re: Ortho Evra	In re: Reglan
In re: Yaz	In re: Levaquin Litigation
In re: Kugel Mesh	In re: Zimmer Nexgen Knee
In re: Medtronic Sprint Fidelis Leads	In re: Fresenius Granuflo
In re: Stand 'N Seal	In re: Propecia
In re: Chantix	In re: Transvaginal Mesh
In re: Fosamax	In re: Fluoroquinolones
In re: Olmesartan (Benicar)	In re: Depuy Pinnacle
In re: Onglyza (Saxagliptin) And Kombiglyze XR	In re: Recalled Abbott Baby Formula
In re: Risperdal and Invega Product Liability Cases	

## NOTABLE RECOVERIES

\$3.2 Billion Settlement - In re: Tyco International Ltd., Securities Litigation, MDL 1335 (D.N.H.)  
\$4 Billion Settlement - In re: Prudential Insurance Co. Sales Practice Litigation, No. 95-4704 (D.N.J.)  
\$1.14 Billion Settlement - In Re: Nortel Networks Corp. Securities Litigation, No. 01-1855 (S.D.N.Y.)  
\$1 Billion-plus Trial Verdict - Vivendi Universal, S.A. Securities Litigation  
\$1 Billion Settlement - NASDAQ Market-Makers Antitrust Litigation  
\$1 Billion Settlement - W.R. Grace & Co.  
\$1 Billion-plus Settlement - Merck & Co., Inc. Securities Litigation  
\$775 Million Settlement - Washington Public Power Supply System Securities Litigation



## LOCATIONS

### CALIFORNIA

280 South Beverly Drive, Penthouse  
Beverly Hills, California 90212

402 West Broadway, Suite 1760  
San Diego, California 92101

### FLORIDA

2701 South Le Jeune Road  
Coral Gables, Florida 33134

### ILLINOIS

227 W. Monroe Street, Suite 2100  
Chicago, Illinois 60606

### KENTUCKY

19 North Main Street  
Madisonville, Kentucky 42431

### LOUISIANA

5301 Canal Boulevard  
New Orleans, Louisiana 70124

### MICHIGAN

6905 Telegraph Road, Suite 115  
Bloomfield Hills, Michigan 48301

### NEW JERSEY

1 Bridge Plaza North, Suite 275  
Fort Lee, New Jersey 07024

### NEW YORK

100 Garden City Plaza,  
Garden City  
New York 11530

405 E 50th Street  
New York 10022

### NORTH CAROLINA

900 West Morgan Street  
Raleigh, North Carolina 27603

### SOUTH CAROLINA

825 Lowcountry Blvd, Suite 101  
Mount Pleasant, South Carolina 29464

### TENNESSEE

800 S. Gay Street, Suite 1100  
Knoxville, Tennessee 37929

518 Monroe Street  
Nashville, Tennessee 37208

### PUERTO RICO

1311 Avenida Juan Ponce de León  
San Juan, Puerto Rico 00907

### WASHINGTON

1420 Fifth Ave, Suite 2200  
Seattle, Washington 98101

17410 133rd Avenue, Suite 301  
Woodinville, Washington 98072

### WASHINGTON, D.C.

5335 Wisconsin Avenue NW, Suite 440  
Washington, D.C. 20015-2052

### NETHERLANDS

### GERMANY

### PORTUGAL

### UNITED KINGDOM



[www.milberg.com](http://www.milberg.com)

# EXHIBIT D

# MORGAN & MORGAN<sup>®</sup>

Morgan & Morgan is a leading civil trial law firm representing consumers and commercial clients nationwide. With over 800 lawyers, and more than 3,000 non-lawyer employees, Morgan & Morgan is the largest plaintiffs' firm in the nation. Morgan & Morgan maintains over offices throughout the United States. Among its lawyers are former state attorney generals and present and former members of various state legislatures.

Morgan & Morgan has a dedicated Complex Litigation Group staffed with lawyers, paralegals, and retired FBI agents serving as investigators committed to representing consumers in complex litigation, MDL proceedings and class action cases throughout the country. It has achieved many remarkable results in class litigation, including the settlement of *In re Black Farmers Discrimination Litigation*, no. 08-0511 (D.C. Oct. 27, 2017), where one of its partners served as co-lead. The case resulted in a settlement with the United States Government in the amount of \$1.2 billion for African American farmers who had been systematically discriminated against on the basis of race, in violation of the Fifth Amendment to the United States Constitution, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act, and the Administrative Procedure Act. Morgan & Morgan has assembled a talented team of lawyers:

**John A. Yanchunis** leads the class action section of the law firm. His practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., S. D. Tex.—has concentrated on complex litigation and spans over 40 years, including consumer class actions for more than two-thirds of that time. As a result of his extensive experience in class litigation, including privacy and data-breach litigation, he regularly lectures nationally and internationally at seminars and symposiums regarding class litigation and privacy litigation.

He has served as lead, co-lead, and class counsel in numerous national class actions, including multi-district litigation, involving a wide range of subjects affecting consumers, including antitrust, defective products, life insurance, annuities, and deceptive and unfair acts and practices. In 2014, he was recognized by the National Law Journal as a trailblazer in the area of privacy litigation, and in 2020, he was recognized by LAW 360 for the second year in a row as one of 4 MVPs in the United States in the area of privacy and cyber security litigation. For his work in the area of privacy litigation, he was awarded lawyer of the year in the state of Florida by The Daily Business Review.

As a result of his experience in insurance and complex litigation, beginning in 2005, he was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a member

of the Florida Cabinet, to serve as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigations of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. He served as lead regulator counsel and worked with a core group of state Attorneys General from the National Association of Attorneys General, which were selected to conduct the investigations. The insurance regulator for Florida was the only insurance regulator in the group. The litigation that was filed and the related investigations netted millions of dollars in restitution for Florida consumers and resulted in significant changes in the way commercial insurance is sold in Florida and across the country.

During his career, he has tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by the Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, he served as lead counsel for several insurance companies, regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. He was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of his clients.

Mr. Yanchunis began his work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). See *Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). Subsequently, I also served as co-Lead Counsel in the DPPA class cases, *Davis v. Bank of America*, No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

He has been appointed and served in leadership positions a number of multidistrict litigation in the area of privacy and data breaches: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.) (settlement for \$190,000,000 preliminarily approved ) *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) ("Yahoo") (Lead Counsel) (Court approved \$117,500,000.00 common fund settlement for approximately 194 million US residents and 270,000 Israeli citizens ); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.)

(co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs’ Steering Committee) (final judgment entered approving \$380.5 million fund for 145 million consumers ); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (“OPM”) (member of the Executive Committee) (motion for preliminary approval of a \$60,000,000 common fund ); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers ).

His court-appointed leadership experience in non-MDL, data breach class actions is likewise significant, and to just name a few : *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.) (Co-Lead Counsel) (“Facebook”) (class certified for 8 million residents , subsequently settlement of the class was approved by the court); *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387 (N.D. Cal.) (“Kimpton”) (Lead Counsel) (class action settlement final approval order entered July 11, 2019); and *In re: Arby’s Restaurant Group, Inc. Data Security Litigation*, Nos. 1:17-cv-514 and 1:17-cv-1035 (N.D. Ga.) (co-Liaison Counsel) (final approval of a class settlement entered June 6, 2019); and *Jackson, et al., v. Wendy’s International, LLC*, No. 6:16-cv-210-PGB (M.D. Fla.) (final approval of a class settlement entered February 26, 2019); *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Montana Eighth Judicial Court – Cascade County) (final approval of class settlement entered January 5, 2021); *In re: Citrix Data Breach Litigation*, No. 19-cv-61350 (S.D. Fla.) (preliminary approval of class action settlement entered on January 26, 2021); *Kuss v. American HomePatient, Inc., et al.*, 18-cv-2348 (M.D. Fla.) (final approval of class action settlement entered on August 13, 2020); *Fulton-Green v. Accolade, Inc.*, 18-cv-274 (E.D. Pa.) (final approval of class action settlement entered September 23, 2019); *Nelson v. Roadrunner Transportation Systems, Inc.*, 18-cv-7400 (N.D. Ill.) (final approval of class action settlement entered September 15, 2020).

His experience in these major data breach matters extends far beyond simply briefing threshold issues and negotiating settlements. Rather, he has personally deposed dozens of corporate representatives, software engineers, cyber professionals and CISOs in major data breach cases such as Capital One, Yahoo, Kimpton, and Facebook. In addition, he has defended experts used in these cases and also deposed defense liability and damage experts.

Presently he leads his firm’s efforts in two major class cases pending against Google for data misuse.

As result of his experience in the area of class litigation and ethics, he has served as an expert for The Florida Bar on ethical issues arising in class action litigation. He is a frequent

lecturer on privacy and class litigation nationally and internationally, including at international conferences, having presented at the University of Haifa's 2019 Class Action Conference, in Haifa, Israel, attended by lawyers, judges and law professors from around the world. In 2020 he lectured on data privacy in Mexico, and in November 2020 and 2021 he presented on class action issues to an international group of lawyers, judges and professors at a symposium in London sponsored by the London Law Society. He is scheduled to speak on class action issues in 2022 at two different symposiums in Amsterdam, and two seminars on privacy and cyber security issues in the United States .

While at the University of Florida Mr. Yanchunis was a member of Florida Blue Key and Omicron Delta Kappa. He received his Juris Doctor degree from the South Texas College of Law in 1980, where he graduated magna cum laude. During law school, Mr. Yanchunis was a member of the Order of the Lytae, Associate Editor-in-Chief and Technical Editor of the South Texas Law Journal.

**Michael F. Ram.** Mr. Ram is a consumer class action lawyer with 40 years of experience. He graduated cum laude from Harvard Law School in 1982. He has co-tried several class action trials and frequently lectures on class trials. In 1992 he was a co-recipient of the Trial Lawyer of the Year Award given by Trial Lawyers for Public Justice for *National Association of Radiation Survivors v. Walters* No. 83-c-1861 (N.D. Cal.) (tried to class-wide judgment on remand from Supreme Court).

From 1993 through 1997, Mr. Ram was a partner with Lieff, Cabraser, Heimann and Bernstein where he represented plaintiffs in several major class actions, including: *Cox v. Shell*, Civ. No 18,844 (Obion County Chancery Court, Tenn.) national class of six million owners of property with defective polybutylene plumbing systems; *In re Louisiana-Pacific Inner-Seal Litigation*, No. 95-cv-879 (D. Oregon) (co-lead counsel) national class of homeowners with defective siding; *ABS Pipe Litigation*, Cal. Judicial Council Coordination Proceeding No. 3126 (Contra Costa County) national class of homeowners.

In 1997, Mr. Ram founded Levy, Ram & Olson which became Ram & Olson and then Ram, Olson, Cereghino & Kopczynski. He was co-lead counsel in many consumer class actions including a national class of half a million owners of dangerous glass pane gas fireplaces in *Keilholtz et al. v. Superior Fireplace Company*, No. 08-cv-00836 (N.D. Cal. 2008). He was co-lead counsel for plaintiffs in *Chamberlan v. Ford Motor Company*, No. 03-cv-2628 (N.D. Cal.), a class action involving defective intake manifolds that generated four published opinions, including one by the Ninth Circuit, 402 F.3d at 950, and settled one court day before the class trial. He was also co-counsel for plaintiffs in a number of other consumer class actions, including: *In re General Motors Corp. Product Liability Lit.* MDL. No. 1896 (W.D. Wash.) (defective speedometers);



*Richison v. American Cemwood Corp.*, San Joaquin Superior Court Case No. 005532 (defective Cemwood Shakes); *Williams v. Weyerhaeuser*, San Francisco Superior Court Case No. 995787 (defective hardboard siding); *Naef v. Masonite*, Mobile County, Alabama Circuit Court Case No. CV-94-4033 (defective hardboard siding on their homes); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998) (approving class action settlement); *McAdams v. Monier, Inc.* (2010) 182 Cal. App. 4th 174 (reversing denial of class certification in consumer class action involving roof tiles); *Gardner v. Stimson Lumber Co.* (King County Wash. No. 2-17633-3-SEA) (defective siding); *Rosenberg v. U-Haul* (Santa Cruz Superior Ct. No. CV-144045 (certified consumer class action for false and deceptive conduct; tried successfully to judgment); *In re Google Buzz User Privacy Litigation*, No. 10-cv-00672-JW (N.D. Cal. 2011) (international class action settlement for false and deceptive conduct); *Whitaker v. Health Net of California, Inc., and International Business Machines Corp.*, No. 2:11-cv-0910 KJM DAD (E.D. Cal.) (electronic privacy class action under the California Confidentiality of Medical Information Act); and *In re Kitec Plumbing System Products Liab. Litigation MDL No 2098*, N.D. Texas, No. 09-MD-2098 (MDL class action involving claims concerning defective plumbing systems).

From 2017 to 2020, Mr. Ram was a partner at Robins Kaplan LLP. In August, 2020, Mr. Ram joined Morgan & Morgan to open a San Francisco office for them. He is currently co-lead counsel in numerous consumer class actions, including *Gold v. Lumber Liquidators*, N.D. Cal. No. 14-cv-05373-RS, a certified multistate class action involving bamboo floors, and *Fowler v. Wells Fargo*, N.D. Cal. No. 3:17-cv-02092-HSG, a class action involving interest charges that settled for \$30 million. In addition, he is also currently serving on the Plaintiffs' Steering Committee in the *In re Philips CPAP MDL Litigation*, where he is co-chair of the Law and Briefing Committee.

**Jean Sutton Martin.** Ms. Martin presently serves by appointment as interim co-lead counsel in, *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.), *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.), and *Johnson, et al. v. Yuma Regional Medical Center*, 2:22-cv-01061-SMB (D. Ariz.). She also serves as a member of the Plaintiffs' Steering Committee for the cases proceeding against LabCorp, Inc. in *In re: American Medical Collection Agency Data Breach Litigation*, 19-md-2904 (D. N.J.) and a steering committee member *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 19-md-2921 (D. N.J.).

In a case in which she serves as interim co-lead counsel, Ms. Martin argued a motion for class certification which resulted in the first order in the country granting Rule 23(b)(3) certification in a consumer payment card data breach. *In re Brinker Data Incident Litig.*, No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021).

She has served in leadership positions in many consumer class actions and consolidated



proceedings in federal courts around the country, including *inter alia*: *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) (\$68 million settlement for 15 million class members); *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.) (data breach settlement valued at over \$17.5 million) (co-lead counsel); *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (data breach) (co-lead counsel); *Linnins v. HAECO Americas, Inc., et al.*, No. 16-cv-486 (M.D.N.C.) (employee data disclosure) (co-lead counsel); *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.) (data breach) (class counsel); *Fuentes, et al. v. UniRush, LLC, et al.*, No. 1:15-cv-08372 (S.D.N.Y.) (disruption in servicing of financial accounts) (co-lead counsel); *Lewis, et al., v. Green Dot Corp., et al.*, No. 2:16-cv-03557 (C.D. Cal.) (disruption in servicing of financial accounts) (class counsel); *Brady, et al. v. Due North Holdings, LLC, et al.*, No. 1:17-cv-01313 (S.D. Ind.) (employee data disclosure) (class counsel); *Foreman v. Solera Holdings, Inc.*, No. 6:17-cv-02002 (M.D. Fla.) (employee data disclosure) (class counsel); *In Re: Outer Banks Power Outage Litigation*, No. 4:17-cv-141 (E.D.N.C.) (extended island power outage due to defective construction practices) (class counsel); and, *McCoy v. North State Aviation, LLC, et al.*, No. 17-cv-346 (M.D.N.C.) (WARN Act violations) (class counsel).

In addition to consumer class actions, Ms. Martin has practiced in the areas of mass tort and catastrophic personal injury litigation. Prior to joining Morgan and Morgan, Ms. Martin ran her own law firm concentrating in consumer class actions and mass tort litigation. She also has served as an adjunct professor at Wake Forest University School of Law.

Ms. Martin received her Juris Doctor degree from Wake Forest University School of Law in 1998, where she served as Editor-in-Chief of the *Wake Forest Law Review*. She obtained eDiscovery certification from the eDiscovery Training Academy at Georgetown Law Center in 2017. Ms. Martin graduated from Wake Forest University with a Bachelor of Science in Mathematical Economics in 1989. She earned a Master of International Business from the University of South Carolina in 1991.

Ms. Martin has been honored with the prestigious “AV” rating by Martindale-Hubbell. In 2016, Ms. Martin was selected by her peers as the foremost Litigation attorney in the State of North Carolina for *Business North Carolina Magazine's Legal Elite*, gaining membership in the *Legal Elite* Hall of Fame. In 2015, she was inducted as a Fellow of the Litigation Counsel of America, a prestigious trial lawyer honorary society comprised of less than one-half of one percent of American lawyers. Fellows are selected based upon excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. For upholding the highest principles of the legal profession and for outstanding dedication to the welfare of others, Ms. Martin has also been selected as a Fellow of the American Bar Foundation, an honorary legal organization whose membership is limited to one third of one percent of

lawyers in each state. In 2022, she was recognized by LAW 360 as an MVP in the area of cybersecurity and data privacy.

Before entering law school, Ms. Martin worked with the sales finance team of Digital Equipment Company in Munich, Germany developing sales forecasts and pricing models for the company's expansion into the Eastern European market after the fall of the Berlin wall. She also worked as a practice management consultant for a physician consulting group and as a marketing manager for an international candy manufacturer where her responsibilities included product development, brand licensing, market research, and sales analysis.

Ms. Martin has been a presenter on a variety of topics related to class actions including: *Fantasy Gaming Webinar: FanDuel and DraftKings Litigation*, AAJ (December 2015); *Thinking Outside the Black Box: Drug Cases in the Class Context*, Mass Torts Made Perfect (October 2019); *Mass Torts and MDLs*, Western Alliance Class Action Forum (March 2020); *Consumer Class Actions*, Western Alliance Class Action Forum (March 2022); *How to Maximize Efficiency in Document Production and Review*, Mass Torts Made Perfect (April 2022).

Ms. Martin is a member of the North Carolina bar, having been admitted in 1998. She is also admitted to practice before the United States Supreme Court, the United States Court of Federal Claims, the United States Court of Appeals for the Fourth Circuit, the Western, Middle, and Eastern Districts of North Carolina, and the United States District Court of Colorado.

**Marcio Valladares.** Mr. Valladares was born in Managua, Nicaragua and immigrated to the United States during Nicaragua's civil war. In 1990, Marcio obtained a Bachelor of Science degree in psychology from the University of Florida. In 1993, he obtained his Juris Doctor degree, *magna cum laude*, from Florida State University. He is pursuing a Masters in Law (LL.M.) degree from Columbia University, focusing on federal and comparative law.

Before joining Morgan & Morgan, Marcio worked in both the public and private sectors. He served as a judicial law clerk to the Honorable Steven D. Merryday, United States District Judge, Middle District of Florida, and then served as a judicial law clerk to the Honorable Susan H. Black, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit. Marcio served as an Assistant United States Attorney for the Middle District of Florida. In the private sector, Marcio practiced commercial litigation and insurance defense at Holland & Knight LLP. Marcio also worked as in-house counsel for the Mayo Clinic. Marcio is fluent in English and Spanish.

**Marie Noel Appel.** Ms. Appel has dedicated her career to representing consumers in both individual and class action cases involving claims under consumer protection laws and other

statutory and common law claims. She earned a B.A. in French from San Francisco State University in 1992 and graduated from University of San Francisco School of Law in 1996.

For most of her career, Ms. Appel has been in private practice litigating class claims related to defective products, mortgage fraud/Truth in Lending violations, unfair business practices relating to manufactured home sales, interest overcharges by the United States on military veterans' credit accounts, and statutory violations by the United States relating to offset of debts beyond the limitations period.

From 2012 to 2019, Ms. Appel left private practice to become the Supervising Attorney of the Consumer Project at the Justice & Diversity Center of the Bar Association of San Francisco which provides free legal services to low-income persons facing consumer issues. In April 2019, Ms. Appel returned to private practice as Counsel at Robins Kaplan, LLP, then joined Morgan & Morgan in August 2020 where she focuses on class action litigation.

In addition to her legal practice, Ms. Appel is an Adjunct Professor at Golden Gate University School of Law in San Francisco where she teaches legal research and writing, and from 2011 to 2018 supervised students at the Consumer Rights Clinic, in which students performed legal work at the Justice & Diversity Center's Consumer Debt Defense and Education Clinics.

Ms. Appel has a long history of pro bono involvement and currently is a regular volunteer at the Community Legal Assistance Saturday Program, a monthly free legal clinic sponsored by the Alameda County Bar Association. Ms. Appel provides trainings to San Francisco Bay Area legal aid attorneys regarding consumer collection defense and related matters, focusing recently on defense of lawsuits against low-income individuals for unpaid back rent resulting during the COVID-19 pandemic. In the past, Ms. Appel has provided pro bono representation for numerous low-income consumers facing debt collection lawsuits, and volunteered regularly at free legal clinics through the Justice & Diversity Center in San Francisco which, on multiple years, designated her as one of the Outstanding Volunteers in Public Service.

Ms. Appel is admitted to practice in the Ninth Circuit Court of Appeals, and United States District Courts in the Central District of California; the Eastern District of California; the Northern District of California; and the Southern District of California.

***Kenya Reddy.*** Ms. Reddy represents consumers in class action litigation. She graduated from Duke University in 1997 with a degree in political science. In 2000, she received her law degree from the University of Virginia School of Law. Prior to joining Morgan & Morgan, Ms. Reddy was a shareholder at Carlton Fields, P.A., where her primary areas of practice were

antitrust, complex civil litigation, class action defense, and business litigation. She also has experience in including labor and employment, products litigation, ERISA and employee benefits law, insurance, healthcare, and securities litigation.

Ms. Reddy has served as a law clerk for the Honorable Charles R. Wilson, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit, the Honorable Anne C. Conway, former Chief Judge of the United States District Court for the Middle District of Florida, the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida, and the Honorable Karla R. Spaulding, United States Magistrate Judge, Middle District of Florida.

Ms. Reddy was a guest speaker in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on the topic of standing in data breach cases. In October 2019, she presented on the topic of third-party litigation funding at the Mass Torts Made Perfect Conference.

Ms. Reddy is admitted to practice in the Northern, Middle, and Southern Districts of Florida.

**Ryan Maxey.** Mr. Maxey grew up in Tampa, Florida. He attended the University of South Florida, where he obtained degrees in Computer Science and Philosophy. During and after his undergraduate education, Mr. Maxey developed software and databases for Amalie Oil Company, an automotive lubricant manufacturer located in the Port of Tampa. Mr. Maxey later attended law school at the University of Florida, graduating *order of the coif* in 2008.

From 2008 to 2011, Mr. Maxey served as a judicial law clerk to the Honorable Elizabeth A. Jenkins, United States Magistrate Judge, University of Florida. Mr. Maxey then worked at one of the country's largest law firms, Greenberg Traurig, for four years. In 2015, Mr. Maxey joined Morgan & Morgan's Business Trial Group as a lead attorney handling a variety of business litigation matters. Mr. Maxey later started his own law practice, litigating claims related to breach of contract, trade secret misappropriation, the FLSA, the FDCPA, and premises liability.

Mr. Maxey was admitted to the Florida Bar in 2008 and is also admitted to practice in the Middle District of Florida and the Southern District of Florida.

**Ryan J. McGee.** Mr. McGee was born and raised in Tampa, Florida. He studied business economics and history at the University of Florida, where he was a teaching assistant for technology classes in the business school, and received his law degree from Stetson University College of Law, where he was an editor on the *Stetson Law Review*, a research assistant for antitrust and consumer protection laws, and a teaching assistant for Stetson's trial advocacy program.

Ryan began his legal career as a state-appointed prosecutor, where he tried over 50 jury trials to verdict, mostly felonies, as well as a special prosecutor appointed to investigate police officers' deadly use-of-force and corruption within various law enforcement agencies. Ryan also served as a law clerk for two years for the Honorable Elizabeth A. Kovachevich, the former Chief United States District Judge, Middle District of Florida. Before joining Morgan & Morgan, Ryan's practice involved complex business disputes, antitrust, trade secret, data security, and class action investigations and defense-side litigation in state and federal courts across the country.

Since shifting his focus entirely to consumer class action representation, Ryan has been selected as a Florida Super Lawyer Rising Star in 2018 and 2019 in the field of Class Actions, and has extensive privacy and consumer fraud class action experience, having actively participated in the following litigations: *Brown v. Google LLC*, No. 4:20-cv-03664-YGR (N.D. Cal.); *Rodriguez v. Google LLC*, No. 3:20-cv-4688-RS (N.D. Cal.); *Stoll et al. v. Musculoskeletal Institute*, No. 8:20-cv-01798 (M.D. Fla.); *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.); *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.); *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.); *In re Google Plus Profile Litigation*, No. 5:18-cv-06164 EJD (N.D. Cal.); *Kuss v. American HomePatient, Inc., et al.*, No. 8:18-cv-02348 (M.D. Fla.); *In re Equifax, Inc. Customer Data Sec. Breach Litigation*, No. 1:17-md-02800 (N.D. Ga.); *Morrow v. Quest Diagnostics, Inc.*, No. 2:17-cv-0948(CCC)(JBC) (D.N.J.); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.C.);

Ryan was admitted to the Florida Bar in 2009 and is also admitted to practice in the Northern, Middle, and Southern Districts of Florida.

**Patrick Barthle.** Mr. Barthle was born and raised in Dade City, Florida. He attended the University of Florida where he was admitted to the Honors Program and graduated, *cum laude*, with a double major in History and Criminology in 2009. While at UF, Patrick was inducted into the Phi Beta Kappa Honor Society and served as President of the Catholic Student Center. Patrick attended Washington and Lee University School of Law, graduating *summa cum laude* in 2012; where he was a Lead Articles Editor for the Wash. & Lee Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society, and President of the W&L Law Families organization.

Before joining Morgan & Morgan in 2015, Patrick worked at one of the country's largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. Patrick has extensive privacy and consumer fraud class action experiencing, having actively participated in

the following litigations: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.C.); *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.); *Morrow v. Quest Diagnostics, Inc.*, No. 2:17-cv-0948 (Dist. NJ); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.); *In re The Home Depot, Inc. Customer Data Security Data Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-md-02752-LHK (N.D. Cal.); and *Finerman v. Marriott Ownership Resorts, Inc.*, Case No.: 3:14-cv-1154-J-32MCR (M.D. Fla.).

Patrick was selected as a Florida Super Lawyer Rising Star in 2019 in the field of Class Actions. He is also active in speaking on privacy and class action topics, having spoken in June 2018, at the NetDiligence Cyber Risk Summit on the topic of Unauthorized Use of Personal Data; in November 2018 at the American Association for Justice's Advanced 30(b)(6) Seminar, on the topic of 30(b)(6) Depositions in Data Breach Cases; and in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on that topics of damage models and settlements in data breach cases; and Rule 23(c)(4) classes at the Mass Torts Made Perfect conference.

Mr. Barthle was admitted to the Florida Bar in 2012 and is also admitted to practice in the Middle District of Florida, the Southern District of Florida, and the District of Colorado.

**Francesca Kester Burne.** Ms. Burne was born and raised in Scranton, Pennsylvania. She attended Marywood University, where she graduated with a major in English Literature, and The Pennsylvania State University's Dickinson School of Law, where she received her Juris Doctor degree in 2017. While at Dickinson, Ms. Burne competed in the American Bar Association's National Appellate Advocacy Competition, where she was awarded the highest honor for her legal brief writing, and the Texas Young Lawyer's National Trial Competition, where she finished as a regional finalist. Ms. Burne also served as Executive Chair of the Dickinson Law Moot Court Board, Founder of the Dickinson Law partnership with Big Brothers Big Sisters, and Student Director of the Bethesda Mission Men's Shelter legal clinic. At graduation, she was honored with the D. Arthur Magaziner Human Services Award for outstanding academic achievement and service to others, the Joseph T. McDonald Memorial Scholarship for excellence in trial advocacy, and the peer-selected Lee Popp Award for her devotion to the legal field.

Ms. Burne completed an externship with United States Magistrate Judge Martin C. Carlson while in law school. After graduation, she served for two years as a law clerk to the Honorable James M. Munley in the United States District Court for the Middle District of Pennsylvania. Ms. Burne now focuses her class action practice on data privacy and products liability, having actively participated in *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.) (data breach settlement valued at over \$17.5 million); *Gordon, et al. v.*



*Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (data breach); *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.) (data breach); *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) (data disclosure settlement valued at over \$68 million); *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.) (data disclosure); *In re: American Medical Collection Agency Data Breach Litigation*, 19-md-2904 (D. N.J.) (data breach); and *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 19-md-2921 (D. N.J.) (products). Ms. Burne served as settlement class counsel in *Portier, et al. v. Neo Technology Solutions, et al.*, No. 3:17-cv-30111 (D. Mass.) (data breach).

Ms. Burne is admitted to practice law in both Pennsylvania and Florida as well as various federal courts throughout the country.

**Ra O. Amen.** Mr. Amen was raised in both the California Bay Area and Massachusetts. In 2005, Ra graduated from Stanford University with a B.A. in Economics. After graduating, Ra worked as a Peace Corps volunteer in Morocco teaching English as a second language and business skills to local artisans. Before entering law school, Ra worked for several years in education and in business development for a mobile technology startup. In 2017, he obtained his Juris Doctor degree with Honors from Emory University School of Law. While at Emory Law, he was a Managing Editor of the Bankruptcy Developments Journal, interned at a consumer fraud law practice, and worked in-house with one of the globe's leading metals companies assisting in a diverse array of legal issues ranging from corporate restructuring to international tax and contract disputes. Before joining Morgan & Morgan in 2020, Mr. Amen worked at one of the nation's largest defense law firms in the nation where he specialized in representing clients in complex commercial, administrative, and ecclesiastical disputes.

Ra speaks both English and Spanish, and is an avid guitar player.

Ra was admitted to the Georgia Bar in 2017.

**David Reign.** Mr. Reign is the former Assistant Special Agent in Charge of the Tampa FBI Field office, with nearly 25 years of investigative experience. He has investigated and managed some of the FBI's most complex white-collar crime cases, with an emphasis on health care fraud, public corruption, and financial crimes. As Deputy Chief of the Enron Task Force, he led a team of investigators and analysts in the successful investigation and prosecution of several executives of the Enron Corporation. He received the Attorney General's Award for Exceptional Service for his work on the Enron matter.

# EXHIBIT E



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## Our Firm

Turke & Strauss is a law firm based in Madison, Wisconsin that focuses on complex civil and commercial litigation with an emphasis on consumer protection, data privacy, data breach, employment, wage and hour, business, and real estate matters. The attorneys of Turkey & Strauss have extensive experience in complex litigation, including class actions. The attorneys of Turkey & Strauss have prosecuted a variety of multi-million-dollar consumer fraud, product defect, privacy, and antitrust class actions and served as class counsel in cases at the federal level. The defendants in these cases have included companies such as Wells Fargo Bank, N.A., LG Electronics U.S.A., Inc., The Clorox Company, Best Buy, Monsanto Company, Kimpton Hotel & Restaurant Group, LLC, Stearns Lending, LLC, Fiat Chrysler Automobiles, and American Power & Gas.

## Our Cases

### CONSUMER PROTECTION

***Fowler, et al. v. Wells Fargo Bank, N.A. (N.D. Cal.)***

Filed on behalf of consumers who were overcharged fees on FHA mortgages. The case settled on a class-wide basis for \$30,000,000 in 2018, and final approval was granted in January 2019.

***Jones, et al. v. Monsanto Company (W.D. Mo.)***

Filed on behalf of individuals who purchased mislabeled RoundUp® products. The case settled on a class-wide basis in 2020 for \$39,550,000. Final approval was granted in May 2021 and the case is currently on appeal to the United States Court of Appeals for the Eight Circuit.

***Crawford, et al. v. FCA US LLC (E.D. Mich.)***

Filed on behalf of consumers who purchased or leased Dodge Ram 1500 and 1500 Classic vehicles equipped with 3.0L EcoDiesel engines between 2013 and 2019. Plaintiffs allege unfair, deceptive, and fraudulent practices in the Defendants' marketing and sale of vehicles with allegedly defective EGR coolers. This case is currently pending in the United States District Court for the Eastern District of Michigan.

***In re: Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability Litigation (N.D. Cal.)***

Filed on behalf of consumers against Fiat Chrysler and Bosch alleging unfair, deceptive, and fraudulent practices in the Defendants' marketing and sale of certain EcoDiesel vehicles. The class contained over 100,000 vehicles, including 2014-2016 model-year Jeep Grand Cherokees and Dodge Ram 1500 trucks that were allegedly outfitted with devices that masked actual emission levels. The case settled on a class-wide basis for \$307,500,000, and final approval was granted in May 2019.

***Rolland, et al. v. Spark Energy, LLC (D.N.J.)***

Filed on behalf of consumers who were forced to pay considerably more for their electricity than they should otherwise have paid due to Spark Energy's deceptive pricing practices. Plaintiff alleges that Spark Energy engages in a bait-and-switch deceptive marketing scheme luring consumers to switch utility companies by offering lower than local utility rates. These lower rates are fixed for only a limited number of months and then switch to a variable market rate that is significantly

higher than the rates local utilities charge. The case settled on a class-wide basis for \$11,000,000 in 2022, and final approval was granted in December 2022.

***Haines v. Washington Trust Bank (Wash. Sup. Ct., King Cty.)***

Turke & Strauss represents consumers who were charged \$35 overdraft fees by Washington Trust Bank on accounts that were never actually overdrawn. Plaintiff filed suit against Washington Trust Bank for the unfair and unlawful assessment of these overdraft fees. This case settled on a class-wide basis in 2021, and is final approval was granted in November 2021.

***Pryor v. Eastern Bank (Mass. Sup. Ct., Suffolk Cty.)***

Turke & Strauss represents consumers who were charged \$35 overdraft fees by Eastern Bank on accounts that were never actually overdrawn. Plaintiff filed suit against Eastern Bank for the unfair and unlawful assessment of these overdraft fees. This case settled on a class-wide basis in 2021, and final approval was granted in March 2021.

***Benanav, et al. v. Healthy Paws Pet Insurance LLC (W.D. Wash.)***

Turke & Strauss represents consumers who were deceived by Healthy Paws Pet Insurance, an insurance provider that markets and administers pet insurance policies, regarding the true cost of its pet insurance policies. Plaintiffs allege that purchasers of Healthy Paws Pet Insurance's policies found that their policy premiums increased drastically from year to year, at a rate far outpacing the general costs of veterinary medicine, despite Healthy Paws Pet Insurance's representations to the contrary. This case is currently pending in the United States District Court for the Western District of Washington.

## DATA BREACH

***Walters v. Kimpton Hotel & Restaurant Group, LLP (N.D. Cal.)***

Filed on behalf of consumers whose private information and personal identifiable information, including credit and debit card numbers, names, mailing addresses, and other personal information, was compromised and stolen from Kimpton Hotel & Restaurant Group by hackers. The case settled on a class-wide basis in 2018, and final approval was granted in July 2019.

***Reetz v. Advocate Aurora Health, Inc. (Wis. Cir. Ct., Milwaukee Cty.)***

Filed on behalf of employees of Aurora Advocate Health, the 10th largest not-for-profit integrated health care system in the United States, whose personally identifiable information was breached and stolen through an email phishing campaign beginning in January 2020. Many of these individuals have lost time

and money responding to the data breach and they face an ongoing risk of identity theft, identity fraud, or other harm. This case is currently pending in the Circuit Court of Wisconsin for the County of Milwaukee.

***Goetz v. Benefit Recovery Specialists, Inc. (Wis. Cir. Ct., Walworth Cty.)***

Turke & Strauss represented a class of consumers whose personal health information was compromised and stolen from Benefit Recovery Specialists, Inc., a Houston-based billing and collections services firm that provides billing and collection services to healthcare providers across the country. Many of these consumers have lost time and money responding to the data breach and they face an ongoing risk of identity theft, identity fraud, or other harm. This case settled on a class-wide basis in 2022 and final approval was granted in July 2022.

***In re BJC Healthcare Data Breach Litigation (Mo. Cir. Ct., St. Louis Cty.)***

Turke & Strauss represented a class of consumers whose personal health information was compromised and stolen from BJC Healthcare, a major regional health system. Many of these consumers lost time and money responding to the data breach and they face an ongoing risk of identity theft, identity fraud, or other harm. This case settled on a class-wide basis in 2021 and final approval was granted in September 2022.

***Daum, et al. v. K & B Surgical Center, LLC (Cal. Sup. Ct., Los Angeles Cty.)***

Turke & Strauss represents a class of consumers whose personal health information and protected health information was compromised and stolen from K & B Surgical Center. Many of these consumers have lost time and money responding to the data breach and they face an ongoing risk of identity theft, identity fraud, or other harm. The case settled on a class-wide basis in 2022 and preliminary approval is pending the Superior Court of California for the County of Los Angeles.

***In re: Netgain Technology, LLC, Consumer Data Breach Litigation (D. Minn.)***

Filed on behalf of consumers whose personal identifiable information and protected health information was breached and stolen from Netgain Technology, LLC beginning in September 2020. Turkey & Strauss partner, Raina Borrelli, serves as a member of the Executive Committee in this multidistrict litigation. Many of the individuals impacted by the breach have lost time and money responding to the data breach and they face an ongoing risk of identity theft, identity fraud, or other harm. This case is currently pending in The United States District Court for the District of Minnesota.

***Dusterhoff, et al. v. OneTouchPoint Corp. (E.D. Wisc.)***

Filed on behalf of 2.6 million consumers whose personal identifiable information and protected health information was breached and stolen from OneTouchPoint Corp., a mailing and printing services vendor, beginning in April 2022. Turke & Strauss partner, Raina Borrelli, serves as a member of the Plaintiffs' Steering Committee in this litigation. Many of the individuals impacted by the breach have lost time and money responding to the data breach and they face an ongoing risk of identity theft, identity fraud, or other harm. This case is currently pending in The United States District Court for the Eastern District of Wisconsin.

***In re Lincare Holdings Inc. Data Breach Litigation (M.D. Fla.)***

Filed on behalf of consumers whose personal identifiable information and protected health information was breached and stolen from Lincare Holdings Inc., a medical products and services provider, beginning in September 2021. Turke & Strauss partner, Raina Borrelli, serves as co-lead counsel for plaintiffs and the class in this multidistrict litigation. Many of the individuals impacted by the breach have lost time and money responding to the data breach and they face an ongoing risk of identity theft, identity fraud, or other harm. This case is currently pending in The United States District Court for the Middle District of Florida.

***Forslund, et al. v. R.R. Donnelley & Sons Company (N.D. Ill.)***

Filed on behalf of consumers whose personal identifiable information was breached and stolen from R.R. Donnelley & Sons Company, a Fortune 500 marketing, packaging, and printing company, beginning in November 2021. Turke & Strauss partner, Raina Borrelli, serves as co-lead counsel for plaintiffs and the class in this litigation. Many of the individuals impacted by the breach have lost time and money responding to the data breach and they face an ongoing risk of identity theft, identity fraud, or other harm. This case is currently pending in The United States District Court for the Northern District of Illinois.

**DATA PRIVACY*****Patterson v. Respondus, Inc., et al. (N.D. Ill.)***

Filed on behalf of all persons who took an exam using Respondus' online exam proctoring software, Respondus Monitor, in the state of Illinois. Plaintiffs allege that Respondus collects, uses, and discloses students' biometric identifiers and biometric information in violation of Illinois' Biometric Information Privacy Act. This case is currently pending in the United States District Court for the Northern District of Illinois.

***Powell v. DePaul University (N.D. Ill.)***

Turke & Strauss represents a class of DePaul University students located in the state of Illinois who were required to take exams using Respondus Monitor, which collects, uses, and discloses students' biometric identifiers and biometric information in violation of Illinois' Biometric Information Privacy Act. Plaintiff alleges that DePaul University collects students' biometric identifiers and biometric information without written consent and without legally compliant written public policies. This case is currently on appeal before the United States Court of Appeals for the Seventh Circuit.

***Fee v. Illinois Institute of Technology (N.D. Ill.)***

Turke & Strauss represents a class of DePaul University students located in the state of Illinois who were required to take exams using Respondus Monitor, which collects, uses, and discloses students' biometric identifiers and biometric information in violation of Illinois' Biometric Information Privacy Act. Plaintiff alleges that DePaul University collects students' biometric identifiers and biometric information without written consent and without legally compliant written public policies. This case is currently pending in the United States District Court for the Northern District of Illinois.

***Harvey v. Resurrection University (N.D. Ill.)***

Turke & Strauss represents a class of Resurrection University students located in the state of Illinois who were required to take exams using Respondus Monitor, which collects, uses, and discloses students' biometric identifiers and biometric information in violation of Illinois' Biometric Information Privacy Act. Plaintiff alleges that Resurrection University collects students' biometric identifiers and biometric information without written consent and without legally compliant written public policies. This case is currently pending in the United States District Court for the Northern District of Illinois.

## **RIGHT OF PUBLICITY**

***Abraham, et al. v. PeopleConnect, Inc., et al. (N.D. California)***

Filed on behalf of California residents against PeopleConnect alleging violations of California law that recognizes the intellectual property and privacy rights of individuals to control the commercial use of their names and likenesses. Plaintiffs allege that PeopleConnect violates these legal rights by using California residents' names and childhood photographs in advertisements promoting paid subscriptions to its website, classmates.com. The case is pending in the United States District Court for the Northern District of California.

***Boshears, et al. v. PeopleConnect, Inc., et al. (W.D. Wash.)***

Filed on behalf of Indiana residents against PeopleConnect alleging violations of Indiana's Right of Publicity Statute and Indiana's common law prohibiting misappropriation of a name or likeness. Plaintiffs allege that PeopleConnect violates these legal rights by using Indiana residents' personalities, including their names and childhood photographs, in advertisements promoting paid subscriptions to its website, classmates.com. The case is currently on appeal before the United States Court of Appeals for the Ninth Circuit.

***Loendorf v. PeopleConnect, Inc., et al. (N.D. Ill.)***

***Mackey v. PeopleConnect, Inc., et al. (N.D. Ill.)***

Both actions were filed on behalf of Illinois residents against PeopleConnect alleging violations of Illinois' Right of Publicity Act and Illinois common law prohibiting unjust enrichment. Plaintiffs allege that PeopleConnect violates these legal rights by using Illinois residents' names, personas, and personal information in advertisements promoting paid subscriptions to its website, classmates.com, and unlawfully profiting from it. The cases are pending in the United States District Court for the Northern District of Illinois.

***Sessa, et al. v. Ancestry.com Operations Inc., et al. (D. Nev.)***

Filed on behalf of Nevada residents against Ancestry.com alleging violations of Nevada's right to publicity statute, Nevada law prohibiting deceptive trade practice, Nevada common law protection against Intrusion upon Seclusion, and Nevada Unjust Enrichment law. Plaintiffs allege that Ancestry.com violates these legal rights by knowingly misappropriating the photographs, likenesses, names, and identities of Nevada residents for the commercial purpose of selling access to and advertising them in Ancestry.com products and services without their prior consent. The case is pending in the United States District Court for the District of Nevada.

***Braundmeier v. Ancestry.com Operations, Inc., et al. (N.D. Ill.)***

Filed on behalf of Illinois residents against Ancestry.com alleging violations of Illinois' Right of Publicity Act and Illinois common law prohibiting unjust enrichment. Plaintiffs allege that Ancestry.com violates these legal rights by knowingly misappropriating the photographs, likenesses, names, and identities of Illinois residents for the commercial purpose of selling access to and advertising them in Ancestry.com products and services without their prior consent. The case is pending in the United States District Court for the Northern District of Illinois.



***Spindler v. Seamless Contacts Inc. (N.D. Cal.)***

Filed on behalf of California residents against Seamless Contacts Inc. alleging violations of California law that recognizes the intellectual property and privacy rights of individuals to control the commercial use of their names and likenesses. Plaintiffs allege that Seamless Contacts violates these legal rights by using California residents' names, likenesses, photographs, and personas in advertisements promoting paid subscriptions to its website, seamless.ai. The case is pending in the United States District Court for the Northern District of California.

***Martinez v. ZoomInfo Technologies Inc. (W.D. Wash.)***

Filed on behalf of California residents against ZoomInfo Technologies Inc. alleging violations of California law that recognizes the intellectual property and privacy rights of individuals to control the commercial use of their names and likenesses. Plaintiffs allege that ZoomInfo Technologies violates these legal rights by using California residents' names and person information in advertisements promoting paid subscriptions to its website, zoominfo.com, as well as selling access to their names and personal information as part of its products. The case is currently on appeal before the United States Court of Appeals for the Ninth Circuit.

***Gbeintor v. DemandBase, Inc., et al. (N.D. Cal.)***

Filed on behalf of California residents against DemandBase, Inc. and InsideView Technologies, Inc. alleging violations of California law that recognizes the intellectual property and privacy rights of individuals to control the commercial use of their names and likenesses. Plaintiffs allege that DemandBase and InsideView Technologies violate these legal rights by using California residents' names, likenesses, photographs, and personas in advertisements promoting paid subscriptions to its website, insideview.com, without their consent. The case is currently on appeal before the United States Court of Appeals for the Ninth Circuit.

***Kellman, et al. v. Spokeo, Inc. (N.D. Cal.)***

Filed on behalf of California residents against Spokeo, Inc. alleging violations of California law that recognizes the intellectual property and privacy rights of individuals to control the commercial use of their names and likenesses. Plaintiffs allege that Spokeo violates these legal rights by using California residents' names, likenesses, photographs, and personas in advertisements promoting paid subscriptions to its website without their consent. The case is pending in the United States District Court for the Northern District of California.

## TELEPHONE CONSUMER PROTECTION ACT

### ***Evans v. American Power & Gas, LLC, et al. (S.D. Ohio)***

Filed on behalf of consumers who received automated solicitation telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* The case settled on a class-wide basis for \$6,000,000, and final approval was granted in May 2019.

### ***Murray, et al. v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh (D. Mass.)***

Filed on behalf of consumers who received automated solicitation telephone calls on their cellular and residential telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* The case settled on a class-wide basis for \$14,000,000 in 2020. Final approval was granted in October 2021 and the case is currently on appeal to the United States Court of Appeals for the First Circuit.

### ***Baldwin, et al. v. Miracle-Ear, Inc., et al. (D. Minn.)***

Filed on behalf of consumers who received automated or prerecorded telemarketing telephone calls on their cellular and residential telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* The case settled on a class-wide basis for \$8,000,000 in 2021 and final approval was granted in October 2022.

### ***Goodell, et al. v. Van Tuyl Group, LLC (D. Az.)***

Filed on behalf of consumers who received automated solicitation telephone calls on their cellular and residential telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* This case is currently pending in the United States District Court for the District of Arizona.

### ***Doup v. Van Tuyl Group, LLC (N.D. Tex.)***

Filed on behalf of consumers who received solicitation telephone calls on their cellular and residential telephones that were listed on the National Do-Not-Call Registry, without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* This case is currently pending in the United States District Court for the Northern District of Texas.

***Dickson v. Direct Energy, LP, et al. (N.D. Ohio)***

Filed on behalf of consumers who received automated or prerecorded telemarketing telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* This case is currently on appeal to the United States Court of Appeals for the Sixth Circuit.

***Learned, et al. v. McClatchy Company, LLC (E.D. Cal.)***

Filed on behalf of consumers who received solicitation telephone calls on their cellular and residential telephones that were listed on the National Do-Not-Call Registry and/or who requested Defendant stop calling them, without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* This case is currently pending in the United States District Court for the Eastern District of California.

***Rogers, et al. v. Assurance IQ, LLC, et al. (W.D. Wash.)***

Filed on behalf of consumers who received automated solicitation telephone calls on their cellular and residential telephones, some that were listed on the National Do-Not-Call Registry, without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* This case is currently pending in the United States District Court for the Western District of Washington.

## Our Professionals

### SAMUEL J. STRAUSS

Samuel J. Strauss is a founding member of Turke & Strauss LLP. Mr. Strauss concentrates his practice in class action litigation with an emphasis on consumer protection and privacy issues. Mr. Strauss has a national practice and appears in federal courts across the country. Over the course of his career, Mr. Strauss has represented plaintiffs in cases which have resulted in the recovery of hundreds of millions of dollars for consumers.

Mr. Strauss received his J.D. with honors from the University of Washington School of Law in 2013. Prior to forming Turke & Strauss in 2016, Mr. Strauss was an associate at Terrell Marshall Law Group in Seattle, Washington, where he successfully prosecuted complex class actions in federal and state courts.

Mr. Strauss is a member of bars of the states of Washington, Wisconsin, and Illinois and has been admitted to practice in the United States District Court for the Western District of Washington, United States District Court for the Eastern District of Washington, United States District Court for the Western District of Wisconsin, the United States District Court for the Eastern District of Wisconsin, the United States District Court for the Northern District of Illinois, the United States District Court for the Eastern District of Michigan, and the United States Court of Appeals for the Ninth Circuit.

In recent years, Mr. Strauss has been actively involved in a number of complex class action matters in state and federal courts including:

- *Daum, et al. v. K & B Surgical Center, LLC*, No. 21STCV41347 (Cal. Sup. Ct., Los Angeles Cty.)
- *Reetz v. Advocate Aurora Health, Inc.*, No. 20CV2361 (Wis. Cir. Ct., Branch 22, Milwaukee Cty.)
- *Goetz v. Benefit Recovery Specialists, Inc.*, No. 2020CV000550 (Wis. Cir. Ct., Walworth Cty.)
- *Joyner v. Behavioral Health Network, Inc.*, No. 2079CV00629 (Mass. Sup. Ct., Hampden Cty.)
- *In re BJC Healthcare Data Breach Litigation*, No. 2022-CC09492 (Mo. Cir. Ct., St. Louis City)
- *Baldwin, et al. v. National Western Life Insurance Company*, No. 2:21-cv-04066 (W.D. Mo.)

- *Pryor v. Eastern Bank*, No. 1984CV03467-BLS1 (Mass. Sup. Ct., Suffolk Cty.)
- *Murray v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, No. 19-cv-12608 (D. Mass.)
- *Baldwin v. Miracle-Ear, Inc.*, No. 20-cv-01502 (D. Minn.)
- *Goodell v. Van Tuyl Group, LLC*, No. 20-cv-01657 (D. Az.)
- *Weister v. Vantage Point AI, LLC*, No. 21-cv-01250 (M.D. Fla.)
- *Lang v. Colonial Penn Life Insurance Company*, No. 21-cv-00165 (N.D. Fla.)
- *Mackey v. PeopleConnect, Inc.*, No. 1:22-cv-00342 (N.D. Ill.)
- *Sessa v. Ancestry.com Operations Inc., et al.*, No. 2:20-cv-02292 (D. Nev.)
- *Boshears v. PeopleConnect, Inc.*, No. 21-cv-01222 (W.D. Wash.)
- *Braundmeier v. Ancestry.com Operations, Inc.*, No. 1:20-cv-07390 (N.D. Ill.)
- *Martinez v. ZoomInfo Technologies Inc.*, No. 21-cv-05725 (W.D. Wash.)
- *Uhhariet v. MyLife.com, Inc.*, No. 21-cv-08229 (N.D. Cal.)
- *Kellman v. Spokeo, Inc.*, No. 21-cv-08976 (N.D. Cal.)
- *Patterson v. Respondus, Inc.*, No. 20-cv-07692 (N.D. Ill.)
- *Bridges v. Respondus, Inc.*, No. 21-cv-01785 (N.D. Ill.)
- *Hudock v. LG Electronics USA, Inc.*, No. 16-cv-1220 (D. Minn.)
- *Crawford v. FCA US LLC*, No. 20-cv-12341 (E.D. Mich.)
- *Klaehn, et al. v. Cali Bamboo, LLC*, No. 19-cv-01498 (S.D. Cal.)
- *Jones v. Monsanto Company*, No. 19-cv-00102 (W.D. Mo.)
- *Dickson v. Direct Energy, LP, et al.*, No. 18-cv-00182 (N.D. Ohio)
- *Rolland v. Spark Energy, LLC*, Case. No. 17-cv-02680 (D.N.J.)
- *Evans v. American Power & Gas, LLC*, No. 17-cv-00515 (S.D. Ohio)
- *Fowler v. Wells Fargo Bank, N.A.*, No. 17-cv-02092 (N.D. Cal.)
- *Wilkins v. HSBC Bank Nevada, N.A., et al.*, No. 14-cv-00190 (N.D. Ill.)
- *Ott v. Mortgage Investors Corporation*, No. 14-cv-00645 (D. Or)
- *Booth v. AppStack, et al.*, No. 13-cv-01533 (W.D. Wash.)
- *Melito v. American Eagle Outfitters, Inc.*, No. 14-cv-02440-VEC (S.D.N.Y.)
- *Spencer v. FedEx Ground Package System, Inc.*, No. 14-2-30110-3 SEA (Wa. Sup. Ct., King Cty.)

## MARY C. TURKE

Mary C. Turke is a founding member of Turke & Strauss. Ms. Turke concentrates her practice in civil and commercial litigation. Ms. Turke regularly prosecutes consumer class actions, including those involving violations of the Illinois Biometric Information Privacy Act and the Telephone Consumer Protection Act. Mr. Turke has extensive experience representing parties in multi-national disputes in both state and federal courts throughout the United States.

Ms. Turke received her J.D. *cum laude* from the University of Wisconsin Law School, Order of the Coif, in 1996. Prior to forming Turke & Strauss in May 2016, Ms. Turke was the managing partner of the Madison, Wisconsin, office of Michel Best & Friedrich LLP, where she practiced civil litigation. Ms. Turke is an active member of the Wisconsin State Bar. Ms. Turke has repeatedly been named to the annual Wisconsin Super Lawyers list (2011-2021) by SuperLawyers Magazine as well as The Best Lawyers in America® list (2013-2020) by Woodward/White, Inc. In 2017, shortly after forming Turke & Strauss, Ms. Turke received the Legal Innovator Award from the Wisconsin State Bar.

Ms. Turke is a member of the Wisconsin State Bar and has been admitted to practice in the United States District Court for the Western District of Wisconsin, the United States District Court for the Eastern District of Wisconsin, the United States District Court for the Northern District of Illinois, the United States District Court for the District of Colorado, and the United States Court of Appeals for the Seventh Circuit.

In recent years, Ms. Turke has been substantially involved in a number of complex class action matters in state and federal courts including:

- *Patterson v. Respondus, Inc.*, No. 1:20-cv-07692 (N.D. Ill.)
- *Reetz v. Advocate Aurora Health, Inc.*, No. 20CV2361 (Wis. Cir. Ct., Branch 22, Milwaukee Cty.)
- *Goetz v. Benefit Recovery Specialists, Inc.*, No. 2020CV000550 (Wis. Cir. Ct., Walworth Cty.)
- *Murray v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, No. 1:19-cv-12608 (D. Mass.)
- *Goodell, et al. v. Van Tuyl Group, LLC*, No. 2:20-cv-01657 (D. Az.)
- *Doe v. Northwestern University*, No. 1:21-cv-01579 (N.D. Ill.)
- *Duerr v. Bradley University*, No. 1:21-cv-01096-SLD-JEH (C.D. Ill.)
- *Bridges v. Respondus, Inc.*, No. 1:21-cv-01785 (N.D. Ill.)

- *Powell v. DePaul University*, No. 1:21-cv-03001 (N.D. Ill.)
- *Doe v. Chamberlain University*, No. 2021CH01183 (Il. Cir. Ct., Cook Cty.)
- *Fee v. Illinois Institute of Technology*, No. 1:21-cv-02512 (N.D. Ill.)
- *Harvey v. Resurrection University*, No. 1:21-cv-03203 (N.D. Ill.)

## RAINA C. BORRELLI

Raina C. Borrelli is a partner at Turke & Strauss whose practice focuses on complex class action litigation, including data privacy, Telephone Consumer Protection Act ("TCPA"), false advertising, and consumer protection cases in both state and federal courts around the country. Ms. Borrelli has served as lead, co-lead, and class counsel in numerous national class actions, including multi-district litigation. Additionally, Ms. Borrelli has substantial experience leading discovery teams in these complex class action matters, as well as in working with class damages experts and class damages models in consumer protection cases.

Ms. Borrelli received her J.D. *magna cum laude* from the University of Minnesota Law School in 2011. Prior to joining Turke & Strauss, Ms. Borrelli was a partner at Gustafson Gluek, where she successfully prosecuted complex class actions in federal and state courts. Ms. Borrelli is an active member of the Minnesota Women's Lawyers and the Federal Bar Association, where she has assisted in the representation of *pro se* litigants through the *Pro Se* Project. Ms. Borrelli has repeatedly been named to the annual Minnesota "Rising Star" Super Lawyers list (2014-2021) by SuperLawyers Magazine. She has also been repeatedly certified as a North Star Lawyer by the Minnesota State Bar Association (2012-2015; 2018-2020) for providing a minimum of 50 hours of pro bono legal services.

Ms. Borrelli is a member of the Minnesota State Bar Association and has been admitted to practice in the United States District Court for the District of Minnesota, the United States District Court for the Eastern District of Wisconsin, the United States District Court for the Eastern District of Michigan, the United States District Court for the Northern District of Illinois, and the United States Court of Appeals for the Tenth Circuit.

In recent years, Ms. Borrelli has been appointed to leadership positions in a number of data privacy cases, including *In re Netgain Technology, LLC Consumer Data Breach Litigation*, No. 21-cv-01210 (D. Minn.) (Executive Committee member); *Dusterhoff, et al. v. OneTouchPoint Corp.*, No. 2:22-cv-00882 (E.D. Wisc.) (Plaintiffs' Steering Committee member); *In re Lincare Holdings Inc. Data Breach Litigation*, No. 8:22-cv-01472 (M.D. Fl.) (co-lead counsel); *Forslund v. R.R. Donnelley & Sons Company*, No. 1:22-cv-04260 (N.D. Ill.) (co-lead counsel); and *Medina v. PracticeMax Incorporated*, No. 2:22-cv-0126 (D. Az.) (Executive Leadership Committee member). Ms. Borrelli has been substantially involved in a number of



complex class action matters in state and federal courts including:

- *Daum, et al. v. K & B Surgical Center, LLC*, No. 21STCV41347 (Cal. Sup. Ct., Los Angeles Cty.)
- *Grogan v. McGrath RentCorp*, No. 3:22-cv-00490 (N.D. Cal.)
- *Benedetto, et al. v. Southeastern Pennsylvania Transportation Authority*, No. 210201425 (C.C.P. Phila.)
- *Reetz v. Advocate Aurora Health, Inc.*, No. 20CV2361 (Wis. Cir. Ct., Branch 22, Milwaukee Cty.)
- *Goetz v. Benefit Recovery Specialists, Inc.*, No. 2020CV000550 (Wis. Cir. Ct., Walworth Cty.)
- *Reese v. Teen Challenge Training Center, Inc.*, No. 00093 (C.C.P. Phila.)
- *Lhota v. Michigan Avenue Immediate Care, S.C.*, No. 2022CH06616 (Ill. Cir. Ct., Cook Cty.)
- *Johnson, et al. v. Yuma Regional Medical Center*, No. 2:22-cv-01061 (D. Az.)
- *Baldwin v. Miracle-Ear, Inc.*, No. 20-cv-01502 (D. Minn.)
- *Murray, et al. v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, No. 1:19-cv-12608 (D. Mass.)
- *Goodell v. Van Tuyl Group, LLC*, No. 20-cv-01657 (D. Az.)
- *Learned, et al. v. McClatchy Company LLC*, No. 2:21-cv-01960 (E.D. Cal.)
- *Lang v. Colonial Penn Life Insurance Company*, No. 21-cv-00165 (N.D. Fla.)
- *Martinez v. ZoomInfo Technologies Inc.*, No. 21-cv-05725 (W.D. Wash.)
- *Abraham, et al. v. PeopleConnect, Inc.*, No. 3:20-cv-09203 (N.D. Cal.)
- *Boshears v. PeopleConnect, Inc.*, No. 21-cv-01222 (W.D. Wash.)
- *Mackey v. PeopleConnect, Inc.*, No. 1:22-cv-00342 (N.D. Ill.)
- *Sessa v. Ancestry.com Operations Inc., et al.*, No. 2:20-cv-02292 (D. Nev.)
- *Braundmeier v. Ancestry.com Operations, Inc.*, No. 1:20-cv-07390 (N.D. Ill.)
- *DeBose v. Dun & Bradstreet Holdings, Inc.*, No. 2:22-cv-00209 (D.N.J.)
- *Gbeintor, et al. v. DemandBase, Inc., et al.*, No. 3:21-cv-09470 (N.D. Cal.)
- *Spindler v. Seamless Contacts Inc.*, No. 4:22-cv-00787 (N.D. Cal.)
- *Kellman, et al. v. Spokeo, Inc.*, No. 3:21-cv-08976 (N.D. Cal.)
- *Brown v. Coty, Inc.*, No. 1:22-cv-02696 (S.D.N.Y.)
- *Benanav v. Healthy Paws Pet Insurance LLC*, No. 2:20-cv-00421 (W.D. Wash.)
- *Spindler, et al. v. General Motors LLC*, No. 3:21-cv-09311 (N.D. Cal.)
- *Hudock v. LG Electronics USA, Inc.*, No. 16-cv-1220 (JRT/KMM) (D. Minn.)
- *Patterson v. Respondus, Inc.*, No. 1:20-cv-07692 (N.D. Ill.)
- *Powell v. DePaul University*, No. 1:21-cv-03001 (N.D. Ill.)
- *Fee v. Illinois Institute of Technology*, No. 1:21-cv-02512 (N.D. Ill.)
- *Harvey v. Resurrection University*, No. 1:21-cv-03203 (N.D. Ill.)
- *In re FCA Monostable Gearshifts Litig.*, No. 16-md-02744 (E.D. Mich.)

- *Zeiger v. WellPet LLC*, No. 17-cv-04056 (N.D. Cal.)
- *Wyoming v. Procter & Gamble*, No. 15-cv-2101 (D. Minn.)
- *In re Big Heart Pet Brands Litig.*, No. 18-cv-00861 (N.D. Cal.)
- *Sullivan v. Fluidmaster*, No. 14-cv-05696 (N.D. Ill.)
- *Rice v. Electrolux Home Prod., Inc.*, No. 15-cv-00371 (M.D. Pa.)
- *Gorczynski v. Electrolux Home Products, Inc.*, No. 18-cv-10661 (D.N.J.)
- *Reitman v. Champion Petfoods*, No. 18-cv-1736 (C.D. Cal.)
- *Reynolds, et al., v. FCA US, LLC*, No. 19-cv-11745 (E.D. Mich.).

## BRITTANY RESCH

Brittany Resch is an associate at Turke & Strauss. Ms. Resch's practice focuses on complex class action litigation, including antitrust litigation, data-breach, Telephone Consumer Protection Act ("TCPA"), false advertising, and consumer protection cases in both state and federal courts around the country. Ms. Resch has substantial experience managing discovery in these complex class action matters.

Ms. Resch received her J.D. from the University of Minnesota Law School in 2015. Prior to joining Turke & Strauss, Ms. Resch was an associate at Gustafson Gluek, where she successfully prosecuted complex class actions in federal and state courts. Ms. Resch also clerked for the Honorable Richard H. Kyle, Senior United States District Judge for the District of Minnesota. Ms. Resch is an active member of the Minnesota Women's Lawyers and the Federal Bar Association, where she has assisted in the representation of *pro se* litigants through the *Pro Se* Project.

Ms. Resch is a member of the Minnesota State Bar Association and has been admitted to practice in the United States District Court for the District of Minnesota and the United States District Court for the Northern District of Illinois.

In recent years, Ms. Resch has been substantially involved in a number of complex class action matters in state and federal courts including:

- *Benedetto v. Southeastern Pennsylvania Transportation Authority*, No. 210201425 (C.C.P. Phila.)
- *In re Netgain Technology, LLC Consumer Data Breach Litigation*, No. 21-cv-01210 (D. Minn.)
- *Perkins v. WelldyneRx, LLC*, No. 8:22-cv-02051 (M.D. Fla.)
- *Forslund v. R.R. Donnelley & Sons Company*, No. 1:22-cv-04260 (N.D. Ill.)
- *Corra, et al. v. ACTS Retirement Services, Inc.*, No. 2:22-cv-02917 (E.D. Pa.)
- *Lamie, et al. v. LendingTree, LLC*, No. 3:22-cv-00307 (W.D.N.C.)
- *In re Lincare Holdings Inc. Data Breach Litigation*, No. 8:22-cv-01472 (M.D. Fl.)
- *Benanav, et al. v. Healthy Paws Pet Insurance, LLC*, No. 2:20-cv-00421-RSM (W.D. Wash.)
- *Martinez v. ZoomInfo Technologies Inc.*, No. 21-cv-05725 (W.D. Wash.)
- *Abraham, et al. v. PeopleConnect, Inc.*, No. 3:20-cv-09203 (N.D. Cal.)
- *Boshears v. PeopleConnect, Inc.*, No. 21-cv-01222 (W.D. Wash.)
- *Mackey v. PeopleConnect, Inc.*, No. 1:22-cv-00342 (N.D. Ill.)

- *Sessa v. Ancestry.com Operations Inc., et al.*, No. 2:20-cv-02292 (D. Nev.)
- *Braundmeier v. Ancestry.com Operations, Inc.*, No. 1:20-cv-07390 (N.D. Ill.)
- *DeBose v. Dun & Bradstreet Holdings, Inc.*, No. 2:22-cv-00209 (D.N.J.)
- *Gbeintor, et al. v. DemandBase, Inc., et al.*, No. 3:21-cv-09470 (N.D. Cal.)
- *Spindler v. Seamless Contacts Inc.*, No. 4:22-cv-00787 (N.D. Cal.)
- *Kellman, et al. v. Spokeo, Inc.*, No. 3:21-cv-08976 (N.D. Cal.)
- *Kis v. Cognism Inc.*, No. 4:22-cv-05322 (N.D. Cal.)
- *Uhhariet v. MyLife.com, Inc.*, No. 21-cv-08229 (N.D. Cal.)
- *Brown v. Coty, Inc.*, No. 1:22-cv-02696 (S.D.N.Y.)
- *Emmrich v. General Motors LLC*, No. 21-cv-05990 (N.D. Ill.)
- *Spindler v. General Motors LLC*, No. 21-cv-09311 (N.D. Cal.)
- *Goodell v. Van Tuyl Group, LLC*, No. 20-cv-01657 (D. Az.)
- *Learned, et al. v. McClatchy Company LLC*, No. 2:21-cv-01960 (E.D. Cal.)
- *Clemens v. O'Neil Insurance Company, Inc.*, No. 21-cv-00678 (E.D. Mo.)
- *Patterson v. Respondus University, et al.*, No. 1:20-cv-07692 (N.D. Ill.)
- *Bridges v. Respondus University, et al.*, No. 1:21-cv-01785 (N.D. Ill.)
- *Hudock v. LG Electronics USA, Inc.*, No. 16-cv-1220 (JRT/KMM) (D. Minn.)
- *In re Broiler Chicken Antitrust Litigation*, No. 16-cv-08637 (N.D. Ill.)
- *In re Disposable Contact Lens Antitrust Litigation*, No. 15-md-02626 (M.D. Fla.)
- *In re Pork Antitrust Litigation*, No. 21-md-02998 (D. Minn.)
- *In re DPP Beef Litigation*,
- *In re Asacol Antitrust Litigation*, No. 15-cv-12730 (D. Mass.)
- *In re Automotive Parts Antitrust Litigation*, No. 12-md-02311 (E.D. Mich.)

## ALEX S. PHILLIPS

Alex Phillips is an associate at Turke & Strauss. Mr. Phillips concentrates his practice in complex class action litigation and commercial litigation. He has represented both plaintiffs and defendants in high stakes litigation. Mr. Phillips has successfully obtained trial verdicts on behalf of his clients as well as negotiated numerous high-value settlements.

Mr. Phillips received his J.D. from the University of Wisconsin School of Law in 2017 and has been an active member of the Wisconsin State Bar as well as the Dane, Jefferson, and Dodge County Bar Associations.

In recent years, Mr. Phillips has been involved in a number of complex class action matters in state and federal courts including:

- *Benedetto v. Southeastern Pennsylvania Transportation Authority*, No. 210201425 (C.C.P. Phila.)
- *Grogan v. McGrath RentCorp*, No. 3:22-cv-00490 (N.D. Cal.)
- *Koeller, et al. v. Numrich Gun Parts Corporation*, No. 1:22-cv-00675 (S.D.N.Y.)
- *Mayhood v. Wilkins Recreational Vehicles, Inc.*, No. E2022-0701 (N.Y. Sup. Ct., Steuben Cty.)
- *Perkins v. WelldyneRx, LLC*, No. 8:22-cv-02051 (M.D. Fla.)
- *Batis v. Dun & Bradstreet Holdings, Inc.*, No. 3:22-cv-09124 (N.D. Cal.)
- *Sessa v. Ancestry.com Operations Inc., et al.*, No. 2:20-cv-02292 (D. Nev.)
- *Ambramson v. First American Home Warranty Corporation*, No. 2:22-cv-01003 (W.D. Pa.)
- *DeVivo v. Sovereign Lending Group Incorporated*, No. 3:22-cv-05254 (W.D. Wash.)
- *Murray, et al. v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, No. 1:19-cv-12608 (D. Mass.)
- *Spindler v. General Motors LLC*, No. 21-cv-09311 (N.D. Cal.)
- *Kellman v. Spokeo, Inc.*, No. 21-cv-08976 (N.D. Cal.)
- *Reetz v. Advocate Aurora Health, Inc.*, No. 20CV2361 (Wis. Cir. Ct., Branch 22, Milwaukee Cty.)
- *Goetz v. Benefit Recovery Specialists, Inc.*, No. 2020CV000550 (Wis. Cir. Ct., Walworth Cty.)
- *Hudock v. LG Electronics USA, Inc.*, No. 16-cv-1220 (D. Minn.)
- *Dickson v. Direct Energy, LP, et al.*, No. 18-cv-00182 (N.D. Ohio)
- *Benanav v. Healthy Paws Pet Insurance, LLC*, No. 20-cv-00421 (W.D. Wash.)
- *Klaehn, et al. v. Cali Bamboo, LLC, et al.*, No. 19-cv-01498 (S.D. Cal.)

## ZOG BEGOLLI

Zog Begolli is an associate at Turke & Strauss. Mr. Begolli concentrates his practice in complex class action litigation, with an emphasis on cases involving data privacy, the Telephone Consumer Protection Act, the Illinois Biometric Information Privacy Act, various states' consumer protection acts, and financial industry regulations.

Mr. Begolli received his J.D. from the University of Wisconsin School of Law in 2017 and is an active member of the Wisconsin State Bar. During law school, Mr. Begolli was a member of the University of Wisconsin Law and Entrepreneurship Clinic, which provides legal services to nascent entrepreneurs and early stage companies.

In recent years, Mr. Begolli has been actively involved in a number of complex class action matters in state and federal courts including:

- *Baldwin v. Miracle-Ear, Inc.*, No. 20-cv-01502 (JRT/HB) (D. Minn.)
- *Murray v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, No. 19-cv-12608 (D. Mass.)
- *Learned, et al. v. McClatchy Company LLC*, No. 2:21-cv-01960 (E.D. Cal.)
- *Patterson v. Respondus, Inc.*, No. 1:20-cv-07692 (N.D. Ill.)
- *Grogan v. McGrath RentCorp*, No. 3:22-cv-00490 (N.D. Cal.)
- *In re Netgain Technology, LLC Consumer Data Breach Litigation*, No. 21-cv-01210 (D. Minn.)
- *Reetz v. Advocate Aurora Health, Inc.*, No. 20CV2361 (Wis. Cir. Ct., Branch 22, Milwaukee Cty.)
- *Goetz v. Benefit Recovery Specialists, Inc.*, No. 2020CV000550 (Wis. Cir. Ct., Walworth Cty.)
- *Reese v. Teen Challenge Training Center, Inc.*, No. 00093 (Philadelphia Ct. Common Pleas)
- *Abraham, et al. v. PeopleConnect, Inc.*, No. 3:20-cv-09203 (N.D. Cal.)
- *Loendorf v. PeopleConnect, Inc.*, No. 1:22-cv-00051 (N.D. Ill.)
- *Braundmeier v. Ancestry.com Operations, Inc.*, No. 1:20-cv-07390 (N.D. Ill.)
- *Crawford, et al. v. FCA US LLC*, No. 20-cv-12341 (E.D. Mich.)
- *Hudock v. LG Electronics USA, Inc.*, No. 16-cv-1220 (D. Minn.)
- *Klaehn, et al. v. Cali Bamboo, LLC, et al.*, No. 19-cv-01498 (S.D. Cal.)
- *Fowler, et al. v. Wells Fargo Bank, N.A.*, No. 17-cv-02092 (N.D. Cal.)

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4 **UNITED STATES DISTRICT COURT**  
5 **NORTHERN DISTRICT OF CALIFORNIA**  
6 **SAN FRANCISCO DIVISION**

7 IN RE: ETHOS TECHNOLOGIES INC.  
8 DATA BREACH LITIGATION

Case No. 3:22-cv-09203-SK

9 This Document Relates to: All Actions

10 **DECLARATION OF SCOTT M.**  
11 **FENWICK OF KROLL SETTLEMENT**  
12 **ADMINISTRATION LLC IN**  
13 **CONNECTION WITH PRELIMINARY**  
14 **APPROVAL OF SETTLEMENT**

15 I, Scott M. Fenwick, hereby declare:

16 1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),<sup>1</sup> the Claims  
17 Administrator to be appointed in the above-captioned case, whose principal office is located at 2000  
18 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am  
19 authorized to make this declaration on behalf of Kroll and myself. The following statements are based  
20 on my personal knowledge and information provided by other experienced Kroll employees working  
21 under my general supervision. This declaration is being filed in connection with preliminary approval  
22 of the settlement.

23 2. Kroll has extensive experience in class action matters, having provided services in  
24 class action settlements involving antitrust, securities, labor and employment, consumer and  
25 government enforcement matters. Kroll has provided class action services in over 3,000 settlements  
26 varying in size and complexity over the past 50 years.

27 3. Kroll is prepared to provide a full complement of notification and claims  
28 administration services in connection with the Settlement Agreement, the terms of which are referred

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Settlement Agreement entered into in connection with the above-captioned matter.



1 to herein as the “Settlement,” including but not limited to notice of the Settlement disseminated by  
2 email, mail, PR Newswire and through the use of a Settlement Website to be created in connection  
3 with this matter.

4 4. It is Kroll’s understanding that it will be provided with a list of Settlement Class  
5 Members covered under the proposed Settlement, and such Class Member Information is to contain  
6 a combination of names, addresses, email addresses, and other data elements pertinent to providing  
7 notice and the administration of the Settlement.

8 **Notice by Email**

9 5. In preparation for disseminating Short Notice by email, Kroll will work with Class  
10 Counsel and Defendant’s counsel (collectively, “Counsel”) to finalize the language for the email form  
11 of the Short Notice. Once the email form of the Short Notice is approved, Kroll will create an email  
12 notice template in preparation for the email campaign. Kroll will prepare a file with all available  
13 Settlement Class Member email addresses and upload the file to an email campaign platform. Kroll  
14 will prepare email proofs for Counsel’s review and approval. The proofs/test emails for approval will  
15 include the body of the email and subject line. Once the proofs/test emails are approved, the email  
16 campaign will begin as directed in the Settlement.

17 6. Kroll will track and monitor emails that are rejected or “bounced back” as  
18 undeliverable. At the conclusion of the email campaign, Kroll will provide a report with the email  
19 delivery status of each record. The report will include the number of records that Kroll has reason to  
20 believe had a successful email Short Notice delivery, and a count of the records where email delivery  
21 failed. Kroll will also update its administration database with the appropriate status of the email  
22 campaign for each of the Settlement Class Member records.

23 **Notice by Mail**

24 7. Kroll will work with Counsel to format the Short Notice for mailing. Upon approval,  
25 Kroll will coordinate the preparation of Short Notice proofs for Counsel to review and approve.

26 8. As required under section 3.3(d)(ii) of the Settlement Agreement, Kroll will send the  
27 Short Notice to physical addresses available for Settlement Class Members by first-class mail. In  
28 preparation for the Short Notice mailing, Kroll will send the Class Member Information through the  
United States Postal Service’s (“USPS”) National Change of Address (“NCOA”) database. The



1 NCOA process will provide updated addresses for Settlement Class Members who have submitted a  
2 change of address with the USPS in the last 48 months, and the process will also standardize the  
3 addresses for mailing. Kroll will then prepare a mail file of Settlement Class Members that are to  
4 receive the Short Notice via first-class mail.

5 9. As required under section 3.3(d)(iii) of the Settlement Agreement, mailed Short  
6 Notices returned by the USPS with a forwarding address will be automatically re-mailed to the  
7 updated address provided by the USPS.

8 10. As required under section 3.3(d)(iv) of the Settlement Agreement, mailed Short  
9 Notices returned by the USPS undeliverable as addressed without a forwarding address will be sent  
10 through an advanced address search process in an effort to find a more current address for the record.  
11 If an updated address is obtained through the advanced search process, Kroll will re-mail the Short  
12 Notice to the updated address.

#### 13 **Settlement Website**

14 11. Kroll will work with Counsel to create a dedicated Settlement Website. The Settlement  
15 Website URL, [www.EthosSettlement.com](http://www.EthosSettlement.com), has already been obtained by Kroll. The Settlement  
16 Website will contain a summary of the Settlement, will allow Settlement Class Members to contact  
17 the Claims Administrator with any questions or changes of address, inform Settlement Class Members  
18 of their rights and provide notice of important dates such as the Final Approval Hearing, Claims  
19 Deadline, Objection Date, and Opt-Out Date, and provide Settlement Class Members who file Claim  
20 Forms online the opportunity to select an electronic payment method, including Venmo, Zelle,  
21 Paypal, ACH, or payment by check. The Settlement Website will also contain relevant Settlement  
22 documents for view and download, including the Long Notice, Claim Form, Consolidated Class  
23 Action Complaint, Preliminary Approval Order, and the Settlement Agreement.

#### 24 **Toll-Free Number**

25 12. Kroll will also establish a toll-free number for the Settlement. The toll-free number  
26 will allow Settlement Class Members to call and obtain information about the Settlement through an  
27 Interactive Voice Response System and live operators.

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**Reminder Notices**

13. As required under section 3.3(g) of the Settlement Agreement, fourteen (14) days before the Claims Deadline, Kroll will send Reminder Notices via email and postcard to all Settlement Class Members who have not yet submitted a Claim Form and have not opted out of the Settlement for whom Kroll, at that time, has a valid email address and/or physical address.

**Publication**

14. As required under section 3.3(f) of the Settlement Agreement, Kroll will publish a notice substantially in the form of the Short Notice on PR Newswire, or a similar outlet that reaches the entire United States.

**Administration Cost**

15. Based on Kroll's current understanding of the class size and requested notice and administration services, estimated Costs of Claims Administration are approximately \$97,987 for fees and costs for the Notice Program and Claims Administration under the Settlement. The current estimate is subject to change depending on factors such as the actual Settlement Class size and/or any Claims Administration scope change not currently under consideration.

**Data Use Limitation**

16. Kroll will solely use Settlement Class Member data for providing notice, Settlement and Claims Administration, award calculations, and issuing Settlement payments for Valid Claims.

**Technical Controls, Data Security**

17. Kroll is an industry leader in data security. Kroll is CCPA, HIPAA, and GDPR compliant and maintains numerous industry certifications related to data security, including SOC2 and ISO 2700 certification. Kroll has technical, physical, and procedural protocols and safeguards in place to ensure the security and privacy of Settlement Class Member data. These include standards related to data retention and document destruction; fully redundant environmental systems and redundant storage; regular audits; and documented plans for both incident and crisis response, including breach protocols and physical controls. Kroll's information security program includes vulnerability management, compliance, security monitoring and security engineering supported by a team of information security professionals, including a Chief Information Security Officer and Chief Privacy Officer.

**Business/Liability Insurance**

18. Kroll maintains standard business insurance, including professional liability insurance, cyber insurance, and crime insurance.

**Administrative and Ethical policies**

19. Kroll has employee administrative and ethical policies that all employees are required to follow. These include, but are not limited to:

- Pre-hire background checks;
- Controls for accessing systems, data and applications, along with processes for assigning access;
- Annual Code of Ethics training and certification;
- Annual Information Security training and certification; and
- HIPAA training for all staff.

**Crisis and Risk Management**

20. Kroll has defined and tested incident response and disaster recovery plans that it employs across the organization. Should an incident occur, Kroll will take immediate action, which will include notification to clients and claimants of the incident consistent with privacy laws and regulations or as otherwise provided in any contractual agreements with its clients. Kroll also has detailed vendor on-boarding and management policies.

**Physical Access Controls**

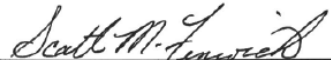
21. Security keycard access is required to enter Kroll's facilities. Additionally, keycard access is required for employees to use the facility elevators and to enter Kroll's office spaces.

**Data Collection, Retention and Destruction**

22. Kroll only requires the collection of data necessary to effectively administer the Settlement. If personally identifiable information ("PII") (e.g., Social Security Numbers, account information, dates of birth, etc.) are not necessary for administration, Kroll will not request such PII. Kroll does not and will not share Settlement Class Member data with third parties unless authorized or directed to do so by the Counsel for the Parties or the Court. Internally, access to data is limited to only those employees working on the particular matter. In addition, Kroll has standard practices for data retention and destruction. However, to the extent there are data retention and destruction

1 requirements specific to the Settlement that differ from Kroll's standard policies, Kroll will follow  
2 the Settlement guidelines.

3 I declare under penalty of perjury under the laws of the United States that the above is true and  
4 correct to the best of my knowledge and that this declaration was executed on June 22, 2023, at  
5 Woodbury, Minnesota.

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8 Scott M. Fenwick

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: ETHOS TECHNOLOGIES INC.  
DATA BREACH LITIGATION

This Document Relates To:  
All Actions

Case No. 3:22-cv-09203-SK

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Complaint Filed: December 30, 2022

This case is before the Court on Plaintiffs Christopher Stein, Josephine Dibisceglia, John Blumenstock, Thomas Rossello, Jeffrey Branch, Derrick Carter, Trevor Pearch, James Schneider and Tameka Young's (collectively, "Plaintiffs") Unopposed Motion for Preliminary Approval of the Class Action Settlement (the "Motion"). The Court, having considered the Motion, the supporting brief, the Parties' Settlement Agreement dated June 23, 2023 (the "Settlement Agreement"); the proposed Claim Form (Exhibit A), Long Notice (Exhibit B), and Short Notice (Exhibit C); the pleadings and other papers filed in this Action; and the statements of counsel and the Parties, and for good cause shown,

**HEREBY ORDERS** as follows:

Preliminary Approval of Settlement Agreement

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement Agreement.

2. This Court has jurisdiction over the Litigation, Plaintiffs, all Settlement Class Members, Defendant Ethos Technologies Inc. ("Ethos"), and any party to any agreement that is part of or related to the Settlement.

3. The Court finds that the proposed Settlement set forth in the Settlement Agreement is sufficiently fair, reasonable, and adequate such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members and that a hearing should be held as set forth below.

4. The Court preliminarily finds that this Settlement complies with the Northern District of California's *Procedural Guidance for Class Action Settlements*.

Class Certification

5. Solely for purposes of the Settlement, the Court conditionally certifies the following nationwide class ("Settlement Class") and California subclass ("California Subclass") pursuant to Fed. R. Civ. P. 23(a) and (b)(3):

**Settlement Class:** All persons identified by Defendant (or its agents or affiliates) as being among those individuals impacted by the Data Incident, including all who were sent a notice of the Data Incident.

**Settlement Subclass or California Settlement Subclass:** All persons identified by Defendant (or its agents or affiliates) as being individuals residing in California impacted by the Data Incident, including all who were sent a notice of the Data Incident.

6. Excluded from the Settlement Class and the California Subclass are: (i) Defendant and its respective officers and directors; (ii) the Judge(s) to whom the action is assigned and any member of those Judges' staffs or immediate family members; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

7. Subject to final approval of the Settlement, the Court finds and concludes for settlement purposes only that the prerequisites to a class action, set forth in Fed. R. Civ. P. 23(a) and (b), are satisfied in that:

- a. the Settlement Class and California Subclass are so numerous that joinder of all members is impracticable;
- b. there are questions of law or fact common to the Settlement Class and the California Subclass;
- c. Plaintiffs and Class Counsel (as defined below) fairly and adequately represent the Settlement Class and the California Subclass;
- d. the claims of Plaintiffs are typical of those of Settlement Class Members and California Subclass Members;
- e. common issues predominate over any individual issues affecting the members of the Settlement Class and the California Subclass;
- f. Plaintiffs fairly and adequately protect and represent the interests of all members of the Settlement Class and the California Subclass, and Plaintiffs' interests are aligned with the interests of all other members of the Settlement Class and the California Subclass; and

1 g. settlement of the Litigation on a class-action basis is superior to other means  
2 of resolving this matter.

3 8. The Court appoints M. Anderson Berry and Gregory Haroutunian of Clayco C.  
4 Arnold, APC; Dylan J. Gould and Jonathan T. Deters of Markovits, Stock & DeMarco, LLC;  
5 Samuel J. Strauss, Raina Borrelli, and Brittany Resch of Turke & Strauss LLP; Jean S. Martin of  
6 Morgan & Morgan Complex Litigation Group; and John J. Nelson of Milberg Coleman Bryson  
7 Phillips Grossman LLC as Class Counsel, having determined that the requirements of Rule 23(g)  
8 of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

9 9. The Court hereby appoints Plaintiffs Christopher Stein, Josephine Dibisceglia, John  
10 Blumenstock, Thomas Rossello, Jeffrey Branch, Derrick Carter, Trevor Pearch, James Schneider  
11 and Tameka Young as the Class Representatives for settlement purposes only on behalf of the  
12 Settlement Class.

13 Notice to Settlement Class Members

14 10. Pursuant to Federal Rule of Civil Procedure 23(e), the Court approves the Short  
15 Notice and Long Notice (the “Settlement Notices”), to the Settlement Agreement, and finds that  
16 the dissemination of the Settlement Notices substantially in the manner and form set forth in Section  
17 3.2 of the Settlement Agreement (“Notice Program”) complies fully with the requirements of the  
18 Federal Rule of Civil Procedure 23 and due process of law, and is the best notice practicable under  
19 the circumstances.

20 11. The Court further approves the Claim Form which will be available both on the  
21 Settlement Website and by request.

22 12. The notice procedures described in the Notice Program are hereby found to be the  
23 best means of providing notice under the circumstances and, when completed, shall constitute due  
24 and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all  
25 persons affected by the Settlement Agreement and/or entitled to participate in the Final Approval  
26 Hearing, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil  
27 Procedure and due process of law.  
28



1           13.     The Court hereby orders that, within fourteen (14) days of entry of this Order, Ethos  
2 shall provide the Claims Administrator with the names, any email addresses, and any last known  
3 physical address of each member of the Settlement Class (collectively, “Class Member  
4 Information”) that Defendant possesses.

5           14.     No later than forty-five (45) days from the date of this Order preliminarily approving  
6 the Settlement, Class Counsel shall cause the Claims Administrator to send the Short Notice to each  
7 member of the Settlement Class via U.S. Mail; and, for those whom Defendant is in possession of  
8 valid email addresses, via email as well, and shall cause to be published the Long Form Notice  
9 available to the Settlement Class as stated in the proposed Notice Program. In the event that a  
10 mailed Short Notice is returned to the Claims Administrator by the USPS because the address of  
11 the recipient is no longer valid, and the envelope contains a forwarding address, the Claims  
12 Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of  
13 receiving the returned Short Notice. Contemporaneously with seeking Final Approval of the  
14 Settlement, Class Counsel and Ethos shall cause to be filed with the Court an appropriate affidavit  
15 or declaration from the Claims Administrator with respect to complying with the Notice Plan.

16           15.     All costs incurred in disseminating and otherwise in connection with the Settlement  
17 Notices shall be paid from the Settlement Fund.

18           16.     The Long Notice, Short Notice and Claim Form satisfy the requirements of due  
19 process and of Rule 23(e) of the Federal Rules of Civil Procedure and thus are approved for  
20 dissemination to the Settlement Class. The Claim Form shall be made available to the Settlement  
21 Class as set forth on the Notice Program and shall be made available to any potential Class Member  
22 that requests one.

23           Responses by Settlement Class Members and the Scheduling of a Final Approval Hearing

24           17.     Settlement Class Members may opt-out or object no later than seventy-five (75)  
25 days from the Notice Commencement Date (one hundred and five (105) days from the date this  
26 Order is entered) (the “Opt-Out Date”).

27           18.     Any member of the Settlement Class who wishes to be excluded (“opt out”) from  
28 the Settlement Class must individually sign (with a physical signature) and timely submit a written

notice to the Claims Administrator of such intent by (a) mailing it with a postmark by the Opt-Out Date to the designated Post Office box established by the Claims Administrator or (b) emailing it to the Claims Administrator using the email address provided on the Settlement Website. To be effective, the written opt-out notice must include the following: (a) the requestor's name, address and email address; (b) the requestor's physical signature; (c) the name and number of this Litigation (e.g., "*In Re: Ethos Technologies Inc. Data Breach Litigation*, Case No. 3:22-cv-09203 (N.D. Cal.)); and (4) a statement that clearly manifests his or her wish to be excluded from the Settlement Class for purposes of this Settlement. To be effective, written notice must be postmarked or emailed no later than the Opt-Out Date. All Settlement Class Members that opt-out of the Settlement will not be eligible to receive any benefits under the Settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Ethos.

19. Any member of the Settlement Class who does not properly and timely opt-out of the Settlement shall, upon entry of the Final Approval Order and Judgment, be bound by all the terms and provisions of the Settlement Agreement and Release, whether or not such Settlement Class Member objected to the Settlement and whether or not such Settlement Class Member received consideration under the Settlement Agreement.

20. The Court adopts the following schedule for the remaining events in this case:

<b><u>From Order Granting Preliminary Approval</u></b>	
Ethos provides list of Settlement Class Members to the Claims Administrator	+14 days
Ethos pays cost of Notice Program and Claims Administration	+15 days
Notice Commencement Date	+30 days
Short Notice Completion Date	+45 days
<b><u>From Notice Commencement Date</u></b>	
Class Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses	+60 days (i.e., 90 days after Order Granting Preliminary Approval)
Objection Deadline	+75 days (i.e., 105 days after Order Granting Preliminary Approval)

Exclusion Deadline	+75 days (i.e., 105 days after Order Granting Preliminary Approval)
Reminder Notice	+91 days (i.e., 121 days after Order Granting Preliminary Approval)
Claims Deadline	+105 days (i.e., 135 days after Order Granting Preliminary Approval)
Claims Administrator Provide List of Opt-Outs to the Court and Parties	+112 days (i.e., 142 days after Order Granting Preliminary Approval)
<b><u>Final Approval Hearing</u></b>	+165 days from Order Granting Preliminary Approval (at minimum)
Motion for Final Approval	At least 35 days before Final Approval Hearing
<b><u>From Order Granting Final Approval</u></b>	
Ethos to pay balance of Settlement Fund	+15 days
Effective Date	+30 days, assuming no appeals
Payment of Attorneys' Fees and Expenses and Class Representative Service Awards	+42 days
Payment of Claims to Class Members	+60 days, assuming no appeals

21. A hearing on the Settlement (the "Final Approval Hearing") shall be held before this Court on a date to be set by the Court.

22. At the Final Approval Hearing, the Court will consider (a) the fairness, reasonableness, and adequacy of the proposed class Settlement and whether the Settlement should be granted final approval by the Court; (b) dismissal with prejudice of the Litigation; (c) entry of an order including the Release; (d) entry of the Final Approval Order; and (e) entry of final judgment in this Litigation. Class Counsel's application for award of attorney's fees and expenses, and request for the Court to award a service award to the named Plaintiffs, shall also be heard at the time of the hearing.

23. The date and time of the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class, other than that which may be posted by the Court. Should the Court adjourn the date for the Final Approval Hearing, that shall not alter the deadlines for mailing and publication of notice, the Opt-Out Date, or the deadlines for submissions of settlement objections, claims, and notices of intention to appear at the Final

1 Approval Hearing unless those dates are explicitly changed by subsequent Order. The Court may  
2 also decide to hold the hearing via zoom or telephonically. Instructions on how to appear at the  
3 Final Approval Hearing will be posted on the Settlement Website, and the Parties shall endeavor to  
4 have the Claims Administrator update the Settlement Website if the Final Approval Hearing date  
5 changes.

6 24. Any person or entity who or which does not elect to be excluded from the Settlement  
7 Class may, but need not, enter an appearance through its own attorney. Settlement Class Members  
8 that do not timely object or opt out and that do not have an attorney enter an appearance on their  
9 behalf will be represented by Class Counsel.

10 25. Any person or entity who or which does not elect to be excluded from the Settlement  
11 Class may object to the proposed Settlement. Any Settlement Class Member may object to, among  
12 other things, (a) the proposed Settlement, (b) entry of Final Approval Order and the judgment  
13 approving the Settlement, (c) Class Counsel's application for attorneys' fees and expenses, or (d)  
14 the service award request, by submitting a written objection to the Court either by filing it in person  
15 at any location of the United States District Court for the Northern District of California or by  
16 mailing it to the Class Action Clerk, United States District Court for the Northern District of  
17 California, 450 Golden Gate Ave., San Francisco, CA 94102, with a filing or postmark date no later  
18 than seventy-five (75) days from the Notice Commencement Date (one hundred and five (105) days  
19 from the approval of this Order), as defined in §§ 1.22 and 5 of the Settlement Agreement  
20 ("Objection Date"). The objector or his or her counsel may also file, no later than the Objection  
21 Date, the written objection with the Court through the Court's ECF system.

22 26. Any Settlement Class Member making the objection (an "Objector") must sign the  
23 objection personally or through Objector's counsel. An objection must state: (i) the objector's full  
24 name and address; (ii) the case name and number, *In Re: Ethos Technologies Inc. Data Breach*  
25 *Litigation*, Case No. 3:22-cv-09203 (N.D. Cal.); (iii) information identifying the objector as a  
26 Settlement Class Member, including proof that the objector is a member of the Settlement Class  
27 (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a  
28 statement explaining why the objector believes he or she is a Settlement Class Member); (iv) a

1 written statement of all grounds for the objection, accompanied by any legal support for the  
2 objection the objector believes applicable; (v) the identity of any and all counsel representing the  
3 objector in connection with the objection; (vi) a statement whether the objector and/or his or her  
4 counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature  
5 of the objector's duly authorized attorney or other duly authorized representative (if any)  
6 representing him or her in connection with the objection.

7 27. Only Settlement Class Members that have filed and served valid and timely notices  
8 of objection shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class  
9 Member who does not timely file and serve an objection in writing in accordance with the procedure  
10 set forth in the Long Notice and mandated in this Order shall be deemed to have waived any  
11 objection to (a) the Settlement; (b) the Released Claims; (c) entry of Final Approval Order and  
12 Judgment; (d) Class Counsel's application for attorneys' fees, costs, and expenses; and/or (e) the  
13 service award request for the Class Representatives, whether by appeal, collateral attack, or  
14 otherwise.

15 28. Settlement Class Members need not appear at the hearing or take any other action  
16 to indicate their approval.

17 29. Upon entry of the Final Approval Order and Judgment all members of the Settlement  
18 Class that have not personally and timely requested to be excluded from the Settlement Class will  
19 be enjoined from proceeding against Ethos with respect to all of the Released Claims.

20 30. Ethos shall prepare and send, at Ethos's expense, all notices that are required by the  
21 Class Action Fairness Act of 2005 ("CAFA") as specified in 28 U.S.C. § 1715.

22 Administration of the Settlement.

23 31. The Court hereby appoints the claims administrator proposed by the parties, Kroll  
24 Settlement Administration, LLC (the "Claims Administrator"). Responsibilities of the Claims  
25 Administrator shall include: (a) establishing a post office box for purposes of communicating with  
26 Settlement Class Members; (b) disseminating notice to the Settlement Class; (c) developing a  
27 website to enable Settlement Class Members to access documents; (d) accepting and maintaining  
28 documents sent from Settlement Class Members relating to claims administration; and (e)

1 distributing settlement checks to Settlement Class Members. Pursuant to the Settlement Agreement,  
2 the Claims Administrator and costs of administration shall be paid from the Settlement Fund.

3 32. In the event the Settlement Agreement and the proposed settlement are terminated  
4 in accordance with the applicable provisions of the Settlement Agreement, the Settlement  
5 Agreement, the proposed Settlement, and all related proceedings shall, except as expressly provided  
6 to the contrary in the Settlement Agreement, become null and void, shall have no further force and  
7 effect, and Settlement Class Members shall retain all of their current rights to assert any and all  
8 claims against Ethos and any other Released Persons, and Ethos and any other Released Persons  
9 shall retain any and all of their current defenses and arguments thereto (including but not limited to  
10 arguments that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are not satisfied for purposes of  
11 continued litigation). The Litigation shall thereupon revert forthwith to its respective procedural  
12 and substantive status prior to the date of execution of the Settlement Agreement and shall proceed  
13 as if the Settlement Agreement and all other related orders and papers had not been executed.

14 33. Neither this Order nor the Settlement Agreement nor any other settlement-related  
15 document nor anything contained herein or therein or contemplated hereby or thereby nor any  
16 proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or  
17 herein or in any other settlement-related document, shall constitute, be construed as or be deemed  
18 to be evidence of or an admission or concession by Ethos as to the validity of any claim that has  
19 been or could have been asserted against it or as to any liability by it as to any matter set forth in  
20 this Order, or as to the propriety of class certification for any purposes other than for purposes of  
21 the current proposed settlement.

22  
23  
24 Dated: \_\_\_\_\_  
25 The Honorable Sallie Kim  
26 United States Magistrate Judge  
27  
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